

ORDERS FROM FEBRUARY 24 THROUGH
APRIL 28, 1986

FEBRUARY 24, 1986

Affirmed on Appeal

No. 85-1090. HUDNUT, MAYOR OF CITY OF INDIANAPOLIS, INDIANA, ET AL. *v.* AMERICAN BOOKSELLERS ASSN., INC., ET AL. Affirmed on appeal from C. A. 7th Cir. THE CHIEF JUSTICE, JUSTICE REHNQUIST, and JUSTICE O'CONNOR would note probable jurisdiction and set case for oral argument. Reported below: 771 F. 2d 323.

Appeals Dismissed

No. 85-979. SVENDROWSKI *v.* MISSOURI. Appeal from Ct. App. Mo., Eastern Dist., dismissed for want of substantial federal question. Reported below: 692 S. W. 2d 348.

No. 85-1080. SAN DIEGO GAS & ELECTRIC CO. *v.* PUBLIC UTILITIES COMMISSION OF CALIFORNIA. Appeal from Sup. Ct. Cal. dismissed for want of substantial federal question.

No. 85-1091. LEONI ET AL. *v.* STATE BAR OF CALIFORNIA. Appeal from Sup. Ct. Cal. dismissed for want of substantial federal question. Reported below: 39 Cal. 3d 609, 704 P. 2d 183.

No. 85-1232. STAMOS, INDIVIDUALLY AND AS NEXT FRIEND OF STAMOS, A MINOR, ET AL. *v.* SPRING BRANCH INDEPENDENT SCHOOL DISTRICT ET AL. Appeal from Sup. Ct. Tex. dismissed for want of substantial federal question. Reported below: 695 S. W. 2d 556.

No. 85-1035. CROCKER NATIONAL BANK *v.* PERDUE. Appeal from Sup. Ct. Cal. dismissed for want of jurisdiction. Reported below: 38 Cal. 3d 913, 702 P. 2d 503.

No. 85-1040. KERNER *v.* JUDGES OF THE WORCESTER PROBATE COURT 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.

February 24, 1986

475 U. S.

No. 85-1113. *CARTER v. VIRGINIA*. Appeal from Sup. Ct. Va. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied.

No. 85-5931. *DYSON v. TEXAS*. Appeal from C. A. 5th Cir. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied.

No. 85-5947. *STEVENSON v. LEGAL AID SOCIETY OF HAWAII*. Appeal from Int. Ct. App. Haw. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied. Reported below: — Haw. App. —, 753 P. 2d 252.

No. 85-6001. *DOOLEY v. BELCHER*. Appeal from Ct. App. Ohio, Montgomery County, dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied.

No. 85-6002. *DOOLEY v. FEDERAL HOME LOAN MORTGAGE CORPORATION ET AL.* Appeal from Ct. App. Ohio, Montgomery County, dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied.

No. 85-1050. *TRAHAN v. TRAHAN*. Appeal from Ct. App. Tex., 3d Sup. Jud. Dist., dismissed for want of substantial federal question. JUSTICE WHITE would postpone further consideration of question of jurisdiction to a hearing of the case on the merits. Reported below: 682 S. W. 2d 332.

No. 85-5650. *TAYLOR v. ROBINSON, WARDEN*. Appeal from Sup. Ct. Conn. dismissed for want of substantial federal question. JUSTICE WHITE, JUSTICE POWELL, and JUSTICE O'CONNOR would note probable jurisdiction and set case for oral argument. Reported below: 196 Conn. 572, 494 A. 2d 1195.

Vacated and Remanded on Appeal

No. 85-182. *NORTHWEST CENTRAL PIPELINE CORP. ET AL. v. CORPORATION COMMISSION OF KANSAS ET AL.* Appeal from Sup. Ct. Kan. Judgment vacated and case remanded for further consideration in light of *Transcontinental Gas Pipe Line Corp. v. State Oil and Gas Board*, 474 U. S. 409 (1986). Reported below: 237 Kan. 248, 699 P. 2d 1002.

475 U. S.

February 24, 1986

Certiorari Granted—Vacated and Remanded

No. 84-1237. THIGPEN, COMMISSIONER, MISSISSIPPI DEPARTMENT OF CORRECTIONS, ET AL. *v.* JONES. C. A. 5th Cir. Motion of respondent for leave to proceed *in forma pauperis* and certiorari granted. Judgment vacated and case remanded for further consideration in light of *Cabana v. Bullock*, 474 U. S. 376 (1986). Reported below: 741 F. 2d 805.

Miscellaneous Orders

No. — — —. AGEE ET AL. *v.* EQUAL EMPLOYMENT OPPORTUNITY COMMISSION; and

No. — — —. VESSICHIO *v.* CONNECTICUT. Motions of petitioners to direct the Clerk to file petitions for writs of certiorari that do not comply with the Rules of this Court denied.

No. — — —. ANDREWS *v.* CALIFORNIA COOLER, INC. Motion of petitioner to direct the Clerk to file a petition for writ of certiorari out of time and for relief from the requirement of Rule 28.2 denied.

No. D-445. IN RE DISBARMENT OF NICHOLAS. Disbarment entered. [For earlier order herein, see 468 U. S. 1223.]

No. D-524. IN RE DISBARMENT OF WETHERBEE. Disbarment entered. JUSTICE STEVENS dissents. [For earlier order herein, see 474 U. S. 897.]

No. D-535. IN RE DISBARMENT OF ROMANO. Salvatore L. Romano, Jr., of Providence, R. I., having requested to resign as a member of the Bar of this Court, it is ordered that his name be stricken from the roll of attorneys admitted to practice before the Bar of this Court. The rule to show cause, heretofore issued on December 9, 1985 [474 U. S. 1017], is hereby discharged.

No. D-544. IN RE DISBARMENT OF TILLEY. It is ordered that Kenneth L. Tilley, of Houston, Tex., be suspended from the practice of law in this Court and that a rule issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D-545. IN RE DISBARMENT OF WILLIS. It is ordered that David A. Willis, of Valparaiso, Ind., 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.

February 24, 1986

475 U. S.

No. D-546. *IN RE DISBARMENT OF AUGUST*. It is ordered that Irving A. August, of Birmingham, Mich., be suspended from the practice of law in this Court and that a rule issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. 65, Orig. *TEXAS v. NEW MEXICO*. Motion of the Special Master for allowance of interim fees and disbursements granted and a total of \$34,213.09 is allowed. [For earlier order herein, see, *e. g.*, 468 U. S. 1202.]

CHIEF JUSTICE BURGER, with whom JUSTICE BLACKMUN and JUSTICE REHNQUIST join, dissenting.

In *Louisiana v. Mississippi*, 466 U. S. 921 (1984), I dissented from an order of the Court granting fees to the Special Master. The basis for my dissent was that the hourly rates at which the Special Master sought fees for work performed by his junior associates, some of whom were only "summer law clerks," were not supported and were unreasonable.

In the present case, the Special Master (who also sat in the *Louisiana* case) has applied for interim fees in the amount of \$33,511. I dissent because the Special Master has elected to give the Court even less information supporting the fee request than he did in *Louisiana*. The Special Master omits any information concerning the experience levels of the four attorneys for whose services he seeks to charge. (I assume, although it is not so stated, that they are in fact members of the bar, for I cannot believe such a claim would be made for services of any persons not admitted to practice.) We are not informed as to the hourly rates charged for his work and the work of those attorneys. Instead, we are provided only with enough information to conclude that the average hourly rate charged by the attorneys is \$140 per hour. The Court and the parties are thus necessarily left to speculate as to whether that average reflects a charge in excess of \$100 per hour for work performed only by junior associates.

As I noted in *Louisiana*,

"[t]he fees and expenses charged by a Special Master when allowed by this Court, represent our assurance to the parties that the charges are reasonable and proper." *Id.*, at 923.

This applies with equal force where, as here, the parties do not oppose the application. The present application for *interim* fees

475 U. S.

February 24, 1986

is made by an adjudicator who has yet to adjudicate. I draw no inferences, affirmative or negative, from the fact that the parties have elected not to express their views concerning the Special Master's application.

However, in dissenting in *Louisiana*, I stated:

"A Special Master of this Court is a surrogate of the Court and in that sense the service performed is an important public duty of high order in much the same way as is serving in the Judiciary. I do not suggest that Special Masters should serve without compensation, as for example, Senior Federal Judges have done for a number of years in such cases, but I believe the public service aspect of the appointment is a factor that is not to be wholly ignored in determining the reasonableness of fees charged in a case like this." *Id.*, at 921.

Even if the public service aspect of the function of a Special Master of this Court should not enter into the fixing of fees, I am unwilling to act without being provided with at least as much information as private clients routinely receive from their privately retained counsel. The contending litigants have a right to expect this Court to exercise its independent judgment on fees rather than requiring each or both of them to challenge the amounts.

I would defer action on the application for interim fees until adequate information is provided. Without such data, this Court cannot protect the legitimate public interests implicated.

No. 84-902. *WARDAIR CANADA INC. v. FLORIDA DEPARTMENT OF REVENUE*. Sup. Ct. Fla. [Probable jurisdiction noted, 474 U. S. 943.] Motion of National Governors' Association et al. for leave to file a brief as *amici curiae* granted.

No. 84-1905. *BOWEN, SECRETARY OF HEALTH AND HUMAN SERVICES v. OWENS ET AL.* D. C. C. D. Cal. [Probable jurisdiction noted *sub nom. Heckler v. Owens*, 474 U. S. 899.] Motion of appellee Buenta Owens to be substituted as representative of appellee Kenneth Owens, deceased, granted.

No. 85-93. *BAZEMORE ET AL. v. FRIDAY ET AL.*; and

No. 85-428. *UNITED STATES ET AL. v. FRIDAY ET AL.* C. A. 4th Cir. [Certiorari granted, 474 U. S. 978.] Motion of respondents for divided argument denied. JUSTICE BRENNAN would grant this motion.

February 24, 1986

475 U. S.

No. 85-117. *BAKER ET AL. v. GENERAL MOTORS CORP. ET AL.* Sup. Ct. Mich. [Probable jurisdiction noted, 474 U. S. 899.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 85-227. *SMALIS ET AL. v. PENNSYLVANIA.* Sup. Ct. Pa. [Certiorari granted, 474 U. S. 944.] Motion of petitioners for divided argument denied. JUSTICE BRENNAN would grant this motion.

No. 85-236. *EICHENLAUB v. YURKY ET AL.* C. A. 3d Cir. [Certiorari granted, 474 U. S. 1049.] Motion for appointment of counsel granted, and it is ordered that David Rudovsky, Esquire, of Philadelphia, Pa., be appointed to serve as counsel for respondent David A. Yurky in this case.

No. 85-372. *CHRISTENSEN ET AL. v. UNITED STATES.* C. A. 9th Cir. Motion of petitioners to consolidate this case with No. 85-546, *United States v. Mottaz* [certiorari granted, 474 U. S. 994], denied.

No. 85-437. *ARCARA, DISTRICT ATTORNEY OF ERIE COUNTY v. CLOUD BOOKS, INC., DBA VILLAGE BOOK & NEWS STORE, ET AL.* Ct. App. N. Y. [Certiorari granted, 474 U. S. 978.] Motion of American Civil Liberties Union et al. for leave to file a brief as *amici curiae* granted.

No. 85-519. *RANDALL ET AL. v. LOFTSGAARDEN ET AL.* C. A. 8th Cir. [Certiorari granted, 474 U. S. 978.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 85-530. *O'CONNOR ET AL. v. ORTEGA.* C. A. 9th Cir. [Certiorari granted, 474 U. S. 1018.] Joel I. Klein, Esquire, of Washington, D. C., a member of the Bar of this Court, is invited to brief and argue this case as *amicus curiae* in support of the judgment below.

No. 85-558. *O'CONNOR ET UX. v. UNITED STATES;*

No. 85-559. *COPLIN ET UX. v. UNITED STATES;* and

No. 85-560. *MATTOX ET UX. v. UNITED STATES.* C. A. Fed. Cir. [Certiorari granted, 474 U. S. 1050.] Motion of petitioners to dispense with printing the joint appendix granted.

No. 85-568. *NANTAHALA POWER & LIGHT CO. ET AL. v. THORNBURG, ATTORNEY GENERAL OF NORTH CAROLINA, ET AL.*

475 U. S.

February 24, 1986

Sup. Ct. N. C. [Probable jurisdiction noted, 474 U. S. 1018.] Motions of Edison Electric Institute and New England Electric System for leave to file briefs as *amici curiae* granted. Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted. Motion of appellees for divided argument denied. JUSTICE BRENNAN would grant this motion. JUSTICE POWELL took no part in the consideration or decision of these motions.

No. 85-621. COMMODITY FUTURES TRADING COMMISSION *v.* SCHOR ET AL.; and

No. 85-642. CONTICOMMODITY SERVICES, INC. *v.* SCHOR ET AL. C. A. D. C. Cir. [Certiorari granted, 474 U. S. 1018.] Motion of petitioner ContiCommodity Services, Inc., for divided argument granted. Motion of respondents for divided argument denied. JUSTICE BRENNAN would grant this motion.

No. 85-632. ATKINS, COMMISSIONER, MASSACHUSETTS DEPARTMENT OF PUBLIC WELFARE *v.* RIVERA ET AL. Sup. Jud. Ct. Mass. [Certiorari granted, 474 U. S. 1018.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 85-905. SALISBURY *v.* JAMES RIVER CORP. ET AL., 474 U. S. 1061. Motion of United Paperworkers International Union for damages and fees denied.

No. 85-954. JAPAN WHALING ASSN. ET AL. *v.* AMERICAN CETACEAN SOCIETY ET AL.; and

No. 85-955. BALDRIGE, SECRETARY OF COMMERCE, ET AL. *v.* AMERICAN CETACEAN SOCIETY ET AL. C. A. D. C. Cir. [Certiorari granted, 474 U. S. 1053.] Motion of the Solicitor General to dispense with printing the joint appendix granted.

No. 85-1030. RADOL ET AL. *v.* THOMAS ET AL. C. A. 6th Cir.;

No. 85-1043. PILOT LIFE INSURANCE CO. *v.* DEDEAUX. C. A. 5th Cir.; and

No. 85-1066. MARTIN, GOVERNOR OF NORTH CAROLINA, ET AL. *v.* HAITH. Appeal from D. C. E. D. N. C. The Solicitor General is invited to file briefs in these cases expressing the views of the United States.

No. 85-5542. FORD *v.* WAINWRIGHT, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. [Certiorari

February 24, 1986

475 U. S.

granted, 474 U. S. 1019.] Motions of American Psychological Association et al., Office of the Capital Collateral Representative for Florida et al., and American Psychiatric Association for leave to file briefs as *amici curiae* granted.

No. 85-5699. WILSON *v.* SCHILLINGER ET AL. C. A. 3d Cir. Motion of petitioner to grant the petition for writ of certiorari, vacate the judgment, and remand the case to the United States Court of Appeals for the Third Circuit for further consideration denied.

No. 85-6233. SHEWCHUN *v.* UNITED STATES. C. A. 11th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied. Petitioner is allowed until March 17, 1986, within which to pay the docketing fee required by Rule 45(a) and to submit a petition in compliance with Rule 33 of the Rules of this Court.

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

For the reasons expressed in *Brown v. Herald Co.*, 464 U. S. 928 (1983), we would deny the petition for writ of certiorari without reaching the merits of the motion to proceed *in forma pauperis*.

No. 85-851. IN RE CARSON. C. A. 6th Cir. Petition for writ of common-law certiorari and/or mandamus denied.

No. 85-6142. IN RE JOHNSON. Petition for writ of habeas corpus denied.

No. 85-5921. IN RE MURPHY; and

No. 85-6090. IN RE BRAATEN. Petitions for writs of mandamus denied.

No. 85-5971. IN RE BARRITT. Petition for writ of mandamus and/or prohibition denied.

No. 85-6141. IN RE GREEN. Petition for writ of prohibition and/or mandamus denied.

Probable Jurisdiction Noted or Postponed

No. 85-732. WESTERN AIR LINES, INC., ET AL. *v.* BOARD OF EQUALIZATION OF THE STATE OF SOUTH DAKOTA ET AL. Appeal from Sup. Ct. S. D. Probable jurisdiction noted. Reported below: 372 N. W. 2d 106.

475 U. S.

February 24, 1986

No. 85-1377. BOWSHER, COMPTROLLER GENERAL OF THE UNITED STATES *v.* SYNAR, MEMBER OF CONGRESS, ET AL.;

No. 85-1378. UNITED STATES SENATE *v.* SYNAR, MEMBER OF CONGRESS, ET AL.; and

No. 85-1379. O'NEILL, SPEAKER OF THE UNITED STATES HOUSE OF REPRESENTATIVES, ET AL. *v.* SYNAR, MEMBER OF CONGRESS, ET AL. Appeals from D. C. D. C. Probable jurisdiction noted, cases consolidated, and a total of one hour allotted each side for oral argument. Motion of the parties to dispense temporarily with printing and to set an expedited briefing schedule and argument date granted. Reported below: 626 F. Supp. 1374.

No. 85-1021. R. J. REYNOLDS TOBACCO CO. *v.* DURHAM COUNTY, NORTH CAROLINA, ET AL. Appeal from Sup. Ct. N. C.; and

No. 85-1022. R. J. REYNOLDS TOBACCO CO. *v.* DURHAM COUNTY, NORTH CAROLINA, ET AL. Appeal from Ct. App. N. C. Further consideration of question of jurisdiction postponed to hearing of cases on the merits. Cases consolidated and a total of one hour allotted for oral argument. Reported below: No. 85-1021, 314 N. C. 540, 335 S. E. 2d 21; No. 85-1022, 73 N. C. App. 475, 326 S. E. 2d 911.

Certiorari Granted

No. 85-782. IMMIGRATION AND NATURALIZATION SERVICE *v.* CARDOZA-FONSECA. C. A. 9th Cir. Certiorari granted. Reported below: 767 F. 2d 1448.

No. 85-1033. KELLY, CONNECTICUT CHIEF STATE'S ATTORNEY, ET AL. *v.* ROBINSON. C. A. 2d Cir. Certiorari granted. Reported below: 776 F. 2d 30.

No. 85-686. METROPOLITAN LIFE INSURANCE CO. *v.* TAYLOR; and

No. 85-688. GENERAL MOTORS CORP. *v.* TAYLOR. C. A. 6th Cir. Certiorari granted, cases consolidated, and a total of one hour allotted for oral argument. Reported below: 763 F. 2d 216.

No. 85-759. MARYLAND *v.* GARRISON. Ct. App. Md. Motion of respondent for leave to proceed *in forma pauperis* and certiorari granted. Reported below: 303 Md. 385, 494 A. 2d 193.

No. 85-937. WEST VIRGINIA *v.* UNITED STATES. C. A. 4th Cir. Certiorari granted limited to Question 2 presented by the petition. Reported below: 764 F. 2d 1028.

February 24, 1986

475 U. S.

No. 84-6075. *TISON v. ARIZONA* (two cases). Sup. Ct. Ariz. Motions of petitioners for leave to proceed *in forma pauperis* and certiorari granted. Reported below: 142 Ariz. 446, 690 P. 2d 747 (first case); 142 Ariz. 454, 690 P. 2d 755 (second case).

No. 85-5454. *GRAY v. MISSISSIPPI*. Sup. Ct. Miss. Motion of petitioner for leave to proceed *in forma pauperis* and certiorari granted. Reported below: 472 So. 2d 409.

Certiorari Denied. (See also Nos. 85-1040, 85-1113, 85-5931, 85-5947, 85-6001, 85-6002, and 85-851, *supra*.)

No. 84-1692. *BIBBY v. UNITED STATES*; and
No. 84-1851. *GILLOCK v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 752 F. 2d 1116.

No. 85-125. *WALTON ET AL. v. COLVILLE CONFEDERATED TRIBES ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 752 F. 2d 397 and 758 F. 2d 1324.

No. 85-591. *W. C. GARCIA & ASSOCIATES, INC. v. SASSI, DISTRICT DIRECTOR, INTERNAL REVENUE SERVICE*. C. A. 9th Cir. Certiorari denied.

No. 85-596. *ARNSBERG v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 757 F. 2d 971.

No. 85-670. *ETHYL CORP. v. UNITED STEELWORKERS OF AMERICA, AFL-CIO-CLC, ET AL.* C. A. 7th Cir. Certiorari denied. Reported below: 768 F. 2d 180.

No. 85-708. *ALL SOULS EPISCOPAL CHURCH v. FEDERAL DEPOSIT INSURANCE CORPORATION ET AL.*; and

No. 85-1017. *ROCKET OIL CO. v. FEDERAL DEPOSIT INSURANCE CORPORATION ET AL.* C. A. 10th Cir. Certiorari denied. Reported below: 769 F. 2d 658.

No. 85-713. *BEERLY, TRUSTEE OF THE GUSTAV E. BEERLY TRUST v. DEPARTMENT OF THE TREASURY ET AL.* C. A. 7th Cir. Certiorari denied. Reported below: 768 F. 2d 942.

No. 85-728. *CARR v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 764 F. 2d 496.

No. 85-746. *ALBANO ET AL. v. CRAIG CORP.* C. A. 7th Cir. Certiorari denied. Reported below: 767 F. 2d 924.

475 U. S.

February 24, 1986

No. 85-758. CITY OF PRIOR LAKE, MINNESOTA *v.* SHAKOPEE MDEWAKANTON SIOUX COMMUNITY ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 771 F. 2d 1153.

No. 85-775. MASTROPAOLO *v.* MASTROPAOLO. Ct. App. Cal., 4th App. Dist. Certiorari denied. Reported below: 166 Cal. App. 3d 953, 213 Cal. Rptr. 26.

No. 85-796. AMERICAN FINANCIAL SERVICES ASSN. *v.* FEDERAL TRADE COMMISSION ET AL.; and

No. 85-797. SOUTH CAROLINA DEPARTMENT OF CONSUMER AFFAIRS *v.* FEDERAL TRADE COMMISSION ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 247 U. S. App. D. C. 167, 767 F. 2d 957.

No. 85-821. FLORIDA DEPARTMENT OF BUSINESS REGULATION ET AL. *v.* UNITED STATES DEPARTMENT OF THE INTERIOR ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 768 F. 2d 1248.

No. 85-822. AMOCO PRODUCTION Co. *v.* EQUAL EMPLOYMENT OPPORTUNITY COMMISSION. C. A. 5th Cir. Certiorari denied. Reported below: 768 F. 2d 669.

No. 85-840. GINSBURG *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 773 F. 2d 798.

No. 85-843. LONG *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 774 F. 2d 1164.

No. 85-850. PURVIS ET AL. *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 768 F. 2d 1237.

No. 85-854. ESPOSITO ET AL. *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 771 F. 2d 283.

No. 85-857. SIMMONS *v.* UNITED STATES. Ct. Mil. App. Certiorari denied. Reported below: 21 M. J. 38.

No. 85-861. HADDON HOUSE FOOD PRODUCTS, INC., ET AL. *v.* NATIONAL LABOR RELATIONS BOARD ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 764 F. 2d 182.

No. 85-867. HODGES *v.* DEPARTMENT OF TRANSPORTATION, FEDERAL AVIATION ADMINISTRATION. C. A. Fed. Cir. Certiorari denied. Reported below: 776 F. 2d 1061.

February 24, 1986

475 U. S.

No. 85-876. *VICARS v. SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA (EPLER ET AL., REAL PARTIES IN INTEREST)*. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 85-884. *BANKS ET AL. v. PAN AMERICAN WORLD AIRWAYS, INC., ET AL.* C. A. 11th Cir. Certiorari denied. Reported below: 763 F. 2d 1399.

No. 85-897. *KOWALCHUK v. UNITED STATES.* C. A. 3d Cir. Certiorari denied. Reported below: 773 F. 2d 488.

No. 85-904. *HERFORD v. SUN PIPE LINE CO.* C. A. 5th Cir. Certiorari denied. Reported below: 770 F. 2d 163.

No. 85-907. *FROMM ET AL. v. ROSEWELL, TREASURER OF COOK COUNTY, ILLINOIS, ET AL.* C. A. 7th Cir. Certiorari denied. Reported below: 771 F. 2d 1089.

No. 85-924. *MURPHY v. UNITED STATES.* C. A. 7th Cir. Certiorari denied. Reported below: 768 F. 2d 1518.

No. 85-927. *SHOKRIAN v. CARROLL, SUPERINTENDENT OF PRISONS, DEPARTMENT OF CORRECTIONS OF CALIFORNIA.* C. A. 9th Cir. Certiorari denied. Reported below: 774 F. 2d 1175.

No. 85-930. *CHAMBLESS ET UX. v. MASTERS, MATES & PILOTS PENSION PLAN ET AL.; and*

No. 85-1097. *MASTERS, MATES & PILOTS PENSION PLAN ET AL. v. CHAMBLESS ET UX.* C. A. 2d Cir. Certiorari denied. Reported below: 772 F. 2d 1032.

No. 85-935. *JONES v. ILLINOIS.* App. Ct. Ill., 2d Dist. Certiorari denied. Reported below: 129 Ill. App. 3d 618, 472 N. E. 2d 1176.

No. 85-938. *ROSS v. ILLINOIS.* App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 132 Ill. App. 3d 498, 477 N. E. 2d 1258.

No. 85-940. *DE LUCA v. NEW YORK.* App. Div., Sup. Ct. N. Y., 1st Jud. Dept. Certiorari denied. Reported below: 110 App. Div. 2d 1091, 488 N. Y. S. 2d 529.

No. 85-942. *FERN v. FERN.* Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 85-950. *MARCHANT v. UNITED STATES.* C. A. 8th Cir. Certiorari denied. Reported below: 774 F. 2d 888.

475 U. S.

February 24, 1986

No. 85-956. *CLOPTON v. CITY OF DALLAS*. C. A. 5th Cir. Certiorari denied. Reported below: 773 F. 2d 1235.

No. 85-959. *TOWNSHIP OF LACEY v. JERSEY CENTRAL POWER & LIGHT CO.* C. A. 3d Cir. Certiorari denied. Reported below: 772 F. 2d 1103.

No. 85-964. *LIBERTARIAN PARTY OF VIRGINIA ET AL. v. DAVIS ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 766 F. 2d 865.

No. 85-975. *ROSS BICYCLES, INC. v. CYCLES USA, INC.* C. A. 11th Cir. Certiorari denied. Reported below: 765 F. 2d 1502.

No. 85-978. *KOREY v. CITY OF DAVENPORT, IOWA*. C. A. 8th Cir. Certiorari denied. Reported below: 774 F. 2d 1170.

No. 85-980. *ERNEST v. UNITED STATES ATTORNEY FOR THE SOUTHERN DISTRICT OF ALABAMA ET AL.* C. A. 11th Cir. Certiorari denied. Reported below: 770 F. 2d 1082.

No. 85-982. *SAMPSON v. RASKIN ET AL.* C. A. 7th Cir. Certiorari denied. Reported below: 767 F. 2d 925.

No. 85-984. *INTERNATIONAL ASSOCIATION OF MACHINISTS & AEROSPACE WORKERS, AFL-CIO v. QANTAS AIRWAYS, LTD.* C. A. 9th Cir. Certiorari denied. Reported below: 772 F. 2d 912.

No. 85-985. *MASIN ET UX. v. DRAIN ET UX*. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 85-986. *GISSARO v. GROSS & HECHT TRUCKING, INC.* Super. Ct. N. J., App. Div. Certiorari denied.

No. 85-989. *QUILICI v. SECOND AMENDMENT FOUNDATION ET AL.* C. A. 7th Cir. Certiorari denied. Reported below: 769 F. 2d 414.

No. 85-992. *FREESE, NEXT FRIEND FOR FREESE, ET UX. v. CORNING GLASS WORKS*. C. A. 6th Cir. Certiorari denied. Reported below: 770 F. 2d 165.

No. 85-1000. *FACER INSURANCE AGENCY, INC. v. FABE, SUPERINTENDENT OF INSURANCE OF OHIO*. C. A. 7th Cir. Certiorari denied. Reported below: 773 F. 2d 142.

February 24, 1986

475 U. S.

No. 85-1001. *BOHN ET UX. v. COUNTY OF DAKOTA ET AL.* C. A. 8th Cir. Certiorari denied. Reported below: 772 F. 2d 1433.

No. 85-1002. *CIAMPITTI ET AL. v. UNITED STATES.* C. A. 3d Cir. Certiorari denied. Reported below: 772 F. 2d 893.

No. 85-1004. *BEAIRD v. MILLER'S MUTUAL INSURANCE ASSOCIATION OF ILLINOIS.* App. Ct. Ill., 5th Dist. Certiorari denied. Reported below: 133 Ill. App. 3d 670, 479 N. E. 2d 374.

No. 85-1006. *SINHA v. VETERANS ADMINISTRATION.* C. A. Fed. Cir. Certiorari denied. Reported below: 768 F. 2d 330.

No. 85-1008. *BRITT v. SIMI VALLEY UNIFIED SCHOOL DISTRICT ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 776 F. 2d 1052.

No. 85-1009. *YARBOUGH ET AL. v. NEW JERSEY.* Sup. Ct. N. J. Certiorari denied. Reported below: 100 N. J. 627, 498 A. 2d 1239.

No. 85-1013. *RITTENHOUSE v. DEKALB COUNTY, GEORGIA, ET AL.* C. A. 11th Cir. Certiorari denied. Reported below: 764 F. 2d 1451.

No. 85-1014. *SMITH v. LOUISIANA.* Ct. App. La., 2d Cir. Certiorari denied.

No. 85-1015. *LEEBRO MANAGEMENT, INC., DBA SAMSON BUICK, INC. v. NATIONAL LABOR RELATIONS BOARD.* C. A. 3d Cir. Certiorari denied. Reported below: 772 F. 2d 895.

No. 85-1016. *MCKNIGHT ET AL. v. UNITED STATES.* C. A. 8th Cir. Certiorari denied. Reported below: 771 F. 2d 388.

No. 85-1019. *RUSSELL v. COLORADO.* Ct. App. Colo. Certiorari denied.

No. 85-1023. *JON-T. CHEMICALS, INC., ET AL. v. UNITED STATES.* C. A. 5th Cir. Certiorari denied. Reported below: 768 F. 2d 686.

No. 85-1024. *PLISKA v. STEEL KING INDUSTRIES, INC.* C. A. 7th Cir. Certiorari denied. Reported below: 774 F. 2d 1168.

475 U. S.

February 24, 1986

No. 85-1025. WILLIAMS, T/A WILLIAMS ELECTRIC *v.* SCHOOL BOARD OF THE CITY OF PITTSBURGH. C. A. 3d Cir. Certiorari denied. Reported below: 772 F. 2d 897.

No. 85-1029. STARKMAN *v.* MARATHON OIL CO. ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 772 F. 2d 231.

No. 85-1031. HUCKS ET AL. *v.* BELL TELEPHONE LABORATORIES, INC. C. A. 4th Cir. Certiorari denied. Reported below: 760 F. 2d 265.

No. 85-1032. M. J. M. EXHIBITORS, INC. *v.* STERN, INDIVIDUALLY AND AS CHAIRMAN OF THE NEW YORK STATE URBAN DEVELOPMENT CORPORATION, ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 770 F. 2d 288.

No. 85-1034. JACKSON *v.* CABINET FOR HUMAN RESOURCES OF THE COMMONWEALTH OF KENTUCKY. C. A. 6th Cir. Certiorari denied. Reported below: 774 F. 2d 1162.

No. 85-1039. QUANSAH *v.* JIM BUTLER & CO. ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 772 F. 2d 913.

No. 85-1041. LLANO, INC. *v.* INTERNATIONAL MINERALS & CHEMICAL CORP. C. A. 10th Cir. Certiorari denied. Reported below: 770 F. 2d 879.

No. 85-1044. QUARLES *v.* OHIO. Ct. App. Ohio, Hamilton County. Certiorari denied.

No. 85-1046. RAMIREZ *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 769 F. 2d 453.

No. 85-1047. MIKULEC *v.* BRAUN, SHERIFF OF ERIE COUNTY. App. Div., Sup. Ct. N. Y., 4th Jud. Dept. Certiorari denied. Reported below: 112 App. Div. 2d 803, 492 N. Y. S. 2d 305.

No. 85-1049. CHRYSLER PLASTIC PRODUCTS CORP. *v.* EREBIA. C. A. 6th Cir. Certiorari denied. Reported below: 772 F. 2d 1250.

No. 85-1055. PYLE, BY STRAUB, A SUCCESSOR GUARDIAN OF HER ESTATE *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 766 F. 2d 1141.

No. 85-1056. BISCAYNE 21 CONDOMINIUM, INC. *v.* SOUTH ATLANTIC FINANCIAL CORP. C. A. 11th Cir. Certiorari denied. Reported below: 767 F. 2d 814.

February 24, 1986

475 U. S.

No. 85-1057. OTARI CORP. *v.* KING INSTRUMENT CORP. C. A. Fed. Cir. Certiorari denied. Reported below: 767 F. 2d 853.

No. 85-1059. DOE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 775 F. 2d 300.

No. 85-1060. RAYTHEON CO. *v.* CVD, INC., ET AL. C. A. 1st Cir. Certiorari denied. Reported below: 769 F. 2d 842.

No. 85-1062. HORNBUCKLE *v.* ARCO OIL & GAS CO. C. A. 5th Cir. Certiorari denied. Reported below: 770 F. 2d 1321.

No. 85-1068. DEMJANJUK *v.* PETROVSKY, WARDEN, ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 776 F. 2d 571.

No. 85-1069. COE *v.* COE. C. A. 3d Cir. Certiorari denied. Reported below: 770 F. 2d 1068.

No. 85-1070. JONES ET AL. *v.* THORNE; and
No. 85-5961. THORNE ET UX. *v.* JONES ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 765 F. 2d 1270.

No. 85-1072. ANGEL *v.* SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO (RENN, REAL PARTY IN INTEREST). Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 85-1073. BLUE BELL, INC. *v.* WILHELM ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 773 F. 2d 1429.

No. 85-1075. DANIEL *v.* SECURITY PACIFIC NATIONAL BANK ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 771 F. 2d 1352.

No. 85-1076. LYONS, GUARDIAN OF THE PERSON AND ESTATE OF WHITTINGTON, A MINOR *v.* BUTE, CONSERVATOR OF THE ESTATE OF WHITTINGTON, ET AL. Sup. Ct. Ill. Certiorari denied. Reported below: 107 Ill. 2d 169, 483 N. E. 2d 210.

No. 85-1078. BERNSTEIN *v.* PORTLAND SAVINGS & LOAN ASSN. Ct. App. Tex., 13th Sup. Jud. Dist. Certiorari denied. Reported below: 716 S. W. 2d 532.

No. 85-1086. RODRIGUEZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 770 F. 2d 959.

475 U. S.

February 24, 1986

No. 85-1087. *HOLMES v. DRUMMOND*. Sup. Ct. Del. Certiorari denied. Reported below: 504 A. 2d 572.

No. 85-1089. *GALLO v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 763 F. 2d 1504.

No. 85-1101. *BURBANK-GLENDALE-PASADENA AIRPORT AUTHORITY v. BAKER ET AL.* Sup. Ct. Cal. Certiorari denied. Reported below: 39 Cal. 3d 862, 705 P. 2d 866.

No. 85-1102. *MANN v. WARDEN, EGLIN AIR FORCE BASE*. C. A. 11th Cir. Certiorari denied. Reported below: 771 F. 2d 1453.

No. 85-1103. *CHALUISSANT v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 779 F. 2d 44.

No. 85-1106. *SHANDLOFF ET AL. v. CALIFORNIA*. Ct. App. Cal., 2d App. Dist. Certiorari denied. Reported below: 170 Cal. App. 3d 372, 215 Cal. Rptr. 916.

No. 85-1107. *INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 18, ET AL. v. MURPHY*. C. A. 6th Cir. Certiorari denied. Reported below: 774 F. 2d 114.

No. 85-1108. *DELTA RESINS & REFRACTORIES, INC., ET AL. v. ASHLAND OIL, INC.* C. A. Fed. Cir. Certiorari denied. Reported below: 776 F. 2d 281.

No. 85-1110. *CARRALERO v. UNITED STATES*. C. A. 11th Cir. Certiorari denied. Reported below: 777 F. 2d 702.

No. 85-1111. *POWELL PRESSED STEEL CO. v. POLICY ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 770 F. 2d 609.

No. 85-1112. *FALSTAFF BREWING CORP. v. TRINITY CARTON CO., INC.* C. A. 5th Cir. Certiorari denied. Reported below: 767 F. 2d 184.

No. 85-1114. *EARNEST v. LOUISIANA*. 15th Jud. Dist. Ct. La., Lafayette Parish. Certiorari denied.

No. 85-1115. *MOATS v. WICK, DIRECTOR, UNITED STATES INFORMATION AGENCY, ET AL.* C. A. D. C. Cir. Certiorari denied.

February 24, 1986

475 U. S.

No. 85-1119. *MARKOWSKI v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 772 F. 2d 358.

No. 85-1123. *TAYLOR v. UNITED STATES ET AL.* C. A. 8th Cir. Certiorari denied. Reported below: 767 F. 2d 930.

No. 85-1124. *CHRISTENSEN v. UNITED STATES* (two cases). C. A. 10th Cir. Certiorari denied.

No. 85-1125. *PRYOR v. PRYOR*. Ct. App. Okla. Certiorari denied.

No. 85-1127. *KING v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 762 F. 2d 232.

No. 85-1128. *HALE ET UX. v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 774 F. 2d 1164.

No. 85-1130. *HAMILTON ET AL. v. ALDAG, TOWN CLERK FOR LOS GATOS (FERRITO ET AL., REAL PARTIES IN INTEREST)*. Ct. App. Cal., 6th App. Dist. Certiorari denied.

No. 85-1132. *ROSENTHAL & ROSENTHAL INC. ET AL. v. NEW YORK STATE URBAN DEVELOPMENT CORPORATION ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 771 F. 2d 44.

No. 85-1134. *FIRST UNITED FUND, LTD. v. BROCKTON SAVINGS BANK*. C. A. 1st Cir. Certiorari denied. Reported below: 771 F. 2d 5.

No. 85-1135. *FLOYD v. HAIG ET AL.* C. A. 4th Cir. Certiorari denied.

No. 85-1136. *WINSLOW v. BOARD OF COUNTY COMMISSIONERS OF MORGAN COUNTY, COLORADO*. Sup. Ct. Colo. Certiorari denied. Reported below: 706 P. 2d 792.

No. 85-1137. *ELSTON ET AL. v. BOARD OF LEVEE COMMISSIONERS OF THE ORLEANS LEVEE DISTRICT ET AL.* Ct. App. La., 4th Cir. Certiorari denied. Reported below: 469 So. 2d 1022.

No. 85-1139. *AMERICAN VELODUR METAL, INC. v. SCHINABECK*. App. Ct. Mass. Certiorari denied. Reported below: 20 Mass. App. 460, 481 N. E. 2d 209.

475 U. S.

February 24, 1986

No. 85-1143. WALLACE *v.* DEPARTMENT OF THE ARMY. C. A. Fed. Cir. Certiorari denied. Reported below: 785 F. 2d 321.

No. 85-1144. SISTRUNK ET AL. *v.* CIRCLE BAR DRILLING CO. C. A. 5th Cir. Certiorari denied. Reported below: 770 F. 2d 455.

No. 85-1147. RADIATION TECHNOLOGY, INC. *v.* NEUTRON PRODUCTS, INC., ET AL. C. A. 4th Cir. Certiorari denied.

No. 85-1149. BRODKA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 775 F. 2d 303.

No. 85-1156. SPALLATO, ADMINISTRATOR OF THE ESTATE OF SPALLATO *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 776 F. 2d 1050.

No. 85-1157. HILLTOP REALTY, INC. *v.* CITY OF CLEVELAND HEIGHTS ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 774 F. 2d 135.

No. 85-1160. SINICROPI *v.* BENNETT, DEPUTY DIRECTOR OF PROBATION OF THE COUNTY OF NASSAU, ET AL. App. Div., Sup. Ct. N. Y., 2d Jud. Dept. Certiorari denied. Reported below: 111 App. Div. 2d 801, 490 N. Y. S. 2d 1005.

No. 85-1161. DANIELS *v.* LOS ANGELES UNIFIED SCHOOL DISTRICT ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 774 F. 2d 1173.

No. 85-1162. DANIELS *v.* LOS ANGELES UNIFIED SCHOOL DISTRICT ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 774 F. 2d 1173.

No. 85-1163. SAMPLE ET AL. *v.* JOHNSON, DEPUTY COMMISSIONER FOR THE OFFICE OF WORKERS' COMPENSATION PROGRAMS FOR DISTRICT 14, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 771 F. 2d 1335.

No. 85-1175. REECE *v.* TENNESSEE CIVIL SERVICE COMMISSION. Ct. App. Tenn. Certiorari denied. Reported below: 699 S. W. 2d 808.

No. 85-1214. LANGELLA *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 776 F. 2d 1078.

February 24, 1986

475 U. S.

No. 85-1242. HALTER *v.* SECRETARY OF THE TREASURY ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 772 F. 2d 911.

No. 85-1254. FERGUSON *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 776 F. 2d 217.

No. 85-5277. O'DRISCOLL *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 761 F. 2d 589.

No. 85-5354. NORTH *v.* WEST VIRGINIA BOARD OF REGENTS. Sup. Ct. App. W. Va. Certiorari denied. Reported below: — W. Va. —, 332 S. E. 2d 141.

No. 85-5431. WALKER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 765 F. 2d 1122.

No. 85-5554. PREER *v.* JOHNSON, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied.

No. 85-5595. DUEMMEL *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 762 F. 2d 1022.

No. 85-5599. BARKLEY *v.* FULCOMER, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT HUNTINGDON. C. A. 3d Cir. Certiorari denied.

No. 85-5661. GULOY *v.* WASHINGTON. Sup. Ct. Wash. Certiorari denied. Reported below: 104 Wash. 2d 412, 705 P. 2d 1182.

No. 85-5676. BARKLEY *v.* FULCOMER, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT HUNTINGDON, ET AL. C. A. 3d Cir. Certiorari denied.

No. 85-5688. JONES *v.* AMERICAN POSTAL WORKERS UNION ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 247 U. S. App. D. C. 148, 766 F. 2d 1566.

No. 85-5698. MARRERA *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 768 F. 2d 201.

No. 85-5708. DAVIS *v.* WYRICK, WARDEN. C. A. 8th Cir. Certiorari denied. Reported below: 766 F. 2d 1197.

No. 85-5711. HUGHES *v.* KENTUCKY. Sup. Ct. Ky. Certiorari denied.

475 U. S.

February 24, 1986

No. 85-5714. *SWEETWINE v. MARYLAND ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 769 F. 2d 991.

No. 85-5737. *CLAUSEN v. TEXAS.* Ct. App. Tex., 1st Sup. Jud. Dist. Certiorari denied. Reported below: 682 S. W. 2d 328.

No. 85-5739. *HALLAHAN v. UNITED STATES.* C. A. 6th Cir. Certiorari denied. Reported below: 768 F. 2d 754.

No. 85-5744. *ANDERSON ET AL. v. MILLER, WARDEN.* C. A. 7th Cir. Certiorari denied. Reported below: 772 F. 2d 375.

No. 85-5760. *SCHUSTER v. UNITED STATES.* C. A. 6th Cir. Certiorari denied. Reported below: 769 F. 2d 337.

No. 85-5762. *NEWTON v. McCOTTER MOTORS, INC., ET AL.* Sup. Ct. Fla. Certiorari denied. Reported below: 475 So. 2d 230.

No. 85-5774. *BROADWAY v. HULL, WARDEN, ET AL.* C. A. 5th Cir. Certiorari denied.

No. 85-5780. *WOODARD v. RASMUSSEN, WARDEN.* Ct. App. Ore. Certiorari denied. Reported below: 73 Ore. App. 689, 700 P. 2d 675.

No. 85-5787. *ANDERSON v. COLORADO.* Sup. Ct. Colo. Certiorari denied.

No. 85-5790. *VELASQUEZ v. UNITED STATES.* C. A. 7th Cir. Certiorari denied. Reported below: 772 F. 2d 1348.

No. 85-5792. *WESTFALL v. HEDRICK, WARDEN.* Sup. Ct. App. W. Va. Certiorari denied.

No. 85-5794. *POLK v. HENDERSON, SUPERINTENDENT, AUBURN CORRECTIONAL FACILITY.* C. A. 2d Cir. Certiorari denied. Reported below: 779 F. 2d 37.

No. 85-5803. *FREDERICK v. UNITED STATES.* C. A. 6th Cir. Certiorari denied. Reported below: 770 F. 2d 167.

No. 85-5805. *FARRUGIA ET AL. v. WAINWRIGHT, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL.* C. A. 11th Cir. Certiorari denied. Reported below: 773 F. 2d 1237.

February 24, 1986

475 U. S.

No. 85-5818. *BEAMON v. WAINWRIGHT, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS*. C. A. 11th Cir. Certiorari denied. Reported below: 773 F. 2d 1238.

No. 85-5819. *CLAY v. VOSE, SUPERINTENDENT, MASSACHUSETTS CORRECTIONAL INSTITUTION, NORFOLK*. C. A. 1st Cir. Certiorari denied. Reported below: 771 F. 2d 1.

No. 85-5822. *SHARLOW v. YOUNG, SUPERINTENDENT, WAUPUN CORRECTIONAL INSTITUTION, ET AL.* C. A. 7th Cir. Certiorari denied. Reported below: 767 F. 2d 373.

No. 85-5829. *MARK v. MCCOTTER, DIRECTOR, TEXAS DEPARTMENT OF CORRECTIONS*. C. A. 5th Cir. Certiorari denied.

No. 85-5859. *GLENN v. ILLINOIS*. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 131 Ill. App. 3d 1160, 493 N. E. 2d 1221.

No. 85-5865. *HOWARD v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 770 F. 2d 57.

No. 85-5874. *MARQUEZ-MEDINA ET AL. v. MEESE, ATTORNEY GENERAL, ET AL.* C. A. 11th Cir. Certiorari denied. Reported below: 766 F. 2d 1478.

No. 85-5902. *LUCIEN v. CHRANS, WARDEN; and*

No. 85-5918. *LUCIEN v. CHRANS, WARDEN*. C. A. 7th Cir. Certiorari denied.

No. 85-5906. *ADAMS v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 772 F. 2d 908.

No. 85-5907. *LUMBERT v. DEROBERTIS, WARDEN*. C. A. 7th Cir. Certiorari denied.

No. 85-5912. *PRICE v. UNITED STATES*. C. A. 11th Cir. Certiorari denied. Reported below: 774 F. 2d 1177.

No. 85-5914. *MOORE v. UNITED STATES*. C. A. 11th Cir. Certiorari denied. Reported below: 772 F. 2d 827.

No. 85-5919. *CRAWFORD v. OHIO*. Sup. Ct. Ohio. Certiorari denied.

No. 85-5922. *PUTA v. COMMISSIONER OF INTERNAL REVENUE*. C. A. 7th Cir. Certiorari denied.

475 U. S.

February 24, 1986

No. 85-5927. DENNIS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 772 F. 2d 902.

No. 85-5932. BAGLEY *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 772 F. 2d 482.

No. 85-5934. SULLIVAN *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 772 F. 2d 909.

No. 85-5937. DEPREE *v.* SOCIAL SECURITY ADMINISTRATION ET AL. C. A. 2d Cir. Certiorari denied.

No. 85-5943. KIRK *v.* TENNESSEE. Ct. Crim. App. Tenn. Certiorari denied. Reported below: 699 S. W. 2d 814.

No. 85-5944. EVANS *v.* DISTRICT OF COLUMBIA. Ct. App. D. C. Certiorari denied.

No. 85-5948. BRYANT *v.* WARDEN, METROPOLITAN CORRECTIONAL CENTER OF NEW YORK CITY, ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 776 F. 2d 394.

No. 85-5950. TRIPATI *v.* BROWN. C. A. 8th Cir. Certiorari denied. Reported below: 774 F. 2d 1172.

No. 85-5952. GISRIEL *v.* BOARD OF APPEALS, MARYLAND DEPARTMENT OF EMPLOYMENT AND TRAINING. Ct. Sp. App. Md. Certiorari denied. Reported below: 62 Md. App. 715.

No. 85-5953. BURTON *v.* SARGENT, WARDEN, ET AL. C. A. 8th Cir. Certiorari denied.

No. 85-5954. CARR *v.* WOODS ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 776 F. 2d 1043.

No. 85-5955. ESSIX *v.* WAINWRIGHT, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. Sup. Ct. Fla. Certiorari denied. Reported below: 475 So. 2d 694.

No. 85-5958. PARRIS *v.* HOLLOHAN, WARDEN, ET AL. Sup. Ct. Ariz. Certiorari denied.

No. 85-5960. WILLIAMS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 771 F. 2d 79.

No. 85-5962. MILLER *v.* CAMPOY, WARDEN. C. A. 9th Cir. Certiorari denied.

February 24, 1986

475 U. S.

No. 85-5964. *LEVENTHAL v. UNITED STATES DEPARTMENT OF LABOR ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 766 F. 2d 1351.

No. 85-5966. *HARDING v. INDIANA.* Sup. Ct. Ind. Certiorari denied. Reported below: 457 N. E. 2d 1098.

No. 85-5969. *KOPP v. SOCIAL SECURITY ADMINISTRATION.* C. A. 3d Cir. Certiorari denied. Reported below: 772 F. 2d 895.

No. 85-5970. *GAY v. HERNANDEZ-CUEBAS.* C. A. 3d Cir. Certiorari denied.

No. 85-5974. *TROUTMAN v. UNITED STATES.* C. A. 7th Cir. Certiorari denied. Reported below: 774 F. 2d 807.

No. 85-5975. *MOORE v. UNITED STATES ET AL.* C. A. 3d Cir. Certiorari denied.

No. 85-5976. *HOWARD v. WAINWRIGHT, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS.* C. A. 11th Cir. Certiorari denied. Reported below: 772 F. 2d 916.

No. 85-5977. *ISLEY v. UNITED STATES.* C. A. 4th Cir. Certiorari denied. Reported below: 767 F. 2d 914.

No. 85-5978. *CLARK v. STATE TREASURER'S OFFICE EMPLOYER ET AL.* C. A. 4th Cir. Certiorari denied.

No. 85-5980. *HOELKER v. UNITED STATES.* C. A. 9th Cir. Certiorari denied. Reported below: 765 F. 2d 1422.

No. 85-5981. *HAASE v. WISCONSIN.* Ct. App. Wis. Certiorari denied. Reported below: 125 Wis. 2d 574, 373 N. W. 2d 86.

No. 85-5982. *DEPREE v. ROBERTS, COMMISSIONER OF LABOR OF THE CITY OF NEW YORK.* App. Div., Sup. Ct. N. Y., 3d Jud. Dept. Certiorari denied.

No. 85-5984. *CALLAHAN v. JOHNSON, WARDEN, ET AL.* C. A. 11th Cir. Certiorari denied. Reported below: 770 F. 2d 173.

No. 85-5985. *KAPP v. UNITED STATES.* C. A. 3d Cir. Certiorari denied. Reported below: 780 F. 2d 1017.

No. 85-5992. *RUBIN v. BOARD OF GOVERNORS OF STATE COLLEGES AND UNIVERSITIES (WESTERN ILLINOIS UNIVERSITY).* C. A. 7th Cir. Certiorari denied.

475 U. S.

February 24, 1986

No. 85-5993. *SIMMONS v. ALABAMA*. Ct. Crim. App. Ala. Certiorari denied. Reported below: 475 So. 2d 884.

No. 85-5994. *SEWARD v. SAN LUIS OBISPO COUNTY DEPARTMENT OF SOCIAL SERVICES*. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 85-5995. *VILLAREAL v. STAGNER, SUPERINTENDENT, CORRECTIONAL TRAINING FACILITY*. C. A. 9th Cir. Certiorari denied. Reported below: 772 F. 2d 915.

No. 85-5996. *ROSBERG v. DEUTSCHE CREDIT CORP.* Sup. Ct. Neb. Certiorari denied. Reported below: 220 Neb. xxiii.

No. 85-5997. *SPENCER v. DEVOE & REYNOLDS CO., INC., ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 770 F. 2d 167.

No. 85-5998. *RUNNELS v. KINGSTON ET AL.* Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 85-5999. *STRYKER v. NATIONAL LABOR RELATIONS BOARD*. C. A. 2d Cir. Certiorari denied.

No. 85-6003. *HURLEY v. HONGISTO ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 742 F. 2d 1438.

No. 85-6007. *KRUMPELMAN v. BOWEN, SECRETARY OF HEALTH AND HUMAN SERVICES*. C. A. 9th Cir. Certiorari denied. Reported below: 767 F. 2d 586.

No. 85-6008. *BRANCEWICZ v. LAMBIRIS ET AL.* C. A. 3d Cir. Certiorari denied.

No. 85-6012. *MUZA v. UNITED STATES*. C. A. 8th Cir. Certiorari denied.

No. 85-6013. *WELLS v. MARYLAND*. Ct. Sp. App. Md. Certiorari denied. Reported below: 64 Md. App. 719.

No. 85-6014. *ROSBERG v. DEUTSCHE CREDIT CORP.* C. A. 8th Cir. Certiorari denied.

No. 85-6015. *WHITE v. BLACKBURN, WARDEN*. C. A. 5th Cir. Certiorari denied. Reported below: 775 F. 2d 300.

No. 85-6016. *FLITTIE v. SOLEM, WARDEN*. C. A. 8th Cir. Certiorari denied. Reported below: 775 F. 2d 933.

February 24, 1986

475 U. S.

No. 85-6017. DALY *v.* BAILEY. Sup. Ct. Conn. Certiorari denied. Reported below: 198 Conn. 801, 501 A. 2d 758.

No. 85-6018. GLOVER *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 779 F. 2d 39.

No. 85-6020. DEMOURA *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 779 F. 2d 39.

No. 85-6021. DRAPER *v.* VIRGINIA DEPARTMENT OF CORRECTIONS ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 774 F. 2d 1154.

No. 85-6023. TURNER *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 770 F. 2d 1508.

No. 85-6025. WELCH *v.* WOODARD ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 774 F. 2d 1156.

No. 85-6028. MARKS *v.* JOHNSON, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied.

No. 85-6029. SHOOK *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 779 F. 2d 53.

No. 85-6030. HOLMES *v.* HARDY ET AL. C. A. 5th Cir. Certiorari denied.

No. 85-6031. REED *v.* MANSON, COMMISSIONER OF CORRECTIONS OF CONNECTICUT, ET AL. C. A. 2d Cir. Certiorari denied.

No. 85-6032. NIVEN *v.* KAISER FOUNDATION HOSPITAL. C. A. 9th Cir. Certiorari denied. Reported below: 767 F. 2d 933.

No. 85-6036. HAASE *v.* WISCONSIN. Ct. App. Wis. Certiorari denied. Reported below: 125 Wis. 2d 574, 373 N. W. 2d 87.

No. 85-6040. RICHARDS ET UX. *v.* SWINEBROAD & DENTON AUCTIONEERS ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 770 F. 2d 167.

No. 85-6041. SPENCE *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 780 F. 2d 1024.

No. 85-6042. VERSE *v.* FOLTZ, REGIONAL ADMINISTRATOR, MICHIGAN DEPARTMENT OF CORRECTIONS. C. A. 6th Cir. Certiorari denied. Reported below: 770 F. 2d 168.

475 U. S.

February 24, 1986

No. 85-6043. *MELVIN v. OKLAHOMA*. Ct. Crim. App. Okla. Certiorari denied. Reported below: 706 P. 2d 163.

No. 85-6046. *HANS v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 779 F. 2d 44.

No. 85-6047. *BROWN v. WAINWRIGHT, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS*. C. A. 11th Cir. Certiorari denied. Reported below: 776 F. 2d 1056.

No. 85-6052. *AUGUSTYNIAK v. CITY OF NEW YORK ET AL.* Ct. App. N. Y. Certiorari denied. Reported below: 65 N. Y. 2d 922, 483 N. E. 2d 135.

No. 85-6053. *SAYRE v. INDIANA*. Ct. App. Ind. Certiorari denied. Reported below: 471 N. E. 2d 708.

No. 85-6054. *SANDERSON v. RICE, WARDEN, ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 777 F. 2d 902.

No. 85-6056. *KELLER v. SALTON*. C. A. 3d Cir. Certiorari denied. Reported below: 772 F. 2d 895.

No. 85-6059. *GLICK v. LOCKHART, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION*. C. A. 8th Cir. Certiorari denied. Reported below: 782 F. 2d 1047.

No. 85-6061. *GILLARD v. UNITED STATES*. C. A. 11th Cir. Certiorari denied. Reported below: 776 F. 2d 1055.

No. 85-6062. *RAYSOR v. PORT AUTHORITY OF NEW YORK ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 768 F. 2d 34.

No. 85-6066. *WESER v. CARLIN, GOVERNOR OF KANSAS*. Sup. Ct. Kan. Certiorari denied.

No. 85-6067. *SALLEE v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 767 F. 2d 909.

No. 85-6068. *FREEMAN v. MCNAMARA, DIRECTOR, NORTH CAROLINA DIVISION OF PRISONS, ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 776 F. 2d 1043.

No. 85-6070. *FIELDS v. SIMMONS ET AL.* C. A. 11th Cir. Certiorari denied.

February 24, 1986

475 U. S.

No. 85-6071. *BLEVINS v. WAINWRIGHT, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL.* C. A. 11th Cir. Certiorari denied. Reported below: 774 F. 2d 1178.

No. 85-6075. *MCDONALD v. UNITED STATES.* C. A. 7th Cir. Certiorari denied. Reported below: 776 F. 2d 1049.

No. 85-6076. *FLETCHER v. UNITED STATES.* Ct. App. D. C. Certiorari denied.

No. 85-6078. *MUZA v. UNITED STATES.* C. A. 8th Cir. Certiorari denied.

No. 85-6079. *SMITH v. WENZELMAN ET AL.* C. A. 7th Cir. Certiorari denied. Reported below: 767 F. 2d 924.

No. 85-6081. *LUCERO v. SNYDER.* C. A. 10th Cir. Certiorari denied.

No. 85-6087. *POOL v. BRACKMAN, JUDGE, ET AL.* C. A. 8th Cir. Certiorari denied.

No. 85-6088. *ALEEM v. CARR ET AL.* Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 85-6093. *GEORGEVICH v. STRAUSS.* C. A. 3d Cir. Certiorari denied. Reported below: 772 F. 2d 1078.

No. 85-6097. *WALLACE v. TATE, SUPERINTENDENT, CHILLICOTHE CORRECTIONAL INSTITUTE.* C. A. 6th Cir. Certiorari denied. Reported below: 774 F. 2d 1164.

No. 85-6099. *RODMAN v. TATE, SUPERINTENDENT, CHILLICOTHE CORRECTIONAL INSTITUTE, ET AL.* C. A. 6th Cir. Certiorari denied.

No. 85-6105. *LEWIEL v. ILLINOIS.* App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 132 Ill. App. 3d 1161, 494 N. E. 2d 959.

No. 85-6106. *ANTHONY v. UNITED STATES.* C. A. 11th Cir. Certiorari denied. Reported below: 769 F. 2d 1544.

No. 85-6107. *WYCOFF v. MENKE.* C. A. 8th Cir. Certiorari denied. Reported below: 773 F. 2d 983.

No. 85-6110. *WALTER v. TORRES ET AL.* C. A. 5th Cir. Certiorari denied.

475 U. S.

February 24, 1986

No. 85-6112. *OFARRIL v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 779 F. 2d 791.

No. 85-6113. *BAKER, AKA WALKER v. ALABAMA*. Ct. Crim. App. Ala. Certiorari denied. Reported below: 477 So. 2d 496.

No. 85-6115. *BUTLER v. UNITED STATES*. C. A. 4th Cir. Certiorari denied.

No. 85-6116. *PALAFIX v. EDWARDS, WARDEN*. C. A. 6th Cir. Certiorari denied. Reported below: 779 F. 2d 52.

No. 85-6121. *WINTERHALDER v. UNITED STATES*. C. A. 10th Cir. Certiorari denied.

No. 85-6129. *THOMAS v. MCCOTTER, DIRECTOR, TEXAS DEPARTMENT OF CORRECTIONS*. C. A. 5th Cir. Certiorari denied.

No. 85-6131. *BARCENA v. WASHINGTON, MAYOR OF CITY OF CHICAGO, ET AL.* Sup. Ct. Ill. Certiorari denied. Reported below: 108 Ill. 2d 555.

No. 85-6132. *BOYNTON v. FLORIDA*. Dist. Ct. App. Fla., 4th Dist. Certiorari denied. Reported below: 473 So. 2d 703.

No. 85-6133. *GRAF v. CITY OF OSHKOSH, WISCONSIN*. Ct. App. Wis. Certiorari denied.

No. 85-6143. *JOHNSTON v. WILKINS ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 774 F. 2d 1162.

No. 85-6148. *GRANGER v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 777 F. 2d 351.

No. 85-6157. *LAWSON v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 779 F. 2d 39.

No. 85-6161. *MOSQUERA ET AL. v. UNITED STATES*. C. A. 1st Cir. Certiorari denied. Reported below: 776 F. 2d 1071.

No. 85-6162. *CASTRO v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 776 F. 2d 1118.

No. 85-6176. *GIPSON v. UNITED STATES*. C. A. 10th Cir. Certiorari denied.

No. 85-6178. *RANDAZZO v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 779 F. 2d 38.

February 24, 1986

475 U. S.

No. 85-6179. *SHACK v. SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AND CORRECTIONAL DIAGNOSTIC AND CLASSIFICATION CENTER AT GRATERFORD*. C. A. 3d Cir. Certiorari denied. Reported below: 776 F. 2d 1170.

No. 85-6180. *SHARP v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 778 F. 2d 1182.

No. 85-6182. *CRUZEN v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 753 F. 2d 1084.

No. 85-6188. *MURRAY v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 780 F. 2d 1023.

No. 85-6189. *GALVIN-MOREJON v. UNITED STATES*. C. A. 11th Cir. Certiorari denied. Reported below: 777 F. 2d 702.

No. 85-6190. *NABORS v. UNITED STATES*. C. A. Fed. Cir. Certiorari denied. Reported below: 776 F. 2d 1064.

No. 85-6191. *BRYANT v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 770 F. 2d 1283.

No. 85-6195. *ADU v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 770 F. 2d 1511.

No. 85-6202. *BEARD v. UNITED STATES*. C. A. 11th Cir. Certiorari denied. Reported below: 775 F. 2d 1577.

No. 85-6203. *JOHNSON v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 774 F. 2d 1170.

No. 85-6205. *DROEGE v. UNITED STATES*. C. A. 11th Cir. Certiorari denied. Reported below: 774 F. 2d 1178.

No. 85-6232. *OLSEN v. DRUG ENFORCEMENT ADMINISTRATION*. C. A. 11th Cir. Certiorari denied. Reported below: 776 F. 2d 267.

No. 85-6238. *WARD v. UNITED STATES ET AL.* C. A. 7th Cir. Certiorari denied. Reported below: 779 F. 2d 54.

No. 85-6241. *CARTER v. UNITED STATES*. C. A. 11th Cir. Certiorari denied. Reported below: 776 F. 2d 1056.

475 U. S.

February 24, 1986

No. 85-6243. *JONES v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 779 F. 2d 121.

No. 85-6245. *PUGH v. UNITED STATES PAROLE COMMISSION*. C. A. 3d Cir. Certiorari denied. Reported below: 782 F. 2d 1033.

No. 85-6251. *ECHEVERRI-JARAMILLO v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 777 F. 2d 933.

No. 85-6258. *GIANGROSSO v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 779 F. 2d 376.

No. 85-6261. *SPECKIN v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 782 F. 2d 1044.

No. 85-6265. *TAYLOR v. UNITED STATES*. C. A. 11th Cir. Certiorari denied. Reported below: 776 F. 2d 1055.

No. 84-6108. *BUSH v. FLORIDA*. Sup. Ct. Fla.;
No. 84-6971. *STEVENS v. KEMP, WARDEN*. Sup. Ct. Ga.;
No. 85-5702. *BIRD v. TEXAS*. Ct. Crim. App. Tex.;
No. 85-5741. *SNOW v. NEVADA*. Sup. Ct. Nev.;
No. 85-5784. *FRANKLIN v. TEXAS*. Ct. Crim. App. Tex.;
No. 85-5933. *MIRANDA v. NEVADA*. Sup. Ct. Nev.;
No. 85-5935. *SMITH v. SOUTH CAROLINA*. Sup. Ct. S. C.;
No. 85-5987. *HORSLEY v. ALABAMA*. Sup. Ct. Ala.;
No. 85-6009. *BOGGS v. VIRGINIA*. Sup. Ct. Va.;
No. 85-6072. *GORE v. FLORIDA*. Sup. Ct. Fla.;
No. 85-6089. *PASTER v. TEXAS*. Ct. Crim. App. Tex.;
No. 85-6098. *DUNCAN v. TENNESSEE*. Sup. Ct. Tenn.;
No. 85-6102. *THOMAS v. WAINWRIGHT, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS*. C. A. 11th Cir.;
No. 85-6103. *BIEGLER v. INDIANA*. Sup. Ct. Ind.;
No. 85-6123. *MILLS v. FLORIDA*. Sup. Ct. Fla.; and
No. 85-6146. *FUNCHESS v. WAINWRIGHT, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL.* C. A. 11th Cir. Certiorari denied. Reported below: No. 84-6108, 461 So. 2d 936; No. 84-6971, 254 Ga. 228, 327 S. E. 2d 185; No. 85-5702, 692 S. W. 2d 65; No. 85-5741, 101 Nev. 439, 705 P. 2d 632; No. 85-5784, 693 S. W. 2d 420; No. 85-5933, 101 Nev. 562, 707 P. 2d 1121; No. 85-5935, 286 S. C. 406, 334 S. E. 2d 277; No. 85-5987,

February 24, 1986

475 U. S.

476 So. 2d 626; No. 85-6009, 229 Va. 501, 331 S. E. 2d 407; No. 85-6072, 475 So. 2d 1205; No. 85-6089, 701 S. W. 2d 843; No. 85-6098, 698 S. W. 2d 63; No. 85-6102, 767 F. 2d 738; No. 85-6103, 481 N. E. 2d 78; No. 85-6123, 476 So. 2d 172; No. 85-6146, 772 F. 2d 683.

JUSTICE BRENNAN and JUSTICE MARSHALL, dissenting.

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

No. 85-400. *FLORIDA v. ROMERO, AKA MASCARA*. Dist. Ct. App. Fla., 3d Dist. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 471 So. 2d 110.

No. 85-968. *ARMONTROUT, WARDEN v. MOORE*. C. A. 8th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 766 F. 2d 1253.

No. 85-1005. *DUCKWORTH, SUPERINTENDENT, INDIANA STATE PRISON v. WEBSTER*. C. A. 7th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 767 F. 2d 1206.

No. 85-459. *MELLON BANK, N. A., ET AL. v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 762 F. 2d 283.

JUSTICE O'CONNOR, with whom JUSTICE BLACKMUN and JUSTICE POWELL join, dissenting.

The Internal Revenue Code allows a deduction from the taxable estate of bequests "to or for the use of any corporation organized and operated exclusively for . . . charitable . . . purposes." 26 U. S. C. §2055(a)(2). This petition presents the question whether a bequest to a nonprofit cemetery association qualifies for a deduction pursuant to this section.

A. Leon Davis died testate on December 6, 1976. His will provided that the residue of his estate was to be distributed to the Verona Cemetery in Oakmont, Pennsylvania. The cemetery was established by nearby residents in 1881 as a nonstock, nonprofit corporation for the purpose of providing burial space to any person regardless of religion or race. Davis' executors filed a federal

estate tax return, paid the tax, and then submitted a claim asserting a charitable deduction of \$370,901.74, the total amount distributed to the cemetery. The Internal Revenue Service disallowed the deduction and denied the accompanying claim for a refund. After exhausting administrative remedies, the executors instituted the present refund action in Federal District Court. Concluding that Verona Cemetery was a "corporation organized and operated exclusively for . . . charitable . . . purposes," 590 F. Supp. 160, 162, n. 1 (WD Pa. 1984), the District Court held that the bequest qualified for a deduction under § 2055(a)(2). In reaching that conclusion, the court observed that the cemetery was exempt from federal income taxes, that the bequest had already been held exempt from Pennsylvania's inheritance tax and, more generally, that bequests to public nonprofit cemetery associations traditionally had been considered charitable under the common law of trusts.

A divided panel of the Court of Appeals for the Third Circuit reversed. 762 F. 2d 283 (1985). It acknowledged the "anomaly" of treating nonprofit cemetery associations differently for federal estate and income tax purposes. It believed, however, that this asymmetry was compelled by the language and history of the relevant provisions of the Code. Employing language that closely parallels § 2055(a)(2), § 501(c)(3) exempts from federal income taxes "[c]orporations . . . organized and operated exclusively for . . . charitable . . . purposes." Since 1913, the Code has included a separate exemption for "[c]emetery companies owned and operated exclusively for the benefit of their members or which are not operated for profit." 26 U. S. C. § 501(c)(13). In 1954, as part of the general revision of the Code, Congress enacted § 170(c)(5), which permits deductions of contributions to any cemetery company that meets a standard virtually identical to that set out in § 501(c)(13). After examining this history, the Court of Appeals concluded that nonprofit cemetery companies did not qualify as a "charitable" corporation under § 2055(a)(2). Because Congress had thought it necessary to enact a special provision for cemeteries on the income tax side, the court reasoned, it must have believed that such entities were not within the general deduction for "charitable" contributions. 26 U. S. C. § 170(c)(2)(B). Thus, the court concluded, the failure to adopt a parallel provision on the estate tax side foreclosed petitioners' contention that ceme-

February 24, 1986

475 U. S.

tery associations qualified as "charitable" within the meaning of § 2055(a)(2).

This reasoning is far from inevitable. That Congress explicitly provided for nonprofit cemetery associations in § 501(c)(13) and § 170(c)(5) does not lead inescapably to the conclusion that many such associations are not within the more general exemption for "charitable" corporations. Some family cemetery corporations, for example, are covered by § 501(c)(13) but almost certainly would not qualify as "charitable" within the more general language of § 501(c)(3). See *John D. Rockefeller Family Cemetery Corp. v. Commissioner*, 63 T. C. 355 (1974). Congress clearly intended to confer on these private cemetery associations an exemption from federal income taxation. *Ibid.* The nearly identical language of § 170(c)(5) suggests that Congress also intended that contributions to such associations be tax deductible. But it does not inevitably follow that public organizations that already qualified as "charitable" suddenly ceased to be so by virtue of a decision to afford a tax benefit to some organizations that could not meet this more restrictive requirement. This construction is especially unlikely in light of the virtually uniform consensus under state common and statutory law that nonprofit, public cemetery associations are "charitable" and that bequests to such organizations are therefore exempt from inheritance taxes. See, e. g., *In re Estate of Edwards*, 88 Cal. App. 3d 383, 151 Cal. Rptr. 770 (1979). See also Restatement (Second) of Trusts § 374, Comment *h* (1959).

I recognize that the Court of Appeals' analysis conforms with that of other federal courts that have considered the issue. See, e. g., *Child v. United States*, 540 F. 2d 579, 584 (CA2 1976). I recognize also, in the words of the dissenting judge below, that "[t]he Republic will stand" regardless of how this issue is resolved. 762 F. 2d, at 287. Nonetheless, because the Court of Appeals' construction of the Code will have a significant impact on the financial vitality of these organizations and because I am unconvinced that this anomalous construction is justified by the language and history of the relevant provisions of the Code, I would grant the petition for certiorari.

No. 85-633. AMREP CORP. *v.* FEDERAL TRADE COMMISSION. C. A. 10th Cir. Certiorari denied. Reported below: 768 F. 2d 1171.

475 U. S.

February 24, 1986

JUSTICE WHITE, dissenting.

The Federal Trade Commission ordered petitioner to cease various unfair trade practices in selling land, and required, among other things, that petitioner send all customers still under land sale contracts with it a letter disclosing that the Commission had brought an action against petitioner and explaining possible courses of action the customers might take. The United States Court of Appeals for the Tenth Circuit affirmed the Commission's order over petitioner's objection that the notification order was not within the Commission's remedial authority under § 5 of the Federal Trade Commission Act, 38 Stat. 719, as amended, 15 U. S. C. § 45. 768 F. 2d 1171 (1985). The Tenth Circuit's decision is at odds with decisions of the Fourth and Ninth Circuits holding that § 5 authorizes only cease-and-desist orders, and not notification orders. See *Barrett Carpet Mills, Inc. v. Consumer Product Safety Comm'n*, 635 F. 2d 299 (CA4 1980); *Congoleum Industries, Inc. v. Consumer Product Safety Comm'n*, 602 F. 2d 220 (CA9 1979).* I would grant certiorari to resolve this apparent conflict.

No. 85-769. *ORUM v. CALIFORNIA*. Ct. App. Cal., 3d App. Dist. Certiorari denied. JUSTICE BRENNAN and JUSTICE POWELL would grant certiorari.

No. 85-786. *BELLISSIMO v. WESTINGHOUSE ELECTRIC CORP. ET AL.* C. A. 3d Cir. Certiorari denied. JUSTICE O'CONNOR would grant certiorari. Reported below: 764 F. 2d 175.

No. 85-849. *PRESIDIO VALLEY FARMERS ASSN. ET AL. v. CALDERON ET AL.* C. A. 5th Cir. Motion of respondents for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 765 F. 2d 1334.

No. 85-926. *CHRISTIAN BROADCASTING NETWORK, INC. v. COPYRIGHT ROYALTY TRIBUNAL*. C. A. D. C. Cir. Motion of Old-Time Gospel Hour et al. for leave to file out-of-time brief in support of petition denied. Certiorari denied. Reported below: 249 U. S. App. D. C. 4, 772 F. 2d 922.

*The decisions in *Barrett* and *Congoleum* are interpretations of the powers of the Consumer Product Safety Commission under the Flammable Fabrics Act, 15 U. S. C. § 1191 *et seq.* Since 15 U. S. C. § 1194 incorporates § 5 of the Federal Trade Commission Act by reference, *Barrett* and *Congoleum* are effectively interpretations of the scope of § 5.

February 24, 1986

475 U. S.

No. 85-960. *COLSON v. MAINE*. Sup. Jud. Ct. Me. Certiorari denied. JUSTICE WHITE would grant certiorari. Reported below: 498 A. 2d 585.

No. 85-974. *HESS v. TREECE*. Sup. Ct. Ark. Certiorari denied. JUSTICE WHITE would grant certiorari. Reported below: 286 Ark. 434, 693 S. W. 2d 792.

No. 85-961. *HOLDING v. SOVRAN BANK ET AL.* Sup. Ct. Va. Certiorari denied. JUSTICE POWELL took no part in the consideration or decision of this petition.

No. 85-1020. *GELLERT v. EASTERN AIR LINES, INC.* Sup. Ct. Fla. Certiorari denied. JUSTICE BRENNAN took no part in the consideration or decision of this petition. Reported below: 475 So. 2d 694.

No. 85-1098. *VEVODA ET AL. v. MILK DRIVERS & DAIRY EMPLOYEES UNION, TEAMSTERS LOCAL 302*. C. A. 9th Cir. Motion of National Right to Work Legal Defense Foundation for leave to file a brief as *amicus curiae* granted. Certiorari denied. JUSTICE O'CONNOR would grant certiorari. Reported below: 772 F. 2d 530.

No. 85-1173. *SPANG & Co. v. GRECCO*. C. A. 3d Cir. Certiorari denied. JUSTICE WHITE and JUSTICE O'CONNOR would grant certiorari. Reported below: 779 F. 2d 44.

No. 85-5928. *LEON v. UNITED STATES*. C. A. 11th Cir. Certiorari denied. JUSTICE MARSHALL would grant certiorari. Reported below: 775 F. 2d 302.

No. 85-5972. *SCHIRO v. INDIANA*. Sup. Ct. Ind. Certiorari denied. Reported below: 479 N. E. 2d 556.

JUSTICE MARSHALL, with whom JUSTICE BRENNAN joins, dissenting.

The trial judge in this case rejected a unanimous jury decision that petitioner's life should be spared, and sentenced him to die. Petitioner's allegations, which call into question the reliability of the judge's sentencing determination, further illustrate why a judge should not have the awesome power to reject a jury recommendation of life. Moreover, a serious inadequacy in the Indiana capital sentencing procedure dramatically distinguishes it from the jury-override procedure that this Court upheld in *Spaziano v.*

Florida, 468 U. S. 447 (1984). I must dissent from the Court's decision not to consider petitioner's substantial claims.

I

Thomas N. Schiro was convicted of murder in the course of a rape and, following a hearing on the appropriateness of sentencing him to die, the jury recommended a life sentence. The trial judge, however, rejected the jury's decision and imposed a sentence of death. Upon direct appeal, the Supreme Court of Indiana found that the trial court's findings pertaining to the sentencing did not set out clearly and properly the court's reasons for imposing the death penalty. *Schiro v. State*, 451 N. E. 2d 1047, 1056 (*Schiro I*), cert. denied, 464 U. S. 1003 (1983). That court ordered that the trial court make written findings setting out the aggravating circumstance proved beyond a reasonable doubt and the mitigating circumstances, if any, as listed in the state statute. 451 N. E. 2d, at 1056.

In response, the trial court specified one aggravating circumstance, that the jury had convicted petitioner of murder in the course of a rape; it then stated that it found no mitigating circumstances, listing and rejecting each of the statutory mitigating circumstances, even though several were suggested by the evidence. With regard to the mitigating factor concerning a defendant's mental or emotional condition and the impairment of his capacity to appreciate the criminality of his acts, the court found as follows:

"This Court personally observed the Defendant, while the jury was present, making continual rocking motions, which did not stop throughout the trial except when the jury left the Courtroom. In the Court's outer chambers, out of the presence of the jury, in the eight days of trial, the Court frequently observed the Defendant sitting calmly and not rocking. It is apparent to the Court that this may well have influenced and misled the jury in its recommendation."

On the basis of his own suspicions, not subject to evidentiary requirements or tested by cross-examination, the judge decided that a unanimous jury was wrong and that petitioner should die. The Indiana Supreme Court upheld the sentence of death. 479 N. E. 2d 556 (1985).

II

In *Spaziano v. Florida*, *supra*, this Court sustained a scheme that gave the judge the power to override the jury's decision to impose a life sentence, provided that the judge could make certain specified findings. The Court relied, in part, on the Florida Supreme Court's anticipated adherence to the so-called "*Tedder* standard." Under *Tedder v. State*, 322 So. 2d 908, 910 (Fla. 1975), a Florida trial judge may not reject a jury decision of life imprisonment unless the evidence favoring death is "so clear and convincing that virtually no reasonable person could differ." *Ibid.* This Court believed *Tedder* to be a "significant safeguard," *Spaziano*, 468 U. S., at 465, and was satisfied that "the Florida Supreme Court takes that standard seriously." *Ibid.*

In contrast, the State of Indiana has not committed itself to any comparable safeguard to protect against the arbitrary rejection of a life sentence. On the contrary, the rules governing the scope of appellate review of sentences provide that the appellate court "will not revise a sentence authorized by statute except where such sentence is *manifestly unreasonable*," and a "sentence is not manifestly unreasonable unless no reasonable person could find such sentence appropriate" Indiana Rules Appellate Review of Sentences 1, 2 (emphasis added). Applying these rules to death sentences, the Supreme Court of Indiana specifically declared that it "will not engage in a different standard of review where jury and trial court disagree" concerning the appropriateness of the death sentence. *Schiro I*, *supra*, at 1058. Thus, while the *Tedder* standard accords the jury's recommendation a presumption of correctness by requiring "clear and convincing" evidence to justify overriding it, the Indiana Supreme Court accords a similar presumption to the judge's sentence, whether it was imposed pursuant to the recommendation of the jury or against it.

This Court has emphasized that a sentence of death must reflect an ethical judgment about the "moral guilt" of the defendant. See *Enmund v. Florida*, 458 U. S. 782, 800-801 (1982). "Moral guilt" is a determination that a jury, as representative of the community, is peculiarly well suited to render. But if a prosecutor, even with the substantial tools available to him, see, *e. g.*, *Wainwright v. Witt*, 469 U. S. 412 (1985); *Witherspoon v. Illinois*, 391 U. S. 510 (1968), is unable to persuade the conscience of the community that death is the appropriate punishment for a particular offense, then that expression on the question of "moral guilt" is

475 U. S.

February 24, 1986

entitled to at least some weight. By according no significance at all to the jury's assessment of the crime and the defendant, either at the sentencing itself or on appeal, Indiana's procedure derogates the historic role of the jury. "*Furman* [v. *Georgia*, 408 U. S. 238 (1972),] and its progeny provide no warrant for—indeed do not tolerate—the exclusion from the capital sentencing process of the jury and the critical contribution only it can make toward linking the administration of capital punishment to community values." *Spaziano, supra*, at 489–490 (STEVENS, J., joined by BRENNAN and MARSHALL, JJ., dissenting in part).

Moreover, the disregard of jury determinations injects a "level of uncertainty and unreliability into the factfinding process that cannot be tolerated in a capital case." *Beck v. Alabama*, 447 U. S. 625, 643 (1980). In this case, for example, the judge speculated that the jury's recommendation of life "may well have" resulted from petitioner's propensity to rock back and forth in the presence of the jury. Indiana law does not require the jury to set forth its reasons for recommending a life sentence, so the court could not have known whether the rocking motion had anything to do with the jury's verdict; the court's decision was necessarily speculative. The reliability that this Court has demanded from capital sentencing decisions is totally lacking here, and the "manifestly unreasonable" standard adopted by the Supreme Court of Indiana effectively insulates the sentence from meaningful review.

Because I understand the Eighth Amendment to require, at the very least, that a jury's considered recommendation of a life sentence rather than death not be ignored without some showing that it was unreasonable, I would grant the petition to review Indiana's method of bringing to execution those whose juries believed that they should live.

No. 85–6010. *WATERS v. KEMP, WARDEN*. Sup. Ct. Ga. Certiorari denied. JUSTICE MARSHALL and JUSTICE BLACKMUN would grant the petition for writ of certiorari, vacate the judgment, and remand the case for further consideration in light of *Caldwell v. Mississippi*, 472 U. S. 320 (1985).

JUSTICE BRENNAN, dissenting.

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,

February 24, 25, 26, 1986

475 U. S.

227 (1976), I would grant certiorari and vacate the death sentence in this case.

Rehearing Denied

No. 84-1855. *STEINES v. ROCK ISLAND ARSENAL DEPARTMENT OF ARMY ET AL.*, 474 U. S. 822;

No. 84-6051. *ALLEN v. GEORGIA*, 470 U. S. 1059;

No. 85-654. *HURVITZ v. DIVISION OF MEDICAL QUALITY, BOARD OF MEDICAL QUALITY ASSURANCE, DEPARTMENT OF CONSUMER AFFAIRS OF CALIFORNIA*, 474 U. S. 1081;

No. 85-753. *PENNINGTON, ADMINISTRATOR FOR THE ESTATE OF TORRES v. FLOTA MERCANTE GRANCOLOMBIANA, S.A., ET AL.*, 474 U. S. 1057;

No. 85-5155. *MCKINNEY v. ELLIS ET AL.*, 474 U. S. 1022;

No. 85-5337. *SCHEPPF v. KING, SECRETARY, LOUISIANA DEPARTMENT OF CORRECTIONS, ET AL.*, 474 U. S. 1035;

No. 85-5525. *VEALE ET AL. v. VEALE ET AL.*, 474 U. S. 1010;

No. 85-5633. *CALPIN v. UNITED STATES*, 474 U. S. 1084;

No. 85-5642. *HANCE v. GEORGIA*, 474 U. S. 1038;

No. 85-5663. *CONKLIN v. GEORGIA*, 474 U. S. 1038;

No. 85-5695. *FRAZIER v. PLACER SAVINGS & LOAN ASSN. ET AL.*, 474 U. S. 1035;

No. 85-5725. *GENTSCH v. ROBERSON ET AL.*, 474 U. S. 1065;

No. 85-5777. *PARKER v. FAIRMAN, WARDEN, ET AL.*, 474 U. S. 1066;

No. 85-5810. *HOOKS v. PHELPS, SECRETARY, LOUISIANA DEPARTMENT OF CORRECTIONS*, 474 U. S. 1068; and

No. 85-5867. *MARTIN v. OHIO*, 474 U. S. 1073. Petitions for rehearing denied.

No. 85-5165. *BROWN v. WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY ET AL.*, 474 U. S. 858;

No. 85-5405. *AMES v. ALASKA ET AL.*, 474 U. S. 951; and

No. 85-5433. *SANCHEZ v. ROTH ET AL.*, 474 U. S. 982. Motions for leave to file petitions for rehearing denied.

FEBRUARY 25, 1986

Certiorari Granted. (See No. 84-1360, *ante*, at 43-44, n. 1.)

FEBRUARY 26, 1986

Dismissal Under Rule 53

No. 85-1003. *PEREIRA v. UTAH TRANSPORT, INC., ET AL.* C. A. 9th Cir. Certiorari dismissed under this Court's Rule 53. Reported below: 764 F. 2d 686.

475 U. S.

February 26, 28, March 1, 3, 1986

Miscellaneous Order

No. A-651 (85-6276). *BUNDY v. FLORIDA*. Sup. Ct. Fla. Application for stay of execution of sentence of death, scheduled for Tuesday, March 4, 1986, presented to JUSTICE POWELL, and by him referred to the Court, is granted pending the disposition by this Court of the petition for writ of certiorari. Should the petition for writ of certiorari be denied, this stay terminates automatically. In the event the petition for writ of certiorari is granted, this stay shall continue pending the issuance of the mandate of this Court. Motion for leave to supplement the petition for writ of certiorari is granted. Supplement is to be filed on or before March 28, 1986. Response to the supplement shall be filed on or before April 11, 1986. Motion to defer consideration of the petition for writ of certiorari is granted pending receipt of the supplement to the petition and the response thereto.

FEBRUARY 28, 1986

Miscellaneous Order

No. A-653. *ADAMS v. WAINWRIGHT, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL.* Application for stay of execution of sentence of death, presented to JUSTICE POWELL, and by him referred to the Court, denied. JUSTICE BLACKMUN and JUSTICE STEVENS would grant the application for stay.

JUSTICE BRENNAN and JUSTICE MARSHALL, dissenting.

Adhering to our views that the death penalty is in all circumstances cruel and unusual punishment prohibited by the Eighth and Fourteenth Amendments, *Gregg v. Georgia*, 428 U. S. 153, 227, 231 (1976), we would grant the application for stay in order to give the applicant time to file a petition for writ of certiorari, and would grant the petition and vacate the death sentence in this case.

MARCH 1, 1986

Rehearing Denied

No. A-653. *ADAMS v. WAINWRIGHT, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL.*, *ante* this page. Petition for rehearing denied.

MARCH 3, 1986

Dismissal Under Rule 53

No. 85-1213. *PACKAGING SERVICE CORPORATION OF KENTUCKY ET AL. v. GAYNER*. Appeal from Ct. App. Ky. dismissed under this Court's Rule 53.

March 3, 1986

475 U. S.

Appeals Dismissed

No. 85-987. METROPOLITAN ATLANTA RAPID TRANSIT AUTHORITY *v.* AMALGAMATED TRANSIT UNION INTERNATIONAL, AFL-CIO, ET AL. Appeal from C. A. D. C. Cir. dismissed for want of jurisdiction. Reported below: 248 U. S. App. D. C. 411, 771 F. 2d 1551.

No. 85-6026. NAMES *v.* CALIFORNIA. Appeal from Ct. App. Cal., 6th App. Dist., dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied.

No. 85-6144. ACUFF *v.* HENRY ET AL. Appeal from Sup. Ct. Tex. dismissed for want of substantial federal question.

Vacated and Remanded on Appeal

No. 85-1116. CITY OF WHITTIER ET AL. *v.* WALNUT PROPERTIES, INC., ET AL. Appeal from C. A. 9th Cir. Judgment vacated and case remanded for further consideration in light of *Renton v. Playtime Theatres, Inc.*, ante, p. 41. Reported below: 774 F. 2d 1176.

Miscellaneous Orders

No. — — —. GRACE *v.* HEARTLAND TRANSPORTATION INC. Motion of petitioner seeking leave to proceed as a seaman and to be relieved from printing the petition for writ of certiorari and the petition for writ of mandamus in compliance with Rule 33 denied. JUSTICE STEVENS would grant the motion.

No. A-625 (85-1429). AMERICAN GENERAL LIFE & ACCIDENT INSURANCE CO. *v.* MILLER ET AL. Sup. Ct. Miss. Application for stay pending appeal, addressed to JUSTICE POWELL and referred to the Court, denied. JUSTICE BLACKMUN dissents.

No. D-512. IN RE DISBARMENT OF MEISNER. Disbarment entered. [For earlier order herein, see 473 U. S. 930.]

No. D-529. IN RE DISBARMENT OF MENDELL. Disbarment entered. [For earlier order herein, see 474 U. S. 941.]

No. D-534. IN RE DISBARMENT OF PESNER. Disbarment entered. [For earlier order herein, see 474 U. S. 1016.]

No. D-537. IN RE DISBARMENT OF KIDWELL. Disbarment entered. [For earlier order herein, see 474 U. S. 1030.]

475 U. S.

March 3, 1986

No. 84-1979. MERITOR SAVINGS BANK, FSB *v.* VINSON ET AL. C. A. D. C. Cir. [Certiorari granted *sub nom.* PSFS Savings Bank *v.* Vinson, 474 U. S. 815.] Motion of Women's Legal Defense Fund et al. for leave to participate in oral argument as *amici curiae* and for divided argument denied.

No. 85-227. SMALIS ET AL. *v.* PENNSYLVANIA. Sup. Ct. Pa. [Certiorari granted, 474 U. S. 944.] Motion of National District Attorneys Association et al. for leave to file a brief as *amici curiae* granted. Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 85-766. TASHJIAN, SECRETARY OF STATE OF CONNECTICUT *v.* REPUBLICAN PARTY OF CONNECTICUT ET AL. C. A. 2d Cir. [Probable jurisdiction noted, 474 U. S. 1049.] Motion of appellant to schedule oral argument during April Session denied. JUSTICE REHNQUIST, JUSTICE STEVENS, and JUSTICE O'CONNOR would grant this motion.

No. 85-905. SALISBURY *v.* JAMES RIVER CORP. ET AL., 474 U. S. 1061. Motion of respondent James River Corp. for damages and fees denied.

No. 85-998. UNITED STATES *v.* DUNN. C. A. 5th Cir. Motion of the Solicitor General to defer consideration of the petition for writ of certiorari granted.

No. 85-1258. BROWN ET AL. *v.* KERR-MCGEE CHEMICAL CORP. C. A. 7th Cir. Motion of respondent to expedite consideration of the petition for certiorari denied.

No. 85-6033. SHAH *v.* KERN COUNTY, CALIFORNIA, ET AL. C. A. 9th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied. Petitioner is allowed until March 24, 1986, within which to pay the docketing fee required by Rule 45(a) and to submit a petition in compliance with Rule 33 of the Rules of this Court.

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

For the reasons expressed in *Brown v. Herald Co.*, 464 U. S. 928 (1983), we would deny the petition for writ of certiorari without reaching the merits of the motion to proceed *in forma pauperis*.

March 3, 1986

475 U. S.

No. 85-6150. *IN RE NELSON*. Petition for writ of mandamus denied.

No. 85-6126. *IN RE LARTEY*; and
No. 85-6183. *IN RE MAY*. Petitions for writs of mandamus and/or prohibition denied.

Certiorari Granted

No. 85-693. *ASAHI METAL INDUSTRY CO., LTD. v. SUPERIOR COURT OF CALIFORNIA, SOLANO COUNTY (CHENG SHIN RUBBER INDUSTRIAL CO., LTD., REAL PARTY IN INTEREST)*. Sup. Ct. Cal. Certiorari granted. Reported below: 39 Cal. 3d 35, 702 P. 2d 543.

No. 85-781. *BURKE, ACTING ARCHIVIST OF THE UNITED STATES, ET AL. v. BARNES ET AL.* C. A. D. C. Cir. Certiorari granted. Reported below: 245 U. S. App. D. C. 1, 759 F. 2d 21.

No. 85-920. *ALASKA AIRLINES, INC., ET AL. v. BROCK, SECRETARY OF LABOR, ET AL.* C. A. D. C. Cir. Certiorari granted. Reported below: 247 U. S. App. D. C. 132, 766 F. 2d 1550.

No. 85-971. *CLARKE, COMPTROLLER OF THE CURRENCY v. SECURITIES INDUSTRY ASSN.*; and

No. 85-972. *SECURITY PACIFIC NATIONAL BANK v. SECURITIES INDUSTRY ASSN.* C. A. D. C. Cir. Certiorari granted, cases consolidated, and a total of one hour allotted for oral argument. Reported below: 244 U. S. App. D. C. 419, 758 F. 2d 739, and 247 U. S. App. D. C. 42, 765 F. 2d 1196.

Certiorari Denied. (See also No. 85-6026, *supra*.)

No. 84-1747. *SHOULTZ v. MONFORT OF COLORADO, INC., ET AL.* C. A. 10th Cir. Certiorari denied. Reported below: 754 F. 2d 318.

No. 85-489. *JACQUES v. ALDRICH, UNITED STATES DISTRICT COURT JUDGE FOR THE NORTHERN DISTRICT OF OHIO, EASTERN DIVISION, ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 761 F. 2d 302.

No. 85-569. *DRAVO BASIC MATERIALS CO. ET AL. v. LOUISIANA ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 758 F. 2d 1081.

475 U. S.

March 3, 1986

No. 85-615. CALIFORNIA DEPARTMENT OF TRANSPORTATION *v.* NAEGELE OUTDOOR ADVERTISING COMPANY OF CALIFORNIA, INC., ET AL.; and

No. 85-639. DESERT OUTDOOR ADVERTISING, INC. *v.* NAEGELE OUTDOOR ADVERTISING COMPANY OF CALIFORNIA, INC. Sup. Ct. Cal. Certiorari denied. Reported below: 38 Cal. 3d 509, 698 P. 2d 150.

No. 85-645. LAW & TECHNOLOGY PRESS *v.* LADD, REGISTER OF COPYRIGHTS. C. A. 9th Cir. Certiorari denied. Reported below: 762 F. 2d 809.

No. 85-750. ROSE, INDIVIDUALLY AND AS SUPERINTENDENT OF THE CALLOWAY COUNTY SCHOOLS, ET AL. *v.* LITTLEJOHN. C. A. 6th Cir. Certiorari denied. Reported below: 768 F. 2d 765.

No. 85-799. MONROE *v.* UNITED STATES DEPARTMENT OF THE TREASURY. C. A. Fed. Cir. Certiorari denied. Reported below: 770 F. 2d 1044.

No. 85-879. THOMAS INTERNATIONAL LTD. *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 773 F. 2d 300.

No. 85-900. ILLINOIS *v.* CRILLY, JUDGE, CIRCUIT COURT OF COOK COUNTY, ILLINOIS, ET AL. Sup. Ct. Ill. Certiorari denied. Reported below: 108 Ill. 2d 301, 483 N. E. 2d 1236.

No. 85-914. JURECZKI *v.* CITY OF SEABROOK, TEXAS, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 765 F. 2d 1120.

No. 85-922. INEXCO OIL CO. *v.* UNITED STATES DEPARTMENT OF ENERGY ET AL. Temp. Emerg. Ct. App. Certiorari denied. Reported below: 776 F. 2d 1554.

No. 85-965. LOOMIS *v.* UNITED STATES; and

No. 85-966. VERMOUTH *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 772 F. 2d 915.

No. 85-973. HANSEN *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 249 U. S. App. D. C. 22, 772 F. 2d 940.

March 3, 1986

475 U. S.

No. 85-977. *COPELAND v. RODRIGUEZ ET AL.* Sup. Ct. La. Certiorari denied. Reported below: 475 So. 2d 1071.

No. 85-988. *METROPOLITAN ATLANTA RAPID TRANSIT AUTHORITY v. AMALGAMATED TRANSIT UNION INTERNATIONAL, AFL-CIO, ET AL.* C. A. D. C. Cir. Certiorari denied. Reported below: 247 U. S. App. D. C. 149, 767 F. 2d 939.

No. 85-990. *AMERICAN POSTAL WORKERS UNION, AFL-CIO, ET AL. v. UNITED STATES POSTAL SERVICE.* C. A. 2d Cir. Certiorari denied. Reported below: 766 F. 2d 715.

No. 85-994. *PFLAUMER v. UNITED STATES.* C. A. 3d Cir. Certiorari denied. Reported below: 774 F. 2d 1224.

No. 85-1012. *PEAT, MARWICK, MITCHELL & CO. v. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION.* C. A. 8th Cir. Certiorari denied. Reported below: 775 F. 2d 928.

No. 85-1045. *SPRYNCZYNATYK ET AL. v. GENERAL MOTORS CORP.* C. A. 8th Cir. Certiorari denied. Reported below: 771 F. 2d 1112.

No. 85-1064. *FAITH CENTER, INC. v. FEDERAL COMMUNICATIONS COMMISSION.* C. A. D. C. Cir. Certiorari denied.

No. 85-1077. *EMPLOYERS INSURANCE OF WAUSAU v. INGERSOLL-RAND FINANCIAL CORP.* C. A. 5th Cir. Certiorari denied. Reported below: 771 F. 2d 910.

No. 85-1081. *BOURKE v. EAST BAY REGIONAL PARK DISTRICT ET AL.* Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 85-1121. *RICHARD A. PLEHN, INC., ET AL. v. IMPERIAL BANCORP ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 760 F. 2d 276.

No. 85-1126. *INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA v. INTERSTATE COMMERCE COMMISSION ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 770 F. 2d 810.

No. 85-1131. *WHITTAKER CORP. v. WILDER.* Ct. App. Cal., 2d App. Dist. Certiorari denied. Reported below: 169 Cal. App. 3d 969, 215 Cal. Rptr. 536.

475 U. S.

March 3, 1986

No. 85-1133. *ABBOT ET AL. v. HAGNER MANAGEMENT CORP.*
Ct. App. D. C. Certiorari denied.

No. 85-1138. *KENT v. SANBORN COOPERATIVE GRAIN CO.*
C. A. 7th Cir. Certiorari denied. Reported below: 772 F. 2d
299.

No. 85-1148. *MORRIS v. BOARD OF PROFESSIONAL RESPON-*
SIBILITY FOR THE DISTRICT OF COLUMBIA. Ct. App. D. C.
Certiorari denied. Reported below: 495 A. 2d 1162.

No. 85-1151. *LAROCHE ET AL. v. CROWELL, SECRETARY OF*
STATE OF TENNESSEE. Ct. App. Tenn. Certiorari denied. Re-
ported below: 709 S. W. 2d 585.

No. 85-1152. *BANDAI AMERICA INC. ET AL. v. BALLY MID-*
WAY MFG. CO. ET AL. C. A. 3d Cir. Certiorari denied. Re-
ported below: 775 F. 2d 70.

No. 85-1153. *KEARNEY & TRECKER CORP. v. PHUC HUU*
NGUYEN ET UX. Ct. App. Wis. Certiorari denied. Reported
below: 126 Wis. 2d 509, 375 N. W. 2d 219.

No. 85-1154. *ELLSWORTH ET AL. v. CITY OF RACINE, WIS-*
CONSIN. C. A. 7th Cir. Certiorari denied. Reported below:
774 F. 2d 182.

No. 85-1159. *EXXON SHIPPING CO. v. COOK, PERSONAL REP-*
RESENTATIVE OF THE ESTATE OF COOK. C. A. 9th Cir. Certio-
rari denied. Reported below: 762 F. 2d 750 and 773 F. 2d 1001.

No. 85-1164. *TEXAS ENERGY INVESTMENT CORP. ET AL. v.*
NIMROD MARKETING (OVERSEAS) LTD. ET AL. C. A. 5th Cir.
Certiorari denied. Reported below: 769 F. 2d 1076.

No. 85-1168. *CITY OF CLEVELAND ET AL. v. HAWLEY ET AL.*
C. A. 6th Cir. Certiorari denied. Reported below: 773 F. 2d
736.

No. 85-1172. *MITCHELL v. PEPSI-COLA BOTTLERS, INC., ET*
AL. C. A. 7th Cir. Certiorari denied. Reported below: 772 F.
2d 342.

No. 85-1174. *WYATT v. UNITED STATES.* C. A. 11th Cir.
Certiorari denied. Reported below: 762 F. 2d 908.

March 3, 1986

475 U. S.

No. 85-1179. *SONDEREGGER v. E. F. HUTTON & Co., INC., ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 770 F. 2d 171.

No. 85-1205. *ROSENTHAL ET AL. v. DAY ET AL.* Ct. App. Cal., 2d App. Dist. Certiorari denied. Reported below: 170 Cal. App. 3d 1125, 217 Cal. Rptr. 89.

No. 85-1221. *FOSTER v. ARCATA ASSOCIATES, INC.* C. A. 9th Cir. Certiorari denied. Reported below: 772 F. 2d 1453.

No. 85-1269. *HOWARD ET AL. v. DEERBROOK STATE BANK.* C. A. 7th Cir. Certiorari denied. Reported below: 776 F. 2d 1051.

No. 85-1284. *MONTEMAYOR v. UNITED STATES.* C. A. 5th Cir. Certiorari denied. Reported below: 776 F. 2d 1046.

No. 85-1328. *BONOMO ET AL. v. HARTFORD ACCIDENT & INDEMNITY CO.* Ct. App. Ind. Certiorari denied. Reported below: 474 N. E. 2d 152.

No. 85-5680. *CAMPBELL v. MORRIS, SUPERINTENDENT, SOUTHEASTERN OHIO TRAINING CENTER, ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 769 F. 2d 314.

No. 85-5742. *REED v. LANE, DIRECTOR, ILLINOIS DEPARTMENT OF CORRECTIONS, ET AL.* C. A. 7th Cir. Certiorari denied. Reported below: 759 F. 2d 618.

No. 85-5771. *BOWLDING v. UNITED STATES.* C. A. 4th Cir. Certiorari denied. Reported below: 767 F. 2d 913.

No. 85-5812. *VIA v. ARIZONA.* Sup. Ct. Ariz. Certiorari denied. Reported below: 146 Ariz. 108, 704 P. 2d 238.

No. 85-5824. *MILLER v. STAGNER, SUPERINTENDENT, CORRECTIONAL TRAINING FACILITY.* C. A. 9th Cir. Certiorari denied. Reported below: 757 F. 2d 988 and 768 F. 2d 1090.

No. 85-5872. *WOODLEY v. UNITED STATES.* C. A. 9th Cir. Certiorari denied. Reported below: 774 F. 2d 1175.

No. 85-5908. *CRUMP v. UNITED STATES.* C. A. 11th Cir. Certiorari denied. Reported below: 772 F. 2d 719.

No. 85-5923. *HELLWARTH v. UNITED STATES.* C. A. 11th Cir. Certiorari denied. Reported below: 774 F. 2d 1178.

475 U. S.

March 3, 1986

No. 85-5967. *DRYDEN v. SAFECO INSURANCE COMPANY OF AMERICA*. C. A. 10th Cir. Certiorari denied.

No. 85-5988. *BLOCKER v. MICHIGAN*. Sup. Ct. Mich. Certiorari denied. Reported below: 422 Mich. 971.

No. 85-5991. *MUNOZ v. UNITED STATES*. C. A. 5th Cir. Certiorari denied.

No. 85-6000. *DEANES v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 779 F. 2d 44.

No. 85-6024. *WILLIAMS v. REES, WARDEN*. C. A. 6th Cir. Certiorari denied. Reported below: 774 F. 2d 1164.

No. 85-6034. *BELASCO v. MORRIS, WARDEN, ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 776 F. 2d 1052.

No. 85-6039. *TRIPATI v. BRIMMER, CHIEF JUDGE, UNITED STATES DISTRICT COURT FOR THE DISTRICT OF WYOMING, ET AL.* C. A. 10th Cir. Certiorari denied.

No. 85-6044. *BOYD v. CUPP, SUPERINTENDENT, OREGON STATE PENITENTIARY*. Ct. App. Ore. Certiorari denied.

No. 85-6050. *GONZALEZ v. BOWEN, SECRETARY OF HEALTH AND HUMAN SERVICES*. C. A. 11th Cir. Certiorari denied. Reported below: 768 F. 2d 1351.

No. 85-6055. *LAMA v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 779 F. 2d 39.

No. 85-6057. *FREEMAN v. STAGNER, SUPERINTENDENT, CORRECTIONAL TRAINING FACILITY, ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 757 F. 2d 988 and 768 F. 2d 1090.

No. 85-6058. *LACKHOUSE v. MERIT SYSTEMS PROTECTION BOARD ET AL.* C. A. Fed. Cir. Certiorari denied. Reported below: 773 F. 2d 313.

No. 85-6060. *BROWN v. BRYANT ET AL.* C. A. 11th Cir. Certiorari denied.

No. 85-6065. *ARIZA-FUENTAS v. UNITED STATES*. C. A. 11th Cir. Certiorari denied. Reported below: 773 F. 2d 1541.

No. 85-6069. *COPLEY v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 774 F. 2d 728.

March 3, 1986

475 U. S.

No. 85-6077. *TILLIS v. DAVIS, WARDEN*. C. A. 11th Cir. Certiorari denied.

No. 85-6084. *MUNGUIA ET AL. v. CHEVRON Co., U. S. A., ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 768 F. 2d 649.

No. 85-6085. *BARBER v. PONTE, SUPERINTENDENT, MASSACHUSETTS CORRECTIONAL INSTITUTION, ET AL.* C. A. 1st Cir. Certiorari denied. Reported below: 772 F. 2d 982.

No. 85-6086. *GARRIS v. MARYLAND*. Ct. Sp. App. Md. Certiorari denied. Reported below: 64 Md. App. 721.

No. 85-6096. *JEFFRIES v. CHICAGO TRANSIT AUTHORITY*. C. A. 7th Cir. Certiorari denied. Reported below: 770 F. 2d 676.

No. 85-6101. *WILLIS v. NEWSOME, SUPERINTENDENT, GEORGIA STATE PRISON*. C. A. 11th Cir. Certiorari denied. Reported below: 771 F. 2d 1445.

No. 85-6111. *WEBSTER v. BOARD OF TRUSTEES OF SCHOOL DISTRICT No. 25, BANNOCK COUNTY, POCATELLO, IDAHO*. C. A. 9th Cir. Certiorari denied. Reported below: 774 F. 2d 1176.

No. 85-6114. *SMITH v. MONSANTO CHEMICAL Co.* C. A. 8th Cir. Certiorari denied. Reported below: 770 F. 2d 719.

No. 85-6117. *SEEVERS v. MERIT SYSTEMS PROTECTION BOARD*. C. A. Fed. Cir. Certiorari denied. Reported below: 785 F. 2d 325.

No. 85-6118. *MARTIN v. LITTLE, BROWN & Co.* C. A. 3d Cir. Certiorari denied.

No. 85-6125. *BROWN v. ILLINOIS*. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 131 Ill. App. 3d 1160, 493 N. E. 2d 1220.

No. 85-6130. *PRESGRAVES v. HEDRICK, WARDEN*. Sup. Ct. App. W. Va. Certiorari denied.

No. 85-6134. *ROBINSON v. COWLEY, WARDEN, ET AL.* C. A. 10th Cir. Certiorari denied.

475 U. S.

March 3, 1986

No. 85-6135. *PERKINS v. ALESİ ET AL.* C. A. 7th Cir. Certiorari denied. Reported below: 782 F. 2d 1045.

No. 85-6136. *SPARKS v. UNITED STATES.* C. A. 4th Cir. Certiorari denied. Reported below: 779 F. 2d 47.

No. 85-6137. *RIVERA v. UNITED STATES.* C. A. 11th Cir. Certiorari denied. Reported below: 775 F. 2d 1559.

No. 85-6139. *REEDER v. MORRIS, SUPERINTENDENT, SOUTHERN OHIO CORRECTIONAL FACILITY.* C. A. 6th Cir. Certiorari denied. Reported below: 774 F. 2d 1163.

No. 85-6140. *BORRMAN v. MAGGIO, WARDEN, ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 777 F. 2d 699.

No. 85-6149. *OKOT v. HAMMERSLEY ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 772 F. 2d 912.

No. 85-6152. *BURGESS v. UNITED STATES.* C. A. 11th Cir. Certiorari denied. Reported below: 774 F. 2d 1177.

No. 85-6153. *CICALA v. BUTTERCREEK INVESTMENT CORP.* Sup. Ct. Pa. Certiorari denied.

No. 85-6154. *KELLY v. CITY OF WAUTOMA, WISCONSIN.* Ct. App. Wis. Certiorari denied.

No. 85-6156. *DABON v. BLACKBURN, WARDEN, ET AL.* C. A. 5th Cir. Certiorari denied.

No. 85-6159. *RASKE v. FALLON ET AL.* C. A. 11th Cir. Certiorari denied.

No. 85-6160. *SMOTHERMON v. MCCOTTER, DIRECTOR, TEXAS DEPARTMENT OF CORRECTIONS.* C. A. 5th Cir. Certiorari denied.

No. 85-6163. *HAASE v. WISCONSIN.* Ct. App. Wis. Certiorari denied. Reported below: 125 Wis. 2d 578, 373 N. W. 2d 89.

No. 85-6165. *GRAF v. WISCONSIN.* Ct. App. Wis. Certiorari denied. Reported below: 125 Wis. 2d 574, 373 N. W. 2d 86.

No. 85-6169. *LLOYD v. BOWEN, SECRETARY OF HEALTH AND HUMAN SERVICES.* C. A. 9th Cir. Certiorari denied. Reported below: 776 F. 2d 1053.

March 3, 1986

475 U. S.

No. 85-6172. *MESHULAM v. MESHULAM ET AL.* C. A. 1st Cir. Certiorari denied. Reported below: 774 F. 2d 1149.

No. 85-6173. *TOMPKINS v. WYOMING.* Sup. Ct. Wyo. Certiorari denied. Reported below: 705 P. 2d 836.

No. 85-6174. *PALOW v. UNITED STATES.* C. A. 1st Cir. Certiorari denied. Reported below: 777 F. 2d 52.

No. 85-6175. *FLOYD v. GENERAL MOTORS CORP. ET AL.* C. A. 11th Cir. Certiorari denied. Reported below: 761 F. 2d 696.

No. 85-6177. *KIRKSEY-BEY v. YOUNG ET AL.* C. A. 8th Cir. Certiorari denied. Reported below: 782 F. 2d 1048.

No. 85-6181. *VILLANUEVA v. UNITED STATES.* C. A. 9th Cir. Certiorari denied. Reported below: 780 F. 2d 1029.

No. 85-6184. *MITCHELL v. MARYLAND.* Ct. Sp. App. Md. Certiorari denied. Reported below: 62 Md. App. 733.

No. 85-6185. *GALLOWAY v. KANSAS.* Sup. Ct. Kan. Certiorari denied. Reported below: 238 Kan. 100, 708 P. 2d 508.

No. 85-6193. *COLATRIANO v. CAVE ET AL.* C. A. 3d Cir. Certiorari denied. Reported below: 770 F. 2d 1068.

No. 85-6199. *GARRETT v. UNITED STATES.* C. A. 6th Cir. Certiorari denied. Reported below: 780 F. 2d 1021.

No. 85-6204. *KIDD v. UNITED VIRGINIA BANK OF LYNCHBURG, VIRGINIA, N. A., ET AL.* C. A. 4th Cir. Certiorari denied.

No. 85-6210. *FAIRFAX v. UNITED STATES.* C. A. 10th Cir. Certiorari denied.

No. 85-6216. *PETERSON v. NEW MEXICO.* Ct. App. N. M. Certiorari denied. Reported below: 103 N. M. 638, 711 P. 2d 915.

No. 85-6220. *GADDIS v. MERIT SYSTEMS PROTECTION BOARD.* C. A. Fed. Cir. Certiorari denied. Reported below: 785 F. 2d 325.

No. 85-6225. *DELORIA v. UNITED STATES.* C. A. 7th Cir. Certiorari denied.

475 U. S.

March 3, 1986

No. 85-6226. *GOLDSTON v. ARIZONA ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 780 F. 2d 1026.

No. 85-6235. *WARDY v. UNITED STATES.* C. A. 2d Cir. Certiorari denied. Reported below: 777 F. 2d 101.

No. 85-6244. *JONES v. DEROBERTIS, WARDEN, ET AL.* C. A. 7th Cir. Certiorari denied. Reported below: 766 F. 2d 270.

No. 85-6248. *STEPHENS v. MONTANA.* C. A. 9th Cir. Certiorari denied. Reported below: 780 F. 2d 1028.

No. 85-6262. *D'ARCO v. UNITED STATES.* C. A. 2d Cir. Certiorari denied.

No. 85-6295. *WARD v. BLEVINS, WARDEN, ET AL.* C. A. 7th Cir. Certiorari denied.

No. 85-6300. *AROCENA v. UNITED STATES.* C. A. 2d Cir. Certiorari denied. Reported below: 778 F. 2d 943.

No. 85-6309. *HUBBLE v. UNITED STATES.* C. A. 6th Cir. Certiorari denied. Reported below: 772 F. 2d 909.

No. 85-539. *LANE, DIRECTOR, ILLINOIS DEPARTMENT OF CORRECTIONS, ET AL. v. ENOCH ET AL.* C. A. 7th Cir. Motion of respondents for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 768 F. 2d 161.

JUSTICE WHITE, with whom THE CHIEF JUSTICE and JUSTICE REHNQUIST join, dissenting.

For the reasons I have twice before stated, *Smith v. Jago*, 470 U. S. 1060 (1985) (dissenting), *Taliaferro v. Maryland*, 461 U. S. 948 (1983) (dissenting), I dissent from the Court's refusal to resolve the important question, which has divided the lower courts, of when, if ever, a State may exclude a defense witness on account of a criminal defendant's failure to comply with a discovery rule.

No. 85-727. *MISSOURI FARMERS ASSN., INC. v. UNITED STATES.* C. A. 8th Cir. Certiorari denied. Reported below: 764 F. 2d 488.

JUSTICE WHITE, dissenting.

In this case the United States Court of Appeals for the Eighth Circuit held that a federal regulation provides the appropriate rule for deciding whether the Farmers Home Administration (FmHA)

March 3, 1986

475 U. S.

retains a continuing security interest in collateral to whose sale the FmHA allegedly consented.* 764 F. 2d 488 (1985). The question presented is whether, under *United States v. Kimbell Foods, Inc.*, 440 U. S. 715 (1979), the Eighth Circuit erred in looking to federal regulations rather than state law for the rule of decision.

In *Kimbell Foods* this Court determined that although federal law should determine the priority of liens stemming from federal lending programs, a national rule is not necessary to protect the federal interests underlying the loan programs of the Small Business Administration and FmHA. Thus, we held that "absent a congressional directive, the relative priority of private liens and consensual liens arising from these Government lending programs is to be determined under nondiscriminatory state laws." *Id.*, at 740 (emphasis added).

I find it difficult to reconcile the Court of Appeals' decision with *Kimbell Foods*. A federal regulation is not a congressional directive, and although *Kimbell Foods* involves a question of lien priority while the present case concerns the extinguishment of a federal lien, that distinction is tenuous at best.

Besides being in obvious tension with *Kimbell Foods*, the Court of Appeals' decision conflicts with the decision in *United States v. Tugwell*, 779 F. 2d 5 (CA4 1985), which holds that under *Kimbell Foods* the question whether a FmHA lien is extinguished upon sale of the collateral must be resolved by looking to state law. I would grant certiorari to resolve this conflict among the Courts of Appeals.

No. 85-757. LANE, DIRECTOR, ILLINOIS DEPARTMENT OF CORRECTIONS, ET AL. *v.* REED. C. A. 7th Cir. Motion of re-

*The regulation on which the Eighth Circuit relied is 7 CFR § 1962.18(b) (1985), which at the time the case was decided provided in relevant part:

"When borrowers [from the FmHA] sell security, the sale will be made subject to the FmHA lien. The property and proceeds will remain subject to the lien until the lien is released or the sale is approved by the County Supervisor and the proceeds are used for one or more of the purposes stated in § 1962.17."

This regulation has since been rewritten: 50 Fed. Reg. 45787 (1985) (proposed 7 CFR § 1962.17(a)), which provides that "[w]hen the borrower sells security, the property and proceeds remain subject to the lien until the lien is released by the County Supervisor." This change in wording is immaterial to the issues presented in this case.

475 U. S.

March 3, 1986

spondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 759 F. 2d 618.

No. 85-1061. OWENS, SUPERINTENDENT, INDIANA STATE REFORMATORY *v.* RINER. C. A. 7th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 764 F. 2d 1253.

No. 85-785. RIVER ROAD ALLIANCE, INC., ET AL. *v.* CORPS OF ENGINEERS OF THE UNITED STATES ARMY ET AL.; and

No. 85-800. ILLINOIS *v.* CORPS OF ENGINEERS OF THE UNITED STATES ARMY ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 764 F. 2d 445.

JUSTICE WHITE, dissenting.

In 1980, respondent National Marine Service applied to respondent Army Corps of Engineers for a permit to construct a temporary barge-fleeting facility on the Mississippi River. After holding a public hearing on the environmental effects of the proposed facility, the Corps issued a brief "environmental assessment" concluding that the facility would have no significant environmental effects. Based on this conclusion, the Corps determined that it was not required to prepare an Environmental Impact Statement (EIS) on the proposed project, since such an EIS is required by the National Environmental Policy Act (NEPA), 83 Stat. 853, 42 U. S. C. § 4332(2)(C), only for projects that will "significantly affect[t] the quality of the human environment." Thus, the Corps issued the permit sought.

Petitioners, the State of Illinois and others including River Road Alliance, Inc., brought suit in the United States District Court for the Southern District of Illinois, challenging the issuance of the permit and the Corps' underlying finding of no significant environmental effects. On petitioners' motion for summary judgment, the District Court found that "[w]hile paying lip service to [NEPA], the Corps has failed to take the 'hard look' required to support its conclusions, and has failed to document that 'hard look' in the Environmental Assessment . . ." App. to Pet. for Cert. in No. 85-800, p. 33. Based on this conclusion, the District Court held that the Corps' action was arbitrary and capricious and entered judgment in favor of petitioners.

On appeal, the United States Court of Appeals for the Seventh Circuit reversed. 764 F. 2d 445 (1985). While observing that

March 3, 1986

475 U. S.

that court had previously held that an agency's decision not to prepare an EIS is reviewed only for an abuse of discretion, see, e. g., *Wisconsin v. Weinberger*, 745 F. 2d 412, 417 (CA7 1984), the Court of Appeals in this case acknowledged that other Courts of Appeals have held that such decisions are reviewed for reasonableness. 764 F. 2d, at 449. Having noted these differing formulations, the Court of Appeals expressed its doubt as to the "practical difference" between the two standards: "There is plenary review and there is deferential review, and whether it is fruitful to attempt fine gradations within the second category may be doubted, though there is no need to resolve our doubt here." *Ibid.* The court then declined to substitute its judgment for the Corps' and reversed the decision of the District Court.

Although the precise contours of the Court of Appeals' review in this case are somewhat unclear, the decision below again presents to this Court the unresolved question of the standard of review to be applied by courts reviewing an agency decision not to prepare an EIS. I have noted before the divergent standards of review invoked by the various Courts of Appeals in this context, see *Gee v. Boyd*, 471 U. S. 1058, 1059 (1985) (dissenting from denial of certiorari), and I will not again detail the alignment of the lower courts here. I reiterate, however, my previously expressed view that "[t]his conflict is not merely semantic or academic": The courts that invoke the abuse-of-discretion or arbitrary-and-capricious standard emphasize that the decision is committed to the agency's discretion and expertise; the courts that invoke the reasonableness standard, in contrast, stress the non-discretionary nature of NEPA's language. *Id.*, at 1060. Because this conflict among the Circuits raises a significant question as to the proper interpretation of a federal statute, because this question recurs regularly, and because I believe that the issue is not merely one of semantics, I would grant certiorari to resolve the issue.

No. 85-798. *PETTY MOTOR CO. v. UNITED STATES*. C. A. 10th Cir. Certiorari denied. Reported below: 767 F. 2d 712.

JUSTICE WHITE, with whom THE CHIEF JUSTICE joins, dissenting.

In this case the United States Court of Appeals for the Tenth Circuit held that as a matter of federal law a United States Marshal's conducting a judicial foreclosure sale constitutes "seizing

475 U. S.

March 3, 1986

or levying" within the meaning of 28 U. S. C. § 1921.* As the Government concedes, this decision conflicts with the decisions of three Courts of Appeals that have held that costs could not be taxed under § 1921 in cases involving judicial foreclosure sales. See *Travelers Insurance Co. v. Lawrence*, 509 F. 2d 83 (CA9 1974); *James T. Barnes & Co. v. United States*, 593 F. 2d 352 (CA8 1979); *Federal Land Bank of St. Paul v. Hassler*, 595 F. 2d 356 (CA6 1979). I would grant certiorari to resolve this conflict.

No. 85-844. DAVIS *v.* UNITED AUTOMOBILE, AEROSPACE & AGRICULTURAL IMPLEMENT WORKERS OF AMERICA ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 765 F. 2d 1510.

JUSTICE WHITE, dissenting.

The question presented is what statute of limitations to borrow in this suit against a union for an alleged violation of a former member's rights under § 101 of the Labor-Management Reporting and Disclosure Act, 29 U. S. C. § 411. The United States Court of Appeals for the Eleventh Circuit held that in light of *DelCostello v. Teamsters*, 462 U. S. 151 (1983), the appropriate source from which to borrow a limitations period is not state law but § 10(b) of the National Labor Relations Act, 29 U. S. C. § 160(b). 765 F. 2d 1510 (1985). Although not without support in other Circuits, see, e. g., *Local Union 1397 v. United Steelworkers of America, AFL-CIO*, 748 F. 2d 180 (CA3 1984), the Eleventh Circuit's decision in this case conflicts with *Doty v. Sewall*, 784 F. 2d 1 (CA1 1986). *Doty* explicitly rejects the analysis of this case and *Local Union 1397*, *supra*, and holds that the usual practice of borrowing statutes of limitations from state law should be followed in a suit like this one. I would grant certiorari to resolve this conflict.

No. 85-863. LUBRIZOL ENTERPRISES, INC. *v.* CANFIELD, BANKRUPTCY TRUSTEE FOR RICHMOND METAL FINISHERS, INC.

*Title 28 U. S. C. § 1921 provides in relevant part:

"Only the following fees of United States marshals shall be collected and taxed as costs, except as otherwise provided:

"For seizing or levying on property (including seizures in admiralty), disposing of the same by sale, setoff, or otherwise and receiving and paying over money, commissions of 3 per centum on the first \$1,000 of the amounts collected and 1½ per centum on the excess of any sum over \$1,000."

March 3, 1986

475 U. S.

C. A. 4th Cir. Certiorari denied. JUSTICE O'CONNOR took no part in the consideration or decision of this petition. Reported below: 756 F. 2d 1043.

No. 85-991. *IN RE MARTIN-TRIGONA*. C. A. 2d Cir. Petition for writ of certiorari and/or mandamus denied. Reported below: 770 F. 2d 157.

No. 85-1053. *CRAFT v. METROMEDIA, INC.* C. A. 8th Cir. Certiorari denied. JUSTICE O'CONNOR would grant certiorari. Reported below: 766 F. 2d 1205.

No. 85-1183. *P. B. C. v. D. H.* Sup. Jud. Ct. Mass. Certiorari denied. JUSTICE WHITE would grant certiorari. Reported below: 396 Mass. 68, 483 N. E. 2d 1094.

No. 85-5386. *FLEMING v. KEMP, WARDEN*. C. A. 11th Cir. Certiorari denied. Reported below: 748 F. 2d 1435.

JUSTICE BRENNAN, dissenting.

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

JUSTICE MARSHALL, dissenting.

I would grant certiorari in this case because petitioner was not represented by counsel at a critical stage of a criminal proceeding, and is therefore entitled to reversal of his conviction. See *United States v. Cronin*, 466 U. S. 648, 659, and n. 25 (1984); *Holloway v. Arkansas*, 435 U. S. 475, 489 (1978).

Petitioner was convicted of murdering a police officer and sentenced to death. After exhausting state remedies, petitioner filed a petition for a writ of habeas corpus in the District Court. Petitioner contended that he had been denied counsel at a commitment hearing, a device used under Georgia law to determine the existence of probable cause to detain a suspect, Ga. Code Ann. § 17-7-23 (1982), and one that the Georgia Supreme Court has held to be a critical stage of the prosecution, *State v. Houston*, 234 Ga. 721, 218 S. E. 2d 13 (1975); cf. *Coleman v. Alabama*, 399 U. S. 1 (1970). The District Court held that the hearing that took place in this case had not been a "commitment hearing" as contemplated

1058

MARSHALL, J., dissenting

by state law, and that in any event petitioner had been represented by an attorney, Millard Farmer. 560 F. Supp. 525 (MD Ga. 1983). Viewing the latter question as one of fact and the District Court's resolution as not clearly erroneous, a divided Court of Appeals affirmed without considering the nature of the hearing. 748 F. 2d 1435 (CA11 1984).

Assuming for the sake of argument that the District Court's determination that attorney Farmer represented petitioner is a pure issue of fact, but see *Cuyler v. Sullivan*, 446 U. S. 335, 342 (1980) (whether counsel engaged in multiple representation is mixed question of law and fact), I would not hesitate to hold that finding clearly erroneous. See 748 F. 2d, at 1456 (Tuttle, J., concurring in part and dissenting in part). Petitioner, Son Fleming, was arrested along with Henry Willis and Larry Fleming, who is petitioner's nephew. Petitioner and his two codefendants requested and received separate appointed counsel. Larry Fleming's appointed counsel induced Farmer, an experienced full-time criminal attorney, to represent both Larry Fleming and Henry Willis. Farmer then requested a commitment hearing for his two clients, who, like petitioner, had been indicted for kidnaping but not yet for murder. Petitioner's counsel, who had been appointed on the kidnaping charge but not the murder charge, chose not to participate. Nevertheless, the prosecutor required petitioner to be at the hearing, at which the State introduced testimony on the kidnaping and murder charges, and permitted Farmer an opportunity to cross-examine.

The District Court found that Farmer had represented all three defendants at the hearing. It based this conclusion on the facts that the transcript showed Farmer appearing "for the defendants," *id.*, at 1444, and that the prosecutor had referred to Farmer as "counsel for the defendants," *ibid.* The District Court also gave weight to Farmer's failure to inform the court during the hearing that he was not representing all three defendants, and to his cross-examination of the State's witnesses, which related to the conduct of all three defendants.

These facts are simply insufficient to support the conclusion that Farmer represented petitioner in the face of direct evidence to the contrary. Farmer, whom the District Court characterized as an experienced criminal attorney, 560 F. Supp., at 529, testified under oath at the habeas hearing that he had not represented petitioner at the "commitment" hearing, *id.*, at 533. Petitioner's ap-

pointed attorney also believed that Farmer had not represented petitioner at the hearing. 748 F. 2d, at 1460 (Tuttle, J., concurring in part and dissenting in part). Finally, it is undisputed that the prosecutor knew before the hearing that Farmer did not represent petitioner. *Id.*, at 1459; 560 F. Supp., at 529-530.

Most importantly, Farmer could not possibly have represented petitioner without incurring an actual and substantial conflict of interest. At the time of the hearing, none of the defendants had been indicted for the murder. Petitioner had told the police that he had not participated in the killing, but instead had begged his codefendants to spare the victim's life. *Id.*, at 529. According to Larry Fleming, however, petitioner and Willis had shot the victim. 748 F. 2d, at 1460. No extended discussion is necessary to demonstrate that Farmer could not represent both petitioner and Larry Fleming under those circumstances. Petitioner thus had either no counsel or counsel who "actively represented conflicting interests," *Cuyler, supra*, at 350. In either event, reversal is automatic. *Holloway, supra*, at 489; *Cuyler, supra*, at 349-350.

The District Court's determination that the hearing in this case was not a critical stage is even less persuasive. The District Court concluded that there had been no need for a commitment hearing because all three defendants could legally have been detained on the kidnaping charges. Moreover, the Justice of the Peace had made no probable-cause determination, as he presumably would have following a commitment hearing. The District Court therefore chose to characterize the hearing as "an agreed upon discovery conference." 560 F. Supp., at 533. Sixth Amendment rights, however, do not turn upon how a proceeding is characterized for purposes of state law, or indeed upon whether state law expressly mandates such a proceeding. *Coleman v. Alabama, supra*, at 8 (plurality opinion). The critical inquiry is whether "counsel's absence might derogate from the accused's right to a fair trial." *United States v. Wade*, 388 U. S. 218, 226 (1967) (footnote omitted).

The hearing in this case was unquestionably a critical stage within the meaning of *Wade* and *Coleman*. As Judge Tuttle observed, the hearing was petitioner's first opportunity to cross-examine the State's witnesses. 748 F. 2d, at 1457. Thus the plurality's observations in *Coleman, supra*, at 9, are equally relevant here:

475 U. S.

March 3, 1986

"[T]he skilled interrogation of witnesses by an experienced lawyer can fashion a vital impeachment tool for use in cross-examination of the State's witnesses at the trial, or preserve testimony favorable to the accused of a witness who does not appear at the trial. . . . [T]rained counsel can more effectively discover the case the State has against his client and make possible the preparation of a proper defense to meet that case at the trial."

Petitioner therefore had a Sixth Amendment right to counsel at the hearing, no matter what that hearing was called or why Farmer requested it. The District Court's determination that Farmer represented petitioner is either contrary to law or clearly erroneous. I would grant the petition for certiorari and set the case for hearing on the merits.

No. 85-6166. CUPPAY *v.* BLACKBURN, WARDEN, ET AL. C. A. 5th Cir. Motion of petitioner to defer consideration of the petition for writ of certiorari denied. Certiorari denied. Reported below: 778 F. 2d 788.

Rehearing Denied

No. 84-1361. UNITED STATES *v.* LOUD HAWK ET AL., 474 U. S. 302;

No. 85-613. COMMUNITY HEALTH SERVICES OF CRAWFORD COUNTY, INC. *v.* TRAVELERS INSURANCE COS. ET AL., 474 U. S. 1056;

No. 85-787. DAVES *v.* STATE BAR OF TEXAS, 474 U. S. 1043;

No. 85-813. MINNESOTA TIMBER PRODUCERS ASSN., INC. *v.* AMERICAN MUTUAL INSURANCE COMPANY OF BOSTON, 474 U. S. 1059;

No. 85-820. NORWOOD *v.* INA LIFE INSURANCE CO. ET AL., 474 U. S. 1059;

No. 85-5372. LEVITT *v.* MONROE ET AL., 474 U. S. 1034;

No. 85-5380. JACKSON *v.* GENERAL DYNAMICS, INC., 474 U. S. 1063;

No. 85-5439. JOHNSON *v.* MANSON, COMMISSIONER OF CORRECTIONS OF CONNECTICUT, 474 U. S. 1063; and

No. 85-5679. PASKULY *v.* MARSHALL FIELD & Co., 474 U. S. 1064. Petitions for rehearing denied.

March 3, 6, 10, 1986

475 U. S.

No. 85-5738. *COSSETT ET AL. v. LEDFORD, TRUSTEE*, 474 U. S. 1065;

No. 85-5764. *SELLNER v. MARYLAND*, 474 U. S. 1066;

No. 85-5839. *GRAY v. DEPARTMENT OF TRANSPORTATION, FEDERAL AVIATION ADMINISTRATION*, 474 U. S. 1069; and

No. 85-5889. *RISPOLI v. UNITED STATES ET AL.*, 474 U. S. 1069. Petitions for rehearing denied.

No. 85-773. *ATLANTIC RICHFIELD CO. ET AL. v. ALASKA ET AL.*, 474 U. S. 1043. Petition for rehearing denied. JUSTICE POWELL took no part in the consideration or decision of this petition.

MARCH 6, 1986

Miscellaneous Order

No. A-653 (85-6448). *ADAMS v. WAINWRIGHT, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL.* Sup. Ct. Fla. The order of February 28, 1986 [*ante*, p. 1041], is vacated. The application for stay of execution of sentence of death, presented to JUSTICE POWELL, and by him referred to the Court, is granted until March 25, 1986, or until the disposition by this Court of the petition for writ of certiorari, whichever is earlier, unless otherwise extended by the Court. JUSTICE REHNQUIST and JUSTICE O'CONNOR would deny the application for stay.

MARCH 10, 1986*

Appeals Dismissed

No. 85-353. *MICHIGAN DIVERSIFIED BUSINESS PRODUCTS, INC., ET AL. v. CITY OF WARREN ET AL.* Appeal from Ct. App. Mich. dismissed for want of properly presented federal question. JUSTICE STEVENS would note probable jurisdiction and set case for oral argument.

No. 85-1185. *WHEATON v. CITY OF OKLAHOMA CITY ET AL.* Appeal from Ct. Crim. App. Okla. dismissed for want of substantial federal question.

No. 85-1211. *RAJARAM v. A. S. ABELL PUBLISHING CO.* Appeal from Ct. Sp. App. Md. dismissed for want of jurisdiction.

*JUSTICE BRENNAN took no part in the consideration or decision of the orders announced on this date with the exception of No. 85-6333, *Egger v. Casey, Director, Central Intelligence Agency, et al.*, *infra*, p. 1064.

475 U. S.

March 10, 1986

Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied.

No. 85-6206. *GAYDOS v. STRELECKI ET AL.* Appeal from C. A. 3d 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: 774 F. 2d 1151.

Certiorari Granted—Vacated and Remanded

No. 85-498. *ABERNATHY ET AL. v. SAN JOSE TEACHERS ASSN.* Sup. Ct. Cal. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Teachers v. Hudson*, ante, p. 292. Reported below: 38 Cal. 3d 839, 700 P. 2d 1252.

Vacated and Remanded After Certiorari Granted

No. 85-298. *CONNOLLY v. BURT.* C. A. 10th Cir. [Certiorari granted, 474 U. S. 1004.] Judgment vacated and case remanded to the Court of Appeals with directions that it instruct the United States District Court for the District of Colorado to dismiss the complaint as moot.

*Miscellaneous Orders**

No. — — —. *ELMWOOD-UTICA HOUSES, INC. v. BUFFALO SEWER AUTHORITY.* Motion to direct the Clerk to file petition for writ of certiorari out of time denied.

No. D-547. *IN RE DISBARMENT OF MAGRUDER.* It is ordered that R. Jack Magruder III, of Little Rock, Ark., 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. 85-701. *FEDERAL ELECTION COMMISSION v. MASSACHUSETTS CITIZENS FOR LIFE, INC.* C. A. 1st Cir. [Probable jurisdiction noted, 474 U. S. 1049.] Motion of Common Cause for leave to file a brief as *amicus curiae* granted.

No. 85-782. *IMMIGRATION AND NATURALIZATION SERVICE v. CARDOZA-FONSECA.* C. A. 9th Cir. [Certiorari granted, ante, p. 1009.] Motion of the Solicitor General to dispense with printing the joint appendix granted.

*For the Court's order prescribing amendments to the Federal Rules of Appellate Procedure, see *post*, p. 1155.

March 10, 1986

475 U. S.

No. 85-6124. JOHNSON *v.* UNITED STATES. C. A. 4th Cir. Motion of petitioner to consolidate this case with No. 85-5189, *McLaughlin v. United States* [certiorari granted, 474 U. S. 944], denied.

No. 85-6333. EGGER *v.* CASEY, DIRECTOR, CENTRAL INTELLIGENCE AGENCY, ET AL. C. A. D. C. Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied. Petitioner is allowed until March 31, 1986, within which to pay the docketing fee required by Rule 45(a) and to submit a petition in compliance with Rule 33 of the Rules of this Court.

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

For the reasons expressed in *Brown v. Herald Co.*, 464 U. S. 928 (1983), we would deny the petition for writ of certiorari without reaching the merits of the motion to proceed *in forma pauperis*.

No. 85-6236. IN RE TUCKER. Petition for writ of mandamus denied.

Certiorari Granted

No. 85-1217. CITY OF SPRINGFIELD, MASSACHUSETTS *v.* KIBBE, ADMINISTRATRIX OF THE ESTATE OF THURSTON. C. A. 1st Cir. Certiorari granted. Reported below: 777 F. 2d 801.

Certiorari Denied. (See also Nos. 85-1211 and 85-6206, *supra.*)

No. 84-6050. CURTIS *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 742 F. 2d 1070.

No. 85-542. ROTH ET AL. *v.* CITY OF VALLEJO. Ct. App. Cal., 1st App. Dist. Certiorari denied. Reported below: 167 Cal. App. 3d 1169, 213 Cal. Rptr. 143.

No. 85-697. WAGGONER ET AL. *v.* DALLAIRE, DBA A-JAY EXCAVATING CO. C. A. 9th Cir. Certiorari denied. Reported below: 767 F. 2d 589.

No. 85-855. ARKLA, INC. *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 765 F. 2d 487.

No. 85-891. SMITH, AS PERSONAL REPRESENTATIVE OF THE ESTATES OF AUSTIN ET AL. *v.* UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF WASHINGTON (UNITED STATES,

475 U. S.

March 10, 1986

REAL PARTY IN INTEREST); and SMITH, AS PERSONAL REPRESENTATIVE OF THE ESTATES OF AUSTIN ET AL. *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 85-951. ROBINSON ET AL. *v.* DEPARTMENT OF TRANSPORTATION, FEDERAL AVIATION ADMINISTRATION. C. A. Fed. Cir. Certiorari denied. Reported below: 769 F. 2d 1556.

No. 85-1036. RUTGERS STATE UNIVERSITY OF NEW JERSEY ET AL. *v.* GALDA ET AL.; and

No. 85-1037. NEW JERSEY PUBLIC INTEREST RESEARCH GROUP, INC. *v.* GALDA ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 772 F. 2d 1060.

No. 85-1052. KUPFERSTEIN *v.* NEW YORK. C. A. 2d Cir. Certiorari denied.

No. 85-1145. WILLIAMS ET AL. *v.* WOLFENBARGER, DBA SHADY SAM'S PAWN SHOP; and

No. 85-1203. TANNERY ET AL. *v.* WOLFENBARGER, DBA SHADY SAM'S PAWN SHOP. C. A. 10th Cir. Certiorari denied. Reported below: 774 F. 2d 358.

No. 85-1178. CHATTEM, INC. *v.* BAILEY. C. A. 6th Cir. Certiorari denied. Reported below: 779 F. 2d 49.

No. 85-1182. HUMBLE EXPLORATION CO., INC., ET AL. *v.* BROWNING ET AL. Ct. App. Tex., 5th Sup. Jud. Dist. Certiorari denied. Reported below: 690 S. W. 2d 321.

No. 85-1193. MAGEE, INDIVIDUALLY AND T/A COLLEGIATE RESEARCH SYSTEMS *v.* RUVOLDT, PROSECUTOR OF HUDSON COUNTY. Super. Ct. N. J., App. Div. Certiorari denied.

No. 85-1202. BRADFORD, AS EXECUTRIX OF THE ESTATE OF BRADFORD *v.* BLUE PEARL MUSIC CORP. C. A. 3d Cir. Certiorari denied. Reported below: 770 F. 2d 1067.

No. 85-1204. TERRY *v.* STONE ET AL. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 85-1212. OLEN *v.* PURDUE ET AL. Ct. App. Ariz. Certiorari denied.

No. 85-1215. GATES *v.* SPINKS ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 771 F. 2d 916.

March 10, 1986

475 U. S.

No. 85-1216. *O'CONNELL v. MARYLAND STEEL ERECTORS, INC., ET AL.* Ct. App. D. C. Certiorari denied. Reported below: 495 A. 2d 1134.

No. 85-1220. *HUGH KNOELL BUILDERS, INC. v. FIRST FEDERAL SAVINGS & LOAN ASSN.* Ct. App. Ariz. Certiorari denied.

No. 85-1241. *LUBBOCK COUNTY, TEXAS, ET AL. v. STEWART ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 767 F. 2d 153.

No. 85-1258. *BROWN ET AL. v. KERR-MCGEE CHEMICAL CORP.* C. A. 7th Cir. Certiorari denied. Reported below: 767 F. 2d 1234.

No. 85-1330. *WILLIAMS ROCK MINING CO., INC. v. UNITED STATES.* C. A. 8th Cir. Certiorari denied. Reported below: 782 F. 2d 1048.

No. 85-5623. *WOLFE v. UNITED STATES.* C. A. 11th Cir. Certiorari denied. Reported below: 766 F. 2d 1525.

No. 85-5879. *UNGAR v. MARYLAND.* Ct. Sp. App. Md. Certiorari denied. Reported below: 63 Md. App. 472, 492 A. 2d 1336.

No. 85-6037. *AMES v. NEW YORK STATE DIVISION OF PAROLE.* C. A. 2d Cir. Certiorari denied. Reported below: 772 F. 2d 13.

No. 85-6120. *POWELL v. DUGGER, SUPERINTENDENT, FLORIDA STATE PRISON.* C. A. 11th Cir. Certiorari denied.

No. 85-6151. *GIRDNER v. UNITED STATES.* C. A. 10th Cir. Certiorari denied. Reported below: 773 F. 2d 257.

No. 85-6186. *TUCKER ET AL. v. MASCHNER, WARDEN, ET AL.* Sup. Ct. Kan. Certiorari denied.

No. 85-6192. *TAYLOR v. BOOKER, WARDEN.* C. A. 4th Cir. Certiorari denied. Reported below: 779 F. 2d 47.

No. 85-6194. *RODMAN v. REED ET AL.* C. A. 6th Cir. Certiorari denied.

No. 85-6196. *PARKER v. CALIFORNIA.* C. A. 9th Cir. Certiorari denied.

475 U. S.

March 10, 1986

No. 85-6197. *SMITH v. DEBARTOLI*. C. A. 7th Cir. Certiorari denied. Reported below: 769 F. 2d 451.

No. 85-6201. *PRANTIL v. CALIFORNIA*. Ct. App. Cal., 4th App. Dist. Certiorari denied. Reported below: 169 Cal. App. 3d 592, 215 Cal. Rptr. 372.

No. 85-6208. *BORGE v. BOYS AND GIRLS CLUBS OF GREATER WASHINGTON*. C. A. D. C. Cir. Certiorari denied. Reported below: 251 U. S. App. D. C. 196, 782 F. 2d 278.

No. 85-6211. *MOORE v. WELLS, SUPERINTENDENT, MUSKOGON CORRECTIONAL FACILITY*. C. A. 6th Cir. Certiorari denied. Reported below: 780 F. 2d 1022.

No. 85-6212. *SMIGA v. DEAN WITTER REYNOLDS, INC.* C. A. 2d Cir. Certiorari denied. Reported below: 766 F. 2d 698.

No. 85-6215. *BRENNAN v. HABERSHAW ET AL.* C. A. 11th Cir. Certiorari denied. Reported below: 777 F. 2d 702.

No. 85-6218. *GASPARD v. TRANSWORLD DRILLING CO.* Sup. Ct. La. Certiorari denied. Reported below: 474 So. 2d 1304.

No. 85-6231. *SOMMER v. CLINTON COUNTY SUPREME COURT ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 779 F. 2d 39.

No. 85-6237. *TOMAS ET AL. v. ILLINOIS*. App. Ct. Ill., 5th Dist. Certiorari denied. Reported below: 136 Ill. App. 3d 1054, 484 N. E. 2d 341.

No. 85-6239. *ROBERTS v. DILL*. C. A. 8th Cir. Certiorari denied. Reported below: 782 F. 2d 1049.

No. 85-6242. *HOWARD v. DAVIS, WARDEN, ET AL.* C. A. 11th Cir. Certiorari denied.

No. 85-6246. *WILLIAMS v. STATE AUTOMOBILE MUTUAL INSURANCE CO.* Ct. App. Ohio, Lawrence County. Certiorari denied.

No. 85-6247. *MCGEE v. SCREW CONVEYOR CORPORATION OF WINONA, MISSISSIPPI*. C. A. 5th Cir. Certiorari denied. Reported below: 777 F. 2d 699.

March 10, 1986

475 U. S.

No. 85-6249. *MIDWIFE v. SUPERIOR COURT OF CALIFORNIA FOR THE COUNTY OF SAN DIEGO ET AL.* Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 85-6255. *BARTLEY v. ILLINOIS.* Sup. Ct. Ill. Certiorari denied. Reported below: 109 Ill. 2d 273, 486 N. E. 2d 880.

No. 85-6267. *GRANT v. ABSHIRE, SUPERINTENDENT, RIVERSIDE CORRECTIONAL FACILITY, ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 774 F. 2d 1162.

No. 85-6298. *HUGGARD v. UNITED STATES.* C. A. 5th Cir. Certiorari denied. Reported below: 778 F. 2d 788.

No. 85-6328. *RIVERA v. UNITED STATES.* C. A. 10th Cir. Certiorari denied. Reported below: 778 F. 2d 591.

No. 85-6331. *CAROTHERS v. UNITED STATES.* C. A. 6th Cir. Certiorari denied. Reported below: 785 F. 2d 311.

No. 85-6336. *BERO v. UNITED STATES.* C. A. 6th Cir. Certiorari denied. Reported below: 782 F. 2d 1044.

No. 85-6339. *AGILAR v. UNITED STATES.* C. A. 2d Cir. Certiorari denied. Reported below: 779 F. 2d 123.

No. 85-6353. *DENNIS v. UNITED STATES.* C. A. 7th Cir. Certiorari denied.

No. 85-6358. *JENKS ET AL. v. UNITED STATES.* C. A. 4th Cir. Certiorari denied. Reported below: 774 F. 2d 1156.

No. 85-6370. *AGUIRRE v. UNITED STATES.* C. A. 11th Cir. Certiorari denied.

No. 85-337. *KEMP, WARDEN v. POTTS.* C. A. 11th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 734 F. 2d 526 and 764 F. 2d 1369.

CHIEF JUSTICE BURGER, with whom JUSTICE REHNQUIST joins, dissenting from the denial of certiorari.

Eleven years ago, while in Cobb County, Georgia, Potts and a female companion persuaded Robert Snyder to give them a ride in a pickup truck. After Snyder agreed, Potts shot him through the left ear and nose with a pistol. Snyder acted as if he were unconscious while Potts dragged him out of the truck. Potts robbed

1068

BURGER, C. J., dissenting

Snyder and then, unable to start the truck, walked to a nearby home. There he told Michael Priest that an accident had occurred. Priest drove Potts back to the truck. Upon their arrival, Priest saw Snyder lying in a ditch and attempted to help him. But Potts ordered Priest to drive him and his companion to the next county, Forsyth County. Once there, he forced Priest out of the car at gunpoint. Priest said, "Oh my God, don't kill me"; Potts retorted that there was no such thing as God, and that he would determine whether Priest would live or die. Potts then put a gun to Priest's head and killed him.

Potts was convicted in the Superior Court of Cobb County of kidnaping Priest with bodily injury, armed robbery of Priest, and armed robbery and aggravated assault of Snyder. Potts was sentenced to death for the kidnaping and for the armed robbery. He was subsequently tried in the Superior Court of Forsyth County for the murder of Priest and received another death sentence. Potts' convictions and sentences were affirmed by the Georgia Supreme Court, although the court vacated Potts' death sentence for armed robbery. *Potts v. State*, 241 Ga. 67, 69, 243 S. E. 2d 510, 514 (1978). He then sought and was denied state habeas relief.

Potts next sought a writ of habeas corpus in the United States District Court for the Northern District of Georgia. The District Court ordered a new guilt/innocence trial with respect to the Cobb County kidnaping conviction and a new sentencing trial with respect to the Forsyth County murder conviction. 575 F. Supp. 374 (1983). The Court of Appeals for the Eleventh Circuit affirmed. 734 F. 2d 526 (1984).

Potts' federal habeas petition contained several issues that had never been presented to the Georgia state courts; for the first time in his petition, he argued that he was denied effective assistance of counsel. This issue had not been raised on direct appeal or on state habeas. Indeed, in the District Court Potts moved to amend his federal habeas petition to include this new claim. The State contended that Potts had not exhausted his state remedies, citing this Court's opinion in *Rose v. Lundy*, 455 U. S. 509 (1982). The District Court nonetheless granted the motion to amend, stating that it was "hard pressed to see how [the State] would be prejudiced by the granting of the . . . motion." Of course, this was a wholly insufficient basis for ignoring the requirement of exhaustion of state remedies made explicit in *Lundy*. There we ex-

plained that the exhaustion requirement is designed not only to avoid prejudice to state prosecutors but also "to protect the state courts' role in the enforcement of federal law and prevent disruption of state judicial proceedings." *Id.*, at 518.

In his federal habeas petition, Potts also argued that the trial court erred in not instructing the jury that "bodily injury" was an element of the crime of capital kidnaping. From an examination of the record lodged with this Court, it seems clear that this issue was not presented to the Georgia Supreme Court either on direct appeal from the conviction or in the state habeas petition. Thus, Potts had not exhausted his state remedies when he sought federal habeas relief on this basis. Nonetheless, both the District Court and the Court of Appeals granted relief on this claim without giving the Georgia state courts any opportunity to review it.

Apart from the unnecessary "disruption of state-court proceedings" created by this failure to require Potts to exhaust state remedies, the record that resulted is unusual in several respects. For example, the Court of Appeals embarked on an extended discussion of the meaning of the Georgia capital kidnaping statute without the benefit and guidance of a prior Georgia court construction of the statute in light of Potts' objection. 734 F. 2d, at 529-530. Obviously our decision, and the decision of the court below, would have been aided by such a construction.

The Court of Appeals also acknowledged after parsing the Cobb County jury verdict that "there is . . . some degree of uncertainty as to what the Cobb County jury intended to find with regard to the kidnaping charge." *Id.*, at 530. The court nevertheless confidently declared that the jury had never found "bodily injury" because of defective instructions. The federal question presented on a challenge such as this is "whether the ailing instruction *by itself* so infected the entire trial that the resulting conviction violates due process,' . . . not merely whether 'the instruction is undesirable, erroneous, or even "universally condemned.'" *Henderson v. Kibbe*, 431 U. S. 145, 154, and 157 (1977) (emphasis added) (quoting *Cupp v. Naughten*, 414 U. S. 141, 147 (1973)). Of course the Georgia state courts, familiar as they are with the nuances of trial procedure in that State, are in a far better position to decide such a question in the first instance than is the Court of Appeals.

By allowing Potts to raise these issues for the first time in his federal habeas petition, the Court of Appeals also effectively

1068

BURGER, C. J., dissenting

circumvented sound state procedural rules that may have been applicable. Although the trial transcript is not part of the record lodged with this Court, it seems apparent that Potts never contested that the kidnaping here did in fact end with bodily injury. After all, Mr. Priest was found shortly after Potts had kidnaped him—not merely injured, but dead with a bullet through his head—and the whole record here is filled with evidence of mayhem. Accordingly, if the trial court's instructions were in any way defective on need for a jury finding of "bodily injury," it seems extremely unlikely that Potts objected. Indeed, he may have even invited the error or made a tactical decision not to object for the purpose of diverting the jury's attention from the obvious injury that resulted. In such circumstances, the state court might well and properly have concluded that Potts was procedurally barred from raising this claim, had he been required to proceed there first. Such a conclusion could have precluded federal-court review of this issue entirely since generally "if a defendant has an objection, there is an obligation to call the matter to the court's attention so the trial judge will have an opportunity to remedy the situation." *Estelle v. Williams*, 425 U. S. 501, 508, n. 3 (1976). This possibility was foreclosed by the Court of Appeals' hasty consideration of Potts' claim. The correct course, clearly mandated by our prior opinions, was to give the Georgia state courts "first crack" at Potts' constitutional objections.

"The exhaustion doctrine seeks to afford the state courts a meaningful opportunity to consider allegations of legal error without interference from the federal judiciary." *Vasquez v. Hillery*, 474 U. S. 254, 257 (1986). Because the District Court and the Court of Appeals entertained a petition contrary to established law, I would vacate and remand with instructions to dismiss the petition to "allo[w] the State an initial opportunity to pass upon and correct alleged violations of [Potts'] federal rights." *Lundy*, *supra*, at 518 (quoting *Duckworth v. Serrano*, 454 U. S. 1, 3 (1981)). We have followed essentially this procedure in other cases when we discovered that a petitioner has obtained relief on an unexhausted claim. See, e. g., *Bergman v. Burton*, 456 U. S. 953 (1982) (after discovering exhaustion problem, vacating and remanding for reconsideration in light of *Lundy*). Accordingly, I dissent from the Court's denial of certiorari.

March 10, 11, 1986

475 U. S.

No. 85-684. *KRAMER v. PUBLIC EMPLOYMENT RELATIONS COMMISSION*. Sup. Ct. N. J. Certiorari denied. JUSTICE BLACKMUN would grant the petition for writ of certiorari, vacate the judgment, and remand the case for further consideration in light of *Teachers v. Hudson*, ante, p. 292. Reported below: 99 N. J. 523, 494 A. 2d 279.

Rehearing Denied

No. 85-748. *KELLER v. UNITED STATES*, 474 U. S. 1082;

No. 85-790. *CUDDY v. CARMEN, ADMINISTRATOR, GENERAL SERVICES ADMINISTRATION*, 474 U. S. 1034;

No. 85-5360. *DARWIN v. UNITED STATES*, 474 U. S. 1110;

No. 85-5619. *CAMPBELL v. DEPARTMENT OF TRANSPORTATION, FEDERAL AVIATION ADMINISTRATION*, 474 U. S. 1084; and

No. 85-5885. *TUCKER v. UNITED STATES*, 474 U. S. 1085. Petitions for rehearing denied.

No. 85-5352. *SANDERS v. JUNIOR COLLEGE DISTRICT OF METROPOLITAN KANSAS CITY, MISSOURI*, 474 U. S. 922; and

No. 85-5413. *PETRILLO v. NEW JERSEY*, 474 U. S. 922. Motions for leave to file petitions for rehearing denied.

MARCH 11, 1986

Miscellaneous Order

No. A-691. *BASS v. MCCOTTER, DIRECTOR, TEXAS DEPARTMENT OF CORRECTIONS*. Application for stay of execution of sentence of death scheduled for Wednesday, March 12, 1986, presented to JUSTICE WHITE, and by him referred to the Court, denied.

JUSTICE BRENNAN, dissenting.

Adhering to my view that the death penalty is in all circumstances cruel and unusual punishment prohibited by the Eighth and Fourteenth Amendments, *Gregg v. Georgia*, 428 U. S. 153, 227 (1976), I would grant the application for a stay and a petition for certiorari, and vacate the death sentence in this case. However, even if I did not hold this view, I would grant this application.

The Court of Appeals rejected applicant's conflict-of-interest claim with regard to attorney Sanders based on the trial court's finding that Sanders had not acted as applicant's trial counsel.

1072

BRENNAN, J., dissenting

784 F. 2d 658 (1986). However, because the determination whether Sanders acted as applicant's counsel presents a mixed question of fact and law, we are not obliged, as the Court of Appeals apparently believed, simply to defer to the trial court's finding. Cf. *Cuyler v. Sullivan*, 446 U. S. 335, 342 (1980) (state court's holding that lawyers had not engaged in multiple representation is mixed question of fact and law).

Sanders represented applicant when he contested extradition from Kentucky to Texas. Upon extradition, the trial court appointed Victor Blaine, a Texas attorney, to represent applicant. However, Sanders continued to play an active role in the case. First, Sanders appeared as *amicus curiae* in support of applicant's motion for a continuance to allow applicant to obtain substitute counsel. Sanders had apparently obtained an agreement from an outside organization to provide applicant with substitute counsel if a continuance could be secured. Second, when applicant balked at testifying at trial without first consulting Sanders, Sanders urged applicant to follow Blaine's advice and to take the stand in his defense. Third, Sanders and Blaine had frequent and direct communication in writing and by telephone, although the trial court characterized the bulk of these as "non-controversial." Fourth, after applicant complained to Sanders about his inability to communicate with Blaine, Sanders gave applicant advice on how to document his complaints with a view towards seeking Blaine's removal or a continuance to obtain new counsel. Fifth, Sanders appeared as *amicus curiae* and filed a motion for reconsideration of applicant's appeal of his conviction. Sixth, Sanders did represent applicant when he filed his petition for certiorari to this Court. Based on these facts, applicant raises a serious question as to whether Sanders was in fact his attorney for purposes of the Sixth Amendment right to effective assistance of counsel. While Sanders did not formally conduct applicant's trial, applicant relied on Sanders' advice in making critical decisions throughout the proceedings. If Sanders was acting as applicant's attorney, Sanders' alleged conflict of interest may have deprived applicant of the effective assistance of counsel under *Cuyler, supra*. I would therefore grant the application for a stay in order to provide applicant with time to prepare and file a petition for a writ of certiorari raising this issue.

March 11, 13, 18, 1986

475 U. S.

JUSTICE MARSHALL, dissenting.

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, 231 (1976), I would grant the application for stay in order to give the applicant time to file a petition for writ of certiorari, and would grant the petition and vacate the death sentence in this case.

MARCH 13, 1986

Dismissal Under Rule 53

No. 85-1361. UNITED GAS PIPE LINE CO. *v.* CITY OF NEW ORLEANS ET AL. Sup. Ct. La. Certiorari dismissed under this Court's Rule 53. Reported below: 478 So. 2d 144.

MARCH 18, 1986

Miscellaneous Orders

No. A-710 (85-6545). JAMES *v.* WAINWRIGHT, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. Sup. Ct. Fla. Application for stay of execution of sentence of death scheduled for Wednesday, March 19, 1986, presented to JUSTICE POWELL, and by him referred to the Court, is granted until April 7, 1986, or until the disposition by this Court of the petition for writ of certiorari, whichever is earlier, unless otherwise extended by the Court. THE CHIEF JUSTICE, JUSTICE WHITE, JUSTICE REHNQUIST, and JUSTICE O'CONNOR would deny the application for stay.

No. A-711 (85-6547). HARICH *v.* WAINWRIGHT, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. Sup. Ct. Fla. Application for stay of execution of sentence of death scheduled for Wednesday, March 19, 1986, presented to JUSTICE POWELL, and by him referred to the Court, denied.

JUSTICE POWELL, concurring.

The other capital case in which execution was scheduled for tomorrow is *James v. Wainwright*, ante this page. I voted to grant a stay of execution in that case. Both *James* and this case profess to present claims similar to that pending before the Court in *Lockhart v. McCree*, No. 84-1865.

This case, however, presents an issue different from *James* and one without merit. In *James*, the *Lockhart* issue was at least ar-

1074

MARSHALL, J., dissenting

guably presented when persons on the venire who expressed reservations as to capital punishment were removed by peremptory challenges. In this case, applicant "conced[ed] in this petition [before the Supreme Court of Florida] that at his trial 'no veniremen were excluded' during *voir dire*, either for cause or through peremptory challenge." *Harich v. Wainwright*, 484 So. 2d 1237 (1986). Similarly, before this Court applicant makes no allegation that persons on the venire were excluded during *voir dire* because of any objections to capital punishment.

Accordingly, my vote is to deny the application for a stay of execution.

JUSTICE BRENNAN, dissenting.

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

JUSTICE MARSHALL, with whom JUSTICE BRENNAN joins, dissenting.

Four Justices of this Court have voted to defer consideration of the petition for certiorari accompanying this application for a stay pending our decision in *Lockhart v. McCree*, No. 84-1865. Applicant has raised a claim that would be directly affected by the decision in *McCree*. Although no prospective juror in this case was actually stricken because of expressed scruples against the death penalty, applicant alleges that the jurors' exposure to *voir dire* on their willingness to inflict the death penalty rendered them more likely to convict him. This is identical to a claim at issue in *McCree*. It is also identical to claims raised in *James v. Wainwright*, *ante*, p. 1074, and *Adams v. Wainwright*, *ante*, p. 1062, both of which were stayed by this Court, the former only hours ago. James, like applicant, relied solely on the jurors' exposure to death qualification; he nowhere claimed that the exclusion of jurors via peremptory strikes brought his case within the scope of *McCree*. See Pet. for Cert. in No. 85-6545, pp. 6-13. Although this Court has deferred consideration of numerous other petitions for certiorari pending our decision in *McCree*, and has issued stays of execution where necessary to permit this deferral, the Court inexplicably refuses to treat the case before us as we have treated these others.

March 18, 20, 1986

475 U. S.

More alarming is the Court's disregard of its own procedures in this case. Because at least three Justices have voted to defer consideration of the petition pending *McCree*, the Court has not, nor under its own procedures can it, dispose of the petition for certiorari. Thus, applicant is in the unusual and manifestly unfair position of facing execution before this Court has considered his petition. This Court has shown a bizarre willingness to ignore standard procedures as it pleases in order to bring about speedy executions. I can only lament this Court's own special contribution to the arbitrariness and freakishness that continues to characterize the implementation of the death penalty.

JUSTICE STEVENS, with whom JUSTICE BLACKMUN joins, dissenting.

Because the Court has not yet acted on the petition for a writ of certiorari, I would stay applicant's execution until that petition is decided.

MARCH 20, 1986

Miscellaneous Order

No. A-721 (85-6557). *JONES v. SMITH, COMMISSIONER, ALABAMA DEPARTMENT OF CORRECTIONS, ET AL.* C. A. 11th Cir. Application for stay of execution of sentence of death scheduled for Friday, March 21, 1986, presented to JUSTICE POWELL, and by him referred to the Court, denied. JUSTICE BLACKMUN and JUSTICE STEVENS would grant the application for stay.

JUSTICE BRENNAN, with whom JUSTICE MARSHALL joins, dissenting.

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

JUSTICE MARSHALL, with whom JUSTICE BRENNAN joins, dissenting.

Petitioner is scheduled to be executed at 12:01 tomorrow morning. In his application for a stay and petition for writ of habeas corpus, he claims that the death-qualification of his jury and the consequent exclusion for cause of one prospective juror from

475 U. S.

March 20, 24, 1986

the panel because of her opposition to the death penalty deprived him of his right to an impartial jury and his right to a jury selected from a representative cross section of the community in violation of the Sixth and Fourteenth Amendments. A case raising an identical claim is now pending before this Court. *Lockhart v. McCree*, No. 84-1865.

The District Court denied the petition and denied a certificate of probable cause. It found that petitioner had abused the writ, that petitioner's claims were procedurally barred, and, in any event, that these claims were meritless. The Court of Appeals for the Eleventh Circuit denied petitioner's application for a certificate of probable cause and a stay of execution, finding his claims to lack merit. 772 F. 2d 668 (1985).

Three times in the past six months a stay of execution has been granted in virtually identical circumstances. See *Bowden v. Kemp*, 474 U. S. 891 (1985); *Moore v. Blackburn*, No. A-261 (85-5555), Oct. 4, 1985; *Celestine v. Blackburn*, 473 U. S. 938 (1985). In light of the disposition of those applications, I can see no justification whatever for the Court's action today. As I noted only two days ago: "I can only lament this Court's own special contribution to the arbitrariness and freakishness that continues to characterize the implementation of the death penalty." *Harich v. Wainwright*, *ante*, at 1076.

MARCH 24, 1986

Appeals Dismissed

No. 85-1256. *COMSTOCK v. HARRIS COUNTY, TEXAS*. Appeal from Ct. App. Tex., 14th 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: 687 S. W. 2d 419.

No. 85-5400. *ANDERSON v. DISTRICT COURT OF JEFFERSON COUNTY ET AL.* Appeal from Sup. Ct. Colo. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied.

No. 85-6307. *EIGENMAN v. CALIFORNIA*. Appeal from App. Dept., Super. Ct. Cal., County of Tulare, dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied.

March 24, 1986

475 U. S.

No. 85-1271. COVENANT COMMUNITY CHURCH *v.* LOWE, KNOX COUNTY CLERK. Appeal from Sup. Ct. Tenn. dismissed for want of substantial federal question. Reported below: 698 S. W. 2d 339.

No. 85-1275. YORK *v.* OFFICE OF DISCIPLINARY COUNSEL OF THE SUPREME COURT OF OHIO. Appeal from Sup. Ct. Ohio dismissed for want of substantial federal question. Reported below: 19 Ohio St. 3d 150, 483 N. E. 2d 1179.

No. 85-1296. ROSENBAUM *v.* ROSENBAUM. Appeal from App. Ct. Ill., 1st Dist., dismissed for want of substantial federal question. Reported below: 131 Ill. App. 3d 1164, 493 N. E. 2d 1223.

No. 85-1311. GREEN ET AL. *v.* WEST VIRGINIA DEPARTMENT OF HUMAN SERVICES. Appeal from Cir. Ct. W. Va., Jefferson County, dismissed for want of substantial federal question.

No. 85-6217. REDERTH *v.* SOUTH DAKOTA. Appeal from Sup. Ct. S. D. dismissed for want of substantial federal question. Reported below: 376 N. W. 2d 579.

Certiorari Granted—Vacated and Remanded

No. 85-23. MARYLAND *v.* LODOWSKI. Ct. App. Md. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Moran v. Burbine*, ante, p. 412. Reported below: 302 Md. 691, 490 A. 2d 1228.

No. 85-1074. FLORIDA *v.* HALIBURTON. Sup. Ct. Fla. Motion of respondent for leave to proceed *in forma pauperis* and certiorari granted. Judgment vacated and case remanded for further consideration in light of *Moran v. Burbine*, ante, p. 412. Reported below: 476 So. 2d 192.

Miscellaneous Orders

No. — — —. FITZGERALD *v.* CITY OF PHILADELPHIA. Motion to direct the Clerk to file petition for writ of certiorari out of time denied.

No. A-599 (85-1455). PRADO *v.* UNITED STATES. C. A. 5th Cir. Application for stay, addressed to JUSTICE STEVENS and referred to the Court, denied.

No. A-668 (85-1468). WOODS *v.* SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA (JONES, REAL PARTY IN INTER-

475 U. S.

March 24, 1986

EST). Ct. App. Cal., 1st App. Dist. Application for stay, addressed to JUSTICE BRENNAN and referred to the Court, denied.

No. A-709. MILLER ET AL. *v.* HIGGS ET AL. Application to continue the stay of mandate of the Supreme Court of Colorado, presented to JUSTICE WHITE, and by him referred to the Court, denied.

No. D-123. IN RE DISBARMENT OF CHVOSTA. Disbarment entered. [For earlier order herein, see 434 U. S. 979.]

No. D-404. IN RE DISBARMENT OF MIRRER. Disbarment entered. [For earlier order herein, see 465 U. S. 1063.]

No. D-541. IN RE DISBARMENT OF BOULDING. Disbarment entered. [For earlier order herein, see 474 U. S. 1044.]

No. D-548. IN RE DISBARMENT OF MARBLE. It is ordered that John Harrison Marble, of Cincinnati, Ohio, be suspended from the practice of law in this Court and that a rule issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D-549. IN RE DISBARMENT OF DUKE. It is ordered that Charles Louis Duke, of Houston, Tex., 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. 105, Orig. KANSAS *v.* COLORADO. Motion for leave to file bill of complaint granted. Defendant is allowed 60 days within which to file an answer.

No. 84-6075. TISON *v.* ARIZONA (two cases). Sup. Ct. Ariz. [Certiorari granted, *ante*, p. 1010.] Motions for appointment of counsel granted, and it is ordered that Alan M. Dershowitz, Esquire, of Cambridge, Mass., be appointed to serve as counsel for petitioners in these cases.

No. 85-246. UNITED STATES *v.* DION. C. A. 8th Cir. [Certiorari granted, 474 U. S. 900.] Motion of the Solicitor General to permit Jeffrey P. Minear, Esquire, to present oral argument *pro hac vice* granted.

No. 85-499. PAPASAN, SUPERINTENDENT OF EDUCATION, ET AL. *v.* ALLAIN, GOVERNOR OF MISSISSIPPI, ET AL. C. A. 5th Cir.

March 24, 1986

475 U. S.

[Certiorari granted, 474 U. S. 1004.] Motion of the Attorney General of Mississippi to strike brief of respondents Dick Molpus, Secretary of State of Mississippi, et al., denied.

No. 85-519. RANDALL ET AL. *v.* LOFTSGAARDEN ET AL. C. A. 8th Cir. [Certiorari granted, 474 U. S. 978.] Motion of petitioners for divided argument denied.

No. 85-954. JAPAN WHALING ASSN. ET AL. *v.* AMERICAN CETACEAN SOCIETY ET AL.; and

No. 85-955. BALDRIGE, SECRETARY OF COMMERCE, ET AL. *v.* AMERICAN CETACEAN SOCIETY ET AL. C. A. D. C. Cir. [Certiorari granted, 474 U. S. 1053.] Motion of the Solicitor General for divided argument granted.

No. 85-6314. IN RE BONDURANT. Petition for writ of habeas corpus denied.

No. 85-6263. IN RE GALBREATH;

No. 85-6279. IN RE COLBERT; and

No. 85-6287. IN RE BOUDETTE. Petitions for writs of mandamus denied.

No. 85-6320. IN RE MACGUIRE. Petition for writ of prohibition denied.

Probable Jurisdiction Noted

No. 84-2022. 324 LIQUOR CORP., DBA YORKSHIRE WINE & SPIRITS *v.* McLAUGHLIN ET AL. Appeal from Ct. App. N. Y. Probable jurisdiction noted. Reported below: 64 N. Y. 2d 504, 479 N. E. 2d 779.

Certiorari Granted

No. 85-608. ILLINOIS *v.* KRULL ET AL. Sup. Ct. Ill. Certiorari granted. Reported below: 107 Ill. 2d 107, 481 N. E. 2d 703.

No. 85-1088. BURLINGTON NORTHERN RAILROAD Co. *v.* WOODS ET AL. C. A. 11th Cir. Certiorari granted.

No. 85-1092. KEYSTONE BITUMINOUS COAL ASSN. ET AL. *v.* DUNCAN, SECRETARY, PENNSYLVANIA DEPARTMENT OF ENVIRONMENTAL RESOURCES, ET AL. C. A. 3d Cir. Certiorari granted. Reported below: 771 F. 2d 707.

No. 85-1226. COMMISSIONER OF INTERNAL REVENUE *v.* GROETZINGER. C. A. 7th Cir. Certiorari granted. Reported below: 771 F. 2d 269.

475 U. S.

March 24, 1986

No. 85-792. INTERSTATE COMMERCE COMMISSION *v.* BROTHERHOOD OF LOCOMOTIVE ENGINEERS ET AL.; and

No. 85-793. MISSOURI-KANSAS-TEXAS RAILROAD CO. *v.* BROTHERHOOD OF LOCOMOTIVE ENGINEERS ET AL. C. A. D. C. Cir. Certiorari granted, cases consolidated, and a total of one hour allotted for oral argument. Reported below: 245 U. S. App. D. C. 311, 761 F. 2d 714.

No. 85-889. COLORADO *v.* BERTINE. Sup. Ct. Colo. Motion of respondent for leave to proceed *in forma pauperis* and certiorari granted. Reported below: 706 P. 2d 411.

No. 85-1233. INTERNATIONAL PAPER CO. *v.* OUELLETTE ET AL. C. A. 2d Cir. Certiorari granted. The Solicitor General is invited to file a brief in this case expressing the views of the United States. Reported below: 776 F. 2d 55.

Certiorari Denied. (See also Nos. 85-1256, 85-5400, and 85-6307, *supra.*)

No. 85-24. MARYLAND *v.* ELFADL. Ct. Sp. App. Md. Certiorari denied. Reported below: 61 Md. App. 132, 485 A. 2d 275.

No. 85-552. SAKAMOTO ET AL. *v.* DUTY FREE SHOPPERS, LTD., ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 764 F. 2d 1285.

No. 85-705. MOLT *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 772 F. 2d 366.

No. 85-874. HACKNEY, INC., ET AL. *v.* BROCK, SECRETARY OF LABOR. C. A. 10th Cir. Certiorari denied. Reported below: 769 F. 2d 650.

No. 85-902. INTERFIRST BANK DALLAS, N. A. *v.* UNITED STATES ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 769 F. 2d 299.

No. 85-913. RESHA ET AL. *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 767 F. 2d 285.

No. 85-1007. DiCARO *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 772 F. 2d 1314.

No. 85-1051. ROE *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 775 F. 2d 43.

March 24, 1986

475 U. S.

No. 85-1063. *LIZZA INDUSTRIES, INC. v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 775 F. 2d 492.

No. 85-1079. *AMERICAN POUCH FOOD CO., INC. v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 769 F. 2d 1190.

No. 85-1082. *HOLBROCK v. YOUNG, JUDGE, WARREN COUNTY COMMON PLEAS COURT*. Ct. App. Ohio, Warren County. Certiorari denied.

No. 85-1084. *CITY OF INDEPENDENCE, OHIO, ET AL. v. TYLER, DIRECTOR OF ENVIRONMENTAL PROTECTION OF OHIO, ET AL.* Ct. App. Ohio, Franklin County. Certiorari denied. Reported below: 25 Ohio App. 3d 20, 495 N. E. 2d 444.

No. 85-1095. *AAMODT ET UX. v. UNITED STATES NUCLEAR REGULATORY COMMISSION ET AL.* C. A. 3d Cir. Certiorari denied. Reported below: 771 F. 2d 720.

No. 85-1096. *VAN SANT v. UNITED STATES POSTAL SERVICE ET AL.* C. A. 4th Cir. Certiorari denied.

No. 85-1117. *ASHWOOD MANOR CIVIC ASSN. ET AL. v. DOLE, SECRETARY OF TRANSPORTATION, ET AL.* (two cases). C. A. 3d Cir. Certiorari denied. Reported below: 779 F. 2d 41.

No. 85-1166. *SOUTHWEST MORTGAGE SERVICE CORP. v. PEZZULLI*. C. A. 5th Cir. Certiorari denied. Reported below: 767 F. 2d 917.

No. 85-1169. *TERRE DU LAC, INC., ET AL. v. TERRE DU LAC ASSN., INC.; and*

No. 85-1331. *TERRE DU LAC ASSN., INC. v. TERRE DU LAC, INC., ET AL.* C. A. 8th Cir. Certiorari denied. Reported below: 772 F. 2d 467.

No. 85-1171. *BRISTOW v. DAILY PRESS, INC.* C. A. 4th Cir. Certiorari denied. Reported below: 770 F. 2d 1251.

No. 85-1181. *ENNIS v. NEW JERSEY BELL TELEPHONE CO.* C. A. 3d Cir. Certiorari denied. Reported below: 782 F. 2d 396.

No. 85-1184. *BROOKLYN UNION GAS CO. v. NEW YORK STATE BOARD OF EQUALIZATION AND ASSESSMENT ET AL.* Ct. App. N. Y. Certiorari denied. Reported below: 65 N. Y. 2d 472, 482 N. E. 2d 77.

475 U. S.

March 24, 1986

No. 85-1188. *ROSE v. SUPREME COURT OF COLORADO*. Sup. Ct. Colo. Certiorari denied.

No. 85-1189. *LONG-AIRDOX CO., DIVISION OF THE MARMON GROUP, INC. v. KESSLER ET AL.* Cir. Ct. W. Va., Fayette County. Certiorari denied.

No. 85-1198. *GROM v. UNITED STATES*. Ct. Mil. App. Certiorari denied. Reported below: 21 M. J. 53.

No. 85-1227. *BRIEHLER v. SYLVIA'S, INC., ET AL.* C. A. 1st Cir. Certiorari denied. Reported below: 774 F. 2d 1149.

No. 85-1228. *BENTON v. ALABAMA*. Ct. Crim. App. Ala. Certiorari denied. Reported below: 479 So. 2d 83.

No. 85-1230. *DANIEL B. ET AL. v. WISCONSIN DEPARTMENT OF PUBLIC INSTRUCTION ET AL.* C. A. 7th Cir. Certiorari denied. Reported below: 776 F. 2d 1051.

No. 85-1238. *HOLMES v. DISTRICT OF COLUMBIA DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS*. Ct. App. D. C. Certiorari denied.

No. 85-1240. *DANIEL A. TORRES, M. D., P. C., ET AL. v. EASTLICK, TRUSTEE OF NORTH AMERICAN COIN & CURRENCY, LTD.* C. A. 9th Cir. Certiorari denied. Reported below: 767 F. 2d 1573.

No. 85-1243. *NOVICKY v. SYNTEX OPHTHALMICS, INC., ET AL.* C. A. Fed. Cir. Certiorari denied. Reported below: 767 F. 2d 901.

No. 85-1245. *GAF CORP. v. WERNER*. Ct. App. N. Y. Certiorari denied. Reported below: 66 N. Y. 2d 97, 485 N. E. 2d 977.

No. 85-1247. *CHMELICKY v. MUCHEWICZ*. Ct. App. Ohio, Cuyahoga County. Certiorari denied.

No. 85-1248. *MALONE v. KENTUCKY*. Sup. Ct. Ky. Certiorari denied.

No. 85-1249. *MCCOLLUM v. REID*. Ct. App. N. Y. Certiorari denied. Reported below: 66 N. Y. 2d 151, 485 N. E. 2d 1010.

No. 85-1255. *GOSLIN v. MCDERMOTT, INC.* C. A. 5th Cir. Certiorari denied. Reported below: 776 F. 2d 1046.

March 24, 1986

475 U. S.

No. 85-1260. *LOWE v. VIRGINIA*. Sup. Ct. Va. Certiorari denied. Reported below: 230 Va. 346, 337 S. E. 2d 273.

No. 85-1263. *NEW YORK STATE DEPARTMENT OF TRANSPORTATION v. SIERRA CLUB ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 776 F. 2d 383.

No. 85-1264. *LAVANT v. ST. JOSEPH'S HOSPITAL ET AL.* Sup. Ct. Ga. Certiorari denied. Reported below: 255 Ga. 60, 335 S. E. 2d 127.

No. 85-1270. *KIENAST v. CALIFORNIA ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 772 F. 2d 912.

No. 85-1272. *MYER v. PACIFIC FEDERAL SAVINGS & LOAN ASSN.* App. Dept., Super. Ct. Cal., County of Orange. Certiorari denied.

No. 85-1273. *EAGLE v. AMERICAN TELEPHONE & TELEGRAPH CO.* C. A. 9th Cir. Certiorari denied. Reported below: 769 F. 2d 541.

No. 85-1274. *ERNEST v. UNITED STATES ATTORNEY FOR THE EASTERN DISTRICT OF VIRGINIA ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 768 F. 2d 596.

No. 85-1276. *RAMOS v. YIP ET AL.* C. A. 9th Cir. Certiorari denied.

No. 85-1286. *MESSING v. SIMON.* Super. Ct. N. J., App. Div. Certiorari denied.

No. 85-1290. *GLICKSTEIN v. PENNSYLVANIA.* Super. Ct. Pa. Certiorari denied. Reported below: 348 Pa. Super. 631, 501 A. 2d 291.

No. 85-1293. *EDUCATIONAL SERVICES, INC., DBA INTERNATIONAL MONTESSORI SOCIETY, ET AL. v. MARYLAND STATE BOARD FOR HIGHER EDUCATION ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 799 F. 2d 751.

No. 85-1294. *LEBER ET AL. v. SMITH ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 773 F. 2d 101.

No. 85-1297. *MANEGO v. ORLEANS BOARD OF TRADE ET AL.* C. A. 1st Cir. Certiorari denied. Reported below: 773 F. 2d 1.

475 U. S.

March 24, 1986

No. 85-1298. *PAYNE ET AL. v. WOOD*. C. A. 7th Cir. Certiorari denied. Reported below: 775 F. 2d 202.

No. 85-1299. *LAURENT ET AL. v. WATTS*. C. A. 7th Cir. Certiorari denied. Reported below: 774 F. 2d 168.

No. 85-1302. *SPIEGEL v. CONTINENTAL ILLINOIS NATIONAL BANK ET AL.* App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 132 Ill. App. 3d 1158, 494 N. E. 2d 957.

No. 85-1303. *KOWALSKI v. KOWALSKI ET AL.* Sup. Ct. Minn. Certiorari denied.

No. 85-1306. *GONZALEZ v. NEW YORK*. App. Div., Sup. Ct. N. Y., 1st Jud. Dept. Certiorari denied. Reported below: 114 App. Div. 2d 469, 494 N. Y. S. 2d 379.

No. 85-1308. *GERACE ET AL. v. NEW JERSEY CASINO CONTROL COMMISSION ET AL.* Super. Ct. N. J., App. Div. Certiorari denied. Reported below: 203 N. J. Super. 297, 496 A. 2d 1111.

No. 85-1310. *DUPONT v. SOUTHERN NATIONAL BANK OF HOUSTON ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 771 F. 2d 874.

No. 85-1312. *UNITED FOOD & COMMERCIAL WORKERS INTERNATIONAL UNION LOCAL 1357 v. NATIONAL LABOR RELATIONS BOARD*. C. A. 3d Cir. Certiorari denied. Reported below: 780 F. 2d 1016.

No. 85-1313. *JERSEY COAST EGG PRODUCERS, INC. v. LOCAL 863, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA, ET AL.* C. A. 3d Cir. Certiorari denied. Reported below: 773 F. 2d 530.

No. 85-1350. *EDGEOMON v. LOCKHART, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION*. C. A. 8th Cir. Certiorari denied.

No. 85-1366. *HUCKABY v. UNITED STATES ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 776 F. 2d 564.

No. 85-1367. *FRANK E. BUSH, INC. v. UNITED STATES POSTAL SERVICE*. C. A. 2d Cir. Certiorari denied. Reported below: 779 F. 2d 38.

March 24, 1986

475 U. S.

No. 85-1375. *BAWCUM v. MARSH, SECRETARY OF THE ARMY*. C. A. 9th Cir. Certiorari denied. Reported below: 779 F. 2d 56.

No. 85-1390. *ARMSTRONG ET AL. v. THOMAS ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 774 F. 2d 1163.

No. 85-1398. *ALEMANY v. UNITED STATES*. C. A. 1st Cir. Certiorari denied. Reported below: 781 F. 2d 229.

No. 85-1416. *ARUBA BONAIRE CURACAO TRUST CO. LTD., TRUSTEE OF THE SUPRIANO TRUST, ET AL. v. COMMISSIONER OF INTERNAL REVENUE*. C. A. D. C. Cir. Certiorari denied. Reported below: 250 U. S. App. D. C. 38, 777 F. 2d 38.

No. 85-5213. *LODOWSKI v. MARYLAND*. Ct. App. Md. Certiorari denied. Reported below: 302 Md. 691, 490 A. 2d 1228.

No. 85-5214. *ELFADL v. MARYLAND*. Ct. Sp. App. Md. Certiorari denied. Reported below: 61 Md. App. 132, 485 A. 2d 275.

No. 85-5938. *GONZALES v. CALIFORNIA*. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 85-6051. *COLE v. UNITED STATES*. Ct. App. D. C. Certiorari denied. Reported below: 499 A. 2d 815.

No. 85-6073. *WENTZ v. DEPARTMENT OF JUSTICE*. C. A. 7th Cir. Certiorari denied. Reported below: 772 F. 2d 335.

No. 85-6082. *ELLIS v. UNITED STATES*. C. A. 11th Cir. Certiorari denied. Reported below: 770 F. 2d 1082.

No. 85-6091. *WILEY v. SCULLY, SUPERINTENDENT, GREEN HAVEN CORRECTIONAL FACILITY, ET AL.* C. A. 2d Cir. Certiorari denied.

No. 85-6092. *ROGERS v. SUPREME COURT OF VIRGINIA ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 772 F. 2d 900.

No. 85-6095. *CLIPP v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 782 F. 2d 1032.

No. 85-6100. *KALYON v. NEW YORK*. Sup. Ct. N. Y., Kings County. Certiorari denied.

475 U. S.

March 24, 1986

No. 85-6219. *JOHNSON v. TEXAS*. Ct. Crim. App. Tex. Certiorari denied.

No. 85-6223. *BONGIOVI v. LEFEVRE, SUPERINTENDENT, CLINTON CORRECTIONAL FACILITY*. C. A. 2d Cir. Certiorari denied.

No. 85-6224. *DRINKWINE v. FEDERATED PUBLICATIONS, INC., ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 780 F. 2d 735.

No. 85-6250. *DIAMONTINEY v. CALIFORNIA*. Ct. App. Cal., 3d App. Dist. Certiorari denied.

No. 85-6257. *DELGADO v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 780 F. 2d 1028.

No. 85-6260. *LYNCH v. JOHNSON ET AL.* C. A. 3d Cir. Certiorari denied. Reported below: 782 F. 2d 1029.

No. 85-6266. *GREEN v. SUPERIOR COURT OF CALIFORNIA, ALAMEDA COUNTY*. Sup. Ct. Cal. Certiorari denied. Reported below: 40 Cal. 3d 126, 707 P. 2d 248.

No. 85-6281. *ROSBERG v. COMMODITY CREDIT CORP. ET AL.* C. A. 8th Cir. Certiorari denied.

No. 85-6282. *ROSBERG v. GOERES*. C. A. 8th Cir. Certiorari denied.

No. 85-6284. *NELSON v. VETERANS ADMINISTRATION*. C. A. Fed. Cir. Certiorari denied. Reported below: 785 F. 2d 326.

No. 85-6285. *WILBANKS v. GEORGIA*. Ct. App. Ga. Certiorari denied. Reported below: 176 Ga. App. 533, 336 S. E. 2d 312.

No. 85-6286. *WALLACE v. IOWA*. Dist. Ct. Iowa, Scott County. Certiorari denied.

No. 85-6288. *FILIPAS v. LEMONS ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 767 F. 2d 920.

No. 85-6289. *ARMSTRONG v. FAIRMAN, WARDEN, ET AL.* C. A. 7th Cir. Certiorari denied.

No. 85-6290. *WASHINGTON v. NEW YORK*. Ct. App. N. Y. Certiorari denied. Reported below: 66 N. Y. 2d 923, 489 N. E. 2d 783.

March 24, 1986

475 U. S.

No. 85-6291. *KOENIG v. BOARD OF CHARITIES AND CORRECTIONS ET AL.* C. A. 8th Cir. Certiorari denied.

No. 85-6293. *MCDONALD v. TENNESSEE.* Sup. Ct. Tenn. Certiorari denied.

No. 85-6296. *CLUTCHETTE v. RUSHEN, DIRECTOR, CALIFORNIA DEPARTMENT OF CORRECTIONS.* C. A. 9th Cir. Certiorari denied. Reported below: 770 F. 2d 1469.

No. 85-6297. *KUNTZELMAN v. BLACK, WARDEN, ET AL.* C. A. 8th Cir. Certiorari denied. Reported below: 774 F. 2d 291.

No. 85-6301. *COATES v. ILLINOIS.* Sup. Ct. Ill. Certiorari denied. Reported below: 109 Ill. 2d 431, 488 N. E. 2d 247.

No. 85-6302. *BEAUDETT v. CITY OF HAMPTON, VIRGINIA, ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 775 F. 2d 1274.

No. 85-6303. *LAMAR v. ILLINOIS.* App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 134 Ill. App. 3d 1155, 496 N. E. 2d 366.

No. 85-6305. *HAMM v. ILLINOIS.* App. Ct. Ill., 2d Dist. Certiorari denied. Reported below: 136 Ill. App. 3d 11, 482 N. E. 2d 1103.

No. 85-6306. *JACKSON v. RUSSELL, WARDEN.* C. A. 11th Cir. Certiorari denied. Reported below: 770 F. 2d 1082.

No. 85-6310. *GREGORY v. SOLEM, WARDEN.* C. A. 8th Cir. Certiorari denied. Reported below: 774 F. 2d 309.

No. 85-6311. *HOUGHTON v. CODER ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 772 F. 2d 911.

No. 85-6312. *FULFORD v. BLACKBURN, WARDEN.* C. A. 5th Cir. Certiorari denied.

No. 85-6313. *ADAMS v. ILLINOIS.* Sup. Ct. Ill. Certiorari denied. Reported below: 109 Ill. 2d 102, 485 N. E. 2d 339.

No. 85-6316. *ROSBERG v. COMMERCIAL STATE BANK ET AL.* C. A. 8th Cir. Certiorari denied. Reported below: 774 F. 2d 1171.

475 U. S.

March 24, 1986

No. 85-6317. *RODRIGUEZ v. ILLINOIS*. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 134 Ill. App. 3d 582, 480 N. E. 2d 1147.

No. 85-6319. *STEVENSON v. NEWSOME, WARDEN*. C. A. 11th Cir. Certiorari denied. Reported below: 774 F. 2d 1558.

No. 85-6323. *OSIPOVA v. WOLIN ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 795 F. 2d 79.

No. 85-6326. *HOSKINS v. GARLAND, WARDEN, ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 782 F. 2d 1035.

No. 85-6332. *AGUILAR v. ONION ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 778 F. 2d 789.

No. 85-6334. *KLEIN v. CIBA GEIGY ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 772 F. 2d 912.

No. 85-6377. *WILLIAMS v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 775 F. 2d 1295.

No. 85-6411. *TELEPO v. CAMPEAN ET AL.* C. A. 3d Cir. Certiorari denied. Reported below: 782 F. 2d 1031.

No. 85-587. *TEXAS v. DUNN*. Ct. Crim. App. Tex. Certiorari denied. JUSTICE WHITE, JUSTICE MARSHALL, JUSTICE BLACKMUN, and JUSTICE REHNQUIST would grant the petition for writ of certiorari, vacate the judgment, and remand the case for further consideration in light of *Moran v. Burbine*, ante, p. 412. Reported below: 696 S. W. 2d 561.

No. 85-969. *GRAY ET AL. v. OFFICE OF PERSONNEL MANAGEMENT*. C. A. D. C. Cir. Certiorari denied. Reported below: 248 U. S. App. D. C. 364, 771 F. 2d 1504.

JUSTICE WHITE, dissenting.

In this case the United States Court of Appeals for the District of Columbia Circuit held that the comprehensive remedial scheme established by Congress in the Civil Service Reform Act of 1978¹ (CSRA) indicates a congressional intent to preclude judicial review under the Administrative Procedure Act² of claims that could have been reviewed administratively under the CSRA. 248

¹Pub. L. 95-454, 92 Stat. 1111 (codified as amended in scattered sections of 5 U. S. C.).

²5 U. S. C. § 701 *et seq.*

March 24, 1986

475 U. S.

U. S. App. D. C. 364, 771 F. 2d 1504 (1985). While eight other Courts of Appeals have reached a similar conclusion, the United States Court of Appeals for the First Circuit has held to the contrary. *Dugan v. Ramsay*, 727 F. 2d 192 (1984). I would grant certiorari to resolve this conflict.

No. 85-1018. *SOUTHLAND NEWS CO., INC. v. COUNTY OF WINNEBAGO ET AL.* C. A. 7th Cir. Certiorari denied. JUSTICE BRENNAN and JUSTICE MARSHALL would grant certiorari. Reported below: 774 F. 2d 1167.

No. 85-1201. *FORD MOTOR CO. v. WALSH ET AL.* C. A. D. C. Cir. Motion of petitioner to defer consideration of the petition for writ of certiorari denied. Certiorari denied.

No. 85-1282. *IRVING EAR, NOSE, THROAT & ALLERGY CLINIC ET AL. v. GROUP HOSPITAL SERVICE, INC., ET AL.* C. A. 5th Cir. Motion of respondents for award of damages pursuant to Rule 49.2 denied. Certiorari denied. Reported below: 776 F. 2d 1046.

No. 85-5375. *BLANKS v. GEORGIA.* Sup. Ct. Ga.;

No. 85-6145. *GUZMON v. TEXAS.* Ct. Crim. App. Tex.;

No. 85-6229. *COLLINS v. GEORGIA.* Super. Ct. Ga., Houston County;

No. 85-6259. *CURRY v. GEORGIA.* Sup. Ct. Ga.;

No. 85-6268. *ROMAN v. FLORIDA.* Sup. Ct. Fla.;

No. 85-6270. *LANEY v. TENNESSEE.* Ct. Crim. App. Tenn.;

and

No. 85-6275. *JONES v. ILLINOIS.* Sup. Ct. Ill. Certiorari denied. Reported below: No. 85-5375, 254 Ga. 420, 330 S. E. 2d 575; No. 85-6145, 697 S. W. 2d 404; No. 85-6259, 255 Ga. 215, 336 S. E. 2d 762; No. 85-6268, 475 So. 2d 1228; No. 85-6275, 109 Ill. 2d 19, 485 N. E. 2d 363.

JUSTICE BRENNAN and JUSTICE MARSHALL, dissenting.

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

Rehearing Denied

No. 84-801. *MIDLANTIC NATIONAL BANK v. NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION*, 474 U. S. 494. Petition for rehearing denied.

475 U. S.

March 24, 1986

No. 84-805. O'NEILL, TRUSTEE IN BANKRUPTCY OF QUANTA RESOURCES CORP., DEBTOR *v.* CITY OF NEW YORK ET AL.; and O'NEILL, TRUSTEE IN BANKRUPTCY OF QUANTA RESOURCES CORP., DEBTOR *v.* NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION, 474 U. S. 494;

No. 85-529. HOU HAWAIIANS *v.* HAWAII ET AL., 474 U. S. 1055;

No. 85-604. SCARNATI *v.* UNITED STATES, 474 U. S. 1056;

No. 85-826. GOLIN *v.* BROOKHAVEN NATIONAL LABORATORY, 474 U. S. 1059;

No. 85-896. JOHNSON *v.* LINDEN SHORE DISTRICT, 474 U. S. 1102;

No. 85-945. OGLALA SIOUX TRIBE OF THE PINE RIDGE INDIAN RESERVATION *v.* SOUTH DAKOTA ET AL., 474 U. S. 1102;

No. 85-952. GRASON ELECTRIC CO. ET AL. *v.* SACRAMENTO MUNICIPAL UTILITY DISTRICT, 474 U. S. 1103;

No. 85-5786. DAVIS *v.* FIRST STATE BANK, 474 U. S. 1098;

No. 85-5866. IN RE GRIFFIN, 474 U. S. 1100;

No. 85-5875. IN RE MAY, 474 U. S. 1100;

No. 85-5878. IN RE MAY, 474 U. S. 1100;

No. 85-5896. RUBIN *v.* BOARD OF GOVERNORS OF STATE COLLEGES AND UNIVERSITIES (WESTERN ILLINOIS UNIVERSITY), 474 U. S. 1104;

No. 85-5959. WHAM *v.* UNITED STATES ET AL., 474 U. S. 1105; and

No. 85-5963. CALVER *v.* OWNERS OF RIDGECREST MOBILE HOME PARK ET AL., 474 U. S. 1105. Petitions for rehearing denied.

No. 84-1070. WITTERS *v.* WASHINGTON DEPARTMENT OF SERVICES FOR THE BLIND, 474 U. S. 481. Petition for rehearing or modification of opinion denied.

No. 84-1076. TRANSCONTINENTAL GAS PIPE LINE CORP. *v.* STATE OIL AND GAS BOARD OF MISSISSIPPI ET AL., 474 U. S. 409. Motion of Louisiana for leave to file a brief as *amicus curiae* in support of petitions for rehearing denied. Petitions of State Oil and Gas Board of Mississippi, Coastal Exploration, Inc., and Getty Oil Co. for rehearing denied.

No. 85-137. LAVADO *v.* UNITED STATES, 474 U. S. 1054. Motion of petitioner for leave to proceed further herein *in forma pauperis* granted. Petition for rehearing denied.

March 25, 28, 31, 1986

475 U. S.

MARCH 25, 1986

Miscellaneous Order

No. A-653 (85-6448). *ADAMS v. WAINWRIGHT, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL.* The order heretofore entered March 6, 1986 [*ante*, p. 1062], staying execution of the sentence of death is continued to and including Monday, March 31, 1986.

MARCH 28, 1986

Dismissal Under Rule 53

No. 85-1195. *LONAVAT v. HARVEY ET AL.* C. A. 2d Cir. Certiorari dismissed under this Court's Rule 53. Reported below: 779 F. 2d 35.

MARCH 31, 1986

Appeal Dismissed

No. 85-1261. *MEYERS ET AL. v. SENECA COUNTY BOARD OF COMMISSIONERS.* Appeal from Sup. Ct. Ohio dismissed for want of substantial federal question. Reported below: 20 Ohio St. 3d 13, 484 N. E. 2d 699.

Miscellaneous Orders

No. A-581 (85-1459). *POWELL v. POWELL.* Ct. App. Tex., 10th Sup. Jud. Dist. Application for recall and stay, addressed to THE CHIEF JUSTICE and referred to the Court, denied.

No. A-703. *FEDORA v. NATIONAL LABOR RELATIONS BOARD.* C. A. 9th Cir. Application for stay pending appeal, addressed to JUSTICE POWELL and referred to the Court, denied.

No. D-536. *IN RE DISBARMENT OF LOVETT.* Disbarment entered. [For earlier order herein, see 474 U. S. 1079.]

No. D-538. *IN RE DISBARMENT OF VETTER.* Disbarment entered. [For earlier order herein, see 474 U. S. 1044.]

No. D-539. *IN RE DISBARMENT OF MUELLER.* Disbarment entered. [For earlier order herein, see 474 U. S. 1044.]

No. D-540. *IN RE DISBARMENT OF CHOSID.* Disbarment entered. [For earlier order herein, see 474 U. S. 1044.]

No. D-550. *IN RE DISBARMENT OF MICHAELS.* It is ordered that Robert Scott Michaels, of Beverly Hills, Cal., be suspended

475 U. S.

March 31, 1986

from the practice of law in this Court and that a rule issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D-551. IN RE DISBARMENT OF NICHOLS. It is ordered that Zane Gray Nichols, of Annapolis, Md., 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. 103, Orig. SOUTH DAKOTA *v.* NEBRASKA ET AL. Motion of North Dakota for leave to intervene as plaintiff granted. Motion for leave to file bill of complaint denied without prejudice. [For earlier order herein, see 474 U. S. 941.]

No. 84-1379. DIAMOND ET AL. *v.* CHARLES ET AL. C. A. 7th Cir. [Probable jurisdiction noted, 471 U. S. 1115.] Motion of appellants for leave to file a supplemental brief after argument granted.

No. 84-1777. INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE & AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, ET AL. *v.* BROCK, SECRETARY OF LABOR. C. A. D. C. Cir. [Certiorari granted, 474 U. S. 900.] Motion of Chamber of Commerce of the United States et al. for leave to file a brief as *amici curiae* out of time granted.

No. 85-473. CARGILL, INC., ET AL. *v.* MONFORT OF COLORADO, INC. C. A. 10th Cir. [Certiorari granted, 474 U. S. 1049.] Motion of the parties to permit filing one volume of joint appendix under seal granted. JUSTICE BLACKMUN took no part in the consideration or decision of this motion.

No. 85-521. BOWEN, SECRETARY OF HEALTH AND HUMAN SERVICES, ET AL. *v.* PUBLIC AGENCIES OPPOSED TO SOCIAL SECURITY ENTRAPMENT ET AL. D. C. E. D. Cal. [Probable jurisdiction noted *sub nom.* *Heckler v. Public Agencies Opposed to Social Security Entrapment*, 474 U. S. 1004.] Motion of appellees Public Agencies Opposed to Social Security Entrapment et al. for leave to file an out-of-time motion for divided argument denied.

No. 85-599. UNITED STATES *v.* AMERICAN BAR ENDOWMENT ET AL. C. A. Fed. Cir. [Certiorari granted, 474 U. S. 1004.]

March 31, 1986

475 U. S.

Motion of California Farm Bureau Federation for leave to file a brief as *amicus curiae* granted. JUSTICE POWELL and JUSTICE O'CONNOR took no part in the consideration or decision of this motion.

No. 85-1377. BOWSHER, COMPTROLLER GENERAL OF THE UNITED STATES *v.* SYNAR, MEMBER OF CONGRESS, ET AL.;

No. 85-1378. UNITED STATES SENATE *v.* SYNAR, MEMBER OF CONGRESS, ET AL.; and

No. 85-1379. O'NEILL, SPEAKER OF THE UNITED STATES HOUSE OF REPRESENTATIVES, ET AL. *v.* SYNAR, MEMBER OF CONGRESS, ET AL. D. C. D. C. [Probable jurisdiction noted, *ante*, p. 1009.] Motion of National Treasury Employees Union for leave to add an individual party plaintiff granted.

No. 85-6368. IN RE KIERSTEAD. Petition for writ of common-law certiorari denied.

No. 85-6371. IN RE KARRIEM ET AL. Petition for writ of mandamus and/or prohibition denied.

Probable Jurisdiction Postponed

No. 85-1200. CALIFORNIA COASTAL COMMISSION ET AL. *v.* GRANITE ROCK CO. Appeal from C. A. 9th Cir. Further consideration of question of jurisdiction postponed to hearing of case on the merits. Reported below: 768 F. 2d 1077.

Certiorari Granted

No. 85-1265. MICHIGAN *v.* SHABAZ. Sup. Ct. Mich. Motion of respondent for leave to proceed *in forma pauperis* and certiorari granted. Reported below: 424 Mich. 42, 378 N. W. 2d 451.

Certiorari Denied. (See also No. 85-6368, *supra*.)

No. 85-862. HUSTLER MAGAZINE, INC. *v.* DOUGLASS. C. A. 7th Cir. Certiorari denied. Reported below: 769 F. 2d 1128.

No. 85-970. THOMPSON *v.* UNITED STATES. Ct. Mil. App. Certiorari denied. Reported below: 21 M. J. 94.

No. 85-1141. BOARD OF TRUSTEES OF INTERNAL IMPROVEMENT TRUST FUND OF FLORIDA *v.* SAND KEY ASSOCIATES, LTD. Dist. Ct. App. Fla., 2d Dist. Certiorari denied. Reported below: 489 So. 2d 34.

475 U. S.

March 31, 1986

No. 85-1142. MANUFACTURERS HANOVER TRUST CO., AS EXECUTOR OF THE ESTATE OF WALLACE *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 775 F. 2d 459.

No. 85-1158. CRAWFORD ET AL. *v.* UNITED STEELWORKERS, AFL-CIO, ET AL. Sup. Ct. Va. Certiorari denied. Reported below: 230 Va. 217, 335 S. E. 2d 828.

No. 85-1187. DiSALVO *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 779 F. 2d 1191.

No. 85-1322. LIGHTMAN ET AL. *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 339 Pa. Super. 359, 489 A. 2d 200.

No. 85-1323. KING *v.* UNIVERSITY OF MINNESOTA ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 774 F. 2d 224.

No. 85-1325. GREEN *v.* OWENS-ILLINOIS CO. ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 779 F. 2d 50.

No. 85-1326. ANDING *v.* ILLINOIS. App. Ct. Ill., 4th Dist. Certiorari denied. Reported below: 135 Ill. App. 3d 1168, 496 N. E. 2d 1278.

No. 85-1327. HARDAWAY CONSTRUCTORS, INC. *v.* BROWNING. Ct. App. Ga. Certiorari denied. Reported below: 176 Ga. App. 530, 336 S. E. 2d 579.

No. 85-1332. CAVALIERI *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 345 Pa. Super. 615, 496 A. 2d 849.

No. 85-1338. WYAND ET AL. *v.* MARYLAND. Ct. App. Md. Certiorari denied. Reported below: 304 Md. 721, 501 A. 2d 43.

No. 85-1340. MARCUM *v.* WAINWRIGHT, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 85-1342. CHICAGO PARK DISTRICT ET AL. *v.* ALEXANDER ET AL.; and

No. 85-1356. ALEXANDER ET AL. *v.* CHICAGO PARK DISTRICT ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 773 F. 2d 850.

March 31, 1986

475 U. S.

No. 85-1348. *HAMM v. DEKALB COUNTY, GEORGIA, ET AL.* C. A. 11th Cir. Certiorari denied. Reported below: 774 F. 2d 1567.

No. 85-1355. *FLEMING ET AL. v. ALLSTATE INSURANCE CO.* Ct. App. N. Y. Certiorari denied. Reported below: 66 N. Y. 2d 838, 489 N. E. 2d 252.

No. 85-1365. *CALIFORNIA v. SERNA.* Sup. Ct. Cal. Certiorari denied. Reported below: 40 Cal. 3d 239, 707 P. 2d 793.

No. 85-1436. *ACOSTA ET AL. v. UNITED STATES.* C. A. 11th Cir. Certiorari denied. Reported below: 770 F. 2d 1082.

No. 85-1455. *PRADO v. UNITED STATES.* C. A. 5th Cir. Certiorari denied. Reported below: 777 F. 2d 248.

No. 85-1456. *GADD v. NEWS-PRESS PUBLISHING CO. ET AL.* Dist. Ct. App. Fla., 2d Dist. Certiorari denied. Reported below: 480 So. 2d 1302.

No. 85-5699. *WILSON v. SCHILLINGER ET AL.* C. A. 3d Cir. Certiorari denied. Reported below: 761 F. 2d 921 and 768 F. 2d 554.

No. 85-5821. *WADE v. UNITED STATES.* C. A. 5th Cir. Certiorari denied. Reported below: 767 F. 2d 916.

No. 85-5917. *EDWARDS v. WAINWRIGHT, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS.* C. A. 11th Cir. Certiorari denied. Reported below: 772 F. 2d 917.

No. 85-6005. *FAIR v. CONNECTICUT.* Sup. Ct. Conn. Certiorari denied. Reported below: 197 Conn. 106, 496 A. 2d 461.

No. 85-6122. *KIDDA v. DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR.* C. A. 3d Cir. Certiorari denied. Reported below: 769 F. 2d 165.

No. 85-6128. *MCCOY v. BOWEN, SECRETARY OF HEALTH AND HUMAN SERVICES.* C. A. 9th Cir. Certiorari denied. Reported below: 770 F. 2d 170.

No. 85-6280. *ABDULLAH v. UNITED STATES.* C. A. 8th Cir. Certiorari denied. Reported below: 782 F. 2d 1049.

475 U. S.

March 31, 1986

No. 85-6321. HENTON *v.* JOB SERVICES. C. A. 8th Cir. Certiorari denied.

No. 85-6322. MURRAY *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 782 F. 2d 1054.

No. 85-6327. WIDEMON *v.* R. J. REYNOLDS TOBACCO CO. ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 782 F. 2d 1037.

No. 85-6338. KUMAR *v.* BOARD OF TRUSTEES OF THE UNIVERSITY OF MASSACHUSETTS. C. A. 1st Cir. Certiorari denied. Reported below: 774 F. 2d 1.

No. 85-6340. MATUSAVAGE *v.* MERIT SYSTEMS PROTECTION BOARD. C. A. Fed. Cir. Certiorari denied. Reported below: 785 F. 2d 321.

No. 85-6341. SHEHEE *v.* KEMP, SUPERINTENDENT, GEORGIA DIAGNOSTIC AND CLASSIFICATION CENTER, ET AL. C. A. 11th Cir. Certiorari denied.

No. 85-6344. MACGUIRE *v.* BOARD OF GOVERNORS FOR THE FLORIDA BAR ET AL. C. A. 11th Cir. Certiorari denied.

No. 85-6345. TUCKER *v.* ANDERSON ET AL. C. A. 11th Cir. Certiorari denied.

No. 85-6351. GALVAN *v.* MINNESOTA. Sup. Ct. Minn. Certiorari denied. Reported below: 374 N. W. 2d 269.

No. 85-6354. BOND *v.* NEW YORK. Ct. App. N. Y. Certiorari denied. Reported below: 66 N. Y. 2d 1037, 489 N. E. 2d 1306.

No. 85-6359. DENBY *v.* CONNECTICUT. Sup. Ct. Conn. Certiorari denied. Reported below: 198 Conn. 23, 501 A. 2d 1206.

No. 85-6367. CHOAT *v.* ROME INDUSTRIES, INC., ET AL. C. A. Fed. Cir. Certiorari denied. Reported below: 776 F. 2d 1064.

No. 85-6380. ORTIZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 776 F. 2d 864.

March 31, 1986

475 U. S.

No. 85-6384. *MERRIWEATHER v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 777 F. 2d 503.

No. 85-6387. *CLARK ET AL. v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 779 F. 2d 47.

No. 85-6414. *HOPKINS v. VIRGINIA*. Sup. Ct. Va. Certiorari denied. Reported below: 230 Va. 280, 337 S. E. 2d 264.

No. 85-6415. *SCHELL v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 775 F. 2d 559.

No. 85-6429. *RORIE v. UNITED STATES*. C. A. 11th Cir. Certiorari denied. Reported below: 781 F. 2d 903.

No. 85-6438. *SCARBOROUGH v. UNITED STATES*. C. A. 11th Cir. Certiorari denied. Reported below: 772 F. 2d 719 and 779 F. 2d 618.

No. 85-6454. *MASSUH v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 780 F. 2d 534.

No. 85-6457. *CALLANAN ET AL. v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 777 F. 2d 1105.

No. 85-6460. *PURCELL ET UX. v. BOARD OF IMMIGRATION APPEALS*. C. A. 8th Cir. Certiorari denied. Reported below: 782 F. 2d 1048.

No. 85-6468. *COX ET AL. v. DUCKWORTH, WARDEN, ET AL.* C. A. 7th Cir. Certiorari denied. Reported below: 776 F. 2d 1051.

No. 84-6778. *DAVIS v. OKLAHOMA*. Ct. Crim. App. Okla.;
No. 85-5053. *DOUGAN v. FLORIDA*. Sup. Ct. Fla.;
No. 85-5553. *KENLEY v. MISSOURI*. Sup. Ct. Mo.;
No. 85-5651. *LOWERY v. INDIANA*. Sup. Ct. Ind.;
No. 85-5833. *NAVE v. MISSOURI*. Sup. Ct. Mo.;
No. 85-6168. *BILLIOT v. MISSISSIPPI*. Sup. Ct. Miss.;
No. 85-6228. *HOOPER v. FLORIDA*. Sup. Ct. Fla.;
No. 85-6342. *WILCHER v. MISSISSIPPI*. Sup. Ct. Miss.; and
No. 85-6382. *WOOMER v. AIKEN, WARDEN*. Sup. Ct. S. C.
Certiorari denied. Reported below: No. 85-5053, 470 So. 2d 697; No. 85-5553, 693 S. W. 2d 79; No. 85-5651, 478 N. E. 2d

475 U. S.

March 31, 1986

1214; No. 85-5833, 694 S. W. 2d 729; No. 85-6168, 478 So. 2d 1043; No. 85-6228, 476 So. 2d 1253; No. 85-6342, 479 So. 2d 710.

JUSTICE BRENNAN and JUSTICE MARSHALL, dissenting.

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

No. 85-1. OHIO *v.* ADKINS. Ct. App. Ohio, Highland County. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied.

No. 85-393. OHIO *v.* COUNTS. Ct. App. Ohio, Pickaway County. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied.

No. 85-1305. BUNNELL, SUPERINTENDENT, CALIFORNIA CORRECTIONAL INSTITUTION *v.* ARMANT. C. A. 9th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 772 F. 2d 552.

No. 85-1346. COMPANHIA DE NAVEGACAO LLOYD BRASILEIRO *v.* ALLIED CHEMICAL INTERNATIONAL CORP. C. A. 2d Cir. Motion of Inter-American Freight Conference, Sections A and D, for leave to file a brief as *amicus curiae* granted. Certiorari denied. Reported below: 775 F. 2d 476.

No. 85-6264. STRAIGHT *v.* WAINWRIGHT, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied. JUSTICE BLACKMUN dissents. Reported below: 772 F. 2d 674.

JUSTICE BRENNAN and JUSTICE MARSHALL, dissenting.

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

No. 85-6324. WATKINS *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied. Reported below: 229 Va. 469, 331 S. E. 2d 422.

Opinion of JUSTICE STEVENS respecting the denial of the petition for certiorari.

As JUSTICE MARSHALL explains in his dissenting opinion, the violation of petitioner's Fifth Amendment right to counsel requires that the sentence of death for the shooting of Betty Jean Barker be set aside. However, in view of the fact that, as petitioner has presented the issue, this error would not appear to have affected the validity of the conviction or the death sentence for the murder of Carl Douglas Buchanan, I agree with the Court's decision to deny certiorari and allow the error to be corrected in collateral proceedings.

JUSTICE MARSHALL, with whom JUSTICE BRENNAN joins, dissenting.

In the landmark case of *Miranda v. Arizona*, 384 U. S. 436 (1966), this Court held that before police institute custodial interrogation of an individual, they must inform him of his right to consult with counsel. *Miranda* further required that the police respect the individual's decision to exercise that right. We stated, in clear and mandatory language:

"If the individual states that he wants an attorney, the interrogation must cease until an attorney is present. At that time, the individual must have an opportunity to confer with the attorney and to have him present during any subsequent questioning. If the individual cannot obtain an attorney and he indicates that he wants one before speaking to police, they must respect his decision to remain silent." *Id.*, at 474.

We reaffirmed that rule in *Fare v. Michael C.*, 442 U. S. 707, 719 (1979) ("[T]he Court fashioned in *Miranda* the rigid rule that an accused's request for an attorney is *per se* an invocation of his Fifth Amendment rights, requiring that all interrogation cease"); see also *Rhode Island v. Innis*, 446 U. S. 291, 298 (1980); *Michigan v. Mosley*, 423 U. S. 96, 104, n. 10 (1975); *id.*, at 109-111 (WHITE, J., concurring in result). We refined the rule in *Edwards v. Arizona*, 451 U. S. 477, 485 (1981), explaining that the right to counsel, once asserted, cannot be waived "unless the accused himself initiates further communication, exchanges, or conversations with the police." We emphasized: "[I]t is inconsistent with *Miranda* and its progeny for the authorities, at their instance, to reinterrogate an accused in custody if he has clearly asserted his right to counsel." *Ibid.*

1099

MARSHALL, J., dissenting

In this case, the Court acquiesces in a blatant denial of that Fifth Amendment right by the police and the courts of the State of Virginia. Unwilling to ignore that violation, I dissent from the denial of certiorari.

I

Petitioner Johnny Watkins, Jr. was charged with the murder of Betty Jean Barker. The State announced its intention to introduce at the penalty phase of that trial a statement made by Watkins in connection with an unrelated murder. During the pretrial suppression hearing, the following facts emerged.

Watkins was arrested in the evening of November 22, 1983, as a suspect in the murder of Carl Douglas Buchanan. He was questioned about 11 p.m. and signed a waiver-of-rights form, but then told the interrogating officer that he wanted to see a lawyer. Interrogation ceased temporarily.

About two hours later, Watkins was informed that he was being charged with the murder of Buchanan. He asked why he was being charged, and was given a second waiver-of-rights form to execute. The police then told Watkins that his brother Darnell had implicated him in the murder, played for him a portion of Darnell's recorded statement, and took him to see Darnell. Watkins refused to talk to police about the shooting.

The police did not supply Watkins with a lawyer. They instead transferred him to the county jail, held him there until November 28, and then reinterrogated him. Testimony was conflicting as to what happened at the November 28 meeting. The parties agreed that a police officer went to the jail to interrogate Watkins, and had him sign a waiver-of-rights form. Watkins testified that he again asked for a lawyer but that the officer ignored his request, and that the officer "nagg[ed]" him until he admitted to the shooting of Buchanan. The officer testified that Watkins never stated on November 28 that he wanted to stop the questioning or consult with a lawyer, and that he gave his statement without apparent hesitation. The Barker trial court apparently credited the officer's testimony. There was no dispute, however, that Watkins had requested a lawyer five days earlier, had not received one, had not himself reinitiated questioning, and had been questioned again nonetheless.

Watkins' statement implicating himself in the Buchanan killing, along with extensive other evidence of that crime, was admitted over objection in the penalty phase of Watkins' trial for the shoot-

ing of Barker. The jury sentenced Watkins to death. Some months later, Watkins was convicted of the murder of Buchanan, and was given a second death sentence.

The facts of this case constitute a plain violation of petitioner's Fifth Amendment right to counsel. Our law sets out a bright-line rule that all questioning must cease after an accused requests counsel, so that repeated police questioning does not "wear down the accused and persuade him to incriminate himself notwithstanding his earlier request for counsel's assistance." *Smith v. Illinois*, 469 U. S. 91, 98 (1984) (*per curiam*). The accused may not be found to have waived that right, once he asserts it, unless he himself reinitiates questioning. *Ibid*.

In this case, Watkins made an undisputed and unequivocal request for counsel on November 22, and refused to talk to the authorities in counsel's absence. The response of the police was to hold Watkins without a lawyer for five days and then to interrogate him again. Even if the trial court credited the police officer with respect to the events of November 28, that interrogation was impermissible under *Miranda* and its progeny, and any statement so elicited should not have been admitted in the penalty phase of a capital proceeding. See *Estelle v. Smith*, 451 U. S. 454, 462-463 (1981); see also *Del Vecchio v. Illinois*, 474 U. S. 883 (1985) (MARSHALL, J., dissenting from denial of certiorari).

II

Respondent State of Virginia contends that petitioner did not adequately present his Fifth Amendment claim to the Supreme Court of Virginia. It focuses on the fact that Watkins did not include the magic words "*Edwards v. Arizona*" in his brief to that court. This contention has no merit. *Edwards* merely set out an elaboration of the basic rule of *Miranda*, and Watkins cited expressly to *Miranda* below. He argued to the trial court that the statement had been taken in violation of his Fifth Amendment right to counsel. He argued to the appellate court that his statement had been taken in violation of his Fifth Amendment rights and was involuntary, focusing on his claim that police had ignored an express request for counsel on November 28. While Watkins did not present his argument below as proficiently as he now does in his petition for certiorari, he unmistakably raised below and reasserts here a claim that the November 28 statement was taken in violation of his Fifth Amendment right to counsel. The denial of

475 U. S.

March 31, 1986

his November 22 request for counsel is part and parcel of that claim. See *Eddings v. Oklahoma*, 455 U. S. 104, 113-114, n. 9 (1982).

III

The Court today allows Watkins' death sentence to stand notwithstanding the illegality of the evidence introduced before the jury in its sentencing deliberations. The denial of his petition adds to a long line of cases in which the Court has declined to review capital sentences marred by the sort of violation described here. *E. g.*, *Henderson v. Florida*, 473 U. S. 916 (1985) (MARSHALL, J., dissenting from denial of certiorari); *James v. Arizona*, 469 U. S. 990 (1984) (BRENNAN, J., dissenting from denial of certiorari); *Johnson v. Virginia*, 454 U. S. 920 (1981) (MARSHALL, J., dissenting from denial of certiorari). I dissent.

No. 85-6448 (A-653). *ADAMS v. WAINWRIGHT, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL.* Sup. Ct. Fla. Application for stay of execution of sentence of death, presented to JUSTICE POWELL, and by him referred to the Court, denied. Stay of execution heretofore granted [*ante*, pp. 1062 and 1092] is vacated. Certiorari denied. Reported below: 484 So. 2d 1211.

JUSTICE BRENNAN and JUSTICE MARSHALL, dissenting.

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

No. 85-6470 (A-663). *ADAMS v. FLORIDA.* Sup. Ct. Fla. Application for stay of execution of sentence of death, presented to JUSTICE POWELL, and by him referred to the Court, denied. Certiorari denied. Reported below: 484 So. 2d 1216.

JUSTICE BRENNAN and JUSTICE MARSHALL, dissenting.

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

March 31, April 7, 1986

475 U. S.

No. 85-6476 (A-664). *ADAMS v. WAINWRIGHT, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS*. Sup. Ct. Fla. Application for stay of execution of sentence of death, presented to JUSTICE POWELL, and by him referred to the Court, denied. Certiorari denied. Reported below: 484 So. 2d 580.

JUSTICE BRENNAN and JUSTICE MARSHALL, dissenting.

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

Rehearing Denied

No. 84-744. *UNITED STATES v. LANE ET AL.*, 474 U. S. 438;
No. 85-1179. *SONDEREGGER v. E. F. HUTTON & Co., INC., ET AL.*, *ante*, p. 1048;

No. 85-5865. *HOWARD v. UNITED STATES*, *ante*, p. 1022;

No. 85-5893. *NICKENS v. MISSISSIPPI*, 474 U. S. 1104;

No. 85-5931. *DYSON v. TEXAS*, *ante*, p. 1002; and

No. 85-6078. *MUZA v. UNITED STATES*, *ante*, p. 1028. Petitions for rehearing denied.

APRIL 7, 1986

Appeals Dismissed

No. 85-1418. *NATIONWIDE MUTUAL INSURANCE Co. v. SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN BERNARDINO (MITCHELL ET AL., REAL PARTIES IN INTEREST)*. Appeal from Ct. App. Cal., 4th App. Dist., dismissed for want of jurisdiction.

No. 85-1452. *LAUVE v. SECRETARY OF STATE OF MICHIGAN; LAUVE v. ATTORNEY GENERAL OF MICHIGAN; and LAUVE v. SECRETARY OF STATE OF MICHIGAN*. Appeals from Sup. Ct. Mich. dismissed for want of jurisdiction. Treating the papers whereon the appeals were taken as a petition for writ of certiorari, certiorari denied. Reported below: 422 Mich. 964 (first case); 424 Mich. 855 (second case); 425 Mich. 874 (third case).

No. 85-6451. *WESLEY v. TEXAS*. Appeal from 66th Jud. Dist. Ct. Tex., Hill County, dismissed for want of jurisdiction. Treat-

475 U. S.

April 7, 1986

ing the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied.

Certiorari Granted—Vacated and Remanded

No. 84-6677. *HOLLOWAY v. TEXAS*. Ct. Crim. App. Tex. Motion of petitioner for leave to proceed *in forma pauperis* and certiorari granted. Judgment vacated and case remanded for further consideration in light of *Michigan v. Jackson*, ante, p. 625, and *Moran v. Burbine*, ante, p. 412. Reported below: 691 S. W. 2d 608.

No. 85-249. *CITY OF LITTLE ROCK v. WILLIAMS*. C. A. 8th Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Pembaur v. Cincinnati*, ante, p. 469. Reported below: 762 F. 2d 73.

No. 85-487. *FORD MOTOR CO. ET AL. v. TUNIS BROTHERS CO., INC., ET AL.* C. A. 3d Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Matsushita Electric Industrial Co. v. Zenith Radio Corp.*, ante, p. 574. Reported below: 763 F. 2d 1482.

No. 85-6318. *MACLEAN v. CITY OF BELLINGHAM*. Ct. App. Wash. Motion of petitioner for leave to proceed *in forma pauperis* and certiorari granted. Judgment vacated and case remanded for further consideration in light of *Pembaur v. Cincinnati*, ante, p. 469. Reported below: 41 Wash. App. 700, 705 P. 2d 1232.

Certiorari Dismissed

No. 85-6557. *JONES v. SMITH, COMMISSIONER, ALABAMA DEPARTMENT OF CORRECTIONS, ET AL.* C. A. 11th Cir. Petition for writ of certiorari dismissed as moot. Reported below: 786 F. 2d 1011.

Miscellaneous Orders

No. — — —. *COOK v. CHIU-AN WANG ET AL.* Motion to direct the Clerk to file a petition for writ of certiorari out of time denied.

No. A-710 (85-6545). *JAMES v. WAINWRIGHT, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL.* Sup. Ct. Fla. The stay order granted March 18, 1986 [ante, p. 1074], is continued pending final disposition of the petition for writ of certiorari.

April 7, 1986

475 U. S.

No. A-694. *BANKERS' LIFE & CASUALTY CO. v. CRENSHAW*. Sup. Ct. Miss. Application for stay pending appeal, addressed to THE CHIEF JUSTICE and referred to the Court, denied. JUSTICE BLACKMUN and JUSTICE STEVENS would grant this application.

No. A-756. *JOHNSON v. TEXAS*. Application for stay of execution of sentence of death, presented to JUSTICE WHITE, and by him referred to the Court, is granted pending the filing of a petition for writ of certiorari on or before May 7, 1986. If the petition is filed on or before May 7, 1986, this order is to continue in effect pending this Court's final disposition of the petition for writ of certiorari.

No. D-533. *IN RE DISBARMENT OF EVANS*. Disbarment entered. [For earlier order herein, see 474 U. S. 1002.]

No. D-543. *IN RE DISBARMENT OF DEGLOW*. Disbarment entered. [For earlier order herein, see 474 U. S. 1079.]

No. D-544. *IN RE DISBARMENT OF TILLEY*. Disbarment entered. [For earlier order herein, see *ante*, p. 1003.]

No. D-552. *IN RE DISBARMENT OF PLAZA*. It is ordered that Richard J. Plaza, of Jersey City, N. J., be suspended from the practice of law in this Court and that a rule issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. 84-1379. *DIAMOND ET AL. v. CHARLES ET AL.* C. A. 7th Cir. [Probable jurisdiction noted, 471 U. S. 1115.] Motion of appellees for leave to file a supplemental brief after argument granted.

No. 85-250. *LYNG, SECRETARY OF AGRICULTURE v. CASTILLO ET AL.* D. C. S. D. Tex. [Probable jurisdiction noted *sub nom. Block v. Castillo*, 474 U. S. 994.] Motion of the Solicitor General to permit Jeffrey P. Minear, Esquire, to present oral argument *pro hac vice* granted.

No. 85-437. *ARCARA, DISTRICT ATTORNEY OF ERIE COUNTY v. CLOUD BOOKS, INC., DBA VILLAGE BOOK & NEWS STORE, ET AL.* Ct. App. N. Y. [Certiorari granted, 474 U. S. 978.] Motion of City of Santa Ana for leave to participate in oral argument as *amicus curiae*, for divided argument, and for additional time for oral argument denied.

475 U. S.

April 7, 1986

No. 85-473. CARGILL, INC., ET AL. *v.* MONFORT OF COLORADO, INC. C. A. 10th Cir. [Certiorari granted, 474 U. S. 1049.] Motion of The Business Roundtable for leave to file a brief as *amicus curiae* granted. JUSTICE BLACKMUN took no part in the consideration or decision of this motion.

No. 85-920. ALASKA AIRLINES, INC., ET AL. *v.* BROCK, SECRETARY OF LABOR, ET AL. C. A. D. C. Cir. [Certiorari granted, *ante*, p. 1044.] Motion of petitioners to dispense with printing the joint appendix granted.

No. 85-1377. BOWSHER, COMPTROLLER GENERAL OF THE UNITED STATES *v.* SYNAR, MEMBER OF CONGRESS, ET AL.;

No. 85-1378. UNITED STATES SENATE *v.* SYNAR, MEMBER OF CONGRESS, ET AL.; and

No. 85-1379. O'NEILL, SPEAKER OF THE UNITED STATES HOUSE OF REPRESENTATIVES, ET AL. *v.* SYNAR, MEMBER OF CONGRESS, ET AL. D. C. D. C. [Probable jurisdiction noted, *ante*, p. 1009.] Motion of the parties for divided argument granted.

No. 85-6374. IN RE KOENIG. Petition for writ of mandamus denied.

Certiorari Granted

No. 85-1027. ARIZONA *v.* HICKS. Ct. App. Ariz. Motion of respondent for leave to proceed *in forma pauperis* and certiorari granted. Reported below: 146 Ariz. 533, 707 P. 2d 331.

Certiorari Denied. (See also Nos. 85-1452 and 85-6451, *supra*.)

No. 84-6580. MARANT *v.* COLORADO. Ct. App. Colo. Certiorari denied.

No. 84-6825. PFEIL, AS PERSONAL REPRESENTATIVE OF THE ESTATE OF PFEIL *v.* ROGERS, FORMER DISTRICT ATTORNEY OF RUSK COUNTY, ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 757 F. 2d 850.

No. 85-82. BUILDING & CONSTRUCTION TRADES COUNCIL OF PHILADELPHIA AND VICINITY ET AL. *v.* ALTEMOSE CONSTRUCTION CO. ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 751 F. 2d 653.

No. 85-301. AMEY, INC., ET AL. *v.* GULF ABSTRACT & TITLE, INC., ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 758 F. 2d 1486.

April 7, 1986

475 U. S.

No. 85-885. *ZELEZNIK, ADMINISTRATOR OF THE ESTATE OF ZELEZNIK, ET AL. v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 770 F. 2d 20.

No. 85-890. *HUBBY v. HISTORIC SAVANNAH FOUNDATION ET AL.* C. A. 11th Cir. Certiorari denied. Reported below: 770 F. 2d 174.

No. 85-1042. *MARINE TRANSPORT LINES, INC. v. INTERNATIONAL ORGANIZATION OF MASTERS, MATES & PILOTS*. C. A. 11th Cir. Certiorari denied. Reported below: 770 F. 2d 1526.

No. 85-1058. *LISIECKI v. FEDERAL HOME LOAN BANK BOARD ET AL.* C. A. Fed. Cir. Certiorari denied. Reported below: 769 F. 2d 1558.

No. 85-1100. *DOE v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 774 F. 2d 624.

No. 85-1146. *KWALLEK v. ALASKA*. Ct. App. Alaska. Certiorari denied.

No. 85-1155. *PAPAGO TRIBAL UTILITY AUTHORITY v. FEDERAL ENERGY REGULATORY COMMISSION*. C. A. 9th Cir. Certiorari denied. Reported below: 773 F. 2d 1056.

No. 85-1196. *CITY OF CHARLOTTESVILLE, VIRGINIA v. FEDERAL ENERGY REGULATORY COMMISSION ET AL.* C. A. D. C. Cir. Certiorari denied. Reported below: 249 U. S. App. D. C. 236, 774 F. 2d 1205.

No. 85-1315. *KOSHER ET UX. v. STAMATIS ET UX*. Ct. App. N. Y. Certiorari denied. Reported below: 66 N. Y. 2d 223, 487 N. E. 2d 241.

No. 85-1320. *CENTRAL HARDWARE CO. v. CENTRAL STATES, SOUTHEAST & SOUTHWEST AREAS PENSION FUND ET AL.* C. A. 8th Cir. Certiorari denied. Reported below: 770 F. 2d 106.

No. 85-1334. *ROE v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 781 F. 2d 238.

No. 85-1351. *CASACELI, INDIVIDUALLY AND AS DULY AUTHORIZED REPRESENTATIVE OF THE ESTATE OF BODD, ET AL. v.*

475 U. S.

April 7, 1986

CHERAMIE BO TRUC #11, INC., ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 774 F. 2d 1322.

No. 85-1363. O'MAHONY *v.* CHICAGO TRANSIT AUTHORITY. C. A. 7th Cir. Certiorari denied. Reported below: 779 F. 2d 54.

No. 85-1364. CLADY ET AL. *v.* COUNTY OF LOS ANGELES. C. A. 9th Cir. Certiorari denied. Reported below: 770 F. 2d 1421.

No. 85-1368. GALARDI ET AL. *v.* TOKAI BANK OF CALIFORNIA ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 780 F. 2d 1025.

No. 85-1369. ZOLDESSY *v.* FOUNDERS TITLE CO. C. A. 11th Cir. Certiorari denied. Reported below: 773 F. 2d 1175.

No. 85-1371. DEPARTMENT OF FINANCE OF THE CITY OF NEW YORK *v.* FORBES, INC. Ct. App. N. Y. Certiorari denied. Reported below: 66 N. Y. 2d 243, 487 N. E. 2d 251.

No. 85-1374. LOEB, INDIVIDUALLY AND AS EXECUTRIX OF THE ESTATE OF LOEB, ET AL. *v.* BERGERON. C. A. 1st Cir. Certiorari denied. Reported below: 777 F. 2d 792.

No. 85-1376. GLASGOW, INC. *v.* NOETZEL ET UX. Super. Ct. Pa. Certiorari denied. Reported below: 338 Pa. Super. 458, 487 A. 2d 1372.

No. 85-1383. KAONOHI OHANA, LTD. *v.* SUTHERLAND ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 776 F. 2d 1425.

No. 85-1397. VASQUEZ *v.* NEW YORK. Ct. App. N. Y. Certiorari denied. Reported below: 66 N. Y. 2d 968, 489 N. E. 2d 757.

No. 85-1417. TYLER-BARCOMB ET AL. *v.* CONNECTICUT. Sup. Ct. Conn. Certiorari denied. Reported below: 197 Conn. 666, 500 A. 2d 1324.

No. 85-1472. BALLARD *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 779 F. 2d 287.

No. 85-1487. MATCHETT *v.* CHICAGO COUNCIL OF LAWYERS ET AL. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 134 Ill. App. 3d 1153, 496 N. E. 2d 365.

April 7, 1986

475 U. S.

No. 85-1495. *PECIC v. UNITED STATES*; and
No. 85-1502. *MURPHY v. UNITED STATES*. C. A. 3d Cir.
Certiorari denied. Reported below: 778 F. 2d 963.

No. 85-1507. *GALLO v. UNITED STATES*. C. A. 4th Cir.
Certiorari denied. Reported below: 782 F. 2d 1037.

No. 85-1508. *WEINSTEIN v. UNITED STATES*. C. A. 11th Cir.
Certiorari denied. Reported below: 762 F. 2d 1522 and 778 F. 2d
673.

No. 85-5729. *HOWELL v. MARYLAND*. Ct. Sp. App. Md.
Certiorari denied. Reported below: 64 Md. App. 724.

No. 85-5858. *COOPER v. SOUTH CAROLINA*. Sup. Ct. S. C.
Certiorari denied.

No. 85-5920. *POOL v. ARMONTROUT, WARDEN*. C. A. 8th
Cir. Certiorari denied.

No. 85-6035. *FOX v. CITY OF DES MOINES*. Sup. Ct. Iowa.
Certiorari denied.

No. 85-6083. *LUCK v. UNITED STATES*. C. A. 11th Cir.
Certiorari denied. Reported below: 772 F. 2d 719.

No. 85-6127. *ROY v. UNITED STATES*. C. A. 2d Cir. Certio-
rari denied. Reported below: 771 F. 2d 54.

No. 85-6198. *CALETTA v. UNITED STATES*. C. A. 3d Cir.
Certiorari denied. Reported below: 780 F. 2d 1014.

No. 85-6294. *POREE v. CHRANS, WARDEN*. C. A. 7th Cir.
Certiorari denied.

No. 85-6343. *TURNER v. UNITED STATES*. C. A. 2d Cir.
Certiorari denied. Reported below: 788 F. 2d 2.

No. 85-6355. *KRZYSAK v. UNITED STATES POSTAL SERVICE*.
C. A. 2d Cir. Certiorari denied. Reported below: 760 F. 2d 253.

No. 85-6362. *WILKINS v. LYLES, WARDEN, ET AL.* C. A. 4th
Cir. Certiorari denied. Reported below: 782 F. 2d 1037.

No. 85-6363. *LINDSEY v. PENNSYLVANIA*. C. A. 3d Cir.
Certiorari denied.

No. 85-6375. *KNIES v. WISCONSIN*. Sup. Ct. Wis. Certio-
rari denied. Reported below: 125 Wis. 2d 584, 375 N. W. 2d 215.

475 U. S.

April 7, 1986

No. 85-6379. JONES *v.* MCCOTTER, DIRECTOR, TEXAS DEPARTMENT OF CORRECTIONS. C. A. 5th Cir. Certiorari denied. Reported below: 777 F. 2d 699.

No. 85-6397. SMITH *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 781 F. 2d 903.

No. 85-6398. VARGAS *v.* COUGHLIN, COMMISSIONER, NEW YORK STATE DEPARTMENT OF CORRECTIONS. App. Div., Sup. Ct. N. Y., 4th Jud. Dept. Certiorari denied. Reported below: 113 App. Div. 2d 1037, 494 N. Y. S. 2d 255.

No. 85-6410. MITCHELL *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 780 F. 2d 1029.

No. 85-6413. PETERSON *v.* BOWEN, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 778 F. 2d 791.

No. 85-6428. HOPPER *v.* BOWEN, SECRETARY OF HEALTH AND HUMAN SERVICES. C. A. 6th Cir. Certiorari denied. Reported below: 780 F. 2d 1021.

No. 85-6441. NOLL *v.* WILKERSON ET AL. C. A. 8th Cir. Certiorari denied.

No. 85-6462. WOOD *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 780 F. 2d 555.

No. 85-6464. GOOD *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 780 F. 2d 773.

No. 85-6480. JOOST *v.* O'BRIEN, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied.

No. 85-6506. LUCAS *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 497 A. 2d 1070.

No. 85-690. MCCOTTER, DIRECTOR, TEXAS DEPARTMENT OF CORRECTIONS *v.* FELDER. C. A. 5th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 765 F. 2d 1245.

No. 85-882. LOVSHIN *v.* DEPARTMENT OF THE NAVY. C. A. Fed. Cir. Certiorari denied. JUSTICE WHITE, JUSTICE MARSHALL, and JUSTICE BLACKMUN would grant certiorari. Reported below: 767 F. 2d 826.

April 7, 11, 1986

475 U. S.

No. 85-1352. FLORIDA FRUIT & VEGETABLE ASSN. ET AL. v. BROCK, SECRETARY OF LABOR, ET AL. C. A. 11th Cir. Motion of Ramirez, Ruiz, and Carrizalez for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 771 F. 2d 1455.

No. 85-6376. ANDRADE v. TEXAS. Ct. Crim. App. Tex.; and No. 85-6439. WISE v. VIRGINIA. Sup. Ct. Va. Certiorari denied. Reported below: No. 85-6376, 700 S. W. 2d 585; No. 85-6439, 230 Va. 322, 337 S. E. 2d 715.

JUSTICE BRENNAN and JUSTICE MARSHALL, dissenting.

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

Rehearing Denied

No. 85-659. HOPFMANN v. UNITED STATES FEDERAL ELECTION COMMISSION ET AL., 474 U. S. 1038;

No. 85-5277. O'DRISCOLL v. UNITED STATES, *ante*, p. 1020;

No. 85-5415. ROBERTS v. RUTGERS STATE UNIVERSITY OF NEW JERSEY ET AL., 474 U. S. 952;

No. 85-5967. DRYDEN v. SAFECO INSURANCE COMPANY OF AMERICA, *ante*, p. 1049;

No. 85-6040. RICHARDS ET UX. v. SWINEBROAD & DENTON AUCTIONEERS ET AL., *ante*, p. 1026; and

No. 85-6099. RODMAN v. TATE, SUPERINTENDENT, CHILLICOTHE CORRECTIONAL INSTITUTE, ET AL., *ante*, p. 1028. Petitions for rehearing denied.

No. 85-429. EXXON CORP. v. UNITED STATES ET AL., 474 U. S. 1105. Motion for leave to file petition for rehearing denied. JUSTICE POWELL took no part in the consideration or decision of this motion.

No. 85-5835. IN RE PATRASCU, 474 U. S. 1100. Motion for leave to file petition for rehearing denied.

APRIL 11, 1986

Certiorari Denied

No. 85-6679 (A-762). THOMAS v. WAINWRIGHT, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. Sup. Ct. Fla. Appli-

475 U. S.

April 11, 15, 21, 1986

cation for stay of execution of sentence of death, presented to JUSTICE POWELL, and by him referred to the Court, denied. Certiorari denied. Reported below: 486 So. 2d 574.

JUSTICE BRENNAN and JUSTICE MARSHALL, dissenting.

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

APRIL 15, 1986

Certiorari Denied

No. 85-6714 (A-777). THOMAS *v.* WAINWRIGHT, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Application for certificate of probable cause, presented to JUSTICE POWELL, and by him referred to the Court, denied. Application for stay of execution of sentence of death, presented to JUSTICE POWELL, and by him referred to the Court, denied. Certiorari denied. Reported below: 788 F. 2d 684.

JUSTICE BRENNAN and JUSTICE MARSHALL, dissenting.

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

APRIL 21, 1986

Appeals Dismissed

No. 85-1093. RYNIAWEC *v.* TSAPIS, JUDGE, CIRCUIT COURT OF BROOKE COUNTY, WEST VIRGINIA, ET AL. 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. 85-6403. DYSON *v.* TEXAS A & M UNIVERSITY. Appeal from C. A. 5th Cir. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied.

April 21, 1986

475 U. S.

No. 85-1343. HUMPHREY ET AL., DBA HUMPHREY & HAAS v. COMMITTEE ON PROFESSIONAL ETHICS AND CONDUCT OF THE IOWA STATE BAR ASSN. Appeal from Sup. Ct. Iowa dismissed for want of substantial federal question. JUSTICE WHITE, JUSTICE BLACKMUN, and JUSTICE STEVENS would note probable jurisdiction and set case for oral argument. Reported below: 377 N. W. 2d 643.

No. 85-1392. PULLUM v. CINCINNATI, INC., ET AL. Appeal from Sup. Ct. Fla. dismissed for want of substantial federal question. Reported below: 476 So. 2d 657.

No. 85-1407. CONSOLIDATED EDISON COMPANY OF NEW YORK, INC., ET AL. v. PUBLIC SERVICE COMMISSION OF THE STATE OF NEW YORK. Appeal from Ct. App. N. Y. dismissed for want of substantial federal question. Reported below: 66 N. Y. 2d 369, 488 N. E. 2d 83.

No. 85-6499. STARADUMSKY v. RHODE ISLAND. Appeal from Dist. Ct. R. I. dismissed for want of substantial federal question.

Certiorari Granted—Reversed and Remanded. (See No. 85-531, *ante*, p. 796.)

Certiorari Granted—Vacated and Remanded. (See also No. 85-1150, *ante*, p. 809.)

No. 85-299. ROYAL CENTER, INC. v. LOCAL JOINT EXECUTIVE BOARD OF LAS VEGAS, CULINARY WORKERS UNION, LOCAL 226, ET AL. C. A. 9th Cir. *Certiorari* granted, judgment vacated, and case remanded for further consideration in light of *AT&T Technologies, Inc. v. Communications Workers*, *ante*, p. 643. Reported below: 754 F. 2d 835.

No. 85-875. RHODE ISLAND v. MANOCCHIO. Sup. Ct. R. I. *Certiorari* granted, judgment vacated, and case remanded for further consideration in light of *Delaware v. Van Arsdall*, *ante*, p. 673. Reported below: 496 A. 2d 931.

No. 85-1026. TEXAS v. JACKSON. Ct. Crim. App. Tex. Motion of respondent for leave to proceed *in forma pauperis* and *certiorari* granted. Judgment vacated and case remanded for further consideration in light of *Texas v. McCullough*, *ante*, p. 134. Reported below: — S. W. 2d —.

475 U. S.

April 21, 1986

No. 85-1434. *TIERNEY ET AL. v. CITY OF TOLEDO ET AL.* C. A. 6th Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Teachers v. Hudson, ante*, p. 292. Reported below: 785 F. 2d 310.

Miscellaneous Orders

No. — — —. *CRIBB ET AL. v. PELHAM ET AL.*; and

No. — — —. *COX v. LEMAIRE, FAUNTZ & KATZNELSON.* Motions to direct the Clerk to file petitions for writs of certiorari out of time denied.

No. D-554. *IN RE DISBARMENT OF WOOD.* It is ordered that Jack R. Wood, of Shelbyville, Ind., be suspended from the practice of law in this Court and that a rule issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D-555. *IN RE DISBARMENT OF KERPAN.* It is ordered that William John Kerpan, of Marysville, Pa., 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. 74, Orig. *GEORGIA v. SOUTH CAROLINA.* First Report of the Special Master received and ordered filed. [For earlier order herein, see, *e. g.*, 434 U. S. 1057.]

No. 85-236. *EICHENLAUB v. YURKY ET AL.* C. A. 3d Cir. [Certiorari granted, 474 U. S. 1049.] Motion of respondents Zimmerman and Wicker for divided argument granted. Request for additional time for oral argument denied.

No. 85-473. *CARGILL, INC., ET AL. v. MONFORT OF COLORADO, INC.* C. A. 10th Cir. [Certiorari granted, 474 U. S. 1049.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted. JUSTICE BLACKMUN took no part in the consideration or decision of this motion.

No. 85-488. *OHIO CIVIL RIGHTS COMMISSION ET AL. v. DAYTON CHRISTIAN SCHOOLS, INC., ET AL.* C. A. 6th Cir. [Probable jurisdiction postponed, 474 U. S. 978.] Motion of appellees for leave to file a supplemental brief after argument granted.

April 21, 1986

475 U. S.

No. 85-660. COLORADO *v.* CONNELLY. Sup. Ct. Colo. [Certiorari granted, 474 U. S. 1050.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 85-701. FEDERAL ELECTION COMMISSION *v.* MASSACHUSETTS CITIZENS FOR LIFE, INC. C. A. 1st Cir. [Probable jurisdiction noted, 474 U. S. 1049.] Motions of Chamber of Commerce of the United States, Joseph M. Scheidler et al., and Catholic League for Religious and Civil Rights for leave to file briefs as *amici curiae* granted.

No. 85-792. INTERSTATE COMMERCE COMMISSION *v.* BROTHERHOOD OF LOCOMOTIVE ENGINEERS ET AL.; and

No. 85-793. MISSOURI-KANSAS-TEXAS RAILROAD CO. *v.* BROTHERHOOD OF LOCOMOTIVE ENGINEERS ET AL. C. A. D. C. Cir. [Certiorari granted, *ante*, p. 1081.] Motion of petitioners to dispense with printing the joint appendix granted.

No. 85-937. WEST VIRGINIA *v.* UNITED STATES. C. A. 4th Cir. [Certiorari granted, *ante*, p. 1009.] Motion of petitioner to dispense with printing the joint appendix granted.

No. 85-1206. ROSE *v.* ROSE ET AL. Appeal from Ct. App. Tenn. The Solicitor General is invited to file a brief in this case expressing the views of the United States.

No. 85-1217. CITY OF SPRINGFIELD, MASSACHUSETTS *v.* KIBBE, ADMINISTRATRIX OF THE ESTATE OF THURSTON. C. A. 1st Cir. [Certiorari granted, *ante*, p. 1064.] Motion of respondent for leave to proceed further herein *in forma pauperis* granted.

No. 85-1377. BOWSHER, COMPTROLLER GENERAL OF THE UNITED STATES *v.* SYNAR, MEMBER OF CONGRESS, ET AL.;

No. 85-1378. UNITED STATES SENATE *v.* SYNAR, MEMBER OF CONGRESS, ET AL.; and

No. 85-1379. O'NEILL, SPEAKER OF THE UNITED STATES HOUSE OF REPRESENTATIVES, ET AL. *v.* SYNAR, MEMBER OF CONGRESS, ET AL. D. C. D. C. [Probable jurisdiction noted, *ante*, p. 1009.] Motions of Edward Blankstein and American Jewish Congress for leave to file briefs as *amici curiae* out of time granted.

No. 85-6214. LINDAHL *v.* OFFICE OF PERSONNEL MANAGEMENT. C. A. Fed. Cir. Motion of petitioner for leave to proceed

475 U. S.

April 21, 1986

in forma pauperis denied. Petitioner is allowed until May 12, 1986, within which to pay the docketing fee required by Rule 45(a) and to submit a petition in compliance with Rule 33 of the Rules of this Court.

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

For the reasons expressed in *Brown v. Herald Co.*, 464 U. S. 928 (1983), we would deny the petition for writ of certiorari without reaching the merits of the motion to proceed *in forma pauperis*.

No. 85-6418. *ISSA v. MERIT SYSTEMS PROTECTION BOARD*. C. A. Fed. Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied. Petitioner is allowed until May 12, 1986, within which to pay the docketing fee required by Rule 45(a) and to submit a petition in compliance with Rule 33 of the Rules of this Court.

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

For the reasons expressed in *Brown v. Herald Co.*, 464 U. S. 928 (1983), we would deny the petition for writ of certiorari without reaching the merits of the motion to proceed *in forma pauperis*.

No. 85-6335. *IN RE WEEMS*;

No. 85-6395. *IN RE SMITH*;

No. 85-6400. *IN RE PETERS*; and

No. 85-6407. *IN RE CARSON*. Petitions for writs of mandamus denied.

Probable Jurisdiction Noted or Postponed

No. 85-1180. *MEESE, ATTORNEY GENERAL OF THE UNITED STATES, ET AL. v. KEENE*. Appeal from D. C. E. D. Cal. Probable jurisdiction noted. Reported below: 619 F. Supp. 1111.

No. 85-993. *HOBBIE v. UNEMPLOYMENT APPEALS COMMISSION OF FLORIDA ET AL.* Appeal from Dist. Ct. App. Fla., 5th Dist. Further consideration of question of jurisdiction postponed to hearing of case on the merits. Reported below: 475 So. 2d 711.

April 21, 1986

475 U. S.

*Certiorari Granted**

No. 85-129. *WIMBERLY v. LABOR AND INDUSTRIAL RELATIONS COMMISSION OF MISSOURI ET AL.* Sup. Ct. Mo. Certiorari granted. Reported below: 688 S. W. 2d 344.

No. 85-1449. *TOWN OF NEWTON ET AL. v. RUMERY.* C. A. 1st Cir. Certiorari granted. Reported below: 778 F. 2d 66.

No. 85-1277. *SCHOOL BOARD OF NASSAU COUNTY, FLORIDA, ET AL. v. ARLINE.* C. A. 11th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari granted limited to Question 1 presented by the petition. In addition, the parties are requested to brief and argue the following question: "Whether one who is afflicted with the contagious, infectious disease of tuberculosis is precluded from being 'otherwise qualified' for the job of elementary-school teacher, within the meaning of § 504 of the Rehabilitation Act of 1973, 29 U. S. C. § 794?" Reported below: 772 F. 2d 759.

JUSTICE STEVENS, dissenting.

The Court of Appeals remanded this case for further proceedings, and concluded its opinion as follows:

"In this case, the district court made no findings resolving the numerous factual disputes as to whether the risks entailed in retaining Arline in her elementary school position precluded her from having the necessary physical qualifications for the job, whether the same would be true if she were transferred to a position teaching less susceptible individuals, or whether the costs involved in accommodating her would place undue burdens on the school system. Rather, it simply concluded that the school board was exempt from any duty whatever to weigh the actual costs and risks involved in accommodating Arline because of an overriding 'duty to the public it serves.' Section 504 by its existence establishes that such a duty cannot be used to shield an entity from liability for making decisions which 'arbitrarily deprive genuinely qualified handicapped persons of the opportunity to participate in a covered program.' *Southeastern Community College v. Davis*, 442

*[REPORTER'S NOTE: An order granting certiorari in No. 85-99, *Messerschmitt Bolkow Blohm, GmbH v. Walker et al.*, issued on April 21, 1986, was vacated on June 9, 1986. See 476 U. S. 1168.]

475 U. S.

April 21, 1986

U. S. 397, 412 (1979)]. We therefore remand this case for further findings as to whether the risks of infection precluded Mrs. Arline from being 'otherwise qualified' for her job and if so whether it was possible to make some reasonable accommodation for her in that teaching position, in another position teaching less susceptible individuals, or in some other kind of position in the school system." 772 F. 2d 759, 765 (CA11 1985) (footnotes omitted).

In my opinion, it is inappropriate for this Court to direct the parties to present argument on the "otherwise qualified" issue before the District Court has an opportunity to make the findings ordered by the Court of Appeals. It is especially inappropriate because petitioner did not seek review on that issue. Accordingly, I respectfully dissent.

No. 85-6461. MARTIN *v.* OHIO. Sup. Ct. Ohio. Motion of Ohio Public Defender Commission for leave to file a brief as *amicus curiae* granted. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted limited to Question IV presented by the petition. Reported below: 21 Ohio St. 3d 91, 488 N. E. 2d 166.

Certiorari Denied. (See also Nos. 85-1093 and 85-6403, *supra.*)

No. 85-834. NIXON, ADMINISTRATOR OF THE ESTATE OF NIXON *v.* BOWEN, SECRETARY OF HEALTH AND HUMAN SERVICES. C. A. 11th Cir. Certiorari denied. Reported below: 770 F. 2d 1083.

No. 85-886. BRUNO *v.* CONNECTICUT. Sup. Ct. Conn. Certiorari denied. Reported below: 197 Conn. 326, 497 A. 2d 758.

No. 85-917. HOLLINS ET AL. *v.* POWELL ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 773 F. 2d 191.

No. 85-1010. PASCHALL ET AL. *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 772 F. 2d 68.

No. 85-1065. BARTIMO *v.* HORSEMEN'S BENEVOLENT & PROTECTIVE ASSN. ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 771 F. 2d 894.

No. 85-1176. COHEN *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 10th Cir. Certiorari denied.

April 21, 1986

475 U. S.

No. 85-1191. *PAINTERS LOCAL UNION No. 164 OF THE BROTHERHOOD OF PAINTERS, DECORATORS & PAPERHANGERS OF AMERICA ET AL. v. EPLEY, INDIVIDUALLY AND DBA EPLEY COATINGS ET AL.* C. A. 11th Cir. Certiorari denied. Reported below: 764 F. 2d 1509.

No. 85-1194. *JACKSON v. UNITED STATES.* C. A. 11th Cir. Certiorari denied. Reported below: 770 F. 2d 1550.

No. 85-1197. *CLAIBORNE, UNITED STATES DISTRICT JUDGE v. UNITED STATES.* C. A. 9th Cir. Certiorari denied. Reported below: 765 F. 2d 784.

No. 85-1209. *KAHLENBERG v. IMMIGRATION AND NATURALIZATION SERVICE.* C. A. 11th Cir. Certiorari denied. Reported below: 763 F. 2d 1346.

No. 85-1224. *KERKMAN v. UNITED STATES.* C. A. 6th Cir. Certiorari denied. Reported below: 779 F. 2d 53.

No. 85-1266. *ZIMMERMAN ET AL. v. HANDLEY, ADMINISTRATOR, AGRICULTURAL MARKETING SERVICE, DEPARTMENT OF AGRICULTURE, ET AL.* C. A. 8th Cir. Certiorari denied. Reported below: 782 F. 2d 1047.

No. 85-1278. *HERRERA-VINEGAS v. UNITED STATES.* C. A. 5th Cir. Certiorari denied. Reported below: 778 F. 2d 788.

No. 85-1287. *BOARD OF REGENTS OF THE UNIVERSITY OF OKLAHOMA v. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION.* C. A. 10th Cir. Certiorari denied. Reported below: 774 F. 2d 999.

No. 85-1324. *WASHINGTON STATE NURSES ASSN. v. WASHINGTON STATE HOSPITAL COMMISSION ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 773 F. 2d 1044.

No. 85-1336. *WALSH, CHIEF OF POLICE OF ORLANDO, FLORIDA v. CENTRAL FLORIDA NUCLEAR FREEZE CAMPAIGN ET AL.* C. A. 11th Cir. Certiorari denied. Reported below: 774 F. 2d 1515.

No. 85-1393. *BELL ET AL. v. CRAWFORD COUNTY, ARKANSAS, ET AL.* Sup. Ct. Ark. Certiorari denied. Reported below: 287 Ark. 251, 697 S. W. 2d 910.

475 U. S.

April 21, 1986

No. 85-1395. NATIONAL STEEL CORP. *v.* PUBLIC SERVICE COMMISSION OF WEST VIRGINIA. Sup. Ct. App. W. Va. Certiorari denied.

No. 85-1396. ROYSTER *v.* BOARD OF TRUSTEES OF ANDERSON COUNTY SCHOOL DISTRICT NO. 5 ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 774 F. 2d 618.

No. 85-1402. CITY OF CORONA ET AL. *v.* SUPERIOR COURT OF CALIFORNIA FOR RIVERSIDE COUNTY (EBEL ET AL., REAL PARTIES IN INTEREST). Sup. Ct. Cal. Certiorari denied. Reported below: 39 Cal. 3d 740, 705 P. 2d 347.

No. 85-1408. LOCAL 710, INTERNATIONAL BROTHERHOOD OF TEAMSTERS *v.* MCGINNIS ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 774 F. 2d 196.

No. 85-1419. NAEGELE OUTDOOR ADVERTISING COMPANY OF LOUISVILLE, A DIVISION OF NAEGELE, INC. *v.* MOULTON ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 773 F. 2d 692.

No. 85-1420. DIXON *v.* CITY OF WINSTON-SALEM, NORTH CAROLINA, ET AL. C. A. 4th Cir. Certiorari denied.

No. 85-1421. TERRAIN ENTERPRISES, INC. *v.* WESTERN CASUALTY & SURETY CO. C. A. 5th Cir. Certiorari denied. Reported below: 774 F. 2d 1320.

No. 85-1422. SHERMAN TREATERS LTD. *v.* AHLBRANDT. C. A. Fed. Cir. Certiorari denied. Reported below: 785 F. 2d 322.

No. 85-1424. BARGE OCEAN STATES *v.* AMOCO OIL CO. ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 766 F. 2d 473.

No. 85-1426. COAKLEY & WILLIAMS, INC. *v.* SHATTERPROOF GLASS CORP. C. A. 4th Cir. Certiorari denied. Reported below: 778 F. 2d 196.

No. 85-1427. PEEPLES *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied.

No. 85-1428. NATIVE VILLAGE OF STEVENS *v.* SMITH, COMMISSIONER OF HEALTH AND HUMAN SERVICES OF ALASKA,

April 21, 1986

475 U. S.

ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 770 F. 2d 1486.

No. 85-1432. DAVIS *v.* CITY OF ROSWELL, GEORGIA, ET AL. Sup. Ct. Ga. Certiorari denied. Reported below: 255 Ga. 158, 335 S. E. 2d 582.

No. 85-1438. CHARLOTTE MEMORIAL HOSPITAL AND MEDICAL CENTER ET AL. *v.* OLIPHANT ET AL. C. A. 4th Cir. Certiorari denied.

No. 85-1440. SPRIGGINS ET UX. *v.* FIRST NATIONAL BANK OF LEA COUNTY ET AL. C. A. 10th Cir. Certiorari denied.

No. 85-1444. ALLEN GROUP, INC., ET AL. *v.* FRICKE ET AL. C. A. Fed. Cir. Certiorari denied. Reported below: 776 F. 2d 1062.

No. 85-1447. CABRIOLET PORSCHE + AUDI, INC. *v.* AMERICAN HONDA MOTOR CO., INC. C. A. 11th Cir. Certiorari denied. Reported below: 773 F. 2d 1193.

No. 85-1450. HORTON *v.* MILLER CHEMICAL CO., INC. C. A. 7th Cir. Certiorari denied. Reported below: 776 F. 2d 1351.

No. 85-1451. HOWARD, DBA LAFAYETTE COMPONENTS *v.* CONTINENTAL CASUALTY CO. C. A. 7th Cir. Certiorari denied. Reported below: 775 F. 2d 876.

No. 85-1457. CATERPILLAR TRACTOR CO. *v.* WHEELER ET AL. Sup. Ct. Ill. Certiorari denied. Reported below: 108 Ill. 2d 502, 485 N. E. 2d 372.

No. 85-1458. PETERSON *v.* KENNEDY ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 771 F. 2d 1244.

No. 85-1460. VESSICHIO *v.* CONNECTICUT. Sup. Ct. Conn. Certiorari denied. Reported below: 197 Conn. 644, 500 A. 2d 1311.

No. 85-1462. WALLACE *v.* HERRON ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 778 F. 2d 391.

No. 85-1467. HOFFMAN *v.* DAVIDOFF EXTENSION, S. A. C. A. 11th Cir. Certiorari denied. Reported below: 774 F. 2d 1178.

475 U. S.

April 21, 1986

No. 85-1470. *COMMUNITY NUTRITION INSTITUTE ET AL. v. YOUNG, COMMISSIONER OF FOOD AND DRUG ADMINISTRATION, ET AL.* C. A. D. C. Cir. Certiorari denied. Reported below: 249 U. S. App. D. C. 150, 773 F. 2d 1356.

No. 85-1473. *EDWARDS v. GOLDBERG ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 779 F. 2d 50.

No. 85-1474. *WILLIAMS v. UNITED STATES.* C. A. 9th Cir. Certiorari denied. Reported below: 780 F. 2d 1029.

No. 85-1475. *KALIN ET AL. v. CASILLAS, DISTRICT DIRECTOR, IMMIGRATION AND NATURALIZATION SERVICE.* C. A. 5th Cir. Certiorari denied. Reported below: 780 F. 2d 533.

No. 85-1478. *BOYCE v. RIDGELY ET AL., PERSONAL REPRESENTATIVES OF THE ESTATE OF BOYCE.* Ct. Sp. App. Md. Certiorari denied.

No. 85-1484. *OWEN STEEL CO., INC., ET AL. v. SOUTH CAROLINA TAX COMMISSION ET AL.* Sup. Ct. S. C. Certiorari denied. Reported below: 287 S. C. 274, 337 S. E. 2d 880.

No. 85-1489. *HILGEFORD ET AL. v. PEOPLES BANK, PORTLAND, INDIANA.* C. A. 7th Cir. Certiorari denied. Reported below: 776 F. 2d 176.

No. 85-1497. *FLYNN v. COMMISSIONER OF INTERNAL REVENUE.* C. A. 6th Cir. Certiorari denied. Reported below: 782 F. 2d 1042.

No. 85-1531. *GUMZ v. MORRISSETTE ET AL.* C. A. 7th Cir. Certiorari denied. Reported below: 772 F. 2d 1395.

No. 85-1532. *FLEMING v. MOORE.* C. A. 4th Cir. Certiorari denied. Reported below: 780 F. 2d 438.

No. 85-1534. *BOLDEN v. UNITED STATES;* and

No. 85-1562. *EDWARDS v. UNITED STATES.* C. A. 11th Cir. Certiorari denied. Reported below: 777 F. 2d 644.

No. 85-1552. *MOSHER v. INTERNAL REVENUE SERVICE ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 775 F. 2d 1292.

No. 85-1557. *GREENSPAN v. UNITED STATES.* C. A. 1st Cir. Certiorari denied. Reported below: 782 F. 2d 1025.

April 21, 1986

475 U. S.

No. 85-1564. CADE ET AL. *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 777 F. 2d 703.

No. 85-1566. KAKAR *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 251 U. S. App. D. C. 197, 782 F. 2d 279.

No. 85-1567. VARRASO *v.* UNITED STATES. Ct. Mil. App. Certiorari denied. Reported below: 21 M. J. 129.

No. 85-1580. GIBSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 782 F. 2d 1037.

No. 85-5873. BEST *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 491 A. 2d 480.

No. 85-5911. ROUCO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 765 F. 2d 983.

No. 85-6038. WALKER *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 133 Ill. App. 3d 1155, 496 N. E. 2d 18.

No. 85-6074. YOUNG *v.* HENDERSON, SUPERINTENDENT, AUBURN CORRECTIONAL FACILITY, ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 765 F. 2d 136.

No. 85-6167. CRITTENDON *v.* KENTUCKY. Sup. Ct. Ky. Certiorari denied.

No. 85-6221. GOMETZ *v.* UNITED STATES;

No. 85-6222. FOUNTAIN *v.* UNITED STATES; and

No. 85-6230. SILVERSTEIN *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 768 F. 2d 790 and 777 F. 2d 345.

No. 85-6227. GLASGOW *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 790 F. 2d 446.

No. 85-6352. BORDAN *v.* STRATTON. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 85-6360. SMITH *v.* SCULLY, SUPERINTENDENT, GREEN HAVEN CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied. Reported below: 779 F. 2d 37.

No. 85-6361. PEARSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 780 F. 2d 1031.

475 U. S.

April 21, 1986

No. 85-6385. *RICHARDS v. TENNESSEE*. Sup. Ct. Tenn. Certiorari denied.

No. 85-6391. *CARTER ET AL. v. LOUISIANA*. Ct. App. La., 3d Cir. Certiorari denied.

No. 85-6392. *NOLL v. PETROVSKY, WARDEN, ET AL.* C. A. 8th Cir. Certiorari denied. Reported below: 786 F. 2d 1168.

No. 85-6393. *RAY v. WHITE, WARDEN, ET AL.* C. A. 11th Cir. Certiorari denied. Reported below: 777 F. 2d 703.

No. 85-6399. *MORRIS v. CHRISTIAN HOSPITAL*. Ct. App. Mo., Eastern Dist. Certiorari denied. Reported below: 682 S. W. 2d 492.

No. 85-6401. *KALTENBACH v. LOUISIANA*. Ct. App. La., 3d Cir. Certiorari denied.

No. 85-6402. *MUELLER v. PETSOCK, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AND DIAGNOSTIC AND CLASSIFICATION CENTER*. C. A. 3d Cir. Certiorari denied.

No. 85-6405. *CRAWFORD v. PARKS ET AL.* Ct. App. Ga. Certiorari denied. Reported below: 176 Ga. App. 497, 336 S. E. 2d 585.

No. 85-6406. *BOYER v. FREY ET AL.* C. A. 8th Cir. Certiorari denied. Reported below: 786 F. 2d 1168.

No. 85-6408. *MCDANIEL v. KELLUM*. C. A. 5th Cir. Certiorari denied.

No. 85-6409. *CISNEROS v. MERIT SYSTEMS PROTECTION BOARD*. C. A. Fed. Cir. Certiorari denied.

No. 85-6412. *MASTERS v. WHITTAKER STEEL ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 765 F. 2d 145.

No. 85-6416. *REDMAN v. WAINWRIGHT, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL.* C. A. 11th Cir. Certiorari denied. Reported below: 774 F. 2d 1178.

No. 85-6419. *LAMPKIN v. WAINWRIGHT, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS*. Dist. Ct. App. Fla., 4th Dist. Certiorari denied. Reported below: 480 So. 2d 1320.

April 21, 1986

475 U. S.

No. 85-6420. *WHITE v. ILLINOIS*. App. Ct. Ill., 2d Dist. Certiorari denied. Reported below: 134 Ill. App. 3d 262, 479 N. E. 2d 1121.

No. 85-6421. *JAHN v. BOWEN, SECRETARY OF HEALTH AND HUMAN SERVICES*. C. A. 7th Cir. Certiorari denied. Reported below: 779 F. 2d 54.

No. 85-6423. *SHIMKUS v. ILLINOIS*. App. Ct. Ill., 2d Dist. Certiorari denied. Reported below: 135 Ill. App. 3d 981, 482 N. E. 2d 194.

No. 85-6426. *CISSELL v. WISCONSIN*. Sup. Ct. Wis. Certiorari denied. Reported below: 127 Wis. 2d 205, 378 N. W. 2d 691.

No. 85-6427. *MITCHELL v. OHIO*. Ct. App. Ohio, Hamilton County. Certiorari denied.

No. 85-6431. *DALE v. SOUTH DAKOTA*. Sup. Ct. S. D. Certiorari denied. Reported below: 379 N. W. 2d 811.

No. 85-6432. *JACKSON v. NEWSOME, WARDEN*. Sup. Ct. Ga. Certiorari denied.

No. 85-6434. *MORALES v. LEFEVRE, SUPERINTENDENT, CLINTON CORRECTIONAL FACILITY, ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 788 F. 2d 1.

No. 85-6436. *DAY v. CONTINENTAL INSURANCE COS.* C. A. 8th Cir. Certiorari denied. Reported below: 786 F. 2d 1169.

No. 85-6437. *CAMPBELL v. WAINWRIGHT, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS*. C. A. 11th Cir. Certiorari denied. Reported below: 738 F. 2d 1573.

No. 85-6443. *FRENCH v. O'LEARY, WARDEN, ET AL.* C. A. 7th Cir. Certiorari denied.

No. 85-6444. *LAMPKIN v. MORRIS, SUPERINTENDENT, SOUTH-EASTERN TRAINING CENTER*. C. A. 6th Cir. Certiorari denied. Reported below: 785 F. 2d 309.

No. 85-6445. *GUNTHER v. WORKMEN'S COMPENSATION APPEAL BOARD*. Sup. Ct. Pa. Certiorari denied.

No. 85-6446. *HOWARD v. FITZPATRICK ET AL.* C. A. 11th Cir. Certiorari denied.

475 U. S.

April 21, 1986

No. 85-6449. *MAYFIELD v. NATIONAL BROADCASTING CORP. ET AL.* C. A. 11th Cir. Certiorari denied. Reported below: 770 F. 2d 173.

No. 85-6450. *RUTLEDGE v. ILLINOIS.* App. Ct. Ill., 3d Dist. Certiorari denied. Reported below: 135 Ill. App. 3d 259, 481 N. E. 2d 348.

No. 85-6452. *TODD v. REES, SUPERINTENDENT, DEUEL VOCATIONAL INSTITUTION.* C. A. 9th Cir. Certiorari denied.

No. 85-6453. *SAWDEY v. SMITH, SUPERINTENDENT, ATTICA CORRECTIONAL FACILITY.* C. A. 2d Cir. Certiorari denied. Reported below: 788 F. 2d 2.

No. 85-6455. *FARQUHAR v. FOOD AND DRUG ADMINISTRATION.* C. A. D. C. Cir. Certiorari denied.

No. 85-6459. *OSTROM v. HOUSEWRIGHT, DIRECTOR, NEVADA DEPARTMENT OF PRISONS, ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 774 F. 2d 1174.

No. 85-6463. *GUICHARD v. UNITED STATES.* C. A. 5th Cir. Certiorari denied. Reported below: 779 F. 2d 1139.

No. 85-6466. *CAMPBELL v. MONTANA.* Sup. Ct. Mont. Certiorari denied. Reported below: — Mont. —, 711 P. 2d 1357.

No. 85-6469. *DRAPER v. MURRAY, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS.* C. A. 4th Cir. Certiorari denied. Reported below: 779 F. 2d 45.

No. 85-6473. *GARIVAY v. McCOTTER, DIRECTOR, TEXAS DEPARTMENT OF CORRECTIONS.* C. A. 5th Cir. Certiorari denied. Reported below: 779 F. 2d 680.

No. 85-6477. *WHITE v. MOORE, CHAIRMAN AND COMPACT ADMINISTRATOR, MISSOURI BOARD OF PROBATION AND PAROLE, ET AL.* C. A. 8th Cir. Certiorari denied. Reported below: 786 F. 2d 1169.

No. 85-6479. *DORSEY v. BOWEN, SECRETARY OF HEALTH AND HUMAN SERVICES.* C. A. 5th Cir. Certiorari denied. Reported below: 779 F. 2d 680.

No. 85-6490. *TIPTON v. BOWEN, SECRETARY OF HEALTH AND HUMAN SERVICES.* C. A. 5th Cir. Certiorari denied. Reported below: 777 F. 2d 699.

April 21, 1986

475 U. S.

No. 85-6493. *KAHN v. UNITED STATES*. C. A. 4th Cir.
Certiorari denied. Reported below: 786 F. 2d 1157.

No. 85-6503. *VELLA v. UNITED STATES*. C. A. 11th Cir.
Certiorari denied. Reported below: 780 F. 2d 1031.

No. 85-6505. *RIVERA v. GREEN ET AL.* C. A. 9th Cir.
Certiorari denied. Reported below: 775 F. 2d 1381.

No. 85-6513. *WRENN v. WALTERS, ADMINISTRATOR, VETERANS ADMINISTRATION*. C. A. D. C. Cir. Certiorari denied.

No. 85-6520. *MEYER v. UNITED STATES*. C. A. 9th Cir.
Certiorari denied. Reported below: 782 F. 2d 1054.

No. 85-6522. *ISENBERG v. UNITED STATES*. C. A. 3d Cir.
Certiorari denied. Reported below: 782 F. 2d 1032.

No. 85-6532. *TRIPP v. UNITED STATES*. C. A. 6th Cir.
Certiorari denied. Reported below: 782 F. 2d 38.

No. 85-6537. *HOOKS v. UNITED STATES*. C. A. 10th Cir.
Certiorari denied. Reported below: 780 F. 2d 1526.

No. 85-6539. *HAIRSTON v. UNITED STATES*. C. A. 6th Cir.
Certiorari denied. Reported below: 785 F. 2d 311.

No. 85-6543. *JACKSON v. UNITED STATES*. C. A. 11th Cir.
Certiorari denied. Reported below: 784 F. 2d 403.

No. 85-6564. *JAMES v. UNITED STATES*. C. A. 5th Cir.
Certiorari denied. Reported below: 784 F. 2d 1111.

No. 85-6567. *RODERICK v. UNITED STATES*. C. A. 4th Cir.
Certiorari denied. Reported below: 782 F. 2d 1037.

No. 85-6569. *HERNANDEZ v. UNITED STATES*. C. A. 9th Cir.
Certiorari denied. Reported below: 782 F. 2d 1054.

No. 85-6577. *SOTELO v. UNITED STATES*. C. A. 5th Cir.
Certiorari denied. Reported below: 778 F. 2d 1125.

No. 85-6579. *VOLINO v. UNITED STATES*. C. A. 3d Cir.
Certiorari denied. Reported below: 786 F. 2d 1149.

No. 85-6582. *TIERNO v. UNITED STATES*. C. A. 3d Cir.
Certiorari denied. Reported below: 782 F. 2d 1033.

475 U. S.

April 21, 1986

No. 85-791. O'DELL *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. JUSTICE WHITE would grant certiorari. Reported below: 751 F. 2d 387.

No. 85-1445. DEAS ET AL. *v.* PACCAR, INC. C. A. 11th Cir. Certiorari denied. JUSTICE WHITE would grant certiorari. Reported below: 775 F. 2d 1498.

No. 85-1454. WILL ET AL. *v.* COMPREHENSIVE ACCOUNTING CORP. ET AL. C. A. 7th Cir. Certiorari denied. JUSTICE WHITE would grant certiorari. Reported below: 776 F. 2d 665.

No. 85-1177. MILLER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. JUSTICE BRENNAN and JUSTICE MARSHALL would grant certiorari. Reported below: 776 F. 2d 978.

No. 85-1235. POYTHRESS ET AL. *v.* KESSLER. C. A. 11th Cir. Certiorari denied. Reported below: 777 F. 2d 1508.

CHIEF JUSTICE BURGER, with whom JUSTICE WHITE joins, dissenting.

This petition presents the question whether a prevailing plaintiff, a lawyer, who acted for herself may recover attorney's fees under 42 U. S. C. § 1988. The Courts of Appeals have uniformly held that a *pro se* litigant may not recover attorney's fees under § 1988, since such a litigant does not require the assistance of an attorney to enforce his rights. *Lovell v. Snow*, 637 F. 2d 170 (CA1 1981); *Pitts v. Vaughn*, 679 F. 2d 311 (CA3 1982); *Cofield v. City of Atlanta*, 648 F. 2d 986 (CA5 1981); *Rheuark v. Shaw*, 628 F. 2d 297 (CA5 1980), cert. denied *sub nom.* *Rheuark v. Dallas County, Texas*, 450 U. S. 931 (1981); *Davis v. Parratt*, 608 F. 2d 717 (CA8 1979); *Turman v. Tuttle*, 711 F. 2d 148 (CA10 1983).

Here, the Court of Appeals for the Eleventh Circuit required the District Court to award fees to respondent Kathleen Kessler, who is an attorney, even though she was proceeding *pro se*. 777 F. 2d 1508 (1985). In the analogous context of attorney's fee awards under the Freedom of Information Act, 5 U. S. C. § 552(a)(4)(E), the Courts of Appeals have reached conflicting conclusions concerning whether a *pro se* plaintiff who is also an attorney is entitled to fees. Compare *Falcone v. Internal Revenue Service*, 714 F. 2d 646 (CA6 1983) (attorney-litigant denied fees), cert. denied, 466 U. S. 908 (1984), with *Cazalas v. United States Dept. of Justice*, 709 F. 2d 1051 (CA5 1983) (attorney-

April 21, 1986

475 U. S.

litigant entitled to fees). District Courts have also reached conflicting determinations concerning an attorney-plaintiff's eligibility for fees under § 1988. Compare *Rybicki v. State Board of Elections of Ill.*, 584 F. Supp. 849 (ND Ill. 1984) (attorney-plaintiff entitled to fees), with *Lawrence v. Staats*, 586 F. Supp. 1375 (DC 1984) (attorney-plaintiff denied fees).

Because the award of fees under § 1988 and under the Freedom of Information Act have much in common, and because the award of fees in this case is in conflict with the general rule against the award of fees to *pro se* litigants, I would grant certiorari in order to resolve the conflicting decisions in the lower federal courts.

No. 85-1314. WILSEY, INDIVIDUALLY AND AS SPECIAL ADMINISTRATRIX OF THE ESTATE OF HAMMEL *v.* EDDINGFIELD ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 780 F. 2d 614.

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

Petitioner Krista Wilsey, an Iowa resident, filed this wrongful-death action in the United States District Court for the Central District of Illinois against respondents, three Illinois physicians. Specifically, petitioner alleged that respondents had been negligent in performing surgery on her 4-year-old daughter, the decedent. Petitioner also requested that she be appointed special administrator of the estate of her deceased daughter so that she could properly prosecute the action: Under Illinois law, a special administrator is appointed to administer a decedent's estate where the only asset of that estate is a cause of action for wrongful death. See Ill. Rev. Stat., ch. 70, ¶2.1 (1986). Jurisdiction was allegedly based on diversity of citizenship under 28 U. S. C. § 1332.

A panel of the United States Court of Appeals for the Seventh Circuit, however, held that diversity jurisdiction was lacking and dismissed the action. 780 F. 2d 614 (1985). Relying on its earlier decision in *Betar v. De Havilland Aircraft of Canada, Ltd.*, 603 F. 2d 30 (1979), the Court of Appeals concluded that a special administrator under Illinois law has no personal stake in the proceeds of a wrongful-death action but merely distributes those proceeds to the statutory beneficiaries. Consequently, the statutory beneficiaries and not the special administrator are the real parties in interest whose citizenship is determinative for di-

475 U. S.

April 21, 1986

versity purposes. Because the decedent's father, one of the statutory beneficiaries, was an Illinois resident, there was incomplete diversity between the parties and diversity jurisdiction was lacking.

This holding, as the Court of Appeals itself recognized, is in conflict with the Tenth Circuit's decision in *Hackney v. Newman Memorial Hospital, Inc.*, 621 F. 2d 1069 (1980), in which that court found diversity jurisdiction to be proper in a very similar situation involving the Oklahoma wrongful-death statute. See also, *e. g.*, *Bettin v. Nelson*, 744 F. 2d 53 (CA8 1984); *Bianca v. Parke-Davis Pharmaceutical Div. of Warner-Lambert Co.*, 723 F. 2d 392 (CA5 1984). Moreover, as Judge Posner pointed out in his dissent from the Court of Appeals' decision not to rehear this case en banc, under Illinois law the special administrator is a fiduciary of the estate's beneficiaries and has sole control over the litigation. See *Rodgers v. Consolidated Railroad Corp.*, 136 Ill. App. 3d 191, 193, 482 N. E. 2d 1080, 1082 (1985). Thus, the holding below is also in tension with this Court's decision in *Navarro Savings Assn. v. Lee*, 446 U. S. 458, 465 (1980), in which we held that business trustees—"active trustees whose control over the assets held in their names is real and substantial"—were real parties in interest for diversity purposes. See also *Mecom v. Fitzsimmons Co.*, 284 U. S. 183 (1931). In addition, defining diversity jurisdiction by the citizenship of the statutory beneficiaries, the approach taken by the Seventh Circuit panel, could make for a difficult and time-consuming determination in ascertaining diversity for jurisdictional purposes. See *Navarro, supra*, at 464, n. 13.

Because of the conflict among the Circuits and the tension between the Court of Appeals' holding and our decision in *Navarro*, I would grant certiorari.

No. 85-1399. EDWARD HINES LUMBER COMPANY OF OREGON *v.* LUMBER & SAWMILL WORKERS LOCAL NO. 2588 ET AL. C. A. 9th Cir. Motion of Chamber of Commerce of the United States for leave to file a brief as *amicus curiae* granted. Certiorari denied. Reported below: 764 F. 2d 631.

No. 85-1414. LAPEYROUSE GRAIN CORP. ET AL. *v.* NELSON, DBA W. J. NELSON Co. Sup. Ct. Ala. Motion of petitioner to defer consideration of the petition for certiorari denied. Certiorari denied. Reported below: 497 So. 2d 1160.

April 21, 1986

475 U. S.

No. 85-1476. BLACKBURN, WARDEN *v.* FLOWERS. C. A. 5th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 779 F. 2d 1115.

No. 85-6147. KING *v.* HEALY ET AL. Ct. App. Cal., 1st App. Dist. Certiorari denied. JUSTICE MARSHALL would grant certiorari.

No. 85-6299. ESQUIVEL *v.* MCCOTTER, DIRECTOR, TEXAS DEPARTMENT OF CORRECTIONS. C. A. 5th Cir.; and

No. 85-6365. QUINCE *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: No. 85-6299, 777 F. 2d 956; No. 85-6365, 477 So. 2d 535.

JUSTICE BRENNAN and JUSTICE MARSHALL, dissenting.

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

Rehearing Denied

No. 84-1360. CITY OF RENTON ET AL. *v.* PLAYTIME THEATRES, INC., ET AL., *ante*, p. 41;

No. 84-1636. MORRIS, SUPERINTENDENT, SOUTHERN OHIO CORRECTIONAL FACILITY *v.* MATHEWS, *ante*, p. 237;

No. 85-897. KOWALCHUK *v.* UNITED STATES, *ante*, p. 1012;

No. 85-979. SVENDROWSKI *v.* MISSOURI, *ante*, p. 1001;

No. 85-982. SAMPSON *v.* RASKIN ET AL., *ante*, p. 1013;

No. 85-1050. TRAHAN *v.* TRAHAN, *ante*, p. 1002;

No. 85-1090. HUDNUT, MAYOR OF CITY OF INDIANAPOLIS, INDIANA, ET AL. *v.* AMERICAN BOOKSELLERS ASSN., INC., ET AL., *ante*, p. 1001;

No. 85-1115. MOATS *v.* WICK, DIRECTOR, UNITED STATES INFORMATION AGENCY, ET AL., *ante*, p. 1017;

No. 85-1123. TAYLOR *v.* UNITED STATES ET AL., *ante*, p. 1018;

No. 85-5386. FLEMING *v.* KEMP, WARDEN, *ante*, p. 1058;

No. 85-5907. LUMBERT *v.* DEROBERTIS, WARDEN, *ante*, p. 1022;

No. 85-5921. IN RE MURPHY, *ante*, p. 1008; and

No. 85-5935. SMITH *v.* SOUTH CAROLINA, *ante*, p. 1031. Petitions for rehearing denied.

475 U. S.

April 21, 22, 1986

No. 85-5952. *GISRIEL v. BOARD OF APPEALS, MARYLAND DEPARTMENT OF EMPLOYMENT AND TRAINING*, *ante*, p. 1023;

No. 85-5964. *LEVENTHAL v. UNITED STATES DEPARTMENT OF LABOR ET AL.*, *ante*, p. 1024;

No. 85-5998. *RUNNELS v. KINGSTON ET AL.*, *ante*, p. 1025;

No. 85-6009. *BOGGS v. VIRGINIA*, *ante*, p. 1031;

No. 85-6058. *LACKHOUSE v. MERIT SYSTEMS PROTECTION BOARD ET AL.*, *ante*, p. 1049;

No. 85-6070. *FIELDS v. SIMMONS ET AL.*, *ante*, p. 1027;

No. 85-6139. *REEDER v. MORRIS, SUPERINTENDENT, SOUTHERN OHIO CORRECTIONAL FACILITY*, *ante*, p. 1051;

No. 85-6193. *COLATRIANO v. CAVE ET AL.*, *ante*, p. 1052; and

No. 85-6231. *SOMMER v. CLINTON COUNTY SUPREME COURT ET AL.*, *ante*, p. 1067. Petitions for rehearing denied.

No. 84-1044. *PACIFIC GAS & ELECTRIC Co. v. PUBLIC UTILITIES COMMISSION OF CALIFORNIA ET AL.*, *ante*, p. 1. Petition for rehearing denied. JUSTICE BLACKMUN took no part in the consideration or decision of this petition.

No. 85-961. *HOLDING v. SOVRAN BANK ET AL.*, *ante*, p. 1036. Petition for rehearing denied. JUSTICE POWELL took no part in the consideration or decision of this petition.

No. 85-6194. *RODMAN v. REED ET AL.*, *ante*, p. 1066. Petition for rehearing denied. JUSTICE BRENNAN took no part in the consideration or decision of this petition.

APRIL 22, 1986

Miscellaneous Order

No. A-807 (85-6761). *FUNCHESS v. WAINWRIGHT, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS*. C. A. 11th Cir. Application for stay of execution of sentence of death, presented to JUSTICE POWELL, and by him referred to the Court, is granted until 5:00 p.m., April 22, 1986.

Certiorari Denied

No. 85-6761 (A-807). *FUNCHESS v. WAINWRIGHT, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS*. C. A. 11th Cir. The order heretofore entered staying execution of sentence of death until 5:00 p.m., April 22, 1986, is vacated. Application for stay of execution of sentence of death, presented to JUSTICE POWELL, and by him referred to the Court, denied. Certiorari denied. Reported below: 788 F. 2d 1443.

April 22, 28, 1986

475 U. S.

JUSTICE BRENNAN and JUSTICE MARSHALL, dissenting.

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

APRIL 28, 1986

Appeals Dismissed

No. 84-1672. *HEPPS ET AL. v. PHILADELPHIA NEWSPAPERS, INC., ET AL.* 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: 506 Pa. 304, 485 A. 2d 374.

No. 85-6501. *ROBINSON v. 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.

No. 85-6004. *CLARK v. FLORIDA.* Appeal from Dist. Ct. App. Fla., 5th Dist., dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied.

CHIEF JUSTICE BURGER.

I agree that we should dismiss this improper appeal, and treating the appeal as a petition for certiorari, deny certiorari. The merits of this appeal are utterly frivolous, as were most of appellant's persistent efforts in the courts of Florida. In light of that frivolousness, as well as appellant's status as a member of the Florida Bar, I would award the State costs and fees under Rule 49.2.

This case originated when appellant Bret Clark received a speeding ticket while traveling on the Florida Turnpike on August 12, 1982. At the time he was a law student. Appellant pleaded not guilty, went to trial *pro se* and lost; he was fined \$100. On appeal the Fifth Judicial Circuit Court of Florida, sitting in its appellate capacity, affirmed without opinion on September 4, 1984. At some point during 1984 appellant graduated from law school and was admitted to the Florida Bar.

Five months later, on February 14, 1985, appellant sought a writ of certiorari from the Florida Fifth District Court of Appeal. Under Florida Rule of Appellate Procedure 9.100(c), however, a petition for that writ must be filed within 30 days of the order sought to be reviewed, or in this case, no later than October 4, 1984. Appellant claimed that his petition was nevertheless timely under an exception to the rule when denial of appellate review would be fundamentally unfair, because he claimed he did not become aware of the Fifth Judicial Circuit's order of affirmance until January 14, 1985, after his driver's license had been suspended by the Florida Department of Highway Safety and Motor Vehicles. He apparently failed to inform the Circuit Court of his change of address while appeal was pending and to keep a watchful eye on that court's docket, as he was obligated to do if he intended to pursue his claim.

On the merits, he challenged the arresting officer's failure to show him the digital display on the radar detection device indicating that he was exceeding the speed limit. He also challenged the Florida sentencing procedure as discriminating against traffic offenders who plead not guilty by imposing "double or nothing" fines that exceed the fine imposed if they plead guilty, thereby discouraging offenders from protesting their guilt. Finally, he challenged the constitutionality of the 55-mile-per-hour speed limit. The Court of Appeal ordered the State to show cause why the petition should not be granted, and the State filed a response raising the jurisdictional bar based on the untimely filing of the petition. On April 15, 1985, the court dismissed the petition for lack of jurisdiction.

Undeterred, appellant filed a motion for rehearing which was stricken as untimely. Over a month later he filed a motion to recall mandate and a suggestion for reconsideration. At this point the State, frustrated with appellant's frivolous litigious efforts, filed a response pointing out that the court had no power to recall mandate, and that no mandate had even issued. The State also moved for attorney's fees pursuant to Fla. Stat. § 57.105 (1985), which provides for an award of fees where a losing party's position is completely lacking any "justiciable issue" of law or fact. The State emphasized that appellant's motion for recall of mandate

"demonstrates a startling ignorance of the law, and, more importantly, an unwillingness to expend even minimal effort

to research facts or law before taking the time of this counsel and this honorable court. . . . [T]he correspondence and pleadings in this cause . . . amply demonstrate petitioner's misconception that his law training entitles him to file whatever he wants whenever he wants without the slightest regard for the law or judicial resources." App. to Juris. Statement A-4.

Appellant responded by citing a Florida District Court of Appeal decision from 1980 supporting his position that the court could consider his rehearing motion. See *Rogers v. State Farm Mutual Automobile Insurance Co.*, 390 So. 2d 138 (Fla. App. 1980). He also asserted that the State's motion for fees "demonstrate[d] a shocking degree of arrogance and lack of professionalism," App. to Juris. Statement A-7, and that the State, "by its motion, reveals that it has nothing but contempt for a law student who does not simply permit an injustice to run its course, paying an unjust penalty." *Id.*, at A-8.

The Court of Appeal issued an order to show cause why sanctions should not be awarded, and appellant again responded that his efforts were not frivolous, relying on the same 1980 case. He claimed his driver's "license was suspended without notice or an opportunity to be heard." *Id.*, at A-10. The State filed a notice of supplemental authority pointing out that the 1980 case upon which appellant relied had been *reversed* by the Florida Supreme Court in 1981. See *State Farm Mutual Automobile Insurance Co. v. Judges of District Court of Appeal, Fifth District*, 405 So. 2d 980 (Fla. 1981), *reversing* 390 So. 2d 138 (Fla. App.). The Court of Appeal thereafter denied the motion for recall of mandate and awarded attorney's fees in the amount of \$100 against appellant pursuant to Florida Rule of Appellate Procedure 9.400(b).

Not one to suffer defeat lightly, appellant untimely moved the Court of Appeal to review its order granting the nominal \$100 fee award. *For the first time*, as appellant acknowledges, see Juris. Statement 2, he claimed that the award of sanctions was in retaliation for certain correspondence he had sent to the Court of Appeal complaining about the "denial" of appellate review of his conviction, in violation of his First Amendment right to petition for redress of grievances. He contended that the fee statute was therefore "repugnant to the Constitution and laws of the United States." App. to Juris. Statement A-14. The Court of Appeal

summarily denied his motion to review the award on September 12, 1985, and the Florida Supreme Court informed appellant that it lacked jurisdiction to review orders granting fee awards under Rule 9.400(c) on November 14, 1985.

From the Florida Fifth District Court of Appeal's "final" order, appellant brings this appeal challenging the fee award as in violation of the First Amendment. He claims Fla. Stat. § 57.105 (1985) permits an award of fees based "upon the vague concept of what constitutes a 'justiciable issue.'" Juris. Statement 2. This claim, coming from an attorney, is so utterly frivolous as to not warrant any further discussion. All this suggests is that appellant considers the judicial system a laboratory where small boys can play.

Rule 49.2 provides that "[w]hen an appeal or petition for writ of certiorari is frivolous, the Court may award the appellee or the respondent appropriate damages." Plainly this is an appropriate case for sanctions. As the State makes clear:

"This case, although the subject of considerable judicial attention, has been troubled by two common elements—untimeliness and only casual observance of proper state procedural rules. Every pleading Clark filed after the affirmance of his speeding ticket was either late or inappropriate and filed with but a minimal knowledge of relevant procedure. That which started him litigating in the Fifth District Court of Appeal was filed almost four months late. Even after being informed that the court was without jurisdiction to entertain the petition, Clark nevertheless persisted in his efforts to obtain something to which he was not legally entitled under state law. When that persistence resulted in a motion for him to pay for the state's costs in the litigation, he was given an opportunity to show cause why such an assessment should not issue. At most, Clark only offered reasons which had nothing to do with the purpose of the motion." Motion to Dismiss 4-5.

Appellant now claims that he "is the victim of a state court system which, confronted by a critical and recalcitrant defendant, decided to punish him for attempting to assert his right to a day in court on an appeal from a conviction in a presumably routine traffic case." Brief Opposing Motion to Dismiss 1. This distorted framing of the issue simply illuminates the frivolousness of this

April 28, 1986

475 U. S.

appeal. The extended proceedings in this case make clear that no one has denied Bret Clark his day in court. Rather, appellant has demonstrated a contempt for the Florida courts and the system of justice by repeatedly ignoring filing deadlines and by raising patently frivolous claims. As a result of his protracted efforts to keep this case alive, the State has been denied its right to put an end to this tedious litigation.

This curious sequence suggests the dangers of a system of legal education that trains students in technique without instilling a sense of professional responsibility and ethics—a bit like giving a small boy a loaded pistol without instruction as to when and how it is to be used. Had he thus conducted himself after finishing law school and before being admitted to practice the State would plainly have been entitled to conclude that he was unfit to be a member of the Bar.

I would impose a penalty of \$1,000 in favor of the State against appellant, who, as a member of the Florida Bar, has abused his privilege to practice law by repeatedly filing frivolous papers.

Certiorari Granted—Vacated and Remanded

No. 85-1295. TYUS *v.* MARTINEZ. C. A. 10th Cir. Certiorari granted, judgment vacated, and case remanded to the Court of Appeals to consider the question of mootness. Reported below: 771 F. 2d 424 and 778 F. 2d 553.

No. 85-1446. UNITED RETAIL WORKERS UNION, LOCAL 881, CHARTERED BY THE UNITED FOOD & COMMERCIAL WORKERS INTERNATIONAL UNION *v.* NATIONAL LABOR RELATIONS BOARD ET AL. C. A. 7th Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *NLRB v. Financial Institution Employees*, ante, p. 192. Reported below: 774 F. 2d 752.

No. 85-6213. MURPHY *v.* HOLLAND, WARDEN. 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 *Michigan v. Jackson*, ante, p. 625. Reported below: 776 F. 2d 470.

Certiorari Dismissed

No. 84-6903. MATTHESON *v.* PHELPS, SECRETARY, LOUISIANA DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONS. C. A.

475 U. S.

April 28, 1986

5th Cir. Petition for writ of certiorari dismissed as moot. Reported below: 751 F. 2d 1432.

Miscellaneous Orders

No. — — —. SMITH *v.* TRANSWORLD DRILLING COMPANY VESSEL. Motion to direct the Clerk to file a petition for writ of certiorari out of time denied.

No. A-749. TREADWELL FORD, INC. *v.* CAMPBELL ET AL. Sup. Ct. Ala. Application for stay, addressed to JUSTICE BLACKMUN and referred to the Court, denied. JUSTICE BLACKMUN would deny this application as moot.

No. D-519. IN RE DISBARMENT OF DAVIS. Disbarment entered. [For earlier order herein, see 474 U. S. 896.]

No. 85-494. CALIFORNIA FEDERAL SAVINGS & LOAN ASSN. ET AL. *v.* GUERRA, DIRECTOR, DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING, ET AL. C. A. 9th Cir. [Certiorari granted, 474 U. S. 1049.] Motion of American Civil Liberties Union et al. for leave to participate in oral argument as *amici curiae*, for divided argument, and for additional time for oral argument denied.

No. 85-495. ANSONIA BOARD OF EDUCATION ET AL. *v.* PHILBROOK ET AL. C. A. 2d Cir. [Certiorari granted, 474 U. S. 1080.] Motion of respondent Ansonia Federation of Teachers for divided argument and for additional time for oral argument denied.

No. 85-767. NORTH CAROLINA DEPARTMENT OF TRANSPORTATION ET AL. *v.* CREST STREET COMMUNITY COUNCIL, INC., ET AL. C. A. 4th Cir. [Certiorari granted, 474 U. S. 1049.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 85-6491. IN RE PALLETT. Petition for writ of habeas corpus denied.

No. 85-6304. IN RE PARKER;

No. 85-6396. IN RE WOLLAK;

No. 85-6488. IN RE HEGWOOD; and

No. 85-6517. IN RE FRAZIER. Petitions for writs of mandamus denied.

April 28, 1986

475 U. S.

No. 85-6364. *IN RE MAY*. Petition for writ of mandamus and/or prohibition denied.

Certiorari Denied. (See also Nos. 84-1672, 85-6501, and 85-6004, *supra*.)

No. 85-1122. *BEHREND ET AL. v. GODWIN ET AL.* C. A. 3d Cir. *Certiorari* denied. Reported below: 774 F. 2d 1150.

No. 85-1234. *BENAVIDES, WEBB COUNTY JUDGE, ET AL. v. GONZALEZ*. C. A. 5th Cir. *Certiorari* denied. Reported below: 774 F. 2d 1295.

No. 85-1318. *ADAMICK ET AL. v. HODEL, SECRETARY OF THE INTERIOR, ET AL.* C. A. 9th Cir. *Certiorari* denied. Reported below: 776 F. 2d 1052.

No. 85-1413. *MARCANTONIO v. UNITED STATES*. C. A. 7th Cir. *Certiorari* denied. Reported below: 776 F. 2d 1051.

No. 85-1464. *NEWKIRK ET AL. v. BIGARD, INDIVIDUALLY AND DBA B & B OIL CO., ET AL.* Sup. Ct. Ill. *Certiorari* denied. Reported below: 109 Ill. 2d 28, 485 N. E. 2d 321.

No. 85-1465. *MARYLAND STATE TEACHERS ASSN., INC., ET AL. v. HUGHES, GOVERNOR OF MARYLAND, ET AL.* C. A. 4th Cir. *Certiorari* denied.

No. 85-1468. *WOODS v. SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA (JONES, REAL PARTY IN INTEREST)*. Ct. App. Cal., 1st App. Dist. *Certiorari* denied.

No. 85-1469. *MASSACHUSETTS DEPARTMENT OF EDUCATION ET AL. v. DAVID D.* C. A. 1st Cir. *Certiorari* denied. Reported below: 775 F. 2d 411.

No. 85-1482. *TILKENS, PERSONAL REPRESENTATIVE OF THE ESTATE OF JONES v. PARKS*. Ct. App. Okla. *Certiorari* denied. Reported below: 710 P. 2d 123.

No. 85-1492. *BORG-WARNER LEASING, A DIVISION OF BORG-WARNER ACCEPTANCE CORP. v. DOYLE ELECTRIC CO., INC., ET AL.* C. A. 11th Cir. *Certiorari* denied. Reported below: 767 F. 2d 936.

No. 85-1496. *ALPERSTEIN ET AL. v. THREE LAKES WATER AND SANITATION DISTRICT*. Ct. App. Colo. *Certiorari* denied. Reported below: 710 P. 2d 1186.

475 U. S.

April 28, 1986

No. 85-1498. *MOORE ET AL. v. VOLKSWAGENWERK, A. G., ET AL.* C. A. 4th Cir. Certiorari denied.

No. 85-1509. *VINTILLA ET AL. v. UNITED STATES STEEL CORPORATION PLAN FOR EMPLOYEE PENSION BENEFITS.* C. A. 3d Cir. Certiorari denied. Reported below: 782 F. 2d 1033.

No. 85-1516. *GIAMMARIO ET AL. v. TRENTON BOARD OF EDUCATION ET AL.* Super. Ct. N. J., App. Div. Certiorari denied. Reported below: 203 N. J. Super. 356, 497 A. 2d 199.

No. 85-1523. *CALDWELL v. ENOCH, JUDGE, 101ST DISTRICT COURT OF TEXAS, ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 736 F. 2d 1525.

No. 85-1527. *JOHNSON v. NORTH DAKOTA.* Sup. Ct. N. D. Certiorari denied. Reported below: 379 N. W. 2d 291.

No. 85-1595. *KARAPINKA v. UNION CARBIDE CORP.* C. A. 2d Cir. Certiorari denied.

No. 85-1601. *WINFIELD v. UNITED STATES.* C. A. 6th Cir. Certiorari denied. Reported below: 782 F. 2d 1044.

No. 85-1614. *POLLINA v. UNITED STATES.* C. A. 2d Cir. Certiorari denied. Reported below: 782 F. 2d 358.

No. 85-5591. *STEELE v. UNITED STATES; and*

No. 85-5704. *GODFREY v. UNITED STATES.* C. A. 11th Cir. Certiorari denied. Reported below: 763 F. 2d 1401.

No. 85-5925. *BREWER v. GARNER, WARDEN.* Ct. Crim. App. Tex. Certiorari denied.

No. 85-5936. *THIBODEAU v. MAINE.* Sup. Jud. Ct. Me. Certiorari denied. Reported below: 496 A. 2d 635.

No. 85-6108. *SCOTT v. UNITED STATES.* C. A. 9th Cir. Certiorari denied. Reported below: 772 F. 2d 915.

No. 85-6109. *BROWN v. UNITED STATES.* C. A. 2d Cir. Certiorari denied. Reported below: 776 F. 2d 397.

No. 85-6164. *MILLER v. OREGON.* Sup. Ct. Ore. Certiorari denied. Reported below: 300 Ore. 203, 709 P. 2d 225.

No. 85-6171. *DAVENPORT ET AL. v. CALIFORNIA.* App. Dept., Super. Ct. Cal., County of Santa Barbara. Certiorari

April 28, 1986

475 U. S.

denied. Reported below: 176 Cal. App. 3d Supp. 10, 222 Cal. Rptr. 736.

No. 85-6200. *NEAL v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 780 F. 2d 1023.

No. 85-6234. *WILLIS v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 778 F. 2d 789.

No. 85-6274. *DEAN v. YOUNG, SUPERINTENDENT, WAUPUN CORRECTIONAL INSTITUTION, ET AL.* C. A. 7th Cir. Certiorari denied. Reported below: 777 F. 2d 1239.

No. 85-6478. *QUINN v. ARMONTROUT, DIRECTOR, MISSOURI DEPARTMENT OF CORRECTIONS, ET AL.* C. A. 8th Cir. Certiorari denied.

No. 85-6482. *WILLIAMS v. ALABAMA ET AL.* C. A. 11th Cir. Certiorari denied. Reported below: 775 F. 2d 303.

No. 85-6483. *BERGSTROM v. WASHINGTON*. Ct. App. Wash. Certiorari denied. Reported below: 41 Wash. App. 1056.

No. 85-6484. *GRIEDER v. ILLINOIS DEPARTMENT OF EMPLOYMENT SECURITY ET AL.* App. Ct. Ill., 4th Dist. Certiorari denied. Reported below: 135 Ill. App. 3d 1167, 496 N. E. 2d 1278.

No. 85-6485. *HALL v. GRANT, SUPERINTENDENT, CORRECTIONS CAMP PROGRAM*. C. A. 6th Cir. Certiorari denied. Reported below: 780 F. 2d 1021.

No. 85-6486. *EDABURN v. WISCONSIN*. Ct. App. Wis. Certiorari denied. Reported below: 127 Wis. 2d 563, 378 N. W. 2d 297.

No. 85-6487. *HALL v. HENDERSON, SUPERINTENDENT, AUBURN CORRECTIONAL FACILITY*. C. A. 2d Cir. Certiorari denied.

No. 85-6489. *JETER v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 775 F. 2d 670.

No. 85-6492. *JENKINS v. RAFFERTY, WARDEN, ET AL.* C. A. 3d Cir. Certiorari denied. Reported below: 774 F. 2d 1151.

No. 85-6494. *HAKIM v. WOLVERINE PACKING Co.* Sup. Ct. Mich. Certiorari denied. Reported below: 422 Mich. 971.

475 U. S.

April 28, 1986

No. 85-6496. *BENEDUM v. PERINI, SUPERINTENDENT, MARION CORRECTIONAL INSTITUTION*. C. A. 6th Cir. Certiorari denied. Reported below: 782 F. 2d 1041.

No. 85-6497. *GATES v. JOHNSON, WARDEN, ET AL.* C. A. 11th Cir. Certiorari denied. Reported below: 779 F. 2d 58.

No. 85-6500. *PRIVETT v. TENNESSEE*. Ct. Crim. App. Tenn. Certiorari denied.

No. 85-6502. *SUTTON v. MORRIS, WARDEN*. C. A. 9th Cir. Certiorari denied. Reported below: 776 F. 2d 1053.

No. 85-6507. *KELLER v. PETSOCK, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AND DIAGNOSTIC AND CLASSIFICATION CENTER, ET AL.* C. A. 3d Cir. Certiorari denied.

No. 85-6541. *SPANN v. CLARK*. Ct. App. Ga. Certiorari denied. Reported below: 171 Ga. App. 690, 320 S. E. 2d 822.

No. 85-6585. *FLEMING v. CONNECTICUT*. Sup. Ct. Conn. Certiorari denied. Reported below: 198 Conn. 255, 502 A. 2d 886.

No. 85-6597. *LLOYD v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 787 F. 2d 585.

No. 85-6598. *BARKER ET AL. v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 785 F. 2d 214.

No. 85-6601. *CARR v. BOWEN, SECRETARY OF HEALTH AND HUMAN SERVICES*. C. A. 2d Cir. Certiorari denied. Reported below: 795 F. 2d 78.

No. 85-6609. *SPEAR v. UNITED STATES*. C. A. Fed. Cir. Certiorari denied. Reported below: 790 F. 2d 93.

No. 85-6615. *GUZMAN v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 781 F. 2d 428.

No. 85-465. *MOUNTAIN PLAINS CONGRESS OF SENIOR ORGANIZATIONS ET AL. v. MALCHMAN ET AL.* C. A. 2d Cir. Certiorari denied. JUSTICE BLACKMUN would grant certiorari. JUSTICE STEVENS took no part in the consideration or decision of this petition. Reported below: 761 F. 2d 893.

April 28, 1986

475 U. S.

No. 85-744. MAINE *v.* THIBODEAU. Sup. Jud. Ct. Me. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 496 A. 2d 635.

CHIEF JUSTICE BURGER, dissenting.

John Tower's brother reported him missing on October 27, 1983; his mother told police that he had last been seen taking respondent Jay Thibodeau for a test drive in his car that he had for sale. On the morning of October 28, police officers went to the Thibodeau apartment where they spoke with respondent in the presence of his parents for about 10 minutes. Respondent told police that he and Tower had gone for a test drive the previous day, after which Tower dropped him off at home.

Two police officers returned to the Thibodeau household that afternoon and asked respondent to show them the route he and Tower had taken the day before. Respondent agreed and got into the backseat of the police car, a two-door automobile. For about an hour and a half the three retraced the complicated route respondent described to the police, after which respondent was returned home. At no time did respondent ask to leave the car. At one point in the journey respondent asked if he was a suspect. The police stated that he had been the last person seen with the victim, to which respondent replied, "Well, I guess I am."

Two days later police found John Tower's body, shot in the head with a .22-caliber rifle. The next day, police discovered that respondent had traded in his .22-caliber rifle for another gun. Police arrested respondent on November 1. After waving his *Miranda* rights, respondent confessed to the killing.

At trial respondent moved to suppress his statements to the police on the morning and afternoon of October 28 on the ground that he was subjected to custodial interrogations without the necessary *Miranda* warnings. The trial court denied the motion, finding that the statements were "voluntary beyond a reasonable doubt" and that "the circumstances did not constitute custodial interrogation" because respondent had willingly cooperated with the police in generally noncoercive settings.

The Maine Supreme Judicial Court, three justices dissenting, reversed respondent's murder conviction on the ground that the afternoon session with police constituted a custodial interrogation requiring *Miranda* warnings. 496 A. 2d 635 (1985). The court listed the following criteria for determining whether there had

been a custodial interrogation: (1) the locale where the statements were made; (2) the party initiating the contact; (3) the existence or nonexistence of probable cause to arrest; (4) the subjective intent of the police; (5) the subjective belief of the defendant; and (6) the focus of the investigation. Applying these factors to this case, the court noted that the officers' suspicions had "increased dramatically since the morning" and that, although no crime had yet been detected, respondent "was the *only* suspect." *Id.*, at 639. Furthermore, a reasonable person would have felt, as did respondent, that he had no choice but to accompany the officers. Finally, by placing him in the backseat of a two-door automobile, police had deprived him of his freedom in a significant way.

This decision of the Maine Supreme Judicial Court illustrates an acute need for clarification of the proper factors to be considered in making the "in custody" determination—a clarification perhaps made necessary by our own lack of clarity as to the standards to be applied. However, four of the six factors enumerated by the Maine court have been rejected by either this Court or other state and federal courts.

(1) We plainly rejected the relevancy of the "subjective intent of the police" in *Berkemer v. McCarty*, 468 U. S. 420, 442 (1984), where we stated "[a] policeman's unarticulated plan has no bearing on the question whether a suspect was 'in custody' at a particular time."

(2) In *Beckwith v. United States*, 425 U. S. 341 (1976), we held that whether police suspicion had focused upon the defendant has no bearing whatever on the "in custody" determination: "It was the compulsive aspect of custodial interrogation, and not the strength or content of the government's suspicions at the time the questioning was conducted, which led the Court to impose the *Miranda* requirements with regard to custodial questioning." *Id.*, at 346-347 (quoting *United States v. Caiello*, 420 F. 2d 471, 473 (CA2 1969)). See also *People v. Black*, 698 P. 2d 766 (Colo. 1984) (trial court erred in suppressing evidence by considering whether the police's investigation had "focused" on the defendant). Cf. *Green v. Superior Court*, 40 Cal. 3d 126, 707 P. 2d 248 (1985) (lack of police suspicion dispositive).

(3) The Ninth Circuit has held that the existence of probable cause at the time of the interrogation is similarly irrelevant. See *United States v. Woods*, 720 F. 2d 1022 (1983).

(4) In *Berkemer* we noted that "the only relevant inquiry is how a reasonable man in the suspect's position would have understood his situation." 468 U. S., at 442. The Maine court eschewed this objective test, substituting instead the "subjective belief of the defendant." But see *State v. Willis*, 145 Vt. 459, 475, 494 A. 2d 108, 116 (1985) ("Inquiring into the subjective thoughts of either the police or the defendant is likely to pervert the factfinding process in a *Miranda* hearing . . ."); *State v. Cruz-Mata*, 138 Ariz. 370, 373, 674 P. 2d 1368, 1371 (1983) (the test is not whether the defendant "felt" he or she was in custody, but rather whether objective indicia of arrest are present, including the site of the questioning, the length of the interrogation, and the method used to summon the individual); *People v. Viduya*, 703 P. 2d 1281, 1286 (Colo. 1985) ("We have held that this question of custody turns on an objective assessment of whether a reasonable person in the suspect's position would believe himself to be deprived of his freedom of action in any significant way"). The Oregon Supreme Court espouses yet a third view, stating that the touchstone of the "in custody" determination is whether "the officer should be aware that the totality of circumstances in which the interrogation takes place is such that the person questioned would reasonably believe he is not free to leave." *State v. White*, 297 Ore. 302, 310, 685 P. 2d 983, 987 (1984).

With this confusion, it is perhaps helpful to turn for guidance to the *Miranda* decision itself. In *Miranda*, the Court stated that "[b]y custodial interrogation, we mean questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way." *Miranda v. Arizona*, 384 U. S. 436, 444 (1966). As the trial court found, in this case there is no indication that the questioning took place in a context where respondent's freedom was restricted in any significant way. Respondent voluntarily accompanied the officers. He never asked to leave. The police never told him that he was not free to leave, never used any physical restraint of any kind, never threatened him, never confronted him with any incriminating evidence, and dropped him off at home at the end of the trip. Respondent was not being coerced by the "inherently compelling pressures" of a custodial setting. See *Miranda, supra*, at 467. As he testified in the suppression hearing, he took police on the long road trip "to keep them off [his] track." It was he, and not the police, who exploited the situation.

475 U. S.

April 28, 1986

Respondent may have therefore unwisely placed himself in an uncomfortable position, but no more so than a suspect who voluntarily comes to the police station for questioning, see *Beckwith, supra*; *Oregon v. Mathiason*, 429 U. S. 492 (1977), or a motorist who is involuntarily detained for questioning concerning a traffic violation. See *Berkemer, supra*.

The Maine Supreme Judicial Court's rejection of the factual findings of the trial court cannot be reconciled with the decisions of this and other courts. I would grant the petition and give plenary consideration to this case.

No. 85-1038. EUROQUILT, INC. v. SCANDIA DOWN CORP. ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 772 F. 2d 1423.

JUSTICE WHITE, dissenting.

One of the questions presented by this case is whether, in a trademark infringement action under § 43(a) of the Lanham Act, 15 U. S. C. § 1125(a), a district court's finding of "likelihood of confusion" is reviewable under the "clearly erroneous" standard, as a finding of fact, or *de novo*, as a conclusion of law. As I have previously noted, the Courts of Appeals are divided on this question. *Elby's Big Boy of Steubenville, Inc. v. Frisch's Restaurants, Inc.*, 459 U. S. 916 (1982) (WHITE, J., dissenting from denial of certiorari). I would grant certiorari to resolve this conflict.

No. 85-1281. HIBERNIA NATIONAL BANK IN NEW ORLEANS v. CHUNG, YONG IL, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 774 F. 2d 1043.

JUSTICE WHITE, dissenting.

In this case, the United States Court of Appeals for the Eleventh Circuit held that the penalty wage provision of 46 U. S. C. § 596, which operates in favor of seamen whose wages are not timely paid, applies to wages earned aboard a docked vessel for which no voyage has been scheduled. *Chung, Yong Il v. Overseas Navigation Co.*, 774 F. 2d 1043 (1985). This holding conflicts with the decisions in *Compton v. Alton Steamship Co.*, 608 F. 2d 96 (CA4 1979), and *Eaton v. S.S. Export Challenger*, 376 F. 2d 725 (CA4 1967).

The Eleventh Circuit also held that penalty wages continued to accrue against petitioner despite its filing with the District Court

April 28, 1986

475 U. S.

of a \$400,000 letter of undertaking, in lieu of a bond, by which petitioner guaranteed payment of all maritime liens against its vessel. In so holding, the Eleventh Circuit rejected the view expressed in *Southern Cross Steamship Co. v. Firipis*, 285 F. 2d 651, 659-660 (CA4 1960), and *Swain v. Isthmian Lines, Inc.*, 360 F. 2d 81, 88, n. 26 (CA3 1966), that a shipowner may stop the accruing of penalty wages by placing in the hands of the court the allegedly unlawfully withheld wages.

Additionally, the Eleventh Circuit held that penalty wages continued to accrue against petitioner up to the actual payment of the disputed wages shortly prior to oral argument on appeal. This ruling is difficult if not impossible to square with *Pacific Mail S.S. Co. v. Schmidt*, 241 U. S. 245 (1916), which we recently characterized with approval as "holding that when an appeal is taken on reasonable grounds, the penalty should not apply to delays in payment beyond the date on which the district court's decree is entered, since those delays are supported by sufficient cause." *Griffin v. Oceanic Contractors, Inc.*, 458 U. S. 564, 574, n. 9 (1982).

I would grant certiorari to resolve the questions presented concerning the correct interpretation of the penalty wage statute.

No. 85-1435. *LITTLE v. FIRST BAPTIST CHURCH, CRESTWOOD*. Cir. Ct., City of Chesapeake, Va. Certiorari denied.

JUSTICE MARSHALL, with whom JUSTICE BRENNAN joins, dissenting.

In this case a state court conducted an election to determine whether petitioner, who was previously elected pastor of the First Baptist Church, Crestwood (Church), is still entitled to serve as pastor. I believe that such an action threatens to erode the First Amendment's prohibitions against entanglement between religious and secular authority, and I would therefore grant the petition for certiorari.

I

In December 1982 petitioner was elected pastor of the Church. The Church is congregational or self-governing, as opposed to associational or hierarchical, which refers to churches that are part of and governed by a larger organization. See generally *Watson v. Jones*, 13 Wall. 679, 722-728 (1872). During 1984 petitioner and certain members of the Church became involved in a dispute. Respondents, individual members of the Church, then filed this action for an injunction, claiming to act on behalf of the Church. Respondents alleged that at a duly held meeting of the

1148

MARSHALL, J., dissenting

congregation, a majority had voted to terminate petitioner's employment. Petitioner's answer disputed respondents' authority to initiate the action on behalf of the Church.

The trial court, based only on the pleadings, temporarily enjoined petitioner from entering the Church premises and appointed a commissioner to hold an election of the congregation. After the commissioner had held the election and certified to the court that a majority had voted to fire petitioner, the court permanently enjoined petitioner from entering Church property or interfering in Church affairs.

II

Because religious organizations may own property and enter into contracts, it is inevitable that they will become involved in legal disputes. However, where the use of property or the terms of contracts necessitate reference to ecclesiastical principles or authority, courts must exercise extreme care to avoid taking sides on matters of religious belief. This Court set down the basic framework for such situations over 100 years ago, in *Watson, supra*. Although it has undergone some refinements, see, e. g., *Jones v. Wolf*, 443 U. S. 595 (1979), the *Watson* approach is simple. A court may apply neutral principles of secular law to the dispute at hand. When that process requires a court to determine the validity of a church decision, the court ordinarily must discern from the relevant canonical law what body is authorized to make a particular decision within the church, and what decision that body has reached. Having done so, the court may not inquire whether the decision was made arbitrarily or whether it conflicts with the ecclesiastical precepts of the organization. *Serbian Eastern Orthodox Diocese v. Milivojevich*, 426 U. S. 696 (1976); *Maryland and Virginia Eldership v. Church of God at Sharpsburg, Inc.*, 396 U. S. 367, 368 (1970) (BRENNAN, J., concurring).

In the present case the trial court clearly did not follow this method; indeed it imposed its own view of proper procedures on the congregation's decisionmaking. The court took respondents' word that they represented the Church without any evidence, although petitioner contested the fact. The court made no inquiry into whether the alleged meeting at which petitioner was fired actually took place, whether a quorum was present, or how the members voted. Lacking any evidence that the authorized decisionmaker had acted, the court induced a decision on its own initiative.

April 28, 1986

475 U. S.

This participation in the decisionmaking of an ecclesiastical body is both dangerous and unwarranted. Courts have no business "helping" a religious organization to make its wishes known. The court in this case should have limited its inquiry to the terms of petitioner's employment contract and to whether the Church had taken the actions requisite to terminating that contract. If the authorized body had indeed terminated petitioner's employment, then the court could validly have taken steps to enforce the Church's right to keep petitioner off Church property. Until respondents, who bore the burden of proof, demonstrated that such termination had taken place, the court's only proper response was to do nothing. Because the trial court instead plunged directly into the dispute, heedless of the severe risk of entanglement in religious affairs, I dissent from this Court's denial of certiorari.

No. 85-1477. LUCY, PERSONAL REPRESENTATIVE OF THE ESTATE OF LUCY, ET AL. *v.* AMOCO OIL CO. C. A. 6th Cir. Motions of Concerned Leaders in Government, Education and Business and Service Station Dealers of America, Inc., for leave to file briefs as *amici curiae* granted. Certiorari denied. Reported below: 780 F. 2d 1022.

No. 85-6170. PRESCOTT *v.* NEW YORK. Ct. App. N. Y. Certiorari denied. JUSTICE WHITE would grant certiorari. Reported below: 66 N. Y. 2d 216, 486 N. E. 2d 813.

No. 85-6495. HOLCOMB *v.* PENNSYLVANIA. Sup. Ct. Pa. Certiorari denied. Reported below: 508 Pa. 425, 498 A. 2d 833.

JUSTICE BRENNAN and JUSTICE MARSHALL, dissenting.

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

Rehearing Denied

No. 83-6950. MAY *v.* KROGER CO. ET AL., 469 U. S. 847; and

No. 84-1538. FISHER ET AL. *v.* CITY OF BERKELEY, CALIFORNIA, ET AL., *ante*, p. 260. Petitions for rehearing denied. JUSTICE BRENNAN took no part in the consideration or decision of these petitions.

475 U. S.

April 28, 1986

- No. 85-676. *BOCK v. NEW YORK ET AL.*, 474 U. S. 996;
No. 85-6001. *DOOLEY v. BELCHER*, *ante*, p. 1002;
No. 85-6002. *DOOLEY v. FEDERAL HOME LOAN MORTGAGE CORPORATION ET AL.*, *ante*, p. 1002;
No. 85-6100. *KALYON v. NEW YORK*, *ante*, p. 1086;
No. 85-6144. *ACUFF v. HENRY ET AL.*, *ante*, p. 1042;
No. 85-6150. *IN RE NELSON*, *ante*, p. 1044; and
No. 85-6293. *MCDONALD v. TENNESSEE*, *ante*, p. 1088. Petitions for rehearing denied.
- No. 85-1182. *HUMBLE EXPLORATION CO., INC., ET AL. v. BROWNING ET AL.*, *ante*, p. 1065;
No. 85-1185. *WHEATON v. CITY OF OKLAHOMA CITY ET AL.*, *ante*, p. 1062;
No. 85-6186. *TUCKER ET AL. v. MASCHNER, WARDEN, ET AL.*, *ante*, p. 1066;
No. 85-6201. *PRANTIL v. CALIFORNIA*, *ante*, p. 1067; and
No. 85-6212. *SMIGA v. DEAN WITTER REYNOLDS, INC.*, *ante*, p. 1067. Petitions for rehearing denied. JUSTICE BRENNAN took no part in the consideration or decision of these petitions.

