

ORDERS FROM MAY 5 THROUGH
JUNE 16, 1986

MAY 5, 1986

Appeals Dismissed

No. 85-1425. REPUBLICAN PARTY OF HAWAII ET AL. *v.* MINK ET AL. Appeal from Sup. Ct. Haw. dismissed for want of substantial federal question. Reported below: 68 Haw. —, 711 P. 2d 723.

No. 85-6104. CORDOVA *v.* TEXAS. Appeal from Ct. Crim. App. Tex. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied. Reported below: 698 S. W. 2d 107.

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.

Certiorari Granted—Vacated and Remanded

No. 84-1783. JORDAN *v.* MISSISSIPPI. Sup. Ct. Miss. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Skipper v. South Carolina*, ante, p. 1. Reported below: 464 So. 2d 475.

No. 84-1942. NATIONWIDE MUTUAL INSURANCE CO. *v.* CLAY. Sup. Ct. Ala. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Aetna Life Insurance Co. v. Lavoie*, 475 U. S. 813 (1986). Reported below: 469 So. 2d 533.

No. 85-5087. ELMORE *v.* SOUTH CAROLINA. Sup. Ct. S. C. Motion of petitioner for leave to proceed *in forma pauperis* and certiorari granted. Judgment vacated and case remanded for further consideration in light of *Skipper v. South Carolina*, ante, p. 1. Reported below: 286 S. C. 70, 332 S. E. 2d 762.

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No. 85-5339. *JONES v. SOUTH CAROLINA*. Sup. Ct. S. C. Motion of petitioner for leave to proceed *in forma pauperis* and certiorari granted. Judgment vacated and case remanded for further consideration in light of *Skipper v. South Carolina, ante*, p. 1. Reported below: 288 S. C. 1, 340 S. E. 2d 782.

No. 85-5411. *PLEMMONS v. SOUTH CAROLINA*. Sup. Ct. S. C. Motion of petitioner for leave to proceed *in forma pauperis* and certiorari granted. Judgment vacated and case remanded for further consideration in light of *Skipper v. South Carolina, ante*, p. 1. Reported below: 286 S. C. 78, 332 S. E. 2d 765.

No. 85-6063. *VALLE v. FLORIDA*. Sup. Ct. Fla. Motion of petitioner for leave to proceed *in forma pauperis* and certiorari granted. Judgment vacated and case remanded for further consideration in light of *Skipper v. South Carolina, ante*, p. 1. Reported below: 474 So. 2d 796.

Miscellaneous Orders

No. — — —. *LESLIE v. UNITED STATES*. Motion to direct the Clerk to file a petition for writ of certiorari which does not comply with the Rules of this Court denied.

No. A-760. *SMITH v. UNITED STATES*. Application for bail pending appeal, addressed to JUSTICE STEVENS and referred to the Court, denied.

No. A-804. *SEABOARD SYSTEM RAILROAD, INC. v. PAGE*. Sup. Ct. Ala. Application for stay pending appeal, presented to JUSTICE POWELL, and by him referred to the Court, denied. JUSTICE BLACKMUN would grant the application.

No. D-553. *IN RE DISBARMENT OF VELASQUEZ*. It is ordered that Ray Velasquez, of Marlow Heights, 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. D-556. *IN RE DISBARMENT OF SODOWICK*. It is ordered that Michael Samuel Sodowick, of West Caldwell, 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. 81, Orig. *KENTUCKY v. INDIANA ET AL.* Accounting of the Special Master is received and ordered filed. The Special

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Master appointed by the Court is discharged with the thanks of the Court. [For earlier decision herein, see, *e. g.*, 474 U. S. 1.]

No. 84-1947. CERBONE, JUSTICE OF THE VILLAGE COURT, VILLAGE OF MT. KISCO, NEW YORK, ET AL. *v.* CONWAY. C. A. 2d Cir. [Certiorari granted, 474 U. S. 1100.] Motion of petitioners for divided argument denied.

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 appellants for leave to file a supplemental brief after argument granted.

No. 85-1524. HUBBARD BROADCASTING, INC. *v.* SOUTHERN SATELLITE SYSTEMS, INC., ET AL. C. A. 8th Cir. The Solicitor General is invited to file a brief in this case expressing the views of the United States.

No. 85-6562. BAXTER *v.* FEDERAL COMMUNICATIONS COMMISSION. C. A. D. C. Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied. Petitioner is allowed until May 27, 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. 85-6628. IN RE BURNEY. Petition for writ of habeas corpus denied.

Probable Jurisdiction Noted

No. 85-1513. EDWARDS, GOVERNOR OF LOUISIANA, ET AL. *v.* AGUILLARD ET AL. Appeal from C. A. 5th Cir. Probable jurisdiction noted. Reported below: 765 F. 2d 1251.

Certiorari Granted

No. 85-1140. ATCHISON, TOPEKA & SANTA FE RAILWAY CO. *v.* BUELL. C. A. 9th Cir. Certiorari granted. Reported below: 771 F. 2d 1320.

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No. 85-1517 (A-619). *COLORADO v. SPRING*. Sup. Ct. Colo. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari granted limited to Question 1 presented by the petition. Application for stay, presented to JUSTICE WHITE, and by him referred to the Court, is granted pending the issuance of the mandate of this Court. Reported below: 713 P. 2d 865.

Certiorari Denied. (See also No. 85-6104, *supra*.)

No. 85-550. *UNION OIL COMPANY OF CALIFORNIA v. SPAETH*. C. A. 10th Cir. Certiorari denied. Reported below: 762 F. 2d 865.

No. 85-695. *ILLINOIS CENTRAL GULF RAILROAD CO. v. COLEMAN*. Sup. Ct. Ala. Certiorari denied. Reported below: 475 So. 2d 498.

No. 85-751. *MOTION PICTURE LABORATORY TECHNICIANS & FILM TAPE EDITORS LOCAL 780 OF THE INTERNATIONAL ALLIANCE OF THEATRICAL STAGE EMPLOYEES & MOVING PICTURE MACHINE OPERATORS OF THE UNITED STATES AND CANADA, AFL-CIO v. NATIONAL AERONAUTICS AND SPACE ADMINISTRATION ET AL.* C. A. 7th Cir. Certiorari denied. Reported below: 774 F. 2d 1167.

No. 85-859. *SULLIVAN v. TEXAS*. Ct. App. Tex., 1st Sup. Jud. Dist. Certiorari denied. Reported below: 678 S. W. 2d 162.

No. 85-946. *KERR-MCGEE CORP. ET AL. v. SILKWOOD, ADMINISTRATOR OF THE ESTATE OF SILKWOOD*. C. A. 10th Cir. Certiorari denied. Reported below: 769 F. 2d 1451.

No. 85-1083. *MOECKLY v. UNITED STATES*; and

No. 85-6019. *COULOMBE v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 769 F. 2d 453.

No. 85-1223. *KIMMEL v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 777 F. 2d 290.

No. 85-1268. *MASSMAN CONSTRUCTION CO. v. TENNESSEE VALLEY AUTHORITY*. C. A. 6th Cir. Certiorari denied. Reported below: 769 F. 2d 1114.

No. 85-1333. *NIMROD MARKETING (OVERSEAS) LTD. ET AL. v. TEXAS ENERGY INVESTMENT CORP. ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 769 F. 2d 1076.

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No. 85-1354. *DiBERNARDO ET AL. v. UNITED STATES*. C. A. 11th Cir. Certiorari denied. Reported below: 775 F. 2d 1470.

No. 85-1381. *HELLER v. UNITED STATES ET AL.* C. A. 3d Cir. Certiorari denied. Reported below: 776 F. 2d 92.

No. 85-1488. *LIGNAROLO ET AL. v. UNITED STATES*. C. A. 11th Cir. Certiorari denied. Reported below: 770 F. 2d 971.

No. 85-1506. *QUANSAH v. CTS PRINTEX CORP.* C. A. 9th Cir. Certiorari denied. Reported below: 779 F. 2d 56.

No. 85-1511. *BETTS v. ATTORNEY REGISTRATION AND DISCIPLINARY COMMISSION OF THE SUPREME COURT OF ILLINOIS*. Sup. Ct. Ill. Certiorari denied. Reported below: 109 Ill. 2d 154, 485 N. E. 2d 1081.

No. 85-1515. *RUSSELL v. TEXAS*. Ct. App. Tex., 1st Sup. Jud. Dist. Certiorari denied.

No. 85-1521. *SMITH v. OFFICE OF PERSONNEL MANAGEMENT*. C. A. 5th Cir. Certiorari denied. Reported below: 778 F. 2d 258.

No. 85-1522. *MILLER v. CITY OF CHICAGO ET AL.* C. A. 7th Cir. Certiorari denied. Reported below: 774 F. 2d 188.

No. 85-1526. *GOPAL v. CALIFORNIA*. Ct. App. Cal., 1st App. Dist. Certiorari denied. Reported below: 171 Cal. App. 3d 524, 217 Cal. Rptr. 487.

No. 85-1536. *ANGEL ET UX. v. MARTINSON, JUDGE, SUPERIOR COURT OF SAN DIEGO COUNTY (RENN, REAL PARTY IN INTEREST)*. Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 85-1539. *SANDHU v. AAMCO TRANSMISSIONS, INC.* C. A. 6th Cir. Certiorari denied. Reported below: 782 F. 2d 1043.

No. 85-1542. *ORLEANS v. CITY OF WILDWOOD HOUSING AUTHORITY ET AL.* C. A. 3d Cir. Certiorari denied. Reported below: 780 F. 2d 1016.

No. 85-1603. *STROZZI v. COLORADO*. Ct. App. Colo. Certiorari denied. Reported below: 712 P. 2d 1100.

No. 85-1619. *REDMOND v. UNITED STATES*. Ct. Mil. App. Certiorari denied. Reported below: 21 M. J. 319.

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No. 85-1638. *LAW MATHEMATICS & TECHNOLOGY, INC. v. UNITED STATES*. C. A. Fed. Cir. Certiorari denied. Reported below: 779 F. 2d 675.

No. 85-5965. *CLARK v. UNITED STATES*. C. A. 10th Cir. Certiorari denied.

No. 85-6080. *WILLIAMS v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 768 F. 2d 809.

No. 85-6124. *JOHNSON v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 779 F. 2d 47.

No. 85-6256. *GREEN v. CALIFORNIA*. Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 85-6269. *TAYLOR v. TENNESSEE*. Ct. Crim. App. Tenn. Certiorari denied.

No. 85-6271. *JONES v. CUYLER ET AL.* C. A. 3d Cir. Certiorari denied. Reported below: 780 F. 2d 1015.

No. 85-6277. *LAWRENCE v. MISSOURI*. Ct. App. Mo., Eastern Dist. Certiorari denied. Reported below: 700 S. W. 2d 111.

No. 85-6346. *BOGGS v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 775 F. 2d 582.

No. 85-6369. *KELLER v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 780 F. 2d 1029.

No. 85-6373. *HOWARD v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 779 F. 2d 47.

No. 85-6378. *CLEMENTS v. ILLINOIS*. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 135 Ill. App. 3d 1001, 482 N. E. 2d 675.

No. 85-6425. *BURNETT v. UNITED STATES*. C. A. 10th Cir. Certiorari denied. Reported below: 777 F. 2d 593.

No. 85-6458. *COOK v. UNITED STATES*. C. A. 9th Cir. Certiorari before judgment denied.

No. 85-6504. *WOOD v. XEROX CORP.* C. A. 9th Cir. Certiorari denied. Reported below: 780 F. 2d 1030.

No. 85-6508. *FRAZAR v. LOWE*. C. A. 5th Cir. Certiorari denied. Reported below: 778 F. 2d 788.

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No. 85-6515. *KALEC v. LANE, DIRECTOR, ILLINOIS DEPARTMENT OF CORRECTIONS, ET AL.* C. A. 7th Cir. Certiorari denied.

No. 85-6516. *SAVAGE v. OHIO.* Ct. App. Ohio, Franklin County. Certiorari denied.

No. 85-6524. *WASHINGTON v. ANGELONE, WARDEN, ET AL.* C. A. 10th Cir. Certiorari denied.

No. 85-6526. *COLE v. MISSOURI.* Ct. App. Mo., Western Dist. Certiorari denied. Reported below: 701 S. W. 2d 489.

No. 85-6528. *DAY v. POPE, FORMER CHIEF JUSTICE, SUPREME COURT OF TEXAS, ET AL.* C. A. 5th Cir. Certiorari denied.

No. 85-6529. *COULVERSON v. OHIO ADULT PAROLE AUTHORITY.* C. A. 6th Cir. Certiorari denied. Reported below: 758 F. 2d 652.

No. 85-6530. *YELLEN v. CALIFORNIA.* C. A. 9th Cir. Certiorari denied.

No. 85-6533. *PICCIOTTI v. ROBERTS, NEW YORK STATE COMMISSIONER OF LABOR.* App. Div., Sup. Ct. N. Y., 3d Jud. Dept. Certiorari denied.

No. 85-6534. *ORTH v. HOUSEWRIGHT, DIRECTOR, NEVADA DEPARTMENT OF PRISONS.* Sup. Ct. Nev. Certiorari denied. Reported below: 101 Nev. 961.

No. 85-6544. *KIMSEY v. CELESTE, GOVERNOR OF OHIO, ET AL.* Sup. Ct. Colo. Certiorari denied.

No. 85-6548. *RYAN v. STEPHEN.* Sup. Ct. Tex. Certiorari denied.

No. 85-6560. *WATSON v. MORRIS, SUPERINTENDENT, SOUTHERN OHIO CORRECTIONAL FACILITY.* C. A. 6th Cir. Certiorari denied. Reported below: 784 F. 2d 722.

No. 85-6589. *BOLES v. DEPARTMENT OF TRANSPORTATION.* C. A. Fed. Cir. Certiorari denied. Reported below: 790 F. 2d 92.

No. 85-6594. *EUSCH v. SKOW ET AL.* C. A. 7th Cir. Certiorari denied.

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No. 85-6596. WALKER *v.* CITY OF BOWLING GREEN, KENTUCKY, ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 785 F. 2d 311.

No. 85-6618. ANESI *v.* UNITED STATES DEPARTMENT OF AGRICULTURE. C. A. 8th Cir. Certiorari denied. Reported below: 786 F. 2d 1168.

No. 85-6652. GENNUSO *v.* EPPOLITO ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 788 F. 2d 1.

No. 85-6656. WATKINS *v.* UNITED STATES. Ct. Mil. App. Certiorari denied. Reported below: 21 M. J. 224.

No. 85-426. SAVE THE DUNES COUNCIL, INC. *v.* UNITED STATES ET AL. C. A. 7th Cir. Motion of Sierra Club for leave to file a brief as *amicus curiae* granted. Certiorari denied. Reported below: 754 F. 2d 855.

No. 85-953. CAGLE *v.* CARLSON ET AL. Ct. App. Ariz. Certiorari denied. JUSTICE WHITE and JUSTICE POWELL would grant certiorari. Reported below: 146 Ariz. 292, 705 P. 2d 1343.

No. 85-1362. STERN ET AL. *v.* TARRANT COUNTY HOSPITAL DISTRICT ET AL. C. A. 5th Cir. Certiorari denied. JUSTICE O'CONNOR took no part in the consideration or decision of this petition. Reported below: 778 F. 2d 1052.

No. 85-1518. VOLKSWAGEN OF AMERICA ET AL. *v.* ROSSELL, GUARDIAN AD LITEM OF KENNON, A MINOR. Sup. Ct. Ariz. Certiorari denied. JUSTICE O'CONNOR took no part in the consideration or decision of this petition. Reported below: 147 Ariz. 160, 709 P. 2d 517.

No. 85-1490. BASCH ET AL. *v.* WESTINGHOUSE CORP. C. A. 4th Cir. Certiorari denied. JUSTICE BLACKMUN took no part in the consideration or decision of this petition. Reported below: 777 F. 2d 165.

No. 85-1801. LARSON ET AL. *v.* FARGO WOMEN'S HEALTH ORGANIZATION, INC., ET AL. Appeal from Sup. Ct. N. D. Motion of appellants to treat the jurisdictional statement as a petition for writ of certiorari granted. Certiorari denied. Reported below: 381 N. W. 2d 176.

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No. 85-5881. HARRIMAN *v.* LOUISIANA. Sup. Ct. La. Certiorari denied. JUSTICE BRENNAN and JUSTICE MARSHALL would grant certiorari. Reported below: 474 So. 2d 1304.

No. 85-6276. BUNDY *v.* FLORIDA. Sup. Ct. Fla.;

No. 85-6325. JOHNSON *v.* MISSISSIPPI. Sup. Ct. Miss.;

No. 85-6511. ADAMS *v.* AIKEN, WARDEN, ET AL. Ct. Common Pleas of York County, S. C.;

No. 85-6512. SPANN *v.* SOUTH CAROLINA. Ct. Common Pleas of York County, S. C.; and

No. 85-6554. YOUNG *v.* MISSOURI. Sup. Ct. Mo. Certiorari denied. Reported below: No. 85-6276, 455 So. 2d 330; No. 85-6325, 477 So. 2d 196; No. 85-6554, 701 S. W. 2d 429.

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. 85-1124. CHRISTENSEN *v.* UNITED STATES (two cases), 475 U. S. 1018;

No. 85-5634. BERNARD *v.* BERNARD ET AL., 474 U. S. 1103;

No. 85-5903. BERNARD *v.* WARDEN ET AL., 474 U. S. 1104;

No. 85-6284. NELSON *v.* VETERANS ADMINISTRATION, 475 U. S. 1087;

No. 85-6368. IN RE KIERSTEAD, 475 U. S. 1094; and

No. 85-6371. IN RE KARRIEM ET AL., 475 U. S. 1094. Petitions for rehearing denied.

No. 85-1212. OLEN *v.* PURDUE ET AL., 475 U. S. 1065. Petition for rehearing denied. JUSTICE BRENNAN took no part in the consideration or decision of this petition.

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Miscellaneous Order

No. A-872. PINKERTON *v.* McCOTTER, DIRECTOR, TEXAS DEPARTMENT OF CORRECTIONS. Application for stay of execution of sentence of death, presented to JUSTICE WHITE, and by him referred to the Court, denied.

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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 in order to give the applicant time to file a petition for writ of certiorari, and would grant the petition and vacate the sentence in this case.

JUSTICE MARSHALL, with whom JUSTICE BRENNAN joins, dissenting.

Applicant seeks a stay of execution, claiming that the Eighth and Fourteenth Amendments are offended by the State's attempt to execute him for a crime he committed while a juvenile. This Court has not yet considered whether imposition of the death penalty for a minor's crimes is so antagonistic to civilized notions of morality as to transgress the bounds imposed by the Constitution. I believe it is time for this Court to address this issue of profound significance. See *Roach v. Aiken*, 474 U. S. 1039 (1986) (BRENNAN, J., joined by MARSHALL, J., dissenting). Accordingly, I would grant the stay of execution in order to afford Pinkerton an opportunity to present his claim in a petition for certiorari.

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Dismissal Under Rule 53

No. 85-777. NATIONAL FEDERATION OF FEDERAL EMPLOYEES *v.* DEFENSE LANGUAGE INSTITUTE. C. A. 9th Cir. Certiorari dismissed under this Court's Rule 53. Reported below: 767 F. 2d 1398.

Appeals Dismissed

No. 85-1257. ROGERS ET AL. *v.* CHEYENNE AIRPORT BOARD ET AL. Appeal from Sup. Ct. Wyo. dismissed for want of substantial federal question. Reported below: 707 P. 2d 717.

No. 85-1537. MUKA *v.* CARTER, CHIEF DISCIPLINARY COUNSEL. Appeal from Sup. Ct. R. I. dismissed for want of substantial federal question. Reported below: 502 A. 2d 327.

No. 85-1584. NIEDZWIECKI *v.* CIRCUIT PROTECTIVE DEVICES, DIVISION OF WESTINGHOUSE ELECTRIC CORP. Appeal from C. A. 2d Cir. dismissed for want of jurisdiction. Treating the

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papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied. Reported below: 795 F. 2d 79.

No. 85-1606. WHALERS' VILLAGE CLUB *v.* CALIFORNIA COASTAL COMMISSION. Appeal from Ct. App. Cal., 2d App. 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: 173 Cal. App. 3d 240, 220 Cal. Rptr. 2.

No. 85-1612. DE NARDO *v.* MURPHY ET AL. Appeal from C. A. 9th 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: 781 F. 2d 1345.

No. 85-6573. HUNTER *v.* ELLINWOOD. Appeal from Sup. Ct. N. M. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied.

No. 85-6674. IN RE DYSON. 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. 85-6688. BURY *v.* CITY OF LAKELAND, FLORIDA, ET AL. Appeal from C. A. 11th 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: 781 F. 2d 904.

No. 85-1596. STEIN DISTRIBUTING CO., INC. *v.* DEPARTMENT OF THE TREASURY, BUREAU OF ALCOHOL, TOBACCO AND FIREARMS. Appeal from C. A. 9th Cir. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied. JUSTICE WHITE and JUSTICE REHNQUIST would postpone jurisdiction to a hearing of the case on the merits. Reported below: 779 F. 2d 1407.

Certiorari Granted—Vacated and Remanded

No. 84-2026. LOCKHART, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION *v.* PITTS. C. A. 8th Cir. Motion of respondent for leave to proceed *in forma pauperis* and certiorari granted. Judgment vacated and case remanded for further consideration in

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light of *Lockhart v. McCree*, ante, p. 162. Reported below: 753 F. 2d 689.

No. 84-2027. *LOCKHART, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION v. RUIZ ET AL.* C. A. 8th Cir. Motion of respondents for leave to proceed *in forma pauperis* and certiorari granted. Judgment vacated and case remanded for further consideration in light of *Lockhart v. McCree*, ante, p. 162. Reported below: 754 F. 2d 254.

No. 84-2028. *SARGENT, WARDEN v. WOODARD.* C. A. 8th Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Lockhart v. McCree*, ante, p. 162. Reported below: 753 F. 2d 694.

No. 85-5768. *GRIFFIN v. WAINWRIGHT, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS.* C. A. 11th 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 *Cabana v. Bullock*, 474 U. S. 376 (1986). Reported below: 760 F. 2d 1505.

Miscellaneous Orders

No. A-800. *KINNEY v. KINNEY.* App. Ct. Conn. Application for stay, addressed to JUSTICE REHNQUIST and referred to the Court, denied.

No. A-825. *SHUMATE v. PATTERSON.* C. A. 4th Cir. Application for stay of mandate, addressed to JUSTICE MARSHALL and referred to the Court, denied.

No. A-853 (85-1609). *HASTINGS, UNITED STATES DISTRICT JUDGE, ET AL. v. GODBOLD, CHIEF JUDGE, UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT, ET AL.* C. A. 11th Cir. Application of Investigating Committee for order vacating stay entered by the United States Court of Appeals for the Eleventh Circuit, presented to JUSTICE POWELL, and by him referred to the Court, denied.

No. D-526. *IN RE DISBARMENT OF DOBBS.* Disbarment entered. [For earlier order herein, see 474 U. S. 917.]

No. D-545. *IN RE DISBARMENT OF WILLIS.* Disbarment entered. [For earlier order herein, see 475 U. S. 1003.]

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No. D-547. *IN RE DISBARMENT OF MAGRUDER*. Disbarment entered. [For earlier order herein, see 475 U. S. 1063.]

No. 85-1027. *ARIZONA v. HICKS*. Ct. App. Ariz. [Certiorari granted, 475 U. S. 1107.] Motion for appointment of counsel granted, and it is ordered that John William Rood III, Esquire, of Phoenix, Ariz., be appointed to serve as counsel for respondent in this case.

No. 85-1792. *BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES v. RICHMOND, FREDERICKSBURG & POTOMAC RAILROAD CO.* C. A. 4th Cir.; and

No. 85-1852. *BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES v. BURLINGTON NORTHERN RAILROAD CO. ET AL.* C. A. 7th Cir. Motion of petitioner to expedite consideration of the petitions for writs of certiorari before judgment denied.

No. 85-6702. *IN RE MUELLER*. Petition for writ of habeas corpus denied.

No. 85-6606. *IN RE BASALYGA*. Petition for writ of mandamus denied.

No. 85-6580. *IN RE OSIPOVA*. Petition for writ of prohibition denied.

Probable Jurisdiction Noted

No. 85-1244. *CITY OF PLEASANT GROVE v. UNITED STATES*. Appeal from D. C. D. C. Probable jurisdiction noted. Reported below: 623 F. Supp. 782.

No. 85-1370. *ARKANSAS WRITERS' PROJECT, INC. v. RAGLAND, COMMISSIONER OF REVENUE OF ARKANSAS*. Appeal from Sup. Ct. Ark. Probable jurisdiction noted. Reported below: 287 Ark. 155, 697 S. W. 2d 94 and 698 S. W. 2d 802.

No. 85-1530. *BROCK, SECRETARY OF LABOR, ET AL. v. ROADWAY EXPRESS, INC.* Appeal from D. C. N. D. Ga. Probable jurisdiction noted. Reported below: 624 F. Supp. 197.

Certiorari Granted

No. 85-1360. *INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL-CIO, ET AL. v. HECHLER*. C. A. 11th Cir. Certiorari granted. Reported below: 772 F. 2d 788.

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No. 85-899. *CONNECTICUT v. BARRETT*. Sup. Ct. Conn. Motion of respondent for leave to proceed *in forma pauperis* and certiorari granted. Reported below: 197 Conn. 50, 495 A. 2d 1044.

No. 85-1409. *BOWEN, SECRETARY OF HEALTH AND HUMAN SERVICES v. YUCKERT*. C. A. 9th Cir. Motion of respondent for leave to proceed *in forma pauperis* and certiorari granted. Reported below: 774 F. 2d 1365.

Certiorari Denied. (See also Nos. 85-1584, 85-1606, 85-1612, 85-6573, 85-6674, 85-6688, and 85-1596, *supra*.)

No. 85-860. *BIASINI v. NEW YORK*. County Court of Montgomery County, N. Y. Certiorari denied.

No. 85-1190. *ASSOCIATED GAS DISTRIBUTORS ET AL. v. FEDERAL ENERGY REGULATORY COMMISSION ET AL.*; and

No. 85-1207. *TRANSCONTINENTAL GAS PIPE LINE CORP. ET AL. v. FEDERAL ENERGY REGULATORY COMMISSION ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 769 F. 2d 1053.

No. 85-1210. *SANTIESTEBAN v. NEW MEXICO*. Ct. App. N. M. Certiorari denied.

No. 85-1219. *TRANSWESTERN PIPELINE CO. v. FEDERAL ENERGY REGULATORY COMMISSION ET AL.*;

No. 85-1236. *ANR PIPELINE CO. v. FEDERAL ENERGY REGULATORY COMMISSION ET AL.*;

No. 85-1237. *TEXAS EASTERN TRANSMISSION CORP. v. FEDERAL ENERGY REGULATORY COMMISSION ET AL.*;

No. 85-1250. *TRUNKLINE GAS CO. ET AL. v. FEDERAL ENERGY REGULATORY COMMISSION ET AL.*; and

No. 85-1252. *ARKLA ENERGY RESOURCES, A DIVISION OF ARKLA, INC. v. FEDERAL ENERGY REGULATORY COMMISSION ET AL.* C. A. D. C. Cir. Certiorari denied. Reported below: 248 U. S. App. D. C. 231, 770 F. 2d 1144.

No. 85-1231. *PASSARO v. UNITED STATES*. C. A. Fed. Cir. Certiorari denied. Reported below: 774 F. 2d 456.

No. 85-1283. *HAYSEN ET AL. v. BOARD OF ZONING ADJUSTMENTS OF THE COUNTY OF SONOMA (BERRY, REAL PARTY IN INTEREST)*. Ct. App. Cal., 1st App. Dist. Certiorari denied. Reported below: 171 Cal. App. 3d 400, 217 Cal. Rptr. 464.

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No. 85-1285. *BAILEY v. PENNSYLVANIA*. Super. Ct. Pa. Certiorari denied. Reported below: 341 Pa. Super. 611, 491 A. 2d 915.

No. 85-1289. *VEILLETTE v. UNITED STATES*. C. A. 1st Cir. Certiorari denied. Reported below: 778 F. 2d 899.

No. 85-1335. *GILMERE, INDIVIDUALLY AND AS ADMINISTRATRIX OF THE ESTATE OF PATILLO v. CITY OF ATLANTA ET AL.* C. A. 11th Cir. Certiorari denied. Reported below: 774 F. 2d 1495.

No. 85-1357. *BRAUER v. COLORADO*. Sup. Ct. Colo. Certiorari denied.

No. 85-1373. *MASSMAN CONSTRUCTION CO. v. UNITED STATES*. C. A. Fed. Cir. Certiorari denied. Reported below: 776 F. 2d 1065.

No. 85-1387. *CESARONI ET AL. v. UNITED STATES*. C. A. 11th Cir. Certiorari denied. Reported below: 780 F. 2d 1031.

No. 85-1389. *LONE PINE STEERING COMMITTEE ET AL. v. UNITED STATES ENVIRONMENTAL PROTECTION AGENCY*. C. A. 3d Cir. Certiorari denied. Reported below: 777 F. 2d 882.

No. 85-1443. *CORDIS CORP. v. MEDTRONIC, INC.* C. A. Fed. Cir. Certiorari denied. Reported below: 780 F. 2d 991.

No. 85-1466. *JET INDUSTRIES, INC. v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 777 F. 2d 303.

No. 85-1471. *BOREAL RIDGE CORP. v. SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA IN AND FOR THE COUNTY OF WASHOE (TIETJEN, REAL PARTY IN INTEREST)*. Sup. Ct. Nev. Certiorari denied. Reported below: 101 Nev. 945.

No. 85-1501. *CORTLANDT NURSING HOME ET AL. v. AXELROD, COMMISSIONER OF HEALTH OF THE STATE OF NEW YORK, ET AL.* Ct. App. N. Y. Certiorari denied. Reported below: 66 N. Y. 2d 169, 486 N. E. 2d 785.

No. 85-1504. *MARITIME OVERSEAS CORP. ET AL. v. BRUNNER*. C. A. 5th Cir. Certiorari denied. Reported below: 779 F. 2d 296.

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No. 85-1510. *CHRISTY NEWSREEL SERVICES, INC. v. CITY OF ANN ARBOR*. C. A. 6th Cir. Certiorari denied. Reported below: 780 F. 2d 1020.

No. 85-1533. *DAVIS ET AL. v. CITY OF DALLAS ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 777 F. 2d 205.

No. 85-1543. *FLINN v. GORDON*. C. A. 11th Cir. Certiorari denied. Reported below: 775 F. 2d 1551.

No. 85-1548. *DILLON v. LUTTERMAN ET AL.* C. A. 10th Cir. Certiorari denied.

No. 85-1549. *G. J. DEASY INVESTMENT, INC., DBA TEXAS VEHICLE MANAGEMENT v. MATTOX, ATTORNEY GENERAL OF TEXAS, ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 778 F. 2d 1091.

No. 85-1553. *CHURCH OF SCIENTOLOGY FLAG SERVICE ORGANIZATION, INC. v. CITY OF CLEARWATER ET AL.* C. A. 11th Cir. Certiorari denied. Reported below: 777 F. 2d 598.

No. 85-1554. *SANTARELLI ET AL. v. ELLISON*. App. Ct. Ill., 4th Dist. Certiorari denied. Reported below: 125 Ill. App. 3d 306, 465 N. E. 2d 962.

No. 85-1556. *STEINGRABER v. PENNSYLVANIA*. Super. Ct. Pa. Certiorari denied. Reported below: 334 Pa. Super. 589, 483 A. 2d 895.

No. 85-1558. *EMPIREGAS, INC. OF ARDMORE v. HARDY ET AL.* Sup. Ct. Ala. Certiorari denied. Reported below: 487 So. 2d 244.

No. 85-1570. *DRURY, ADMINISTRATOR OF THE ESTATE OF ABDALLAH v. ABDALLAH ET AL.* C. A. 1st Cir. Certiorari denied. Reported below: 778 F. 2d 75.

No. 85-1572. *LEE v. GEORGIA*. Ct. App. Ga. Certiorari denied. Reported below: 177 Ga. App. 8, 338 S. E. 2d 445.

No. 85-1573. *BRADFIELD v. PENNSYLVANIA*. Super. Ct. Pa. Certiorari denied. Reported below: 341 Pa. Super. 611, 491 A. 2d 915.

No. 85-1574. *BURLINGTON NORTHERN RAILROAD CO. v. ANDERSON*. Ct. App. Mo., Eastern Dist. Certiorari denied. Reported below: 700 S. W. 2d 469.

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No. 85-1575. *RIVERA v. ARIZONA*. C. A. 9th Cir. Certiorari denied. Reported below: 772 F. 2d 913.

No. 85-1576. *WRIGHT ET AL. v. KECH-TV ET AL.* Sup. Ct. Ore. Certiorari denied. Reported below: 300 Ore. 139, 707 P. 2d 1232.

No. 85-1577. *DINWIDDIE ET AL. v. BOARD OF COUNTY COMMISSIONERS OF LEA COUNTY ET AL.* Sup. Ct. N. M. Certiorari denied. Reported below: 103 N. M. 442, 708 P. 2d 1043.

No. 85-1578. *MINAYA v. CALIFORNIA*. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 85-1582. *GROSS v. GROSS*. Sup. Ct. Ohio. Certiorari denied.

No. 85-1586. *CAMPS v. LOUISIANA*. Ct. App. La., 2d Cir. Certiorari denied. Reported below: 476 So. 2d 864.

No. 85-1597. *IVANCIC v. OLMSTEAD*. Ct. App. N. Y. Certiorari denied. Reported below: 66 N. Y. 2d 349, 488 N. E. 2d 72.

No. 85-1598. *A & A CONCRETE, INC., ET AL. v. WHITE MOUNTAIN APACHE TRIBE, DBA WHITE MOUNTAIN APACHE DEVELOPMENT ENTERPRISE, ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 781 F. 2d 1411.

No. 85-1607. *GIBBS v. KING, SECRETARY, LOUISIANA DEPARTMENT OF CORRECTIONS, ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 779 F. 2d 1040.

No. 85-1615. *BOOKER ET AL. v. THOMAS*. C. A. 8th Cir. Certiorari denied. Reported below: 784 F. 2d 299.

No. 85-1627. *MAYER v. DAVIS ET AL.* Ct. App. Ohio, Summit County. Certiorari denied.

No. 85-1634. *CONNER ET AL. v. SHELTER MUTUAL INSURANCE CO.* C. A. 6th Cir. Certiorari denied. Reported below: 779 F. 2d 335.

No. 85-1636. *O'DONNELL v. PAINE, JUDGE, UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF FLORIDA*. C. A. 11th Cir. Certiorari denied.

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No. 85-1647. RUBINSTEIN *v.* TEXAS. Ct. App. Tex., 10th Sup. Jud. Dist. Certiorari denied.

No. 85-1657. NELMS *v.* WEAVER ET UX. Sup. Ct. Tenn. Certiorari denied.

No. 85-1666. HOSFORD *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 782 F. 2d 936.

No. 85-1675. KALISH *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 780 F. 2d 506.

No. 85-1681. HECHT *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 782 F. 2d 1032.

No. 85-1682. WARD *v.* UNITED STATES CONSUMER PRODUCT SAFETY COMMISSION. C. A. Fed. Cir. Certiorari denied. Reported below: 776 F. 2d 1062.

No. 85-1703. STRANAHAN *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied.

No. 85-1723. FESLER ET UX. *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 781 F. 2d 384.

No. 85-5929. CASEY *v.* ALASKA. Sup. Ct. Alaska. Certiorari denied.

No. 85-5951. OTERO *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 788 F. 2d 2.

No. 85-5983. CHURCHILL *v.* ILLINOIS. App. Ct. Ill., 3d Dist. Certiorari denied. Reported below: 136 Ill. App. 3d 123, 482 N. E. 2d 355.

No. 85-6033. SHAH *v.* KERN COUNTY, CALIFORNIA, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 774 F. 2d 1175.

No. 85-6138. WILKINS *v.* MCCOTTER, DIRECTOR, TEXAS DEPARTMENT OF CORRECTIONS. C. A. 5th Cir. Certiorari denied. Reported below: 776 F. 2d 1047.

No. 85-6187. LEE *v.* MILLER, WARDEN. C. A. 3d Cir. Certiorari denied.

No. 85-6209. BERTON *v.* UNITED STATES. Ct. App. D. C. Certiorari denied.

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No. 85-6252. *BROWN v. MARYLAND*. Ct. Sp. App. Md. Certiorari denied. Reported below: 64 Md. App. 708.

No. 85-6254. *FIGUEROA v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 779 F. 2d 44.

No. 85-6292. *CLIFFORD v. DAUGHERTY ET AL.* C. A. 3d Cir. Certiorari denied.

No. 85-6347. *BIRDELL v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 775 F. 2d 645.

No. 85-6348. *SAM v. LOUISIANA*. Ct. App. La., 3d Cir. Certiorari denied. Reported below: 473 So. 2d 908.

No. 85-6349. *WHITE v. WAINWRIGHT, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS*. C. A. 11th Cir. Certiorari denied. Reported below: 780 F. 2d 1032.

No. 85-6357. *HILL v. UNITED STATES*. Ct. App. D. C. Certiorari denied. Reported below: 489 A. 2d 1078.

No. 85-6366. *JOHNSON v. MISSOURI*. Sup. Ct. Mo. Certiorari denied. Reported below: 700 S. W. 2d 815.

No. 85-6381. *WILSON v. UNITED STATES*. Ct. App. D. C. Certiorari denied.

No. 85-6383. *BROOKS v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 777 F. 2d 1141.

No. 85-6422. *SHOOK v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 779 F. 2d 53.

No. 85-6433. *FORMAN v. BAER, CHAIRMAN, UNITED STATES PAROLE COMMISSION*. C. A. 3d Cir. Certiorari denied. Reported below: 776 F. 2d 1156.

No. 85-6435. *CAMACHO v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 779 F. 2d 227.

No. 85-6442. *TAYLOR v. WHITE, WARDEN, ET AL.* C. A. 11th Cir. Certiorari denied.

No. 85-6471. *KLIER v. OREGON*. Sup. Ct. Ore. Certiorari denied. Reported below: 300 Ore. 477, 713 P. 2d 1058.

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No. 85-6509. *BRYNSINSKI v. ILLINOIS*. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 135 Ill. App. 3d 1160, 496 N. E. 2d 1274.

No. 85-6531. *SPRAGGINS v. GEORGIA*. Sup. Ct. Ga. Certiorari denied. Reported below: 255 Ga. 195, 336 S. E. 2d 227.

No. 85-6542. *FREEMAN v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 761 F. 2d 549 and 782 F. 2d 853.

No. 85-6555. *WILLIFORD v. YOUNG, SUPERINTENDENT, WAUPUN CORRECTIONAL INSTITUTION, ET AL.* C. A. 7th Cir. Certiorari denied. Reported below: 779 F. 2d 405.

No. 85-6559. *GRIFFIN v. VIRGINIA ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 780 F. 2d 1018.

No. 85-6561. *STEWART v. FOLTZ, WARDEN*. C. A. 6th Cir. Certiorari denied. Reported below: 782 F. 2d 1043.

No. 85-6563. *BUFFALOE v. ANDERSON*. Ct. Sp. App. Md. Certiorari denied. Reported below: 63 Md. App. 747.

No. 85-6565. *GODBEE v. NEWSOME, WARDEN*. C. A. 11th Cir. Certiorari denied. Reported below: 773 F. 2d 1237.

No. 85-6566. *FRIEND v. REES, WARDEN, ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 779 F. 2d 50.

No. 85-6568. *SMITH v. SCHROEDER, CHIEF JUSTICE, KANSAS SUPREME COURT, ET AL.* C. A. 10th Cir. Certiorari denied.

No. 85-6570. *DAY v. CONTINENTAL INSURANCE COS.* C. A. 5th Cir. Certiorari denied.

No. 85-6571. *FORD v. STEPHENSON, SUPERINTENDENT, CAL-EDONIA AND ODOM COMPLEX*. C. A. 4th Cir. Certiorari denied. Reported below: 782 F. 2d 1034.

No. 85-6574. *DAVIS v. BOSTON EDISON CO. ET AL.* C. A. 1st Cir. Certiorari denied.

No. 85-6576. *UNGER v. HOELEN*. C. A. 4th Cir. Certiorari denied. Reported below: 785 F. 2d 306.

No. 85-6578. *MORGAN v. NEW YORK*. App. Div., Sup. Ct. N. Y., 3d Jud. Dept. Certiorari denied. Reported below: 116 App. Div. 2d 919, 498 N. Y. S. 2d 510.

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No. 85-6583. *KIM ET AL. v. STROH, DIRECTOR OF ALCOHOLIC BEVERAGE CONTROL, ET AL.* Sup. Ct. Cal. Certiorari denied.

No. 85-6586. *WILDER v. ESTELLE, WARDEN.* C. A. 9th Cir. Certiorari denied. Reported below: 780 F. 2d 1029.

No. 85-6587. *McFALL v. REES, WARDEN, ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 786 F. 2d 1165.

No. 85-6588. *KISER v. OHIO.* Sup. Ct. Ohio. Certiorari denied.

No. 85-6590. *HERNANDEZ v. CITY OF LOUISVILLE, KENTUCKY, ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 780 F. 2d 1021.

No. 85-6591. *LAGRANGE v. TEXAS DEPARTMENT OF PUBLIC SAFETY ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 779 F. 2d 681.

No. 85-6592. *HARRIS v. ABSHIRE, SUPERINTENDENT, RIVERSIDE CORRECTIONAL FACILITY.* C. A. 6th Cir. Certiorari denied. Reported below: 785 F. 2d 308.

No. 85-6605. *JOHNSON v. WOMACK, CLERK, SUPREME COURT OF MISSISSIPPI.* C. A. 5th Cir. Certiorari denied. Reported below: 786 F. 2d 1160.

No. 85-6607. *BRYSON v. OKLAHOMA.* Ct. Crim. App. Okla. Certiorari denied. Reported below: 711 P. 2d 932.

No. 85-6608. *ROSBERG v. GOERES.* C. A. 8th Cir. Certiorari denied. Reported below: 782 F. 2d 1050.

No. 85-6610. *MYERS v. GUILLORY, WARDEN, ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 776 F. 2d 1046.

No. 85-6611. *TINNEY v. OKLAHOMA.* Ct. Crim. App. Okla. Certiorari denied. Reported below: 712 P. 2d 65.

No. 85-6613. *SELLERS v. GEORGIA.* Ct. App. Ga. Certiorari denied. Reported below: 176 Ga. App. 681, 337 S. E. 2d 373.

No. 85-6614. *RANDALL v. SUPERIOR COURT OF CALIFORNIA, RIVERSIDE COUNTY.* Sup. Ct. Cal. Certiorari denied.

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No. 85-6617. *KUNKEL v. FLORIDA*. Sup. Ct. Fla. Certiorari denied. Reported below: 484 So. 2d 9.

No. 85-6619. *HART v. HOLLAND, WARDEN*. Sup. Ct. App. W. Va. Certiorari denied.

No. 85-6621. *HOLLINGSWORTH v. STEPHENSON, SUPERINTENDENT, CALEDONIA AND ODOM COMPLEX, ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 779 F. 2d 46.

No. 85-6624. *ALLEN v. OKLAHOMA*. Ct. Crim. App. Okla. Certiorari denied.

No. 85-6625. *DAY v. CMC CORP.* C. A. 5th Cir. Certiorari denied.

No. 85-6629. *MORRIS v. JACKSON PARK HOSPITAL*. App. Ct. Ill., 1st Dist. Certiorari denied.

No. 85-6632. *SIMPSON v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 785 F. 2d 311.

No. 85-6651. *LEE v. HARDAGE ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 782 F. 2d 1035.

No. 85-6657. *SHUMATE v. PATTERSON ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 782 F. 2d 1036.

No. 85-6666. *DE VITO v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 786 F. 2d 1149.

No. 85-6685. *MARKOUSKI v. NEW YORK ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 795 F. 2d 79.

No. 85-6686. *MORGAN v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 779 F. 2d 47.

No. 85-6690. *RICHARDSON v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 782 F. 2d 1033.

No. 85-6691. *MERCER v. UNITED STATES ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 786 F. 2d 1165.

No. 85-6694. *BOONE v. CASHION, SUPERINTENDENT OF NORTH CAROLINA DIVISION OF PRISONS, ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 785 F. 2d 304.

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No. 85-6701. WILSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 778 F. 2d 1017.

No. 85-6708. JEFFERS *v.* LOCKHART, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION. C. A. 8th Cir. Certiorari denied. Reported below: 782 F. 2d 1049.

No. 85-6711. KAYE *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 779 F. 2d 1461.

No. 85-6719. NUNEZ *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied.

No. 85-6720. GLASCOE *v.* UNITED STATES. Ct. App. D. C. Certiorari denied.

No. 85-6722. SWANSON *v.* OFFICE OF PERSONNEL MANAGEMENT ET AL. C. A. Fed. Cir. Certiorari denied. Reported below: 785 F. 2d 322.

No. 85-6728. WOMBLE *v.* NORTON. Ct. App. D. C. Certiorari denied.

No. 85-6735. VANNEPERSON ET AL. *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 786 F. 2d 221.

No. 85-6736. CREECH *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 780 F. 2d 1025.

No. 85-6740. JIMENEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 782 F. 2d 533.

No. 85-121. KEMP, WARDEN *v.* YOUNG. C. A. 11th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 760 F. 2d 1097.

No. 85-801. WAINWRIGHT, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS *v.* GRIFFIN. C. A. 11th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 760 F. 2d 1505.

No. 85-1337. NORTH CAROLINA *v.* HARBISON. Sup. Ct. N. C. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 315 N. C. 175, 337 S. E. 2d 504.

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No. 85-1590. *KIRK, SECRETARY, NORTH CAROLINA DEPARTMENT OF HUMAN RESOURCES v. THOMAS S., BY HIS APPOINTED GUARDIAN AD LITEM, BROOKS*. C. A. 4th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 781 F. 2d 367.

No. 85-541. *BARCLAYSAMERICAN/CREDIT, INC. v. QUILLER ET UX.*;

No. 85-584. *GRANT ET AL. v. GENERAL ELECTRIC CREDIT CORP.*; and

No. 85-717. *QUILLER ET UX. v. BARCLAYSAMERICAN/CREDIT, INC.* C. A. 11th Cir. Motion of American Financial Services Association et al. for leave to file a brief as *amici curiae* in No. 85-541 granted. Certiorari denied. JUSTICE BLACKMUN took no part in the consideration or decision of this motion and these petitions. Reported below: Nos. 85-541 and 85-717, 727 F. 2d 1067 and 764 F. 2d 1400; No. 85-584, 764 F. 2d 1404.

No. 85-1186. *SAMPSON v. GILMERE, INDIVIDUALLY AND AS ADMINISTRATRIX OF THE ESTATE OF PATILLO*. C. A. 11th Cir. Certiorari denied. Reported below: 774 F. 2d 1495.

CHIEF JUSTICE BURGER, with whom JUSTICE O'CONNOR joins, dissenting.

On New Year's Day, 1980, Atlanta police responded to a report that Thomas Patillo had threatened the driver of a van with a gun after Patillo had nearly caused an accident with the van. Petitioner Sampson and a fellow police officer, Craig, responded to the call, and arrived at Patillo's residence. Patillo, who appeared to be inebriated, refused the officers' order to accompany them to the police car for questioning, and attempted to flee. The police officers then escorted Patillo from his residence by force. Some witnesses reported that at this point the officers began beating Patillo in the head but no evidence of head wounds was discovered. Patillo broke free of the officers' hold and reached for officer Craig's revolver. During the struggle that followed, Patillo lunged towards Officer Sampson. Sampson, believing that Patillo had the gun in his hand, shot Patillo twice at close range. Patillo died from these gunshot wounds.

Respondent is Patillo's sister, who filed this suit under 42 U. S. C. § 1983 on her own behalf and on behalf of Patillo's estate.

After a bench trial, the District Court concluded that Patillo's due process rights had been violated both by the alleged beating and by the shooting, and that Sampson's belief that his life was in danger was not objectively reasonable, and awarded damages against petitioner. A panel of the United States Court of Appeals for the Eleventh Circuit reversed the award of damages, reasoning that under *Parratt v. Taylor*, 451 U. S. 527 (1981), the availability of a state-law tort action against the police officers precluded relief under § 1983 for a due process violation. The panel decision was vacated and the case was listed before the Eleventh Circuit for en banc hearing. The en banc court affirmed the award of damages against the police officers. *Gilmere v. City of Atlanta*, 774 F. 2d 1495 (1985). Reasoning that *Parratt* barred only purely procedural due process claims for which state remedies are available, the Court of Appeals discerned two substantive constitutional bases for the imposition of § 1983 liability in this case. First, the court determined that Patillo's shooting deprived him of substantive due process by the excessive use of force. In reaching this conclusion, the Court of Appeals reasoned that any fear that Sampson had for his own life was legally insufficient to justify the use of deadly force because any fear on the officer's part was the fear of retaliation against his own unjustified physical abuse. Second, as an alternative holding, the Court of Appeals determined that Patillo's shooting was also an unconstitutional "seizure" in violation of this Court's holding in *Tennessee v. Garner*, 471 U. S. 1 (1985), that use of deadly force to arrest a nonviolent suspect violates the Fourth Amendment.

The Court of Appeals' holding that Patillo's shooting violates the Fourth Amendment despite Officer Sampson's fear for his life is plainly at odds with language in *Garner* emphasizing that the use of deadly force in effecting an arrest is constitutional when the officer has probable cause to believe that the suspect poses a threat to the officer. *Id.*, at 11-12. The Court of Appeals' holding conflicts with a holding of the Fifth Circuit that an officer's conduct which makes the need for deadly force more likely does not constitutionally disable the officer from later using deadly force to defend himself. *Young v. City of Killeen*, 775 F. 2d 1349 (1985).

Because the Court of Appeals' decision in this case misreads this Court's holding in *Garner*, and because the decision conflicts with

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the decision of the Fifth Circuit in *Young*, I would grant certiorari.

No. 85-1246. RAYMARK INDUSTRIES, INC. v. BATH IRON WORKS CORP. ET AL.;

No. 85-1253. EAGLE-PICHER INDUSTRIES, INC. v. UNITED STATES; and

No. 85-1288. RAYMARK INDUSTRIES, INC., ET AL. v. UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: No. 85-1246, 772 F. 2d 1007; Nos. 85-1253 and 85-1288, 772 F. 2d 1023.

JUSTICE WHITE, dissenting.

In No. 85-1246, petitioner, an asbestos manufacturer, is the defendant in a products liability suit brought by the widow of a deceased employee of respondent Bath Iron Works' shipyard. Petitioner sought contribution from respondent on various theories, including a claim under §5(b) of the Longshoremen's and Harbor Workers' Compensation Act, 86 Stat. 1263, 33 U. S. C. §905(b). The United States Court of Appeals for the First Circuit held that §5(b) covers only those torts that are within the reach of admiralty jurisdiction as defined in *Executive Jet Aviation, Inc. v. City of Cleveland*, 409 U. S. 249 (1972). *Drake v. Raymark Industries, Inc.*, 772 F. 2d 1007 (1985). The First Circuit concluded that ship construction does not satisfy the "maritime nexus" test of *Executive Jet*. As the First Circuit realized, its interpretation of the scope of §5(b) conflicts with the decision in *Hall v. Hvide Hull No. 3*, 746 F. 2d 294 (CA5 1984), which holds that employees covered by the LHWCA who sue under §5(b) need not satisfy the "maritime nexus" test of *Executive Jet* so long as the underlying event took place on a ship on navigable water.

In Nos. 85-1253 and 85-1288, which involve third-party claims by asbestos manufacturers against the United States as vessel owner and shipyard employer, the First Circuit followed its holding in *Drake, supra*, regarding the scope of §5(b). *In re All Maine Asbestos Litigation (PNS Cases)*, 772 F. 2d 1023 (1985).

I would grant certiorari to resolve the conflict presented in these cases.

No. 85-1359. NORVELL, SHERIFF, ST. LUCIE JAIL, ET AL. v. MILLER. C. A. 11th Cir. Motion of respondent for leave to

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proceed *in forma pauperis* granted. Certiorari denied. Reported below: 775 F. 2d 1572.

CHIEF JUSTICE BURGER, with whom JUSTICE REHNQUIST and JUSTICE O'CONNOR join, dissenting.

Miller was charged with "misapplication of funds" in connection with the 1978 construction of several homes. The Florida statute under which Miller was charged provides that one of the elements of the crime, the "intent to defraud," can be prima facie established by the "failure to pay for such labor, services or materials furnished for this specific improvement after receipt of such proceeds." Fla. Stat. § 713.34(3) (1985).

The state trial court instructed the jury that

"[p]roof that the defendant failed to pay for such labor, services or materials for any specific improvement from the proceeds of any payment made to him for such specific improvements shall constitute prima facie evidence of intent to defraud. Prima facie evidence means evidence of such nature as is sufficient to establish a fact and which, if un rebutted, remains sufficient for that purpose."

Miller was found guilty and sentenced to 6 months in county jail and 14½ years' probation. After Miller's conviction was affirmed on direct appeal, he brought this federal habeas action. The District Court denied the application.

The Court of Appeals for the Eleventh Circuit reversed, 775 F. 2d 1572 (1985), holding that the jury instructions could have been interpreted as creating a "mandatory rebuttable presumption" in violation of *Francis v. Franklin*, 471 U. S. 307 (1985), and *Sandstrom v. Montana*, 442 U. S. 510 (1979). Although this holding was sufficient to dispose of the application, the court went on to hold that the statute under which Miller was convicted was unconstitutional. Since the improper jury instructions were a "verbatim" rendition of the statute, the court reasoned, the statute, like the instructions, must fail.

Even if the jury instructions were impermissible under *Franklin* and *Sandstrom*, by striking down the underlying statute the Court of Appeals' decision flies in the face of *Ulster County Court v. Allen*, 442 U. S. 140 (1979), where we considered a facial attack upon a New York statute on the grounds that it impermissibly shifted the burden of proof. As the Court explained, a facial attack to a statute on these grounds will fail if the statute creates

only a "permissive inference," leaving the trier of fact free to credit or reject the inference. The application of the statute to a particular case, however, can be successfully challenged if there is no rational way the trier could make the connection permitted by the inference. On the other hand, a statute creating a "mandatory presumption" is "a far more troublesome evidentiary device" because it may "affect not only the strength of the 'no reasonable doubt' burden but also the placement of that burden; it tells the trier that he or they *must* find the elemental fact upon proof of the basic fact." *Id.*, at 157. To the extent that the trier of fact is forced to abide by the presumption irrespective of particular facts presented by the case, the analysis of the mandatory presumption's constitutional validity "is logically divorced from those facts and based on the presumption's accuracy in the run of cases." *Id.*, at 159. Because the statute in *Ulster County* created only a permissive inference, the Court held that the Court of Appeals erred in passing on the constitutionality of the statute "on its face." *Id.*, at 163.

The Court of Appeals' decision in this case striking down the statute cannot be reconciled with *Ulster County*. According to the Florida Supreme Court, the statute creates only a "permissive inference." *State v. Ferrari*, 398 So. 2d 804 (1981). A state trial court could, consistently with the statute as interpreted by the Florida Supreme Court, instruct the jury that it is free to either accept or reject the inference; that is, from the evidence that a contractor received advance payment for a particular project and did not use the money for the project, the jury could *but need not* infer that the contractor intended to defraud the owner. As we held in *Ulster County*, whether this kind of permissive inference unconstitutionally relieves the State of its burden of proof is to be determined on the facts of each case. But, because such an inference can be applied in a manner not repugnant to the Constitution, the Court of Appeals had no warrant to hold the Florida statute unconstitutional.

The Court of Appeals suggested that, while the Florida Supreme Court said that the statute created only a permissive inference, as a matter of federal law it created a mandatory rebuttable presumption. The Florida Supreme Court, however, is the final expositor of Florida law, not the Eleventh Circuit. Whether the troublesome phrase in the statute—"shall constitute prima facie evidence"—places the burden upon the defendant to rebut

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the State's showing is a question properly left to the Florida Supreme Court. Even if the Florida Supreme Court had not already declared that the statute created only a permissive inference, the Court of Appeals still should have allowed the Florida courts to interpret their statute to conform with federal constitutional requirements. And, even if the statute were incapable of such interpretation, the Florida courts should have been left free to make that determination in the first instance.

The holding of the Court of Appeals is not only incorrect but also completely gratuitous. After holding that the petition should be granted because of the flawed jury instruction, it had no reason to go on and take the drastic step of holding a state statute unconstitutional, thereby leaving the State with no means of retrying Miller. Accordingly, I would grant the petition and at least allow plenary consideration of the issue.

No. 85-1423. PRIVATE TRUCK COUNCIL OF AMERICA, INC., ET AL. v. QUINN, SECRETARY OF STATE OF MAINE, ET AL. Sup. Jud. Ct. Me. Certiorari denied. Reported below: 503 A. 2d 214.

JUSTICE WHITE, with whom JUSTICE BRENNAN and JUSTICE O'CONNOR join, dissenting.

In this case, the Supreme Judicial Court of Maine held that an allegation that a State has violated the Commerce Clause is not cognizable in an action under 42 U. S. C. § 1983. 503 A. 2d 214 (1986). This decision, while supported by the weight of authority, see, e. g., *Consolidated Freightways Corp. v. Kassel*, 730 F. 2d 1139 (CA8), cert. denied, 469 U. S. 834 (1984), conflicts with the holding in *Kennecott Corp. v. Smith*, 637 F. 2d 181, 186, n. 5 (CA3 1980). I would grant certiorari to resolve this conflict.

This case also presents the question whether persons subjected to an unconstitutional tax, the nonpayment of which is a crime, may bring a refund action under the Fourteenth Amendment if no state refund procedure is available. The Supreme Judicial Court recognized that the Fourteenth Amendment may require a refund of unconstitutional taxes paid under compulsion. See *Carpenter v. Shaw*, 280 U. S. 363, 369 (1930); *Ward v. Board of County Comm'rs*, 253 U. S. 17, 24 (1920). However, the court rejected the "implied duress" theory of *Atchison, T. & S. F. R. Co. v. O'Connor*, 223 U. S. 280, 286 (1912), and held that petitioners have no right of recovery under the Fourteenth Amendment

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because they failed to present evidence that the State actually threatened them with arrest or seizure of personal property if they failed to pay the tax in question. Because this holding calls into question the continuing vitality of *Atchison*, I would grant certiorari on this issue as well.

No. 85-1617. EMERSON ELECTRIC CO. *v.* SWENSON ET AL. Sup. Ct. Minn. Motion of Chamber of Commerce of the United States et al. for leave to file a brief as *amici curiae* granted. Motion of petitioner to defer consideration of the petition for writ of certiorari denied. Certiorari denied. Reported below: 374 N. W. 2d 690.

No. 85-5273. DAVID *v.* LOUISIANA. Sup. Ct. La. Certiorari denied. JUSTICE BRENNAN and JUSTICE MARSHALL would grant certiorari. Reported below: 468 So. 2d 1126 and 1133.

No. 85-5793. SKAGGS *v.* KENTUCKY (two cases). Sup. Ct. Ky.;

No. 85-6525. JOHNSON *v.* TENNESSEE. Sup. Ct. Tenn.;

No. 85-6630. ROGERS, AKA HEYDUK *v.* NEVADA. Sup. Ct. Nev.; and

No. 85-6631. FARMER *v.* NEVADA. Sup. Ct. Nev. Certiorari denied. Reported below: No. 85-5793 (first case), 694 S. W. 2d 672; No. 85-6525, 698 S. W. 2d 631; No. 85-6630, 101 Nev. 457, 705 P. 2d 664; No. 85-6631, 101 Nev. 419, 705 P. 2d 149.

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. 85-6556. ANDERSON *v.* SPRING LAKE PARK PARTNERSHIP. C. A. 8th Cir. Certiorari denied. JUSTICE BLACKMUN took no part in the consideration or decision of this petition. Reported below: 782 F. 2d 1048.

No. 85-6930 (A-889). STRAIGHT *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,

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denied. Certiorari denied. JUSTICE BLACKMUN would deny the state habeas petition without prejudice to the presentation of claims on federal habeas. Reported below: 488 So. 2d 530.

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. 85-24. MARYLAND *v.* ELFADL, 475 U. S. 1081;

No. 85-1096. VAN SANT *v.* UNITED STATES POSTAL SERVICE ET AL., 475 U. S. 1082;

No. 85-1272. MYER *v.* PACIFIC FEDERAL SAVINGS & LOAN ASSN., 475 U. S. 1084;

No. 85-1296. ROSENBAUM *v.* ROSENBAUM, 475 U. S. 1078;

No. 85-5375. BLANKS *v.* GEORGIA, 475 U. S. 1090;

No. 85-5729. HOWELL *v.* MARYLAND, 475 U. S. 1110;

No. 85-5890. BAIG *v.* UNITED STATES, 474 U. S. 1103;

No. 85-5920. POOL *v.* ARMONTROUT, WARDEN, 475 U. S. 1110;

No. 85-5978. CLARK *v.* STATE TREASURER'S OFFICE EMPLOYER ET AL., 475 U. S. 1024;

No. 85-6183. IN RE MAY, 475 U. S. 1044;

No. 85-6224. DRINKWINE *v.* FEDERATED PUBLICATIONS, INC., ET AL., 475 U. S. 1087;

No. 85-6229. COLLINS *v.* GEORGIA, 475 U. S. 1090;

No. 85-6260. LYNCH *v.* JOHNSON ET AL., 475 U. S. 1087;

No. 85-6310. GREGORY *v.* SOLEM, WARDEN, 475 U. S. 1088;

No. 85-6311. HOUGHTON *v.* CODER ET AL., 475 U. S. 1088;

No. 85-6367. CHOAT *v.* ROME INDUSTRIES, INC., ET AL., 475 U. S. 1097;

No. 85-6375. KNIES *v.* WISCONSIN, 475 U. S. 1110;

No. 85-6403. DYSON *v.* TEXAS A & M UNIVERSITY, 475 U. S. 1113; and

No. 85-6460. PURCELL ET UX. *v.* BOARD OF IMMIGRATION APPEALS, 475 U. S. 1098. Petitions for rehearing denied.

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No. 84-773. BENDER ET AL. *v.* WILLIAMSPORT AREA SCHOOL DISTRICT ET AL., 475 U. S. 534. Motion of Bender et al. for leave to file petition for rehearing denied. Petition for rehearing denied.

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Miscellaneous Orders

No. A-891. WAINWRIGHT, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS *v.* ZEIGLER. Application of the Attorney General of Florida for an order to dissolve a stay of execution of sentence of death entered by the United States Court of Appeals for the Eleventh Circuit, presented to JUSTICE POWELL, and by him referred to the Court, denied.

No. A-892 (85-6947). STRAIGHT *v.* WAINWRIGHT, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. The order heretofore entered staying the execution of the sentence of death until 5 p.m., May 20, 1986, is vacated. The application for stay of execution of sentence of death, presented to JUSTICE POWELL, and by him referred to the Court, is denied. JUSTICE STEVENS would grant the application for stay of execution.

JUSTICE POWELL, joined by THE CHIEF JUSTICE, JUSTICE REHNQUIST, and JUSTICE O'CONNOR, concurring in the denial of a stay.

In view of the discussion in the dissents, I write to summarize my reasons for voting to deny a stay in this case.

Ronald Straight is here on his second federal habeas corpus petition. In his first petition, Straight argued that he was handicapped by the reasonable belief of trial counsel and the trial judge that Florida law barred the introduction of nonstatutory mitigating evidence at capital sentencing proceedings. Cf. *Lockett v. Ohio*, 438 U. S. 586 (1978). The District Court denied relief on this claim, and on Straight's other claims as well, and the Court of Appeals for the Eleventh Circuit affirmed. *Straight v. Wainwright*, 772 F. 2d 674 (1985). Less than seven weeks ago, this Court denied Straight's petition for certiorari, a petition that again raised his *Lockett* argument. 475 U. S. 1099.

In his second habeas petition, filed late yesterday, Straight raises the same substantive legal claim, and adds various new

factual allegations in support. The District Court properly found that, to the extent Straight seeks to relitigate the same claims raised earlier, his petition should be dismissed under Habeas Corpus Rule 9(b) as a successive petition. The court also found that, to the extent that Straight sought to make new arguments that plainly could have been raised earlier, his petition was an abuse of the writ. See *Woodard v. Hutchins*, 464 U. S. 377, 378-380 (1984) (POWELL, J., joined by BURGER, C. J., and BLACKMUN, REHNQUIST, and O'CONNOR, JJ., concurring). The Court of Appeals found no error in the District Court's disposition, and denied a certificate of probable cause to appeal. The Court of Appeals granted a stay of execution until noon today to permit this Court to consider Straight's belated application for a stay and petition for certiorari.¹

I find no basis for concluding that the District Court abused its discretion. Applicant has not offered any reason why he should be permitted to relitigate his *Lockett* claim, nor has he justified his previous failure to allege the supporting factual grounds on which he now relies. Thus, the District Court's decision to deny relief based on Rule 9 was plainly correct. That being the case, there is no ground for reaching the merits argument that the dissenting opinions now rely on.²

¹Acting in my capacity as Circuit Justice, I extended the stay of petitioner's execution until 5 p.m. today to allow fuller consideration of his stay application.

²JUSTICE BRENNAN contends that, because four Justices have voted to "hold" this case pending disposition of *Darden v. Wainwright*, No. 85-5319, the Court is obliged to stay applicant's execution in order that the case not be mooted. JUSTICE BRENNAN correctly notes that, in the past, the Court has ordinarily stayed executions when four Members have voted to grant certiorari, and he maintains that "[a] 'hold' is analogous to a decision to grant a petition for certiorari." *Post*, at 1135 (dissenting). In my view, this last assertion is incorrect on several levels. First and foremost, the Court often "holds" cases for reasons that have nothing to do with the merits of the cases being held, as when we wish not to "tip our hand" in advance of an opinion's announcement. Second, when certiorari is granted, *by definition* the Court's resolution of the issues presented in that case might affect the judgment rendered below. That is not necessarily true of held cases. The judgment in a held case may rest on a number of grounds sufficient to sustain it. In this case, my vote to deny Straight's petition for certiorari—and therefore not to hold the petition for *Darden*, *supra*—reflects my view that *no matter how Darden* is resolved, the judgment of the District Court will be unaffected. The reason for that conclusion is obvious: the District Court found that the pe-

JUSTICE BRENNAN, with whom JUSTICE MARSHALL joins, and with whom JUSTICE BLACKMUN joins in all but the first paragraph, 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) (BRENNAN, J., dissenting), I would grant the stay application and the petition for certiorari and would vacate the sentence in this case.

But even if I did not hold this view, I would extend the stay of execution in this case until the Court acts on Straight's petition for certiorari in No. 85-6947. In that petition, Straight contends that the State of Florida's death penalty statute and the cases interpreting it prior to his trial resulted in the failure of the trial court to consider nonstatutory mitigating factors in violation of this Court's holding in *Lockett v. Ohio*, 438 U. S. 586 (1978). This issue is similar to one presented in *Darden v. Wainwright*, No. 85-5319, a case that has been argued but not yet decided by the Court, and other petitions that are before the Court that have not yet been acted upon.

It would be disturbing enough if the Court were to allow this execution to proceed without acting on the merits of Straight's petition for certiorari, since this would allow him to be executed despite the continuing possibility of relief from this Court. What the Court does here is far more alarming, however. For the fact is that in my view the Court *has* acted on the merits of Straight's petition. Four Justices have voted to "hold" Straight's petition because they believe that it presents an issue sufficiently similar to *Darden* to warrant delaying disposition of Straight's case until a decision is reached in that case. To deny a stay of execution in the face of this "hold" is, in my view, a wrong to which I may not be a silent witness.

A minority of the Justices has the power to grant a petition for certiorari over the objection of five Justices. The reason for this "antimajoritarianism" is evident: in the context of a preliminary 5-to-4 vote to deny, 5 give the 4 an opportunity to change at least one mind. Accordingly, when four vote to grant certiorari in a

tion must be dismissed under Habeas Corpus Rule 9, and therefore did not reach the merits of applicant's claim. *Darden*, of course, does not raise any issue concerning the applicability of Rule 9 in cases such as this one.

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capital case, but there is not a fifth vote to stay the scheduled execution, one of the five Justices who does not believe the case worthy of granting certiorari will nonetheless vote to stay; this is so that the "Rule of Four" will not be rendered meaningless by an execution that occurs before the Court considers the case on the merits.

A "hold" is analogous to a decision to grant a petition for certiorari. The Court's "hold" policy represents the conviction that like cases must be treated alike. Like the "Rule of Four," it grants to a minority of the Court the power to prevent the majority from denying a petition for certiorari when the minority is persuaded that the issues or questions presented in the case to be held are similar to a case that the Court is to decide. The principle is apparent: whether an individual obtains relief should not turn on the fortuity of whether his papers were the first, the second, or the tenth to reach the Court. What counts is the merits. A vote to "hold" is a statement by a number of Justices that the disposition of the granted case may have an effect on the merits of the case which is to be held. The fact that a majority of the Justices disagree with the decision to "hold" does not warrant subversion of the "hold" rule any more than does disagreement by five with the decision to grant a petition for certiorari justify departure from the "Rule of Four." It is unthinkable to me that the practice that four votes to grant certiorari trigger an "automatic" fifth vote to stay an execution should not apply to a "hold" when a man's life is in the balance.

For the Court to deny a stay to a petitioner who is under sentence of death, and whose petition four Justices have determined to hold, is to give a new and gruesome meaning to the old notion of the "race to the courthouse." It is to distinguish as an initial matter between those who may live and those who will die by rewarding with a stay of execution that litigant whose lawyer files his papers first. It is to divide litigants arbitrarily into the condemned and the spared on the basis of what amounts to little more than a footrace. It is to reject those first principles of justice that ultimately define a system of law: the principles of uniform application of rules, of consistency, of evenhandedness, of fairness.

I dissent.

JUSTICE MARSHALL, with whom JUSTICE BRENNAN joins, dissenting from denial of application for stay of execution.

The State of Florida intends to execute applicant at 5:01 this afternoon. In the papers he has filed in this Court, applicant claims that the Florida death penalty statute and the cases interpreting it prior to his trial led all participants in his sentencing hearing, including the trial judge, to believe that nonstatutory mitigating circumstances could not be considered in the sentencing decision. He argues that the failure of the trial court to consider such nonstatutory factors violated the injunction of this Court in *Lockett v. Ohio*, 438 U. S. 586 (1978), that a death penalty scheme must not prevent the sentencer from considering "any aspect of a defendant's character or record and any of the circumstances of the offense that the defendant proffers as a basis for a sentence less than death." *Id.*, at 604; see *Eddings v. Oklahoma*, 455 U. S. 104 (1982).

When presented with evidence that a sentencing judge had actually believed himself precluded from considering nonstatutory mitigating circumstances, both the Florida Supreme Court and the Court of Appeals for the Eleventh Circuit have held that a defendant is constitutionally entitled to a new sentencing proceeding. See, e. g., *Harvard v. State*, 486 So. 2d 537 (Fla. 1986); *Songer v. Wainwright*, 769 F. 2d 1488 (CA11 1985). Unlike the defendants in *Harvard* and *Songer*, applicant never had the chance during postconviction proceedings to ascertain how his sentencing judge had interpreted Florida's statutory scheme. He now seeks an evidentiary hearing where he might make such an inquiry. I believe he should be given at least the chance to do so.*

I would grant the petition for certiorari and the application for a stay of execution.

*With respect to JUSTICE POWELL's suggestion that the merits ought not to be reached here, I note only that there is no little confusion on the procedural aspects of this case. When, in his first habeas petition, applicant raised a variant of the *Lockett* claim he raises here, the Court of Appeals incorrectly found that claim procedurally barred even though, on state collateral review, the Florida Supreme Court had reached it on the merits, 422 So. 2d 827, 832 (1982). 772 F. 2d 674, 677-678 (1985). Had the Court of Appeals properly considered that claim, this second habeas petition might not have been necessary.

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Dismissal Under Rule 53

No. 85-6770. ADAMS *v.* UNITED STATES. C. A. 4th Cir. Certiorari dismissed under this Court's Rule 53. Reported below: 786 F. 2d 1157.

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Appeals Dismissed

No. 85-31. OWENS ET AL. *v.* BOWEN, SECRETARY OF HEALTH AND HUMAN SERVICES. Appeal from D. C. C. D. Cal. dismissed.

No. 85-1493. METROPOLITAN EDISON CO. ET AL. *v.* PENNSYLVANIA PUBLIC UTILITY COMMISSION ET AL. Appeal from Sup. Ct. Pa. dismissed for want of substantial federal question. Reported below: 509 Pa. 324, 502 A. 2d 130.

No. 85-1637. BUDGET RENT-A-CAR OF CINCINNATI, INC. *v.* KENTUCKY REVENUE CABINET. Appeal from Sup. Ct. Ky. dismissed for want of substantial federal question. Reported below: 704 S. W. 2d 199.

No. 85-1610. NORTHERN INDIANA PUBLIC SERVICE CO. *v.* CITIZENS ACTION COALITION OF INDIANA, INC., ET AL. Appeal from Sup. Ct. Ind. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied. Reported below: 485 N. E. 2d 610.

No. 85-6635. WILKERSON *v.* TOWNSHIP OF EAST BRUNSWICK, NEW JERSEY. Appeal from Super. Ct. N. J., App. Div., dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied.

Certiorari Granted—Vacated and Remanded

No. 84-1859. MARSH *v.* BOARD OF EDUCATION OF THE CITY OF FLINT ET AL. C. A. 6th Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Wygant v. Jackson Board of Education, ante*, p. 267. Reported below: 762 F. 2d 1009.

No. 85-912. BROCK, SECRETARY OF LABOR *v.* SOUTHEASTERN ARIZONA GOVERNMENTS ORGANIZATION. C. A. 9th Cir. Cer-

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tiorari granted, judgment vacated, and case remanded for further consideration in light of *Brock v. Pierce County*, ante, p. 253.

No. 85-1105. CARTER ET AL. *v.* UNITED STATES;

No. 85-1118. MURRAY *v.* UNITED STATES; and

No. 85-1120. ROONEY *v.* UNITED STATES. C. A. 1st Cir. Certiorari granted, judgment vacated, and cases remanded for further consideration in light of *Henderson v. United States*, ante, p. 321. JUSTICE STEVENS would deny the petitions for writs of certiorari. Reported below: 771 F. 2d 589.

No. 85-5040. ISAAC *v.* UNITED STATES. 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 *Henderson v. United States*, ante, p. 321. JUSTICE STEVENS would deny the petition for writ of certiorari. Reported below: 762 F. 2d 1000.

Vacated and Remanded After Certiorari Granted

No. 85-236. EICHENLAUB *v.* YURKY ET AL. C. A. 3d Cir. [Certiorari granted, 474 U. S. 1049.] Judgment vacated and case remanded to the Court of Appeals to consider whether the case is moot.

Certiorari Dismissed

No. 85-6947. STRAIGHT *v.* WAINWRIGHT, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Petition for writ of certiorari dismissed as moot. Reported below: 791 F. 2d 830.

Miscellaneous Orders

No. — — —. PEEDE *v.* FLORIDA. Motion to direct the Clerk to file the petition for writ of certiorari without the affidavit in support of motion for leave to proceed *in forma pauperis* granted.

No. D-509. IN RE DISBARMENT OF ALEXANDER. Disbarment entered. [For earlier order herein, see 474 U. S. 977.]

No. D-557. IN RE DISBARMENT OF KEIDEN. It is ordered that Bruce H. Keiden, of Southfield, 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.

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No. 85-88. PAULUSSEN *v.* HERION, 475 U. S. 557. Motion of appellee to retax costs denied. JUSTICE BLACKMUN would grant this motion.

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 The Rutherford Institute of Alabama et al. for leave to file a brief as *amici curiae* granted.

No. 85-608. ILLINOIS *v.* KRULL ET AL. Sup. Ct. Ill. [Certiorari granted, 475 U. S. 1080.] Motion of Americans for Effective Law Enforcement, Inc., et al. for leave to file a brief as *amici curiae* granted.

No. 85-1033. KELLY, CONNECTICUT CHIEF STATE'S ATTORNEY, ET AL. *v.* ROBINSON. C. A. 2d Cir. [Certiorari granted, 475 U. S. 1009.] Motion of National Governors' Association et al. for leave to file a brief as *amici curiae* granted.

No. 85-1529. GRUMMAN AEROSPACE CORP. *v.* SHAW. C. A. 11th Cir.; and

No. 85-1623. ISLAMIC REPUBLIC OF IRAN ET AL. *v.* BOEING CO. ET AL. C. A. 9th Cir. The Solicitor General is invited to file briefs in these cases expressing the views of the United States.

No. 85-6823. IN RE THAPER. Petition for writ of mandamus denied.

Certiorari Granted

No. 85-1208. FALL RIVER DYEING & FINISHING CORP. *v.* NATIONAL LABOR RELATIONS BOARD. C. A. 1st Cir. Certiorari granted. Reported below: 775 F. 2d 425.

No. 85-1347. PENNSYLVANIA *v.* RITCHIE. Sup. Ct. Pa. Certiorari granted. Reported below: 509 Pa. 357, 502 A. 2d 148.

No. 85-1384. TURNER ET AL. *v.* SAFLEY ET AL. C. A. 8th Cir. Certiorari granted. Reported below: 777 F. 2d 1307.

No. 85-1589. IOWA MUTUAL INSURANCE CO. *v.* LAPLANTE ET AL. C. A. 9th Cir. Certiorari granted. Reported below: 774 F. 2d 1174.

No. 85-1259. TULL *v.* UNITED STATES. C. A. 4th Cir. Certiorari granted limited to Question 1 presented by the petition. Reported below: 769 F. 2d 182.

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No. 85-1613. UNITED STATES *v.* JOHN DOE, INC. I, ET AL. C. A. 2d Cir. Motion of petitioners in No. 85-1840, *Archer-Daniels-Midland Co. et al. v. United States*, for contemporaneous consideration denied. Certiorari granted. Reported below: 774 F. 2d 34.

No. 85-5348. BUCHANAN *v.* KENTUCKY. Sup. Ct. Ky. Motion of petitioner for leave to proceed *in forma pauperis* and certiorari granted. Reported below: 691 S. W. 2d 210.

Certiorari Denied. (See also Nos. 85-1610 and 85-6635, *supra.*)

No. 84-6590. ROWAN *v.* OWENS, SUPERINTENDENT, INDIANA STATE REFORMATORY. C. A. 7th Cir. Certiorari denied. Reported below: 752 F. 2d 1186.

No. 84-6854. BECK *v.* MISSOURI. Sup. Ct. Mo. Certiorari denied. Reported below: 687 S. W. 2d 155.

No. 84-7000. COLSON *v.* PENNSYLVANIA. Sup. Ct. Pa. Certiorari denied. Reported below: 507 Pa. 440, 490 A. 2d 811.

No. 85-949. ST. REGIS MOHAWK TRIBE, NEW YORK *v.* BROCK, SECRETARY OF LABOR. C. A. 2d Cir. Certiorari denied. Reported below: 769 F. 2d 37.

No. 85-1109. MILWAUKEE COUNTY, WISCONSIN *v.* BROCK, SECRETARY OF LABOR. C. A. 7th Cir. Certiorari denied. Reported below: 771 F. 2d 983.

No. 85-1167. MAYOR'S OFFICE OF EMPLOYMENT AND TRAINING, CITY OF CHICAGO, ET AL. *v.* UNITED STATES DEPARTMENT OF LABOR. C. A. 7th Cir. Certiorari denied. Reported below: 775 F. 2d 196.

No. 85-1304. SPANG & Co. *v.* DELGROSSO ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 769 F. 2d 928.

No. 85-1319. BUTTS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 777 F. 2d 699.

No. 85-1430. GARTH *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 773 F. 2d 1469.

No. 85-1448. LOCAL 560 OF THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA ET AL. *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 780 F. 2d 267.

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No. 85-1463. *MARQUES v. UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES*. C. A. Fed. Cir. Certiorari denied. Reported below: 776 F. 2d 1062.

No. 85-1545. *BACA, COMMISSIONER OF PUBLIC LANDS OF THE STATE OF NEW MEXICO, ET AL. v. ROE ET AL.* Sup. Ct. N. M. Certiorari denied. Reported below: 103 N. M. 517, 710 P. 2d 84.

No. 85-1569. *DAMERON v. WASHINGTON MAGAZINE, INC., ET AL.* C. A. D. C. Cir. Certiorari denied. Reported below: 250 U. S. App. D. C. 346, 779 F. 2d 736.

No. 85-1599. *CITY OF SAN DIEGO ET AL. v. SPORTS ARENAS PROPERTIES ET AL.* Sup. Ct. Cal. Certiorari denied. Reported below: 40 Cal. 3d 808, 710 P. 2d 338.

No. 85-1611. *ARNEBERGH v. E. F. HUTTON & CO., INC.* C. A. 9th Cir. Certiorari denied. Reported below: 775 F. 2d 1061.

No. 85-1616. *TRANS RENT-A-CAR, INC. v. HERTZ CORP. ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 766 F. 2d 1292.

No. 85-1618. *SLATTON v. CALIFORNIA.* Ct. App. Cal., 4th App. Dist. Certiorari denied. Reported below: 173 Cal. App. 3d 487, 219 Cal. Rptr. 70.

No. 85-1621. *HON YIP, AKA YIP HON v. PAGANO.* C. A. 3d Cir. Certiorari denied. Reported below: 782 F. 2d 1033.

No. 85-1622. *ANDERSON, FKA JENKINS v. MINNESOTA.* Sup. Ct. Minn. Certiorari denied. Reported below: 379 N. W. 2d 70.

No. 85-1640. *DINEEN v. MAINE BOARD OF OVERSEERS OF THE BAR.* Sup. Jud. Ct. Me. Certiorari denied. Reported below: 500 A. 2d 262.

No. 85-1643. *STROH CONTAINER CO. v. DELPHI INDUSTRIES, INC., ET AL.* C. A. 8th Cir. Certiorari denied. Reported below: 783 F. 2d 743.

No. 85-1655. *KAISER GYPSUM CO., INC. v. SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DEIGO (SAN DIEGO ASBESTOS LITIGATION PLAINTIFFS, REAL PARTIES IN INTEREST).* Ct. App. Cal., 4th App. Dist. Certiorari denied.

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No. 85-1687. *HOME INSURANCE CO. v. TAYLOR*. C. A. 4th Cir. Certiorari denied. Reported below: 777 F. 2d 849.

No. 85-1697. *DAY v. SEABOLD, WARDEN*. C. A. 6th Cir. Certiorari denied. Reported below: 785 F. 2d 307.

No. 85-1698. *GUTHRIE v. INTERNATIONAL DAIRY QUEEN, INC., ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 788 F. 2d 3.

No. 85-1720. *VITTECK ET UX. v. WASHINGTON FEDERAL SAVINGS & LOAN ASSN.* Super. Ct. Pa. Certiorari denied. Reported below: 348 Pa. Super. 639, 501 A. 2d 296.

No. 85-1738. *GANOE ET AL. v. NEFF, INDEPENDENT EXECUTOR OF THE ESTATE OF LUMMIS, ET AL.* Ct. App. Tex., 1st Sup. Jud. Dist. Certiorari denied.

No. 85-1739. *HUNTER v. UNITED STATES*. Ct. Mil. App. Certiorari denied. Reported below: 21 M. J. 240.

No. 85-1747. *MCCLAIN v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 786 F. 2d 1166.

No. 85-1749. *HARTSEL ET AL. v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 736 F. 2d 223.

No. 85-1767. *CAGGIANO v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 782 F. 2d 1044.

No. 85-1768. *REALE v. UNITED STATES*. C. A. 11th Cir. Certiorari denied. Reported below: 782 F. 2d 179.

No. 85-1785. *CARLEY v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 783 F. 2d 341.

No. 85-6278. *BROWNING v. UNITED STATES*. C. A. 11th Cir. Certiorari denied. Reported below: 779 F. 2d 58.

No. 85-6465. *KIMBERLIN v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 776 F. 2d 1344.

No. 85-6472. *MENDOZA v. MILLER, WARDEN*. C. A. 7th Cir. Certiorari denied. Reported below: 779 F. 2d 1287.

No. 85-6481. *FRAZIER v. BOARD OF TRUSTEES OF NORTHWEST MISSISSIPPI REGIONAL MEDICAL CENTER ET AL.* C. A.

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5th Cir. Certiorari denied. Reported below: 765 F. 2d 1278 and 777 F. 2d 329.

No. 85-6623. *BROWN v. JEFFERSON*. C. A. D. C. Cir. Certiorari denied.

No. 85-6634. *CONNEL v. TEXAS*. Ct. Crim. App. Tex. Certiorari denied.

No. 85-6636. *KOFF v. CALIFORNIA*. App. Dept., Super. Ct. Cal., Nevada County. Certiorari denied.

No. 85-6639. *TORNERO v. UNITED STATES*. Ct. App. D. C. Certiorari denied.

No. 85-6640. *VICK v. LONG*. C. A. 3d Cir. Certiorari denied. Reported below: 774 F. 2d 1153.

No. 85-6641. *HALL v. ROGERS*. C. A. 4th Cir. Certiorari denied. Reported below: 779 F. 2d 45.

No. 85-6644. *HOLLAND v. BUTTERWORTH, SHERIFF, BROWARD COUNTY, FLORIDA, ET AL.* C. A. 11th Cir. Certiorari denied.

No. 85-6647. *DAVIDSON v. DAVIS, WARDEN*. C. A. 11th Cir. Certiorari denied. Reported below: 783 F. 2d 203.

No. 85-6658. *NOVEL v. PICARIELLO, JUDGE, ET AL.* C. A. 2d Cir. Certiorari denied.

No. 85-6659. *MARKS v. LEE WAY MOTOR FREIGHT ET AL.* C. A. 10th Cir. Certiorari denied.

No. 85-6661. *BONVILLAIN v. BLACKBURN, WARDEN*. C. A. 5th Cir. Certiorari denied. Reported below: 780 F. 2d 1248.

No. 85-6662. *BECKTEL v. ILLINOIS*. App. Ct. Ill., 2d Dist. Certiorari denied. Reported below: 137 Ill. App. 3d 810, 485 N. E. 2d 474.

No. 85-6663. *BOYT v. ILLINOIS*. Sup. Ct. Ill. Certiorari denied. Reported below: 109 Ill. 2d 403, 488 N. E. 2d 264.

No. 85-6677. *TRAWICK v. FLORIDA*. Sup. Ct. Fla. Certiorari denied. Reported below: 473 So. 2d 1235.

No. 85-6683. *HARROD v. HALFORD ET AL.* C. A. 8th Cir. Certiorari denied. Reported below: 773 F. 2d 234.

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No. 85-6712. *GIBSON v. SCROGGY, WARDEN*. C. A. 6th Cir. Certiorari denied. Reported below: 786 F. 2d 1164.

No. 85-6730. *ORTIZ v. WASHINGTON*. Sup. Ct. Wash. Certiorari denied. Reported below: 104 Wash. 2d 479, 706 P. 2d 1069.

No. 85-6754. *AL-AZZAWY v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 784 F. 2d 890.

No. 85-6757. *JONES v. UNITED STATES*. C. A. 4th Cir. Certiorari denied.

No. 85-6759. *CORONEL v. UNITED STATES ET AL.* C. A. 9th Cir. Certiorari denied.

No. 85-6763. *LAMP v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 779 F. 2d 1088.

No. 85-6765. *CARY v. McCOTTER, DIRECTOR, TEXAS DEPARTMENT OF CORRECTIONS*. C. A. 5th Cir. Certiorari denied.

No. 85-6772. *MARKUS v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 786 F. 2d 1149.

No. 85-6776. *ASSAAD v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 784 F. 2d 1111.

No. 85-6780. *KELLY v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 785 F. 2d 311.

No. 85-6782. *CHEIKH v. UNITED STATES*; and
No. 85-6794. *FARRAN v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 784 F. 2d 1111.

No. 85-6801. *BATUOLI v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 782 F. 2d 1036.

No. 85-6802. *JOHNSON v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 788 F. 2d 6.

No. 85-6803. *FISHERMAN v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 782 F. 2d 1054.

No. 85-6806. *NOLAN v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 784 F. 2d 496.

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No. 85-6813. SCOTT ET AL. *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 784 F. 2d 787.

No. 85-6822. KORYTO *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 787 F. 2d 593.

No. 85-6829. PARADISO *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 787 F. 2d 578.

No. 84-6187. KEETEN ET AL. *v.* GARRISON, WARDEN, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 742 F. 2d 129.

JUSTICE BRENNAN and JUSTICE MARSHALL, dissenting as to petitioner Larry Darnell Williams.

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. 84-6667. MONROE *v.* BLACKBURN, WARDEN. C. A. 5th Cir. Certiorari denied. Reported below: 748 F. 2d 958.

JUSTICE MARSHALL, with whom JUSTICE BRENNAN joins, dissenting.

I would grant certiorari in this case to resolve the serious questions it raises concerning the scope of a defendant's rights under *Brady v. Maryland*, 373 U. S. 83 (1963), during the period following his conviction. While lower courts here have adhered to our precedents in finding petitioner's *Brady* rights to have been violated, the remedy ordered impermissibly dilutes those rights even as it recognizes them.

I

In 1980, after a previous conviction had been overturned, petitioner was brought to trial in New Orleans, once again charged with the 1978 murder of Lenora Collins, a neighbor. The State's case consisted of eyewitness identifications by the victim's two children, both of whom were present when the assailant broke into their mother's bedroom. *State v. Monroe*, 397 So. 2d 1258, 1268 (La. 1981). Accepting the testimony of the two children, who at the time of the murder were aged 12 and 11, the jury re-

jected petitioner's alibi, found him guilty of first-degree murder, and unanimously recommended the death sentence.

Six months after petitioner's conviction, but while his appeal was still pending, the New Orleans Police Department was contacted by Detective Joseph Gallardo of the Pontiac, Michigan, Police Department. In the course of investigating one George Stinson's murder of his common-law wife in Michigan, Gallardo had received information suggesting that Stinson may also have murdered his previous wife, three years earlier in New Orleans. His previous wife was Lenora Collins, for whose murder petitioner has been sentenced to die. Two months later, Detective Gallardo again called the New Orleans police. This time, he related to Sergeant John McKenzie the substance of an interview he had had with Stinson's cellmate during which the cellmate had quoted Stinson as first confessing to the Michigan murder and then saying that "the same thing happened" to his first wife, Lenora Collins. Noting that a second source had corroborated this admission, Detective Gallardo also reported having received information that Stinson had threatened Lenora Collins' two children into identifying petitioner as their mother's killer.

All this information was carefully recorded by Sergeant McKenzie, who then dispatched his notes to the detectives who had been involved in the Collins investigation. These notes did not trigger further police inquiries. Neither was their existence ever disclosed to petitioner, who under Louisiana law, could have sought the remand of his case so that he might move in the trial court for a new trial. See *State v. Spell*, 388 So. 2d 754 (La. 1980). Indeed, it was not until late 1983 that independent investigation by petitioner's counsel led him to Detective Gallardo, who told of Stinson's incriminating admissions and of the fact that the New Orleans police had long before known of the new evidence. Petitioner thereupon filed a motion in New Orleans Criminal District Court seeking a new trial or, in the alternative, postconviction relief, and also a stay of his execution, then scheduled for January 4, 1984. In this motion, petitioner claimed that the State had unconstitutionally suppressed material, exculpatory evidence. While petitioner was still unaware of the existence of Sergeant McKenzie's actual notes, his counsel's independent efforts in Pontiac enabled him to present the Criminal District Court with all of the information contained in the notes.

The day before petitioner's scheduled date of execution, the Criminal District Court denied petitioner's motion without an evidentiary hearing. Weighing the eyewitness testimony of the victim's children against the affidavit of Stinson's cellmate, the court found that the new evidence was not "so material that it ought to produce a different result then [*sic*] the verdict reached." The Louisiana Supreme Court affirmed hours later, *State ex rel Monroe v. Maggio*, 444 So. 2d 606 (1984), although two justices would have granted a stay and ordered a "full evidentiary hearing on the newly discovered evidence issue." The two noted: "Because the death penalty is so final, surely no harm would come from continuing this matter one month to allow the defense to produce witnesses from Michigan, and having the trial court evaluate this evidence." *Ibid.*

After the state court denied relief, the Federal District Court acted upon a habeas petition filed several days earlier, and stayed petitioner's execution. After a hearing in which he heard testimony from Detective Gallardo and Stinson, a Magistrate held that the information allowed to sit undisturbed in New Orleans police files was both improperly suppressed and clearly favorable to petitioner. He recommended that the writ be granted.

The District Court adopted the Magistrate's report, agreeing that the information received from Detective Gallardo was material, exculpatory information that under *United States v. Agurs*, 427 U. S. 97 (1976), should have been disclosed to petitioner. The District Court noted that, when coupled with the absence of physical evidence linking petitioner to the murder, the possibility that the eyewitness testimony of the victim's children may have been coerced, and testimony by petitioner's mother placing Stinson at the victim's house on the day of the murder, the suppressed evidence "makes the assertion that Stinson committed the murder plausible." Finding the evidence to "creat[e] a reasonable doubt as to Monroe's guilt that did not previously exist," the court issued the writ. However, having concluded that petitioner's due process rights under *Brady* had been violated, the court did not order that he be released or retried. Rather, it ordered Louisiana

"to grant to Petitioner whatever he was entitled to by way of post-conviction relief during the limitation period provided by Louisiana law for a request for a new trial based on the excul-

patory material which the State courts did not have an opportunity to consider, so that Petitioner may fully and effectively exercise and exhaust his post-conviction rights under Louisiana law."

The Court of Appeals upheld the District Court's choice of remedy. 748 F. 2d 958, 960 (CA5 1984).

II

In *Brady v. Maryland*, 373 U. S. 83 (1963), this Court held that "the suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution." *Id.*, at 87. In *United States v. Agurs, supra*, we recognized that

"there are situations in which evidence is obviously of such substantial value to the defense that elementary fairness requires it to be disclosed even without a specific request. For though the attorney for the sovereign must prosecute the accused with earnestness and vigor, he must always be faithful to his client's overriding interest that 'justice shall be done.'" *Id.*, at 110-111 (footnote omitted).

The message of *Brady* and its progeny is that a trial is not a mere "sporting event"; it is a quest for truth in which the prosecutor, by virtue of his office, must seek truth even as he seeks victory. See *United States v. Bagley*, 473 U. S. 667, 675 (1985) (*Brady* rule to "ensure that a miscarriage of justice does not occur").

The quest for truth may not terminate with a defendant's conviction. In Louisiana, a convicted defendant must receive a new trial whenever

"[n]ew and material evidence that, notwithstanding the exercise of reasonable diligence by the defendant, was not discovered before or during the trial, is available, and if the evidence had been introduced at the trial it would probably have changed the verdict or judgment of guilty." La. Code Crim. Proc. Ann., Art. 851(3) (West 1984).

When the sovereign has decided that justice will be best served by qualifying the finality of a conviction so that a convicted defendant may yet prove his innocence, its attorney is not free to choose

otherwise. And until factfinding proceedings, or the possibility of them, is terminated, the State remains bound by the rules of simple fairness that *Brady* held to be of constitutional dimension. It would hardly make sense to hold the State to a special duty to disclose exculpatory evidence in any adversarial proceeding and then permit the State to avoid this obligation by suppressing the very evidence that would enable a defendant to trigger such proceedings.¹

In this case there can be no doubt that petitioner's due process rights were violated by the State's failure to disclose to him the information that Detective Gallardo related to the New Orleans police. That the information lay undisturbed in the files of the police and not those of the prosecutor should make no difference. The police files that so readily provided the State with the incriminating material to convict a defendant cannot be turned into a dead-letter repository where evidence of innocence is concerned. See *Moore v. Illinois*, 408 U. S. 786, 810 (1972) (MARSHALL, J., concurring in part and dissenting in part); *Smith v. Florida*, 410 F. 2d 1349, 1351 (CA5 1969). If by now police are not fully aware of their constitutional obligation to disclose exculpatory evidence even in the absence of a specific request by the prosecutor or defense counsel, this Court should seize this case as a chance to educate them.

This is certainly not a case in which the failure, whether intentional or inadvertent, of the police to alert petitioner to the new information can be attributed to their failure to understand the complexities of the *Brady* rule. At the time the evidence was suppressed, *Agurs* obliged the State to disclose evidence that created "a reasonable doubt that did not otherwise exist" as to defendant's guilt. 427 U. S., at 112. And though the District Court here quite properly made a careful examination of the transcripts from petitioner's second trial before holding the informa-

¹Because in this case, the State suppressed exculpatory evidence while petitioner could still have sought postconviction relief under state law, we need not consider whether the State also deprived petitioner of a federal right to seek habeas relief on the basis of evidence that undermines the sufficiency of the evidence supporting his conviction. See *Dobbert v. Wainwright*, 468 U. S. 1231, 1234 (1984) (BRENNAN, J., dissenting from denial of stay and certiorari); Wright & Sofaer, Federal Habeas Corpus for State Prisoners, 75 Yale L. J. 895, 958, n. 223 (1966).

tion from Detective Gallardo to be "material" under the *Agurs* standard,² I cannot believe that either an examination of the record or a law degree is needed to appreciate that admissions by a wife-killer incriminating himself in the murder of a former wife cannot be dismissed as idle gossip.

III

While it was correct to find a *Brady* violation, the District Court appears to have believed that because the Louisiana courts were not given an opportunity to consider the evidence that petitioner was able to develop in the course of his federal habeas proceeding—to wit, Sergeant McKenzie's actual notes of his conversations with Detective Gallardo and the testimony of Detective Gallardo at the habeas hearing—they should now be allowed to decide whether they were a bit hasty in denying petitioner's new trial motion on the eve of his execution. However, the only reason why the state courts never considered this evidence was that they dismissed petitioner's motion without an evidentiary hearing. It was only after the Federal District Court gave petitioner the chance to subpoena the evidence that it came to light. Moreover, as the Court of Appeals observed, the state courts were presented with the "same underlying information" as that contained in Sergeant McKenzie's notes. Having adequately asserted in state courts the basis for his *Brady* claim, petitioner plainly satisfied the exhaustion requirement of federal habeas corpus.

Sending petitioner back to state court with his already exhausted claim is particularly inappropriate here because of the nature of the constitutional violation. If the police had not improperly suppressed the exculpatory information, petitioner would have been able to seek a new trial under Art. 851(3). To require petitioner now to pursue this same remedy is thus to treat the suppressed information just as if it had been "found in a neutral source" and therefore to ignore the "special significance" of the police's obligation to serve the cause of justice. *United States v. Agurs*, 427 U. S., at 111. The remedy ordered here removes from the State any incentive to make timely disclosure of material, exculpatory evidence and trivializes the constitutional right

²It is clear that this evidence would also be material under the standard established by this Court in *United States v. Bagley*, 473 U. S. 667 (1985).

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recognized in *Brady* and its progeny. The only way this right can be guaranteed is to grant petitioner the remedy that until now has always followed a determination that the *Brady* rule has been violated: He must be released or retried. Because I do not believe this Court should stand by in the face of the dilution of the due process rights of an individual who may not even be guilty of the crime for which he stands under death sentence, I respectfully dissent from the denial of certiorari.

No. 85-1262. TEXAS ASSOCIATION OF CONCERNED TAXPAYERS, INC. *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 772 F. 2d 163.

JUSTICE WHITE, with whom JUSTICE BRENNAN joins, dissenting.

Petitioner Texas Association of Concerned Taxpayers challenges the Tax Equity and Fiscal Responsibility Act of 1982, 96 Stat. 324 (TEFRA), on the ground that it was enacted in violation of the Origination Clause of the United States Constitution, which provides that "[a]ll Bills for raising Revenue shall originate in the House of Representatives." Art. I, § 7, cl. 1. Specifically, petitioner asserts that when the bill originated in the House of Representatives, it was not a "bill for raising revenue" within the meaning of the Origination Clause because the net effect of the bill would have been to reduce the amount of revenue collected.

The United States Court of Appeals for the Fifth Circuit held that this issue was a nonjusticiable political question. 772 F. 2d 163, 165-167 (1985). This holding conflicts with the Ninth Circuit's explicit holding with respect to an identical challenge to TEFRA that the Origination Clause issue was in fact justiciable. See *Armstrong v. United States*, 759 F. 2d 1378, 1381-1382 (1985). See also *Wardell v. United States*, 757 F. 2d 203 (CA8 1985) (*per curiam*) (adjudicating same claim on the merits); *Heitman v. United States*, 753 F. 2d 33 (CA6 1984) (*per curiam*) (same). The Fifth Circuit's holding is also in tension with this Court's decision in *Flint v. Stone Tracy Co.*, 220 U. S. 107, 142-143 (1911), in which we also adjudicated an Origination Clause challenge to a statute. To resolve this conflict among the Circuits, I would grant certiorari.

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No. 85-1321. RAMIREZ *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 39 Cal. 3d 931, 705 P. 2d 897.

JUSTICE WHITE, with whom JUSTICE BRENNAN and JUSTICE POWELL join, dissenting.

Petitioner Rudy Ramirez is currently serving a prison term imposed by the State of California for a crime committed before January 1, 1983. As of that date, a new plan for awarding sentence reduction credits and their forfeiture became effective. See Cal. Penal Code Ann. §§ 2931, 2932 (West Supp. 1986). Ramirez was charged in January 1983 with altering the paperwork relating to a television set. This resulted in a loss under the new plan of 95 days of behavior credits, which was later reduced to 48 days. Under the old plan, Ramirez would have forfeited at most 15 days.

Ramirez then filed a habeas corpus petition in the California state courts, challenging the application to him of the new system on the ground that such application violated the *Ex Post Facto* Clause of the United States Constitution. Art. I, § 10. A divided California Supreme Court upheld the new system, as applied to Ramirez, applying the two-part test set forth in *Weaver v. Graham*, 450 U. S. 24, 29 (1981), and concluding that the new provisions were not unconstitutionally retrospective because the increased sanctions were imposed only for misconduct occurring after the changes became effective. *In re Ramirez*, 39 Cal. 3d 931, 705 P. 2d 897 (1985).

The decision of the California Supreme Court conflicts with the decision of the United States Court of Appeals for the Fifth Circuit in *Beebe v. Phelps*, 650 F. 2d 774 (1981). In *Beebe*, the Fifth Circuit held that the application of new provisions for revoking previously earned credits for parole violations to a prisoner who had been incarcerated before the new provisions became effective violated the *Ex Post Facto* Clause even where the parole violations occurred after the effective date of the new provisions. The decision of the California Supreme Court also is in tension with our decision in *Weaver, supra*, in which we held that the application to a prisoner of a new system for earning good-time credits, which system reduced the credits that could be earned, violated the *Ex Post Facto* Clause. See also *Greenfield v. Scafati*, 277 F. Supp. 644 (Mass. 1967), summarily aff'd, 390 U. S. 713 (1968). In *Weaver*, we analyzed the question of retrospectivity according to whether the new rule "substantially alters the consequences

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attached to a crime already completed," 450 U. S., at 33, and the California Supreme Court's distinction here between the ability to earn good-time credits, at issue in *Weaver*, and the forfeiture of such credits, at issue here, does not seem immediately relevant to this analysis. To resolve the conflict with *Beebe* and the tension with *Greenfield* and *Weaver*, I would grant certiorari and set the case for argument.

No. 85-1646. *KEMP, WARDEN v. WILSON*. C. A. 11th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 777 F. 2d 621.

No. 85-1752. *KAIRYS v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. JUSTICE WHITE took no part in the consideration or decision of this petition. Reported below: 782 F. 2d 1374.

No. 85-5022. *RUSHING v. LOUISIANA*. Sup. Ct. La.;

No. 85-5082. *WATSON v. BLACKBURN, WARDEN*. C. A. 5th Cir.;

No. 85-6308. *LOWENFIELD v. LOUISIANA*. Sup. Ct. La.;

No. 85-6551. *BROCK v. MCCOTTER, DIRECTOR, TEXAS DEPARTMENT OF CORRECTIONS*. C. A. 5th Cir.;

No. 85-6584. *KORDENBROCK v. KENTUCKY*. Sup. Ct. Ky.;

No. 85-6643. *BEAM v. IDAHO*. Sup. Ct. Idaho;

No. 85-6665. *BARNES v. TENNESSEE*. Sup. Ct. Tenn.;

No. 85-6668. *HARBISON v. TENNESSEE*. Sup. Ct. Tenn.; and

No. 85-6675. *BYRD v. FLORIDA*. Sup. Ct. Fla. Certiorari denied. Reported below: No. 85-5022, 464 So. 2d 268; No. 85-5082, 756 F. 2d 1055; No. 85-6308, 495 So. 2d 1245; No. 85-6551, 781 F. 2d 1152; No. 85-6584, 700 S. W. 2d 384; No. 85-6643, 109 Idaho 616, 710 P. 2d 526; No. 85-6665, 703 S. W. 2d 611; No. 85-6668, 704 S. W. 2d 314; No. 85-6675, 481 So. 2d 468.

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. 85-301. *AMEY, INC., ET AL. v. GULF ABSTRACT & TITLE, INC., ET AL.*, 475 U. S. 1107. Petition for rehearing denied.

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No. 85-6432. JACKSON *v.* NEWSOME, WARDEN, 475 U. S. 1126. Petition for rehearing denied.

No. 85-531. CITY OF LOS ANGELES ET AL. *v.* HELLER, 475 U. S. 796. Petition for rehearing denied. JUSTICE BRENNAN took no part in the consideration or decision of this petition.

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Appeals Dismissed

No. 85-1344. TAYLOR *v.* MOONEY, SUPERINTENDENT, WEST VIRGINIA DEPARTMENT OF PUBLIC SAFETY, ET AL. Appeal from Cir. Ct. W. Va., Kanawha County, dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied.

No. 85-1823. STROOM *v.* CARTER, FORMER PRESIDENT OF THE UNITED STATES, 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: 787 F. 2d 584.

No. 85-6669. KEANE *v.* AMBACH. Appeal from C. A. 2d Cir. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied. Reported below: 788 F. 2d 5.

No. 85-6670. D'AREZZO *v.* ESTATE OF CHRISTY ET AL. Appeal from Sup. Ct. R. I. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied. Reported below: 499 A. 2d 744.

No. 85-6709. ARNOLD *v.* SOUTH DAKOTA. Appeal from Sup. Ct. S. D. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied. Reported below: 379 N. W. 2d 322.

No. 85-1714. PAYNE ET UX. *v.* MOUNT, SHERIFF OF WHATCOM COUNTY, WASHINGTON, ET AL. Appeal from Ct. App. Wash. dismissed for want of jurisdiction. Reported below: 41 Wash. App. 627, 705 P. 2d 297.

No. 85-6521. CAMPBELL *v.* GRIFFIN, DISTRICT JUDGE, FIRST JUDICIAL DISTRICT COURT OF NEVADA, CARSON CITY. Appeal from Sup. Ct. Nev. dismissed for want of substantial federal question. Reported below: 101 Nev. 718, 710 P. 2d 70.

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No. 85-6687. ACEN ET AL. *v.* MASSACHUSETTS. Appeal from Sup. Jud. Ct. Mass. dismissed for want of substantial federal question. Reported below: 396 Mass. 472, 487 N. E. 2d 189.

Miscellaneous Orders

No. — — —. MANRIQUE-FERNANDEZ *v.* IMMIGRATION AND NATURALIZATION SERVICE. Motion to direct the Clerk to file the petition for writ of certiorari out of time denied.

No. — — —. GRACE *v.* HEARTLAND TRANSPORTATION INC., 475 U. S. 1042. Motion for reconsideration of order of Court entered March 3, 1986, denied.

No. D-546. IN RE DISBARMENT OF AUGUST. Irving A. August, of Birmingham, Mich., 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 February 24, 1986 [475 U. S. 1004], is hereby discharged.

No. D-549. IN RE DISBARMENT OF DUKE. Charles Louis Duke, of Houston, Tex., 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 March 24, 1986 [475 U. S. 1079], is hereby discharged.

No. D-552. IN RE DISBARMENT OF PLAZA. Disbarment entered. [For earlier order herein, see 475 U. S. 1106.]

No. 84-2022. 324 LIQUOR CORP., DBA YORKSHIRE WINE & SPIRITS *v.* MCLAUGHLIN ET AL. Ct. App. N. Y. [Probable jurisdiction noted, 475 U. S. 1080.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

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 respondents Ansonia Federation of Teachers et al. for divided argument granted.

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, 475 U. S. 1044.] Motion of Legal Foundation of America for leave to file a brief as *amicus curiae* granted. Motion of the

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Solicitor General to dispense with printing the joint appendix granted.

No. 85-1027. *ARIZONA v. HICKS*. Ct. App. Ariz. [Certiorari granted, 475 U. S. 1107.] Motion of Americans for Effective Law Enforcement, Inc., et al. for leave to file a brief as *amici curiae* granted.

No. 85-1233. *INTERNATIONAL PAPER CO. v. OUELLETTE ET AL.* C. A. 2d Cir. [Certiorari granted, 475 U. S. 1081.] Motion of Mid-America Legal Foundation for leave to file a brief as *amicus curiae* granted.

No. 85-1388. *ROSE v. ARKANSAS STATE POLICE*. Ct. App. Ark. The Solicitor General is invited to file a brief in this case expressing the views of the United States.

No. 85-6698. *CAPPIELLO v. CAPPIELLO*. Ct. App. N. Y.;

No. 85-6768. *RAMIREZ v. UNITED STATES*. Ct. Mil. App.;
and

No. 85-6769. *MCNEAIR v. GEORGETOWN UNIVERSITY HOSPITAL*. C. A. D. C. Cir. Motions of petitioners for leave to proceed *in forma pauperis* denied. Petitioners are allowed until June 23, 1986, within which to pay the docketing fee required by Rule 45(a) and to submit petitions 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 petitions for writs of certiorari without reaching the merits of the motions to proceed *in forma pauperis*.

No. 85-5957. *IN RE SHEWCHUN*. Petition for writ of mandamus denied.

Probable Jurisdiction Noted

No. 85-1658. *FEDERAL COMMUNICATIONS COMMISSION ET AL. v. FLORIDA POWER CORP. ET AL.*; and

No. 85-1660. *GROUP W CABLE, INC., ET AL. v. FLORIDA POWER CORP. ET AL.* Appeals from C. A. 11th Cir. Probable

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jurisdiction noted, cases consolidated, and a total of one hour allotted for oral argument. Reported below: 772 F. 2d 1537.

Certiorari Granted

No. 85-1736. JERSEY SHORE STATE BANK *v.* UNITED STATES. C. A. 3d Cir. Certiorari granted. Reported below: 781 F. 2d 974.

No. 85-184. STRINGFELLOW ET AL. *v.* CONCERNED NEIGHBORS IN ACTION ET AL. C. A. 9th Cir. Certiorari granted limited to Question 1 presented by the petition. Reported below: 755 F. 2d 1383 and 783 F. 2d 821.

No. 85-1222. INTERSTATE COMMERCE COMMISSION *v.* TEXAS ET AL.; and

No. 85-1267. MISSOURI-KANSAS-TEXAS RAILROAD CO. ET AL. *v.* TEXAS ET AL. C. A. 5th Cir. Certiorari granted, cases consolidated, and a total of one hour allotted for oral argument. Reported below: 770 F. 2d 452.

No. 85-1239. AMOCO PRODUCTION CO. ET AL. *v.* VILLAGE OF GAMBELL ET AL.; and

No. 85-1406. HODEL, SECRETARY OF THE INTERIOR, ET AL. *v.* VILLAGE OF GAMBELL ET AL. C. A. 9th Cir. Certiorari granted, cases consolidated, and a total of one hour allotted for oral argument. Reported below: 774 F. 2d 1414.

No. 85-1563. CALIFORNIA *v.* BROWN. Sup. Ct. Cal. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari granted limited to Question 1 presented by the petition. Reported below: 40 Cal. 3d 512, 709 P. 2d 440.

No. 85-5221. GRIFFITH *v.* KENTUCKY. Sup. Ct. Ky. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari is granted limited to the following question: "In cases pending on direct appeal, should the holding in *Batson v. Kentucky*, ante, p. 79, be given retroactive effect?" Case is set for oral argument in tandem with No. 85-5731, *Brown v. United States*, immediately *infra*.

No. 85-5731. BROWN *v.* UNITED STATES. C. A. 10th Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari is granted limited to the following question: "In cases pending on direct appeal, should the holding in *Batson v. Kentucky*, ante, p. 79, be given retroactive effect?" Case is set

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for oral argument in tandem with No. 85-5221, *Griffith v. Kentucky*, immediately *supra*. Reported below: 770 F. 2d 912.

Certiorari Denied. (See also Nos. 85-1344, 85-1823, 85-6669, 85-6670, and 85-6709, *supra*.)

No. 85-112. *LITTLE CROW MILLING CO., INC., ET AL. v. BALTIMORE & OHIO RAILROAD ET AL.* C. A. 7th Cir. *Certiorari denied*. Reported below: 759 F. 2d 1305.

No. 85-1229. *RUSSELL ET AL. v. DEPARTMENT OF TRANSPORTATION, FEDERAL AVIATION ADMINISTRATION.* C. A. Fed. Cir. *Certiorari denied*. Reported below: 771 F. 2d 493.

No. 85-1279. *UNITED NUCLEAR CORP. ET AL. v. THOMAS, ADMINISTRATOR, ENVIRONMENTAL PROTECTION AGENCY, ET AL.* (two cases);

No. 85-1280. *AMERICAN MINING CONGRESS v. THOMAS, ADMINISTRATOR, ENVIRONMENTAL PROTECTION AGENCY, ET AL.* (two cases); and

No. 85-6404. *KEPFORD v. THOMAS, ADMINISTRATOR, ENVIRONMENTAL PROTECTION AGENCY, ET AL.* C. A. 10th Cir. *Certiorari denied*. Reported below: Nos. 85-1279 and 85-1280 (first cases), 772 F. 2d 617; Nos. 85-1279 and 85-1280 (second cases) and No. 85-6404, 772 F. 2d 640.

No. 85-1291. *LEVINE ET AL. v. UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA (UNITED STATES, REAL PARTY IN INTEREST).* C. A. 9th Cir. *Certiorari denied*. Reported below: 764 F. 2d 590 and 775 F. 2d 1054.

No. 85-1339. *COHEN ET AL. v. NEW MEXICO.* Sup. Ct. N. M. *Certiorari denied*. Reported below: 103 N. M. 558, 711 P. 2d 3.

No. 85-1386. *HOLLOWAY v. UNITED STATES*; and

No. 85-1391. *SULLIVAN v. UNITED STATES.* C. A. 11th Cir. *Certiorari denied*. Reported below: 778 F. 2d 653.

No. 85-1410. *MALONE & HYDE, INC. v. TANDY CORP.* C. A. 6th Cir. *Certiorari denied*. Reported below: 769 F. 2d 362 and 777 F. 2d 1130.

No. 85-1431. *BOLTON ET AL., DBA PRYOR & GLEN COAL CO. v. UNITED STATES.* C. A. 6th Cir. *Certiorari denied*. Reported below: 781 F. 2d 528.

No. 85-1486. *LOCAL 32, INTERNATIONAL LONGSHOREMEN'S & WAREHOUSEMEN'S UNION v. PACIFIC MARITIME ASSN. ET AL.*

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C. A. 9th Cir. Certiorari denied. Reported below: 773 F. 2d 1012.

No. 85-1505. TURNBULL CONE BAKING COMPANY OF TENNESSEE *v.* NATIONAL LABOR RELATIONS BOARD. C. A. 6th Cir. Certiorari denied. Reported below: 778 F. 2d 292.

No. 85-1538. KATZ *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 778 F. 2d 963.

No. 85-1541. BATTAGLIA ET AL. *v.* BERGER ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 779 F. 2d 992.

No. 85-1555. ROSE *v.* TOWN OF HARWICH. C. A. 1st Cir. Certiorari denied. Reported below: 778 F. 2d 77.

No. 85-1642. CUNNINGHAM *v.* SAFEWAY TRAILS, INC., ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 795 F. 2d 78.

No. 85-1661. COONEY *v.* ILLINOIS. App. Ct. Ill., 2d Dist. Certiorari denied. Reported below: 136 Ill. App. 3d 989, 484 N. E. 2d 802.

No. 85-1662. WALKER *v.* TIME LIFE FILMS, INC., ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 784 F. 2d 44.

No. 85-1669. FINDLAY *v.* CONNECTICUT. Sup. Ct. Conn. Certiorari denied. Reported below: 198 Conn. 328, 502 A. 2d 921.

No. 85-1670. CAMPBELL, TRUSTEE *v.* WELLS FARGO BANK, N. A., ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 781 F. 2d 440.

No. 85-1671. AQUAMARINE OPERATORS, INC. *v.* DOWNER. Sup. Ct. Tex. Certiorari denied. Reported below: 701 S. W. 2d 238.

No. 85-1677. JOHNSON *v.* ALABAMA AGRICULTURAL AND MECHANICAL UNIVERSITY ET AL. Sup. Ct. Ala. Certiorari denied. Reported below: 481 So. 2d 336.

No. 85-1679. DALEY *v.* FRANK ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 776 F. 2d 834.

No. 85-1680. E. B. *v.* BURLINGTON COUNTY WELFARE AGENCY. Super. Ct. N. J., App. Div. Certiorari denied.

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No. 85-1711. *GRIMES v. LOUISVILLE & NASHVILLE RAILROAD CO.* C. A. 7th Cir. Certiorari denied. Reported below: 767 F. 2d 925.

No. 85-1724. *UNDERWOOD v. ALABAMA.* Ct. Crim. App. Ala. Certiorari denied. Reported below: 484 So. 2d 520.

No. 85-1725. *KENNEDY v. GENERAL SERVICES ADMINISTRATION.* C. A. Fed. Cir. Certiorari denied. Reported below: 785 F. 2d 326.

No. 85-1729. *MEADS ET AL. v. FLYING TIGER LINE, INC., ET AL.* C. A. Fed. Cir. Certiorari denied. Reported below: 758 F. 2d 661.

No. 85-1756. *POOL v. MISSISSIPPI.* Sup. Ct. Miss. Certiorari denied. Reported below: 483 So. 2d 331.

No. 85-1758. *TURNER v. PARSONS.* C. A. 3d Cir. Certiorari denied. Reported below: 787 F. 2d 584.

No. 85-1783. *ARDITO v. UNITED STATES.* C. A. 2d Cir. Certiorari denied. Reported below: 782 F. 2d 358.

No. 85-1784. *BONANSINGA v. UNITED STATES.* C. A. 7th Cir. Certiorari denied. Reported below: 773 F. 2d 166.

No. 85-1787. *WISNIEWSKI v. UNITED STATES.* Ct. Mil. App. Certiorari denied. Reported below: 21 M. J. 370.

No. 85-1795. *HOFFMAN v. UNITED STATES.* C. A. 7th Cir. Certiorari denied. Reported below: 784 F. 2d 798.

No. 85-1800. *FREEMAN v. UNITED STATES.* C. A. 6th Cir. Certiorari denied. Reported below: 786 F. 2d 1164.

No. 85-1810. *SCHREIBER, PERSONAL REPRESENTATIVE OF THE ESTATE OF ROSS v. CHASE FEDERAL SAVINGS & LOAN ASSN.* Sup. Ct. Fla. Certiorari denied. Reported below: 479 So. 2d 90.

No. 85-1833. *STANGER v. UNITED STATES.* C. A. 2d Cir. Certiorari denied. Reported below: 788 F. 2d 6.

No. 85-5990. *MONTGOMERY v. SEITER ET AL.* C. A. 6th Cir. Certiorari denied.

No. 85-6330. *FUENTES-JIMENEZ v. UNITED STATES.* C. A. 11th Cir. Certiorari denied. Reported below: 750 F. 2d 1495.

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No. 85-6356. *BUTLER v. JOHNSON ET AL.* C. A. 11th Cir. Certiorari denied.

No. 85-6498. *CARDINAL v. UNITED STATES.* C. A. 6th Cir. Certiorari denied. Reported below: 782 F. 2d 34.

No. 85-6510. *JENKINS ET AL. v. UNITED STATES.* C. A. 4th Cir. Certiorari denied. Reported below: 780 F. 2d 472.

No. 85-6518. *GLOVER v. NEW YORK.* Ct. App. N. Y. Certiorari denied. Reported below: 66 N. Y. 2d 931, 489 N. E. 2d 765.

No. 85-6538. *HALL v. KENTUCKY.* Ct. App. Ky. Certiorari denied.

No. 85-6672. *COLEMAN v. ABACUS CORP. ET AL.* Sup. Ct. Del. Certiorari denied. Reported below: 508 A. 2d 72.

No. 85-6673. *FRONEBERGER v. NORTH CAROLINA.* C. A. 4th Cir. Certiorari denied. Reported below: 786 F. 2d 1153.

No. 85-6681. *HURTADO v. CALIFORNIA.* Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 85-6682. *PARKHURST v. QUARLES, WARDEN, ET AL.* Ct. App. Mich. Certiorari denied.

No. 85-6684. *RANDALL v. UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA.* C. A. 9th Cir. Certiorari denied.

No. 85-6689. *NABOZNY v. MORRIS, SUPERINTENDENT, SOUTHERN OHIO CORRECTIONAL FACILITY.* C. A. 6th Cir. Certiorari denied. Reported below: 781 F. 2d 83.

No. 85-6697. *LOFTON v. MICHIGAN.* Ct. App. Mich. Certiorari denied.

No. 85-6700. *ROSBERG v. COMMERCIAL STATE BANK OF WAUSA, NEBRASKA.* Sup. Ct. Neb. Certiorari denied.

No. 85-6703. *WALKER v. UNITED STATES.* C. A. 11th Cir. Certiorari denied. Reported below: 725 F. 2d 693.

No. 85-6706. *DAY v. UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT ET AL.* C. A. 5th Cir. Certiorari before judgment denied.

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No. 85-6741. *STRATTON v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 779 F. 2d 820.

No. 85-6743. *LIPSMAN v. ANDERSON ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 800 F. 2d 1128.

No. 85-6747. *COCHRAN v. UNITED STATES POSTAL SERVICE*. C. A. 5th Cir. Certiorari denied. Reported below: 783 F. 2d 1061.

No. 85-6751. *THERRIEN v. VOSE, SUPERINTENDENT, MASSACHUSETTS CORRECTIONAL INSTITUTION*. C. A. 1st Cir. Certiorari denied. Reported below: 782 F. 2d 1.

No. 85-6766. *LARKIN v. UNITED STATES*. C. A. 11th Cir. Certiorari denied. Reported below: 780 F. 2d 1031.

No. 85-6785. *MAYBERRY v. UNITED STATES*. C. A. 11th Cir. Certiorari denied. Reported below: 784 F. 2d 402.

No. 85-6792. *CORLEY v. UNITED STATES*. Ct. App. D. C. Certiorari denied.

No. 85-6799. *SPANO, INDIVIDUALLY AND AS ADMINISTRATOR OF THE ESTATE OF SPANO v. ONONDAGA COUNTY, NEW YORK*. C. A. 2d Cir. Certiorari denied. Reported below: 779 F. 2d 35.

No. 85-6807. *SAUERS v. COMMISSIONER OF INTERNAL REVENUE*. C. A. 3d Cir. Certiorari denied. Reported below: 771 F. 2d 64.

No. 85-6812. *DAVIDSON v. UNITED STATES*. Ct. App. D. C. Certiorari denied.

No. 85-6827. *ANDERSON v. UNITED STATES*. C. A. 11th Cir. Certiorari denied. Reported below: 785 F. 2d 1036.

No. 85-6838. *WALETZKI v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 786 F. 2d 1168.

No. 85-6841. *ORGERA v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 786 F. 2d 1148.

No. 85-6858. *GARZA-PACHECO v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 784 F. 2d 1112.

No. 85-6860. *BUTLER ET AL. v. BROOKLYN UNION GAS ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 788 F. 2d 6.

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No. 85-6861. *HYDE v. PITTMAN, ATTORNEY GENERAL OF MISSISSIPPI, ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 788 F. 2d 759.

No. 85-6865. *FRITTS v. UNITED STATES.* C. A. 10th Cir. Certiorari denied.

No. 85-1349. *INTAKE WATER CO. v. YELLOWSTONE RIVER COMPACT COMMISSION ET AL.* C. A. 9th Cir. Motion of Yellowstone Pipeline Co. Inc. et al. for leave to file a brief as *amici curiae* granted. Certiorari denied. Reported below: 769 F. 2d 568.

No. 85-1439. *FRANKLIN AND MARSHALL COLLEGE v. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION.* C. A. 3d Cir. Certiorari denied. Reported below: 775 F. 2d 110.

JUSTICE WHITE, with whom JUSTICE BLACKMUN joins, dissenting.

The Equal Employment Opportunity Commission is investigating petitioner on a charge of discriminating on the basis of national origin in denying tenure to a former assistant professor. In the course of its investigation, the EEOC issued a subpoena *duces tecum* for evaluations submitted by petitioner's faculty in all cases in which tenure was granted or denied from 1977 to the present. The EEOC offered to accept the subpoenaed materials with names and identifying characteristics deleted. Petitioner resisted the subpoena, asserting a privilege against the compelled production of confidential peer review materials absent a showing of facts supporting an inference of discrimination. The United States Court of Appeals for the Third Circuit rejected the asserted privilege, 775 F. 2d 110 (1985), which has been accepted by another Court of Appeals, see *EEOC v. University of Notre Dame du Lac*, 715 F. 2d 331, 337, n. 4 (CA7 1983). I would grant certiorari to resolve this conflict.

No. 85-1631. *RANDOLPH v. SUPREME COURT OF NEW JERSEY ET AL.* Sup. Ct. N. J. Certiorari denied. JUSTICE BRENNAN, JUSTICE WHITE, and JUSTICE BLACKMUN would grant certiorari. Reported below: 101 N. J. 425, 502 A. 2d 533.

No. 85-1649. *MIDWEST COMMUNICATIONS, INC. v. MINNESOTA TWINS, INC., ET AL.* C. A. 8th Cir. Certiorari denied. JUSTICE BLACKMUN took no part in the consideration or decision of this petition. Reported below: 779 F. 2d 444.

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No. 85-1652. *KEMP, WARDEN v. COLEMAN*; and *KEMP, WARDEN v. ISAACS ET AL.* C. A. 11th Cir. Motions of respondents Coleman, Dungee, and Isaacs for leave to proceed *in forma pauperis* granted. Certiorari denied. THE CHIEF JUSTICE would grant certiorari. Reported below: 778 F. 2d 1487 (first case); 778 F. 2d 1482 (second case).

No. 85-1673. *MILLER v. SOUTH CAROLINA*. Ct. Gen. Sess. S. C., Horry County. Certiorari denied. JUSTICE BRENNAN and JUSTICE MARSHALL would grant certiorari.

No. 85-5394. *JENKINS v. WAINWRIGHT, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS*. C. A. 11th Cir. Certiorari denied. JUSTICE MARSHALL would grant certiorari. Reported below: 763 F. 2d 1390.

No. 85-5446. *BERRY v. KING, SECRETARY, LOUISIANA DEPARTMENT OF CORRECTIONS, ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 765 F. 2d 451.

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.

This is yet another capital case in which defense counsel failed to present *any* mitigation evidence whatsoever during the sentencing phase of a defendant's trial. I believe that, except perhaps in the extraordinary case, counsel's failure even to attempt to give the jury some reason for believing a defendant is not deserving of death denies defendant his Sixth Amendment right to the effective assistance of counsel. And I have yet to see that extraordinary case. I would grant the petition for certiorari and vacate the sentence.

No. 85-5466. *CELESTINE v. BLACKBURN, WARDEN*. C. A. 5th Cir.;

No. 85-5491. *HOUSTON v. TENNESSEE*. Sup. Ct. Tenn.;

No. 85-5564. *CABELLO v. MISSISSIPPI*. Sup. Ct. Miss.;

No. 85-5607. *BOWDEN v. KEMP, WARDEN*. C. A. 11th Cir.;

No. 85-5640. *LILES v. OKLAHOMA*. Ct. Crim. App. Okla.;

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No. 85-5736. *MCDOWELL v. NORTH CAROLINA*. Super. Ct. N. C., Lee County;

No. 85-5852. *MALONE v. MISSOURI*. Sup. Ct. Mo.;

No. 85-6676. *NEAL v. ILLINOIS*. Sup. Ct. Ill.; and

No. 85-6692. *BROWN v. NORTH CAROLINA*. Sup. Ct. N. C. Certiorari denied. Reported below: No. 85-5564, 471 So. 2d 332; No. 85-5607, 774 F. 2d 1494; No. 85-5640, 702 P. 2d 1025; No. 85-5852, 694 S. W. 2d 723; No. 85-6676, 111 Ill. 2d 180, 489 N. E. 2d 845; No. 85-6692, 315 N. C. 40, 337 S. E. 2d 808.

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. 85-1343. *HUMPHREY ET AL., DBA HUMPHREY & HAAS v. COMMITTEE ON PROFESSIONAL ETHICS AND CONDUCT OF THE IOWA STATE BAR ASSN.*, 475 U. S. 1114;

No. 85-6501. *ROBINSON v. UNITED STATES*, 475 U. S. 1134; and

No. 85-6579. *VOLINO v. UNITED STATES*, 475 U. S. 1128. Petitions for rehearing denied.

No. 85-6052. *AUGUSTYNIAK v. CITY OF NEW YORK ET AL.*, 475 U. S. 1027. Motion for leave to file petition for rehearing denied.

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Miscellaneous Order

No. A-950. *ESQUIVEL v. McCOTTER, DIRECTOR, TEXAS DEPARTMENT OF CORRECTIONS*. Application for stay of execution of sentence of death, presented to JUSTICE WHITE, and by him referred to the Court, denied.

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

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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.

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Appeals Dismissed

No. 84-623. CINCINNATI BELL TELEPHONE CO. *v.* PUBLIC UTILITIES COMMISSION OF OHIO ET AL. Appeal from Sup. Ct. Ohio. Motion of GTE Service Corp. for leave to file a brief as *amicus curiae* granted. Appeal dismissed for want of substantial federal question. JUSTICE POWELL and JUSTICE O'CONNOR took no part in the consideration or decision of this motion and this case. Reported below: 12 Ohio St. 3d 280, 466 N. E. 2d 848.

No. 84-870. LOUISIANA PUBLIC SERVICE COMMISSION ET AL. *v.* SOUTH CENTRAL BELL TELEPHONE Co. 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 granted. Judgment vacated and case remanded for further consideration in light of *Public Service Comm'n v. Chesapeake & Potomac Tel. Co.*, *ante*, p. 445. JUSTICE POWELL and JUSTICE O'CONNOR took no part in the consideration or decision of this case. Reported below: 744 F. 2d 1107.

No. 85-132. HEMME ET AL. *v.* UNITED STATES ET AL. Appeal from D. C. S. D. Ill. dismissed for want of jurisdiction.

No. 85-1644. BRIEHLER *v.* POSEIDON VENTURE, INC., ET AL. Appeal from Sup. Ct. R. I. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied. Reported below: 502 A. 2d 821.

No. 85-6727. VALWAY ET AL. *v.* BURLINGAME. Appeal from Sup. Ct. N. H. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied.

No. 85-1689. GINOCCHI *v.* BURRELL SCHOOL DISTRICT. Appeal from Pa. Commw. Ct. dismissed for want of substantial federal question.

No. 85-6742. JOHNSTON *v.* PERROTT. Appeal from Sup. Ct. Vt. dismissed for want of a properly presented federal question.

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Certiorari Granted—Vacated and Remanded. (See also No. 84-870, *supra*.)

No. 84-483. ARKANSAS PUBLIC SERVICE COMMISSION ET AL. *v.* SOUTHWESTERN BELL TELEPHONE CO. C. A. 8th Cir. Motion of National Association of Regulatory Utility Commissioners et al. for leave to file a brief as *amici curiae* granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Public Service Comm'n v. Chesapeake & Potomac Tel. Co.*, *ante*, p. 445. JUSTICE POWELL and JUSTICE O'CONNOR took no part in the consideration or decision of this motion and this case. Reported below: 738 F. 2d 901.

No. 85-55. BOWEN, SECRETARY OF HEALTH AND HUMAN SERVICES *v.* POLASKI ET AL. C. A. 8th Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Bowen v. City of New York*, *ante*, p. 467. Reported below: 751 F. 2d 943.

No. 85-474. HYATT ET AL. *v.* BOWEN, SECRETARY OF HEALTH AND HUMAN SERVICES, ET AL. C. A. 4th Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Bowen v. City of New York*, *ante*, p. 467. Reported below: 757 F. 2d 1455.

No. 85-6553. GIBSON ET AL. *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Motion of petitioner Norman Bonds for leave to proceed *in forma pauperis* granted. The petition for writ of certiorari as to Norman Bonds is granted, the judgment is vacated, and the case is remanded for further consideration in light of *Lee v. Illinois*, *ante*, p. 530. The petition for writ of certiorari as to Sammy Gibson is denied. Reported below: 137 Ill. App. 3d 330, 484 N. E. 2d 858.

Miscellaneous Orders

No. A-901. CARTER ET AL. *v.* FARM BUREAU SERVICES, INC. C. A. 6th Cir. Application for stay, addressed to JUSTICE BRENNAN and referred to the Court, denied.

No. A-907. HOFFART *v.* TEXAS. Ct. App. Tex., 14th Sup. Jud. Dist. Application for stay, addressed to THE CHIEF JUSTICE and referred to the Court, denied.

No. A-919. MILLER *v.* IDAHO. Sup. Ct. Idaho. Application for stay, addressed to JUSTICE BRENNAN and referred to the Court, denied.

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No. D-542. *IN RE DISBARMENT OF BOWLES*. Disbarment entered. [For earlier order herein, see 474 U. S. 1079.]

No. D-548. *IN RE DISBARMENT OF MARBLE*. Disbarment entered. [For earlier order herein, see 475 U. S. 1079.]

No. 85-99. *MESSERSCHMITT BOLKOW BLOHM, GMBH. v. WALKER ET AL.* C. A. 5th Cir. The order entered April 21, 1986, granting the petition for writ of certiorari is vacated.

No. 85-6836. *GUTIERREZ v. OFFICE OF PERSONNEL MANAGEMENT*. C. A. Fed. Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied. Petitioner is allowed until June 30, 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*.

Probable Jurisdiction Postponed

No. 85-1708. *CALIFORNIA ET AL. v. CABAZON BAND OF MISSION INDIANS ET AL.* Appeal from C. A. 9th Cir. Further consideration of question of jurisdiction postponed to hearing of case on the merits. Reported below: 783 F. 2d 900.

Certiorari Granted

No. 85-1695. *SOCIÉTÉ NATIONALE INDUSTRIELLE AÉRO-SPATIALE ET AL. v. UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF IOWA*. C. A. 8th Cir. Certiorari granted. Reported below: 782 F. 2d 120.

No. 85-1433. *RICHARDSON, WARDEN v. MARSH*. C. A. 6th Cir. Motion of respondent for leave to proceed *in forma pauperis* and certiorari granted. Reported below: 781 F. 2d 1201.

No. 85-5939. *CRUZ v. NEW YORK*. Ct. App. N. Y. Motion of petitioner for leave to proceed *in forma pauperis* and certiorari granted. Reported below: 66 N. Y. 2d 61, 485 N. E. 2d 221.

No. 85-6756. *HITCHCOCK v. WAINWRIGHT, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS*. C. A. 11th Cir. Mo-

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tion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted limited to Questions I, II, and IV presented by the petition. Reported below: 770 F. 2d 1514.

Certiorari Denied. (See also Nos. 85-1644, 85-6727, and 85-6553, *supra.*)

No. 85-239. HOFFMAN ET AL. *v.* SYLVA. C. A. 11th Cir. Certiorari denied. Reported below: 757 F. 2d 1112.

No. 85-502. NATIONAL ASSOCIATION OF BROADCASTERS ET AL. *v.* QUINCY CABLE TV, INC., ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 248 U. S. App. D. C. 1, 768 F. 2d 1434.

No. 85-1372. OHIO *v.* THOMAS, ADMINISTRATOR, UNITED STATES ENVIRONMENTAL PROTECTION AGENCY. C. A. 6th Cir. Certiorari denied. Reported below: 776 F. 2d 1333.

No. 85-1382. ROSE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 775 F. 2d 1166.

No. 85-1405. MACKENZIE ET AL. *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 777 F. 2d 811.

No. 85-1441. WASHINGTON ET AL. *v.* HAWAII ET AL. Sup. Ct. Haw. Certiorari denied. Reported below: 68 Haw. —, 708 P. 2d 129.

No. 85-1546. MID-STATE HOMES, INC. *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 770 F. 2d 1001.

No. 85-1561. ORGANIZED FISHERMEN OF FLORIDA ET AL. *v.* HODEL, SECRETARY OF THE INTERIOR, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 775 F. 2d 1544.

No. 85-1591. SCHWANECKE ET AL. *v.* ALI ET AL. Ct. App. Tex., 1st Sup. Jud. Dist. Certiorari denied.

No. 85-1600. BOARD OF COUNTY COMMISSIONERS OF BERNALILLO COUNTY ET AL. *v.* FRIEDMAN. C. A. 10th Cir. Certiorari denied. Reported below: 781 F. 2d 777.

No. 85-1602. TEXAS *v.* VAN GUILDER. Ct. Crim. App. Tex. Certiorari denied. Reported below: 709 S. W. 2d 178.

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No. 85-1625. PEARL INVESTMENT CO. *v.* CITY AND COUNTY OF SAN FRANCISCO. C. A. 9th Cir. Certiorari denied. Reported below: 774 F. 2d 1460.

No. 85-1665. PROBE ET AL. *v.* CALIFORNIA STATE TEACHERS' RETIREMENT SYSTEM ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 780 F. 2d 776.

No. 85-1667. RHODE *v.* SAN JACINTO COUNTY, TEXAS. C. A. 5th Cir. Certiorari denied. Reported below: 776 F. 2d 107.

No. 85-1684. COLLETTI ET AL. *v.* COUNTY OF PRINCE WILLIAM, VIRGINIA. Cir. Ct. Prince William County, Va. Certiorari denied.

No. 85-1686. BUSSANICH ET AL. *v.* UNITED STATES LINES, INC. Ct. App. N. Y. Certiorari denied. Reported below: 67 N. Y. 2d 1, 489 N. E. 2d 1042.

No. 85-1692. LOVELACE *v.* AMETEK, INC. App. Div., Sup. Ct. N. Y., 3d Jud. Dept. Certiorari denied. Reported below: 111 App. Div. 2d 953, 490 N. Y. S. 2d 49.

No. 85-1699. LASALLE NATIONAL BANK OF CHICAGO, TRUSTEE, ET AL. *v.* COUNTY OF DUPAGE ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 777 F. 2d 377.

No. 85-1700. FIRST FIDELITY BANCORPORATION ET AL. *v.* PARELL, COMMISSIONER OF BANKING OF THE STATE OF NEW JERSEY, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 783 F. 2d 360.

No. 85-1701. POWELL *v.* CHESAPEAKE & POTOMAC TELEPHONE COMPANY OF VIRGINIA ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 780 F. 2d 419.

No. 85-1705. FELDER *v.* SEAFARERS' INTERNATIONAL UNION OF NORTH AMERICA ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 779 F. 2d 56.

No. 85-1706. CLARK *v.* INDIANA DEPARTMENT OF PUBLIC WELFARE ET AL. Ct. App. Ind. Certiorari denied. Reported below: 478 N. E. 2d 699.

No. 85-1709. CROSS *v.* GENERAL MOTORS CORP. ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 778 F. 2d 468.

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No. 85-1712. *WILSMANN v. UPJOHN CO. ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 775 F. 2d 713.

No. 85-1715. *CITY HOSPITAL OF BELLAIRE v. DELGUZZO, EXECUTRIX OF THE ESTATE OF DELGUZZO.* Ct. App. Ohio, Belmont County. Certiorari denied.

No. 85-1718. *MORGAN v. CALIFORNIA.* Ct. App. Cal., 2d App. Dist. Certiorari denied. Reported below: 177 Cal. App. 3d 466, 225 Cal. Rptr. 673.

No. 85-1719. *OWENS ET AL. v. TENNESSEE.* Sup. Ct. Tenn. Certiorari denied.

No. 85-1734. *CONNOR ET AL. v. PHILLIPS ET AL.* Sup. Ct. N. J. Certiorari denied.

No. 85-1744. *ESSNER v. SECURITIES AND EXCHANGE COMMISSION.* C. A. 2d Cir. Certiorari denied. Reported below: 785 F. 2d 38.

No. 85-1753. *UNRUH v. COLORADO.* Sup. Ct. Colo. Certiorari denied. Reported below: 713 P. 2d 370.

No. 85-1760. *PAPALINI ET AL. v. FITHIAN.* Sup. Ct. Mich. Certiorari denied. Reported below: 424 Mich. 77, 378 N. W. 2d 467.

No. 85-1774. *LEVIN v. GUEST.* Ct. App. N. Y. Certiorari denied. Reported below: 67 N. Y. 2d 629, 490 N. E. 2d 546.

No. 85-1777. *FARLEY v. ITT LIFE INSURANCE CORP.* C. A. 10th Cir. Certiorari denied. Reported below: 783 F. 2d 978.

No. 85-1794. *SAGERMARK v. IMMIGRATION AND NATURALIZATION SERVICE.* C. A. 9th Cir. Certiorari denied. Reported below: 767 F. 2d 645.

No. 85-1807. *ZLOTNICKI v. HARSCO CORP.* C. A. 3d Cir. Certiorari denied. Reported below: 779 F. 2d 906.

No. 85-1830. *KADIN CORP. v. UNITED STATES.* C. A. Fed. Cir. Certiorari denied. Reported below: 782 F. 2d 175.

No. 85-1832. *HEAD v. UNITED STATES.* C. A. 9th Cir. Certiorari denied. Reported below: 783 F. 2d 1422.

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No. 85-1841. *ROBINSON, BY HIS GUARDIAN AD LITEM, YOUNG v. BOWEN, SECRETARY OF HEALTH AND HUMAN SERVICES*. C. A. 4th Cir. Certiorari denied. Reported below: 783 F. 2d 1144.

No. 85-1850. *YARIS ET AL., ON THEIR OWN BEHALF AND AS NEXT FRIENDS OF YARIS, ET AL. v. MALLORY ET AL.* C. A. 8th Cir. Certiorari denied. Reported below: 780 F. 2d 724.

No. 85-6519. *BROWN v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 770 F. 2d 768.

No. 85-6536. *FERRI v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 778 F. 2d 985.

No. 85-6540. *ANDREWS v. BECHTEL CORP. ET AL.* C. A. 1st Cir. Certiorari denied. Reported below: 780 F. 2d 124.

No. 85-6620. *CASTALDI v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 783 F. 2d 119.

No. 85-6699. *MCCAFFERTY v. SOUTH DAKOTA*. Sup. Ct. S. D. Certiorari denied. Reported below: 384 N. W. 2d 323.

No. 85-6705. *SELLERS v. STEIN ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 786 F. 2d 1166.

No. 85-6710. *KOENIG v. FOSHEIM ET AL.* C. A. 8th Cir. Certiorari denied.

No. 85-6713. *CAREY v. OKLAHOMA*. Ct. Crim. App. Okla. Certiorari denied.

No. 85-6716. *SUTTON v. CALIFORNIA*. Sup. Ct. Cal. Certiorari denied.

No. 85-6717. *OBOLENSKY v. POTTER ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 779 F. 2d 38.

No. 85-6718. *WILLIAMS v. WAINWRIGHT, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS*. C. A. 11th Cir. Certiorari denied. Reported below: 784 F. 2d 402.

No. 85-6724. *MAYORGA v. CALIFORNIA*. Ct. App. Cal., 2d App. Dist. Certiorari denied. Reported below: 171 Cal. App. 3d 929, 218 Cal. Rptr. 830.

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No. 85-6726. ALLEN *v.* GILMORE ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 785 F. 2d 1035.

No. 85-6729. GORDON *v.* NUCCI ET AL. C. A. 1st Cir. Certiorari denied.

No. 85-6731. WRIGHT *v.* COLLINS ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 782 F. 2d 1037.

No. 85-6733. JOHNSON *v.* ONION ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 787 F. 2d 586.

No. 85-6734. WAHID *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied. Reported below: 716 P. 2d 678.

No. 85-6737. RANDOLPH *v.* MUNCY, WARDEN, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 780 F. 2d 1018.

No. 85-6738. RAPPUHN *v.* DAVIS, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 785 F. 2d 310.

No. 85-6739. SMITH *v.* ABSHIRE, SUPERINTENDENT, RIVERSIDE CORRECTIONAL FACILITY. C. A. 6th Cir. Certiorari denied. Reported below: 786 F. 2d 1166.

No. 85-6744. KINDER *v.* KEITH. Ct. App. Mo., Eastern Dist. Certiorari denied. Reported below: 703 S. W. 2d 53.

No. 85-6745. DAY *v.* ATTWELL ET AL. C. A. 5th Cir. Certiorari denied.

No. 85-6746. DAY *v.* ALLSTATE INSURANCE CO. C. A. 8th Cir. Certiorari denied. Reported below: 794 F. 2d 678.

No. 85-6750. REED *v.* STANTON CORRECTIONAL CENTER ET AL. C. A. 11th Cir. Certiorari denied.

No. 85-6758. JACKSON *v.* SOUTH DAKOTA ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 786 F. 2d 1169.

No. 85-6798. MARTIN *v.* EQUAL EMPLOYMENT OPPORTUNITY COMMISSION ET AL. C. A. 10th Cir. Certiorari denied.

No. 85-6820. ANDREZ *v.* DEPARTMENT OF THE AIR FORCE. C. A. Fed. Cir. Certiorari denied. Reported below: 785 F. 2d 326.

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No. 85-6864. *BURKE v. UNITED STATES*. C. A. 11th Cir. Certiorari denied. Reported below: 784 F. 2d 1090.

No. 85-6867. *CRAWFORD ET AL. v. METROPOLITAN IMPEX, INC.* C. A. 2d Cir. Certiorari denied. Reported below: 800 F. 2d 1127.

No. 85-6875. *JACKSON v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 781 F. 2d 1114.

No. 85-6876. *LITTLEHALES v. UNITED STATES*. Ct. Mil. App. Certiorari denied. Reported below: 22 M. J. 17.

No. 85-6885. *STEELE v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 786 F. 2d 1171.

No. 85-6887. *CRUZ v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 783 F. 2d 1470.

No. 84-900. *NEW ENGLAND TELEPHONE & TELEGRAPH CO. v. PUBLIC UTILITIES COMMISSION OF MAINE ET AL.* C. A. 1st Cir. Certiorari denied. JUSTICE POWELL and JUSTICE O'CONNOR took no part in the consideration or decision of this petition. Reported below: 742 F. 2d 1.

No. 85-1544. *BURLINGTON NORTHERN INC. v. ANDERSON*. Sup. Ct. Mont. Motion of Association of American Railroads et al. for leave to file a brief as *amici curiae* granted. Certiorari denied. Reported below: — Mont. —, 709 P. 2d 641.

No. 85-1629. *INTERNATIONAL MOLDERS & ALLIED WORKERS UNION, AFL-CIO, ET AL. v. HOWARD ET AL.* C. A. 11th Cir. Certiorari denied. JUSTICE BRENNAN, JUSTICE WHITE, and JUSTICE MARSHALL would grant certiorari. Reported below: 779 F. 2d 1546.

No. 85-1641. *MULLIGAN v. HAZARD ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 777 F. 2d 340.

JUSTICE WHITE, with whom JUSTICE MARSHALL joins, dissenting.

In *Wilson v. Garcia*, 471 U. S. 261 (1985), we held that an action brought under 42 U. S. C. § 1983 should be considered a personal injury action for purposes of borrowing an appropriate state statute of limitations. Since our decision in that case, the Courts of Appeals have differed on whether *Wilson* should be given retro-

active effect. In the present case, the Sixth Circuit held, without qualification, that *Wilson* should be given retroactive effect. 777 F. 2d 340 (1985). The Courts of Appeals for the Fifth and Eleventh Circuits have reached similar results. *Gates v. Spinks*, 771 F. 2d 916 (CA5 1985), cert. denied, 475 U. S. 1065 (1986); *Jones v. Prewit & Mauldin*, 763 F. 2d 1250 (CA11 1985), cert. denied, 474 U. S. 1105 (1986). Two other Courts of Appeals, however, have determined that when retroactive application would shorten the statute of limitations, *Wilson* merits only prospective relief. *Gibson v. United States*, 781 F. 2d 1334 (CA9 1986); *Jackson v. City of Bloomfield*, 731 F. 2d 652 (CA10 1984). Although the Third and Eighth Circuits have applied *Wilson* retroactively in certain cases, it is unclear whether their holdings are designed to have universal application. See *Wycoff v. Menke*, 773 F. 2d 983, 986-987 (CA8 1985); *Fitzgerald v. Larson*, 769 F. 2d 160, 162-164 (CA3 1985); *Smith v. City of Pittsburgh*, 764 F. 2d 188, 194-196 (CA3 1985).

In addition, the Courts of Appeals also have reached conflicting results concerning what should be done when more than one state statute of limitations applies to personal injury actions. In *Hamilton v. City of Overton Park*, 730 F. 2d 613 (1984) (en banc), cert. denied, 471 U. S. 1052 (1985), and *Mismash v. Murray City*, 730 F. 2d 1366 (1984) (en banc), cert. denied, 471 U. S. 1052 (1985), the Tenth Circuit rejected, for §1983 purposes, the state statute of limitations for intentional torts, and chose instead a State's residual statute of limitations. See generally *Prewit & Mauldin v. Jones*, 474 U. S. 1105, 1106-1107 (1986) (WHITE, J. dissenting from denial of certiorari). The Eleventh Circuit in *Jones v. Prewit & Mauldin*, *supra*, the Fifth Circuit in *Gates v. Spinks*, *supra*, and the Sixth Circuit in the present case, however, follow a different rule, and select the state statute of limitations governing intentional torts.

The Court's decision not to review the instant case marks the third time this Term that it has refused to address these differences that exist between the Courts of Appeals; differences that are not likely to disappear without guidance from this Court. Given the square conflicts among the Circuits, and the frequency with which these cases arise, I would grant the petition for certiorari in this case.

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No. 85-1710. *MALLINCKRODT, INC. v. BENNETT ET AL.* Ct. App. Mo., Eastern Dist. Motions of Syncor International Corp., American College of Radiology, Society of Nuclear Medicine et al., and American College of Nuclear Physicians for leave to file briefs as *amici curiae* granted. Motion of petitioner to defer consideration of the petition for writ of certiorari denied. Certiorari denied. JUSTICE WHITE, JUSTICE MARSHALL, and JUSTICE O'CONNOR would grant certiorari. Reported below: 698 S. W. 2d 854.

No. 85-5555. *MOORE v. BLACKBURN, WARDEN.* C. A. 5th Cir. Certiorari denied. Reported below: 774 F. 2d 97.

JUSTICE MARSHALL, with whom JUSTICE BRENNAN joins, dissenting.

The petitioner in this case was sentenced to death by a jury that was "led to believe that the responsibility for determining the appropriateness of [his] death rests elsewhere," *Caldwell v. Mississippi*, 472 U. S. 320, 329 (1985). Under our recent decision in *Caldwell*, petitioner's sentence cannot stand unless this error "had no effect on the sentencing decision," *id.*, at 341, a point the courts below did not consider and the State does not contest here. I would therefore grant the petition for certiorari, vacate the District Court's judgment, and remand for reconsideration in light of *Caldwell*.

At the penalty phase of petitioner's trial, the prosecutor argued:

"And it's a tough thing to ask, but there is only one penalty really available for this type of crime and that is the death penalty. This is where it will begin. From the next point forward it goes through the court system to be thoroughly reviewed and checked, through every court in this land. But it has to begin here, right here with the jury." App. to Pet. for Cert. 10; *State v. Moore*, 414 So. 2d 340, 347 (La. 1982).

On direct appeal to the Louisiana Supreme Court, petitioner argued that these statements had injected passion, prejudice, or other arbitrary factors into the sentencing determination. That court, while admitting that the prosecutor's argument was "close to reversible error," *ibid.*, concluded that the argument had not diminished the jury's sense of responsibility for its sentencing decision. The Fifth Circuit, reviewing the District Court's rejection of the same claim in petitioner's first federal habeas petition,

reached the same conclusion. *Moore v. Maggio*, 740 F. 2d 308, 320 (1984). Subsequently, this Court decided *Caldwell*, and petitioner filed a second habeas petition claiming that the prosecutor's argument violated the Eighth Amendment as construed in our decision in that case.

The District Court denied this petition, and the Court of Appeals denied a certificate of probable cause. 774 F. 2d 97 (1985). The latter court held that the *Caldwell* claim had been raised in petitioner's first application, and was therefore barred by Rule 9(b) of the Rules Governing Section 2254 Cases, and by the principles enunciated in *Sanders v. United States*, 373 U. S. 1 (1963). The court also concluded that its prior determination that the prosecutor's argument had not diminished the jury's sense of responsibility, see 740 F. 2d, at 320, was "consistent with the rule set forth in *Caldwell*." 774 F. 2d, at 98. Even had the *Caldwell* claim not been raised previously, the court held, it would have denied that claim as an abuse of the writ, because a competent lawyer would have been aware of the possibility of such a claim.

The Court of Appeals was mistaken in believing that its prior pronouncement that the jury's sense of responsibility was not diminished disposed of the *Caldwell* claim. The prosecutor's argument in this case is essentially identical to the argument held unconstitutional in *Caldwell*. The lesson of *Caldwell*, at a minimum, is that a misleading or incomplete statement concerning appellate review of a death sentence necessarily diminishes the jury's sense of responsibility. In the present case, no less than in *Caldwell*, the jury may have "harbor[ed] misconceptions about the power of state appellate courts or, for that matter, *this* Court to override a jury's sentence of death." 472 U. S., at 342 (O'CONNOR, J., concurring in part and concurring in judgment). Under those circumstances, we cannot be confident that the jury did not conclude that the ultimate responsibility for petitioner's fate rested elsewhere.

This case, then, falls squarely within the "ends of justice" exception to the general rule forbidding successive assertions of the same claim on habeas, see *Sanders, supra*, at 16-17. In *Sanders*, this Court held that "[i]f purely legal questions are involved, the applicant may be entitled to a new hearing upon showing an intervening change in the law." 373 U. S., at 17. *Caldwell* constitutes an intervening change in the law concerning the precise argument used by the prosecutor in this case—a change that re-

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quires reexamination of the Court of Appeals' earlier conclusion about the effect of that argument on the jury. The clear import of *Sanders* is that petitioner is entitled to present his claim to the federal courts, and I therefore dissent from the denial of certiorari.

- No. 85-5868. *MAPES v. OHIO*. Sup. Ct. Ohio;
 No. 85-5886. *RAULT v. LOUISIANA*. C. A. 5th Cir.;
 No. 85-5979. *HARPER v. KENTUCKY*. Sup. Ct. Ky.;
 No. 85-5986. *JONES v. LOUISIANA*. Sup. Ct. La.;
 No. 85-6048. *GILMORE v. MISSOURI*. Sup. Ct. Mo.;
 No. 85-6389. *FOSTER, AKA LEE v. MISSOURI*. Sup. Ct. Mo.;
 No. 85-6390. *CAVE v. FLORIDA*. Sup. Ct. Fla.;
 No. 85-6456. *KIRKPATRICK v. BLACKBURN, WARDEN*. C. A. 5th Cir.;
- No. 85-6547. *HARICH v. WAINWRIGHT, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL.* Sup. Ct. Fla.;
- No. 85-6771. *SUAREZ v. FLORIDA*. Sup. Ct. Fla.; and
- No. 85-6932. *EVANS v. MISSISSIPPI*. Sup. Ct. Miss. Certiorari denied. Reported below: No. 85-5868, 19 Ohio St. 3d 108, 484 N. E. 2d 140; No. 85-5886, 772 F. 2d 117 and 774 F. 2d 675; No. 85-5979, 694 S. W. 2d 665; No. 85-5986, 474 So. 2d 919; No. 85-6048, 697 S. W. 2d 172; No. 85-6389, 700 S. W. 2d 440; No. 85-6390, 476 So. 2d 180; No. 85-6456, 777 F. 2d 272; No. 85-6547, 484 So. 2d 1237; No. 85-6771, 481 So. 2d 1201; No. 85-6932, 485 So. 2d 276.

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. 85-6707. *GOLUB v. ERNST & ERNST (WHINNEY) ET AL.* C. A. 2d Cir. Certiorari denied. JUSTICE BLACKMUN took no part in the consideration or decision of this petition. Reported below: 779 F. 2d 38.

No. 85-6721. *TONEY-EL v. LANE, DIRECTOR, ILLINOIS DEPARTMENT OF CORRECTIONS, ET AL.* C. A. 7th Cir. Certiorari denied. JUSTICE BRENNAN and JUSTICE MARSHALL would grant certiorari. Reported below: 777 F. 2d 1224.

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Rehearing Denied

No. 84-1288. EVANS, GOVERNOR OF IDAHO, ET AL. *v.* JEFF D. ET AL., MINORS, BY AND THROUGH THEIR NEXT FRIEND, JOHNSON, ET AL., 475 U. S. 717;

No. 85-1095. AAMODT ET UX. *v.* UNITED STATES NUCLEAR REGULATORY COMMISSION ET AL., 475 U. S. 1082;

No. 85-1407. CONSOLIDATED EDISON COMPANY OF NEW YORK, INC., ET AL. *v.* PUBLIC SERVICE COMMISSION OF THE STATE OF NEW YORK, 475 U. S. 1114;

No. 85-1478. BOYCE *v.* RIDGELY ET AL., PERSONAL REPRESENTATIVES OF THE ESTATE OF BOYCE, 475 U. S. 1123;

No. 85-6431. DALE *v.* SOUTH DAKOTA, 475 U. S. 1126; and

No. 85-6499. STARADUMSKY *v.* RHODE ISLAND, 475 U. S. 1114. Petitions for rehearing denied.

No. 85-6003. HURLEY *v.* HONGISTO ET AL., 475 U. S. 1025. Motion for leave to file petition for rehearing denied.

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Miscellaneous Order

No. A-959. KEMP, WARDEN *v.* COLLINS. Application of the Attorney General of Georgia for an order to vacate the stay of execution of sentence of death entered by the United States Court of Appeals for the Eleventh Circuit, presented to JUSTICE POWELL, and by him referred to the Court, denied.

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Certiorari Granted. (See No. 84-495, *ante*, at 747.)

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Dismissal Under Rule 53

No. 85-1852. BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES *v.* BURLINGTON NORTHERN RAILROAD CO. ET AL. C. A. 7th Cir. *Certiorari* before judgment dismissed under this Court's Rule 53.

Appeals Dismissed

No. 84-1724. SNIDER ET AL. *v.* VIRGINIA. Appeal from Sup. Ct. Va. dismissed for want of substantial federal question.

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No. 85-1459. *POWELL v. POWELL*. Appeal from Ct. App. Tex., 10th 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: 703 S. W. 2d 434.

No. 85-1754. *BOBER ET AL. v. WALGREEN CO. ET AL.* Appeal from Sup. Ct. Ill. dismissed for want of substantial federal question. JUSTICE BRENNAN would note probable jurisdiction and set case for oral argument. JUSTICE WHITE took no part in the consideration or decision of this case. Reported below: 111 Ill. 2d 120, 488 N. E. 2d 980.

Certiorari Granted—Vacated and Remanded

No. 85-279. *AMERICAN PETROFINA COMPANY OF TEXAS v. OIL, CHEMICAL & ATOMIC WORKERS INTERNATIONAL UNION LOCAL NO. 4-23 ET AL.* C. A. 5th Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *AT&T Technologies, Inc. v. Communications Workers*, 475 U. S. 643 (1986). Reported below: 759 F. 2d 512.

Miscellaneous Orders

No. — — —. *COMSIA v. MORRIS, JUDGE*. Motion to direct the Clerk to file a petition for writ of certiorari out of time denied.

No. A-925 (85-1962). *RIDDICK ET AL. v. SCHOOL BOARD OF CITY OF NORFOLK ET AL.* C. A. 4th Cir. Application for an injunction, presented to THE CHIEF JUSTICE, and by him referred to the Court, denied. JUSTICE MARSHALL and JUSTICE BLACKMUN would grant the application. JUSTICE STEVENS would expedite consideration of the petition for writ of certiorari and postpone action on the application pending such consideration.

No. A-934 (85-7008). *LESKO v. PENNSYLVANIA*. Sup. Ct. Pa. Application for stay of execution of sentence of death, presented to JUSTICE BRENNAN, and by him referred to the Court, is granted pending the disposition of the petition for writ of certiorari.

No. 84-1904. *UNITED STATES DEPARTMENT OF THE TREASURY, BUREAU OF ALCOHOL, TOBACCO AND FIREARMS v. GALIOTO*. D. C. N. J. [Probable jurisdiction noted, 474 U. S. 943.] Motion of the Solicitor General for leave to file a supplemental brief after argument granted.

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No. 85-1233. INTERNATIONAL PAPER CO. *v.* OUELLETTE ET AL. C. A. 2d Cir. [Certiorari granted, 475 U. S. 1081.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 85-1773. OBERLY, ATTORNEY GENERAL OF DELAWARE, ET AL. *v.* BALTIMORE & OHIO RAILROAD CO. ET AL. Appeal from C. A. 3d Cir. The Solicitor General is invited to file a brief in this case expressing the views of the United States.

No. 85-6878. WILSON *v.* UNITED STATES. C. A. Fed. Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied. Petitioner is allowed until July 7, 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. 85-6775. IN RE AYERS. Petition for writ of mandamus denied.

No. 85-6789. IN RE HOSEY. Petition for writ of mandamus and/or prohibition denied.

Certiorari Granted

No. 85-1385. UNITED STATES *v.* GENERAL DYNAMICS CORP. ET AL. C. A. Fed. Cir. Certiorari granted. Reported below: 773 F. 2d 1224.

No. 85-1581. SOLORIO *v.* UNITED STATES. Ct. Mil. App. Certiorari granted. Reported below: 21 M. J. 251.

No. 85-1630. HEWITT ET AL. *v.* HELMS. C. A. 3d Cir. Certiorari granted. Reported below: 780 F. 2d 367.

Certiorari Denied

No. 85-372. CHRISTENSEN ET AL. *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 755 F. 2d 705.

No. 85-1380. WOODHOUSE *v.* UNITED STATES BUREAU OF INDIAN AFFAIRS ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 767 F. 2d 614.

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No. 85-1401. *TEMPLE UNIVERSITY v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 769 F. 2d 126.

No. 85-1411. *MCCALLUM v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 788 F. 2d 1042.

No. 85-1415. *WOLFENBARGER ET AL. v. OKLAHOMA*. Ct. Crim. App. Okla. Certiorari denied. Reported below: 710 P. 2d 114.

No. 85-1453. *COLORADO FLYING ACADEMY, INC., ET AL. v. UNITED STATES*. C. A. 10th Cir. Certiorari denied. Reported below: 724 F. 2d 871.

No. 85-1483. *MAIKOVSKIS v. IMMIGRATION AND NATURALIZATION SERVICE*. C. A. 2d Cir. Certiorari denied. Reported below: 773 F. 2d 435.

No. 85-1559. *POSNER v. UNITED STATES*. C. A. 11th Cir. Certiorari denied. Reported below: 780 F. 2d 1536.

No. 85-1560. *RUBIO v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 780 F. 2d 533.

No. 85-1605. *RHODES ET AL. v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 779 F. 2d 1019.

No. 85-1651. *WNEV-TV, NEW ENGLAND TELEVISION CORP. v. INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 1228, AFL-CIO*. C. A. 1st Cir. Certiorari denied. Reported below: 778 F. 2d 46.

No. 85-1685. *HERBERT v. LANDO ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 781 F. 2d 298.

No. 85-1732. *TAKAHASHI v. BOARD OF TRUSTEES OF LIVINGSTON UNION SCHOOL DISTRICT ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 783 F. 2d 848.

No. 85-1733. *MCANINCH, EXECUTOR OF THE ESTATE OF MCANINCH, ET AL. v. TRADERS NATIONAL BANK OF KANSAS CITY*. C. A. 8th Cir. Certiorari denied. Reported below: 779 F. 2d 466.

No. 85-1740. *KANANEN ET UX. v. SUN BANK OKEECHOBEE, FKA COMMERCIAL BANK OKEECHOBEE, FLORIDA, ET AL.* Dist.

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Ct. App. Fla., 4th Dist. Certiorari denied. Reported below: 482 So. 2d 362.

No. 85-1746. *MARGULIS v. MILLER ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 780 F. 2d 1027.

No. 85-1757. *AZIMA v. FLORIDA DEPARTMENT OF PROFESSIONAL REGULATION, BOARD OF MEDICAL EXAMINERS.* Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 473 So. 2d 761.

No. 85-1764. *BUCK v. KANSAS.* Ct. App. Kan. Certiorari denied. Reported below: 11 Kan. App. 2d xl, 713 P. 2d 494.

No. 85-1769. *PROCTOR ET AL. v. UNITED STATES.* C. A. 9th Cir. Certiorari denied. Reported below: 781 F. 2d 752.

No. 85-1771. *LECOUNT v. BETHLEHEM STEEL CORP. ET AL.* C. A. 7th Cir. Certiorari denied. Reported below: 785 F. 2d 312.

No. 85-1775. *MACURDY v. DAUER ET AL.* C. A. 3d Cir. Certiorari denied. Reported below: 780 F. 2d 1015.

No. 85-1776. *HOLDING v. SOVRAN BANK.* Cir. Ct. Powhatan County, Va. Certiorari denied.

No. 85-1781. *FOTLAND ET AL. v. COMMISSIONER OF PATENTS AND TRADEMARKS.* C. A. Fed. Cir. Certiorari denied. Reported below: 779 F. 2d 31.

No. 85-1812. *DEUTSCH v. NEW MEXICO.* Ct. App. N. M. Certiorari denied. Reported below: 103 N. M. 752, 713 P. 2d 1008.

No. 85-1836. *CHEHADE v. SHEHADE.* App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 137 Ill. App. 3d 692, 484 N. E. 2d 1253.

No. 85-1872. *COOK v. PETER KIEWIT SON'S CO. ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 775 F. 2d 1030.

No. 85-1879. *MURPHY v. UNITED STATES.* C. A. 2d Cir. Certiorari denied.

No. 85-1880. *KEPLINGER ET AL. v. UNITED STATES.* C. A. 7th Cir. Certiorari denied. Reported below: 776 F. 2d 678.

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No. 85-1909. *MOSLEY v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 786 F. 2d 1330.

No. 85-6388. *MAGGITT v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 778 F. 2d 1029.

No. 85-6417. *NAPUE v. UNITED STATES*. C. A. 7th Cir. Certiorari denied.

No. 85-6527. *GRAY v. CODY, ATTORNEY GENERAL OF TENNESSEE, ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 779 F. 2d 50.

No. 85-6562. *BAXTER v. FEDERAL COMMUNICATIONS COMMISSION*. C. A. D. C. Cir. Certiorari denied. Reported below: 249 U. S. App. D. C. 210, 774 F. 2d 510.

No. 85-6599. *HIGHIGHI v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 782 F. 2d 1033.

No. 85-6600. *WOOD v. UNITED STATES*. C. A. 11th Cir. Certiorari denied. Reported below: 780 F. 2d 955.

No. 85-6633. *MITCHELL v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 777 F. 2d 248.

No. 85-6655. *MORMON v. ILLINOIS*. C. A. 7th Cir. Certiorari denied. Reported below: 782 F. 2d 1045.

No. 85-6664. *OWENS v. UNITED STATES*. C. A. 10th Cir. Certiorari denied. Reported below: 782 F. 2d 862.

No. 85-6695. *REMINGTON v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 783 F. 2d 1061.

No. 85-6760. *WATSON v. MCCOTTER*. C. A. 10th Cir. Certiorari denied. Reported below: 782 F. 2d 143.

No. 85-6764. *LEECAN v. CONNECTICUT*. Sup. Ct. Conn. Certiorari denied. Reported below: 198 Conn. 517, 504 A. 2d 480.

No. 85-6774. *JUDD v. UNITED STATES ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 786 F. 2d 1174.

No. 85-6779. *STEVENS v. FULCOMER, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT HUNTINGDON*. C. A. 3d Cir. Certiorari denied. Reported below: 782 F. 2d 1033.

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No. 85-6784. *SAMPLES v. KEENEY*, SUPERINTENDENT, OREGON STATE PENITENTIARY. C. A. 9th Cir. Certiorari denied. Reported below: 785 F. 2d 317.

No. 85-6786. *RICHARDSON v. LOUISIANA STATE PAROLE BOARD ET AL.* C. A. 5th Cir. Certiorari denied.

No. 85-6787. *RUSSO v. HARTIGAN*, ATTORNEY GENERAL OF ILLINOIS. C. A. 7th Cir. Certiorari denied. Reported below: 780 F. 2d 712.

No. 85-6788. *PENDLETON v. NEW YORK STATE DEPARTMENT OF CORRECTIONAL SERVICES.* C. A. 2d Cir. Certiorari denied. Reported below: 788 F. 2d 1.

No. 85-6795. *YARBOROUGH v. YARBOROUGH.* Fam. Ct. of Darlington County, S. C. Certiorari denied.

No. 85-6800. *TARKOWSKI v. WOLFF ET AL.* C. A. 7th Cir. Certiorari denied. Reported below: 787 F. 2d 595.

No. 85-6804. *LOVE v. YOUNG*, SUPERINTENDENT, WAUPUN CORRECTIONAL INSTITUTION. C. A. 7th Cir. Certiorari denied. Reported below: 781 F. 2d 1307.

No. 85-6805. *GREENE v. UNITED STATES.* C. A. 9th Cir. Certiorari denied. Reported below: 783 F. 2d 1364.

No. 85-6808. *WRIGHT v. MURRAY*, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 786 F. 2d 1159.

No. 85-6809. *MARTINEZ v. CALIFORNIA.* Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 85-6810. *HERSHIPS v. FOUNDERS TITLE CO., INC., ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 785 F. 2d 315.

No. 85-6811. *DIEBOLD v. NEW YORK.* Ct. App. N. Y. Certiorari denied. Reported below: 67 N. Y. 2d 761, 491 N. E. 2d 289.

No. 85-6814. *SMITH v. NEWSOME*, WARDEN. C. A. 11th Cir. Certiorari denied.

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No. 85-6830. *MCCREARY v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 785 F. 2d 184.

No. 85-6849. *SMITH v. MARYLAND*. Ct. App. Md. Certiorari denied. Reported below: 305 Md. 489, 505 A. 2d 511.

No. 85-6852. *SHEWARD v. INDIANA*. Ct. App. Ind. Certiorari denied. Reported below: 481 N. E. 2d 181.

No. 85-6879. *GOLDSMITH v. JOHNSON, WARDEN, ET AL.* C. A. 11th Cir. Certiorari denied. Reported below: 786 F. 2d 1179.

No. 85-6913. *DANIEL v. OFFICE OF PERSONNEL MANAGEMENT*. C. A. Fed. Cir. Certiorari denied. Reported below: 785 F. 2d 323.

No. 85-6923. *MORSE v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 785 F. 2d 771.

No. 85-6924. *LARSON v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 788 F. 2d 9.

No. 85-6927. *GARCIA v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 786 F. 2d 1157.

No. 85-6931. *TERROVONA v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 785 F. 2d 767.

No. 84-2023. *INDEPENDENT BANKERS ASSOCIATION OF NEW YORK STATE, INC., ET AL. v. MARINE MIDLAND BANK, N. A., ET AL.* C. A. 2d Cir. Certiorari denied. JUSTICE WHITE would grant certiorari. Reported below: 757 F. 2d 453.

No. 85-1479. *STONE & WEBSTER ENGINEERING CORP. v. LINDLEY ET AL.* C. A. 9th Cir. Certiorari denied. JUSTICE WHITE would grant certiorari. Reported below: 780 F. 2d 797.

No. 85-1316. *PULASKI COUNTY SPECIAL SCHOOL DISTRICT NO. 1 ET AL. v. LITTLE ROCK SCHOOL DISTRICT ET AL.*; and

No. 85-1547. *ARKANSAS STATE BOARD OF EDUCATION ET AL. v. LITTLE ROCK SCHOOL DISTRICT ET AL.* C. A. 8th Cir. Certiorari denied. JUSTICE POWELL would grant certiorari. Reported below: 778 F. 2d 404.

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No. 85-1593. COUGHLIN ET UX. *v.* WESTINGHOUSE BROADCASTING & CABLE, INC. C. A. 3d Cir. Certiorari denied. Reported below: 780 F. 2d 340.

CHIEF JUSTICE BURGER, with whom JUSTICE REHNQUIST joins, dissenting.

In *Dun & Bradstreet, Inc. v. Greenmoss Builders, Inc.*, 472 U. S. 749, 764 (1985) (BURGER, C. J., concurring in judgment), I wrote to express my agreement with JUSTICE WHITE that *New York Times Co. v. Sullivan*, 376 U. S. 254 (1964), should be re-examined. Petitioners in this petition ask this Court for such a reconsideration. I dissent from the Court's refusal to grant certiorari and give plenary attention to this important issue.

Respondent conducted an investigation into the alleged failure of Philadelphia police to enforce state liquor laws against an "after hours" bar. In the course of that investigation, they hid a camera across the street from the bar and videotaped police officers entering and leaving the bar. Respondent ultimately broadcast a videotape of petitioner leaving a bar on October 11, 1981. The videotape stated that "the only paperwork we saw [petitioner] doing was *carrying this envelope* out of the Club less than a minute after he went in." A freeze frame with a circle around an object in petitioner's hand was used to emphasize the point. The announcer went on to say that the officer had difficulty finding the proper key to start his patrol car and that he was not wearing his uniform jacket or hat, "all standard items officers on patrol are required to have." The clear implication of the broadcast was that petitioner had accepted a bribe. Respondent made no attempt to obtain petitioner's explanation for these events other than an "ambush" interview four months after the fact. In this "interview," a reporter for respondent approached petitioner with cameras whirling as he came off of his all-night shift and asked what he had been doing four months earlier on the night of October 11, 1981. Petitioner said "this here is harassment" and declined to answer questions at that time.

Petitioner and his wife filed a libel suit in District Court. He alleged that even a minimal investigation of the events of that evening would have revealed that he was a rookie policeman, patrolling alone for the first time on October 11, 1981; that early in his shift, he was ordered to investigate a vandalism complaint at

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the bar; that after talking to the bar's steward, he returned to the patrol car and filled out his incident report book; and that he was not required to wear his jacket or hat while on patrol. Petitioner further alleged that the purported "envelope" was in fact nothing other than his incident report book. The District Court concluded that petitioner had raised a genuine issue of material fact concerning the truth of the allegedly defamatory statements and that the broadcast was capable of a defamatory interpretation. 603 F. Supp. 377 (ED Pa. 1985). Applying our decision in *New York Times Co. v. Sullivan*, however, the District Court concluded that petitioner had not introduced sufficient evidence of "actual malice" on the part of respondent to withstand a motion for summary judgment. The Court of Appeals affirmed, concluding that the District Court had properly evaluated petitioner's evidence of actual malice. 780 F. 2d 340 (CA3 1985). One judge concurred, observing that "[t]he *New York Times* standard makes it hard enough for a public figure to win a libel suit, even when faced, as here, with what any fair observer must agree is egregious conduct on the part of the media." *Id.*, at 349 (Becker, J.).

Petitioner has raised an important federal question that we should review. He has been accused of accepting a bribe on the basis of a cursory investigation, yet his libel suit to clear his name has been found to be constitutionally barred. The District Court observed: "An issue . . . exists as to whether [respondent], with a minimum of effort, could have discovered the truth. The Supreme Court's mandate, however, is clear: 'reckless conduct is not measured by whether a reasonably prudent man would have published, or would have investigated before publishing.'" 603 F. Supp., at 388 (quoting *St. Amant v. Thompson*, 390 U. S. 727, 731 (1968)). I would grant certiorari and set this case for argument to determine whether the Court's "mandate" remains an appropriate one.

No. 85-1750. S/S SALVADOR ET AL. *v.* BERISFORD METALS CORP. C. A. 2d Cir. Motions of Inter-American Freight Conference, Star Shipping A/S, and American President Lines, Ltd., for leave to file briefs as *amici curiae* granted. Certiorari denied. JUSTICE WHITE would grant certiorari. Reported below: 779 F. 2d 841.

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No. 85-6474. *BUXTON v. TEXAS*. Ct. Crim. App. Tex.; and
No. 85-6773. *WISEHART v. INDIANA*. Sup. Ct. Ind. Certiorari denied. Reported below: No. 85-6474, 699 S. W. 2d 212; No. 85-6773, 484 N. E. 2d 949.

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. 85-1447. *CABRIOLET PORSCHE + AUDI, INC. v. AMERICAN HONDA MOTOR CO., INC.*, 475 U. S. 1122;

No. 85-1509. *VINTILLA ET AL. v. UNITED STATES STEEL CORPORATION PLAN FOR EMPLOYEE PENSION BENEFITS*, 475 U. S. 1141;

No. 85-5925. *BREWER v. GARNER, WARDEN*, 475 U. S. 1141;

No. 85-5977. *ISLEY v. UNITED STATES*, 475 U. S. 1024;

No. 85-6325. *JOHNSON v. MISSISSIPPI*, *ante*, p. 1109;

No. 85-6364. *IN RE MAY*, 475 U. S. 1140;

No. 85-6494. *HAKIM v. WOLVERINE PACKING CO.*, 475 U. S. 1142;

No. 85-6517. *IN RE FRAZIER*, 475 U. S. 1139; and

No. 85-6524. *WASHINGTON v. ANGELONE, WARDEN, ET AL.*, *ante*, p. 1107. Petitions for rehearing denied.

No. 85-882. *LOVSHIN v. DEPARTMENT OF THE NAVY*, 475 U. S. 1111. Motion of petitioner for leave to proceed further herein *in forma pauperis* granted. Petition for rehearing denied.

REPORTER'S NOTE

The next page is purposely numbered 1301. The numbers between 1189 and 1301 were intentionally omitted, in order to make it possible to publish in-chambers opinions with *permanent* page numbers, thus making the official citations available upon publication of the preliminary prints of the United States Reports.

DISCUSSION

The first part of this paper is devoted to a study of the
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