

ORDERS FROM APRIL 6 THROUGH  
MAY 29, 1987

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APRIL 6, 1987

*Dismissals Under Rule 53*

No. 86-843. CONTINENTAL TRAILWAYS, INC. *v.* DIRECTOR, NEW JERSEY DIVISION OF MOTOR VEHICLES; and

No. 86-879. DIRECTOR, NEW JERSEY DIVISION OF MOTOR VEHICLES *v.* CONTINENTAL TRAILWAYS, INC. Sup. Ct. N. J. Certiorari dismissed under this Court's Rule 53. Reported below: 102 N. J. 526, 509 A. 2d 769.

*Appeal Dismissed*

No. 86-5656. BAIRNSFATHER *v.* LOUISIANA. Appeal from Ct. App. La., 2d Cir., dismissed for want of substantial federal question. JUSTICE BRENNAN, JUSTICE POWELL, and JUSTICE SCALIA would note probable jurisdiction and set case for oral argument. JUSTICE STEVENS would dismiss the appeal for want of jurisdiction.

*Certiorari Granted—Vacated and Remanded*

No. 84-1936. CORPORATE CITY OF SOUTH BEND ET AL. *v.* JANOWIAK. C. A. 7th Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Johnson v. Transportation Agency*, 480 U. S. 616 (1987), and *Wygant v. Jackson Board of Education*, 476 U. S. 267 (1986). Reported below: 750 F. 2d 557.

No. 86-468. TISCH, POSTMASTER GENERAL OF THE UNITED STATES *v.* SHIDAKER. C. A. 7th Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Johnson v. Transportation Agency*, 480 U. S. 616 (1987). Reported below: 782 F. 2d 746.

No. 86-1351. UTICA MUTUAL INSURANCE CO. *v.* TALLEY ET AL. C. A. 11th Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Burlington Northern R. Co. v. Woods*, 480 U. S. 1 (1987).

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*Miscellaneous Orders*

No. A-674. *KNOWLES v. UNITED STATES*. Application for bail, addressed to JUSTICE BRENNAN and referred to the Court, denied.

No. A-693. *LINNE v. UNITED STATES*. Application for bail, addressed to JUSTICE BRENNAN and referred to the Court, denied.

No. A-716. *WESTERN AIRLINES, INC., ET AL. v. INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA, AIRLINE DIVISION, ET AL.* Motions of Air Transport Employees and International Brotherhood of Teamsters, Airline Division, et al. to vacate the stay orders entered by JUSTICE O'CONNOR on April 1, 1987, and April 2, 1987, pending the timely filing and disposition of a petition for writ of certiorari, denied. JUSTICE STEVENS took no part in the consideration or decision of these motions.

No. D-624. *IN RE DISBARMENT OF HALLOWS*. It is ordered that Joseph H. Hallows, of Milwaukee, Wis., 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-625. *IN RE DISBARMENT OF ERNST*. It is ordered that Thomas J. Ernst, of Clayton, Mo., 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-626. *IN RE DISBARMENT OF MAZELIS*. It is ordered that Morris Mazelis, of Baltimore, 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-627. *IN RE DISBARMENT OF GERNS*. It is ordered that Peter H. Gerns, of Charlotte, N. C., 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. 86-246. *SUMNER, DIRECTOR, NEVADA DEPARTMENT OF PRISONS, ET AL. v. SHUMAN*. C. A. 9th Cir. [Certiorari

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granted, 479 U. S. 948.] Out-of-time motion of Johnny Harris et al. for leave to participate in oral argument as *amici curiae* and for divided argument denied. The order, heretofore entered on December 8, 1986 [479 U. S. 1004], appointing N. Patrick Flanagan III, Esquire, is vacated and it is ordered that M. Daniel Markoff, Esquire, of Las Vegas, Nev., be appointed to serve as counsel for respondent in this case.

No. 86-344. OHIO ET AL. *v.* FLEET AEROSPACE CORP. ET AL. Appeal from C. A. 6th Cir. Motion of appellants to defer consideration in No. 86-71, *CTS Corp. v. Dynamics Corporation of America* [probable jurisdiction noted, 479 U. S. 810], and No. 86-97, *Indiana v. Dynamics Corporation of America* [probable jurisdiction noted, 479 U. S. 811], and to note probable jurisdiction in this case denied.

No. 86-870. PHILLIPS PETROLEUM CO. ET AL. *v.* MISSISSIPPI ET AL. Sup. Ct. Miss. [Certiorari granted, 479 U. S. 1084.] Motion of respondent Mississippi to dismiss the writ of certiorari as improvidently granted is denied.

No. 86-1172. GOODYEAR ATOMIC CORP. *v.* MILLER ET AL. Appeal from Sup. Ct. Ohio; and

No. 86-1387. MACKEY ET AL. *v.* LANIER COLLECTION AGENCY & SERVICE, INC. Sup. Ct. Ga. The Solicitor General is invited to file briefs in these cases expressing the views of the United States.

No. 86-6367. IN RE GRAY. Petition for writ of mandamus denied.

#### *Certiorari Granted*

No. 86-1408. HAYNIE ET AL. *v.* ROSS GEAR DIVISION OF TRW, INC., ET AL. C. A. 6th Cir. Certiorari granted. JUSTICE MARSHALL took no part in the consideration or decision of this petition. Reported below: 799 F. 2d 237.

#### *Certiorari Denied*

No. 86-1030. COUNTY OF SANTA CLARA *v.* RAMIREZ. C. A. 9th Cir. Certiorari denied. Reported below: 795 F. 2d 1494.

No. 86-1059. BELL *v.* BELL. C. A. 5th Cir. Certiorari denied. Reported below: 801 F. 2d 396.



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No. 86-1155. *INTERNATIONAL PRIMATE PROTECTION LEAGUE ET AL. v. INSTITUTE FOR BEHAVIORAL RESEARCH, INC., ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 799 F. 2d 934.

No. 86-1158. *SCHELLONG v. IMMIGRATION AND NATURALIZATION SERVICE.* C. A. 7th Cir. Certiorari denied. Reported below: 805 F. 2d 655.

No. 86-1316. *HARRIS, AS TRUSTEE UNDER THE TRUST AGREEMENT DATED MARCH 1, 1973, ET AL. v. SENTRY CORP. ET AL.* C. A. 7th Cir. Certiorari denied. Reported below: 802 F. 2d 229.

No. 86-1331. *YURI FASHIONS CO., LTD. v. UNITED STATES.* C. A. Fed. Cir. Certiorari denied. Reported below: 804 F. 2d 1246.

No. 86-1332. *MCCARTY v. PENNSYLVANIA.* Super. Ct. Pa. Certiorari denied. Reported below: 356 Pa. Super. 618, 512 A. 2d 1290.

No. 86-1411. *MILLER v. FEDERAL DEPOSIT INSURANCE CORPORATION.* C. A. 5th Cir. Certiorari denied. Reported below: 805 F. 2d 1031.

No. 86-1422. *RATCLIFF v. UNITED STATES.* C. A. 5th Cir. Certiorari denied. Reported below: 806 F. 2d 1253.

No. 86-1441. *SOLTIES ET UX. v. MASSEY-FERGUSON, INC.* C. A. 3d Cir. Certiorari denied. Reported below: 804 F. 2d 1249.

No. 86-1444. *BIGLEY ET AL. v. UNITED STATES.* C. A. 6th Cir. Certiorari denied. Reported below: 809 F. 2d 291.

No. 86-1465. *DESHA v. UNITED STATES.* Ct. Mil. App. Certiorari denied. Reported below: 23 M. J. 66.

No. 86-5888. *DALE v. KENTUCKY.* Sup. Ct. Ky. Certiorari denied. Reported below: 715 S. W. 2d 227.

No. 86-5999. *TURNER v. PANSOPHIC SYSTEMS, INC.* C. A. 7th Cir. Certiorari denied.

No. 86-6001. *WILMER v. UNITED STATES.* C. A. 9th Cir. Certiorari denied. Reported below: 799 F. 2d 495.

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No. 86-6031. *RODRIGUEZ v. WISCONSIN*. Ct. App. Wis. Certiorari denied. Reported below: 133 Wis. 2d 475, 394 N. W. 2d 920.

No. 86-6054. *WILLIAMS v. RONE ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 805 F. 2d 1037.

No. 86-6130. *LOCKETT v. SOUTH CAROLINA*. Sup. Ct. S. C. Certiorari denied.

No. 86-6148. *REED v. MARYLAND*. Ct. Sp. App. Md. Certiorari denied. Reported below: 68 Md. App. 320, 511 A. 2d 567.

No. 86-6159. *WANZER v. TEXAS*. Ct. App. Tex., 2d Dist. Certiorari denied.

No. 86-6191. *HOFFMAN v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 806 F. 2d 703.

No. 86-6202. *CLARK v. LYNAUGH, INTERIM DIRECTOR, TEXAS DEPARTMENT OF CORRECTIONS*. C. A. 5th Cir. Certiorari denied.

No. 86-6213. *DOUBLEDAY v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 804 F. 2d 1091.

No. 86-6220. *ADAMS v. PENNSYLVANIA*. Sup. Ct. Pa. Certiorari denied.

No. 86-6269. *TALBOTT v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 808 F. 2d 1518.

No. 86-6275. *KIMBROUGH v. AMERICAN TELEPHONE & TELEGRAPH CO. ET AL.* C. A. 8th Cir. Certiorari denied. Reported below: 808 F. 2d 839.

No. 86-6337. *CLEMENTE v. OFFICE OF PERSONNEL MANAGEMENT*. C. A. Fed. Cir. Certiorari denied. Reported below: 809 F. 2d 792.

No. 86-6356. *PEHRINGER, AKA WHITTLESEY v. DUGGER, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL.* C. A. 11th Cir. Certiorari denied. Reported below: 803 F. 2d 1184.

No. 86-6357. *PRICE ET AL. v. BALTIMORE POLICE DEPARTMENT ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 804 F. 2d 1251.

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No. 86-6358. *FRAPPIER v. UNITED STATES*. C. A. 1st Cir. Certiorari denied. Reported below: 807 F. 2d 257.

No. 86-6359. *LEAL v. WRQN ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 805 F. 2d 1035.

No. 86-6363. *TAYLOR v. DAVIS, WARDEN*. C. A. 6th Cir. Certiorari denied. Reported below: 811 F. 2d 608.

No. 86-6366. *JACKSON v. COUNTY OF ARMSTRONG CHILDREN AND YOUTH SERVICE ET AL.* C. A. 3d Cir. Certiorari denied. Reported below: 808 F. 2d 1516.

No. 86-6395. *HUMPHREY v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 808 F. 2d 561.

No. 86-6396. *GRANT v. GEORGIA*. Ct. App. Ga. Certiorari denied. Reported below: 180 Ga. App. 746, 350 S. E. 2d 582.

No. 86-6407. *DIGGS v. ZIMMERMAN, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AND CORRECTIONAL DIAGNOSTIC AND CLASSIFICATION CENTER AT GRATERFORD, ET AL.* C. A. 3d Cir. Certiorari denied.

No. 86-6430. *COOK ET AL. v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 811 F. 2d 608.

No. 86-6440. *REYNOSO-BARRIOS v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 808 F. 2d 57.

No. 86-6455. *RIDGE v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 810 F. 2d 1167.

No. 86-6456. *CRUZ v. UNITED STATES*. C. A. 11th Cir. Certiorari denied. Reported below: 805 F. 2d 1464.

No. 86-6463. *WHITE v. UNITED STATES*. Ct. App. D. C. Certiorari denied.

No. 86-6465. *GATES v. UNITED STATES*. C. A. D. C. Cir. Certiorari denied. Reported below: 257 U. S. App. D. C. 160, 807 F. 2d 1075.

No. 86-6467. *COLEMAN v. UNITED STATES*. Ct. App. D. C. Certiorari denied. Reported below: 515 A. 2d 439.

No. 86-6477. *BONNER ET AL. v. UNITED STATES*. C. A. 1st Cir. Certiorari denied. Reported below: 808 F. 2d 864.



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No. 86-6480. HAMPTON *v.* ALASKA. Sup. Ct. Alaska. Certiorari denied.

No. 86-6499. HOGAN *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 812 F. 2d 713.

No. 85-958. ILLINOIS *v.* EYLER. App. Ct. Ill., 2d Dist. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 132 Ill. App. 3d 792, 477 N. E. 2d 774.

No. 86-291. SUMNER, DIRECTOR, NEVADA DEPARTMENT OF PRISONS *v.* PHELPS. C. A. 9th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 792 F. 2d 144.

No. 86-1311. A. L. LABORATORIES, INC., ET AL. *v.* NORTH AMERICAN PHILIPS CORP. C. A. 8th Cir. Certiorari denied. JUSTICE WHITE took no part in the consideration or decision of this petition. Reported below: 803 F. 2d 378.

No. 86-1338. DEYA *v.* BOARD OF SUPERVISORS OF LOUISIANA STATE UNIVERSITY ET AL. C. A. 5th Cir. Certiorari denied. JUSTICE SCALIA took no part in the consideration or decision of this petition. Reported below: 801 F. 2d 397.

No. 86-6197. GIPSON *v.* ROSENBERG ET AL. C. A. 5th Cir. Motion of respondents for damages denied. Certiorari denied. Reported below: 797 F. 2d 224.

No. 86-6208. FREY *v.* PENNSYLVANIA. Sup. Ct. Pa.;

No. 86-6334. MANN *v.* TEXAS. Ct. Crim. App. Tex.;

No. 86-6355. KUBAT *v.* ILLINOIS. Sup. Ct. Ill.;

No. 86-6372. ZETTLEMOYER *v.* PENNSYLVANIA. Super. Ct. Pa.; and

No. 86-6470. MORRISON *v.* ALABAMA. Sup. Ct. Ala. Certiorari denied. Reported below: No. 86-6208, 512 Pa. 557, 517 A. 2d 1265; No. 86-6334, 718 S. W. 2d 741; No. 86-6355, 114 Ill. 2d 424, 501 N. E. 2d 111; No. 86-6372, 359 Pa. Super. 631, 515 A. 2d 620; No. 86-6470, 500 So. 2d 57.

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,

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227, 231 (1976), we would grant certiorari and vacate the death sentences in these cases.

No. 86-6600 (A-697). *WILLIAMS v. LYNAUGH*, INTERIM DIRECTOR, TEXAS DEPARTMENT OF CORRECTIONS. C. A. 5th Cir. Application for stay of execution of sentence of death, presented to JUSTICE WHITE, and by him referred to the Court, denied. Certiorari denied. Reported below: 809 F. 2d 1063.

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 of execution and the petition for writ of certiorari and would vacate the death sentence in this case.

*Rehearing Denied*

No. 86-1025. *IN RE POLYAK*, 479 U. S. 1082;

No. 86-6006. *LYDA ET AL. v. JOHN K. ET AL.*, 479 U. S. 1095; and

No. 86-6077. *KUCHER v. MADERIOS ET AL.*, 479 U. S. 1097. Petitions for rehearing denied.

No. 85-703. *SCHOENBORN ET AL. v. BOEING Co.*, 474 U. S. 1082. Motion for leave to file petition for rehearing denied.

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*Miscellaneous Order*

No. 85-673. *HARTIGAN, ATTORNEY GENERAL OF THE STATE OF ILLINOIS, ET AL. v. ZBARAZ ET AL.* C. A. 7th Cir. [Probable jurisdiction postponed, 479 U. S. 881.] The parties are directed to file supplemental briefs addressing the merits of the second question presented in appellants' jurisdictional statement, as well as the question whether the Court of Appeals' decision is sufficiently final to permit this Court to take jurisdiction over the case under 28 U. S. C. § 1254(2) to review both questions presented. Rule 35 of the Rules of this Court prescribes the time for filing these supplemental briefs.

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*Appeals Dismissed*

No. 86-1350. *423 SOUTH SALINA STREET, INC. v. CITY OF SYRACUSE ET AL.* Appeal from Ct. App. N. Y. dismissed for



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want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied. Reported below: 68 N. Y. 2d 474, 503 N. E. 2d 63.

No. 86-1363. *WANGRUD v. OREGON*. Appeal from Ct. App. Ore. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied. Reported below: 81 Ore. App. 105, 723 P. 2d 387.

No. 86-1403. *KONIG v. PICKING*. 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.

No. 86-6427. *STEVENSON v. DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS*. Appeal from Int. Ct. App. Haw. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied.

No. 86-1370. *AUTOMATIC MUSIC & VENDING CORP. ET AL. v. MICHIGAN LIQUOR CONTROL COMMISSION*. Appeal from Sup. Ct. Mich. dismissed for want of substantial federal question. Reported below: 426 Mich. 452, 396 N. W. 2d 204.

No. 86-1396. *BATY v. OREGON*. Appeal from Ct. App. Ore. dismissed for want of substantial federal question. Reported below: 80 Ore. App. 153, 720 P. 2d 415.

No. 86-6008. *JAMES v. IOWA*. Appeal from Sup. Ct. Iowa dismissed for want of properly presented federal question. Reported below: 393 N. W. 2d 465.

*Certiorari Granted—Vacated and Remanded*

No. 85-1839. *GALLON v. LEVIN METALS CORP. ET AL.* C. A. 9th Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *West v. Conrail*, ante, p. 35. Reported below: 779 F. 2d 1439.

No. 86-1207. *IMMIGRATION AND NATURALIZATION SERVICE ET AL. v. NATIONAL CENTER FOR IMMIGRANTS' RIGHTS ET AL.* C. A. 9th Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of the Immigration Re-

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form and Control Act of 1986, Pub. L. 99-603. Reported below: 791 F. 2d 1351.

*Miscellaneous Orders*

No. — — —. JAMES *v.* CITY OF TROY ET AL. Motion to direct the Clerk to file a petition for writ of certiorari out of time denied.

No. — — —. HANSEN *v.* CITY OF SAN BUENAVENTURA. Motion of appellant to dispense with printing portions of the appendix to the jurisdictional statement denied.

No. A-615 (86-6562). McDONALD *v.* METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY, TENNESSEE. Chan. Ct. Tenn., Davidson County. Application for temporary injunction and other relief, addressed to JUSTICE O'CONNOR and referred to the Court, denied.

No. A-732. LINNAS *v.* IMMIGRATION AND NATURALIZATION SERVICE. Application for stay of deportation, presented to JUSTICE MARSHALL, and by him referred to the Court, denied. The order heretofore entered by JUSTICE MARSHALL on April 6, 1987, is vacated. JUSTICE BRENNAN, JUSTICE BLACKMUN, and JUSTICE O'CONNOR would grant the application for stay.

No. D-588. IN RE DISBARMENT OF SPEERT. Disbarment entered. [For earlier order herein, see 479 U. S. 958.]

No. D-599. IN RE DISBARMENT OF HENRY. Disbarment entered. [For earlier order herein, see 479 U. S. 1026.]

No. D-601. IN RE DISBARMENT OF INTINI. Disbarment entered. [For earlier order herein, see 479 U. S. 1026.]

No. D-607. IN RE DISBARMENT OF EIMERS. Disbarment entered. [For earlier order herein, see 479 U. S. 1078.]

No. D-610. IN RE DISBARMENT OF LOPEZ. Vincent Cabrera Lopez, of Chicago, Ill., 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 2, 1987 [480 U. S. 902], is hereby discharged.

No. D-628. IN RE DISBARMENT OF BRUMFIELD. It is ordered that H. Alva Brumfield III, of Baton Rouge, La., be sus-

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pended 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-629. *IN RE DISBARMENT OF MIRTO*. It is ordered that Peter G. Mirto, of Brooklyn, N. Y., 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. 9, Orig. *UNITED STATES v. LOUISIANA ET AL.* Supplemental Report of the Special Master on the Alabama and Mississippi boundary cases is received and ordered filed. Exceptions to the Report, with supporting briefs, may be filed by the parties within 45 days. Replies thereto, if any, with supporting briefs, may be filed within 30 days. JUSTICE MARSHALL took no part in the consideration or decision of this order. [For earlier decision herein, see, *e. g.*, 470 U. S. 93.]

No. 108, Orig. *NEBRASKA v. WYOMING ET AL.* Motion of Wyoming for leave to file a counterclaim granted. Answers to the counterclaim may be filed within 60 days. [For earlier order herein, see 479 U. S. 1051.]

No. 85-1409. *BOWEN, SECRETARY OF HEALTH AND HUMAN SERVICES v. YUCKERT*. C. A. 9th Cir. [Certiorari granted, 476 U. S. 1114.] Motion of respondent for leave to file a supplemental brief after argument granted. Motion of the Solicitor General for leave to file a supplemental brief after argument granted.

No. 86-337. *BURLINGTON NORTHERN RAILROAD CO. v. OKLAHOMA TAX COMMISSION ET AL.* C. A. 10th Cir. [Certiorari granted, 479 U. S. 913.] Motion of respondents for leave to file a supplemental brief after argument granted.

No. 86-594. *NATIONAL LABOR RELATIONS BOARD ET AL. v. UNITED FOOD & COMMERCIAL WORKERS UNION, LOCAL 23, AFL-CIO*. C. A. 3d Cir. [Certiorari granted, 479 U. S. 1029.] Motion of the Solicitor General to dispense with printing the joint appendix granted.

No. 86-836. *HAZELWOOD SCHOOL DISTRICT ET AL. v. KUHLMIEER ET AL.* C. A. 8th Cir. [Certiorari granted, 479 U. S.



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1053.] Motions of National School Boards Association et al. and School Board of Dade County, Florida, for leave to file briefs as *amici curiae* granted.

No. 86-863. BOWEN, SECRETARY OF HEALTH AND HUMAN SERVICES v. KIZER, DIRECTOR OF CALIFORNIA DEPARTMENT OF HEALTH SERVICES, ET AL. C. A. 9th Cir. [Certiorari granted, 479 U. S. 1083.] Motion of respondents for divided argument denied.

No. 86-1108. VERMONT v. COX. Sup. Ct. Vt. [Certiorari granted, 479 U. S. 1083.] Motion of respondent for leave to proceed further herein *in forma pauperis* denied. Henry Hinton, Esquire, of Montpelier, Vt., a member of the Bar of this Court, is invited to brief and argue this case in support of the judgment below as *amicus curiae*.

No. 86-6060. YATES v. AIKEN, WARDEN, ET AL. Sup. Ct. S. C. [Certiorari granted, 480 U. S. 945.] Motion for appointment of counsel granted, and it is ordered that David I. Bruck, Esquire, of Columbia, S. C., be appointed to serve as counsel for petitioner in this case.

No. 86-6139. WATSON v. FORT WORTH BANK & TRUST. C. A. 5th Cir. The Solicitor General is invited to file a brief in this case expressing the views of the United States limited to Question 1 presented by the petition.

No. 86-1545. IN RE KOWALIK;

No. 86-6559. IN RE TROCHE; and

No. 86-6607. IN RE FIXEL. Petitions for writs of habeas corpus denied.

#### *Certiorari Granted*

No. 86-805. PINTER ET AL. v. DAHL ET AL. C. A. 5th Cir. Certiorari granted. Reported below: 787 F. 2d 985.

No. 86-1217. RUSSONIELLO ET AL. v. OLAGUES ET AL. C. A. 9th Cir. Certiorari granted. In addition to the questions presented by the petition for writ of certiorari, the parties are invited to brief and argue the question of possible mootness. Reported below: 797 F. 2d 1511.

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*Certiorari Denied.* (See also Nos. 86-1350, 86-1363, 86-1403, and 86-6427, *supra*.)

No. 85-1400. CONTINENTAL BAKING CO. *v.* MACON. C. A. 6th Cir. *Certiorari denied.* Reported below: 779 F. 2d 1166.

No. 86-340. LOCAL 710, INTERNATIONAL BROTHERHOOD OF TEAMSTERS *v.* THOMSEN. C. A. 8th Cir. *Certiorari denied.* Reported below: 792 F. 2d 115.

No. 86-672. TRANS WORLD AIRLINES, INC. *v.* ELISALDE. C. A. 8th Cir. *Certiorari denied.* Reported below: 792 F. 2d 114.

No. 86-715. SUBCLASS IV (UNITHOLDERS) *v.* FOX & CO. ET AL. C. A. 8th Cir. *Certiorari denied.* Reported below: 794 F. 2d 318.

No. 86-765. MISSOURI PACIFIC RAILROAD CO. ET AL. *v.* EVANS. C. A. 8th Cir. *Certiorari denied.* Reported below: 795 F. 2d 57.

No. 86-1022. GOVERNMENT DEVELOPMENT BANK FOR PUERTO RICO ET AL. *v.* LYDIA DE CHOUDENS. C. A. 1st Cir. *Certiorari denied.* Reported below: 801 F. 2d 5.

No. 86-1024. CONFERENCE OF STATE BANK SUPERVISORS ET AL. *v.* BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM ET AL. C. A. 11th Cir. *Certiorari denied.* Reported below: 800 F. 2d 1534.

No. 86-1080. WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY *v.* BROCK, SECRETARY OF LABOR. C. A. D. C. Cir. *Certiorari denied.* Reported below: 254 U. S. App. D. C. 190, 796 F. 2d 481.

No. 86-1118. CINNANTE *v.* UNITED STATES. C. A. 2d Cir. *Certiorari denied.* Reported below: 799 F. 2d 842.

No. 86-1127. WRIGHT ET AL. *v.* UNITED STATES. C. A. 5th Cir. *Certiorari denied.* Reported below: 797 F. 2d 245.

No. 86-1143. ORTEGA ET AL. *v.* ROWE ET AL. C. A. 5th Cir. *Certiorari denied.* Reported below: 796 F. 2d 765.

No. 86-1163. JONES ET AL. *v.* UNITED STATES. C. A. Fed. Cir. *Certiorari denied.* Reported below: 801 F. 2d 1334.

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No. 86-1187. *CANISIUS COLLEGE v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 799 F. 2d 18.

No. 86-1188. *BURFORD v. COMMISSIONER OF INTERNAL REVENUE*. C. A. 4th Cir. Certiorari denied. Reported below: 813 F. 2d 400.

No. 86-1199. *KINGTON ET AL. v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 801 F. 2d 733.

No. 86-1200. *ROTH STEEL TUBE CO. v. COMMISSIONER OF INTERNAL REVENUE*. C. A. 6th Cir. Certiorari denied. Reported below: 800 F. 2d 625.

No. 86-1213. *JIMENEZ-FUENTES ET AL. v. TORRES GAZTAM-BIDE, SECRETARY OF HOUSING OF PUERTO RICO, ET AL.* C. A. 1st Cir. Certiorari denied. Reported below: 807 F. 2d 236.

No. 86-1219. *LARY v. REPUBLIC OF CHINA*. C. A. 11th Cir. Certiorari denied. Reported below: 800 F. 2d 265.

No. 86-1226. *JOHN MORRELL & Co. v. LOCAL UNION 304A OF THE UNITED FOOD & COMMERCIAL WORKERS, AFL-CIO, CLC, ET AL.* C. A. 8th Cir. Certiorari denied. Reported below: 804 F. 2d 457.

No. 86-1229. *GARCIA v. INDIANA*. Sup. Ct. Ind. Certiorari denied. Reported below: 500 N. E. 2d 158.

No. 86-1232. *NEWTON v. UNITED STATES ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 797 F. 2d 1370.

No. 86-1236. *BALLAM v. UNITED STATES*. C. A. Fed. Cir. Certiorari denied. Reported below: 806 F. 2d 1017.

No. 86-1238. *DEMPSEY v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 806 F. 2d 766.

No. 86-1239. *COUNTY OF MARIPOSA ET AL. v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 798 F. 2d 364.

No. 86-1248. *CURTIS v. ILLINOIS*. Sup. Ct. Ill. Certiorari denied. Reported below: 113 Ill. 2d 136, 497 N. E. 2d 1004.

No. 86-1298. *WRIGHT ET UX. v. COMMISSIONER OF INTERNAL REVENUE*. C. A. 9th Cir. Certiorari denied. Reported below: 800 F. 2d 1146.



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No. 86-1333. NATIONAL ELEVATOR INDUSTRY, INC. *v.* INTERNATIONAL UNION OF ELEVATOR CONSTRUCTORS. C. A. 5th Cir. Certiorari denied. Reported below: 806 F. 2d 259.

No. 86-1344. SROUR *v.* UNITED ARAB EMIRATES. C. A. 2d Cir. Certiorari denied. Reported below: 833 F. 2d 1003.

No. 86-1348. CHINAKOOL *v.* TRUSTEES OF THE CALIFORNIA STATE UNIVERSITIES AND COLLEGES ET AL. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 86-1355. CHIRPICH *v.* MINNESOTA. Ct. App. Minn. Certiorari denied. Reported below: 392 N. W. 2d 34.

No. 86-1360. CONSTELLATION LINES, S. A., ET AL. *v.* KARVELIS. C. A. 2d Cir. Certiorari denied. Reported below: 806 F. 2d 49.

No. 86-1361. REYNOLDS *v.* VON BULOW, BY HER NEXT FRIENDS, AUERSPERG ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 811 F. 2d 136.

No. 86-1365. SHAW *v.* WINTER, SHERIFF. C. A. 9th Cir. Certiorari denied. Reported below: 796 F. 2d 1124.

No. 86-1367. ADAM ET AL. *v.* BROTHERHOOD RAILWAY CARMEN OF THE UNITED STATES AND CANADA ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 833 F. 2d 1002.

No. 86-1369. MATTINGLY *v.* KENTUCKY. Sup. Ct. Ky. Certiorari denied. Reported below: 722 S. W. 2d 288.

No. 86-1372. SOBERATS *v.* FLORIDA. Dist. Ct. App. Fla., 5th Dist. Certiorari denied. Reported below: 500 So. 2d 157.

No. 86-1375. HARVEY *v.* HOLT OIL & GAS CORP. ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 801 F. 2d 773.

No. 86-1378. HANIL BANK *v.* MICHELMAN, TRUSTEE. C. A. 9th Cir. Certiorari denied. Reported below: 799 F. 2d 532.

No. 86-1379. MOYER *v.* PETTY, SHERIFF. C. A. 6th Cir. Certiorari denied. Reported below: 811 F. 2d 606.

No. 86-1385. AL-FASSI *v.* AL-FASSI. Ct. App. Cal., 2d App. Dist. Certiorari denied.

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No. 86-1388. COMPTON COMMUNITY COLLEGE DISTRICT ET AL. *v.* NORTHWESTERN NATIONAL CASUALTY CO. ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 803 F. 2d 724.

No. 86-1390. OHIO CITIZENS FOR RESPONSIBLE ENERGY, INC. *v.* NUCLEAR REGULATORY COMMISSION ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 803 F. 2d 258.

No. 86-1391. RUSSELL ET AL. *v.* SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES (FRASER, REAL PARTY IN INTEREST). Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 86-1392. PHILADELPHIA FAST FOOD PARTNERSHIP ET AL. *v.* A. COPELAND ENTERPRISES ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 806 F. 2d 254.

No. 86-1393. GISSENDANER MORTGAGE CO. ET AL. *v.* CENTRAL BANK OF THE SOUTH. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 495 So. 2d 751.

No. 86-1397. PHILLIPS ET AL. *v.* AMOCO OIL CO. ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 799 F. 2d 1464.

No. 86-1398. DUGGER, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS *v.* JOHNSON. Sup. Ct. Fla. Certiorari denied. Reported below: 498 So. 2d 938.

No. 86-1401. BEAZLEY *v.* STATE BAR OF GEORGIA. Sup. Ct. Ga. Certiorari denied. Reported below: 256 Ga. 561, 350 S. E. 2d 422.

No. 86-1402. CAMERON *v.* FOGARTY ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 806 F. 2d 380.

No. 86-1404. MISSOURI PACIFIC RAILROAD CO. *v.* BESSE. Sup. Ct. Mo. Certiorari denied. Reported below: 721 S. W. 2d 740.

No. 86-1405. BOSE CORP. *v.* CONSUMERS UNION OF UNITED STATES, INC. C. A. 1st Cir. Certiorari denied. Reported below: 806 F. 2d 304.

No. 86-1407. WOODRING ET AL. *v.* MCQUADE. Super. Ct. Pa. Certiorari denied. Reported below: 353 Pa. Super. 650, 506 A. 2d 1341.

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No. 86-1412. *ROSENBLOOM ET AL. v. ROTHBERG*. C. A. 3d Cir. Certiorari denied. Reported below: 808 F. 2d 252.

No. 86-1413. *STOREY ET AL. v. GEORGIA*. Ct. App. Ga. Certiorari denied. Reported below: 181 Ga. App. 161, 351 S. E. 2d 502.

No. 86-1418. *MCDONALD v. BOARD OF EQUALIZATION ET AL.* Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 86-1420. *MASSACHUSETTS v. LAHTI*. Sup. Jud. Ct. Mass. Certiorari denied. Reported below: 398 Mass. 829, 501 N. E. 2d 511.

No. 86-1423. *TINLEY PARK COMMUNITY CONSOLIDATED SCHOOL DISTRICT NO. 146 ET AL. v. JENNINGS*. C. A. 7th Cir. Certiorari denied. Reported below: 796 F. 2d 962.

No. 86-1426. *TUCKER v. BENNETT ET AL.* C. A. 10th Cir. Certiorari denied.

No. 86-1437. *BRUMFIELD v. MISSISSIPPI STATE BAR ASSN.* Sup. Ct. Miss. Certiorari denied. Reported below: 497 So. 2d 800.

No. 86-1445. *FIRST TEAM AUCTION, INC. v. FIRST STATE BANK OF CLAY COUNTY*. C. A. 11th Cir. Certiorari denied. Reported below: 808 F. 2d 60.

No. 86-1459. *LAW ENFORCEMENT INSURANCE CO., LTD. v. CORCORAN, SUPERINTENDENT OF INSURANCE OF THE STATE OF NEW YORK, AS LIQUIDATOR OF IDEAL MUTUAL INSURANCE CO.* C. A. 2d Cir. Certiorari denied. Reported below: 807 F. 2d 38.

No. 86-1460. *ESPENSCHIED v. MERIT SYSTEMS PROTECTION BOARD*. C. A. Fed. Cir. Certiorari denied. Reported below: 804 F. 2d 1233.

No. 86-1463. *CORONA ET AL. v. UNITED STATES*. C. A. 11th Cir. Certiorari denied. Reported below: 804 F. 2d 1568.

No. 86-1467. *STEMER v. WAYNE COUNTY DEPARTMENT OF HEALTH ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 798 F. 2d 471.

No. 86-1479. *RATCLIFF v. MCKEEVER ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 807 F. 2d 994.



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No. 86-1481. *HOLLOWAY ET UX. v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 798 F. 2d 175.

No. 86-1486. *TIMMERMAN v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 806 F. 2d 258.

No. 86-1489. *MELLETT v. FEDERAL DEPOSIT INSURANCE CORPORATION ET AL.* C. A. 8th Cir. Certiorari denied. Reported below: 808 F. 2d 840.

No. 86-1494. *SORISE v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 811 F. 2d 605.

No. 86-1500. *MOBLEY v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 804 F. 2d 1253.

No. 86-1504. *TRANOWSKI v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 804 F. 2d 144.

No. 86-1525. *RESTREPO v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 804 F. 2d 1253.

No. 86-5959. *LOVETT v. DELAWARE*. Sup. Ct. Del. Certiorari denied. Reported below: 516 A. 2d 455.

No. 86-5960. *ANDREWS v. UNITED STATES*. C. A. 10th Cir. Certiorari denied. Reported below: 790 F. 2d 803.

No. 86-5967. *VINCENT v. BLACKBURN, WARDEN*. 30th Jud. Dist. Ct. La., Vernon Parish. Certiorari denied.

No. 86-6042. *HOWELL v. DALLAS COUNTY CHILD WELFARE UNIT*. Ct. App. Tex., 5th Dist. Certiorari denied. Reported below: 710 S. W. 2d 729.

No. 86-6085. *BROOKS v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 805 F. 2d 1036.

No. 86-6114. *PRICE v. UNITED STATES*. C. A. 11th Cir. Certiorari denied. Reported below: 805 F. 2d 1041.

No. 86-6163. *GRAYSON v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 795 F. 2d 278.

No. 86-6170. *STOCKHEIMER v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 807 F. 2d 610.

No. 86-6233. *RODRIGUEZ v. SCHWEIGER ET AL.* C. A. 7th Cir. Certiorari denied. Reported below: 796 F. 2d 930.

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No. 86-6279. *EDWARDS v. UNITED STATES*. C. A. 11th Cir. Certiorari denied. Reported below: 795 F. 2d 958.

No. 86-6295. *ENGLER v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 806 F. 2d 425.

No. 86-6312. *HYMEN v. MERIT SYSTEMS PROTECTION BOARD*. C. A. 9th Cir. Certiorari denied. Reported below: 799 F. 2d 1421.

No. 86-6361. *SHAW v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 807 F. 2d 178.

No. 86-6362. *RUEDA-GOMEZ v. UNITED STATES*. C. A. 11th Cir. Certiorari denied. Reported below: 798 F. 2d 1419.

No. 86-6369. *COX v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 810 F. 2d 196.

No. 86-6373. *WALLACE v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 800 F. 2d 1509.

No. 86-6376. *ALMANZA v. TEXAS*. Ct. Crim. App. Tex. Certiorari denied. Reported below: 724 S. W. 2d 805.

No. 86-6378. *WILLIAMS v. BLACKBURN, WARDEN*. C. A. 5th Cir. Certiorari denied. Reported below: 808 F. 2d 1521.

No. 86-6382. *WORTHAN v. ARMONTROUT, WARDEN*. C. A. 8th Cir. Certiorari denied. Reported below: 805 F. 2d 303.

No. 86-6383. *SULLIVAN v. BLACKBURN, WARDEN, ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 804 F. 2d 885.

No. 86-6390. *CALDWELL v. TEXAS*. Ct. App. Tex., 9th Dist. Certiorari denied. Reported below: 696 S. W. 2d 606.

No. 86-6391. *BRENNAN v. GRIFFETH ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 803 F. 2d 718.

No. 86-6394. *BROWN v. RICE, WARDEN, ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 803 F. 2d 713.

No. 86-6398. *BURNETT v. COX ET AL.* Sup. Ct. Fla. Certiorari denied. Reported below: 494 So. 2d 1149.

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No. 86-6401. *SKURDAL v. CITY OF BILLINGS, MONTANA*. Sup. Ct. Mont. Certiorari denied. Reported below: 224 Mont. 84, 730 P. 2d 371.

No. 86-6406. *BERRY v. MOORE, DIRECTOR, MISSOURI DEPARTMENT OF CORRECTIONS*. C. A. 8th Cir. Certiorari denied. Reported below: 808 F. 2d 841.

No. 86-6408. *HOLLEY v. SMITH, COMMISSIONER, ALABAMA DEPARTMENT OF CORRECTIONS, ET AL.* C. A. 11th Cir. Certiorari denied. Reported below: 792 F. 2d 1046.

No. 86-6410. *REARDON ET AL. v. LOPES, COMMISSIONER, CONNECTICUT DEPARTMENT OF CORRECTIONS, ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 806 F. 2d 39.

No. 86-6416. *GONZALEZ v. NEW YORK*. App. Div., Sup. Ct. N. Y., 2d Jud. Dept. Certiorari denied. Reported below: 125 App. Div. 2d 330, 508 N. Y. S. 2d 606.

No. 86-6417. *LAY v. HORAN, COMMONWEALTH ATTORNEY*. C. A. 4th Cir. Certiorari denied. Reported below: 806 F. 2d 257.

No. 86-6420. *CONWAY v. MUNCY, WARDEN*. C. A. 4th Cir. Certiorari denied. Reported below: 808 F. 2d 834.

No. 86-6423. *BONDS v. WILLIS, WARDEN*. C. A. 11th Cir. Certiorari denied.

No. 86-6424. *REED v. MORTON ET AL.* C. A. 7th Cir. Certiorari denied. Reported below: 808 F. 2d 837.

No. 86-6426. *ROCHON v. CONSOLIDATED CONSTRUCTION CO. ET AL.* Ct. App. La., 3d Cir. Certiorari denied. Reported below: 497 So. 2d 746.

No. 86-6428. *MRAOVIC v. LYNAUGH, INTERIM DIRECTOR, TEXAS DEPARTMENT OF CORRECTIONS*. C. A. 5th Cir. Certiorari denied.

No. 86-6429. *MCCONE v. DISTRICT COURT OF ALBANY COUNTY ET AL.* C. A. 10th Cir. Certiorari denied.

No. 86-6434. *FRANKLIN v. WHITE, SUPERINTENDENT, ALGOA CORRECTIONAL CENTER*. C. A. 8th Cir. Certiorari denied. Reported below: 803 F. 2d 416.



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No. 86-6437. *MURVIN v. KAYE*. C. A. 4th Cir. Certiorari denied. Reported below: 802 F. 2d 451.

No. 86-6438. *MARTIN v. PEREZOUS ET AL.* C. A. 3d Cir. Certiorari denied. Reported below: 810 F. 2d 1163.

No. 86-6439. *SAID v. SOUTHERN CALIFORNIA RAPID TRANSIT DISTRICT*. C. A. 9th Cir. Certiorari denied. Reported below: 800 F. 2d 1145.

No. 86-6441. *WINGOS v. ILLINOIS*. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 141 Ill. App. 3d 1174, 503 N. E. 2d 1214.

No. 86-6444. *COX v. LEEKE, COMMISSIONER, SOUTH CAROLINA DEPARTMENT OF CORRECTIONS, ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 807 F. 2d 175.

No. 86-6446. *CROGHAN v. FARRIER, DIRECTOR, IOWA DEPARTMENT OF CORRECTIONS, ET AL.* C. A. 8th Cir. Certiorari denied.

No. 86-6448. *RANDOLPH v. MURRAY, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS, ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 808 F. 2d 835.

No. 86-6450. *MARSHALL v. BAUER*. C. A. 4th Cir. Certiorari denied. Reported below: 803 F. 2d 1181.

No. 86-6454. *ESTUPINAN PAREDES v. UNITED STATES*. C. A. 11th Cir. Certiorari denied. Reported below: 798 F. 2d 1418.

No. 86-6457. *MCGHAR v. KOEHLER, WARDEN*. C. A. 6th Cir. Certiorari denied. Reported below: 811 F. 2d 606.

No. 86-6458. *ZERMAN v. WOLOFSKY ET AL.* C. A. 11th Cir. Certiorari denied. Reported below: 794 F. 2d 686.

No. 86-6459. *BELK v. CHRANS, WARDEN, ET AL.* C. A. 7th Cir. Certiorari denied.

No. 86-6460. *CARDELLE v. DELTA AIR LINES, INC.* C. A. 11th Cir. Certiorari denied.

No. 86-6461. *MOSS v. MORRIS, SUPERINTENDENT, SOUTHERN OHIO CORRECTIONAL FACILITY, ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 805 F. 2d 1035.

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No. 86-6462. *TEAGUE v. NEW MEXICO*. Ct. App. N. M. Certiorari denied.

No. 86-6464. *REFILE v. PENNSYLVANIA*. Super. Ct. Pa. Certiorari denied. Reported below: 356 Pa. Super. 590, 512 A. 2d 53.

No. 86-6468. *LYNCH v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 800 F. 2d 765.

No. 86-6475. *LAVERGNE v. HOLY NAME HOSPITAL*. Super. Ct. N. J., App. Div. Certiorari denied.

No. 86-6478. *REEVES v. LYNNAUGH, INTERIM DIRECTOR, TEXAS DEPARTMENT OF CORRECTIONS*. C. A. 5th Cir. Certiorari denied.

No. 86-6496. *COMSTOCK v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 805 F. 2d 1194.

No. 86-6498. *DONOGHUE v. MASSACHUSETTS*. App. Ct. Mass. Certiorari denied. Reported below: 23 Mass. App. 103, 499 N. E. 2d 832.

No. 86-6504. *HAMLOR v. MURRAY, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS*. C. A. 4th Cir. Certiorari denied. Reported below: 809 F. 2d 785.

No. 86-6508. *RICHTER v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 813 F. 2d 399.

No. 86-6511. *VILLAUME v. UNITED STATES DEPARTMENT OF JUSTICE*. C. A. 8th Cir. Certiorari denied. Reported below: 804 F. 2d 498.

No. 86-6512. *WESTBROOK v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 806 F. 2d 255.

No. 86-6527. *FAY v. UNITED STATES*. C. A. 8th Cir. Certiorari denied.

No. 86-6529. *BASSFORD v. UNITED STATES*. C. A. 1st Cir. Certiorari denied. Reported below: 812 F. 2d 16.

No. 86-6535. *VEGA v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 812 F. 2d 713.

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No. 86-6538. *BREWER v. UNITED STATES*. C. A. 11th Cir. Certiorari denied. Reported below: 807 F. 2d 895.

No. 86-6539. *WALITWARANGKUL v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 808 F. 2d 1352.

No. 86-6542. *AL-KURNA v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 808 F. 2d 1072.

No. 86-6548. *THOMAS v. UNITED STATES*. Ct. App. D. C. Certiorari denied.

No. 86-49. *AMERICAN ELECTRIC POWER CO., INC., ET AL. v. KENTUCKY PUBLIC SERVICE COMMISSION ET AL.* C. A. 6th Cir. Motions of Edison Electric Institute and Eastern Utilities Associates et al. for leave to file briefs as *amici curiae* granted. Certiorari denied. Reported below: 787 F. 2d 588.

No. 86-546. *NEW ORLEANS PUBLIC SERVICE, INC. v. CITY OF NEW ORLEANS ET AL.* C. A. 5th Cir. Motions of System Energy Resources, Inc., Edison Electric Institute, National Association of Regulatory Utility Commissioners, and Eastern Utilities Associates et al. for leave to file briefs as *amici curiae* granted. Certiorari denied. Reported below: 798 F. 2d 858.

No. 86-806. *PATTERSON ET AL. v. JOSEPH ET AL.* C. A. 6th Cir. Motion of Prosecuting Attorneys Association of Michigan for leave to file a brief as *amicus curiae* granted. Certiorari denied. JUSTICE WHITE and JUSTICE O'CONNOR would grant certiorari. Reported below: 795 F. 2d 549.

No. 86-1082. *CHURCH OF SCIENTOLOGY OF CALIFORNIA v. WOLLERSHEIM*. Ct. App. Cal., 2d App. Dist. Motions of National Association for the Advancement of Colored People and National Council of Churches of Christ in the U. S. A. for leave to file briefs as *amici curiae* granted. Certiorari denied. JUSTICE BRENNAN took no part in the consideration or decision of these motions and this petition.

No. 86-1116. *LEWIS, DIRECTOR, ARIZONA DEPARTMENT OF CORRECTIONS, ET AL. v. CHANEY*. C. A. 9th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 801 F. 2d 1191.



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No. 86-1191. *WARREN v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. JUSTICE WHITE would grant certiorari. Reported below: 800 F. 2d 1316.

No. 86-1283. *KAMEAN ET AL. v. LOCAL 363, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA, ET AL.* C. A. 2d Cir. Certiorari denied. JUSTICE WHITE would grant certiorari. Reported below: 833 F. 2d 1002.

No. 86-1495. *GONZALES ET AL. v. SEALY ET AL.* C. A. 10th Cir. Certiorari denied. JUSTICE WHITE would grant certiorari.

No. 86-1346. *MATCHA ET UX. v. MATTOX, ATTORNEY GENERAL OF TEXAS*. Ct. App. Tex., 3d Dist. Motion of Legal Foundation of America for leave to file a brief as *amicus curiae* granted. Certiorari denied. Reported below: 711 S. W. 2d 95.

No. 86-6377. *LUSK v. FLORIDA*. Sup. Ct. Fla.;

No. 86-6384. *ROMINE v. GEORGIA*. Sup. Ct. Ga.;

No. 86-6471. *PROVENZANO v. FLORIDA*. Sup. Ct. Fla.; and

No. 86-6510. *LASHLEY v. MISSOURI*. Ct. App. Mo., Eastern Dist. Certiorari denied. Reported below: No. 86-6377, 498 So. 2d 902; No. 86-6384, 256 Ga. 521, 350 S. E. 2d 446; No. 86-6471, 497 So. 2d 1177; No. 86-6510, 721 S. W. 2d 31.

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. 85-998. *UNITED STATES v. DUNN*, 480 U. S. 294;

No. 85-1277. *SCHOOL BOARD OF NASSAU COUNTY, FLORIDA, ET AL. v. ARLINE*, 480 U. S. 273;

No. 85-6461. *MARTIN v. OHIO*, 480 U. S. 228;

No. 85-6783. *WRIGHT v. ILLINOIS*, 479 U. S. 1101;

No. 85-7232. *CARGILL v. GEORGIA*, 479 U. S. 1101;

No. 86-969. *KANAREK v. WAMBAUGH ET AL.*, 479 U. S. 1089; and

No. 86-1113. *BERGMAN ET UX. v. COMMISSIONER OF INTERNAL REVENUE*, 479 U. S. 1092. Petitions for rehearing denied.

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- No. 86-5207. *MORGAN v. ILLINOIS*, 479 U. S. 1101;  
No. 86-5434. *OLINGER v. ILLINOIS*, 479 U. S. 1101;  
No. 86-5906. *SZABO v. ILLINOIS*, 479 U. S. 1101;  
No. 86-5991. *MULLIGAN v. KEMP, WARDEN*, 480 U. S. 911;  
No. 86-5994. *BROOKS v. OHIO*, 479 U. S. 1101;  
No. 86-6022. *BARRITT v. BORDENKIRCHER, WARDEN*, 479 U. S. 1095;  
No. 86-6030. *WILKIE v. FOLTZ*, REGIONAL ADMINISTRATOR, MICHIGAN DEPARTMENT OF CORRECTIONS, 479 U. S. 1095;  
No. 86-6072. *DUNLAP v. BESHEAR*, ATTORNEY GENERAL OF KENTUCKY, ET AL., 479 U. S. 1097;  
No. 86-6098. *GREEN v. UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA*, 479 U. S. 1098;  
No. 86-6123. *IN RE JOHL*, 479 U. S. 1082;  
No. 86-6168. *DAVID v. AMERICAN TELEPHONE & TELEGRAPH CO. ET AL.*, 480 U. S. 909;  
No. 86-6200. *STRANGE v. BROWN, WARDEN, ET AL.*, 480 U. S. 921;  
No. 86-6210. *OLIVER v. DUGGER*, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, 480 U. S. 921;  
No. 86-6218. *JONES v. ZIMMERMAN*, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AND CORRECTIONAL DIAGNOSTIC CLASSIFICATION CENTER AT GRATERFORD, 480 U. S. 909; and  
No. 86-6246. *HANNER v. MISSISSIPPI ET AL.*, 480 U. S. 921. Petitions for rehearing denied.

No. 86-5210. *LIGHTFOOT v. WHITE, WARDEN, ET AL.*, 479 U. S. 964. Motion for leave to file petition for rehearing denied.

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*Appeals Dismissed*

No. 86-1295. *ASHLAND OIL, INC. v. ROSE*, STATE TAX COMMISSIONER OF WEST VIRGINIA. Appeal from Sup. Ct. App. W. Va. Motion of Committee on State Taxation of the Council of State Chambers of Commerce for leave to file a brief as *amicus curiae* granted. Appeal dismissed for want of a final judgment. Reported below: — W. Va. —, 350 S. E. 2d 531.

No. 86-1452. *STICH v. COURT OF APPEAL OF CALIFORNIA, FIRST APPELLATE DISTRICT, ET AL.* Appeal from C. A. 9th Cir.

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dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied. Reported below: 805 F. 2d 1039.

No. 86-6474. ROBINSON, BY HIS MOTHER AND NEXT FRIEND, ROBINSON *v.* UNITED STATES. Appeal from C. A. D. C. Cir. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied.

No. 86-1456. PYZER, EXECUTRIX OF THE ESTATE OF PYZER *v.* PERRY ET AL. Appeal from Ct. App. Cal., 1st App. Dist., dismissed for want of substantial federal question. JUSTICE BLACKMUN would note probable jurisdiction and set case for oral argument.

No. 86-1478. WHITE PLAINS AUTOMOTIVE SUPPLY CO., INC., ET AL. *v.* CITY OF PEEKSKILL. Appeal from Ct. App. N. Y. dismissed for want of substantial federal question. Reported below: 68 N. Y. 2d 933, 502 N. E. 2d 1006.

No. 86-1586. BOMHARDT *v.* MARYLAND. Appeal from Ct. Sp. App. Md. dismissed for want of jurisdiction. Reported below: 68 Md. App. 723.

*Vacated and Remanded on Appeal*

No. 86-344. OHIO ET AL. *v.* FLEET AEROSPACE CORP. ET AL. Appeal from C. A. 6th Cir. Motion of North American Securities Administrators Association, Inc., for leave to file a brief as *amicus curiae* granted. Judgment vacated and case remanded for further consideration in light of *CTS Corp. v. Dynamics Corporation of America*, ante, p. 69. Reported below: 796 F. 2d 135.

*Certiorari Granted—Reversed and Remanded.* (See No. 86-1381, ante, p. 400.)

*Certiorari Granted—Vacated and Remanded*

No. 85-6430. SANDERS *v.* LANE, DIRECTOR, ILLINOIS DEPARTMENT OF CORRECTIONS, ET AL. C. A. 7th 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 *Cruz v. New York*, ante, p. 186. Reported below: 779 F. 2d 54.



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No. 85-6925. PICKETT ET AL. *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Motion of petitioners for leave to proceed *in forma pauperis* and certiorari granted. Judgment vacated and case remanded for further consideration in light of *Cruz v. New York*, ante, p. 186. Reported below: 137 Ill. App. 3d 1155, 499 N. E. 2d 176.

No. 86-6105. PUIATTI *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 *Cruz v. New York*, ante, p. 186. Reported below: 495 So. 2d 128.

### Miscellaneous Orders

No. A-770. ROBERTS *v.* UNITED STATES. Application to continue stay and for other relief, presented to JUSTICE POWELL, and by him referred to the Court, denied. The order heretofore entered by JUSTICE POWELL on April 21, 1987, is vacated. JUSTICE STEVENS, JUSTICE O'CONNOR, and JUSTICE SCALIA would grant the application.

No. D-614. IN RE DISBARMENT OF BRIGGS. Due to mistaken identity, the order entered March 9, 1987 [480 U. S. 914], suspending William Leon Briggs, of Fort Wayne, Ind., from the practice of law in this Court is vacated and the rule to show cause issued on that date is discharged.

No. D-630. IN RE DISBARMENT OF ALLEN. It is ordered that William Slater Allen, Jr., of Providence, R. I., 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-631. IN RE DISBARMENT OF BURKE. It is ordered that Thomas John Burke, of Naperville, Ill., be suspended from the practice of law in this Court and that a rule issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. 85-1589. IOWA MUTUAL INSURANCE CO. *v.* LAPLANTE ET AL., 480 U. S. 9. Motion of respondents to retax costs granted.

No. 86-228. KUNGYS *v.* UNITED STATES. C. A. 3d Cir. [Certiorari granted, 479 U. S. 947.] Motion of petitioner for leave to file a reply brief to the briefs of the *amici curiae* denied.

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No. 86-327. *MULLINS COAL CO., INC. OF VIRGINIA, ET AL. v. DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR, ET AL.* C. A. 4th Cir. [Certiorari granted, 479 U. S. 1029.] Motion of the Solicitor General for divided argument granted.

No. 86-1406. *PUERTO RICO DEPARTMENT OF CONSUMER AFFAIRS ET AL v. ISLA PETROLEUM CORP. ET AL.* Temp. Emerg. Ct. App. Motions of New York et al. and Asociacion de Detallistas de Gasoline de Puerto Rico for leave to file briefs as *amici curiae* granted. The Solicitor General is invited to file a brief in this case expressing the views of the United States. JUSTICE O'CONNOR took no part in the consideration or decision of these motions and this order.

*Certiorari Denied.* (See also Nos. 86-1452 and 86-6474, *supra.*)

No. 85-1840. *ARCHER-DANIELS-MIDLAND CO. ET AL. v. UNITED STATES.* C. A. 8th Cir. Certiorari denied. Reported below: 785 F. 2d 206.

No. 86-884. *GRAMENOS v. JEWEL COS., INC., ET AL.* C. A. 7th Cir. Certiorari denied. Reported below: 797 F. 2d 432.

No. 86-1085. *PAGEL v. CALIFORNIA.* App. Dept., Super. Ct. Cal., Orange County. Certiorari denied. Reported below: 186 Cal. App. 3d Supp. 1, 232 Cal. Rptr. 104.

No. 86-1134. *VGS CORP., DBA SOUTHLAND OIL CO., ET AL. v. UNITED STATES DEPARTMENT OF ENERGY ET AL.* Temp. Emerg. Ct. App. Certiorari denied. Reported below: 808 F. 2d 842.

No. 86-1174. *HOLMBERG v. MORRISETTE ET AL.* C. A. 8th Cir. Certiorari denied. Reported below: 800 F. 2d 205.

No. 86-1211. *REID v. UNITED STATES.* C. A. 4th Cir. Certiorari denied. Reported below: 803 F. 2d 714.

No. 86-1288. *KRUTZ v. OHIO.* Sup. Ct. Ohio. Certiorari denied. Reported below: 28 Ohio St. 3d 36, 502 N. E. 2d 210.

No. 86-1312. *ABSHER ET AL. v. UNITED STATES.* C. A. Fed. Cir. Certiorari denied. Reported below: 805 F. 2d 1025.

No. 86-1334. *SKEVIN v. SUPREME COURT OF NEW JERSEY.* Sup. Ct. N. J. Certiorari denied. Reported below: 104 N. J. 476, 517 A. 2d 852.

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No. 86-1421. *OCTOPI, INC., ET AL. v. COURTNEY*. C. A. 7th Cir. Certiorari denied. Reported below: 807 F. 2d 594.

No. 86-1428. *PHOENIX NEWSPAPERS, INC., ET AL. v. BOSWELL ET AL.* Sup. Ct. Ariz. Certiorari denied. Reported below: 152 Ariz. 9, 730 P. 2d 186.

No. 86-1434. *CHEVRON U. S. A. INC. v. JHJ LIMITED I.* C. A. 5th Cir. Certiorari denied. Reported below: 806 F. 2d 82.

No. 86-1446. *PUNTON v. CITY OF SEATTLE*. C. A. 9th Cir. Certiorari denied. Reported below: 805 F. 2d 1378.

No. 86-1448. *CHANCEY v. GEORGIA*. Sup. Ct. Ga. Certiorari denied. Reported below: 256 Ga. 415, 349 S. E. 2d 717.

No. 86-1453. *ZENITH RADIO CORP. ET AL. v. MATSUSHITA ELECTRIC INDUSTRIAL Co., LTD., ET AL.* C. A. 3d Cir. Certiorari denied. Reported below: 807 F. 2d 44.

No. 86-1455. *MARCOCCIO ET AL. v. CROSSMAN ET AL.* C. A. 1st Cir. Certiorari denied. Reported below: 806 F. 2d 329.

No. 86-1458. *VADEN v. VIRGINIA*. Sup. Ct. Va. Certiorari denied.

No. 86-1462. *POTENZE ET AL. v. NEW YORK SHIPPING ASSN., INC., ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 804 F. 2d 235.

No. 86-1477. *CREDIT MANAGERS ASSOCIATION OF SOUTHERN CALIFORNIA v. KENNESAW LIFE & ACCIDENT INSURANCE CO.* C. A. 11th Cir. Certiorari denied. Reported below: 800 F. 2d 1542.

No. 86-1482. *KIER v. COMMERCIAL UNION INSURANCE COS.* C. A. 7th Cir. Certiorari denied. Reported below: 808 F. 2d 1254.

No. 86-1484. *TIP TOP FARMS, INC., ET AL. v. DAIRYLEA CO-OPERATIVE, INC.* Ct. App. N. Y. Certiorari denied. Reported below: 69 N. Y. 2d 625, 503 N. E. 2d 692.

No. 86-1485. *TOWNSHIP OF EDISON, NEW JERSEY v. SKEVO-FILAX ET AL.* C. A. 3d Cir. Certiorari denied. Reported below: 810 F. 2d 378.



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No. 86-1491. *POINTON v. OKLAHOMA ET AL.* Ct. App. Okla. Certiorari denied.

No. 86-1515. *HING ET UX. v. MCELHANON ET UX.* Sup. Ct. Ariz. Certiorari denied. Reported below: 151 Ariz. 403, 728 P. 2d 273.

No. 86-1535. *CARTER v. PURYEAR ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 790 F. 2d 83.

No. 86-1550. *POSNER v. UNITED STATES.* C. A. 9th Cir. Certiorari denied. Reported below: 806 F. 2d 264.

No. 86-1558. *GANT v. UNITED STATES.* C. A. 5th Cir. Certiorari denied. Reported below: 808 F. 2d 55.

No. 86-1580. *GONZALEZ-CALLES v. UNITED STATES.* C. A. 5th Cir. Certiorari denied. Reported below: 808 F. 2d 55.

No. 86-1582. *GUZZINO ET AL. v. UNITED STATES.* C. A. 7th Cir. Certiorari denied. Reported below: 810 F. 2d 687.

No. 86-5361. *WASHINGTON v. UNITED STATES.* Ct. App. D. C. Certiorari denied. Reported below: 470 A. 2d 729.

No. 86-5744. *KING v. UNITED STATES;*

No. 86-5745. *MARTIN v. UNITED STATES;* and

No. 86-5746. *TAYLOR, AKA ROBERTS v. UNITED STATES.* C. A. 11th Cir. Certiorari denied. Reported below: 792 F. 2d 1019.

No. 86-6248. *KABAT v. UNITED STATES.* C. A. 8th Cir. Certiorari denied. Reported below: 797 F. 2d 580.

No. 86-6319. *MOONEY v. QUINLAN ET AL.* C. A. 3d Cir. Certiorari denied. Reported below: 802 F. 2d 447.

No. 86-6387. *BURNS v. EDWARDS.* C. A. 6th Cir. Certiorari denied. Reported below: 810 F. 2d 200.

No. 86-6397. *LOPEZ v. UNITED STATES;* and

No. 86-6589. *NADIR ET AL. v. UNITED STATES.* C. A. 9th Cir. Certiorari denied. Reported below: 803 F. 2d 969.

No. 86-6469. *WARD v. MICHIGAN.* Sup. Ct. Mich. Certiorari denied.

No. 86-6476. *BLANDIN v. UNITED STATES.* C. A. 1st Cir. Certiorari denied. Reported below: 809 F. 2d 75.

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No. 86-6483. *MCHARRIS v. SPEARS, WARDEN, ET AL.* C. A. 11th Cir. Certiorari denied.

No. 86-6484. *STALLWORTH v. DETROIT BOARD OF EDUCATION ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 810 F. 2d 203.

No. 86-6486. *SMITH v. ILLINOIS.* App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 142 Ill. App. 3d 1171, 504 N. E. 2d 548.

No. 86-6488. *CONTRERAS v. UNITED STATES.* C. A. 2d Cir. Certiorari denied. Reported below: 805 F. 2d 1108.

No. 86-6489. *MARS v. DUGGER, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL.* Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 500 So. 2d 153.

No. 86-6492. *HOLT v. INDIANA.* Sup. Ct. Ind. Certiorari denied. Reported below: 481 N. E. 2d 1324.

No. 86-6493. *SCHLOMANN v. MCSTEEN ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 805 F. 2d 1036.

No. 86-6494. *BEWLEY v. COLEMAN.* Sup. Ct. Okla. Certiorari denied.

No. 86-6495. *KIMBLE v. BUNNELL.* C. A. 9th Cir. Certiorari denied.

No. 86-6518. *AMARO v. UNITED STATES.* C. A. 7th Cir. Certiorari denied. Reported below: 816 F. 2d 284.

No. 86-6533. *MADSON v. BOWEN, SECRETARY OF HEALTH AND HUMAN SERVICES.* C. A. 10th Cir. Certiorari denied.

No. 86-6534. *MCCOY v. ZIMMERMAN, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AND CORRECTIONAL DIAGNOSTIC AND CLASSIFICATION CENTER AT GRATERFORD, ET AL.* C. A. 3d Cir. Certiorari denied.

No. 86-6536. *DEMARCO v. BLACKSHEAR ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 810 F. 2d 1160.

No. 86-6540. *CLARKSON v. INTERNAL REVENUE SERVICE ET AL.* C. A. 11th Cir. Certiorari denied. Reported below: 811 F. 2d 1396.

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No. 86-6553. *HESS v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 805 F. 2d 1039.

No. 86-6555. *BROWN v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 812 F. 2d 713.

No. 86-6556. *ACOSTA v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 807 F. 2d 178.

No. 86-6558. *MARTINEZ v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 808 F. 2d 1050.

No. 86-6560. *SCHIEK v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 806 F. 2d 943.

No. 86-6564. *MAY v. PRO-GUARD, INC.* C. A. 6th Cir. Certiorari denied. Reported below: 810 F. 2d 202.

No. 86-6571. *SILAS v. KERBY, WARDEN*. C. A. 10th Cir. Certiorari denied.

No. 86-6574. *POMPEY v. UNITED STATES*. C. A. 10th Cir. Certiorari denied.

No. 86-6575. *BROWN v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 808 F. 2d 841.

No. 86-6584. *REDMOND v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 803 F. 2d 438 and 804 F. 2d 146.

No. 86-6590. *PRICE v. UNITED STATES*. C. A. 10th Cir. Certiorari denied.

No. 86-6595. *HAYS v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 810 F. 2d 1163.

No. 86-6614. *JORDAN v. UNITED STATES*. C. A. D. C. Cir. Certiorari denied. Reported below: 258 U. S. App. D. C. 143, 810 F. 2d 262.

No. 86-267. *RAVEN'S HOLLOW, LTD., ET AL. v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. JUSTICE WHITE would grant certiorari. Reported below: 783 F. 2d 450.

No. 86-1257. *SMITH v. UNITED STATES*; and *STEVENSON v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. JUSTICE



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BRENNAN and JUSTICE MARSHALL would grant the petition for writ of certiorari and reverse the judgments of conviction. Reported below: 795 F. 2d 841 (first case); 807 F. 2d 178 (second case).

No. 86-1302. THIGPEN, COMMISSIONER, MISSISSIPPI DEPARTMENT OF CORRECTIONS, ET AL. *v.* PRUETT. C. A. 5th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 805 F. 2d 1032.

No. 86-1409. INTERNATIONAL UNION, UNITED MINE WORKERS OF AMERICA, ET AL. *v.* A. T. MASSEY COAL CO., INC., ET AL. C. A. 4th Cir. Certiorari denied. JUSTICE POWELL took no part in the consideration or decision of this petition. Reported below: 799 F. 2d 142.

No. 86-6303. PIERRE, AKA SELBY *v.* SHULSEN, WARDEN, ET AL. C. A. 10th Cir.;

No. 86-6472. SPRANGER *v.* INDIANA. Sup. Ct. Ind.;

No. 86-6604. MARTIN *v.* DUGGER, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. Sup. Ct. Fla.; and

No. 86-6653. COCHRAN *v.* ALABAMA. Sup. Ct. Ala. Certiorari denied. Reported below: No. 86-6303, 802 F. 2d 1282; No. 86-6472, 498 N. E. 2d 931; No. 86-6604, 497 So. 2d 872; No. 86-6653, 500 So. 2d 1064.

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. 85-1094. HOPFMANN ET AL. *v.* CONNOLLY ET AL., 479 U. S. 1023;

No. 85-1217. CITY OF SPRINGFIELD, MASSACHUSETTS *v.* KIBBE, ADMINISTRATRIX OF THE ESTATE OF THURSTON, 480 U. S. 257;

No. 85-1485. WALKER *v.* OHIO, 480 U. S. 916; and

No. 86-5307. WILLIAMS *v.* OHIO, 480 U. S. 923. Petitions for rehearing denied.

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- No. 86-5701. *GRIFFIN v. MARTIN, WARDEN, ET AL.*, 480 U. S. 919;  
No. 86-5953. *SCOTT v. OHIO*, 480 U. S. 923;  
No. 86-6147. *RUSSELL v. GARRAGHTY, WARDEN, ET AL.*, 479 U. S. 1100;  
No. 86-6206. *MAHDAVI v. SHIRANI*, 480 U. S. 921;  
No. 86-6256. *HENRY v. MERIT SYSTEMS PROTECTION BOARD*, 480 U. S. 922;  
No. 86-6268. *STARKES v. LYNAUGH, INTERIM DIRECTOR, TEXAS DEPARTMENT OF CORRECTIONS*, 480 U. S. 937;  
No. 86-6341. *HILL v. LYNAUGH, INTERIM DIRECTOR, TEXAS DEPARTMENT OF CORRECTIONS*, 480 U. S. 939; and  
No. 86-6345. *MONTGOMERY v. INTERNAL REVENUE SERVICE*, 480 U. S. 939. Petitions for rehearing denied.

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*Appeals Dismissed*

No. 86-1297. *BACKLUND v. BOARD OF COMMISSIONERS OF KING COUNTY HOSPITAL DISTRICT NO. 2*. Appeal from Sup. Ct. Wash. dismissed for want of substantial federal question. Reported below: 106 Wash. 2d 632, 724 P. 2d 981.

No. 86-1342. *LAVALLE ET AL. v. CANARY ET AL.*; and *LACK ET AL. v. CANARY ET AL.* Appeals from App. Div., Sup. Ct. N. Y., 2d Jud. Dept., dismissed for want of substantial federal question. Reported below: 123 App. Div. 2d 730, 507 N. Y. S. 2d 412 (first case); 123 App. Div. 2d 729, 507 N. Y. S. 2d 606 (second case).

No. 86-1457. *BANKERS TRUST NEW YORK CORP. ET AL. v. DEPARTMENT OF FINANCE OF THE CITY OF NEW YORK ET AL.* Appeal from App. Div., Sup. Ct. N. Y., 1st Jud. Dept., dismissed for want of properly presented federal question. Reported below: 120 App. Div. 2d 992, 502 N. Y. S. 2d 567.

*Certiorari Granted—Vacated and Remanded*

No. 85-1292. *M. C. C. OF FLORIDA, INC., ET AL. v. UNITED STATES ET AL.* C. A. 11th Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Tull v. United States*, ante, p. 412. Reported below: 772 F. 2d 1501.

No. 86-6263. *PETTY v. UNITED STATES*. C. A. 8th Cir. Certiorari granted limited to Question i presented by the petition,

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judgment vacated, and case remanded for further consideration in light of the position presently asserted by the Solicitor General in his brief filed April 13, 1987. In all other respects the petition for writ of certiorari is denied. Reported below: 798 F. 2d 1157.

### *Miscellaneous Orders*

No. A-727. *BLACK v. UNITED STATES*. Application for bail pending appeal, addressed to JUSTICE BLACKMUN and referred to the Court, denied.

No. A-786. *RECTOR v. TEXAS*. Application to continue stay of mandate of the Court of Criminal Appeals of Texas, presented to JUSTICE WHITE, and by him referred to the Court, granted pending the filing of a petition for writ of certiorari on or before June 3, 1987. In the event the petition for writ of certiorari is filed by that date, this order is to continue pending final disposition by this Court of the petition for writ of certiorari.

No. D-606. *IN RE DISBARMENT OF KNOWLES*. Disbarment entered. [For earlier order herein, see 479 U. S. 1078.]

No. D-615. *IN RE DISBARMENT OF ABRAHAMS*. Disbarment entered. [For earlier order herein, see 480 U. S. 914.]

No. D-632. *IN RE DISBARMENT OF WHITTED*. It is ordered that Earl Whitted, Jr., of Goldsboro, N. C., 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. 86-6124. *BENNETT v. ARKANSAS*. Sup. Ct. Ark. The Solicitor General is invited to file a brief in this case expressing the views of the United States.

No. 86-6442. *LIEGL v. WEBB, ACTING COMMISSIONER, NEW YORK STATE DEPARTMENT OF SOCIAL SERVICES, ET AL.* C. A. 2d Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied. Petitioner is allowed until May 26, 1987, 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



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without reaching the merits of the motion to proceed *in forma pauperis*.

*Probable Jurisdiction Noted*

No. 86-1471. LYG, SECRETARY OF AGRICULTURE *v.* INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE & AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, UAW, ET AL. Appeal from D. C. D. C. Probable jurisdiction noted. Reported below: 648 F. Supp. 1234.

*Certiorari Granted*

No. 86-1146. BOWEN, SECRETARY OF HEALTH AND HUMAN SERVICES *v.* GALBREATH. C. A. 8th Cir. Certiorari granted. Reported below: 799 F. 2d 370.

No. 86-1419. OREGON DEPARTMENT OF HUMAN RESOURCES ET AL. *v.* COOS BAY CARE CENTER ET AL. C. A. 9th Cir. Certiorari granted. Reported below: 803 F. 2d 1060.

No. 86-1013. LYG, SECRETARY OF AGRICULTURE, ET AL. *v.* NORTHWEST INDIAN CEMETERY PROTECTIVE ASSN. ET AL. C. A. 9th Cir. Motion of Howenquet Community Association et al. for leave to file a brief as *amici curiae* granted. Certiorari granted. Reported below: 795 F. 2d 688.

*Certiorari Denied.* (See also No. 86-6263, *supra*.)

No. 86-61. COMMONWEALTH ELECTRIC CO. *v.* DEPARTMENT OF PUBLIC UTILITIES OF THE COMMONWEALTH OF MASSACHUSETTS. Sup. Jud. Ct. Mass. Certiorari denied. Reported below: 397 Mass. 361, 491 N. E. 2d 1035.

No. 86-175. NORFOLK & WESTERN RAILWAY CO. *v.* BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 795 F. 2d 1169.

No. 86-353. CONSOLIDATED RAIL CORPORATION *v.* BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 792 F. 2d 303.

No. 86-503. RICHMOND, FREDERICKSBURG & POTOMAC RAILROAD CO. *v.* BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES. C. A. 4th Cir. Certiorari denied. Reported below: 795 F. 2d 1161.

No. 86-849. WOODRICK *v.* HUNGERFORD ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 800 F. 2d 1413.

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No. 86-1119. *DRAYTON ET AL., AS ESCROW AGENTS OF THE DELAWARE & BOUND BROOK RAILROAD CO. v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 801 F. 2d 117.

No. 86-1149. *CUNNINGHAM ET UX. v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 804 F. 2d 58.

No. 86-1220. *DELAWARE & HUDSON RAILWAY CO. v. BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES*. C. A. 1st Cir. Certiorari denied. Reported below: 803 F. 2d 1228.

No. 86-1224. *PION v. OFFICE OF PERSONNEL MANAGEMENT*. C. A. Fed. Cir. Certiorari denied.

No. 86-1281. *QUME CORP. v. UNITED STATES INTERNATIONAL TRADE COMMISSION ET AL.* C. A. Fed. Cir. Certiorari denied. Reported below: 809 F. 2d 787.

No. 86-1327. *MEDALLION KITCHENS, INC. v. NATIONAL LABOR RELATIONS BOARD ET AL.* C. A. 8th Cir. Certiorari denied. Reported below: 806 F. 2d 185.

No. 86-1364. *FERRE v. FLORIDA EX REL. RENO, STATE ATTORNEY FOR THE ELEVENTH JUDICIAL CIRCUIT OF FLORIDA*. Sup. Ct. Fla. Certiorari denied. Reported below: 494 So. 2d 214.

No. 86-1433. *ESTATE OF LARKINS, BY HIS ADMINISTRATRIX, LARKINS v. FARRELL LINES, INC.* C. A. 4th Cir. Certiorari denied. Reported below: 806 F. 2d 510.

No. 86-1438. *DENNIS v. UNITED STATES*;

No. 86-6209. *COHEN v. UNITED STATES*;

No. 86-6336. *HURLEY v. UNITED STATES*; and

No. 86-6544. *JENNINGS v. UNITED STATES*. C. A. 11th Cir. Certiorari denied. Reported below: 786 F. 2d 1029 and 804 F. 2d 1208.

No. 86-1450. *PALANDJIAN v. PAHLAVI*. C. A. 1st Cir. Certiorari denied. Reported below: 808 F. 2d 1513.

No. 86-1469. *ALABAMA v. GEESLIN*. Ct. Crim. App. Ala. Certiorari denied. Reported below: 505 So. 2d 1248.

No. 86-1473. *WILSON, INDIVIDUALLY, AND AS PERSONAL REPRESENTATIVE OF THE ESTATE OF WILSON, AND AS GUARD-*

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IAN OF WILSON ET AL. *v.* BURLINGTON NORTHERN RAILROAD CO. C. A. 10th Cir. Certiorari denied. Reported below: 804 F. 2d 607.

No. 86-1483. REETZ *v.* KINSMAN MARINE TRANSIT CO. Ct. App. Mich. Certiorari denied.

No. 86-1487. SAYLOR *v.* NEBRASKA. Sup. Ct. Neb. Certiorari denied. Reported below: 223 Neb. 694, 392 N. W. 2d 789.

No. 86-1492. HOSPITAL CORPORATION OF AMERICA *v.* FEDERAL TRADE COMMISSION. C. A. 7th Cir. Certiorari denied. Reported below: 807 F. 2d 1381.

No. 86-1499. EMBERTON ET AL., DBA EMBERTON MACHINE & TOOL, INC. *v.* COUNTY OF SAN DIEGO. Ct. App. Cal., 4th App. Dist. Certiorari denied. Reported below: 186 Cal. App. 3d 268, 230 Cal. Rptr. 572.

No. 86-1506. DYKES *v.* NATIONAL GYPSUM CO. C. A. 6th Cir. Certiorari denied. Reported below: 801 F. 2d 810.

No. 86-1509. BOWENS ET AL. *v.* BOARD OF LAW EXAMINERS OF THE STATE OF NORTH CAROLINA ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 804 F. 2d 1250.

No. 86-1530. AETNA CASUALTY & SURETY CO. ET AL. *v.* SECURITY FORCES, INC., ET AL. Ct. App. S. C. Certiorari denied. Reported below: 290 S. C. 20, 347 S. E. 2d 903.

No. 86-1565. BAUER *v.* BOSLEY, CLERK OF THE CIRCUIT COURT, CITY OF ST. LOUIS, MISSOURI, ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 802 F. 2d 1058.

No. 86-1596. BAZAN ET AL. *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 807 F. 2d 1200.

No. 86-1611. NICHOLS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 808 F. 2d 660.

No. 86-5282. DIAMOND ET AL. *v.* BLINZINGER ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 789 F. 2d 474.

No. 86-6205. THOMPkins *v.* GEORGIA. Ct. App. Ga. Certiorari denied. Reported below: 180 Ga. App. 473, 349 S. E. 2d 768.

No. 86-6223. FREDERICK *v.* WARWZESZACK ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 792 F. 2d 144.



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No. 86-6235. *SASSOUNIAN v. CALIFORNIA*. Ct. App. Cal., 2d App. Dist. Certiorari denied. Reported below: 182 Cal. App. 3d 361, 226 Cal. Rptr. 880.

No. 86-6241. *LONG v. FLORIDA*. Dist. Ct. App. Fla., 2d Dist. Certiorari denied. Reported below: 497 So. 2d 1222.

No. 86-6253. *BRIMBERRY v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 803 F. 2d 908.

No. 86-6270. *ABDULLAH v. LOCKHART, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION*. C. A. 8th Cir. Certiorari denied.

No. 86-6272. *HARRIS v. DUGGER, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS*. Sup. Ct. Fla. Certiorari denied. Reported below: 501 So. 2d 1282.

No. 86-6346. *WILLIAMS v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 805 F. 2d 1301.

No. 86-6481. *HILL v. WATTS ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 803 F. 2d 713.

No. 86-6485. *WILSON v. LYLES, WARDEN*. C. A. 4th Cir. Certiorari denied. Reported below: 803 F. 2d 1182.

No. 86-6487. *JOHNSON v. ARMONTROUT, WARDEN, ET AL.* C. A. 8th Cir. Certiorari denied. Reported below: 815 F. 2d 711.

No. 86-6497. *VALENTINO v. DUGGER, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL.* C. A. 11th Cir. Certiorari denied. Reported below: 808 F. 2d 59.

No. 86-6502. *GALLEGOS v. ARIZONA*. Sup. Ct. Ariz. Certiorari denied.

No. 86-6503. *WEBER v. CALIFORNIA*. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 86-6507. *ROBINSON v. TANNER ET AL.* C. A. 11th Cir. Certiorari denied. Reported below: 798 F. 2d 1378.

No. 86-6513. *NAZAIRE v. TRANS WORLD AIRLINES ET AL.* C. A. 7th Cir. Certiorari denied. Reported below: 807 F. 2d 1372.

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No. 86-6516. *LIETZKE v. MONTGOMERY POLICE DEPARTMENT*. Sup. Ct. Ala. Certiorari denied. Reported below: 514 So. 2d 344.

No. 86-6517. *VITA v. KELLY, SUPERINTENDENT, ATTICA CORRECTIONAL FACILITY*. C. A. 2d Cir. Certiorari denied. Reported below: 802 F. 2d 444.

No. 86-6521. *SHEARS v. HEDRICK, WARDEN*. Sup. Ct. App. W. Va. Certiorari denied.

No. 86-6525. *BLEVINS v. NORRIS, WARDEN*. Sup. Ct. Ark. Certiorari denied. Reported below: 291 Ark. 70, 722 S. W. 2d 573.

No. 86-6531. *MATTHEWS v. MCCLUNG*. Ct. App. Ga. Certiorari denied. Reported below: 181 Ga. App. XXVIII.

No. 86-6541. *MOORE v. TENNESSEE*. C. A. 6th Cir. Certiorari denied. Reported below: 798 F. 2d 1415.

No. 86-6546. *ROSS v. FOLTZ, WARDEN*. C. A. 6th Cir. Certiorari denied.

No. 86-6551. *BURTON v. LOCKHART, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION*. C. A. 8th Cir. Certiorari denied. Reported below: 815 F. 2d 710.

No. 86-6552. *HAMMONDS v. FERA ET AL.* C. A. 3d Cir. Certiorari denied.

No. 86-6561. *MUNFORD v. HAWAII*. Sup. Ct. Haw. Certiorari denied.

No. 86-6601. *DEROCHER v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 805 F. 2d 391.

No. 86-6606. *BAKER v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 808 F. 2d 836.

No. 86-6609. *CARPENTER v. HEETER, JUDGE, MUNICIPAL COURT OF LIMA, OHIO, ET AL.* Sup. Ct. Ohio. Certiorari denied.

No. 86-6616. *WAJDA v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 810 F. 2d 754.

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No. 86-6622. HILLSBERG *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 812 F. 2d 328.

No. 86-6659. MARTENS *v.* MASSACHUSETTS. Sup. Jud. Ct. Mass. Certiorari denied. Reported below: 398 Mass. 674, 500 N. E. 2d 282.

No. 86-6680. PRIHODA *v.* WISCONSIN. Ct. App. Wis. Certiorari denied.

No. 85-567. DUGGER, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS *v.* SONGER. C. A. 11th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 769 F. 2d 1488.

No. 86-758. FLORIDA *v.* NEASE, AKA COLWELL. Dist. Ct. App. Fla., 4th Dist. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 484 So. 2d 67.

No. 86-1339. O'LEARY, WARDEN *v.* DUNCAN. C. A. 7th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 806 F. 2d 1307.

No. 86-1476. KEMP, WARDEN *v.* THOMAS. C. A. 11th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 800 F. 2d 1024.

No. 86-1336. MCCOY ET AL. *v.* HEARST CORP. ET AL. Sup. Ct. Cal. Certiorari denied. JUSTICE WHITE would grant certiorari. Reported below: 42 Cal. 3d 835, 727 P. 2d 711.

No. 86-1443. KRAFT, INC. *v.* AMBRIT, INC. C. A. 11th Cir. Certiorari denied. JUSTICE WHITE took no part in the consideration or decision of this petition. Reported below: 805 F. 2d 974.

No. 86-1466. MCNEIL *v.* ECONOMICS LABORATORY, INC. C. A. 7th Cir. Motion of petitioner to strike respondent's brief denied. Certiorari denied. Reported below: 800 F. 2d 111.

No. 86-1472. RABIDUE *v.* OSCEOLA REFINING CO., A DIVISION OF TEXAS-AMERICAN PETROCHEMICALS, INC. C. A. 6th Cir. Motion of Michigan Trial Lawyers Association for leave to file



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a brief as *amicus curiae* granted. Certiorari denied. Reported below: 805 F. 2d 611.

No. 86-1546. CENTRAL MACHINERY CO. *v.* ARIZONA. Sup. Ct. Ariz. Motion of Ak-Chin Indian Community et al. for leave to file a brief as *amici curiae* granted. Certiorari denied. JUSTICE O'CONNOR took no part in the consideration or decision of this motion and this petition. Reported below: 152 Ariz. 134, 730 P. 2d 843.

No. 86-5026. WINGO *v.* BLACKBURN, WARDEN. C. A. 5th Cir.;

No. 86-5292. LOYD *v.* LOUISIANA. Sup. Ct. La.;

No. 86-5379. WATSON *v.* BLACKBURN, WARDEN. C. A. 5th Cir.;

No. 86-5426. BROGDON *v.* BLACKBURN, WARDEN. C. A. 5th Cir.;

No. 86-5436. GLASS *v.* BLACKBURN, WARDEN. C. A. 5th Cir.;

No. 86-5544. WELCOME *v.* BLACKBURN, WARDEN. C. A. 5th Cir.;

No. 86-5769. THOMPSON *v.* DUGGER, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir.;

No. 86-5800. BERRY *v.* PHELPS, SECRETARY, LOUISIANA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 5th Cir.;

No. 86-5884. IRVING *v.* MISSISSIPPI. Sup. Ct. Miss.;

No. 86-5984. BATES *v.* LOUISIANA. Sup. Ct. La.;

No. 86-6027. RUST *v.* NEBRASKA. Sup. Ct. Neb.;

No. 86-6043. RAULT *v.* BLACKBURN, WARDEN. C. A. 5th Cir.;

No. 86-6103. HARDWICK *v.* DUGGER, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. Sup. Ct. Fla.;

No. 86-6188. MOORE *v.* BLACKBURN, WARDEN. C. A. 5th Cir.; and

No. 86-6300. JOHNSON *v.* LYNAUGH, INTERIM DIRECTOR, TEXAS DEPARTMENT OF CORRECTIONS. C. A. 5th Cir. Certiorari denied. Reported below: No. 86-5026, 783 F. 2d 1046 and 786 F. 2d 654; No. 86-5292, 489 So. 2d 898; No. 86-5379, 798 F. 2d 872; No. 86-5426, 790 F. 2d 1164; No. 86-5436, 791 F. 2d 1165; No. 86-5544, 793 F. 2d 672; No. 86-5769, 787 F. 2d 1447; No. 86-5800, 795 F. 2d 504; No. 86-5884, 498 So. 2d 305; No. 86-5984, 495 So. 2d 1262; No. 86-6027, 223 Neb. 150, 388 N. W. 2d 483;

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No. 86-6043, 799 F. 2d 1071; No. 86-6103, 496 So. 2d 796; No. 86-6188, 806 F. 2d 560; No. 86-6300, 804 F. 2d 300.

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. 86-913. HEINEMANN *v.* UNITED STATES, 480 U. S. 930;

No. 86-1293. MALICK *v.* SANDIA CORP., 480 U. S. 935;

No. 86-6013. BURDINE *v.* TEXAS, 480 U. S. 940;

No. 86-6318. THOMPSON *v.* SOUTHEASTERN TOYOTA ET AL., 480 U. S. 939; and

No. 86-6405. MATUSAVAGE *v.* UNITED STATES, 480 U. S. 950. Petitions for rehearing denied.

No. 85-1837. BLOCK ET AL. *v.* MEESE, ATTORNEY GENERAL OF THE UNITED STATES, ET AL., 478 U. S. 1021. Petition for rehearing denied. JUSTICE SCALIA took no part in the consideration or decision of this petition.

No. 86-848. HAYES *v.* UNITED STATES, 479 U. S. 1086. Motion for leave to file petition for rehearing denied.

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*Dismissal Under Rule 53*

No. 86-1193. McDONNELL DOUGLAS CORP. *v.* DANIELS ET AL. Ct. App. Cal., 2d App. Dist. Certiorari dismissed under this Court's Rule 53.

*Certiorari Denied*

No. 86-6896 (A-824). MULLIGAN *v.* KEMP, WARDEN. C. A. 11th Cir. Application for stay of execution of sentence of death, presented to JUSTICE POWELL, and by him referred to the Court, denied. Certiorari denied. Reported below: 818 F. 2d 746.

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,

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227, 231 (1976), we would grant the application for stay of execution and the petition for writ of certiorari and would vacate the death sentence in this case.

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*Appeals Dismissed*

No. 86-781. *KANSAS GAS & ELECTRIC CO. v. STATE CORPORATION COMMISSION OF KANSAS ET AL.* Sup. Ct. Kan. [Probable jurisdiction noted, 479 U. S. 1082.] Because there is no longer a live controversy concerning Question 1 presented by the jurisdictional statement, and because Question 2 does not present a substantial federal question, the appeal is dismissed. The portions of this Court's orders of February 23, 1987, consolidating Nos. 86-781 and 86-793 for argument are vacated. JUSTICE POWELL took no part in the consideration or decision of this case.

No. 86-1366. *DUQUESNE LIGHT CO. ET AL. v. STATE TAX DEPARTMENT OF WEST VIRGINIA ET AL.* Appeal from Sup. Ct. App. W. Va. dismissed for want of substantial federal question. JUSTICE POWELL took no part in the consideration or decision of this case. Reported below: — W. Va. —, 350 S. E. 2d 754.

No. 86-1510. *TYRAKOWSKI v. TYRAKOWSKI.* Appeal from Ct. App. Cal., 2d App. Dist., dismissed for want of jurisdiction.

No. 86-1518. *STANDARD MANUFACTURING CO., INC. v. TAX COMMISSION OF THE STATE OF NEW YORK ET AL.* Appeal from Ct. App. N. Y. dismissed for want of substantial federal question. Reported below: 69 N. Y. 2d 635, 503 N. E. 2d 694.

No. 86-1524. *MCGOVERN v. NEW JERSEY.* Appeal from Super. Ct. N. J., App. Div., dismissed for want of substantial federal question.

No. 86-1522. *TEMPLEMAN v. PRESBYTERY OF NORTHERN NEW ENGLAND.* 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. 86-1669. *BRANSON v. NORTHINGTON 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: 810 F. 2d 205.



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No. 86-6568. *SANDS v. ARIZONA DEPARTMENT OF ECONOMIC SECURITY ET AL.* Appeal from Sup. Ct. Ariz. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied.

No. 86-6612. *LEWINGDON ET AL. v. CELESTE ET AL.* Appeal from C. A. 6th Cir. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied. Reported below: 810 F. 2d 201.

### *Miscellaneous Orders*

No. A-768. *RUNNELLS v. LEVY ET AL.* Application for bail and other relief, addressed to JUSTICE BRENNAN and referred to the Court, denied.

No. A-796. *MIGUEL T. v. COMMISSIONER, NEW YORK CITY DEPARTMENT OF SOCIAL SERVICES, ET AL.* Family Ct., Kings County, N. Y. Application for stay, addressed to JUSTICE WHITE and referred to the Court, denied.

No. D-602. *IN RE DISBARMENT OF HOLMES.* Disbarment entered. [For earlier order herein, see 479 U. S. 1051.]

No. D-613. *IN RE DISBARMENT OF SASSOWER.* Disbarment entered. [For earlier order herein, see 480 U. S. 914.]

No. D-617. *IN RE DISBARMENT OF CASLER.* Disbarment entered. [For earlier order herein, see 480 U. S. 928.]

No. D-633. *IN RE DISBARMENT OF MONAGHAN.* It is ordered that Peter Joseph Monaghan, of Bergenfield, 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. 85-2079. *LABORERS HEALTH AND WELFARE TRUST FUND FOR NORTHERN CALIFORNIA ET AL. v. ADVANCED LIGHT-WEIGHT CONCRETE Co., INC.* C. A. 9th Cir. [Certiorari granted, 479 U. S. 1083.] Motion of National Coordinating Committee for Multiemployer Plans for leave to file a brief as *amicus curiae* granted.

No. 86-246. *SUMNER, DIRECTOR, NEVADA DEPARTMENT OF PRISONS, ET AL. v. SHUMAN.* C. A. 9th Cir. [Certiorari granted, 479 U. S. 948.] Motion of petitioners for leave to file

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a supplemental brief after argument and to supplement the record granted.

No. 86-279. *BASIC INC. ET AL. v. LEVINSON ET AL.* C. A. 6th Cir. [Certiorari granted, 479 U. S. 1083.] Motion of American Corporate Counsel Association for leave to file a brief as *amicus curiae* granted. THE CHIEF JUSTICE took no part in the consideration or decision of this motion.

No. 86-728. *HONIG, CALIFORNIA SUPERINTENDENT OF PUBLIC INSTRUCTION v. DOE ET AL.* C. A. 9th Cir. [Certiorari granted, 479 U. S. 1084.] Motion of San Francisco Unified School District for leave to file a brief as *amicus curiae* granted.

No. 86-740. *OMNI CAPITAL INTERNATIONAL, LTD., ET AL. v. RUDOLF WOLFF & Co., LTD., ET AL.* C. A. 5th Cir. [Certiorari granted, 479 U. S. 1063.] Motion of respondents for divided argument denied.

No. 86-761. *FORRESTER v. WHITE.* C. A. 7th Cir. [Certiorari granted, 479 U. S. 1083.] Motion of petitioner to dispense with printing the joint appendix granted.

No. 86-1033. *JAFFE ET AL. v. GRANT, TRUSTEE IN BANKRUPTCY FOR CONTINENTAL SOUTHEAST LAND CORP. AND AS RECEIVER,* 480 U. S. 931. Motion of respondent for award of fees and damages denied.

No. 86-1128. *IMMIGRATION AND NATURALIZATION SERVICE v. ABUDU.* C. A. 9th Cir. [Certiorari granted, 480 U. S. 930.] Motion of the Solicitor General to dispense with printing the joint appendix granted.

No. 86-1661. *BATTLES FARM CO. ET AL. v. PIERCE, SECRETARY OF HOUSING AND URBAN DEVELOPMENT.* C. A. D. C. Cir. Motion of petitioners to expedite consideration of the petition for writ of certiorari denied.

No. 86-6109. *MATHEWS v. UNITED STATES.* C. A. 7th Cir. [Certiorari granted, 480 U. S. 945.] Motion for appointment of counsel granted, and it is ordered that Franklyn M. Gimbel, Esquire, of Milwaukee, Wis., be appointed to serve as counsel for petitioner in this case.

No. 86-6393. *GRUETTER v. OHIO.* Ct. App. Ohio, Wood County. Motion of petitioner for leave to proceed *in forma pau-*

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*peris* denied. Petitioner is allowed until June 8, 1987, 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. 86-6629. *WRENN v. WEINBERGER, SECRETARY OF DEFENSE, ET AL.* C. A. D. C. Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied. Petitioner is allowed until June 8, 1987, 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 Noted*

No. 86-1521. *UNITED STATES v. CROCKER NATIONAL BANK ET AL.* Appeal from D. C. C. D. Cal. Motion of appellees to substitute Wells Fargo Bank et al. in place of Crocker National Bank et al. granted. Probable jurisdiction noted.

*Certiorari Granted*

No. 86-1415. *MARINO ET AL. v. ORTIZ ET AL.*; and *COSTELLO ET AL. v. NEW YORK CITY POLICE DEPARTMENT ET AL.* C. A. 2d Cir. Certiorari granted.\* Reported below: 806 F. 2d 1144 (first case); 806 F. 2d 1147 (second case).

No. 86-1512. *PIERCE, SECRETARY OF HOUSING AND URBAN DEVELOPMENT v. UNDERWOOD ET AL.* C. A. 9th Cir. Certiorari granted. Reported below: 761 F. 2d 1342 and 802 F. 2d 1107.

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\*[REPORTER'S NOTE: For amendment of this order, see 482 U. S. 912.]



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*Certiorari Denied.* (See also Nos. 86-1522, 86-1669, 86-6568, and 86-6612, *supra*.)

No. 86-1048. *COOPER v. DIAMOND M Co.* C. A. 5th Cir. *Certiorari denied.* Reported below: 799 F. 2d 176.

No. 86-1136. *PACYNIA v. MARSH, SECRETARY OF THE ARMY.* C. A. Fed. Cir. *Certiorari denied.* Reported below: 809 F. 2d 792.

No. 86-1210. *JONES v. SHANKLAND ET AL.* C. A. 6th Cir. *Certiorari denied.* Reported below: 800 F. 2d 77.

No. 86-1284. *LOPES, COMMISSIONER OF CONNECTICUT DEPARTMENT OF CORRECTION v. MELE.* C. A. 2d Cir. *Certiorari denied.* Reported below: 833 F. 2d 1003.

No. 86-1322. *AAACON AUTO TRANSPORT, INC. v. INTERSTATE COMMERCE COMMISSION ET AL.* C. A. D. C. Cir. *Certiorari denied.* Reported below: 253 U. S. App. D. C. 202, 792 F. 2d 1156.

No. 86-1358. *CRUZ v. MARINE TRANSPORT LINES, INC.* C. A. 3d Cir. *Certiorari denied.* Reported below: 806 F. 2d 252.

No. 86-1359. *PORTER v. UNITED STATES.* C. A. 1st Cir. *Certiorari denied.* Reported below: 807 F. 2d 21.

No. 86-1383. *NEW YORK LAND CO. ET AL. v. REPUBLIC OF THE PHILIPPINES.* C. A. 2d Cir. *Certiorari denied.* Reported below: 806 F. 2d 344.

No. 86-1435. *DEMOULAS SUPER MARKETS, INC. v. HARRIMAN ET AL.* Sup. Jud. Ct. Me. *Certiorari denied.* Reported below: 518 A. 2d 1035.

No. 86-1449. *FEDERAL INSURANCE CO. ET AL. v. UNITED STATES.* C. A. Fed. Cir. *Certiorari denied.* Reported below: 805 F. 2d 1012.

No. 86-1496. *MARTIN ET AL. v. MONTELONGO ET AL.* C. A. 5th Cir. *Certiorari denied.* Reported below: 803 F. 2d 1341.

No. 86-1497. *HOWER ET AL. v. PICINICH & RIGOLOSI, P. A., ET AL.* Super. Ct. N. J., App. Div. *Certiorari denied.*

No. 86-1498. *HERON v. PENNSYLVANIA.* Super. Ct. Pa. *Certiorari denied.* Reported below: 357 Pa. Super. 635, 513 A. 2d 1076.

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No. 86-1501. CITY OF McKEESPORT ET AL. *v.* CUNNINGHAM. C. A. 3d Cir. Certiorari denied. Reported below: 807 F. 2d 49.

No. 86-1511. BROWN *v.* MISSOURI PACIFIC RAILROAD CO. Sup. Ct. Mo. Certiorari denied. Reported below: 720 S. W. 2d 357.

No. 86-1513. PALMER ET AL. *v.* CITY OF CHICAGO ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 806 F. 2d 1316.

No. 86-1516. REKLAU *v.* MERCHANTS NATIONAL CORP. ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 808 F. 2d 628.

No. 86-1517. SCHOOLER *v.* HARDER, SECRETARY OF SOCIAL AND REHABILITATION SERVICES, ET AL. Ct. App. Kan. Certiorari denied. Reported below: 11 Kan. App. 2d xxxix, 761 P. 2d 327.

No. 86-1523. CHANDLER *v.* CHANDLER. C. A. 5th Cir. Certiorari denied. Reported below: 805 F. 2d 555.

No. 86-1531. EDWARDS *v.* UNITED STATES OFFICE OF PERSONNEL MANAGEMENT. C. A. Fed. Cir. Certiorari denied.

No. 86-1532. FLORIDA *v.* STRONG. Dist. Ct. App. Fla., 2d Dist. Certiorari denied. Reported below: 495 So. 2d 191.

No. 86-1534. APPLGATE *v.* DEBROVIR, OAKES & GEBHARDT. C. A. D. C. Cir. Certiorari denied. Reported below: 258 U. S. App. D. C. 89, 809 F. 2d 930.

No. 86-1539. STATE LINE DELIVERY SERVICE, INC. *v.* RIVERA ET AL. Ct. App. N. Y. Certiorari denied. Reported below: 69 N. Y. 2d 679, 504 N. E. 2d 381.

No. 86-1540. CATHEY *v.* LOUISIANA. Ct. App. La., 5th Cir. Certiorari denied. Reported below: 493 So. 2d 842.

No. 86-1541. TOWNSHIP OF BRICK *v.* BLOCK 48-7 ET AL. Super. Ct. N. J., App. Div. Certiorari denied. Reported below: 210 N. J. Super. 481, 510 A. 2d 101.

No. 86-1544. NU-CAR CARRIERS, INC. *v.* VARNUM. C. A. 11th Cir. Certiorari denied. Reported below: 804 F. 2d 638.

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No. 86-1547. *PARKS v. MICHIGAN EMPLOYMENT SECURITY COMMISSION ET AL.* Sup. Ct. Mich. Certiorari denied. Reported below: 427 Mich. 224, 398 N. W. 2d 275.

No. 86-1549. *CONSUL, LTD. v. TRANSCO ENERGY CO., FKA TRANSCO COS., INC., ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 805 F. 2d 490.

No. 86-1551. *PEREZ DE LA CRUZ ET AL. v. CROWLEY TOWING & TRANSPORTATION CO.* C. A. 1st Cir. Certiorari denied. Reported below: 807 F. 2d 1084.

No. 86-1554. *SMITH v. TEXAS.* Ct. App. Tex., 1st Dist. Certiorari denied. Reported below: 708 S. W. 2d 518.

No. 86-1556. *UNITED AMERICAN TELECASTERS, INC. v. FEDERAL COMMUNICATIONS COMMISSION ET AL.;* and

No. 86-1561. *BETHEL BROADCASTING, INC. v. FEDERAL COMMUNICATIONS COMMISSION ET AL.* C. A. D. C. Cir. Certiorari denied. Reported below: 255 U. S. App. D. C. 397, 801 F. 2d 1436.

No. 86-1557. *DUGGER, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS v. COOPER.* C. A. 11th Cir. Certiorari denied. Reported below: 807 F. 2d 881.

No. 86-1560. *SHERIDAN ROAD BAPTIST CHURCH ET AL. v. MICHIGAN DEPARTMENT OF EDUCATION ET AL.* Sup. Ct. Mich. Certiorari denied. Reported below: 426 Mich. 462, 396 N. W. 2d 373.

No. 86-1563. *GNIOTEK ET AL. v. CITY OF PHILADELPHIA ET AL.* C. A. 3d Cir. Certiorari denied. Reported below: 808 F. 2d 241.

No. 86-1564. *SPENCER COUNTY CLERK ET AL. v. B & M COAL CORP. ET AL.* Sup. Ct. Ind. Certiorari denied. Reported below: 501 N. E. 2d 401.

No. 86-1568. *ROMAIN v. SHEAR, ADMINISTRATOR OF THE DEPARTMENT OF TRANSPORTATION, MARITIME ADMINISTRATION.* C. A. 9th Cir. Certiorari denied. Reported below: 799 F. 2d 1416.

No. 86-1571. *RALPHS ET UX. v. PARA ET AL.* Ct. App. Wash. Certiorari denied. Reported below: 44 Wash. App. 1008.



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No. 86-1574. *CHEMEHUEVI INDIAN TRIBE v. CALIFORNIA STATE BOARD OF EQUALIZATION ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 800 F. 2d 1446.

No. 86-1581. *NEUMANN v. ILLINOIS.* App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 148 Ill. App. 3d 362, 499 N. E. 2d 487.

No. 86-1583. *WILSON v. MCDANIEL, SECRETARY OF STATE OF TEXAS.* C. A. 5th Cir. Certiorari denied.

No. 86-1584. *PLAS ET AL. v. AUSTIN, SECRETARY OF STATE OF MICHIGAN, ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 811 F. 2d 607.

No. 86-1585. *DAROFF ET AL. v. DUNKIN' DONUTS OF PENNSYLVANIA, INC.* Super. Ct. Pa. Certiorari denied. Reported below: 356 Pa. Super. 621, 512 A. 2d 1293.

No. 86-1592. *MADDOX v. ALABAMA.* Ct. Crim. App. Ala. Certiorari denied. Reported below: 502 So. 2d 790.

No. 86-1595. *WOMBLE v. SEABOARD SYSTEM RAILROAD.* C. A. 11th Cir. Certiorari denied. Reported below: 804 F. 2d 635.

No. 86-1605. *ROGERS v. CONNECTICUT.* App. Ct. Conn. Certiorari denied. Reported below: 9 Conn. App. 208, 518 A. 2d 399.

No. 86-1609. *GRABNER v. CONTI ET AL.* Super. Ct. Pa. Certiorari denied. Reported below: 353 Pa. Super. 649, 506 A. 2d 1340.

No. 86-1610. *JOHNSON v. NEW MEXICO.* Ct. App. N. M. Certiorari denied. Reported below: 105 N. M. 63, 728 P. 2d 473.

No. 86-1624. *WITHWORTH, SUPERINTENDENT, COMMUNITY CORRECTIONAL INSTITUTE, ET AL. v. WANG.* C. A. 6th Cir. Certiorari denied. Reported below: 811 F. 2d 952.

No. 86-1637. *WALDMANN v. GRANT, TRUSTEE IN BANKRUPTCY FOR CONTINENTAL SOUTHEAST LAND CORP.* C. A. 11th Cir. Certiorari denied.

No. 86-1641. *LOCKSLEY v. UNITED STATES.* C. A. 7th Cir. Certiorari denied. Reported below: 811 F. 2d 1104.

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No. 86-1658. *ORIENT LEASING CO., LTD., AS OWNER OF M/V MONTMARTRE v. CACTUS PIPE & SUPPLY CO., INC.* C. A. 5th Cir. Certiorari denied. Reported below: 808 F. 2d 54.

No. 86-1662. *CLARK v. UNITED STATES.* C. A. 5th Cir. Certiorari denied. Reported below: 806 F. 2d 260.

No. 86-1667. *MUINA ET AL. v. ARCHER ET AL.* C. A. 11th Cir. Certiorari denied. Reported below: 788 F. 2d 1568.

No. 86-1675. *DELACRUZ v. UNITED STATES.* Ct. Mil. App. Certiorari denied. Reported below: 23 M. J. 356.

No. 86-1699. *VIDAL v. UNITED STATES.* Ct. Mil. App. Certiorari denied. Reported below: 23 M. J. 319.

No. 86-1700. *DENNISON MANUFACTURING CO. v. PANDUIT CORP.* C. A. Fed. Cir. Certiorari denied. Reported below: 810 F. 2d 1561.

No. 86-1701. *SOUDAN v. UNITED STATES.* C. A. 5th Cir. Certiorari denied. Reported below: 812 F. 2d 920.

No. 86-6107. *NIELSEN v. GUNTER ET AL.* C. A. 8th Cir. Certiorari denied.

No. 86-6182. *MCCORMACK v. UNITED STATES.* C. A. 9th Cir. Certiorari denied.

No. 86-6217. *BURKS v. PERINI, SUPERINTENDENT, MARION CORRECTIONAL INSTITUTION, ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 810 F. 2d 199.

No. 86-6234. *TOWNSEND v. UNITED STATES.* Ct. App. D. C. Certiorari denied. Reported below: 512 A. 2d 994.

No. 86-6273. *JONES v. UNITED STATES.* C. A. 9th Cir. Certiorari denied. Reported below: 806 F. 2d 264.

No. 86-6314. *STEVENSON v. PHELPS, SECRETARY, LOUISIANA DEPARTMENT OF CORRECTIONS.* C. A. 5th Cir. Certiorari denied.

No. 86-6322. *ROSS v. ZIMMERMAN, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AND DIAGNOSTIC AND CLASSIFICATION CENTER AT GRATERFORD, ET AL.* C. A. 3d Cir. Certiorari denied.

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No. 86-6326. *BROOKS v. ZENT ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 810 F. 2d 199.

No. 86-6350. *HULL v. CUPP, SUPERINTENDENT, OREGON STATE PENITENTIARY.* C. A. 9th Cir. Certiorari denied. Reported below: 804 F. 2d 1252.

No. 86-6364. *STICKLES v. VETERANS ADMINISTRATION.* C. A. Fed. Cir. Certiorari denied. Reported below: 809 F. 2d 790.

No. 86-6375. *HARRIS v. UNITED STATES.* C. A. 9th Cir. Certiorari denied. Reported below: 807 F. 2d 178.

No. 86-6381. *PITTS v. RICHARDS, SUPERINTENDENT, ROCKVILLE TRAINING CENTER.* C. A. 7th Cir. Certiorari denied.

No. 86-6421. *BERRY v. UNITED STATES.* C. A. 4th Cir. Certiorari denied. Reported below: 808 F. 2d 836.

No. 86-6473. *RAMIREZ v. ILLINOIS.* Sup. Ct. Ill. Certiorari denied. Reported below: 114 Ill. 2d 125, 500 N. E. 2d 14.

No. 86-6537. *MINER v. LOCKHART, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION.* C. A. 8th Cir. Certiorari denied. Reported below: 802 F. 2d 464.

No. 86-6545. *WORKMAN v. PERINI, SUPERINTENDENT, MARION CORRECTIONAL INSTITUTION.* C. A. 6th Cir. Certiorari denied. Reported below: 812 F. 2d 1409.

No. 86-6549. *JAMES v. MURRAY, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS.* C. A. 4th Cir. Certiorari denied. Reported below: 808 F. 2d 835.

No. 86-6562. *MCDONALD v. METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY, TENNESSEE.* Chan. Ct. Tenn., Davidson County. Certiorari denied.

No. 86-6563. *PENDER v. DUGGER, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL.* C. A. 11th Cir. Certiorari denied. Reported below: 808 F. 2d 59.

No. 86-6567. *MAY v. WARNER AMEX CABLE COMMUNICATIONS, INC.* C. A. 6th Cir. Certiorari denied. Reported below: 805 F. 2d 1035.



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No. 86-6569. *COULIAS v. CITY OF CHICAGO DEPARTMENT OF WATER*. C. A. 7th Cir. Certiorari denied.

No. 86-6570. *WILLIAMS v. INDIANA*. Ct. App. Ind. Certiorari denied. Reported below: 494 N. E. 2d 1001.

No. 86-6572. *WORKMAN v. PERINI, SUPERINTENDENT, MARION CORRECTION INSTITUTION*. C. A. 6th Cir. Certiorari denied. Reported below: 805 F. 2d 1037.

No. 86-6573. *VEREEN v. NEWSOME, WARDEN*. C. A. 11th Cir. Certiorari denied. Reported below: 811 F. 2d 610.

No. 86-6577. *CASTRO v. HAWAII*. Int. Ct. App. Haw. Certiorari denied.

No. 86-6578. *ABDULLAH v. LOCKHART, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION*. C. A. 8th Cir. Certiorari denied. Reported below: 808 F. 2d 841.

No. 86-6579. *HAGEMEIER ET AL. v. BLOCK ET AL.* C. A. 8th Cir. Certiorari denied. Reported below: 806 F. 2d 197.

No. 86-6580. *GREEN v. DEPARTMENT OF THE TREASURY, INTERNAL REVENUE SERVICE*. C. A. Fed. Cir. Certiorari denied. Reported below: 818 F. 2d 877.

No. 86-6581. *MOORE v. KEMP, WARDEN*. C. A. 11th Cir. Certiorari denied. Reported below: 809 F. 2d 702.

No. 86-6582. *WOOD v. MUNCY, WARDEN*. C. A. 4th Cir. Certiorari denied. Reported below: 806 F. 2d 258.

No. 86-6583. *ROMAN v. CALIFORNIA*. Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 86-6585. *MILLER v. SOLEM, WARDEN, ET AL.* C. A. 8th Cir. Certiorari denied. Reported below: 807 F. 2d 747.

No. 86-6586. *WARD v. UNITED STATES*. Ct. App. D. C. Certiorari denied. Reported below: 516 A. 2d 929.

No. 86-6588. *FAULK v. MURRAY, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS*. C. A. 4th Cir. Certiorari denied. Reported below: 807 F. 2d 175.

No. 86-6592. *ABDULLAH v. LOCKHART, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION, ET AL.* C. A. 8th Cir. Certiorari denied. Reported below: 808 F. 2d 840.

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No. 86-6594. *CALLAHAN v. ILLINOIS*. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 145 Ill. App. 3d 1160, 511 N. E. 2d 278.

No. 86-6596. *BENEDICT v. NEW YORK*. App. Div., Sup. Ct. N. Y., 3d Jud. Dept. Certiorari denied. Reported below: 124 App. Div. 2d 890, 508 N. Y. S. 2d 656.

No. 86-6597. *AL-KARIM v. STRAWHORN ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 811 F. 2d 1504.

No. 86-6602. *JONES v. WHITE, WARDEN, ET AL.* C. A. 11th Cir. Certiorari denied. Reported below: 811 F. 2d 610.

No. 86-6608. *BIRD v. KANSAS*. Sup. Ct. Kan. Certiorari denied. Reported below: 240 Kan. 288, 729 P. 2d 1136.

No. 86-6610. *WILKINS v. LYLES, WARDEN*. C. A. 4th Cir. Certiorari denied. Reported below: 838 F. 2d 469.

No. 86-6611. *DAVENPORT v. NEWSOME, WARDEN*. Sup. Ct. Ga. Certiorari denied.

No. 86-6613. *HENNESSEY v. ZIMMERMAN, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AND DIAGNOSTIC AND CLASSIFICATION CENTER AT GRATERFORD, ET AL.* C. A. 3d Cir. Certiorari denied.

No. 86-6615. *LONBERGER v. MORRIS, SUPERINTENDENT, SOUTHERN OHIO CORRECTIONAL FACILITY*. C. A. 6th Cir. Certiorari denied. Reported below: 808 F. 2d 1169.

No. 86-6617. *RORRER v. NORTH CAROLINA*. Ct. App. N. C. Certiorari denied.

No. 86-6620. *PEARSON v. MICHIGAN*. Ct. App. Mich. Certiorari denied.

No. 86-6621. *GIVENS v. MISSOURI COMMISSION ON HUMAN RIGHTS*. C. A. 8th Cir. Certiorari denied. Reported below: 808 F. 2d 841.

No. 86-6623. *GAMBRELL v. AMERADA HESS CORP.* C. A. 3d Cir. Certiorari denied. Reported below: 813 F. 2d 397.

No. 86-6624. *HARRISON v. HATFIELD ET AL.* C. A. 8th Cir. Certiorari denied.

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No. 86-6627. *MAGEE v. BORG, WARDEN, ET AL.* C. A. 9th Cir. Certiorari denied.

No. 86-6628. *PILON v. RAY ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 805 F. 2d 1040.

No. 86-6632. *FIGUEROA v. UNITED STATES.* C. A. 3d Cir. Certiorari denied. Reported below: 810 F. 2d 1163.

No. 86-6635. *SPIVEY v. UNITED STATES.* C. A. 11th Cir. Certiorari denied. Reported below: 811 F. 2d 609.

No. 86-6636. *WATSON v. UNITED STATES.* C. A. 9th Cir. Certiorari denied. Reported below: 808 F. 2d 58.

No. 86-6639. *FLOWERS v. UNITED STATES.* C. A. 6th Cir. Certiorari denied. Reported below: 818 F. 2d 464.

No. 86-6640. *HARRISON v. UNITED STATES.* C. A. D. C. Cir. Certiorari denied. Reported below: 256 U. S. App. D. C. 295, 804 F. 2d 1324.

No. 86-6643. *HOWARD ET AL. v. UNITED STATES.* C. A. 4th Cir. Certiorari denied. Reported below: 811 F. 2d 1505.

No. 86-6644. *MARTINEZ v. UNITED STATES.* C. A. 9th Cir. Certiorari denied. Reported below: 806 F. 2d 945.

No. 86-6649. *ZOGHEIB v. UNITED STATES.* C. A. 9th Cir. Certiorari denied. Reported below: 811 F. 2d 1509.

No. 86-6650. *JOHNSON v. LYNAUGH, INTERIM DIRECTOR, TEXAS DEPARTMENT OF CORRECTIONS.* C. A. 5th Cir. Certiorari denied.

No. 86-6656. *FLIPPINS v. UNITED STATES.* C. A. 6th Cir. Certiorari denied. Reported below: 808 F. 2d 16.

No. 86-6657. *BRANSFORD v. BROWN ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 806 F. 2d 83.

No. 86-6658. *GISPERT v. UNITED STATES.* C. A. 11th Cir. Certiorari denied. Reported below: 810 F. 2d 207.

No. 86-6660. *PHIPPS v. KEOHANE ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 811 F. 2d 607.



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No. 86-6670. *BRUNO v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 809 F. 2d 1097.

No. 86-6674. *DAVIS v. TEXAS*. Ct. App. Tex., 13th Dist. Certiorari denied. Reported below: 709 S. W. 2d 288.

No. 86-6675. *JONES v. UNITED STATES*. C. A. 8th Cir. Certiorari denied.

No. 86-6684. *WOOTEN-BEY v. MARYLAND*. Ct. App. Md. Certiorari denied. Reported below: 308 Md. 534, 520 A. 2d 1090.

No. 86-6686. *LOVINGOOD v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 810 F. 2d 195.

No. 86-6687. *HOLLAND v. UNITED STATES*. C. A. D. C. Cir. Certiorari denied. Reported below: 258 U. S. App. D. C. 236, 810 F. 2d 1215.

No. 86-6688. *DAVIDSON v. FERRUCCI ET AL.* App. Ct. Conn. Certiorari denied.

No. 86-6692. *RYLAND v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 806 F. 2d 941.

No. 86-6695. *ADKINS v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 815 F. 2d 80.

No. 86-6708. *AYERS v. LYLES, WARDEN, ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 812 F. 2d 1400.

No. 86-6718. *NEAL v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 810 F. 2d 195.

No. 86-6741. *CUTLER v. ALASKA*. Sup. Ct. Alaska. Certiorari denied.

No. 86-895. *HALL v. ILLINOIS*. App. Ct. Ill., 2d Dist. Certiorari denied. JUSTICE BRENNAN and JUSTICE MARSHALL would grant the petition for writ of certiorari and reverse the judgment of conviction. Reported below: 143 Ill. App. 3d 766, 491 N. E. 2d 757.

No. 86-1261. *SEQUOIA BOOKS, INC. v. ILLINOIS* (two cases). Certiorari denied. JUSTICE BRENNAN and JUSTICE MARSHALL would grant the petition for writ of certiorari and reverse the

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judgment of conviction. Reported below: 145 Ill. App. 3d 1054, 495 N. E. 2d 1292 (first case); 146 Ill. App. 3d 1, 496 N. E. 2d 740 (second case).

No. 86-1289. CALIFORNIA *v.* SABO ET AL. Ct. App. Cal., 4th App. Dist. Motions of respondents Ronald Lee Sabo and Angela Marie Zizzo for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 185 Cal. App. 3d 845, 230 Cal. Rptr. 170.

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

During a routine helicopter patrol a deputy sheriff observed what he believed to be marijuana plants growing inside a 15- by 20-foot greenhouse located in respondents' backyard. The helicopter hovered at 400 to 500 feet and circled the greenhouse in order to give the deputy a better look at the marijuana. Based on this observation a search warrant issued and deputies seized the marijuana. A trial court held the marijuana inadmissible as evidence and the California Court of Appeal affirmed, holding that the deputy's observation of the greenhouse from the hovering helicopter violated the Fourth Amendment. 185 Cal. App. 3d 845, 230 Cal. Rptr. 170 (1986). The Court of Appeal distinguished *California v. Ciraolo*, 476 U. S. 207 (1986), on the ground that there the observation of marijuana was made from a fixed-wing aircraft flying in navigable airspace at an altitude over 1,000 feet. The court concluded that here the helicopter was not in navigable airspace as that term is defined at 49 U. S. C. App. § 1301(29), but recognized that the helicopter was lawfully positioned because federal regulations allow operation of helicopters at altitudes less than the minimum permitted to fixed-wing aircraft, provided that the helicopter operates without hazard to persons or property, see 14 CFR § 91.79(d) (1987).<sup>\*</sup> The court expressed concern about the capabilities of helicopters to furnish "a platform for aerial

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<sup>\*</sup>Title 49 U. S. C. App. § 1301(29) defines navigable airspace as "airspace above the minimum altitudes of flight prescribed by regulations issued under this chapter, . . . includ[ing] airspace needed to insure safety in take-off and landing of aircraft." The Court of Appeal reasoned that a helicopter flying below 1,000 feet is not above a specified minimum flight altitude and hence not in navigable airspace.

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surveillance," 185 Cal. App. 3d, at 854, 230 Cal. Rptr., at 175, and held that the search in this case infringed on a reasonable expectation of privacy.

The Court of Appeal's holding that the helicopter was not in navigable airspace is questionable, and even if this is technically correct it remains true, as the court conceded, that the helicopter was lawfully positioned when the deputy observed the marijuana in respondents' greenhouse. While it is certainly possible that helicopter surveillance could be unreasonably intrusive on account of interminable hovering, raising clouds of dust, creating unreasonable noise, and so forth, nothing in the record indicates that any such factor was present in this case. The decision below is a highly questionable interpretation of our decision in *California v. Ciraolo*. I would grant certiorari.

No. 86-1330. MAXTONE-GRAHAM *v.* BURTCHAELE ET AL. C. A. 2d Cir. Motion of American Society of Journalists and Authors, Inc., for leave to file a brief as *amicus curiae* granted. Certiorari denied. Reported below: 803 F. 2d 1253.

No. 86-1536. POWELL ET AL. *v.* FLORIDA ET AL. Sup. Ct. Fla. Motion of Rabbinical Association of Greater Miami et al. for leave to file a brief as *amici curiae* granted. Certiorari denied. Reported below: 497 So. 2d 1188.

No. 86-1537. ARMONTROUT, WARDEN *v.* THOMPSON. C. A. 8th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 808 F. 2d 28.

No. 86-1567. RYAN *v.* NEW YORK. App. Div., Sup. Ct. N. Y., 2d Jud. Dept. Motion of respondent to defer consideration of the petition for writ of certiorari denied. Certiorari denied. Reported below: 121 App. Div. 2d 34, 509 N. Y. S. 2d 545.

No. 86-6193. CLARK *v.* TEXAS. Ct. Crim. App. Tex.;

No. 86-6374. CHRISTY *v.* PENNSYLVANIA. Sup. Ct. Pa.;

No. 86-6599. CARD *v.* DUGGER, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. Sup. Ct. Fla.;

No. 86-6603. DOBBS *v.* KEMP, WARDEN. C. A. 11th Cir.;

No. 86-6618. MCQUEEN *v.* KENTUCKY. Sup. Ct. Ky.; and

No. 86-6648. STANO *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: No. 86-6193, 717 S. W. 2d 910; No. 86-



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6374, 511 Pa. 490, 515 A. 2d 832; No. 86-6599, 497 So. 2d 1169; No. 86-6603, 790 F. 2d 1499 and 809 F. 2d 750; No. 86-6618, 721 S. W. 2d 694; No. 86-6648, 497 So. 2d 1185.

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. 85-1864. RANDALL BOOK CORP. *v.* MARYLAND, 480 U. S. 940;

No. 86-5530. TRUESDALE *v.* AIKEN, WARDEN, ET AL., 480 U. S. 527;

No. 86-5656. BAIRNSFATHER *v.* LOUISIANA, *ante*, p. 1001;

No. 86-6059. PATTERSON *v.* AIKEN, WARDEN, ET AL., 480 U. S. 943;

No. 86-6071. KOON *v.* AIKEN, WARDEN, 480 U. S. 943;

No. 86-6145. CARPENTER *v.* LEONARD, 480 U. S. 936;

No. 86-6191. HOFFMAN *v.* UNITED STATES, *ante*, p. 1005;

No. 86-6232. WHITE *v.* OHIO, 480 U. S. 937;

No. 86-6242. GRAVES *v.* OHIO, 480 U. S. 937;

No. 86-6293. HALL *v.* ILLINOIS, 480 U. S. 951;

No. 86-6294. JOHNSON *v.* ILLINOIS, 480 U. S. 951;

No. 86-6315. SELLNER *v.* FEDERAL BUREAU OF INVESTIGATION ET AL., 480 U. S. 939;

No. 86-6328. BEEZLEY *v.* FREMONT INDEMNITY CO. ET AL., 480 U. S. 949;

No. 86-6337. CLEMENTE *v.* OFFICE OF PERSONNEL MANAGEMENT, *ante*, p. 1005;

No. 86-6359. LEAL *v.* WRQN ET AL., *ante*, p. 1006;

No. 86-6371. SHAHID *v.* TEXAS, 480 U. S. 941;

No. 86-6380. PARKER *v.* GEORGIA, 480 U. S. 940;

No. 86-6398. BURNETT *v.* COX ET AL., *ante*, p. 1019; and

No. 86-6479. JOHNSON *v.* THIGPEN, COMMISSIONER, MISSISSIPPI DEPARTMENT OF CORRECTIONS, 480 U. S. 951. Petitions for rehearing denied.

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No. 86-5388. *TYSON v. MCKELLAR, WARDEN, ET AL.*, 479 U. S. 1037. Motion for leave to file petition for rehearing denied.

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*Certiorari Denied*

No. 86-6919 (A-842). *JOHNSON v. CABANA*, ACTING COMMISSIONER, MISSISSIPPI DEPARTMENT OF CORRECTIONS. C. A. 5th Cir. Application for stay of execution of sentence of death, presented to JUSTICE WHITE, and by him referred to the Court, denied. Certiorari denied. Reported below: 818 F. 2d 333.

JUSTICE BRENNAN, with whom JUSTICE MARSHALL joins, dissenting.

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

Even if I did not take this view, I would still grant the application for a stay and the petition for certiorari. Petitioner raises a substantial claim that, since trial, he has become incompetent and therefore may not be executed. In *Ford v. Wainwright*, 477 U. S. 399 (1986), the Court held that the Eighth Amendment bars execution of convicted prisoners found to be incompetent. The Court rested its holding on the lack of "retributive value [in] executing a person who has no comprehension of why he has been singled out and stripped of his fundamental right to life." *Id.*, at 409. The Court also relied on "the natural abhorrence civilized societies feel at killing one who has no capacity to come to grips with his own conscience or deity." *Ibid.* In a concurring opinion, JUSTICE POWELL stated:

"If the defendant perceives the connection between his crime and his punishment, the retributive goal of the criminal law is satisfied. And only if the defendant is aware that his death is approaching can he prepare himself for his passing. Accordingly, I would hold that the Eighth Amendment forbids the execution only of those who are unaware of the pun-

ishment they are about to suffer and why they are to suffer it." *Id.*, at 422.

Petitioner's claim is founded on an affidavit by a licensed clinical psychologist stating his findings as to petitioner's sanity. Following a 5-hour evaluation of petitioner, and after a review of petitioner's medical records and of statements by others acquainted with petitioner, the affiant concluded:

"Edward Johnson is unable to relate any punishment through execution to his own conduct, or the conduct alleged against him. He does not understand why he is being singled out, and does not have the proper mental framework to come to grips with his own conscience. It is quite clear that this is the product of mental disease or defect." App. to Pet. for Cert. D 2.

The plausibility of this conclusion is buttressed by the affidavit of a psychiatrist, who evaluated petitioner prior to his trial. That evaluation "revealed substantial mental defects," and the affiant diagnosed that petitioner had "suffered from brain dysfunction" from birth, and "suffered from [an] organic brain syndrome" that intermittently caused personality and behavioral changes. He concluded "that [petitioner's] mental problems were severe." *Id.*, at E 1-2.

Petitioner first presented this evidence to the Mississippi Supreme Court pursuant to the State's postconviction procedures set forth in Miss. Stat. Ann. § 99-19-57(2)(b) (Supp. 1987). In response, the State submitted affidavits that disputed petitioner's claims. The Mississippi Supreme Court did not hold a hearing in this matter, nor did it even consider the affidavits presented by the State. Instead, the court simply concluded, without explanation, that it did "not find it necessary to consider [the State's affidavits] because [petitioner] failed to make out a prima facie case of present insanity by his affidavits." *Johnson v. State*, 508 So. 2d 1126, 1127 (1987). The court summarily held that petitioner's evidence was insufficient standing alone to raise "a reasonable probability" that petitioner is presently "insane." *Ibid.*

The Constitution does not require an indigent prisoner to produce more than what petitioner has in order to meet the burden of coming forward. There is nothing amiss, at least facially, in petitioner's affidavits. The affidavits were prepared by licensed professionals, not by family members or friends. Cf. *Evans v.*



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*McCotter*, 805 F. 2d 1210, 1212-1213 (CA5 1986) (affidavit of insanity by prisoner's sister does not raise legitimate question of sanity). They are based on comprehensive evaluations of petitioner. If true, they reveal an individual who, because of mental defect, is "unaware of the punishment [he is] about to suffer and why [he is] to suffer it." *Ford*, 477 U. S., at 422 (concurring opinion). Yet this individual, according to the Mississippi Supreme Court, has not raised even a *prima facie Ford* claim sufficient to warrant *consideration* of the State's response. If unchallenged affidavits by licensed professionals, concluding that a condemned man "is unable to relate any punishment through execution to his own conduct," are insufficient to raise a *prima facie* case that he is incompetent under *Ford*, then it is hard to imagine what would.\*

As applied by the Mississippi Supreme Court, the State's procedures for evaluating the competency of those on death row are inconsistent with *Ford*, and with the minimum requirements of due process when the constitutionality of an execution is at stake. It is true that, in *Ford*, we "left to the State the task of developing appropriate ways" to ensure that the incompetent would never be executed. We also acknowledged that "it may be that some high threshold showing on behalf of the prisoner will be found a necessary means to control the number of nonmeritorious or repetitive claims of insanity." *Id.*, at 417. But we left no doubt that the "overriding dual imperative" in devising procedures to comply with *Ford* was to ensure "redress for those with substantial claims and [to] encourag[e] accuracy in the factfinding determination." *Ibid.* Mississippi's procedures appear utterly inconsistent with this imperative.

Because the precedent set below threatens to undermine the practical effectiveness of our holding in *Ford*, I would grant the stay and the petition to consider the constitutionality of Mississippi's procedures for ensuring that its death sentencing system comports with the constitutional obligations identified in *Ford*.

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*Certiorari Denied*

No. 86-6925 (A-844). TUCKER v. KEMP, WARDEN. C. A. 11th Cir. Application for stay of execution of sentence of death,

\*I am at a loss to guess what extensive showing the State might require of an indigent defendant before it would grant a hearing.

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presented to JUSTICE POWELL, and by him referred to the Court, denied. Certiorari denied. Reported below: 818 F. 2d 749.

JUSTICE BRENNAN, with whom JUSTICE MARSHALL joins, dissenting.

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

Even if I did not take this view, however, I would still grant the application for a stay. Tucker's petition for certiorari raises the question whether inflammatory and prejudicial photographs of the victim's body introduced at trial violated his constitutional right to "fundamental fairness and a reliable sentencing determination." Pet. for Cert. i. This question is sufficiently similar to a question that will be decided by the Court in *Thompson v. Oklahoma*, certiorari granted, 479 U. S. 1084 (1987),<sup>1</sup> that the petition should be held by the Court pending our disposition of the question in *Thompson*.<sup>2</sup>

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<sup>1</sup> Among the questions presented in *Thompson* is:

"May admission of inflammatory evidence [*i. e.*, two photos of murder victim] in capital case against 16 year old defendant be deemed harmless error merely because of strong evidence of guilt, when such evidence also prejudices defendant's right to fair, full jury consideration of all mitigating circumstances—including age—during death penalty deliberations?" Pet. for Cert. in No. 86-6169, p. 2.

<sup>2</sup> It is true that in *Thompson* the court below found that admission of the photographs at issue was error, but harmless, while here the court found no error in the admission of the photographs. 724 P. 2d 780 (Okla. Crim. App. 1986). This difference is not significant. In *Thompson*, in order to overturn the state court's determination of harmless error, we would have to find both that the admission of the photographs at issue violated the defendant's due process rights under the Federal Constitution, and that the error was not harmless. In order to overturn the state court's determination that no error occurred in *Tucker*, we would have to find only the first of these, namely that the admission of the photographs at issue violated these same federal constitutional rights. Plainly, any standard we might develop in deciding whether sufficient prejudice existed to render an error harmful would be applicable in a decision whether sufficient possibility of prejudice existed to render admission of evidence error. The possibility that the analysis in *Thompson* will shed light on *Tucker* is therefore sufficient to justify a hold.

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I find particularly disturbing the Court of Appeals' treatment of this question. In deciding that the grant of certiorari in *Thompson* did not "sufficiently suggest that 'new law' relevant to the present case [was] near at hand," the court stated:

"The petition for certiorari . . . raised two issues of which only one may be marginally relevant to the present case. This court has no way of knowing which issue prompted the Court to grant *certiorari*. Thus the ends of justice would not be served by revisiting the issue." 818 F. 2d 749, 751 (CA11 1987).

Plainly, any doubt that the Court of Appeals had about which issue prompted the Court to grant certiorari should have been resolved in favor of the defendant facing the death penalty. Moreover, given that this Court may restrict its grant of certiorari to those questions it wishes to hear, it seems to me most inappropriate for the court to have engaged in speculation about the *possible* insignificance of our grant on one of the questions in Tucker's petition.

The relationship between the questions presented by Tucker and Thompson justifies delaying consideration of the former on the ground that it will be illuminated by the disposition of the latter. I dissent.

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*Dismissal Under Rule 53*

No. 86-440. *BECHTEL, INC. v. WEBSTER ET AL.* C. A. 9th Cir. Certiorari dismissed under this Court's Rule 53. Reported below: 796 F. 2d 252.

*Appeals Dismissed*

No. 86-1649. *OHIO ET AL. v. ALLINDER ET AL.* Appeal from C. A. 6th Cir. dismissed for want of jurisdiction. *Thornburgh v. American College of Obstetricians & Gynecologists*, 476 U. S. 747 (1986). Reported below: 808 F. 2d 1180.

No. 86-6291. *BECKNELL 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: 720 S. W. 2d 526.

No. 86-6642. *HELLER v. EMPLOYMENT DIVISION ET AL.* Appeal from Ct. App. Ore. dismissed for want of jurisdiction.



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Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied. Reported below: 80 Ore. App. 153, 721 P. 2d 482.

No. 86-6667. *MEDER v. MEDER*. 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: 793 F. 2d 302.

No. 86-6702. *COSNER v. OREGON*. Appeal from Sup. Ct. Ore. dismissed for want of substantial federal question. Reported below: 302 Ore. 159, 727 P. 2d 129.

*Miscellaneous Orders*

No. D-592. *IN RE DISBARMENT OF GIOMETTI*. Disbarment entered. [For earlier order herein, see 479 U. S. 1003.]

No. D-609. *IN RE DISBARMENT OF CONNOLLY*. Disbarment entered. [For earlier order herein, see 480 U. S. 902.]

No. D-616. *IN RE DISBARMENT OF DECIOUS*. Disbarment entered. [For earlier order herein, see 480 U. S. 914.]

No. D-618. *IN RE DISBARMENT OF WHITTEN*. Disbarment entered. [For earlier order herein, see 480 U. S. 928.]

No. D-619. *IN RE DISBARMENT OF STOKES*. Disbarment entered. [For earlier order herein, see 480 U. S. 928.]

No. D-634. *IN RE DISBARMENT OF BRYAN*. It is ordered that Paul Jackson Bryan, of Palatka, Fla., 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. 86-108. *HILTON, SUPERINTENDENT, NEW JERSEY STATE PRISON, ET AL. v. BRAUNSKILL*. C. A. 3d Cir. [Certiorari granted, 479 U. S. 881.] Motion of petitioners for leave to file a supplemental brief after argument granted.

No. 86-120. *BOWEN, SECRETARY OF HEALTH AND HUMAN SERVICES, ET AL. v. ELLENDER ET AL.*, 479 U. S. 914. Motion of respondents for award of attorney's fees and costs denied.

No. 86-179. *CORPORATION OF THE PRESIDING BISHOP OF THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS ET AL. v. AMOS ET AL.*; and

No. 86-401. *UNITED STATES v. AMOS ET AL.* D. C. Utah. [Probable jurisdiction postponed, 479 U. S. 929.] Motion of

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appellees for leave to file a supplemental brief after argument denied.

No. 86-728. HONIG, CALIFORNIA SUPERINTENDENT OF PUBLIC INSTRUCTION *v.* DOE ET AL. C. A. 9th Cir. [Certiorari granted, 479 U. S. 1084.] Motion of Davis Joint Unified School District et al. for leave to participate in oral argument as *amici curiae*, for divided argument, and for additional time for oral argument denied. Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 86-787. HICKS, DISTRICT ATTORNEY FOR COUNTY OF ORANGE, CALIFORNIA, ACTING ON BEHALF OF FEIOCK *v.* FEIOCK. Ct. App. Cal., 4th App. Dist. [Certiorari granted, 480 U. S. 915.] Motion of Women's Legal Defense Fund et al. for leave to file a brief as *amici curiae* granted.

No. 86-793. KANSAS CITY POWER & LIGHT CO. *v.* STATE CORPORATION COMMISSION OF KANSAS ET AL. Sup. Ct. Kan. [Probable jurisdiction noted, 479 U. S. 1082.] Motion of Edison Electric Institute for leave to file a brief as *amicus curiae* granted. JUSTICE POWELL took no part in the consideration or decision of this motion.

No. 86-870. PHILLIPS PETROLEUM CO. ET AL. *v.* MISSISSIPPI ET AL. Sup. Ct. Miss. [Certiorari granted, 479 U. S. 1084.] Motion of Robert E. Longino, Jr., for leave to file a brief as *amicus curiae* granted.

No. 86-1503. SAMAYOA ET AL. *v.* CHICAGO BOARD OF EDUCATION ET AL. C. A. 7th Cir. Motion of petitioners to strike brief of respondents denied.

No. 86-6781. IN RE WILLIAMS. Petition for writ of habeas corpus denied.

*Probable Jurisdiction Noted*

No. 86-1430. PERALTA *v.* HEIGHTS MEDICAL CENTER, INC., DBA HEIGHTS HOSPITAL, ET AL. Appeal from Ct. App. Tex., 1st Dist. Probable jurisdiction noted. Reported below: 715 S. W. 2d 721.

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*Certiorari Granted*

No. 86-1329. GULFSTREAM AEROSPACE CORP. *v.* MAYACAMAS CORP. C. A. 9th Cir. Certiorari granted. Reported below: 806 F. 2d 928.

No. 86-1552. DEPARTMENT OF THE NAVY *v.* EGAN. C. A. Fed. Cir. Certiorari granted. Reported below: 802 F. 2d 1563.

No. 86-1602. UNITED SAVINGS ASSOCIATION OF TEXAS *v.* TIMBERS OF INWOOD FOREST ASSOCIATES, LTD. C. A. 5th Cir. Certiorari granted. Reported below: 808 F. 2d 363.

*Certiorari Denied.* (See also Nos. 86-6291, 86-6642, and 86-6667, *supra.*)

No. 86-1002. NEWELL ET UX. *v.* MARITIME ADMINISTRATION ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 802 F. 2d 448.

No. 86-1099. GALANOS *v.* HOWARD, JUDGE, UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF ALABAMA. C. A. 11th Cir. Certiorari denied.

No. 86-1201. VAHLSING CHRISTINA CORP. *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 1st Cir. Certiorari denied. Reported below: 802 F. 2d 440.

No. 86-1206. WILLIAMS *v.* ARKANSAS. Sup. Ct. Ark. Certiorari denied. Reported below: 290 Ark. 286, 718 S. W. 2d 935.

No. 86-1234. CHICAGO, MILWAUKEE, ST. PAUL & PACIFIC RAILROAD CO. ET AL. *v.* UNITED STATES ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 799 F. 2d 317.

No. 86-1247. SHENKER *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 8th Cir. Certiorari denied. Reported below: 804 F. 2d 109.

No. 86-1277. EASTERN CONNECTICUT CITIZENS ACTION GROUP, INC., ET AL. *v.* DOLE, SECRETARY OF TRANSPORTATION, ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 804 F. 2d 804.

No. 86-1349. NATIONAL TREASURY EMPLOYEES UNION ET AL. *v.* REAGAN, PRESIDENT OF THE UNITED STATES, ET AL. C. A. Fed. Cir. Certiorari denied. Reported below: 806 F. 2d 1034.



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No. 86-1368. *LEE v. WEBB, SECRETARY OF THE NAVY*. C. A. 9th Cir. Certiorari denied. Reported below: 804 F. 2d 146.

No. 86-1410. *HUNTER DOUGLAS, INC. v. NATIONAL LABOR RELATIONS BOARD*. C. A. 3d Cir. Certiorari denied. Reported below: 804 F. 2d 808.

No. 86-1414. *OREGON v. SETTLER ET AL.* Ct. App. Ore. Certiorari denied. Reported below: 81 Ore. App. 518, 726 P. 2d 410.

No. 86-1425. *YAKIMA TRIBAL COURT OF THE YAKIMA INDIAN NATION ET AL. v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 806 F. 2d 853.

No. 86-1427. *COLE v. UNITED STATES*. C. A. 1st Cir. Certiorari denied. Reported below: 807 F. 2d 262.

No. 86-1439. *LEVER BROTHERS CO. v. UNITED STATES ET AL.* C. A. D. C. Cir. Certiorari before judgment denied.

No. 86-1555. *ORECK CORP. v. U. S. FLOOR SYSTEMS, INC.* C. A. 5th Cir. Certiorari denied. Reported below: 803 F. 2d 166.

No. 86-1566. *COLCLASURE ET AL. v. KANSAS CITY LIFE INSURANCE Co. ET AL.* Sup. Ct. Ark. Certiorari denied. Reported below: 290 Ark. 585, 720 S. W. 2d 916.

No. 86-1587. *TOUSSAINT ET AL. v. MCCARTHY ET AL.*; and

No. 86-1588. *MCCARTHY ET AL. v. TOUSSAINT ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 801 F. 2d 1080.

No. 86-1590. *NOVINGER ET UX. v. KRAMER ET AL.* C. A. 3d Cir. Certiorari denied. Reported below: 809 F. 2d 212.

No. 86-1597. *CHETISTER v. DOUGLAS, JUSTICE, SUPREME COURT OF OHIO, ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 812 F. 2d 1406.

No. 86-1604. *MICHIGAN v. WILLIAMS*. Ct. App. Mich. Certiorari denied.

No. 86-1606. *SLOAN ET AL. v. LEE, BANKRUPTCY JUDGE, UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF KENTUCKY*. C. A. 6th Cir. Certiorari denied.

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No. 86-1612. *CONSOLIDATED RAIL CORPORATION v. ERIE LACKAWANNA INC. ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 803 F. 2d 881.

No. 86-1654. *ROBINSON ET AL. v. NEW JERSEY ET AL.* C. A. 3d Cir. Certiorari denied. Reported below: 806 F. 2d 442.

No. 86-1655. *TURGISS v. FASSETT ET AL.* C. A. 3d Cir. Certiorari denied. Reported below: 807 F. 2d 1150.

No. 86-1664. *HERZFELD ET AL. v. UNITED STATES.* C. A. 10th Cir. Certiorari denied.

No. 86-1683. *SAMPSON v. COHN ET AL.* C. A. 7th Cir. Certiorari denied. Reported below: 808 F. 2d 838.

No. 86-1692. *COWIN v. CHILDERS ET AL.* Cir. Ct. Montgomery County, Md. Certiorari denied.

No. 86-1705. *MORRELL ET AL. v. UNITED STATES.* C. A. 11th Cir. Certiorari denied. Reported below: 799 F. 2d 665.

No. 86-6251. *NEWTON v. SUPERIOR COURT OF CALIFORNIA, IN AND FOR THE COUNTY OF ALAMEDA.* C. A. 9th Cir. Certiorari denied. Reported below: 803 F. 2d 1051.

No. 86-6351. *JONES v. SCROGGY, WARDEN, ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 812 F. 2d 1407.

No. 86-6402. *CAMDEN v. ILLINOIS.* Sup. Ct. Ill. Certiorari denied. Reported below: 115 Ill. 2d 369, 504 N. E. 2d 96.

No. 86-6449. *ROSENBERG ET AL. v. UNITED STATES.* C. A. 3d Cir. Certiorari denied. Reported below: 806 F. 2d 1169.

No. 86-6543. *LYNESS v. NEW YORK.* App. Div., Sup. Ct. N. Y., 4th Jud. Dept. Certiorari denied. Reported below: 115 App. Div. 2d 333, 495 N. Y. S. 2d 848.

No. 86-6625. *DEBAUFER v. ILLINOIS.* App. Ct. Ill., 2d Dist. Certiorari denied. Reported below: 147 Ill. App. 3d 1161, 512 N. E. 2d 138.

No. 86-6626. *KNIGHT v. TEXAS.* C. A. 5th Cir. Certiorari denied.

No. 86-6630. *MCDONALD v. BLACKBURN, WARDEN.* C. A. 5th Cir. Certiorari denied. Reported below: 806 F. 2d 613.

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No. 86-6634. *BROWN v. MINNEAPOLIS ELECTRIC STEEL CASTINGS ET AL.* Sup. Ct. Minn. Certiorari denied. Reported below: 398 N. W. 2d 568.

No. 86-6646. *MCMILLAN v. SCULLY ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 814 F. 2d 653.

No. 86-6651. *JACKSON v. ARMONTROUT, WARDEN.* C. A. 8th Cir. Certiorari denied.

No. 86-6652. *JOHNSON v. KANSAS.* Sup. Ct. Kan. Certiorari denied. Reported below: 240 Kan. 326, 729 P. 2d 1169.

No. 86-6662. *OWEN ET AL. v. DUGGER, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS.* C. A. 11th Cir. Certiorari denied. Reported below: 806 F. 2d 1519.

No. 86-6663. *WILKERSON v. WYRICK, WARDEN, ET AL.* C. A. 8th Cir. Certiorari denied. Reported below: 806 F. 2d 161.

No. 86-6664. *NICHOLAS v. BUCHANAN.* C. A. 1st Cir. Certiorari denied. Reported below: 806 F. 2d 305.

No. 86-6665. *MORRIS v. OREGON.* Ct. App. Ore. Certiorari denied. Reported below: 82 Ore. App. 422, 727 P. 2d 632.

No. 86-6666. *MCDONALD v. PATE ET AL.* C. A. 8th Cir. Certiorari denied. Reported below: 815 F. 2d 711.

No. 86-6668. *PARKER v. NEW JERSEY.* Super. Ct. N. J., App. Div. Certiorari denied.

No. 86-6671. *ANDERSON v. NEWSOME, WARDEN.* C. A. 11th Cir. Certiorari denied. Reported below: 813 F. 2d 409.

No. 86-6673. *DAVIS v. TEXAS.* Ct. Crim. App. Tex. Certiorari denied.

No. 86-6681. *MILLER v. NEW YORK.* App. Div., Sup. Ct. N. Y., 2d Jud. Dept. Certiorari denied. Reported below: 124 App. Div. 2d 830, 508 N. Y. S. 2d 549.

No. 86-6696. *ELAGAMY v. UNITED STATES.* C. A. 5th Cir. Certiorari denied. Reported below: 808 F. 2d 1521.

No. 86-6697. *ASANTE v. UNITED STATES.* C. A. 3d Cir. Certiorari denied.



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No. 86-6704. *GOLDBERG v. MERIT SYSTEMS PROTECTION BOARD*. C. A. Fed. Cir. Certiorari denied. Reported below: 818 F. 2d 877.

No. 86-6726. *HEMPHILL v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 810 F. 2d 197.

No. 86-6733. *STANDRIDGE v. UNITED STATES*. C. A. 11th Cir. Certiorari denied. Reported below: 810 F. 2d 1034.

No. 86-6734. *SANDINI v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 810 F. 2d 1165.

No. 86-6743. *ALEGRIA-VALENCIA v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 810 F. 2d 1338.

No. 86-6749. *TATE v. UNITED STATES*. C. A. 1st Cir. Certiorari denied. Reported below: 809 F. 2d 75.

No. 86-6752. *JAQUEZ v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 814 F. 2d 654.

No. 85-1877. *AZL RESOURCES, INC. v. MARGARET HALL FOUNDATION, INC., ET AL.* C. A. 1st Cir. Certiorari denied. JUSTICE WHITE and JUSTICE POWELL would grant certiorari. Reported below: 784 F. 2d 29.

No. 86-1468. *BSP INVESTMENT & DEVELOPMENT, LTD. v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. JUSTICE WHITE would grant certiorari. Reported below: 804 F. 2d 1085.

No. 86-6451. *WEST v. TEXAS*. Ct. Crim. App. Tex; and

No. 86-6723. *COOKS v. OKLAHOMA*. Ct. Crim. App. Okla. Certiorari denied. Reported below: No. 86-6451, 720 S. W. 2d 511.

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. 86-1422. *RATCLIFF v. UNITED STATES*, *ante*, p. 1004;

No. 86-6197. *GIPSON v. ROSENBERG ET AL.*, *ante*, p. 1007;

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No. 86-6355. KUBAT *v.* ILLINOIS, *ante*, p. 1007;

No. 86-6367. IN RE GRAY, *ante*, p. 1003;

No. 86-6428. MRAOVIC *v.* LYNAUGH, INTERIM DIRECTOR, TEXAS DEPARTMENT OF CORRECTIONS, *ante*, p. 1020; and

No. 86-6438. MARTIN *v.* PEREZOUS ET AL., *ante*, p. 1021.  
Petitions for rehearing denied.

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*Miscellaneous Order*

No. A-861. WILLIAMS *v.* LYNAUGH, 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 of execution in order to give the applicant time to file a petition for writ of certiorari and would grant the petition and vacate the death sentence in this case.

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*Dismissal Under Rule 53*

No. 86-1688. DAYTON-HUDSON CORP. *v.* ALTUS. Ct. App. Tex., 1st Dist. Certiorari dismissed under this Court's Rule 53. Reported below: 715 S. W. 2d 670.

*Certiorari Denied*

No. 86-6955 (A-860). TUCKER *v.* KEMP, WARDEN. C. A. 11th Cir. Application for stay of execution of sentence of death, presented to JUSTICE POWELL, and by him referred to the Court, denied. Certiorari denied. The order heretofore entered staying the execution of sentence of death until 7 p.m., May 29, 1987, will not be extended. Reported below: 819 F. 2d 978.

JUSTICE BRENNAN, with whom JUSTICE MARSHALL joins, and with whom JUSTICE BLACKMUN joins as to Part II, dissenting.

## I

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 death sentence in this case.

## II

Even if I did not hold this view, I would still grant the application for a stay and the petition for certiorari. Petitioner raises a substantial claim that the trial court's instruction to the jury unconstitutionally shifted the burden of proof to petitioner in violation of *Francis v. Franklin*, 471 U. S. 307 (1985).

Petitioner William Tucker was tried for murder, kidnaping with bodily injury, armed robbery, and aggravated sodomy. Intent was a crucial issue at trial. Trial testimony indicated that, on the day of the crime, Tucker was under the influence of drugs and alcohol, which he had been using heavily since his father's death less than three months earlier. Both the prosecutor and the defense attorney focused their closing remarks on Tucker's state of mind and his ability *vel non* to form the requisite criminal intent.

The trial court's instruction to the jury included the following charge on the burden of proof with respect to the defendant's criminal intent:

"Ladies and Gentlemen, a crime is the violation of the Statute of this State in which there shall be a union or joint operation of act and intention, or criminal negligence.

"Now, I'm going to give you certain presumptions. A person is presumed to be of sound mind and discretion, but the presumption may be rebutted. The acts of a person of sound mind and discretion are presumed to be the product of the person's will. A person of sound mind and discretion is presumed to intend the natural and probable consequences of his act. But, these presumptions may be rebutted. The person will not be presumed to act with criminal intention, but the trier of facts, and that's you the jury, may find such intention upon consideration of the words, conduct, demeanor and other circumstances connected with the act for which the accused is prosecuted." Tr. 822-823 (emphasis added).

After deliberations, the jury returned a verdict of murder, kidnaping with bodily injury, and robbery by intimidation. After a sentencing hearing, Tucker was sentenced to death.



In *Francis v. Franklin*, *supra*, the trial court gave a similar instruction to the jury:

"A crime is a violation of a statute of this State in which there shall be a union of joint operation of act or omission to act, and intention or criminal negligence. A person shall not be found guilty of any crime committed by misfortune or accident where it satisfactorily appears there was no criminal scheme or undertaking or intention or criminal negligence. *The acts of a person of sound mind and discretion are presumed to be the product of the person's will, but the presumption may be rebutted. A person of sound mind and discretion is presumed to intend the natural and probable consequences of his acts but the presumption may be rebutted. A person will not be presumed to act with criminal intention but the trier of facts, that is, the Jury, may find criminal intention upon a consideration of the words, conduct, demeanor, motive and all other circumstances connected with the act for which the accused is prosecuted.*" 471 U. S., at 311-312 (emphasis added).

In *Franklin*, the Court held that this instruction created a mandatory presumption that shifted to the defendant the burden of proof on the element of intent, thereby depriving him of due process under the Fourteenth Amendment. The charge given in Tucker's case is virtually identical to the jury instruction in *Franklin*.

Tucker petitioned the District Court for a writ of habeas corpus, raising the *Franklin* claim for the first time in a federal court. The District Court denied an evidentiary hearing on this claim solely on its conclusion that the petition constituted an abuse of the writ, because Tucker had filed a previous petition for federal habeas corpus in District Court on January 28, 1982, that did not raise the *Franklin* claim. The Court of Appeals agreed. It concluded that since, in its view, "*Franklin* did not constitute 'new law[,] petitioner's *Franklin* claim should have been raised in his first petition," and that therefore it was an abuse of the writ under Habeas Corpus Rule 9(b), 28 U. S. C. § 2254. 819 F. 2d 978, 980 (CA11 1987). Rule 9(b) allows a federal court to dismiss a second federal petition when "new and different grounds are alleged," if "the judge finds that the failure of the petitioner to assert those grounds in a prior petition constituted an abuse of the writ."

In my view, Tucker's failure to raise the *Franklin* claim in his first petition for federal habeas relief does not constitute abuse of the writ under Rule 9(b). In *Sanders v. United States*, 373 U. S. 1 (1963), the Court established guidelines for cases involving potential abuse of the writ:

"Thus, for example, if a prisoner *deliberately* withholds one of two grounds for federal collateral relief at the time of filing his first application, in the hope of being granted two hearings rather than one or for some other such reason, he may be deemed to have waived his right to a hearing on a second application presenting the withheld ground. The same may be true if, as in *Wong Doo* [v. *United States*, 265 U. S. 239 (1924)], the prisoner *deliberately* abandons one of his grounds at the first hearing. Nothing in the traditions of habeas corpus requires the federal courts to tolerate needless piecemeal litigation, or to entertain collateral proceedings whose *only purpose* is to vex, harass, or delay." *Id.*, at 18 (emphasis added).

The Court of Appeals for the Eleventh Circuit requires a habeas petitioner to demonstrate that "the failure to present the ground in the prior proceeding was neither the result of an intentional abandonment or withholding nor the product of inexcusable neglect" to avoid dismissal of a subsequent petition. *Witt v. Wainwright*, 755 F. 2d 1396, 1397, rev'd on other grounds, 469 U. S. 412 (1985), quoted in *Fleming v. Kemp*, 794 F. 2d 1478, 1482 (CA11 1986).

In considering the present petition by a man facing execution, the District Court refused to conduct an evidentiary hearing, but made no finding of intentional abandonment, deliberate withholding, or inexcusable neglect.<sup>1</sup> In my view, this represents an unexplained departure from the standards set forth in *Sanders*, *supra*. Tucker's petition establishes that under *Sanders* his petition does not constitute abuse of the writ.

This Court did not decide *Franklin* until April 29, 1985. The Georgia Supreme Court had earlier dismissed Franklin's appeal raising the burden of proof issue in 1980, eight months before

<sup>1</sup> Both the District Court and the Court of Appeals found that, because *Franklin* did not represent a substantial break in precedent with *Sandstrom v. Montana*, 442 U. S. 510 (1979), Tucker had no excuse for failing to raise the claim in his first petition.

Tucker's appeal to that same court. *Franklin v. State*, 245 Ga. 141, 153-154, 263 S. E. 2d 666, 674 (1980). Tucker did not raise the *Franklin* claim at that time. Thus, Tucker had a perfectly valid reason for his failure to raise the *Franklin* claim in his first federal habeas petition—it would obviously have been frivolous to do so. The Georgia Supreme Court repeatedly rejected *Franklin* claims during the two years in which Tucker had the opportunity to present the claim in state courts, prior to filing his first federal habeas petition in January 1982. See, e. g., *Rose v. State*, 249 Ga. 628, 631, 292 S. E. 2d 678, 681 (1982); *Zant v. Gaddis*, 247 Ga. 717, 718, 279 S. E. 2d 219, 220-221, cert. denied, 454 U. S. 1037 (1981); *Lackey v. State*, 246 Ga. 331, 338, 271 S. E. 2d 478, 484-485 (1980); *Robinson v. State*, 246 Ga. 469, 470-471, 271 S. E. 2d 786, 788 (1980); *Adams v. State*, 246 Ga. 119, 122, 271 S. E. 2d 11, 12-13 (1980); *Bridges v. State*, 246 Ga. 323, 324, 271 S. E. 2d 471, 472-473 (1980). It is unreasonable, therefore, to dismiss this second federal habeas petition on the ground that petitioner's failure to raise in his first petition what was a frivolous claim barred him forever from asserting that claim once *Francis* made clear that it was viable.

The record in this case contains no evidence that the *Franklin* claim was intentionally abandoned or deliberately withheld. The affidavit of petitioner's counsel states:

"At the time we filed the original petition for writ of habeas corpus I had no basis for believing that the portion of the charge concerning intent and state of mind was in any way constitutionally infirm. The language of the charge was taken nearly verbatim from Georgia statutes which had repeatedly been upheld by the Georgia Supreme Court. I was aware of no case that would indicate that this portion of the jury charge was unconstitutional and I had no reason to believe that that charge was improper.

"We included in the petition for writ of habeas corpus all claims which appeared to be viable based on our reasoned and professional judgment of the facts and law. It was our intent to include all nonfrivolous claims. We did not deliberately withhold this claim or intentionally abandon it. This claim was not included in the petition because in the exercise of our reasoned professional judgment we were not aware that it ex-



isted." Affidavits of Robert B. Remar and Eric G. Kocher, 819 F. 2d, at 980.<sup>2</sup>

In *Franklin* we held that a charge identical in all pertinent respects to the one given here violated the Fourteenth Amendment's requirement that the State prove every element of a criminal offense beyond a reasonable doubt. Here, the Court permits a man to be executed despite the likelihood that his conviction was obtained in violation of this fundamental tenet of our criminal law. It does so on the untenable ground that petitioner has abused the writ by failing to anticipate that a claim repeatedly held without merit by the State Supreme Court would ultimately be vindicated here. I dissent.

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<sup>2</sup> Petitioner himself submitted an affidavit that states:

"At no time did I instruct Mr. Remar or Mr. Kocher to withhold that [*Franklin* claim]. In fact, we agreed that all claims that my attorneys believed had any merit should be asserted in my habeas corpus petition. . . .

"At no time have I deliberately withheld any claims or intentionally abandoned any claims. I wanted every claim that my attorneys were aware of to be filed in my original habeas corpus petition." Affidavit of William Boyd Tucker (Exhibit F to Pet. for Cert.).