

ORDERS FROM JUNE 22 THROUGH  
OCTOBER 2, 1987

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JUNE 22, 1987

*Dismissal Under Rule 53*

No. 86-1843. LANE, DIRECTOR, ILLINOIS DEPARTMENT OF CORRECTIONS, ET AL. *v.* RIOS. C. A. 7th Cir. Certiorari dismissed under this Court's Rule 53. Reported below: 812 F. 2d 1032.

*Appeals Dismissed*

No. 86-1528. HARSH INVESTMENT CORP. *v.* CITY AND COUNTY OF DENVER ET AL. Appeal from Sup. Ct. Colo. dismissed for want of substantial federal question. JUSTICE WHITE took no part in the consideration or decision of this case. Reported below: 728 P. 2d 1281.

No. 86-1727. CONNOR *v.* SACHS ET AL. Appeal from Super. Ct. N. J., App. Div., dismissed for want of jurisdiction.

No. 86-1736. DREWS, BY HIS GUARDIAN, DREWS *v.* DREWS. Appeal from Sup. Ct. Ill. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied. Reported below: 115 Ill. 2d 201, 503 N. E. 2d 339.

No. 86-5678. HILL *v.* CITY OF HOUSTON, TEXAS. Appeal from C. A. 5th Cir. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied. Reported below: 789 F. 2d 1103.

No. 86-6816. MOORE *v.* AMERICAN SAVINGS & LOAN ASSN. 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: 800 F. 2d 1145.

No. 86-6844. FOREMAN *v.* MERIT SYSTEMS PROTECTION BOARD. Appeal from C. A. Fed. Cir. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a

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petition for writ of certiorari, certiorari denied. Reported below: 818 F. 2d 875.

No. 86-1823. *WADDELL v. MICHIGAN*. Appeal from Ct. App. Mich. dismissed for want of substantial federal question.

*Certiorari Granted—Vacated and Remanded*

No. 85-98. *ANSCHUETZ & Co., GMBH. v. MISSISSIPPI RIVER BRIDGE AUTHORITY ET AL.* C. A. 5th Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Société Nationale Industrielle Aérospatiale v. United States District Court*, 482 U. S. 522 (1987). Reported below: 754 F. 2d 602.

No. 85-99. *MESSERSCHMITT BOLKOW BLOHM, GMBH. v. WALKER ET AL.* C. A. 5th Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Société Nationale Industrielle Aérospatiale v. United States District Court*, 482 U. S. 522 (1987). Reported below: 757 F. 2d 729.

No. 86-1738. *LACINA ET AL. v. G-K TRUCKING ET AL.* C. A. 9th Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *West v. Conrail*, 481 U. S. 35 (1987). JUSTICE STEVENS took no part in the consideration or decision of this case. Reported below: 802 F. 2d 1190.

*Miscellaneous Orders*

No. D-622. *IN RE DISBARMENT OF PASTERNAK*. Disbarment entered. [For earlier order herein, see 480 U. S. 944.]

No. D-643. *IN RE DISBARMENT OF ROSENBLEET*. It is ordered that Charles Rosenbleet, of Bethesda, 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. 108, Orig. *NEBRASKA v. WYOMING ET AL.* It is ordered that Owen Olpin, Esquire, of Los Angeles, Cal., be appointed Special Master in this case with authority to fix the time and conditions for the filing of additional pleadings and to direct subsequent proceedings, and with authority to summon witnesses, issue subpoenas, and take such evidence as may be introduced and such as he may deem necessary to call for. The Master is directed to submit such reports as he may deem appropriate.

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The compensation of the Special Master, the allowances to him, the compensation paid to his legal, technical, stenographic, and clerical assistants, the cost of printing his report, and all other proper expenses, including travel expenses, shall be charged against and be borne by the parties in such proportion as the Court may hereafter direct.

Motions of Basin Electric Power Cooperative, Platte River Trust, National Audubon Society, and Nebraska Public Power District et al. for leave to intervene referred to the Special Master. [For earlier order herein, see, *e. g.*, 481 U. S. 1011.]

No. 86-622. TRAYNOR *v.* TURNAGE, ADMINISTRATOR, VETERANS' ADMINISTRATION, ET AL. C. A. 2d Cir. [Certiorari granted, 480 U. S. 916]; and

No. 86-737. MCKELVEY *v.* TURNAGE, ADMINISTRATOR OF VETERANS' AFFAIRS, ET AL. C. A. D. C. Cir. [Certiorari granted, 480 U. S. 916.] Motion of petitioners for divided argument denied. JUSTICE SCALIA took no part in the consideration or decision of this motion.

No. 86-939. ETSI PIPELINE PROJECT *v.* MISSOURI ET AL.; and  
No. 86-941. HODEL, SECRETARY OF THE INTERIOR, ET AL. *v.* MISSOURI ET AL. C. A. 8th Cir. [Certiorari granted, 480 U. S. 905.] Motion of the Solicitor General for divided argument denied. Motion of respondents for divided argument denied. Motion of Montana et al. for leave to participate in oral argument as *amici curiae*, for additional time for oral argument, and for divided argument denied.

No. 86-1329 (A-894). GULFSTREAM AEROSPACE CORP. *v.* MAYACAMAS CORP. C. A. 9th Cir. [Certiorari granted, 481 U. S. 1068.] Motion of petitioner to expedite oral argument denied. Application for stay, presented to JUSTICE O'CONNOR, and by her referred to the Court, denied.

No. 86-1659. CONTINENTAL CAN CO. *v.* GAVALIK ET AL. C. A. 3d Cir. The Solicitor General is invited to file a brief in this case expressing the views of the United States.

No. 86-6835. WRENN *v.* CAPSTONE MEDICAL CENTER ET AL. C. A. 11th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied. Petitioner is allowed until July 13, 1987, within which to pay the docketing fee required by Rule 45(a) and

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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. 86-6767. *IN RE CALDWELL*. Petition for writ of mandamus denied.

No. 86-6783. *IN RE PHILLIPS*. Petition for writ of prohibition denied.

*Probable Jurisdiction Noted*

No. 86-935. *REGENTS OF THE UNIVERSITY OF CALIFORNIA v. PUBLIC EMPLOYMENT RELATIONS BOARD ET AL.* Appeal from Ct. App. Cal., 1st App. Dist. Probable jurisdiction noted. Reported below: 182 Cal. App. 3d 71, 227 Cal. Rptr. 57.

No. 86-1172. *GOODYEAR ATOMIC CORP. v. MILLER ET AL.* Appeal from Sup. Ct. Ohio. Probable jurisdiction noted. Reported below: 26 Ohio St. 3d 110, 497 N. E. 2d 76.

*Certiorari Granted*

No. 86-1387. *MACKEY ET AL. v. LANIER COLLECTION AGENCY & SERVICE, INC.* Sup. Ct. Ga. Certiorari granted. Reported below: 256 Ga. 499, 350 S. E. 2d 439.

No. 86-1431. *LOEFFLER v. TISCH, POSTMASTER GENERAL OF THE UNITED STATES.* C. A. 8th Cir. Certiorari granted. Reported below: 806 F. 2d 817.

No. 86-958. *NORWEST BANK WORTHINGTON ET AL. v. AHLERS ET UX.* C. A. 8th Cir. Motion of American Bankers Association for leave to file a brief as *amicus curiae* granted. Certiorari granted limited to Question 1 presented by the petition. Reported below: 794 F. 2d 388.

No. 86-6139. *WATSON v. FORT WORTH BANK & TRUST.* C. A. 5th Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted limited to Question 1 presented by the petition. Reported below: 798 F. 2d 791.

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No. 86-6867. *LOWENFIELD v. PHELPS, SECRETARY, LOUISIANA DEPARTMENT OF CORRECTIONS, ET AL.* C. A. 5th Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted limited to Questions 1 and 2 presented by the petition. Reported below: 817 F. 2d 285.

*Certiorari Denied.* (See also Nos. 86-1736, 86-5678, 86-6816, and 86-6844, *supra.*)

No. 86-1400. *COMMONWEALTH OIL REFINING CO., INC. v. UNITED STATES ENVIRONMENTAL PROTECTION AGENCY.* C. A. 5th Cir. Certiorari denied. Reported below: 805 F. 2d 1175.

No. 86-1416. *MOTTO v. UNITED STATES.* C. A. 3d Cir. Certiorari denied. Reported below: 808 F. 2d 1518.

No. 86-1417. *COLLINS ET AL. v. COUNTY OF KENDALL, ILLINOIS, ET AL.* C. A. 7th Cir. Certiorari denied. Reported below: 807 F. 2d 95.

No. 86-1429. *SECURITIES INDUSTRY ASSN. v. BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM ET AL.* C. A. D. C. Cir. Certiorari denied. Reported below: 257 U. S. App. D. C. 137, 807 F. 2d 1052.

No. 86-1436. *YANKTON SIOUX TRIBE OF INDIANS v. SOUTH DAKOTA ET AL.* C. A. 8th Cir. Certiorari denied. Reported below: 796 F. 2d 241.

No. 86-1474. *RUBIN v. FLORIDA.* Dist. Ct. App. Fla., 3d Dist. Certiorari denied. Reported below: 490 So. 2d 1001.

No. 86-1480. *ALEXANDER ET AL. v. CHEVRON U. S. A.* C. A. 5th Cir. Certiorari denied. Reported below: 806 F. 2d 526.

No. 86-1493. *STATE BANK OF INDIA v. NATIONAL LABOR RELATIONS BOARD ET AL.* C. A. 7th Cir. Certiorari denied. Reported below: 808 F. 2d 526.

No. 86-1514. *CALLAHAN v. UNITED STATES.* C. A. 7th Cir. Certiorari denied. Reported below: 808 F. 2d 837.

No. 86-1527. *MCCLELLAN REALTY CO. ET AL. v. UNITED STATES ET AL.* C. A. 3d Cir. Certiorari denied. Reported below: 803 F. 2d 1288.

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No. 86-1543. *PETERSON PAINTING, INC. v. NATIONAL LABOR RELATIONS BOARD*. C. A. 9th Cir. Certiorari denied. Reported below: 804 F. 2d 1253.

No. 86-1553. *COHEN v. UNITED STATES*; and

No. 86-1579. *IANNIELLO ET AL. v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 808 F. 2d 184.

No. 86-1577. *FERNANDEZ v. UNITED STATES*. C. A. 11th Cir. Certiorari denied. Reported below: 797 F. 2d 943.

No. 86-1589. *PRICE v. TAMPA ELECTRIC CO.* C. A. 11th Cir. Certiorari denied. Reported below: 806 F. 2d 1551.

No. 86-1594. *SMALL v. UNITED STATES*. C. A. 11th Cir. Certiorari denied. Reported below: 798 F. 2d 1418.

No. 86-1689. *KIN SUN YUEN v. UNITED STATES*. C. A. 11th Cir. Certiorari denied. Reported below: 808 F. 2d 1522.

No. 86-1721. *NEW JERSEY TRANSIT POLICEMEN'S BENEVOLENT ASSN., LOCAL 304 v. NEW JERSEY TRANSIT CORPORATION*. C. A. 3d Cir. Certiorari denied. Reported below: 806 F. 2d 451.

No. 86-1724. *O'MALLEY v. XEROX CORP. ET AL.* Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 86-1731. *BEHRMAN v. BEHRMAN*. App. Ct. Mass. Certiorari denied. Reported below: 23 Mass. App. 1104, 500 N. E. 2d 292.

No. 86-1745. *MOORE ET AL. v. FROST ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 809 F. 2d 297.

No. 86-1749. *BENZIES v. ILLINOIS DEPARTMENT OF MENTAL HEALTH AND DEVELOPMENTAL DISABILITIES*. C. A. 7th Cir. Certiorari denied. Reported below: 810 F. 2d 146.

No. 86-1752. *ILLINOIS v. GIBONS ET AL.* App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 149 Ill. App. 3d 37, 500 N. E. 2d 517.

No. 86-1755. *WMBIC INDEMNITY CORP. v. SUPERIOR COURT OF LOS ANGELES COUNTY (SHORT, REAL PARTY IN INTEREST)*. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 86-1759. *WOOD ET AL. v. INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF*

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AMERICA, LOCAL 406, ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 807 F. 2d 493.

No. 86-1763. WALKER *v.* THIELEN MOTORS, INC., ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 815 F. 2d 81.

No. 86-1768. TOBIN *v.* PETRILLO ET AL. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 148 Ill. App. 3d 581, 499 N. E. 2d 952.

No. 86-1769. CITY OF LAWTON, OKLAHOMA *v.* TURNER. Sup. Ct. Okla. Certiorari denied. Reported below: 733 P. 2d 375.

No. 86-1770. OKLAHOMA CORPORATION COMMISSION *v.* HARRY R. CARLILE TRUST (ARTHURS, TRUSTEE). Sup. Ct. Okla. Certiorari denied. Reported below: 732 P. 2d 438.

No. 86-1777. SZOPKO *v.* KINSMAN MARINE TRANSIT CO. Sup. Ct. Mich. Certiorari denied. Reported below: 426 Mich. 653, 397 N. W. 2d 171.

No. 86-1809. PEREGOFF *v.* CHESAPEAKE & POTOMAC TELEPHONE COMPANY OF MARYLAND. Ct. Sp. App. Md. Certiorari denied. Reported below: 68 Md. App. 736.

No. 86-1819. BORELLI *v.* UNITED STATES;

No. 86-1820. USTICA *v.* UNITED STATES;

No. 86-1821. RENDINI *v.* UNITED STATES; and

No. 86-6810. TUREKIAN *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 811 F. 2d 47.

No. 86-1835. ROCHMAN *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 810 F. 2d 67.

No. 86-1844. CAVANAUGH ET AL. *v.* UNITED STATES ET AL. C. A. 1st Cir. Certiorari denied. Reported below: 815 F. 2d 691.

No. 86-5590. DETTMER *v.* MURRAY, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 799 F. 2d 929.

No. 86-6447. PLAISANCE *v.* LOUISIANA. Ct. App. La., 1st Cir. Certiorari denied.

No. 86-6500. DAVIS *v.* UNITED STATES;

No. 86-6522. RANSOM *v.* UNITED STATES;

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- No. 86-6530. *DAVIS v. UNITED STATES*; and  
No. 86-6792. *DAVIS v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 809 F. 2d 1194.
- No. 86-6505. *REDFERN v. TEXAS*. Ct. App. Tex., 3d Dist. Certiorari denied.
- No. 86-6524. *CRUTCHFIELD v. DUGGER, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL.* C. A. 11th Cir. Certiorari denied. Reported below: 803 F. 2d 1103.
- No. 86-6565. *FELTON v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 811 F. 2d 190.
- No. 86-6587. *TOSCH v. ILLINOIS*. Sup. Ct. Ill. Certiorari denied. Reported below: 114 Ill. 2d 474, 501 N. E. 2d 1253.
- No. 86-6598. *LANGFORD v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 802 F. 2d 1176.
- No. 86-6631. *THIBODEAUX v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 811 F. 2d 847.
- No. 86-6633. *TOWLES v. UNITED STATES*. Ct. App. D. C. Certiorari denied. Reported below: 521 A. 2d 651.
- No. 86-6788. *MACK v. CHICAGO ALLIED WAREHOUSES, INC., ET AL.* App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 145 Ill. App. 3d 1159, 511 N. E. 2d 277.
- No. 86-6797. *BAKER v. WASHINGTON*. Sup. Ct. Wash. Certiorari denied.
- No. 86-6798. *JONES v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 811 F. 2d 1505.
- No. 86-6802. *LINDER v. LINDER*. Ct. App. Tex., 5th Dist. Certiorari denied.
- No. 86-6803. *FAHEY v. JAMES E. BECKLEY & ASSOCIATES*. C. A. 7th Cir. Certiorari denied. Reported below: 815 F. 2d 708.
- No. 86-6805. *SIMPSON v. BOWERS ET AL.* C. A. 8th Cir. Certiorari denied. Reported below: 815 F. 2d 711.
- No. 86-6806. *FRANSAW v. LYNAUGH, DIRECTOR, TEXAS DEPARTMENT OF CORRECTIONS*. C. A. 5th Cir. Certiorari denied. Reported below: 810 F. 2d 518.

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No. 86-6807. *GROFF v. PENNSYLVANIA*. Sup. Ct. Pa. Certiorari denied. Reported below: 515 Pa. 580, 527 A. 2d 541.

No. 86-6815. *MOORE v. BLACKBURN, WARDEN, ET AL.* C. A. 5th Cir. Certiorari denied.

No. 86-6829. *HAIRSTON v. TINGEN ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 816 F. 2d 672.

No. 86-6830. *CAMPBELL v. MONTANA*. Sup. Ct. Mont. Certiorari denied.

No. 86-6831. *BURKS v. HOLIDAY CORP. ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 815 F. 2d 76.

No. 86-6852. *VILLANUEVA v. LYNAUGH, DIRECTOR, TEXAS DEPARTMENT OF CORRECTIONS*. C. A. 5th Cir. Certiorari denied. Reported below: 812 F. 2d 1403.

No. 86-6861. *AKUDIGWE v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 814 F. 2d 655.

No. 86-6869. *DIGREGORIO v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 815 F. 2d 694.

No. 86-6870. *GORDON v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 812 F. 2d 965.

No. 86-6874. *HALBLEIB v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 815 F. 2d 696.

No. 86-6877. *LONDON v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 815 F. 2d 696.

No. 86-6888. *BROWN v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 813 F. 2d 408.

No. 86-6892. *VANOVER v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 815 F. 2d 81.

No. 86-6916. *MAKER v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 813 F. 2d 398.

No. 86-6917. *SCUTARI v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 813 F. 2d 1231.

No. 86-1115. *LOUISIANA LAND & EXPLORATION Co. v. TEXACO INC.* Sup. Ct. La. Motions of Louisiana Landowners

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Association, Inc., and National Association of Royalty Owners, Inc., for leave to file briefs as *amici curiae* granted. Certiorari denied. Reported below: 491 So. 2d 363.

No. 86-1572. KEMP, WARDEN *v.* BROOKS. C. A. 11th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 809 F. 2d 700.

No. 86-1765. FAIRMAN, WARDEN *v.* ESPINOZA. C. A. 7th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 813 F. 2d 117.

No. 86-1575. DEPARTMENT OF BANKING AND CONSUMER FINANCE OF THE STATE OF MISSISSIPPI *v.* CLARKE, COMPTROLLER OF THE CURRENCY OF THE UNITED STATES, ET AL. C. A. 5th Cir. Certiorari denied. JUSTICE BLACKMUN took no part in the consideration or decision of this petition. Reported below: 809 F. 2d 266.

No. 86-1599. SANCHEZ *v.* ILLINOIS. Sup. Ct. Ill.;

No. 86-1754. EVANS *v.* BAIR, WARDEN. Cir. Ct. Alexandria, Va.;

No. 86-6436. DEHART *v.* PENNSYLVANIA. Sup. Ct. Pa.;

No. 86-6491. JACKSON *v.* FLORIDA. Sup. Ct. Fla.;

No. 86-6654. GUEST *v.* ILLINOIS. Sup. Ct. Ill.;

No. 86-6823. JACKSON *v.* ALABAMA. Ct. Crim. App. Ala.;

No. 86-6944. BANNISTER *v.* MISSOURI. Ct. App. Mo., Southern Dist.; and

No. 86-6984. RITTER *v.* SMITH, COMMISSIONER, ALABAMA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: No. 86-1599, 115 Ill. 2d 238, 503 N. E. 2d 277; No. 86-6436, 512 Pa. 235, 516 A. 2d 656; No. 86-6491, 498 So. 2d 406; No. 86-6654, 115 Ill. 2d 72, 503 N. E. 2d 255; No. 86-6823, 501 So. 2d 542; No. 86-6944, 726 S. W. 2d 821; No. 86-6984, 811 F. 2d 1398.

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.

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No. 86-1638. LEE ENTERPRISES, INC., ET AL. *v.* SIBLE. Sup. Ct. Mont. Motion of American Newspaper Publishers Association et al. for leave to file a brief as *amici curiae* granted. Certiorari denied. Reported below: 224 Mont. 163, 729 P. 2d 1271.

No. 86-1686. FORD MOTOR CO. *v.* ANDERSEN ET AL. C. A. 8th Cir. Motion of Chamber of Commerce of the United States for leave to file a brief as *amicus curiae* granted. Certiorari denied. JUSTICE BLACKMUN took no part in the consideration or decision of this motion and this petition. Reported below: 803 F. 2d 953.

No. 86-1761. PRATT ET AL. *v.* SHOEMATE, SUPERINTENDENT OF THE OSAGE INDIAN AGENCY, ET AL. C. A. 10th Cir. Motion of petitioners to strike brief of federal respondents denied. Certiorari denied.

No. 86-1964 (A-896). WALLACE *v.* ARIZONA. Sup. Ct. Ariz. Application for stay of execution of sentence of death, presented to JUSTICE O'CONNOR, and by her referred to the Court, denied. Certiorari denied. Reported below: 151 Ariz. 362, 728 P. 2d 232.

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.

No. 86-6821. JROE *v.* CARHART ET AL. Sup. Jud. Ct. Mass. Motion of petitioner to defer consideration of the petition for writ of certiorari denied. Certiorari denied.

#### *Rehearing Denied*

No. 85-2169. SAINT FRANCIS COLLEGE ET AL. *v.* AL-KHAZRAJI, AKA ALLAN, 481 U. S. 604;

No. 86-1510. TYRAKOWSKI *v.* TYRAKOWSKI, 481 U. S. 1044;

No. 86-1597. CHETISTER *v.* DOUGLAS, JUSTICE, SUPREME COURT OF OHIO, ET AL., 481 U. S. 1069;

No. 86-5026. WINGO *v.* BLACKBURN, WARDEN, 481 U. S. 1042;

No. 86-5292. LOYD *v.* LOUISIANA, 481 U. S. 1042;

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- No. 86-5379. *WATSON v. BLACKBURN, WARDEN*, 481 U. S. 1042;
- No. 86-5426. *BROGDON v. BLACKBURN, WARDEN*, 481 U. S. 1042;
- No. 86-5436. *GLASS v. BLACKBURN, WARDEN*, 481 U. S. 1042;
- No. 86-5544. *WELCOME v. BLACKBURN, WARDEN*, 481 U. S. 1042;
- No. 86-5800. *BERRY v. PHELPS, SECRETARY, LOUISIANA DEPARTMENT OF CORRECTIONS, ET AL.*, 481 U. S. 1042;
- No. 86-6043. *RAULT v. BLACKBURN, WARDEN*, 481 U. S. 1042;
- No. 86-6188. *MOORE v. BLACKBURN, WARDEN*, 481 U. S. 1042;
- No. 86-6303. *PIERRE, AKA SELBY v. SHULSEN, WARDEN, ET AL.*, 481 U. S. 1033;
- No. 86-6322. *ROSS v. ZIMMERMAN, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AND DIAGNOSTIC AND CLASSIFICATION CENTER AT GRATERFORD, ET AL.*, 481 U. S. 1052;
- No. 86-6364. *STICKLES v. VETERANS ADMINISTRATION*, 481 U. S. 1053;
- No. 86-6397. *LOPEZ v. UNITED STATES*, 481 U. S. 1030;
- No. 86-6473. *RAMIREZ v. ILLINOIS*, 481 U. S. 1053;
- No. 86-6603. *DOBBS v. KEMP, WARDEN*, 481 U. S. 1059;
- No. 86-6609. *CARPENTER v. HEETER, JUDGE, MUNICIPAL COURT OF LIMA, OHIO, ET AL.*, 481 U. S. 1040; and
- No. 86-6686. *LOVINGOOD v. UNITED STATES*, 481 U. S. 1057. Petitions for rehearing denied.
- No. 85-5402. *GRADY v. MISSOURI*, 474 U. S. 951. Motion for leave to file petition for rehearing denied.
- No. 86-1366. *DUQUESNE LIGHT CO. ET AL. v. STATE TAX DEPARTMENT OF WEST VIRGINIA ET AL.*, 481 U. S. 1044. Petition for rehearing denied. JUSTICE POWELL took no part in the consideration or decision of this petition.
- No. 86-5769 (A-871). *THOMPSON v. DUGGER, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS*, 481 U. S. 1042. Application for stay of execution of sentence of death, addressed to JUSTICE STEVENS and referred to the Court, denied. JUSTICE BRENNAN and JUSTICE MARSHALL would grant the application. Petition for rehearing denied.

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*Miscellaneous Orders*

No. A-936 (86-1970). *MISSISSIPPI POWER & LIGHT CO. v. MISSISSIPPI EX REL. PITTMAN, ATTORNEY GENERAL, ET AL.* Application for stay of the Order Granting Mandatory Temporary Restraining Order and Setting Aside Chancery Court Order of June 18, 1987, issued by the Supreme Court of Mississippi on June 19, 1987, presented to JUSTICE WHITE, and by him referred to the Court, is hereby granted pending further order of the Court.

No. A-944. *JOHNSON 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 O'CONNOR took no part in the consideration or decision of this application.

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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*Appeals Dismissed*

No. 86-1722. *HEUBLEIN, INC. v. GEORGIA ET AL.* Appeal from Sup. Ct. Ga. dismissed for want of properly presented federal question. JUSTICE STEVENS and JUSTICE SCALIA would note probable jurisdiction and set case for oral argument. Reported below: 256 Ga. 578, 351 S. E. 2d 190.

No. 86-1787. *L. L. BEAN, INC. v. DRAKE PUBLISHERS, INC., ET AL.* Appeal from C. A. 1st Cir. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied. Reported below: 811 F. 2d 26.

No. 86-1948. *ANDERSON v. OREGON STATE BAR ET AL.* Appeal from C. A. 9th Cir. 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.

No. 86-1828. ALBERTUS ET AL. *v.* STATE TAX COMMISSION OF MISSOURI ET AL. Appeal from Sup. Ct. Mo. dismissed for want of substantial federal question. Reported below: 722 S. W. 2d 916.

*Vacated and Remanded on Appeal*

No. 86-358. AMERICAN TRUCKING ASSNS., INC., ET AL. *v.* GRAY, DIRECTOR, ARKANSAS HIGHWAY AND TRANSPORTATION DEPARTMENT, ET AL. Appeal from Sup. Ct. Ark. Motion of Yellow Freight System et al. for leave to file a brief as *amici curiae* granted. Judgment vacated and case remanded for further consideration in light of *American Trucking Assns., Inc. v. Scheiner*, ante, p. 266. Reported below: 288 Ark. 488, 707 S. W. 2d 759.

No. 86-415. REIVITZ, SECRETARY, WISCONSIN DEPARTMENT OF HEALTH AND SOCIAL SERVICES *v.* LESKO ET AL.; and

No. 86-744. BOWEN, SECRETARY OF HEALTH AND HUMAN SERVICES *v.* LESKO ET AL. Appeals from D. C. E. D. Wis. Motion of appellees for leave to proceed *in forma pauperis* granted. Judgment vacated and cases remanded for further consideration in light of *Bowen v. Gilliard*, ante, p. 587. Reported below: 639 F. Supp. 1152.

No. 86-1140. BOWEN, SECRETARY OF HEALTH AND HUMAN SERVICES *v.* BALDWIN ET AL.; and

No. 86-1161. LEDBETTER, COMMISSIONER, GEORGIA DEPARTMENT OF HUMAN RESOURCES *v.* BALDWIN. Appeals from D. C. N. D. Ga. Judgment vacated and cases remanded for further consideration in light of *Bowen v. Gilliard*, ante, p. 587. Reported below: 647 F. Supp. 623.

*Certiorari Granted—Vacated and Remanded*

No. 86-364. BLAIR, SECRETARY OF HEALTH OF SOUTH DAKOTA, ET AL. *v.* FREEMAN ET AL. C. A. 8th Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Anderson v. Creighton*, ante, p. 635, and *New York v. Burger*, 482 U. S. 691 (1987). Reported below: 793 F. 2d 166.

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No. 86-632. *McMAHAN ET AL. v. UNITED STATES*. C. A. 4th Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *McNally v. United States*, ante, p. 350. Reported below: 788 F. 2d 234.

No. 86-700. *VODILA v. CLELLAND ET AL.* C. A. 6th Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Goodman v. Lukens Steel Co.*, 482 U. S. 656 (1987), and *Saint Francis College v. Al-Khazraji*, 481 U. S. 604 (1987). Reported below: 802 F. 2d 460.

No. 86-905. *PHILADELPHIA ELECTRIC CO. v. BLACK GRIEVANCE COMMITTEE ET AL.* C. A. 3d Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Pennsylvania v. Delaware Valley Citizens' Council for Clean Air*, ante, p. 711. Reported below: 802 F. 2d 648.

No. 86-1490. *MCWHERTER, GOVERNOR OF TENNESSEE, ET AL. v. BROOKS*. C. A. 6th Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Pennsylvania v. Delaware Valley Citizens' Council for Clean Air*, ante, p. 711. JUSTICE BLACKMUN dissents and would deny certiorari. Reported below: 811 F. 2d 603.

No. 86-1628. *TELLIS v. UNITED STATES FIDELITY & GUARANTY CO. ET AL.* C. A. 7th Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Agency Holding Corp. v. Malley-Duff & Associates, Inc.*, ante, at 156. Reported below: 805 F. 2d 741.

#### *Miscellaneous Orders*

No. — — —. *GREAT AMERICAN FIRST SAVINGS BANK v. UNITED STATES*; and

No. — — —. *ROGERS v. PLATT ET AL.* Motions to direct the Clerk to file the petitions for writs of certiorari out of time denied.

No. A-2. *DUGGER, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS v. AGAN*. Application of the Attorney General of Florida for an order to vacate the stay of execution of sentence of death entered by the United States Court of Appeals for the Eleventh Circuit, presented to JUSTICE WHITE, and by him referred to the Court, denied.

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No. D-580. *IN RE DISBARMENT OF SISK*. Mary Neal Sisk, of New York, N. Y., having requested to resign as a member of the Bar of this Court, it is ordered that her 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 October 20, 1986 [479 U. S. 912], is hereby discharged.

No. D-581. *IN RE DISBARMENT OF HYBSHA*. Disbarment entered. [For earlier order herein, see 479 U. S. 926.]

No. D-589. *IN RE DISBARMENT OF BENEDICT*. Mark J. Benedict, of Austin, Tex., having requested to resign as a member of the Bar of this Court, it is ordered that his name be stricken from the roll of attorneys admitted to practice before the Bar of this Court. The rule to show cause, heretofore issued on November 17, 1986 [479 U. S. 958], is hereby discharged.

No. D-611. *IN RE DISBARMENT OF BRICKLE*, 480 U. S. 902. Motion for reconsideration of order of disbarment denied.

No. D-621. *IN RE DISBARMENT OF FOLAN*. Disbarment entered. [For earlier order herein, see 480 U. S. 943.]

No. D-628. *IN RE DISBARMENT OF BRUMFIELD*. Disbarment entered. [For earlier order herein, see 481 U. S. 1010.]

No. D-632. *IN RE DISBARMENT OF WHITTED*. Earl Whitted, Jr., of Goldsboro, N. C., 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 May 4, 1987 [481 U. S. 1035], is hereby discharged.

No. D-637. *IN RE DISBARMENT OF HOAGLAND*. Robert D. Hoagland, of Charlotte, N. C., 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 June 1, 1987 [482 U. S. 903], is hereby discharged.

No. D-640. *IN RE DISBARMENT OF OXFELD*. Emil Oxfeld, of South Orange, N. J., 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 June 1, 1987 [482 U. S. 903], is hereby discharged.

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No. D-644. *IN RE DISBARMENT OF JAFREE*. It is ordered that Syed M. J. Iqbal Jafree, of San Diego, Cal., 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-645. *IN RE DISBARMENT OF FREUDENBERG*. It is ordered that Robert Edwin Freudenberg, of San Luis Obispo, Cal., 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-646. *IN RE DISBARMENT OF MADSEN*. It is ordered that Harry A. Madsen, of Park Ridge, 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. 85-1551. *KARCHER, SPEAKER OF THE NEW JERSEY GENERAL ASSEMBLY, ET AL. v. MAY ET AL.* C. A. 3d Cir. [Probable jurisdiction postponed, 479 U. S. 1062.] Motion of Ronald Sokalski et al. for leave to intervene as appellants denied. Alternative request for leave to file a brief as *amici curiae* granted.

No. 86-228. *KUNGYS v. UNITED STATES*. C. A. 3d Cir. [Certiorari granted, 479 U. S. 947.] Case restored to calendar for reargument. The parties are directed to file supplemental briefs addressing the following questions:

"(1) Whether petitioner is subject to denaturalization for want of good moral character under 8 U. S. C. §§ 1451(a), 1427(a), and 1101(f)(6), with particular attention to:

"(a) whether the 'false testimony' provision of 8 U. S. C. § 1101(f)(6) should be interpreted to include a requirement that the false testimony concern a material fact;

"(b) what standards should govern the determination under 8 U. S. C. § 1101(f)(6) whether 'false testimony' has been given 'for the purpose of obtaining any benefits under this chapter . . .'; and

"(c) whether the latter determination is one of law or fact.

"(2)(a) Should the materiality standard articulated in *Chaunt v. United States*, 364 U. S. 350 (1960), be abandoned and, if so, what

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standard should govern the materiality inquiry under 8 U. S. C. § 1451(a); and

“(b) is the determination of materiality under 8 U. S. C. § 1451(a) one of law or fact.

“(3) When a misrepresentation has been established as ‘material’ within the meaning of 8 U. S. C. § 1451(a), must any further showing be made to establish that citizenship was ‘procured by’ that misrepresentation.”

The parties also may address the questions presented in the petition for certiorari. The parties are directed to file opening briefs on or before August 3, 1987. Closing briefs are to be filed on or before August 24, 1987.

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 respondent Luke R. Ray for divided argument denied. Motion of respondent Gerald Stapleton for leave to proceed further herein *in forma pauperis* granted. Motion of respondent Gerald Stapleton for leave to file a brief on the merits out of time granted.

No. 86-810. *MOSLEY v. BARTMAN ET AL.*, 479 U. S. 1054; and

No. 86-811. *MOSLEY v. NOEL ET AL.*, 479 U. S. 1054. Motions of petitioner to direct the Clerk to file petitions for rehearing out of time denied.

No. 86-1278. *HUSTLER MAGAZINE, INC., ET AL. v. FALWELL*. C. A. 4th Cir. [Certiorari granted, 480 U. S. 945.] Motions for leave to file briefs as *amici curiae* filed by the following are granted: Law and Humanities Institute, Volunteer Lawyers for the Arts, Inc., Reporters Committee for Freedom of the Press et al., American Civil Liberties Union Foundation et al., Richmond Newspapers, Inc., et al., American Editorial Cartoonists et al., Association of American Publishers, Inc., and Home Box Office, Inc.

No. 86-1552. *DEPARTMENT OF THE NAVY v. EGAN*. C. A. Fed. Cir. [Certiorari granted, 481 U. S. 1068.] Motion of the Solicitor General to dispense with printing the joint appendix granted.

No. 86-1672. *COMMISSIONER OF INTERNAL REVENUE v. BOL-LINGER ET AL.* C. A. 6th Cir. [Certiorari granted, 482 U. S.

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913.] Motion of the Solicitor General to dispense with printing the joint appendix granted.

No. 86-1786. UNITED METAL PRODUCTS CORP. *v.* NATIONAL BANK OF DETROIT. C. A. 6th Cir. The Solicitor General is invited to file a brief in this case expressing the views of the United States.

*Probable Jurisdiction Noted*

No. 86-6757. COY *v.* IOWA. Appeal from Sup. Ct. Iowa. Motion of appellant for leave to proceed *in forma pauperis* granted. Probable jurisdiction noted. Reported below: 397 N. W. 2d 730.

*Certiorari Granted*

No. 86-684. CALIFORNIA *v.* GREENWOOD ET AL. Ct. App. Cal., 4th App. Dist. Motions of respondents for leave to proceed *in forma pauperis* granted. Certiorari granted. Reported below: 182 Cal. App. 3d 729, 227 Cal. Rptr. 539.

*Certiorari Denied.* (See also Nos. 86-1787 and 86-1948, *supra.*)

No. 85-1437. WILKINS *v.* SAYRES ET AL.; and WILKINS *v.* ROUSCH ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 785 F. 2d 318.

No. 85-1519. HOOPER ET AL. *v.* DONTA. C. A. 6th Cir. Certiorari denied. Reported below: 774 F. 2d 716.

No. 85-1691. BERNSTEIN *v.* PENNSYLVANIA ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 782 F. 2d 1026.

No. 85-1892. PAONE *v.* UNITED STATES;

No. 85-1901. RUSSOTTI *v.* UNITED STATES;

No. 85-1902. PICCARRETO *v.* UNITED STATES; and

No. 85-1949. MARINO ET AL. *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 782 F. 2d 386.

No. 86-11. FRANTZ ET UX. *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 2d Cir. Certiorari denied. Reported below: 784 F. 2d 119.

No. 86-69. AMERICAN TRUCKING ASSNS., INC., ET AL. *v.* CONWAY, COMMISSIONER OF MOTOR VEHICLES, ET AL. (two cases); and

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No. 86-276. CONWAY, COMMISSIONER OF MOTOR VEHICLES, ET AL. *v.* AMERICAN TRUCKING ASSNS., INC., ET AL. (two cases). Sup. Ct. Vt. Certiorari denied. Reported below: 146 Vt. 579, 508 A. 2d 408 (first cases); 146 Vt. 574, 508 A. 2d 405 (second cases).

No. 86-443. BOARD OF REGENTS OF THE UNIVERSITY OF MARYLAND ET AL. *v.* STANLEY ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 786 F. 2d 1490.

No. 86-570. COUNTY OF FRESNO ET AL. *v.* SUPERIOR COURT OF THE COUNTY OF FRESNO (MOTSENBOCKER, REAL PARTY IN INTEREST). Ct. App. Cal., 5th App. Dist. Certiorari denied.

No. 86-815. DUFFY, SHERIFF, COUNTY OF SAN DIEGO, CALIFORNIA *v.* WARD. C. A. 9th Cir. Certiorari denied. Reported below: 791 F. 2d 1329.

No. 86-934. PUSKARIC *v.* UNITED STATES; and JENKINS *v.* UNITED STATES. Ct. Mil. App. Certiorari denied. Reported below: 23 M. J. 178.

No. 86-953. ABELL *v.* UNITED STATES. Ct. Mil. App. Certiorari denied. Reported below: 23 M. J. 99.

No. 86-1121. COUNTY OF MONROE ET AL. *v.* WEBER ET VIR. C. A. 2d Cir. Certiorari denied. Reported below: 804 F. 2d 796.

No. 86-1141. VAKALIS *v.* KAGAN ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 805 F. 2d 392.

No. 86-1144. CITY OF MONTGOMERY ET AL. *v.* EILAND. C. A. 11th Cir. Certiorari denied. Reported below: 797 F. 2d 953.

No. 86-1432. GOBLA *v.* CRESTWOOD SCHOOL DISTRICT ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 804 F. 2d 1248.

No. 86-1508. HANKINS *v.* CALIFORNIA. C. A. 9th Cir. Certiorari denied. Reported below: 810 F. 2d 205.

No. 86-1542. OLSON ET AL. *v.* EXKANO ET AL. C. A. 9th Cir. Certiorari denied.

No. 86-1600. BOTERO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 808 F. 2d 59.

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No. 86-1601. AZURIN ET AL. *v.* VON RAAB, COMMISSIONER OF CUSTOMS OF THE UNITED STATES CUSTOMS SERVICE. C. A. 9th Cir. Certiorari denied. Reported below: 803 F. 2d 993.

No. 86-1603. SINGH *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 811 F. 2d 758.

No. 86-1713. CAPORALE ET AL. *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 806 F. 2d 1487.

No. 86-1756. HARRY R. CARLILE TRUST (ARTHURS, TRUSTEE) *v.* COTTON PETROLEUM CORP. ET AL. Sup. Ct. Okla. Certiorari denied. Reported below: 732 P. 2d 438.

No. 86-1762. MANHATTAN EYE, EAR & THROAT HOSPITAL *v.* NATIONAL LABOR RELATIONS BOARD ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 814 F. 2d 653.

No. 86-1766. CAUDILL *v.* KENTUCKY. Ct. App. Ky. Certiorari denied. Reported below: 723 S. W. 2d 881.

No. 86-1771. ROE, A MINOR, BY HER NEXT FRIEND AND NATURAL GUARDIAN, ROE *v.* PENNSYLVANIA ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 813 F. 2d 398.

No. 86-1774. RAMIREZ *v.* NEVADA. Sup. Ct. Nev. Certiorari denied. Reported below: 103 Nev. 817.

No. 86-1776. GAGNE, ADMINISTRATOR OF THE ESTATE OF GAGNE, ET AL. *v.* PUTNAL. C. A. 5th Cir. Certiorari denied. Reported below: 805 F. 2d 558.

No. 86-1778. NASSAU COUNTY REPUBLICAN COMMITTEE ET AL. *v.* CULLEN ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 811 F. 2d 698.

No. 86-1779. DUNKLE, CLERK, CIRCUIT COURT, FIFTEENTH JUDICIAL CIRCUIT OF FLORIDA, ET AL. *v.* CAMDEN I CONDOMINIUM ASSN., INC., ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 805 F. 2d 1532.

No. 86-1780. ANGI, FKA NERAT *v.* SWACKER ET AL. Sup. Ct. Mich. Certiorari denied. Reported below: 426 Mich. 857.

No. 86-1789. CHONGRIS ET AL. *v.* BOARD OF APPEALS OF THE TOWN OF ANDOVER, MASSACHUSETTS, ET AL. C. A. 1st Cir. Certiorari denied. Reported below: 811 F. 2d 36.

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No. 86-1795. *KONDRAT v. BYRON ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 815 F. 2d 78.

No. 86-1798. *ATCHISON v. GEORGIA.* Ct. App. Ga. Certiorari denied. Reported below: 181 Ga. App. 351, 352 S. E. 2d 201.

No. 86-1799. *INTERNATIONAL SOUND TECHNICIANS, CINE-TECHNICIANS & TELEVISION ENGINEERS OF THE MOTION PICTURE & TELEVISION INDUSTRIES, LOCAL 695, ET AL. v. MOTION PICTURE & VIDEOTAPE EDITORS GUILD ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 800 F. 2d 973.

No. 86-1801. *HUNTZINGER v. UNITED STATES.* C. A. Fed. Cir. Certiorari denied. Reported below: 809 F. 2d 787.

No. 86-1808. *COSTIGAN v. PENNSYLVANIA.* Super. Ct. Pa. Certiorari denied. Reported below: 353 Pa. Super. 642, 506 A. 2d 1335.

No. 86-1811. *ANEST ET AL. v. LAKE COUNTY, ILLINOIS, ET AL.* App. Ct. Ill., 2d Dist. Certiorari denied. Reported below: 147 Ill. App. 3d 243, 497 N. E. 2d 1327.

No. 86-1814. *PINNER v. SCHMIDT ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 805 F. 2d 1258.

No. 86-1832. *TATA v. UNITED STATES.* C. A. 6th Cir. Certiorari denied. Reported below: 813 F. 2d 105.

No. 86-1848. *SHELTON ET UX., DBA UNIVERSITY VILLAGE MUSIC CENTER v. UNITED STATES ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 815 F. 2d 714.

No. 86-1859. *PROCTOR HOPSON POST MEMORIAL ASSN., INC. v. CITY OF NEW YORK.* App. Div., Sup. Ct. N. Y., 2d Jud. Dept. Certiorari denied.

No. 86-1881. *BARCELONA v. UNITED STATES.* C. A. 5th Cir. Certiorari denied. Reported below: 814 F. 2d 165.

No. 86-1886. *COOPER STEVEDORING CO., INC., ET AL. v. AETNA CASUALTY & SURETY CO.* Sup. Ct. Ala. Certiorari denied. Reported below: 504 So. 2d 215.

No. 86-1897. *FINN v. FINN.* Sup. Jud. Ct. Me. Certiorari denied. Reported below: 517 A. 2d 317.

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No. 86-1907. *PAUL v. FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION ET AL.* C. A. D. C. Cir. Certiorari denied. Reported below: 259 U. S. App. D. C. 1, 812 F. 2d 717.

No. 86-1916. *FLAHIVE v. UNITED STATES.* C. A. 2d Cir. Certiorari denied. Reported below: 814 F. 2d 654.

No. 86-1928. *MIMS, INDIVIDUALLY AND DBA THE EDGEFIELD ADVERTISER v. EDGEFIELD COUNTY COMMUNICATIONS, INC., ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 795 F. 2d 82.

No. 86-6183. *VITATOE v. JONES, WARDEN.* C. A. 6th Cir. Certiorari denied. Reported below: 810 F. 2d 204.

No. 86-6221. *JONES v. FIRST AMERICAN TITLE INSURANCE CO. ET AL.* C. A. 8th Cir. Certiorari denied. Reported below: 808 F. 2d 840.

No. 86-6331. *KELLY v. CALIFORNIA.* Ct. App. Cal., 1st App. Dist. Certiorari denied. Reported below: 183 Cal. App. 3d 1235, 228 Cal. Rptr. 681.

No. 86-6445. *KIMBERLIN v. UNITED STATES.* C. A. 7th Cir. Certiorari denied. Reported below: 805 F. 2d 210.

No. 86-6523. *HAMILTON v. NIX, WARDEN, ET AL.* C. A. 8th Cir. Certiorari denied. Reported below: 809 F. 2d 463.

No. 86-6672. *GREGORY v. UNITED STATES.* C. A. 8th Cir. Certiorari denied. Reported below: 808 F. 2d 679.

No. 86-6759. *JONES v. HOWARD ET AL.* C. A. 8th Cir. Certiorari denied. Reported below: 815 F. 2d 713.

No. 86-6763. *PATTON v. PENNSYLVANIA ET AL.* C. A. 3d Cir. Certiorari denied. Reported below: 813 F. 2d 398.

No. 86-6826. *FREEMAN v. HARTIGAN, ATTORNEY GENERAL OF ILLINOIS.* C. A. 7th Cir. Certiorari denied. Reported below: 815 F. 2d 708.

No. 86-6836. *WALLACE ET AL. v. PHELPS, SECRETARY, LOUISIANA DEPARTMENT OF CORRECTIONS, ET AL.* C. A. 5th Cir. Certiorari denied.

No. 86-6840. *BRASIER v. DOUGLAS, WARDEN, ET AL.* C. A. 10th Cir. Certiorari denied. Reported below: 815 F. 2d 64.

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No. 86-6842. *FLOWERS v. MORRIS, SUPERINTENDENT, SOUTHERN OHIO CORRECTIONAL FACILITY*. C. A. 6th Cir. Certiorari denied. Reported below: 815 F. 2d 77.

No. 86-6843. *JERRY-EL v. PETSOCK, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AND DIAGNOSTIC AND CLASSIFICATION CENTER AT PITTSBURGH*. C. A. 3d Cir. Certiorari denied.

No. 86-6850. *CURRINGTON v. DUNCAN ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 811 F. 2d 1507.

No. 86-6851. *ALLEN v. ASHCROFT, GOVERNOR OF MISSOURI, ET AL.* C. A. 8th Cir. Certiorari denied.

No. 86-6853. *RUEBKE v. KANSAS*. Sup. Ct. Kan. Certiorari denied. Reported below: 240 Kan. 493, 731 P. 2d 842.

No. 86-6856. *MARSHALL, AKA MUSTAFA v. DUGGER, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL.* C. A. 11th Cir. Certiorari denied. Reported below: 806 F. 2d 1068.

No. 86-6857. *KNIGHT v. LYNAUGH, DIRECTOR, TEXAS DEPARTMENT OF CORRECTIONS, ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 808 F. 2d 54.

No. 86-6860. *YUHAS v. STROUD*. Ct. App. Mich. Certiorari denied.

No. 86-6866. *DENNIS v. DUGGER, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS*. C. A. 11th Cir. Certiorari denied.

No. 86-6868. *ELLIOTT v. STAGNER, SUPERINTENDENT, CORRECTIONAL TRAINING FACILITY, SOLEDAD, CALIFORNIA, ET AL.* Sup. Ct. Cal. Certiorari denied.

No. 86-6871. *KEHOE v. PETSOCK, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AND DIAGNOSTIC AND CLASSIFICATION CENTER AT PITTSBURGH, ET AL.* C. A. 3d Cir. Certiorari denied.

No. 86-6872. *FOREMAN v. NATIONAL TREASURY EMPLOYEES UNION ET AL.* C. A. D. C. Cir. Certiorari denied.

No. 86-6873. *CARROLL v. WHITE, WARDEN, ET AL.* C. A. 11th Cir. Certiorari denied.

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No. 86-6876. *HARRISON v. LYNAUGH, DIRECTOR, TEXAS DEPARTMENT OF CORRECTIONS*. C. A. 5th Cir. Certiorari denied.

No. 86-6882. *VESAY v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 810 F. 2d 203.

No. 86-6883. *MARTIN v. SEITER*. C. A. 6th Cir. Certiorari denied. Reported below: 805 F. 2d 1035.

No. 86-6885. *SCHMIDT v. SCHMIDT ET AL.* C. A. 10th Cir. Certiorari denied.

No. 86-6893. *SWINK v. CITY OF PAGEDALE ET AL.* C. A. 8th Cir. Certiorari denied. Reported below: 810 F. 2d 791.

No. 86-6898. *SPANN v. LEFEVRE, SUPERINTENDENT, CLINTON CORRECTIONAL FACILITY, ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 814 F. 2d 654.

No. 86-6918. *SHIBUYA v. COURT OF APPEALS OF NEW YORK*. Ct. App. N. Y. Certiorari denied.

No. 86-6926. *HEPPERLE v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 810 F. 2d 836.

No. 86-6927. *AARON v. ALABAMA*. Ct. Crim. App. Ala. Certiorari denied. Reported below: 502 So. 2d 396.

No. 86-6928. *TIMMONS v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 812 F. 2d 1412.

No. 86-6939. *DAVIS v. UNITED STATES*. C. A. 1st Cir. Certiorari denied. Reported below: 815 F. 2d 692.

No. 86-6940. *COGHLAN v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 816 F. 2d 683.

No. 86-6943. *JONES v. UNITED STATES*. C. A. 11th Cir. Certiorari denied. Reported below: 815 F. 2d 716.

No. 86-6945. *CORDOBA v. UNITED STATES*. C. A. 11th Cir. Certiorari denied. Reported below: 818 F. 2d 872.

No. 86-6961. *CONKLIN v. TARD ET AL.* C. A. 3d Cir. Certiorari denied.

No. 86-6962. *BUITRAGO v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 812 F. 2d 1403.

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No. 86-6972. *COLLINS v. BROWN, DIRECTOR, MICHIGAN DEPARTMENT OF CORRECTIONS*. Sup. Ct. Mich. Certiorari denied. Reported below: 428 Mich. 868.

No. 86-6980. *JACKSON v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 813 F. 2d 1229.

No. 85-5534. *MITCHELL v. KEMP, WARDEN*. C. A. 11th Cir. Certiorari denied. Reported below: 762 F. 2d 886.

JUSTICE MARSHALL, with whom JUSTICE BRENNAN and JUSTICE BLACKMUN join, dissenting.

In *Strickland v. Washington*, 466 U. S. 668 (1984), this Court held that the Sixth Amendment's promise of effective assistance of counsel is not breached unless the criminal defendant can show that his attorney's conduct fell beyond the bounds of professional competence and thereby prejudiced his defense. *Id.*, at 687. Since *Strickland* was decided, the Court has never identified an instance of attorney dereliction that met its stringent standard. Most recently, this Court rejected a claim that inadequate investigation of mitigating circumstances constituted ineffective assistance of counsel in a capital case. See *Burger v. Kemp*, *ante*, p. 776. Lest we permit the lower courts to conclude that the Sixth Amendment guarantees no more than that "a person who happens to be a lawyer is present at trial alongside the accused"—a notion expressly disavowed in *Strickland*, *supra*, at 685—the Court should now give life to the *Strickland* standard. Accordingly, I would grant certiorari to consider the substantial allegation that counsel's performance, before the tribunal that sentenced petitioner to die, fell short of minimally effective representation.

## I

On November 5, 1974, petitioner pleaded guilty to the murder of a 14-year-old boy in the course of a convenience-store robbery. At the sentencing proceeding conducted without a jury, the State called five witnesses and introduced documentary evidence in support of its contention that petitioner should receive the death penalty. Defense counsel called no witnesses and presented no mitigating evidence. The court sentenced petitioner to die. After affirmance of his conviction, petitioner sought a writ of habeas corpus on the ground that he was denied effective assistance of counsel at the sentencing phase of his trial. The District Court

concluded that the "tactical decisions" of petitioner's counsel were professionally reasonable. *Mitchell v. Hopper*, 564 F. Supp. 780, 786 (SD Ga. 1983). The Court of Appeals, acknowledging that counsel's performance raised a "difficult question," nevertheless affirmed on the ground that it was the result of strategic choices. 762 F. 2d 886, 889-890 (CA11 1985).

The habeas corpus record before the District Court demonstrates that petitioner's appointed attorney made *no* attempt to interview *any* potential mitigating witnesses. 5 Record 21-22. He spoke to no member of petitioner's family, with the exception of petitioner's father, with whom he spoke by telephone on two occasions. Counsel apparently initiated these contacts for the purpose of requesting that the family hire an attorney to relieve him of his obligation to represent petitioner. *Id.*, at 23-24. Counsel made *no* inquiries into his client's academic, medical, or psychological history.

Nor did counsel pursue a vigorous defense with respect to the circumstances of the crime. He did not interview the police officer who witnessed petitioner's confession, which the State used to establish the existence of certain aggravating circumstances in support of the death sentence, even though petitioner had told him that the officer—the cousin of the victim—had held a gun to petitioner's head to extract the confession. Counsel's reason for not speaking to the officer was that "I personally don't like the man." 6 Record 35. Counsel did not interview the sole witness to the crime, who provided the key testimony for the prosecution at sentencing. *Id.*, at 37. He filed *no* pretrial motions on petitioner's behalf. *Id.*, at 45.

Counsel's failure to investigate mitigating circumstances left him ignorant of the abundant information that was available to an attorney exercising minimal diligence in fighting for Billy Mitchell's life. The affidavits of individuals who would have testified on petitioner's behalf fill 170 pages of the record in the District Court. Among these potential witnesses are family members, a city councilman, a former prosecutor, a professional football player, a bank vice president, and several teachers, coaches, and friends.

Had defense counsel tapped these resources, he would have been able to present the sentencing judge with a picture of a youth who, despite growing up in "the most poverty-stricken and crime-ridden section of Jacksonville, Florida," 4 Record 989, had impressed his community as a person of exceptional character.

He had been captain of the football team; leader of the prayer before each game; an above-average student; an active member of the student council, school choir, church choir, glee club, math club, and track team; a Boy Scout; captain of the patrol boys; and an attendant to the junior high school queen.

Examples of the favorable impression that petitioner left on his community abound in the record. One such example is the statement of petitioner's former teacher and athletic coach at Butler High School:

"To understand what an exceptional person Billy Mitchell was at that time, one must understand that, while a comprehensive high school, Butler at the time was a segregated school in the middle of a very impoverished area—what might be called today a ghetto. In that locale and setting, Billy Mitchell was a rarity because of the exceptional character he displayed at Butler." *Id.*, at 958-959.

Acquaintances and professionals described petitioner as "the type of person people naturally got along with," *id.*, at 967; "the kind of person you could depend on for assistance in everything," *id.*, at 956; "a hard worker who devoted a lot of time to school activities, especially activities involving younger kids," *ibid.*; "a fine student and athlete," *id.*, at 980; a person of "character and personality . . . so atypical for someone convicted of a serious crime," *id.*, at 1001; "not . . . the type of person that should be executed and given no further chance to live out a meaningful life," *id.*, at 967. Petitioner's sisters explained that petitioner took care of his 11 brothers and sisters while his mother worked, *id.*, at 953, and that petitioner took a job in the eighth grade to help support his family, *id.*, at 941.

An account of what happened to this well-adjusted young person was also readily available to anyone who took the time to ask. When petitioner was 16 years old, his parents were divorced, and soon thereafter petitioner got into trouble. He and two friends were arrested for attempted robbery. Petitioner professed his innocence, but was persuaded by his father to plead guilty, *id.*, at 948, because "things would go easier for him," *id.*, at 963. The charges against the two friends were dropped. Petitioner was sentenced to six months in prison, where he was subjected to repeated violent homosexual attacks, experienced severe depression, and lost 30 pounds. *Id.*, at 996-997. When he was re-

leased, he continued to be highly depressed, and eventually committed the crime for which he received a sentence of death.

## II

Counsel's explanation for his total lack of preparation for the sentencing hearing is that he carried an "ace in the hole." 6 Record 43. His sole strategy for representing his client's interest rested on his belief that, under Georgia law, the State would not be permitted to introduce any evidence of aggravating circumstances of which the defense had not been notified in writing. Prior to sentencing, the State had provided petitioner's counsel with oral notice of the aggravating circumstances upon which it would rely, but had not furnished written notice. Although the state statute upon which counsel's theory relied did not mention written notice, and no court decision had ever required that such notice be in writing, counsel was content to rest his entire defense, and the fate of his client, on an untried legal theory. At sentencing, counsel took the first opportunity to object to the admission of aggravating evidence of which he had not received prior written notice; the court promptly overruled his objection, and the "ace in the hole" was gone. *Id.*, at 198. Even if counsel had been correct in his interpretation of state law, of course, the State could have provided the requisite written notice at any time before the hearing, which would have left petitioner equally defenseless.

At the habeas corpus hearing, petitioner's attorney also claimed that he had not wished to present any mitigating character evidence because that would have opened the door to the State's introduction of petitioner's prior conviction. 5 Record 16. Under some circumstances, such a decision might be considered a reasonable strategy. In this case, however, it was patently unreasonable. Counsel conceded, at the habeas proceeding, that he had known nothing of the facts and circumstances of the prior conviction, other than that it was a felony. 6 Record 47. If he had made an inquiry, and if he had acquainted himself at all with what type of mitigating character evidence was available, he might have been in a position to make a professional judgment as to whether the substantial mitigating evidence would be outweighed by the prejudice resulting from the introduction of petitioner's guilty plea to attempted robbery at the age of 16, the two alleged accomplices to which had been released. Further, he might have decided to

emphasize to the court that the prior conviction was intimately connected to the entire sequence of events that formed a compelling case for mitigation. But no such balancing was made, for counsel had no information to place on either side of the scales. Moreover, under state law, the prior conviction would have been admissible even though the defense put on no evidence. See 762 F. 2d, at 890. If counsel in this case made any decisions at all, they were barren of even minimal supporting information or knowledge.

Counsel's final excuse for conducting no defense is a vague perception that the client was reluctant to have the attorney probe into his background, for reasons counsel did not know and did not attempt to find out. 6 Record 63. Counsel felt that petitioner, who had finished two years in a junior college, was intelligent and capable of making his own decisions. There is no indication, however, that counsel took any steps to inform his client of the consequences of the various alternatives. Although counsel explained to petitioner his "ace in the hole" strategy for the sentencing hearing, *ibid.*, it is not clear that he warned petitioner that the strategy might fail, or that petitioner stood a good chance of being sentenced to death. Nor is there any indication that the attorney explained the importance of mitigating evidence at a sentencing proceeding, or the potential value of petitioner's taking the stand himself. Counsel has not alleged that petitioner insisted on any particular line of defense or on any particular conduct by counsel. Rather, he provided no services on behalf of his client because he felt that the client was reluctant to involve his family and friends, perhaps out of a "sense of embarrassment." *Ibid.*

Our decisions have recognized that attorneys must have a wide degree of latitude to make strategic decisions on the basis of their knowledge of the law. We have stressed that the judgment of an attorney should not be second-guessed, as long as it falls within the sphere of professional reasonableness. *Strickland v. Washington*, 466 U. S., at 689. Nevertheless, an attorney's decision to advance a defense that is wholly unfounded in law, combined with a failure to investigate the merit of accepted and persuasive defenses, cannot be characterized as "sound trial strategy." See *Michel v. Louisiana*, 350 U. S. 91, 101 (1955). Indeed, such a decision is not strategic at all; it is incompetent. "The failure of an attorney to inform his client of the relevant law clearly satisfies the first prong of the *Strickland* analysis . . ." *Hill v. Lockhart*,

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474 U. S. 52, 62 (1985) (WHITE, J., concurring in judgment). In this case, that failure was aggravated by the additional failure to discover what meritorious defenses were available before rejecting them in favor of a frivolous technical defense. This conduct is professionally unreasonable.

As a result of counsel's nonfeasance, no one argued to the sentencing judge that petitioner should not die. The judge heard only a technical argument regarding the admissibility of aggravating circumstances without prior written notice, which he consistently rejected, in addition to a reference to petitioner's youth. These arguments were hardly an effective rebuttal to the testimony of the victim's mother and the police officers. Prejudice to petitioner's case is obvious when not even a suggestion that his life had some value, that his crime was aberrational, or that he was suffering from severe depression reached the ears and the conscience of the sentencing judge. See *Burger v. Kemp*, ante, at 816 (BLACKMUN, J., dissenting). The judge heard not even a plea for mercy.

### III

This Court has repeatedly insisted that unfettered consideration of mitigating evidence is an essential aspect of the process by which the States adjudicate the appropriateness of putting a person to death. See, e. g., *Sumner v. Shuman*, ante, at 76; *Eddings v. Oklahoma*, 455 U. S. 104, 112 (1982); *Lockett v. Ohio*, 438 U. S. 586, 605 (1978); *Woodson v. North Carolina*, 428 U. S. 280, 303 (1976). Accordingly, we have not permitted a State to insulate the capital sentencer from considerations favorable to the defendant. The reliability of the process depends upon the sentencer's consideration of both tangibles and intangibles, see *Caldwell v. Mississippi*, 472 U. S. 320, 330 (1985), in evaluating the individual character of the defendant and his acts. In light of the importance that this Court has placed upon the role of mitigating evidence in capital-sentencing decisions, I cannot believe that *Strickland* was intended to permit a defendant to be sentenced to death solely on the basis of the State's evidence, when a powerful defense easily could have been marshaled on his behalf. Any reasonable standard of professionalism governing the conduct of a capital defense must impose upon the attorney, at a minimum, the obligation to explore the aspects of his client's character that might persuade the sentencer to spare his life. Without even this effort by the defense, the adversarial process breaks down.

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By denying certiorari in this compelling case, the Court has refused to apply *Strickland* in a manner that gives meaning to the constitutional values from which it was derived. I dissent.

No. 86-419. PATTON ET AL. *v.* SOURBEER. C. A. 3d Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 791 F. 2d 1094.

No. 86-1505. PRESTRESS ENGINEERING CORP. *v.* GONZALEZ ET AL. Sup. Ct. Ill. Certiorari denied. Reported below: 115 Ill. 2d 1, 503 N. E. 2d 308.

JUSTICE WHITE, dissenting.

This case raises the question whether a state-law claim for retaliatory discharge is pre-empted by § 301 of the Labor-Management Relations Act, 1947, 61 Stat. 156, 29 U. S. C. § 185(a), when the suing employee is covered by a collective-bargaining agreement. The Illinois Supreme Court here, relying on its earlier opinion in *Midgett v. Sackett-Chicago, Inc.*, 105 Ill. 2d 143, 473 N. E. 2d 1280, cert. denied, 472 U. S. 1032 (1984) and 474 U. S. 909 (1985), held that the state claim was not pre-empted. The Court of Appeals for the Eighth Circuit, faced with an almost identical state-law claim for retaliatory discharge, concluded that under our opinion in *Allis-Chalmers Corp. v. Lueck*, 471 U. S. 202 (1985), § 301 pre-empted the state-law claim. *Johnson v. Hussmann Corp.*, 805 F. 2d 795, 797 (1986) (Missouri). One other Court of Appeals has come to a similar conclusion. See *Vantine v. Elkhart Brass Manufacturing Co.*, 762 F. 2d 511, 517-518 (CA7 1985) (Indiana). The Second Circuit, just three months ago, concluded that Connecticut's retaliatory-discharge claim was not pre-empted by § 301. *Baldracchi v. Pratt & Whitney Aircraft Div., United Technologies Corp.*, 814 F. 2d 102 (1987). The Illinois Supreme Court has interpreted federal law in a manner consistent with the Second Circuit but directly contrary to the Seventh and Eighth Circuits. I would grant the petition and resolve the conflict, rather than wait until the conflict invites more litigation and becomes more acute.

No. 86-1800. ATKINSON ET AL. *v.* ANADARKO BANK & TRUST CO. C. A. 5th Cir. Certiorari denied. JUSTICE WHITE would grant certiorari. Reported below: 808 F. 2d 438.

No. 86-1815. CREDIT BUREAU SERVICES-NEW ORLEANS, DBA CHILTON CORP. *v.* PINNER. C. A. 5th Cir. Motions of Trans

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Union Credit Information Co., Associated Credit Bureaus, Inc., and Credit Bureau, Incorporated of Georgia for leave to file briefs as *amici curiae* granted. Certiorari denied. Reported below: 805 F. 2d 1258.

No. 86-5391. WILLIAMS *v.* LOUISIANA. Sup. Ct. La.;  
No. 86-6506. SMITH *v.* OKLAHOMA. Ct. Crim. App. Okla.;  
No. 86-6825. BEAVER *v.* VIRGINIA. Sup. Ct. Va.;  
No. 86-6921. TOMPKINS *v.* FLORIDA. Sup. Ct. Fla.; and  
No. 86-6969. SMITH *v.* ARMONTROUT, WARDEN. C. A. 8th Cir. Certiorari denied. Reported below: No. 86-5391, 490 So. 2d 255; No. 86-6506, 727 P. 2d 1366; No. 86-6825, 232 Va. 521, 352 S. E. 2d 342; No. 86-6921, 502 So. 2d 415; No. 86-6969, 812 F. 2d 1050.

JUSTICE BRENNAN and JUSTICE MARSHALL, dissenting.

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

No. 86-6224. TAFERO *v.* DUGGER, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Motion of National Association of Criminal Defense Lawyers for leave to file a brief as *amicus curiae* granted. Certiorari denied. Reported below: 796 F. 2d 1314.

JUSTICE BRENNAN and JUSTICE MARSHALL, dissenting.

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

No. 86-6985 (A-942). EVANS *v.* THIGPEN, 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: 809 F. 2d 239.

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

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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. 85-2121. *ARIZONA v. MAURO*, 481 U. S. 520;

No. 86-1136. *PACYNNA v. MARSH, SECRETARY OF THE ARMY*, 481 U. S. 1048;

No. 86-1669. *BRANSON v. NORTINGTON ET AL.*, 481 U. S. 1044; and

No. 86-6702. *COSNER v. OREGON*, 481 U. S. 1066. Petitions for rehearing denied.

No. 85-2102. *MONTAUK-CARIBBEAN AIRWAYS, INC., DBA LONG ISLAND AIRLINES v. HOPE ET AL.*, 479 U. S. 872; and

No. 86-6429. *MCCONE v. DISTRICT COURT OF ALBANY COUNTY ET AL.*, 481 U. S. 1020. Motions for leave to file petitions for rehearing denied.

No. 86-1363. *WANGRUD v. OREGON*, 481 U. S. 1009. Petition for rehearing and other relief denied.

No. 86-6750. *COLEMAN v. BROWN, WARDEN, ET AL.*, 482 U. S. 909. Motion of respondents for leave to file response to petitioner's petition for rehearing denied. Petition for rehearing denied.

*Assignment Order*

Pursuant to the provisions of 28 U. S. C. § 42, it is ordered that JUSTICE WHITE be, and he is hereby, assigned to the Eleventh Circuit as Circuit Justice, effective June 26, 1987, pending further order.

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*Certiorari Denied*

No. 87-5038 (A-17). *WHITLEY v. MUNCY, WARDEN, ET AL.* C. A. 4th Cir. Application for stay of execution of sentence of death, presented to THE CHIEF JUSTICE, and by him referred to the Court, denied. Certiorari denied. Reported below: 823 F. 2d 55.

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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*Certiorari Denied*

No. 87-5052 (A-23). THOMPSON *v.* LYNAUGH, 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. JUSTICE STEVENS would grant the application for stay. Reported below: 821 F. 2d 1054.

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.

No. 87-5053 (A-24). THOMPSON *v.* LYNAUGH, 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: 821 F. 2d 1080.

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.

No. 87-5070. EVANS *v.* CABANA, ACTING COMMISSIONER, MISSISSIPPI DEPARTMENT OF CORRECTIONS. C. A. 5th Cir. Certiorari denied. JUSTICE O'CONNOR took no part in the consideration or decision of this petition. Reported below: 821 F. 2d 1065.

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 sentence in this case.

*Rehearing Denied*

No. 86-6985 (A-3). *EVANS v. CABANA*, ACTING COMMISSIONER, MISSISSIPPI DEPARTMENT OF CORRECTIONS, *ante*, p. 1033. Application for stay of execution of sentence of death, addressed to JUSTICE BRENNAN and referred to the Court, denied. JUSTICE BRENNAN and JUSTICE MARSHALL would grant the application. Petition for rehearing denied.

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*Dismissals Under Rule 53*

No. 86-2057. *JENNESS, TRUSTEE v. OFH, INC.* C. A. 5th Cir. Certiorari dismissed under this Court's Rule 53. Reported below: 807 F. 2d 994.

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.] Appeal dismissed under this Court's Rule 53.

JULY 19, 1987

*Certiorari Denied*

No. 87-5130 (A-56). *CELESTINE v. BUTLER, WARDEN.* 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: 823 F. 2d 74.

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.

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*Miscellaneous Orders*

No. A-65. *LINCOLN PARK NURSING & CONVALESCENT HOME v. KAHN, GUARDIAN AD LITEM OF JOBES, ET AL.* Sup. Ct. N. J.

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Application for stay, addressed to JUSTICE SCALIA and referred to the Court, denied. JUSTICE BRENNAN took no part in the consideration or decision of this application.

No. A-78 (87-5161). WATSON *v.* BUTLER, WARDEN. 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. JUSTICE STEVENS would grant the application.

JUSTICE BRENNAN and JUSTICE MARSHALL, with whom JUSTICE BLACKMUN joins in Parts II and III, dissenting.

## I

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 (1976) (BRENNAN, J., dissenting), we would grant the stay application and the petition for writ of certiorari.

## II

Even if we did not hold these views, we would nonetheless grant the stay application in order to hold the case for *Lowenfield v. Phelps*, No. 86-6867. At issue in *Lowenfield* is the constitutionality of a death-sentencing procedure where the aggravating factor found by the jury duplicates the jury's findings in the guilt phase and thus fails to narrow the class of defendants eligible for the death penalty.

In this case, Watson was found guilty of first-degree murder because he killed while "engaged in the perpetration or attempted perpetration of aggravated kidnapping, aggravated escape, aggravated arson, aggravated rape, aggravated burglary, armed robbery, or simple robbery." La. Rev. Stat. Ann. § 14.30(A)(1) (West 1986). Louisiana law requires that the sentencing jury find beyond a reasonable doubt that at least one statutory aggravating factor exists before a death sentence may be imposed. La. Code Crim. Proc. Ann., Art. 905.3 (West Supp. 1987). Article 905.4 of the Louisiana Code of Criminal Procedure (West 1984 and Supp. 1987) provides that "[t]he following shall be considered aggravating circumstances," and lists 10 circumstances, which are labeled as subsections (a) through (j). The jury in Watson's case found that Watson had committed the acts described in subsection (a): he "was engaged in the perpetration or attempted perpetration

of aggravated rape, aggravated kidnapping, aggravated burglary, aggravated arson, aggravated escape, armed robbery, or simple robbery.”<sup>1</sup> Specifically, the jury determined that Watson committed armed robbery and aggravated rape.

If the commission of armed robbery and aggravated rape constitutes only a single aggravating circumstance, then Watson presents exactly the same claim as Lowenfield.<sup>2</sup> In the majority of cases that have required a tally of aggravating circumstances, the Louisiana Supreme Court has considered the presence of more than one felony under Article 905.4(a) to count as only a single aggravating factor. See, e. g., *State v. Carmouche*, 508 So. 2d 792 (1987); *State v. Bates*, 495 So. 2d 1262 (1986); *State v. Andrews*, 452 So. 2d 687 (1984); *State v. Jordan*, 420 So. 2d 420 (1982); *State v. Myles*, 389 So. 2d 12 (1979). In some other cases, including this one, *State v. Watson*, 449 So. 2d 1321 (1984), the Louisiana Supreme Court appears to have viewed each felony as a separate aggravating factor. That court, however, has not had the opportunity to address this issue explicitly. In our view, until the Louisiana Supreme Court gives the statute a definitive interpretation, this Court should grant the application for stay, in order to hold for *Lowenfield*.

### III

Four Members of this Court consider the above view sufficiently compelling to have voted to hold this case until *Lowenfield* is decided. Three votes suffice to hold a case, but it takes five votes to stay an execution. The Court today thus permits Mr. Watson's legal claim to stay alive while condemning Watson himself to die under a sentencing scheme that within a matter of months the Court may conclude is unconstitutional. Half the Members of this Court believe that Watson's claim might be indistinguishable from

<sup>1</sup>The jury also found a second aggravating circumstance that Watson had “a significant prior history of criminal activity.” This aggravating circumstance has since been invalidated by the Louisiana Supreme Court as unconstitutionally vague under the Eighth Amendment. *State v. David*, 468 So. 2d 1126 (1984).

<sup>2</sup>The District Court denied Watson's claim and stated only: “Suffice it to say that the Fifth Circuit Court of Appeals, whose ruling binds this court has decided this claim adversely to petitioner. *Lowenfield v. Phelps*, 817 F. 2d 285 (1987).” No. 87-3391 (ED La. July 21, 1987). The Court of Appeals affirmed the judgment, agreeing with the “reasons stated succinctly and correctly” by the District Court. 823 F. 2d 842, 843 (CA5 1987).

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Lowenfield's, yet tonight Watson will be executed while Lowenfield may prevail and be spared. This prospect is the ultimate derogation of the Court's duty to provide equal justice under law.

We dissent.

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*Miscellaneous Orders*

No. A-909. POLYAK *v.* HAMILTON, JUDGE, CIRCUIT COURT OF LAWRENCE COUNTY, ET AL. C. A. 6th Cir. Motion to compel the Clerk to docket a jurisdictional statement and a petition for writ of certiorari, addressed to JUSTICE BLACKMUN and referred to the Court, denied.

No. A-910. POLYAK *v.* BUFORD EVANS & SONS. Motion to compel the Clerk to file a petition for writ of common-law certiorari, addressed to JUSTICE BLACKMUN and referred to the Court, denied.

No. A-934. STEIN *v.* UNITED STATES. Application for bail, addressed to JUSTICE BRENNAN and referred to the Court, denied.

No. A-8 (86-7154). WHITE *v.* DUGGER, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Application for stay of execution of sentence of death, addressed to JUSTICE BRENNAN and referred to the Court, denied. JUSTICE BRENNAN and JUSTICE MARSHALL would grant the application.

No. D-597. IN RE DISBARMENT OF FABRÉ. Disbarment entered. [For earlier order herein, see 479 U. S. 1026.]

No. D-612. IN RE DISBARMENT OF BING. Disbarment entered. [For earlier order herein, see 480 U. S. 913.]

No. D-620. IN RE DISBARMENT OF DECELLO. Disbarment entered. [For earlier order herein, see 480 U. S. 943.]

No. D-624. IN RE DISBARMENT OF HALLOWS. Disbarment entered. [For earlier order herein, see 481 U. S. 1002.]

No. D-626. IN RE DISBARMENT OF MAZELIS. Disbarment entered. [For earlier order herein, see 481 U. S. 1002.]

No. D-629. IN RE DISBARMENT OF MIRTO. Disbarment entered. [For earlier order herein, see 481 U. S. 1011.]

No. D-631. IN RE DISBARMENT OF BURKE. Disbarment entered. [For earlier order herein, see 481 U. S. 1027.]

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No. D-633. IN RE DISBARMENT OF MONAGHAN. Disbarment entered. [For earlier order herein, see 481 U. S. 1045.]

No. D-638. IN RE DISBARMENT OF HAEBERLE. Disbarment entered. [For earlier order herein, see 482 U. S. 903.]

No. D-647. IN RE DISBARMENT OF ELDEN. It is ordered that William Elden, of Chicago, Ill., be suspended from the practice of law in this Court and that a rule issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D-648. IN RE DISBARMENT OF MONOKER. It is ordered that David Monoker, 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-649. IN RE DISBARMENT OF FILSOOF. It is ordered that Fred F. Filsoof, of Atlanta, Ga., 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.

*Certiorari Denied*

No. 87-5193 (A-94). BROGDON *v.* BUTLER, WARDEN. 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: 824 F. 2d 338.

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. 86-1640. PACE RESOURCES, INC. *v.* SHREWSBURY TOWN-SHIP ET AL., 482 U. S. 906;

No. 86-1648. WEST ET AL. *v.* MULTIBANCO COMERMEX, S. A., ET AL., 482 U. S. 906; and

No. 86-1671. COKER *v.* GIELOW, CHAIRMAN, RAILROAD RETIREMENT BOARD, ET AL., 482 U. S. 906. Petitions for rehearing denied.

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- No. 86-1730. SETERA *v.* TEXAS A & M UNIVERSITY ET AL., 482 U. S. 928;  
 No. 86-5984. BATES *v.* LOUISIANA, 481 U. S. 1042;  
 No. 86-6175. WILSON *v.* DENTON ET AL., 482 U. S. 931;  
 No. 86-6491. JACKSON *v.* FLORIDA, *ante*, p. 1010;  
 No. 86-6519. COFIELD *v.* MERIT SYSTEMS PROTECTION BOARD, 482 U. S. 916;  
 No. 86-6677. GASKINS *v.* SOUTH CAROLINA, 482 U. S. 909;  
 No. 86-6713. WILLIAMS *v.* BLACKBURN, WARDEN, 482 U. S. 917;  
 No. 86-6730. TURNER *v.* FUERST, 482 U. S. 917;  
 No. 86-6732. PRUETT *v.* VIRGINIA, 482 U. S. 931;  
 No. 86-6753. ATTWELL *v.* METROPOLITAN ATLANTA RAPID TRANSIT AUTHORITY ET AL., 482 U. S. 908;  
 No. 86-6776. BUTLER *v.* WELSCHMEYER, 482 U. S. 918;  
 No. 86-6786. MARTIN *v.* LITTLE, BROWN & CO., INC., ET AL., 482 U. S. 930; and  
 No. 86-6804. BROWN-BEY *v.* UNITED STATES MARSHAL, 482 U. S. 908. Petitions for rehearing denied.

JULY 31, 1987

*Assignment Order*

Pursuant to the provisions of 28 U. S. C. §42, it is ordered that JUSTICE SCALIA be, and he is hereby, assigned to the Eleventh Circuit as Circuit Justice, pending further order. The order of June 26, 1987 [*ante*, p. 1034], assigning JUSTICE WHITE to the Eleventh Circuit as Circuit Justice is vacated. It is further ordered that THE CHIEF JUSTICE be, and he is hereby, assigned to the Fifth Circuit, in addition to JUSTICE WHITE, effective August 1, 1987, pending further order.

AUGUST 3, 1987

*Dismissal Under Rule 53*

No. 86-1927. CHICAGO COMMODITIES, INC., ET AL. *v.* COMMODITIES FUTURES TRADING COMMISSION ET AL. C. A. 9th Cir. Certiorari dismissed under this Court's Rule 53. Reported below: 811 F. 2d 1262.

*Miscellaneous Order*

No. A-69. CASTILLE, DISTRICT ATTORNEY, PHILADELPHIA COUNTY *v.* HARRIS ET AL. C. A. 3d Cir. Application for recall

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and stay of mandate, presented to JUSTICE WHITE, and by him referred to the Court, denied. The temporary stay heretofore entered on July 23, 1987, is vacated and the application for recall and stay is in all respects denied.

AUGUST 5, 1987

*Dismissal Under Rule 53*

No. 87-123. SCHULMAN *v.* UNITED STATES. C. A. 9th Cir. Certiorari dismissed under this Court's Rule 53. Reported below: 817 F. 2d 1355.

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*Miscellaneous Order*

No. A-147. WHITLEY, WARDEN *v.* NEUSCHAFFER. Application of the Attorney General of Nevada for an order to vacate the stay of execution of sentence of death entered by the United States District Court for the District of Nevada, presented to JUSTICE O'CONNOR, and by her referred to the Court, denied.

AUGUST 21, 1987

*Certiorari Denied*

No. 87-5319 (A-148). RAULT *v.* BUTLER, WARDEN. C. A. 5th Cir. Application for stay of execution of sentence of death, presented to THE CHIEF JUSTICE, and by him referred to the Court, denied. Certiorari denied. Reported below: 826 F. 2d 299.

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.

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*Miscellaneous Orders*

No. A-932. BECHTEL ET AL. *v.* SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES, ET AL. Sup. Ct. Cal. Application for stay, addressed to JUSTICE BRENNAN and referred to the Court, denied.

No. A-14. WINSLOW ET AL. *v.* COYTE, JUDGE, MORGAN COUNTY DISTRICT COURT, COLORADO, ET AL. Application for in-

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junction and other relief, addressed to JUSTICE BLACKMUN and referred to the Court, denied. JUSTICE WHITE took no part in the consideration or decision of this application.

No. A-35. AMBULANCE SERVICE OF RENO, INC., DBA 911 PARAMEDICS *v.* NEVADA AMBULANCE SERVICES, INC., DBA MEDIC I, ET AL. Application for temporary restraining order and other relief, addressed to JUSTICE STEVENS and referred to the Court, denied.

No. A-62. BENJAMIN *v.* COMMITTEE ON PROFESSIONAL STANDARDS. Ct. App. N. Y. Application for stay, addressed to JUSTICE BRENNAN and referred to the Court, denied.

No. 85-2079. LABORERS HEALTH AND WELFARE TRUST FUND FOR NORTHERN CALIFORNIA ET AL. *v.* ADVANCED LIGHTWEIGHT CONCRETE CO., INC. C. A. 9th Cir. [Certiorari granted, 479 U. S. 1083.] Motions of Chamber of Commerce of the United States and Associated General Contractors of America, Inc., for leave to file briefs as *amici curiae* granted.

No. 86-492. BOYLE, PERSONAL REPRESENTATIVE OF THE HEIRS AND ESTATE OF BOYLE *v.* UNITED TECHNOLOGIES CORP. C. A. 4th Cir. [Certiorari granted, 479 U. S. 1029.] Motion of Chamber of Commerce of the United States for leave to file a supplemental brief *amicus curiae* granted.

No. 86-761. FORRESTER *v.* WHITE. C. A. 7th Cir. [Certiorari granted, 479 U. S. 1083.] Motion of Illinois Judges Association for leave to file a brief as *amicus curiae* granted.

No. 86-935. REGENTS OF THE UNIVERSITY OF CALIFORNIA *v.* PUBLIC EMPLOYMENT RELATIONS BOARD ET AL. Ct. App. Cal., 1st App. Dist. [Probable jurisdiction noted, *ante*, p. 1004.] Motion of appellant to dispense with printing the joint appendix 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, 481 U. S. 1047 and 482 U. S. 912.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted. Motion of Dov Hikind et al. for leave to file a brief as *amici curiae* granted.

#### *Rehearing Denied*

No. 86-1141. VAKALIS *v.* KAGAN ET AL., *ante*, p. 1020. Petition for rehearing denied.

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- No. 86-1599. *SANCHEZ v. ILLINOIS*, *ante*, p. 1010;  
 No. 86-1727. *CONNOR v. SACHS ET AL.*, *ante*, p. 1001;  
 No. 86-1742. *MARMOTT ET AL. v. MARYLAND LUMBER CO. ET AL.*, 482 U. S. 929;  
 No. 86-1759. *WOOD ET AL. v. INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA, LOCAL 406, ET AL.*, *ante*, p. 1006;  
 No. 86-1808. *COSTIGAN v. PENNSYLVANIA*, *ante*, p. 1022;  
 No. 86-6221. *JONES v. FIRST AMERICAN TITLE INSURANCE CO. ET AL.*, *ante*, p. 1023;  
 No. 86-6506. *SMITH v. OKLAHOMA*, *ante*, p. 1033;  
 No. 86-6645. *SAWYER v. ILLINOIS*, 482 U. S. 930;  
 No. 86-6654. *GUEST v. ILLINOIS*, *ante*, p. 1010;  
 No. 86-6685. *GLENN v. OHIO*, 482 U. S. 931;  
 No. 86-6767. *IN RE CALDWELL*, *ante*, p. 1004;  
 No. 86-6802. *LINDER v. LINDER*, *ante*, p. 1008;  
 No. 86-6821. *JROE v. CARHART ET AL.*, *ante*, p. 1011;  
 No. 86-6844. *FOREMAN v. MERIT SYSTEMS PROTECTION BOARD*, *ante*, p. 1001;  
 No. 86-6872. *FOREMAN v. NATIONAL TREASURY EMPLOYEES UNION ET AL.*, *ante*, p. 1024;  
 No. 86-6876. *HARRISON v. LYNAUGH, DIRECTOR, TEXAS DEPARTMENT OF CORRECTIONS*, *ante*, p. 1025;  
 No. 86-6883. *MARTIN v. SEITER*, *ante*, p. 1025; and  
 No. 86-6927. *AARON v. ALABAMA*, *ante*, p. 1025. Petitions for rehearing denied.

No. 85-5348. *BUCHANAN v. KENTUCKY*, *ante*, p. 402. Petition for rehearing or modification of opinion denied.

- No. 86-6758. *HATTON v. MINNESOTA*, 482 U. S. 911; and  
 No. 86-6816. *MOORE v. AMERICAN SAVINGS & LOAN ASSN. ET AL.*, *ante*, p. 1001. Motions for leave to file petitions for rehearing denied.

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*Certiorari Denied*

No. 86-7154. *WHITE v. DUGGER, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS*. C. A. 11th Cir. *Certiorari denied*. Reported below: 809 F. 2d 1478.

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

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and Fourteenth Amendments, *Gregg v. Georgia*, 428 U. S. 153, 227, 231 (1976), we would grant certiorari and vacate the death sentence in this case.

No. 87-5362 (A-172). *WHITE v. DUGGER, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS*. C. A. 11th Cir. Application for stay of execution of sentence of death, presented to JUSTICE SCALIA, and by him referred to the Court, denied. Certiorari denied. Reported below: 828 F. 2d 10.

JUSTICE BRENNAN, with whom JUSTICE MARSHALL joins, dissenting.

The State of Florida will execute Beauford White tomorrow morning without so much as a determination by its own courts that his death sentence is currently legal. I adhere to my view that the death penalty is in all circumstances cruel and unusual punishment prohibited by the Eighth and Fourteenth Amendments. See *Gregg v. Georgia*, 428 U. S. 153, 227 (1976) (dissenting opinion). But even were I not of that view, I would dissent from this Court's tacit approval of a death sentence whose factual predicate the executing State has not reviewed for consistency with intervening Supreme Court precedent. I would vote to stay White's execution, grant his petition for writ of certiorari, and reverse the judgments below denying habeas relief.

## I

As summarized by the Florida Supreme Court, the relevant facts of this case are as follows: White and two companions entered a home under a subterfuge to rob its occupants. All three were armed and wore masks covering their faces from the nose down. After blindfolding and binding the sole occupant, the three robbers ransacked the house in search of valuables. Within an hour, seven acquaintances of the occupant appeared at the house. The three robbers bound the newcomers. At some point, the mask of one of White's companions fell off, exposing his face to the victims. Consequently, the three discussed the need to kill the victims. White voiced his opposition, but to no avail; his companions overrode him. White's two companions separated the victims into two rooms and systematically shot all eight in the back of the head, killing six. White remained in the house throughout, but did not participate in the shootings. The three co-felons then returned to White's motel room to divide their loot. A fourth participant, a wheelman who never entered the home, testified that he and White were both

duped into what he later discovered was a planned contract murder of one or two of the victims. He also testified that White was visibly shaken afterwards and refused to help dispose of the weapons.

A Florida jury convicted White of six counts of first-degree murder, two counts of attempted first-degree murder, and four counts of robbery, and unanimously recommended a life sentence. The trial judge, disregarding the jury's unanimous recommendation, imposed a death sentence. After this Court's decision in *Enmund v. Florida*, 458 U. S. 782 (1982), the Florida courts entertained a petition for postconviction relief to determine whether White's conduct exhibited the requisite intent to sustain a death sentence under that intervening case. The Florida Supreme Court reversed a lower court finding that *Enmund* was not satisfied. The court held that White had the requisite intent (within the meaning of *Enmund*) because, "whatever [White] might have originally intended or contemplated about lethal force being used in the robbery, it can hardly be said that he did not realize that lethal force was going to be used in carrying out the robbery." *State v. White*, 470 So. 2d 1377, 1380 (Fla. 1985).

Since then, White has twice sought postconviction relief from the Florida courts. He has argued, among other things, that he is entitled to a new determination as to whether his conduct was sufficiently culpable to satisfy the new culpability standard that this Court articulated in *Tison v. Arizona*, 481 U. S. 137 (1987). On each occasion, the state courts barred his application as untimely. White then filed a habeas petition in the United States District Court for the Southern District of Florida. The District Court denied relief, and the Court of Appeals for the Eleventh Circuit affirmed. 828 F. 2d 10 (1987). This evening, less than 11 hours before his death, White filed the instant petition for a writ of certiorari and application for a stay of execution.

## II

While the Florida Supreme Court purported to have found White's conduct sufficiently culpable to satisfy the *Enmund* test, it has to date never reconsidered that determination in light of this Court's rereading of *Enmund* in *Tison*. After briefly summarizing how *Tison* modified the *Enmund* inquiry, I will explain why, in my view, the modified analysis demands that we vacate White's death sentence, just as we did in *Tison*, until such time as the Florida courts have established the factual predicate that a majority of this

Court has deemed a constitutional prerequisite to the imposition of a death penalty.

In *Enmund*, *supra*, at 798, this Court declared that a State may not constitutionally execute a defendant who "did not kill or attempt to kill" and who had no "intention of participating in or facilitating a murder." This Term a majority of this Court departed from that holding when it held in *Tison* that a death penalty could constitutionally be imposed for felony murder. The *Tison* Court assumed for the sake of argument that the Tison brothers "did not 'intend to kill'" in the traditional sense: "Traditionally, 'one intends certain consequences when he desires that his acts cause those consequences or knows that those consequences are substantially certain to result from his acts.'" 481 U. S., at 150. (quoting W. LaFare & A. Scott, Criminal Law § 28, p. 196 (1972)). Accordingly the Court rejected the creative attempt of the Arizona Supreme Court (and others) to expand the traditional definition of intent to encompass foreseeable consequences. But the Court held that, *Enmund* notwithstanding, a defendant who did not intend to kill (in that traditional sense) could constitutionally be sentenced to death for "major participation in [a] felony" coupled with "reckless indifference to human life." 481 U. S., at 158 (footnote omitted).

The correctness of the *Tison* overlay on *Enmund* is not at issue here. More relevant to the issue of the proper disposition of this case, is the *Tison* Court's disposition of the case before it. Having assumed that the Tison brothers lacked traditional intent, the Court vacated the sentence and remanded for a determination whether the Tison brothers' participation amounted to "reckless indifference." 481 U. S., at 158. In so doing, it minced no words about its view of the matter: "[T]he record," the Court observed, "would support a finding of the culpable mental state of reckless indifference to human life." *Id.*, at 151; see also *ibid.* ("These facts . . . would clearly support a finding that . . . both [defendants] subjectively appreciated that their acts were likely to result in the taking of innocent life"). Despite its clear leaning, the Court declined to enter the requisite *Tison* findings itself. Nor did it attempt to divine from what the Arizona courts *had* said in applying *Enmund*, what they *would* say in applying the new *Tison* overlay.

The Court's citation to *Cabana v. Bullock*, 474 U. S. 376 (1986), suggests that it considered such psychoanalysis improper. Under *Cabana*, "it is [the State] . . . not the federal . . . court, which should first provide [the defendant] with that which he has not yet

had and to which he is constitutionally entitled—a reliable determination as to whether he is subject to the death penalty,” under whatever standards this Court may most recently have articulated. *Id.*, at 391. As there explained, the right arises not only because justice demands that the same judicial system that sentences a defendant to death find the requisite factual predicate for the sentence, but also because “[c]onsiderations of federalism and comity counsel respect for the ability of state courts to carry out their role as the primary protectors of the rights of criminal defendants . . .” *Ibid.* (citation omitted).

I see no reason not to extend to White the same constitutional entitlement that we extended to the Tison brothers. Nor does the Florida Supreme Court in this case deserve any less respect than we afforded the Arizona Supreme Court in *Tison*. The state court here no more addressed the *Tison* overlay than did the *Tison* state court. Obviously, it could not have, since at the time of the Florida Supreme Court’s last decision on the merits, *Tison* had not yet been decided. See 474 U. S., at 389 (“[T]he [State] Supreme Court obviously was not addressing the specific requirements set forth in *Enmund*, for that case had not yet been decided”).

The only conceivable difference then between this case and *Tison* is that here, unlike in *Tison*, this Court assumes (as did the courts below) that the State Supreme Court’s pre-*Tison* analysis encompassed some finding that the petitioner *intended*, in (what *Tison* deems) the traditional sense, that his actions would kill the victims. I am willing to make no such assumption, however, when a man’s life is at stake. To be sure, the State Supreme Court observed that there came a point (once White’s two accomplices overruled his objections to murder) at which “it can hardly be said that he did not realize that lethal force was going to be used in carrying out the robbery.” *State v. White*, 470 So. 2d, at 1380. It then reiterated its finding that White “stood by while the victims were shot one by one.” *Ibid.* (citation and internal quotes omitted). But inaction in the face of an expected murder is a far cry from the traditional definition of intent to kill. The Florida Supreme Court never found that White did anything (after coming to the rude “realiz[ation]” that his co-felons were about to commit murder) to further the murders. Nor did it find that he could have done anything to prevent the murders, short of killing his accomplices or otherwise risking his own life. There is not even any state finding that White had

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either the time or the freedom to dissociate himself from the sordid affair in the brief interval between the realization and the murders.

Since the death sentence cannot stand without the requisite findings by a state court and the state court's findings are inadequate, I would reverse the judgment of the Court of Appeals. "[T]he District Court should be directed to issue the writ of habeas corpus vating [White's] death sentence but leaving to the State of [Florida] the choice of either imposing a sentence of life imprisonment or, within a reasonable time, obtaining a determination from its own courts of the factual question" that it never clearly decided—whether White either intended to kill the victims in the traditional sense, or acted with reckless indifference to human life. *Cabana*, *supra*, at 392.

### III

This Court's refusal to stay White's execution is inexcusable for yet another reason. It permits the State to put him to death based, in part, on two aggravating circumstances whose application to this case is constitutionally suspect, at best. The trial judge found that the murders committed by White's companions were "especially heinous, atrocious or cruel" and "were committed in an effort to avoid arrest by eliminating witnesses to the crime." *White v. State*, 403 So. 2d 331, 338 (Fla. 1981). In *Tison* we left open the issue whether a court may constitutionally attribute to a defendant as an aggravating factor the manner in which other individuals carried out the killings. See 481 U. S., at 146, n. 2; *id.*, at 160, n. 3 (BRENNAN, J., dissenting). Nor has this Court ever addressed the related question whether the purposes for which other individuals committed a crime can be constitutionally attributed to a defendant as an aggravating circumstance. Such vicarious attribution "would seem to violate the core Eighth Amendment requirement that capital punishment be based upon an 'individualized consideration' of the defendant's culpability," *ibid.* (quoting *Lockett v. Ohio*, 438 U. S. 586, 605 (1978)).

No. 87-5363 (A-174). SELBY, AKA PIERRE *v.* COOK, WARDEN, ET AL. C. A. 10th Cir. Application for stay of execution of sentence of death, presented to JUSTICE WHITE, and by him referred to the Court, denied. Certiorari 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

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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.

SEPTEMBER 1, 1987

*Dismissal Under Rule 53*

No. 86-2045. *KIWANIS CLUB OF RIDGEWOOD, INC., ET AL. v. KIWANIS INTERNATIONAL*. C. A. 3d Cir. Certiorari dismissed under this Court's Rule 53. Reported below: 806 F. 2d 468.

*Certiorari Denied*

No. 87-5382 (A-180). *MITCHELL v. KEMP, SUPERINTENDENT, GEORGIA DIAGNOSTIC AND CLASSIFICATION CENTER, ET AL.* C. A. 11th Cir. Application for stay of execution of sentence of death, presented to JUSTICE SCALIA, and by him referred to the Court, denied. Certiorari denied. Reported below: 827 F. 2d 1433.

JUSTICE MARSHALL, with whom JUSTICE BRENNAN and JUSTICE BLACKMUN join, dissenting.

Two months ago, we dissented from the Court's decision to deny Billy Mitchell's petition for a writ of certiorari to review his first federal habeas proceeding. *Mitchell v. Kemp, ante*, p. 1026. We stated then that the failure of Mitchell's attorney to investigate Mitchell's background and character or the circumstances of his crime, and the consequent failure to present any mitigating evidence at the sentencing proceeding, constituted a violation of Mitchell's Sixth Amendment rights. Mitchell's current petition for a writ of certiorari, which reveals yet further instances of his attorney's dereliction and incompetence, only confirms our prior view. We again call upon the Court to give life and meaning to the Sixth Amendment's promise of effective assistance of counsel, and we again dissent.

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*Miscellaneous Orders*

No. A-44 (86-6942). *GOREE v. CUNNINGHAM*. C. A. 6th Cir. Application for stay, addressed to JUSTICE BRENNAN and referred to the Court, denied.

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No. A-111 (86-2023). SHEPARD *v.* UNITED STATES. C. A. 11th Cir. Application for stay, addressed to JUSTICE BRENNAN and referred to the Court, denied.

No. A-121. ROSENTHAL *v.* STATE BAR OF CALIFORNIA. Sup. Ct. Cal. Application for stay and other relief, addressed to JUSTICE O'CONNOR and referred to the Court, denied.

No. A-122. ROSENTHAL *v.* UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA ET AL. C. A. 9th Cir. Application for stay and other relief, addressed to JUSTICE O'CONNOR and referred to the Court, denied.

No. D-605. IN RE DISBARMENT OF CLARKE. Disbarment entered. [For earlier order herein, see 479 U. S. 1078.]

No. D-630. IN RE DISBARMENT OF ALLEN. Disbarment entered. [For earlier order herein, see 481 U. S. 1027.]

No. D-635. IN RE DISBARMENT OF FLEISCHER. Disbarment entered. [For earlier order herein, see 482 U. S. 903.]

No. D-636. IN RE DISBARMENT OF BROWN. Disbarment entered. [For earlier order herein, see 482 U. S. 903.]

No. D-641. IN RE DISBARMENT OF WECHSLER. Disbarment entered. [For earlier order herein, see 482 U. S. 911.]

No. D-643. IN RE DISBARMENT OF ROSENBLEET. Disbarment entered. [For earlier order herein, see *ante*, p. 1002.]

No. D-650. IN RE DISBARMENT OF SLOTKIN. It is ordered that Paul Simon Slotkin, of Cherry Hill, 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. D-651. IN RE DISBARMENT OF RIGOLOSI. It is ordered that Vincent Paul Rigolosi, of Hackensack, 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. D-652. IN RE DISBARMENT OF CONWAY. It is ordered that Donald R. Conway, of Hackensack, N. J., be suspended from

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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-653. *IN RE DISBARMENT OF VAUGHN*. It is ordered that Paul A. Vaughn, of Danville, Ind., be suspended from the practice of law in this Court and that a rule issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D-654. *IN RE DISBARMENT OF MILLER*. It is ordered that Donald Joseph Miller, of San Mateo, Cal., 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.

SEPTEMBER 8, 1987

*Dismissal Under Rule 53*

No. 86-2007. *SPENCER GIFTS, INC. v. CHIPOLLINI*. C. A. 3d Cir. Certiorari dismissed under this Court's Rule 53. Reported below: 814 F. 2d 893.

SEPTEMBER 9, 1987

*Dismissal Under Rule 53*

No. 86-1878. *TENNESSEE VALLEY AUTHORITY ET AL. v. ALCO STANDARD CORP.* C. A. Fed. Cir. Certiorari dismissed under this Court's Rule 53. Reported below: 808 F. 2d 1490.

*Miscellaneous Order*

No. A-209. *STARVAGGI 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 execu-

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tion 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.

SEPTEMBER 10, 1987

*Assignment Order*

Pursuant to the provisions of 28 U. S. C. § 42, it is ordered that JUSTICE O'CONNOR be, and she is hereby, assigned to the Eleventh Circuit as Circuit Justice, pending further order. The order of July 31, 1987 [*ante*, p. 1041], assigning JUSTICE SCALIA to the Eleventh Circuit as Circuit Justice is vacated.

SEPTEMBER 21, 1987

*Miscellaneous Orders*

No. A-26 (87-5204). WILLIAMS *v.* OKLAHOMA. Ct. Crim. App. Okla. Application for stay and other relief, addressed to JUSTICE O'CONNOR and referred to the Court, denied.

No. A-177. MORGAN *v.* FORETICH. Super. Ct. D. C. Application for stay, addressed to JUSTICE BRENNAN and referred to the Court, denied.

No. D-646. IN RE DISBARMENT OF MADSEN. Disbarment entered. [For earlier order herein, see *ante*, p. 1017.]

No. 86-495. K MART CORP. *v.* CARTIER, INC., ET AL.;

No. 86-624. 47TH STREET PHOTO, INC. *v.* COALITION TO PRESERVE THE INTEGRITY OF AMERICAN TRADEMARKS ET AL.; and

No. 86-625. UNITED STATES ET AL. *v.* COALITION TO PRESERVE THE INTEGRITY OF AMERICAN TRADEMARKS ET AL. C. A. D. C. Cir. [Certiorari granted, 479 U. S. 1005.] Motion of Yamaha International Corp. et al. for leave to participate in oral argument as *amici curiae*, for divided argument, and for additional time for oral argument denied.

No. 86-684. CALIFORNIA *v.* GREENWOOD ET AL. Ct. App. Cal., 4th App. Dist. [Certiorari granted, *ante*, p. 1019.] Motion of Americans for Effective Law Enforcement, Inc., et al. for leave to file a brief as *amici curiae* granted.

No. 86-803. BOOS ET AL. *v.* BARRY, MAYOR OF THE DISTRICT OF COLUMBIA, ET AL. C. A. D. C. Cir. [Certiorari granted, 479

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U. S. 1083.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 86-805. PINTER ET AL. *v.* DAHL ET AL. C. A. 5th Cir. [Certiorari granted, 481 U. S. 1012.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 86-946. EMPLOYMENT DIVISION, DEPARTMENT OF HUMAN RESOURCES OF THE STATE OF OREGON, ET AL. *v.* SMITH; and

No. 86-947. EMPLOYMENT DIVISION, DEPARTMENT OF HUMAN RESOURCES OF THE STATE OF OREGON, ET AL. *v.* BLACK. Sup. Ct. Ore. [Certiorari granted, 480 U. S. 916.] Motion of American Civil Liberties Union Foundation et al. for leave to participate in oral argument as *amici curiae* and for divided argument denied.

No. 86-1387. MACKEY ET AL. *v.* LANIER COLLECTION AGENCY & SERVICE, INC. Sup. Ct. Ga. [Certiorari granted, *ante*, p. 1004.] Motion of National Conference of State Legislatures et al. for leave to file a brief as *amici curiae* 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, 481 U. S. 1047 and 482 U. S. 912.] Motions of Lawyers' Committee for Civil Rights Under Law, Equal Employment Advisory Council, and National League of Cities et al. for leave to file briefs as *amici curiae* granted.

No. 86-1419. OREGON DEPARTMENT OF HUMAN RESOURCES ET AL. *v.* COOS BAY CARE CENTER ET AL. C. A. 9th Cir. [Certiorari granted, 481 U. S. 1036.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 86-1430. PERALTA *v.* HEIGHTS MEDICAL CENTER, INC., DBA HEIGHTS HOSPITAL, ET AL. Ct. App. Tex., 1st Dist. [Probable jurisdiction noted, 481 U. S. 1067.] Motion of appellant to dispense with printing the joint appendix granted.

No. 86-1461. EDWARD J. DEBARTOLO CORP. *v.* FLORIDA GULF COAST BUILDING & CONSTRUCTION TRADES COUNCIL ET AL.

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C. A. 11th Cir. [Certiorari granted, 482 U. S. 913.] Motion of the Solicitor General for divided argument granted to be divided as follows: 20 minutes for petitioner and 10 minutes for the Solicitor General.

No. 86-1650. TRANS WORLD AIRLINES, INC. *v.* INDEPENDENT FEDERATION OF FLIGHT ATTENDANTS. C. A. 8th Cir. [Certiorari granted, 482 U. S. 913.] Motions of Crossover Flight Attendants and Some Working TWA Flight Attendants for leave to file briefs as *amici curiae* granted.

No. 86-6284. SATTERWHITE *v.* TEXAS. Ct. Crim. App. Tex. [Certiorari granted, 482 U. S. 905.] Motion of petitioner for divided argument to permit *amicus curiae* NAACP Legal Defense and Educational Fund, Inc., to present oral argument denied. Motion of Coalition for the Fundamental Rights and Equality of Ex-Patients for leave to file a brief as *amicus curiae* out of time denied.

No. 86-6867. LOWENFIELD *v.* PHELPS, SECRETARY, LOUISIANA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 5th Cir. [Certiorari granted, *ante*, p. 1005.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument denied.

### *Certiorari Denied*

No. 87-5491 (A-234). MCCORQUODALE *v.* KEMP, WARDEN. C. A. 11th Cir. Application for stay of execution of sentence of death, presented to JUSTICE O'CONNOR, and by her referred to the Court, denied. Certiorari denied. Reported below: 832 F. 2d 543.

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.

No. 87-5516 (A-244). MCCORQUODALE *v.* KEMP, WARDEN. C. A. 11th Cir. Application for stay of execution of sentence

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of death, presented to JUSTICE O'CONNOR, and by her referred to the Court, denied. Certiorari denied. Reported below: 829 F. 2d 1035.

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. 85-1581. SOLORIO *v.* UNITED STATES, *ante*, p. 435;
- No. 85-1835. CALIFORNIA *v.* ROONEY, *ante*, p. 307;
- No. 85-2064. GREER, WARDEN *v.* MILLER, *ante*, p. 756;
- No. 85-2068. RANKIN ET AL. *v.* MCPHERSON, *ante*, p. 378;
- No. 86-44. SHEARSON/AMERICAN EXPRESS INC. ET AL. *v.* MCMAHON ET AL., 482 U. S. 220;
- No. 86-1079. KOCZAK ET AL. *v.* DIXON ET AL., 479 U. S. 1073;
- No. 86-1631. MARGOLES *v.* JOHNS ET AL., 482 U. S. 905;
- No. 86-1948. ANDERSON *v.* OREGON STATE BAR ET AL., *ante*, p. 1013;
- No. 86-5020. BOOTH *v.* MARYLAND, 482 U. S. 496;
- No. 86-5375. BURGER *v.* KEMP, WARDEN, *ante*, p. 776; and
- No. 86-5391. WILLIAMS *v.* LOUISIANA, *ante*, p. 1033. Petitions for rehearing denied.

No. 86-1801. HUNTZINGER *v.* UNITED STATES, *ante*, p. 1022. Motion for leave to file petition for rehearing denied.

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### *Miscellaneous Order*

No. A-251 (87-5546). FRANKLIN *v.* LYNAUGH, 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, is granted pending the disposition by this Court of the petition for writ of certiorari. Should the petition for writ of certiorari be denied, this stay terminates automatically. In the event the petition for

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writ of certiorari is granted, this stay shall continue pending the sending down of the judgment of this Court.

OCTOBER 2, 1987

*Dismissals Under Rule 53*

No. 87-276. ASSOCIATION FOR RETARDED CITIZENS OF TEXAS *v.* KAVANAGH ET AL. C. A. 5th Cir. Certiorari dismissed under this Court's Rule 53. Reported below: 807 F. 2d 1243.

No. 86-1827. GUILD ET AL. *v.* BROCK, SECRETARY OF LABOR. C. A. 11th Cir. Certiorari dismissed under this Court's Rule 53. Reported below: 809 F. 2d 753.

REPRODUCTION OF THE

1952

The following are the results of the experiments conducted during the summer of 1951. The first series of experiments was conducted in the laboratory and the second series was conducted in the field.

LABORATORY EXPERIMENTS

The first series of experiments was conducted in the laboratory. The purpose of these experiments was to determine the effect of temperature on the development of the pupae. The results of these experiments are shown in Table 1. It is evident from the data that the rate of development of the pupae is directly proportional to the temperature. The higher the temperature, the faster the pupae develop.

The second series of experiments was conducted in the field. The purpose of these experiments was to determine the effect of natural conditions on the development of the pupae. The results of these experiments are shown in Table 2. It is evident from the data that the rate of development of the pupae is directly proportional to the temperature. The higher the temperature, the faster the pupae develop.

The third series of experiments was conducted in the laboratory. The purpose of these experiments was to determine the effect of humidity on the development of the pupae. The results of these experiments are shown in Table 3. It is evident from the data that the rate of development of the pupae is directly proportional to the humidity. The higher the humidity, the faster the pupae develop.

The fourth series of experiments was conducted in the field. The purpose of these experiments was to determine the effect of natural conditions on the development of the pupae. The results of these experiments are shown in Table 4. It is evident from the data that the rate of development of the pupae is directly proportional to the temperature. The higher the temperature, the faster the pupae develop.

The fifth series of experiments was conducted in the laboratory. The purpose of these experiments was to determine the effect of light on the development of the pupae. The results of these experiments are shown in Table 5. It is evident from the data that the rate of development of the pupae is directly proportional to the light. The higher the light, the faster the pupae develop.

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REPORTER'S NOTE

The next page is purposely numbered 1301. The numbers between 1057 and 1301 were intentionally omitted, in order to make it possible to publish in-chambers opinions with *permanent* page numbers, thus making the official citations available upon publication of the preliminary prints of the United States Reports.

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1-2-1954

The enclosed contains a copy of the report of the  
committee on the subject of the proposed  
amendment to the constitution of the  
state of New York, which was adopted  
by the legislature at its session in  
1953.

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