

ORDERS FOR OCTOBER 5, 1987, THROUGH  
FEBRUARY 22, 1988

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OCTOBER 5, 1987

*Appeals Dismissed*

No. 86-1242. CITY OF AKRON ET AL. *v.* OHIO MANUFACTURERS' ASSN. ET AL. Appeal from C. A. 6th Cir. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied. Reported below: 801 F. 2d 824.

No. 86-1656. UTAH POWER & LIGHT Co. *v.* IDAHO PUBLIC UTILITIES COMMISSION ET AL. Appeal from Sup. Ct. Idaho dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied. Reported below: 112 Idaho 10, 730 P. 2d 930.

No. 86-1850. ANDERSON *v.* FROHNMAYER 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: 812 F. 2d 714.

No. 86-1885. SCARVACI *v.* MATESTIC, ASSISTANT DISTRICT ATTORNEY, ET AL. Appeal from C. A. 7th Cir. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied.

No. 86-1891. HALLIWELL *v.* EU, SECRETARY OF STATE OF CALIFORNIA, 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.

No. 86-1899. POLYAK *v.* STACK ET AL. Appeal from C. A. 6th Cir. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied. Reported below: 812 F. 2d 1408.

No. 86-2008. BRANSON *v.* COMMISSIONER OF INTERNAL REVENUE. Appeal from C. A. 9th 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: 815 F. 2d 82.

No. 86-2039. *OKIN v. COMMISSIONER OF INTERNAL REVENUE*. 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: 808 F. 2d 1338.

No. 86-2041. *CASSIDY ET AL. v. FIRESTONE TIRE & RUBBER CO. ET AL.* Appeal from Dist. Ct. App. Fla., 1st Dist., dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied. Reported below: 495 So. 2d 801.

No. 86-2059. *SHERIFF OF FALL RIVER COUNTY JAIL ET AL. v. HUGHES*. Appeal from C. A. 8th 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: 814 F. 2d 532.

No. 86-6977. *JIMENEZ v. MUNICIPAL COURT, SAN MATEO COUNTY*. Appeal from Ct. App. Cal., 1st App. Dist., dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied.

No. 86-7142. *COATS v. WOODS 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: 819 F. 2d 236.

No. 86-7149. *PRENZLER v. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION*. 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.

No. 86-7153. *PRENZLER v. SOCIAL SECURITY ADMINISTRATION*. 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.

No. 87-229. *KING v. CALIFORNIA 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: 784 F. 2d 910.

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No. 87-315. *TICKEL v. GEORGIA*. Appeal from Ct. App. Ga. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied. Reported below: 181 Ga. App. XXIX.

No. 87-342. *HUDGINS ET AL. v. INTERNAL REVENUE SERVICE*. Appeal from C. A. D. C. Cir. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied. Reported below: 257 U. S. App. D. C. 242, 808 F. 2d 137.

No. 87-5045. *WULFFENSTEIN v. UTAH*. Appeal from Sup. Ct. Utah dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied. Reported below: 733 P. 2d 120.

No. 87-5062. *WILLIAMS v. GEORGIA*. Appeal from Ct. App. Ga. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied. Reported below: 181 Ga. App. 902, 354 S. E. 2d 184.

No. 87-5168. *BROWN v. PARNHAM*. Appeal from C. A. 11th Cir. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied. Reported below: 816 F. 2d 686.

No. 87-5188. *COOMBS v. METROPOLITAN FEDERAL SAVINGS & LOAN ASSNS.* Appeal from Sup. Ct. N. J. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied.

No. 87-5208. *WILLIAMS v. FEDERICO ET AL.* Appeal from Sup. Ct. Fla. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied. Reported below: 509 So. 2d 1119.

No. 87-5273. *NAKAGAWA v. COLORADO*. Appeal from Ct. App. Colo. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied.

No. 86-1758. *WATERWAYS ASSOCIATION OF PITTSBURGH v. ROSE, STATE TAX COMMISSIONER OF WEST VIRGINIA*. Appeal from Cir. Ct. Kanawha County, W. Va., dismissed for want of properly presented federal question.

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No. 86-6886. MELNICK *v.* CITY OF MENTOR. Appeal from Ct. App. Ohio, Lake County, dismissed for want of properly presented federal question.

No. 86-7023. W. L. H. *v.* K. B. M. ET AL. Appeal from Sup. Ct. Pa. dismissed for want of properly presented federal question. Reported below: 514 Pa. 636, 522 A. 2d 1105.

No. 86-1840. CLAYPOOL ET AL. *v.* CLAYPOOL. Appeal from Sup. Ct. S. C. Motion of appellee for leave to proceed *in forma pauperis* granted. Appeal dismissed for want of jurisdiction.

No. 86-1875. DEWEESE NELSON REALTY, INC. *v.* EQUITY SERVICES CO. ET AL. Appeal from Sup. Ct. Miss. dismissed for want of substantial federal question. Reported below: 502 So. 2d 310.

No. 86-1985. FREED ET UX. *v.* WORCESTER COUNTY DEPARTMENT OF SOCIAL SERVICES ET AL. Appeal from Ct. Sp. App. Md. dismissed for want of substantial federal question. Reported below: 69 Md. App. 447, 518 A. 2d 159.

No. 86-2061. CITIZENS FOR BETTER EDUCATION ET AL. *v.* GOOSE CREEK CONSOLIDATED INDEPENDENT SCHOOL DISTRICT ET AL. Appeal from Ct. App. Tex., 1st Dist., dismissed for want of substantial federal question. Reported below: 719 S. W. 2d 350.

No. 86-7010. CLAY *v.* CLAY ET AL. Appeal from Ct. App. Minn. dismissed for want of substantial federal question. Reported below: 397 N. W. 2d 571.

No. 87-14. CHASE *v.* SCHLEUNING. Appeal from Ct. App. Ore. dismissed for want of substantial federal question. Reported below: 83 Ore. App. 149, 729 P. 2d 14.

No. 87-23. LONG *v.* HARRISON, A MINOR, BY AND THROUGH HIS NEXT FRIENDS AND NATURAL PARENTS, HARRISON, ET AL. Appeal from Sup. Ct. Kan. dismissed for want of substantial federal question. Reported below: 241 Kan. 174, 734 P. 2d 1155.

No. 87-45. LUND ET UX. *v.* COUNTY OF HENNEPIN. Appeal from Sup. Ct. Minn. dismissed for want of substantial federal question. Reported below: 403 N. W. 2d 617.

No. 87-51. HANSEN *v.* CITY OF SAN BUENAVENTURA, CALIFORNIA. Appeal from Sup. Ct. Cal. dismissed for want of sub-

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stantial federal question. Reported below: 42 Cal. 3d 1172, 729 P. 2d 186.

No. 87-86. *WILDERMUTH v. PENNSYLVANIA*. Appeal from Sup. Ct. Pa. dismissed for want of substantial federal question. Reported below: 514 Pa. 374, 524 A. 2d 490.

No. 87-126. *ARCHDIOCESAN SCHOOL OFFICE ET AL. v. COMMISSION ON HUMAN RIGHTS AND OPPORTUNITIES*. Appeal from Sup. Ct. Conn. dismissed for want of substantial federal question. Reported below: 202 Conn. 601, 522 A. 2d 781.

No. 87-141. *POE, JUDGE OF THE 228TH JUDICIAL DISTRICT COURT OF HARRIS COUNTY, TEXAS v. COLLIER*. Appeal from Ct. Crim. App. Tex. dismissed for want of substantial federal question. Reported below: 732 S. W. 2d 332.

No. 87-156. *BURNS ET AL. v. CHISUM INDEPENDENT SCHOOL DISTRICT ET AL.* Appeal from Ct. App. Tex., 6th Dist., dismissed for want of substantial federal question. Reported below: 720 S. W. 2d 836.

No. 87-158. *BEREZOSKI v. OHIO*. Appeal from Ct. App. Ohio, Montgomery County, dismissed for want of substantial federal question.

No. 87-237. *RHINEHART ET AL. v. TRIBUNE PUBLISHING CO., INC., ET AL.* Appeal from Ct. App. Wash. dismissed for want of substantial federal question. Reported below: 44 Wash. App. 707, 723 P. 2d 22.

No. 86-1915. *BOHEMIAN CLUB v. FAIR EMPLOYMENT AND HOUSING COMMISSION ET AL.* Appeal from Ct. App. Cal., 1st App. Dist., dismissed for want of substantial federal question. *JUSTICE O'CONNOR* took no part in the consideration or decision of this case. Reported below: 187 Cal. App. 3d 1, 231 Cal. Rptr. 769.

No. 86-2040. *KAVANAGH v. COVEN*. Appeal from App. Div., Sup. Ct. N. Y., 1st Jud. Dept., dismissed for want of jurisdiction. Reported below: 128 App. Div. 2d 450, 512 N. Y. S. 2d 776.

No. 87-15. *BROWN ET AL. v. BAILEY ET AL.* Appeal from Ct. Civ. App. Ala. dismissed for want of substantial federal ques-

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tion. JUSTICE WHITE would dismiss the appeal for want of jurisdiction. Reported below: 504 So. 2d 289.

*Vacated and Remanded After Certiorari Granted*

No. 86-1217. *RUSSONIELLO ET AL. v. OLAGUES ET AL.* C. A. 9th Cir. [Certiorari granted, 481 U. S. 1012.] Judgment vacated and case remanded to the Court of Appeals with instructions that the United States District Court for the Northern District of California dismiss the action as moot. *United States v. Munsingwear, Inc.*, 340 U. S. 36 (1950).

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.] Judgment vacated and case remanded to the Court of Appeals to consider the suggestion of mootness.

*Certiorari Granted—Vacated and Remanded*

No. 86-1714. *ARN, SUPERINTENDENT, OHIO REFORMATORY FOR WOMEN v. GREEN.* C. A. 6th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case remanded to the Court of Appeals to consider the question of mootness. Reported below: 809 F. 2d 1257.

No. 86-1851. *HAPANIEWSKI v. CITY OF CHICAGO HEIGHTS.* App. Ct. Ill., 1st Dist. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Goodman v. Lukens Steel Co.*, 482 U. S. 656 (1987). Reported below: 147 Ill. App. 3d 528, 497 N. E. 2d 97.

No. 86-1855. *DELTA AIR LINES, INC., ET AL. v. INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA, AIRLINE DIVISION, ET AL.* C. A. 9th Cir. Certiorari granted, judgment vacated, and case remanded to the Court of Appeals to consider the question of mootness. JUSTICE STEVENS took no part in the consideration or decision of this case. Reported below: 813 F. 2d 1359.

No. 86-1898. *ILLINOIS v. DUNCAN.* Sup. Ct. Ill. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Richardson v. Marsh*, 481 U. S. 200 (1987). Reported below: 115 Ill. 2d 429, 505 N. E. 2d 307.

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No. 86-1906. *HOLZER v. UNITED STATES*. C. A. 7th Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *McNally v. United States*, 483 U. S. 350 (1987). Reported below: 816 F. 2d 304.

No. 86-6641. *GRAY v. UNITED STATES*. C. A. 9th Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of the position presently asserted by the Solicitor General in his brief filed June 17, 1987. Reported below: 809 F. 2d 579.

No. 87-8. *BURROUGHS ET AL. v. HIGGINS*. C. A. 3d Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *O'Lone v. Estate of Shabazz*, 482 U. S. 342 (1987). Reported below: 816 F. 2d 119.

No. 87-24. *MOORE ET AL. v. BECHTEL POWER CORP. 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). Reported below: 810 F. 2d 205.

No. 87-28. *PICKETT ET AL. v. CHAPMAN*. C. A. 7th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Anderson v. Creighton*, 483 U. S. 635 (1987). Reported below: 801 F. 2d 912.

No. 87-161. *COPELAND v. DUGGER, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL.* Sup. Ct. Fla. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Hitchcock v. Dugger*, 481 U. S. 393 (1987). Reported below: 505 So. 2d 425.

#### *Certiorari Dismissed*

No. 86-7029. *LEWIS v. UNITED STATES*. C. A. 9th Cir. Certiorari dismissed. *Warden v. Palermo*, 431 U. S. 911 (1977). Reported below: 812 F. 2d 715.

#### *Miscellaneous Orders*

No. — — —. *FARNUM v. COMMISSIONER OF PATENTS AND TRADEMARKS*; and

No. — — —. *UHLMANN-KIHEI, INC., ET AL. v. GAH, INC.* Motions to direct the Clerk to file the petitions for writs of certiorari out of time denied.

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No. A-110. CONSTRUCTION, PRODUCTION & MAINTENANCE LABORERS' LOCAL 383 *v.* CARTER-GLOGAU LABORATORIES, INC. Motion for reconsideration of denial of application for extension of time to file a petition for writ of certiorari denied.

No. A-198. CHROMIAK *v.* UNITED STATES. D. C. C. D. Cal. Application for stay, addressed to JUSTICE BRENNAN and referred to the Court, denied.

No. A-217. HERBAGE *v.* MEESE, ATTORNEY GENERAL OF THE UNITED STATES, ET AL. Application for writ of habeas corpus, presented to THE CHIEF JUSTICE, and by him referred to the Court, denied.

No. D-647. IN RE DISBARMENT OF ELDEN. It having been reported to the Court that William Elden died September 2, 1987, the rule to show cause, heretofore issued on July 29, 1987 [483 U. S. 1040], is hereby discharged.

No. 94, Orig. SOUTH CAROLINA *v.* BAKER, SECRETARY OF THE TREASURY. Motion of National Governors' Association for leave to file a reply brief granted. Exceptions to the Report of the Special Master are set for oral argument in due course. [For earlier order herein, see, *e. g.*, 479 U. S. 1078.]

No. 109, Orig. OKLAHOMA ET AL. *v.* NEW MEXICO. Motion for leave to file bill of complaint granted, and defendant is allowed 60 days within which to file an answer.

No. 86-279. BASIC INC. ET AL. *v.* LEVINSON ET AL. C. A. 6th Cir. [Certiorari granted, 479 U. S. 1083.] Motion of Joseph Harris et al. for leave to file a brief as *amici curiae* out of time denied. THE CHIEF JUSTICE and JUSTICE SCALIA took no part in the consideration or decision of this motion.

No. 86-684. CALIFORNIA *v.* GREENWOOD ET AL. Ct. App. Cal., 4th App. Dist. [Certiorari granted, 483 U. S. 1019.] Motion of respondent Dyanne Van Houten for divided argument denied. Motion for appointment of counsel granted, and it is ordered that Michael Ian Garey, Esq., of Santa Ana, Cal., be appointed to serve as counsel for respondent Billy Greenwood in this case.

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 Legal Affairs Council et al. for leave to participate in oral argument as *amici curiae* and for divided argument denied.

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, 483 U. S. 1004.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 86-958. NORWEST BANK WORTHINGTON ET AL. *v.* AHLERS ET UX. C. A. 8th Cir. [Certiorari granted, 483 U. S. 1004.] Motion of respondents for leave to proceed further herein *in forma pauperis* granted. Motion of petitioners to dispense with printing the joint appendix granted. Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument denied.

No. 86-978. GARDEBRING, COMMISSIONER OF THE MINNESOTA DEPARTMENT OF HUMAN SERVICES *v.* JENKINS. C. A. 8th Cir. [Certiorari granted, 482 U. S. 926.] Motion of respondent for leave to proceed further herein *in forma pauperis* granted. Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 86-1172. GOODYEAR ATOMIC CORP. *v.* MILLER ET AL. Sup. Ct. Ohio. [Probable jurisdiction noted, 483 U. S. 1004.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 86-1387. MACKEY ET AL. *v.* LANIER COLLECTION AGENCY & SERVICE, INC. Sup. Ct. Ga. [Certiorari granted, 483 U. S. 1004.] Maureen E. Mahoney, Esq., of Washington, D. C., a member of the Bar of this Court, is invited to brief and argue this case as *amicus curiae* in support of the judgment below. Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 86-1431. LOEFFLER *v.* TISCH, POSTMASTER GENERAL OF THE UNITED STATES. C. A. 8th Cir. [Certiorari granted, 483 U. S. 1004.] Motion of petitioner to dispense with printing the joint appendix granted.

No. 86-1590. NOVINGER ET UX. *v.* KRAMER ET AL., 481 U. S. 1069. Motion of respondent Swartz for damages denied. Motion of respondents Kramer and Geffen for damages denied.

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No. 86-1856. NORTHWEST CENTRAL PIPELINE CORP. *v.* STATE CORPORATION COMMISSION OF KANSAS ET AL. Appeal from Sup. Ct. Kan.;

No. 86-1857. CONTINENTAL BANK INTERNATIONAL *v.* CITY OF NEW YORK, DEPARTMENT OF FINANCE. Appeal from Ct. App. N. Y.;

No. 86-1940. SHEET METAL WORKERS' INTERNATIONAL ASSN. ET AL. *v.* LYNN. C. A. 9th Cir.;

No. 87-42. CLIFT *v.* INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE & AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW) ET AL. C. A. 7th Cir.; and

No. 87-133. BUCHANAN *v.* STANSHIPS, INC., ET AL. C. A. 5th Cir. The Solicitor General is invited to file briefs in these cases expressing the views of the United States.

No. 86-2035. CHESAPEAKE & OHIO RAILWAY CO. *v.* ALDRIDGE ET AL. C. A. 4th Cir. Motion of Association of American Railroads et al. for leave to file a brief as *amici curiae* granted.

No. 86-6284. SATTERWHITE *v.* TEXAS. Ct. Crim. App. Tex. [Certiorari granted, 482 U. S. 905.] Motion for appointment of counsel granted, and it is ordered that Richard D. Woods, Esq., of San Antonio, Tex., be appointed to serve as counsel for petitioner in this case.

No. 86-6757. COY *v.* IOWA. Sup. Ct. Iowa. [Probable jurisdiction noted, 483 U. S. 1019.] Motion of appellant to seal the record granted. Motion for appointment of counsel granted, and it is ordered that Paul J. Papak, Esq., of Iowa City, Iowa, be appointed to serve as counsel for appellant in this case.

No. 86-6964. IN RE CONCOBY. Motion of petitioner for leave to proceed *in forma pauperis* denied. Petitioner is allowed until October 26, 1987, within which to pay the docketing fee required by Rule 45(a) and to submit a petition in compliance with Rule 33 of the Rules of this Court.

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

For the reasons expressed in *Brown v. Herald Co.*, 464 U. S. 928 (1983), we would deny the petition for writ of *madamus*

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

No. 86-7009. IN RE SHIBUYA;

No. 86-7012. IN RE SHIBUYA; and

No. 87-5032. IN RE SHIBUYA. Motions of petitioner for leave to proceed *in forma pauperis* denied. Petitioner is allowed until October 26, 1987, within which to pay the docketing fee required by Rule 45(a) and to submit petitions in compliance with Rule 33 of the Rules of this Court.

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

For the reasons expressed in *Brown v. Herald Co.*, 464 U. S. 928 (1983), we would deny the petitions for writs of mandamus without reaching the merits of the motions to proceed *in forma pauperis*.

No. 86-7147. MACLIN *v.* MOBILE CONSORTIUM ET AL. C. A. 11th Cir.;

No. 87-5085. BROWN *v.* CITY OF ST. LOUIS ET AL. C. A. 8th Cir.; and

No. 87-5137. MCCULLUM *v.* MICHIGAN. Ct. App. Mich. Motions of petitioners for leave to proceed *in forma pauperis* denied. Petitioners are allowed until October 26, 1987, within which to pay the docketing fee required by Rule 45(a) and to submit petitions in compliance with Rule 33 of the Rules of this Court.

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

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

No. 87-113. HERCEG ET AL. *v.* HUSTLER MAGAZINE, INC. C. A. 5th Cir. Motion of Charles H. Keating, Jr., for leave to file a brief as *amicus curiae* granted.

No. 87-159. OHIO CASUALTY INSURANCE CO. *v.* DOWNEY SAVINGS & LOAN ASSN. Ct. App. Cal., 2d App. Dist. Motions of California Bankers Association and Washington Legal Foundation for leave to file briefs as *amici curiae* granted.

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No. 87-5153. *CARNEGIE v. UNITED STATES*. C. A. 2d Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied. Petitioner is allowed until October 26, 1987, within which to pay the docketing fee required by Rule 45(a) and to submit a petition in compliance with Rule 33 of the Rules of this Court.

JUSTICE BRENNAN, JUSTICE MARSHALL, 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. 87-5008. *IN RE MCDONALD*. Sup. Ct. Tenn.; and

No. 87-5124. *IN RE TAYLOR*. Ct. App. La., 3d Cir. Petitions for writs of common-law certiorari denied. Reported below: No. 87-5124, 495 So. 2d 996.

No. 86-7052. *IN RE MCDONALD*. Sup. Ct. Tenn. Petition for writ of common-law certiorari and habeas corpus denied.

No. 86-6996. *IN RE CLARK*;

No. 86-7086. *IN RE MCDONALD*; and

No. 87-5115. *IN RE OLIVER*. Petitions for writs of habeas corpus denied.

No. 86-7053. *IN RE MONTGOMERY*;

No. 86-7098. *IN RE MCGOVERN*;

No. 86-7120. *IN RE BROWN-EL*;

No. 87-5004. *IN RE TYLER*;

No. 87-5037. *IN RE FAZZINI*;

No. 87-5157. *IN RE WOOL*; and

No. 87-5183. *IN RE D'AMARIO*. Petitions for writs of mandamus denied.

No. 86-1910. *IN RE HUDGINS ET AL.*; and

No. 87-5155. *IN RE NABORS*. Petitions for writs of mandamus and/or prohibition denied.

No. 87-5125. *IN RE TAYLOR*. Petition for writ of prohibition denied.

*Probable Jurisdiction Noted or Postponed*

No. 86-1836. *NEW YORK STATE CLUB ASSN., INC. v. CITY OF NEW YORK ET AL.* Appeal from Ct. App. N. Y. Probable juris-

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diction noted. Reported below: 69 N. Y. 2d 211, 505 N. E. 2d 915.

No. 86-1961. TULSA PROFESSIONAL COLLECTION SERVICES, INC. *v.* POPE, EXECUTRIX OF THE ESTATE OF POPE. Appeal from Sup. Ct. Okla. Probable jurisdiction noted. Reported below: 733 P. 2d 396.

No. 86-1743. MONESSEN SOUTHWESTERN RAILWAY Co. *v.* MORGAN. Appeal from Sup. Ct. Pa. Motion of Association of American Railroads for leave to file a brief as *amicus curiae* granted. Probable jurisdiction noted. Reported below: 513 Pa. 86, 518 A. 2d 1171.

No. 86-7113. KADRMAS ET AL. *v.* DICKINSON PUBLIC SCHOOLS ET AL. Appeal from Sup. Ct. N. D. Motion of appellants for leave to proceed *in forma pauperis* granted. Probable jurisdiction noted. Reported below: 402 N. W. 2d 897.

No. 87-5002. MCCOY *v.* COURT OF APPEALS OF WISCONSIN, DISTRICT 1. Appeal from Sup. Ct. Wis. Motion of appellant for leave to proceed *in forma pauperis* granted. Probable jurisdiction noted. Reported below: 137 Wis. 2d 90, 403 N. W. 2d 449.

No. 86-1970. MISSISSIPPI POWER & LIGHT Co. *v.* MISSISSIPPI EX REL. PITTMAN, ATTORNEY GENERAL OF MISSISSIPPI, ET AL. Appeal from Sup. Ct. Miss. Further consideration of question of jurisdiction postponed to hearing of case on the merits. Reported below: 506 So. 2d 978.

*Certiorari Granted*

No. 86-1520. BROCK, SECRETARY OF LABOR *v.* RICHLAND SHOE Co. C. A. 3d Cir. Certiorari granted. Reported below: 799 F. 2d 80.

No. 86-1715. FEDERAL LABOR RELATIONS AUTHORITY *v.* ABERDEEN PROVING GROUND, DEPARTMENT OF THE ARMY. C. A. 4th Cir. Certiorari granted.

No. 86-1753. DOE *v.* UNITED STATES. C. A. 5th Cir. Certiorari granted. Reported below: 812 F. 2d 1404.

No. 86-1764. BETHESDA HOSPITAL ASSN. ET AL. *v.* BOWEN, SECRETARY OF HEALTH AND HUMAN SERVICES. C. A. 6th Cir. Certiorari granted. Reported below: 810 F. 2d 558.

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No. 86-1781. SCHWEIKER ET AL. *v.* CHILICKY ET AL. C. A. 9th Cir. Certiorari granted. Reported below: 796 F. 2d 1131.

No. 87-3. BRASWELL *v.* UNITED STATES. C. A. 5th Cir. Certiorari granted. Reported below: 814 F. 2d 190.

No. 87-16. SHAPERO *v.* KENTUCKY BAR ASSN. Sup. Ct. Ky. Certiorari granted. Reported below: 726 S. W. 2d 299.

No. 87-65. UNITED STATES *v.* PROVIDENCE JOURNAL CO. ET AL. C. A. 1st Cir. Certiorari granted. Reported below: 820 F. 2d 1342 and 1354.

No. 87-107. PATTERSON *v.* MCLEAN CREDIT UNION. C. A. 4th Cir. Certiorari granted. Reported below: 805 F. 2d 1143.

No. 87-157. ALLIED TUBE & CONDUIT CORP. *v.* INDIAN HEAD, INC. C. A. 2d Cir. Certiorari granted. Reported below: 817 F. 2d 938.

No. 86-1145. PATRICK *v.* BURGET ET AL. C. A. 9th Cir. Certiorari granted. JUSTICE BLACKMUN took no part in the consideration or decision of this petition. Reported below: 800 F. 2d 1498.

No. 86-1406. PUERTO RICO DEPARTMENT OF CONSUMER AFFAIRS ET AL. *v.* ISLA PETROLEUM CORP. ET AL. Temp. Emerg. Ct. App. Certiorari granted. JUSTICE O'CONNOR took no part in the consideration or decision of this petition. Reported below: 811 F. 2d 1511.

No. 86-1685. FLORIDA ET AL. *v.* LONG ET AL. C. A. 11th Cir. Motion of Equal Employment Advisory Counsel et al. for leave to file a brief as *amici curiae* granted. Certiorari granted limited to Questions 1, 2(A), 2(B), and 2(C) presented by the petition. Reported below: 805 F. 2d 1542.

No. 86-1992. IMMIGRATION AND NATURALIZATION SERVICE *v.* PANGILINAN ET AL.; and

No. 86-2019. IMMIGRATION AND NATURALIZATION SERVICE *v.* MANZANO. C. A. 9th Cir. Certiorari granted, cases consolidated, and a total of one hour allotted for oral argument. Reported below: No. 86-1992, 796 F. 2d 1091.

No. 87-4. WHEAT *v.* UNITED STATES. C. A. 9th Cir. Certiorari granted limited to Question 1 presented by the petition. Reported below: 813 F. 2d 1399.

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*Certiorari Denied.* (See also Nos. 86-1242, 86-1656, 86-1850, 86-1885, 86-1891, 86-1899, 86-2008, 86-2039, 86-2041, 86-2059, 86-6977, 86-7142, 86-7149, 86-7153, 87-229, 87-315, 87-342, 87-5045, 87-5062, 87-5168, 87-5188, 87-5208, 87-5273, 87-5008, 87-5124, and 86-7052, *supra*.)

No. 86-1102. MANUFACTURERS ASSOCIATION OF TRI-COUNTY ET AL. *v.* KNEPPER ET AL. C. A. 3d Cir. *Certiorari denied.* Reported below: 801 F. 2d 130.

No. 86-1382. SAJER, ADJUTANT GENERAL OF THE COMMONWEALTH OF PENNSYLVANIA, ET AL. *v.* JORDEN. C. A. 3d Cir. *Certiorari denied.* Reported below: 799 F. 2d 99.

No. 86-1570. MCKINLEY *v.* UNITED STATES. C. A. 11th Cir. *Certiorari denied.* Reported below: 808 F. 2d 60.

No. 86-1607. BAILEY *v.* RYAN STEVEDORING Co., INC., ET AL. C. A. 5th Cir. *Certiorari denied.* Reported below: 808 F. 2d 55.

No. 86-1608. BULJUBASIC *v.* UNITED STATES. C. A. 7th Cir. *Certiorari denied.* Reported below: 808 F. 2d 1260.

No. 86-1613. NATIONAL TREASURY EMPLOYEES UNION *v.* HORN, DIRECTOR, OFFICE OF PERSONNEL MANAGEMENT. C. A. Fed. Cir. *Certiorari denied.* Reported below: 805 F. 2d 384.

No. 86-1614. GRAHAM, AS EXECUTRIX OF THE ESTATE OF GRAHAM *v.* TELEDYNE-CONTINENTAL MOTORS, A DIVISION OF TELEDYNE INDUSTRIES, INC., ET AL. C. A. 9th Cir. *Certiorari denied.* Reported below: 805 F. 2d 1386.

No. 86-1619. LOCAL UNION No. 690, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA *v.* CARUSO. Sup. Ct. Wash. *Certiorari denied.* Reported below: 107 Wash. 2d 524, 730 P. 2d 1299.

No. 86-1623. LOCAL 19, UNITED GLASS & CERAMIC WORKERS *v.* EQUAL EMPLOYMENT OPPORTUNITY COMMISSION ET AL. C. A. 7th Cir. *Certiorari denied.* Reported below: 799 F. 2d 1152.

No. 86-1625. GORMAN *v.* UNITED STATES. C. A. 6th Cir. *Certiorari denied.* Reported below: 807 F. 2d 1299.

No. 86-1626. HASKINS *v.* UNITED STATES DEPARTMENT OF THE ARMY. C. A. 6th Cir. *Certiorari denied.* Reported below: 808 F. 2d 1192.

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No. 86-1633. *NORWICH EATON PHARMACEUTICALS, INC. v. BOWEN, SECRETARY OF HEALTH AND HUMAN SERVICES, ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 808 F. 2d 486.

No. 86-1642. *MONONGAHELA POWER CO. ET AL. v. MARSH, SECRETARY OF THE ARMY, ET AL.* C. A. D. C. Cir. Certiorari denied. Reported below: 257 U. S. App. D. C. 345, 809 F. 2d 41.

No. 86-1643. *MISSISSIPPI v. FLOYD.* Sup. Ct. Miss. Certiorari denied. Reported below: 500 So. 2d 989.

No. 86-1646. *TEXAS v. WILLIAMS.* Ct. Crim. App. Tex. Certiorari denied. Reported below: 738 S. W. 2d 257.

No. 86-1647. *GOLDIN, COMPTROLLER OF THE CITY OF NEW YORK, ET AL. v. BAKER, SECRETARY OF THE TREASURY.* C. A. 2d Cir. Certiorari denied. Reported below: 809 F. 2d 187.

No. 86-1665. *HURT v. UNITED STATES.* C. A. 9th Cir. Certiorari denied. Reported below: 795 F. 2d 765 and 808 F. 2d 707.

No. 86-1673. *GREGORY v. DRURY ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 809 F. 2d 249.

No. 86-1674. *HESTERMAN, EXECUTRIX OF THE ESTATE OF HESTERMAN v. UNITED STATES.* C. A. 9th Cir. Certiorari denied. Reported below: 772 F. 2d 914.

No. 86-1678. *MORRIS v. GARMON.* Sup. Ct. Ark. Certiorari denied. Reported below: 291 Ark. 67, 722 S. W. 2d 571.

No. 86-1709. *CHANDLER v. UNITED STATES.* C. A. 3d Cir. Certiorari denied. Reported below: 800 F. 2d 1140.

No. 86-1710. *KNAPP v. ARIZONA.* Ct. App. Ariz. Certiorari denied.

No. 86-1717. *JENKINS ET AL. v. MISSOURI ET AL.; and*

No. 86-1718. *KANSAS CITY, MISSOURI, SCHOOL DISTRICT ET AL. v. MISSOURI ET AL.* C. A. 8th Cir. Certiorari denied. Reported below: 807 F. 2d 657.

No. 86-1720. *TREVINO ET AL. v. UNITED STATES.* C. A. 9th Cir. Certiorari denied. Reported below: 804 F. 2d 1512.

No. 86-1729. *CALIFORNIA STATE LANDS COMMISSION v. UNITED STATES ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 805 F. 2d 857.

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No. 86-1735. *SHOE WORLD, INC., DBA GUSSINI v. EL GRECO LEATHER PRODUCTS CO., INC., DBA CANDIE'S INTERNATIONAL*. C. A. 2d Cir. Certiorari denied. Reported below: 806 F. 2d 392.

No. 86-1739. *GUARINI ET AL. v. NEW YORK ET AL.* Super. Ct. N. J., App. Div. Certiorari denied. Reported below: 215 N. J. Super. 293, 521 A. 2d 1294.

No. 86-1741. *T. J. MELTON III & ASSOCIATES, INC., ET AL. v. FEDERAL DEPOSIT INSURANCE CORPORATION*. C. A. 5th Cir. Certiorari denied. Reported below: 808 F. 2d 1521.

No. 86-1744. *SHORTER v. UNITED STATES*. C. A. D. C. Cir. Certiorari denied. Reported below: 257 U. S. App. D. C. 358, 809 F. 2d 54.

No. 86-1746. *DARNELL ET AL. v. DEPARTMENT OF TRANSPORTATION, FEDERAL AVIATION ADMINISTRATION; POLLEY ET AL. v. DEPARTMENT OF TRANSPORTATION, FEDERAL AVIATION ADMINISTRATION; ALEXANDER v. DEPARTMENT OF TRANSPORTATION, FEDERAL AVIATION ADMINISTRATION; MCCORMACK v. DEPARTMENT OF TRANSPORTATION, FEDERAL AVIATION ADMINISTRATION; and SWAUGER v. DEPARTMENT OF TRANSPORTATION, FEDERAL AVIATION ADMINISTRATION*. C. A. Fed. Cir. Certiorari denied. Reported below: 807 F. 2d 943 (first case); 809 F. 2d 787 (second case); 809 F. 2d 787 (third case); 809 F. 2d 787 (fourth case); 809 F. 2d 787 (fifth case).

No. 86-1747. *MEYER v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 802 F. 2d 348.

No. 86-1750. *SOUTHERN METHODIST UNIVERSITY v. KNEELAND ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 806 F. 2d 1285.

No. 86-1751. *RHODES v. DEKALB COUNTY, GEORGIA, ET AL.* C. A. 11th Cir. Certiorari denied. Reported below: 806 F. 2d 1068.

No. 86-1760. *CARPENTERS LOCAL 608, UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA, AFL-CIO v. NATIONAL LABOR RELATIONS BOARD*. C. A. 2d Cir. Certiorari denied. Reported below: 811 F. 2d 149.

No. 86-1772. *UNITED PACIFIC INSURANCE Co. v. LAUREL COUNTY ET AL.*; and

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No. 86-1922. LAUREL COUNTY ET AL. *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 805 F. 2d 628.

No. 86-1773. CRONSON, AUDITOR GENERAL OF ILLINOIS *v.* MADDEN, ACTING DIRECTOR, ADMINISTRATIVE OFFICE OF THE ILLINOIS COURTS. Sup. Ct. Ill. Certiorari denied. Reported below: 114 Ill. 2d 504, 501 N. E. 2d 1267.

No. 86-1782. BLACK HILLS POWER & LIGHT CO. ET AL. *v.* WEINBERGER, SECRETARY OF DEFENSE, ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 808 F. 2d 665.

No. 86-1783. COLAHAN, DBA IBA OF OHIO, ET AL. *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 811 F. 2d 287.

No. 86-1784. COHL ET AL. *v.* UNITED STATES; and  
No. 86-1785. COHL *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 812 F. 2d 1408.

No. 86-1788. TELEGRAPH SAVINGS & LOAN ASSN. ET AL. *v.* FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 807 F. 2d 590.

No. 86-1791. WARD *v.* SENTRY TITLE Co., INC. C. A. 5th Cir. Certiorari denied. Reported below: 806 F. 2d 1278.

No. 86-1793. BONNER *v.* FORD, DEPUTY SHERIFF OF DALE COUNTY, ALABAMA, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 813 F. 2d 409.

No. 86-1794. MBANK CORPUS CHRISTI, N. A. *v.* DAVILA ET AL. Ct. App. Tex., 13th Dist. Certiorari denied. Reported below: 750 S. W. 2d 1.

No. 86-1804. TRAVIS ET AL. *v.* TEXAS ET AL. Sup. Ct. Tex. Certiorari denied. Reported below: 722 S. W. 2d 698.

No. 86-1805. OLSON *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied.

No. 86-1806. R. D. RYNO INDUSTRIES, INC., DBA R. D. RYNO MAZDA *v.* MAZDA DISTRIBUTORS (GULF), INC., ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 807 F. 2d 1222.

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No. 86-1807. *LEOGRANDE ET AL. v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 811 F. 2d 147.

No. 86-1810. *DUNGEY v. USX CORP.* App. Ct. Ill., 5th Dist. Certiorari denied. Reported below: 148 Ill. App. 3d 484, 499 N. E. 2d 545.

No. 86-1812. *HRIBAR v. TRW, INC.* C. A. 6th Cir. Certiorari denied. Reported below: 815 F. 2d 78.

No. 86-1816. *YOUNG v. REAGAN, PRESIDENT OF THE UNITED STATES, ET AL.* C. A. 10th Cir. Certiorari denied.

No. 86-1817. *KONDRAT v. O'NEILL ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 815 F. 2d 78.

No. 86-1822. *THOMPSON v. MONSANTO CORP.* C. A. 5th Cir. Certiorari denied. Reported below: 809 F. 2d 1167.

No. 86-1825. *BRAWER v. OPTIONS CLEARING CORP. ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 807 F. 2d 297.

No. 86-1829. *ATLANTIC RICHFIELD CO. v. INDEPENDENT U. S. TANKER OWNERS COMMITTEE ET AL.* C. A. D. C. Cir. Certiorari denied. Reported below: 258 U. S. App. D. C. 6, 809 F. 2d 847.

No. 86-1830. *SPECK v. MCQUIDDY PRINTING Co., INC.* C. A. 6th Cir. Certiorari denied. Reported below: 815 F. 2d 80.

No. 86-1833. *WATTS v. GENERAL TELEPHONE COMPANY OF THE SOUTHEAST.* C. A. 11th Cir. Certiorari denied. Reported below: 808 F. 2d 60.

No. 86-1834. *BROWN v. ALABAMA DEPARTMENT OF PENSIONS AND SECURITY ET AL.* C. A. 11th Cir. Certiorari denied. Reported below: 808 F. 2d 1522.

No. 86-1837. *BAUMANN-FURRIE & Co. v. COMMODITY CREDIT CORPORATION, UNITED STATES DEPARTMENT OF AGRICULTURE, ET AL.* C. A. 8th Cir. Certiorari denied. Reported below: 815 F. 2d 712.

No. 86-1838. *PALERMO v. ROREX ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 806 F. 2d 1266.

No. 86-1839. *BERRY ESTATES, INC. v. REGAN, COMPTROLLER OF THE STATE OF NEW YORK.* C. A. 2d Cir. Certiorari denied. Reported below: 812 F. 2d 67.

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No. 86-1841. *SUNSHINE BISCUITS, INC. v. APPONI ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 809 F. 2d 1210.

No. 86-1842. *ARNAIZ v. UNITED STATES*;

No. 86-1998. *BACALLAO ET AL. v. UNITED STATES*;

No. 86-6591. *MOYA v. UNITED STATES*; and

No. 86-6637. *RODRIGUEZ v. UNITED STATES.* C. A. 9th Cir. Certiorari denied. Reported below: 810 F. 2d 206.

No. 86-1846. *HOWARD v. CHESAPEAKE & OHIO RAILWAY CO.* C. A. 6th Cir. Certiorari denied. Reported below: 812 F. 2d 282.

No. 86-1849. *WOMACK ET AL. v. GETTELFINGER ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 808 F. 2d 446.

No. 86-1852. *LONG ET AL. v. FLORIDA ET AL.* C. A. 11th Cir. Certiorari denied. Reported below: 805 F. 2d 1542.

No. 86-1853. *OHIO DEPARTMENT OF MENTAL HEALTH v. MILTON.* Sup. Ct. Ohio. Certiorari denied. Reported below: 29 Ohio St. 3d 20, 505 N. E. 2d 255.

No. 86-1858. *INTERNATIONAL LONGSHOREMEN'S ASSN., AFL-CIO, ET AL. v. ALLIED INTERNATIONAL, INC.* C. A. 1st Cir. Certiorari denied. Reported below: 814 F. 2d 32.

No. 86-1861. *BOWEN, SECRETARY OF HEALTH AND HUMAN SERVICES v. HYATT ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 807 F. 2d 376.

No. 86-1862. *JOHN HANSON SAVINGS & LOAN, INC. v. MARYLAND ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 812 F. 2d 1401.

No. 86-1863. *FINANCIAL INFORMATION, INC. v. MOODY'S INVESTORS SERVICE.* C. A. 2d Cir. Certiorari denied. Reported below: 808 F. 2d 204.

No. 86-1864. *COLAN v. CUTLER-HAMMER, INC., ET AL.* C. A. 7th Cir. Certiorari denied. Reported below: 812 F. 2d 357.

No. 86-1865. *MARQUEZ-PEREZ v. UNITED STATES.* C. A. 11th Cir. Certiorari denied. Reported below: 813 F. 2d 409.

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No. 86-1866. ALABAMA *v.* LYNG, SECRETARY OF AGRICULTURE, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 811 F. 2d 567.

No. 86-1867. COOK *v.* GEORGIA. Sup. Ct. Ga. Certiorari denied. Reported below: 256 Ga. 808, 353 S. E. 2d 333.

No. 86-1868. PLAINS COTTON COOPERATIVE ASSOCIATION OF LUBBOCK, TEXAS *v.* GOODPASTURE COMPUTER SERVICE, INC., ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 807 F. 2d 1256.

No. 86-1869. BEACHBOARD *v.* TRUSTEES OF COLUMBIA UNIVERSITY IN THE CITY OF NEW YORK. C. A. 3d Cir. Certiorari denied. Reported below: 815 F. 2d 693.

No. 86-1872. HARGRAVE *v.* KENTUCKY. Sup. Ct. Ky. Certiorari denied. Reported below: 724 S. W. 2d 202.

No. 86-1873. JONES, BY AND THROUGH HIS NEXT FRIEND, JONES *v.* UNIVERSITY INTERSCHOLASTIC LEAGUE ET AL. Ct. App. Tex., 5th Dist. Certiorari denied. Reported below: 715 S. W. 2d 759.

No. 86-1874. PERSON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 813 F. 2d 105.

No. 86-1876. PACECO, INC. *v.* SMITH ET AL. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 86-1877. FOGERTY ET AL. *v.* CALIFORNIA ET AL.; and

No. 86-1901. TAHOE SHOREZONE REPRESENTATION *v.* CALIFORNIA ET AL. Ct. App. Cal., 3d App. Dist. Certiorari denied. Reported below: 187 Cal. App. 3d 224, 231 Cal. Rptr. 810.

No. 86-1880. SPRENGER, OLSON & SHUTES, P. A., ET AL. *v.* BURLINGTON NORTHERN RAILROAD Co. C. A. 7th Cir. Certiorari denied. Reported below: 810 F. 2d 601.

No. 86-1882. STOOT *v.* D & D CATERING SERVICE, INC. C. A. 5th Cir. Certiorari denied. Reported below: 807 F. 2d 1197.

No. 86-1884. GORDON *v.* DAVIS ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 811 F. 2d 1507.

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No. 86-1887. *MAYERS ET UX. v. BOWEN, SECRETARY OF HEALTH AND HUMAN SERVICES*. C. A. 11th Cir. Certiorari denied. Reported below: 806 F. 2d 995.

No. 86-1888. *MARTINELLI, INDIVIDUALLY AND AS ADMINISTRATRIX OF THE ESTATE OF MARTINELLI, ET AL. v. UNITED STATES DEPARTMENT OF THE ARMY*. C. A. 3d Cir. Certiorari denied. Reported below: 812 F. 2d 872.

No. 86-1889. *DIAZ-ALBERTINI v. UNITED STATES*. C. A. 10th Cir. Certiorari denied. Reported below: 772 F. 2d 654.

No. 86-1890. *GIBBS v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 813 F. 2d 596.

No. 86-1892. *FORD MOTOR CO. v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 814 F. 2d 1099.

No. 86-1893. *DOUGLAS v. UNITED STATES*. Ct. Mil. App. Certiorari denied. Reported below: 24 M. J. 129.

No. 86-1894. *BARTON v. E. F. HUTTON & Co., INC., ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 809 F. 2d 548.

No. 86-1895. *RIVAL MANUFACTURING CO. v. AVERBACH*. C. A. 3d Cir. Certiorari denied. Reported below: 809 F. 2d 1016.

No. 86-1896. *BROME v. UNITED STATES*. C. A. Fed. Cir. Certiorari denied. Reported below: 818 F. 2d 876.

No. 86-1900. *PELTIER v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 800 F. 2d 772.

No. 86-1902. *BEN M. HOGAN CO., INC. v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 809 F. 2d 480.

No. 86-1903. *HOWARD v. MARSH, SECRETARY OF THE ARMY*. C. A. 8th Cir. Certiorari denied. Reported below: 808 F. 2d 841.

No. 86-1905. *BRUMFIELD v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 810 F. 2d 196.

No. 86-1909. *HOFFMAN v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 812 F. 2d 714.

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No. 86-1911. *CASA LINDA PRESBYTERIAN CHURCH IN AMERICA ET AL. v. GRACE UNION PRESBYTERY, INC., ET AL.* Ct. App. Tex., 5th Dist. Certiorari denied. Reported below: 710 S. W. 2d 700.

No. 86-1912. *TOTUS ET AL. v. HOLLY ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 812 F. 2d 714.

No. 86-1913. *LAWRENCE v. SECRETARY OF TRANSPORTATION ET AL.* C. A. D. C. Cir. Certiorari denied. Reported below: 257 U. S. App. D. C. 242, 808 F. 2d 137.

No. 86-1914. *PERLSTEIN v. HERRMANN.* C. A. 3d Cir. Certiorari denied. Reported below: 817 F. 2d 752.

No. 86-1917. *BARNES-HIND/HYDROCURVE, INC., ET AL. v. BAUSCH & LOMB INC.* C. A. Fed. Cir. Certiorari denied. Reported below: 796 F. 2d 443.

No. 86-1918. *ALIOTO & ALIOTO ET AL. v. E. F. HUTTON & Co., INC., ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 809 F. 2d 548.

No. 86-1919. *CHEROKEE INSURANCE Co. v. RIEDER ET AL.* C. A. 3d Cir. Certiorari denied. Reported below: 813 F. 2d 398.

No. 86-1920. *MCDONALD PONTIAC-CADILLAC-GMC, INC. v. PROSECUTING ATTORNEY FOR THE COUNTY OF SAGINAW.* Ct. App. Mich. Certiorari denied. Reported below: 150 Mich. App. 52, 388 N. W. 2d 301.

No. 86-1921. *LIFETIME DOORS, INC. v. BARBER & ROSS Co.* C. A. 4th Cir. Certiorari denied. Reported below: 810 F. 2d 1276.

No. 86-1923. *MADDEN ET AL. v. GLUCK ET AL.* C. A. 8th Cir. Certiorari denied. Reported below: 815 F. 2d 1163.

No. 86-1924. *LAUCLAN v. CALIFORNIA.* Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 86-1925. *FLORIDA v. JONES.* Dist. Ct. App. Fla., 3d Dist. Certiorari denied. Reported below: 497 So. 2d 1268.

No. 86-1926. *CHICAGO BRIDGE & IRON Co. v. DEPARTMENT OF LABOR AND INDUSTRIES OF WASHINGTON ET AL.* Ct. App.

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Wash. Certiorari denied. Reported below: 46 Wash. App. 252, 731 P. 2d 1.

No. 86-1929. *McGINNIS v. E. F. HUTTON & Co., INC.* C. A. 6th Cir. Certiorari denied. Reported below: 812 F. 2d 1011.

No. 86-1930. *GRYNBERG v. SKALET, INC., ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 814 F. 2d 653.

No. 86-1931. *GRISWOLD ET AL. v. COMMISSIONER OF INTERNAL REVENUE.* C. A. 2d Cir. Certiorari denied. Reported below: 812 F. 2d 712.

No. 86-1932. *GATES, CHIEF OF POLICE, LOS ANGELES POLICE DEPARTMENT, ET AL. v. LANGFORD ET AL.* Sup. Ct. Cal. Certiorari denied. Reported below: 43 Cal. 3d 21, 729 P. 2d 822.

No. 86-1933. *HELLER v. CONSOLIDATED RAIL CORPORATION ET AL.* C. A. 3d Cir. Certiorari denied. Reported below: 815 F. 2d 694.

No. 86-1934. *TEDDER v. UNITED STATES.* Ct. Mil. App. Certiorari denied. Reported below: 24 M. J. 129.

No. 86-1937. *SANGER-HARRIS, A DIVISION OF FEDERATED DEPARTMENT STORES, INC. v. RICHARDS, TREASURER OF THE STATE OF TEXAS.* C. A. 5th Cir. Certiorari denied. Reported below: 812 F. 2d 211.

No. 86-1938. *BEASLEY v. KENTUCKY.* Sup. Ct. Ky. Certiorari denied.

No. 86-1939. *HAYES v. DIXON ET AL.* Ct. App. N. C. Certiorari denied. Reported below: 83 N. C. App. 52, 348 S. E. 2d 609.

No. 86-1941. *CARDINAL INDUSTRIES, INC. v. KING ET AL.* C. A. 11th Cir. Certiorari denied. Reported below: 811 F. 2d 609.

No. 86-1942. *JORDAN ET AL. v. NORTH MISSISSIPPI RURAL LEGAL SERVICES, INC., ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 808 F. 2d 1114.

No. 86-1945. *VARIAN ASSOCIATES, INC. v. UTLEY.* C. A. 9th Cir. Certiorari denied. Reported below: 811 F. 2d 1279.

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No. 86-1946. *DECINTIO ET AL. v. WESTCHESTER COUNTY MEDICAL CENTER ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 807 F. 2d 304.

No. 86-1947. *QUALITY ALUMINUM PRODUCTS, INC. v. NATIONAL LABOR RELATIONS BOARD.* C. A. 6th Cir. Certiorari denied. Reported below: 813 F. 2d 795.

No. 86-1949. *MARTIN v. UNITED STATES.* C. A. 1st Cir. Certiorari denied. Reported below: 815 F. 2d 818.

No. 86-1950. *ADER v. UNITED STATES.* C. A. 4th Cir. Certiorari denied. Reported below: 816 F. 2d 673.

No. 86-1951. *COOPER ET AL. v. ARIZONA WESTERN COLLEGE DISTRICT GOVERNING BOARD ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 812 F. 2d 714.

No. 86-1952. *RICATTO ET AL. v. BROCK, SECRETARY OF LABOR.* C. A. 2d Cir. Certiorari denied. Reported below: 810 F. 2d 1161.

No. 86-1953. *HILL v. UNITED STATES.* Ct. Mil. App. Certiorari denied. Reported below: 24 M. J. 127.

No. 86-1954. *MARBLE v. UNITED STATES.* Ct. Mil. App. Certiorari denied. Reported below: 24 M. J. 127.

No. 86-1955. *COX v. UNITED STATES.* Ct. Mil. App. Certiorari denied. Reported below: 24 M. J. 127.

No. 86-1956. *NICELY v. UNITED STATES STEEL CORP. ET AL.* C. A. 3d Cir. Certiorari denied. Reported below: 813 F. 2d 398.

No. 86-1957. *MONTGOMERY PUBLISHING CO. v. GANT.* Sup. Ct. Pa. Certiorari denied. Reported below: 513 Pa. 444, 521 A. 2d 920.

No. 86-1958. *MAINE CENTRAL RAILROAD CO. ET AL. v. BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES.* C. A. 1st Cir. Certiorari denied. Reported below: 813 F. 2d 484.

No. 86-1959. *HARDIE v. HARDIE.* Super. Ct. Alaska, 3d Jud. Dist. Certiorari denied.

No. 86-1960. *BROOKS v. ILLINOIS.* Sup. Ct. Ill. Certiorari denied. Reported below: 115 Ill. 2d 510, 505 N. E. 2d 336.

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No. 86-1962. SCHLAEPPI ET AL. *v.* DELAWARE TRUST CO., TRUSTEE. Sup. Ct. Del. Certiorari denied. Reported below: 523 A. 2d 981.

No. 86-1965. SEILER *v.* LUCASFILM, LTD., ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 808 F. 2d 1316.

No. 86-1966. MATHIS ET AL. *v.* HYDRO AIR INDUSTRIES, INC., ET AL. C. A. Fed. Cir. Certiorari denied. Reported below: 818 F. 2d 874.

No. 86-1968. LOS ANGELES RAIDERS *v.* NATIONAL FOOTBALL LEAGUE ET AL.; and

No. 86-1972. NATIONAL FOOTBALL LEAGUE ET AL. *v.* OAKLAND RAIDERS, LTD., ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 791 F. 2d 1356.

No. 86-1969. CAMPOS-GUARDADO *v.* IMMIGRATION AND NATURALIZATION SERVICE. C. A. 5th Cir. Certiorari denied. Reported below: 809 F. 2d 285.

No. 86-1973. GOELST *v.* GOELST. Super. Ct. Ga., Cobb County. Certiorari denied.

No. 86-1974. EDDINS *v.* NEW YORK UNIVERSITY. C. A. 2d Cir. Certiorari denied. Reported below: 833 F. 2d 1002.

No. 86-1975. MICHELSON *v.* MERRILL LYNCH, PIERCE, FENNER & SMITH, INC. C. A. 10th Cir. Certiorari denied.

No. 86-1976. BRIGGS *v.* INDIANA SUPREME COURT DISCIPLINARY COMMISSION; and

No. 86-1977. BRIGGS *v.* INDIANA SUPREME COURT DISCIPLINARY COMMISSION. Sup. Ct. Ind. Certiorari denied. Reported below: No. 86-1976, 502 N. E. 2d 879; No. 86-1977, 502 N. E. 2d 890.

No. 86-1978. JACKSON COUNTY BY AND THROUGH ITS CHILD SUPPORT ENFORCEMENT AGENCY EX REL. JACKSON *v.* SWAYNEY. Sup. Ct. N. C. Certiorari denied. Reported below: 319 N. C. 52, 352 S. E. 2d 413.

No. 86-1979. TEXAS *v.* WILKERSON. 208th Dist. Ct. of Harris County, Tex. Certiorari denied.

No. 86-1980. BAILEY *v.* GRAND TRUNK LINES NEW ENGLAND ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 805 F. 2d 1097.

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No. 86-1983. *TEAL v. BUCKNER ET UX.* Ct. App. Tenn. Certiorari denied.

No. 86-1984. *EIDAL INTERNATIONAL CORP. v. GARCIA ET AL.* C. A. 10th Cir. Certiorari denied. Reported below: 808 F. 2d 717.

No. 86-1988. *TORRES v. STATE BOARD OF LAW EXAMINERS OF ILLINOIS.* Sup. Ct. Ill. Certiorari denied.

No. 86-1989. *DRAINE v. UNITED STATES.* C. A. 11th Cir. Certiorari denied. Reported below: 811 F. 2d 1419.

No. 86-1991. *CHUCK'S FEED & SEED CO., INC. v. RALSTON PURINA CO.* C. A. 4th Cir. Certiorari denied. Reported below: 810 F. 2d 1289.

No. 86-1993. *HICKS v. UNITED STATES.* Ct. Mil. App. Certiorari denied. Reported below: 24 M. J. 3.

No. 86-1994. *VERDEGAAL BROTHERS, INC., ET AL. v. UNION OIL COMPANY OF CALIFORNIA ET AL.* C. A. Fed. Cir. Certiorari denied. Reported below: 814 F. 2d 628.

No. 86-1995. *FONDEL v. FORD MOTOR CO. ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 803 F. 2d 719.

No. 86-1996. *ILLINOIS v. KAIL.* App. Ct. Ill., 4th Dist. Certiorari denied. Reported below: 150 Ill. App. 3d 75, 501 N. E. 2d 979.

No. 86-1997. *ROUSSEAU ET AL. v. TELEDYNE MOVIBLE OFFSHORE, INC.* C. A. 5th Cir. Certiorari denied. Reported below: 805 F. 2d 1245.

No. 86-1999. *MURPHY v. DANAHER, CHEMUNG COUNTY JUDGE, ET AL.* App. Div., Sup. Ct. N. Y., 3d Jud. Dept. Certiorari denied. Reported below: 123 App. Div. 2d 461, 506 N. Y. S. 2d 235.

No. 86-2001. *KIRKSEY ET AL. v. WASHINGTON.* C. A. 11th Cir. Certiorari denied. Reported below: 811 F. 2d 561.

No. 86-2002. *CITY OF LONG BEACH ET AL. v. AIRCAL INC. ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 815 F. 2d 714.

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No. 86-2004. *HOWITT v. UNITED STATES DEPARTMENT OF COMMERCE*. C. A. Fed. Cir. Certiorari denied. Reported below: 818 F. 2d 877.

No. 86-2005. *CASEY ET AL. v. TENNESSEE*. Ct. Crim. App. Tenn. Certiorari denied.

No. 86-2006. *VOICE OF AMERICANISM ET AL. v. KENDALL ET AL.* Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 86-2009. *ITEL CONTAINERS INTERNATIONAL CORP. ET AL. v. M/V C. C. SAN FRANCISCO ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 808 F. 2d 697.

No. 86-2010. *DUQUEMIN ET AL. v. HORSESHOE BEND PROPERTIES, INC.* C. A. 11th Cir. Certiorari denied. Reported below: 814 F. 2d 661.

No. 86-2011. *WILSON ET AL. v. ARMSTRONG WORLD INDUSTRIES ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 810 F. 2d 1358.

No. 86-2012. *COLE v. UNITED STATES*. Ct. Mil. App. Certiorari denied. Reported below: 24 M. J. 18.

No. 86-2014. *JOHNSON v. HETTLEMAN ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 812 F. 2d 1401.

No. 86-2016. *MYERS ET AL. v. MORRIS ET AL.*; and

No. 87-61. *LALLAK ET AL. v. MORRIS ET AL.* C. A. 8th Cir. Certiorari denied. Reported below: 810 F. 2d 1437.

No. 86-2017. *HOLDING v. SOVRAN BANK ET AL.* Sup. Ct. Va. Certiorari denied.

No. 86-2020. *MACZKO v. JOYCE*. C. A. 6th Cir. Certiorari denied. Reported below: 814 F. 2d 308.

No. 86-2021. *GIL-ZAPATA v. UNITED STATES DEPARTMENT OF JUSTICE EXECUTIVE OFFICE FOR IMMIGRATION REVIEW ET AL.* C. A. 11th Cir. Certiorari denied. Reported below: 815 F. 2d 716.

No. 86-2022. *INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS v. INTERSTATE COMMERCE COMMISSION ET AL.* C. A. 8th Cir. Certiorari denied. Reported below: 808 F. 2d 654.

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No. 86-2023. *SHEPARD v. UNITED STATES*. C. A. 11th Cir. Certiorari denied. Reported below: 808 F. 2d 59.

No. 86-2024. *MEYERS ET AL. v. CONTRA COSTA COUNTY DEPARTMENT OF SOCIAL SERVICES ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 812 F. 2d 1154.

No. 86-2025. *KING v. TEXAS*. Ct. App. Tex., 14th Dist. Certiorari denied. Reported below: 710 S. W. 2d 110.

No. 86-2026. *DEAVER v. UNITED STATES*. C. A. D. C. Cir. Certiorari denied.

No. 86-2027. *SOUTHERN FUEL CO. v. LANGHAM-HILL PETROLEUM, INC.* C. A. 4th Cir. Certiorari denied. Reported below: 813 F. 2d 1327.

No. 86-2028. *ILLINOIS STATE BOARD OF EDUCATION v. BOARD OF EDUCATION OF THE CITY OF PEORIA, SCHOOL DISTRICT NO. 150*. C. A. 7th Cir. Certiorari denied. Reported below: 810 F. 2d 707.

No. 86-2031. *BOARD OF SCHOOL COMMISSIONERS OF MOBILE COUNTY, ALABAMA, ET AL. v. FOSTER ET AL.* C. A. 11th Cir. Certiorari denied. Reported below: 810 F. 2d 1021.

No. 86-2032. *DETOMASO v. PAN AMERICAN WORLD AIRWAYS, INC.* Sup. Ct. Cal. Certiorari denied. Reported below: 43 Cal. 3d 517, 733 P. 2d 614.

No. 86-2033. *MOLINARI v. MCNEIL PHARMACEUTICAL*. C. A. 3d Cir. Certiorari denied. Reported below: 810 F. 2d 1164.

No. 86-2034. *MCGOVREN v. CALIFORNIA*. Ct. App. Cal., 6th App. Dist. Certiorari denied.

No. 86-2036. *MALATESTA v. COURT OF APPEALS OF THE STATE OF NEW YORK*. App. Div., Sup. Ct. N. Y., 1st Jud. Dept. Certiorari denied. Reported below: 124 App. Div. 2d 62, 511 N. Y. S. 2d 246.

No. 86-2038. *SNYDER v. PENNSYLVANIA JUDICIAL INQUIRY AND REVIEW BOARD*. Sup. Ct. Pa. Certiorari denied. Reported below: 514 Pa. 142, 523 A. 2d 294.

No. 86-2043. *NEW YORK TELEPHONE CO. ET AL. v. CAHILL ET AL.*; and

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No. 86-2044. PUBLIC SERVICE COMMISSION OF THE STATE OF NEW YORK ET AL. *v.* CAHILL ET AL. Ct. App. N. Y. Certiorari denied. Reported below: 69 N. Y. 2d 265, 506 N. E. 2d 187.

No. 86-2046. HOWARD *v.* ARIZONA DEPARTMENT OF REVENUE. Ct. App. Ariz. Certiorari denied.

No. 86-2047. JOHNSON ET AL. *v.* ARKANSAS. Sup. Ct. Ark. Certiorari denied. Reported below: 291 Ark. 260, 724 S. W. 2d 160.

No. 86-2048. THOMPSON *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 814 F. 2d 1472.

No. 86-2049. BAYER *v.* JOHNSON, SECRETARY OF REVENUE OF SOUTH DAKOTA. Sup. Ct. S. D. Certiorari denied. Reported below: 400 N. W. 2d 884.

No. 86-2050. JOHNSON ET AL. *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 8th Cir. Certiorari denied. Reported below: 815 F. 2d 713.

No. 86-2051. JOYNER *v.* LANCASTER ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 815 F. 2d 20.

No. 86-2054. BOSTON & MAINE CORP. ET AL. *v.* RAILWAY LABOR EXECUTIVES' ASSN. C. A. 1st Cir. Certiorari denied. Reported below: 808 F. 2d 150.

No. 86-2055. CARROLL *v.* CITY OF HUNTSVILLE. Ct. Crim. App. Ala. Certiorari denied. Reported below: 505 So. 2d 389.

No. 86-2056. MOSLEY *v.* SCHOOL BOARD OF PINELLAS COUNTY, FLORIDA. C. A. 11th Cir. Certiorari denied. Reported below: 811 F. 2d 609.

No. 86-2058. CHRIST THE KING REGIONAL HIGH SCHOOL *v.* CULVERT, CHAIRMAN, NEW YORK STATE LABOR RELATIONS BOARD, ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 815 F. 2d 219.

No. 86-2060. REY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 811 F. 2d 1453.

No. 86-2062. SANDERS *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 9th Cir. Certiorari denied. Reported below: 812 F. 2d 715.

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No. 86-2063. MAHR ET UX. *v.* NATIONAL BROADCASTING CO., INC., ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 813 F. 2d 1230.

No. 86-2065. BROOKS *v.* EBONY OIL CORP. C. A. 2d Cir. Certiorari denied. Reported below: 819 F. 2d 1129.

No. 86-2066. YASUI ET AL. *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 86-2067. SCHWARTZ *v.* CITY OF GRAND PRAIRIE, TEXAS, ET AL. Ct. App. Tex., 5th Dist. Certiorari denied.

No. 86-2069. JUDGE ET AL. *v.* CITY OF FORT LAUDERDALE. Dist. Ct. App. Fla., 4th Dist. Certiorari denied. Reported below: 502 So. 2d 433.

No. 86-2071. VERDERBER *v.* CANTELLO PLUMBING CORP. C. A. 3d Cir. Certiorari denied. Reported below: 817 F. 2d 753.

No. 86-6501. WHITLEY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 809 F. 2d 786.

No. 86-6509. CHAVEZ *v.* NEW MEXICO. Sup. Ct. N. M. Certiorari denied.

No. 86-6566. GARAUX *v.* VASQUEZ, WARDEN. Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 86-6593. HALL *v.* JONES ET AL. Ct. App. Ga. Certiorari denied. Reported below: 180 Ga. App. 454, 349 S. E. 2d 469.

No. 86-6619. SAMPLE *v.* MARYLAND. C. A. 4th Cir. Certiorari denied. Reported below: 806 F. 2d 258.

No. 86-6647. VUE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 811 F. 2d 1509.

No. 86-6655. ISREAL *v.* CALIFORNIA. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 86-6661. WALSH *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 811 F. 2d 608.

No. 86-6679. MOORE *v.* MICHIGAN. Ct. App. Mich. Certiorari denied.

No. 86-6683. POLLARD *v.* ILLINOIS. App. Ct. Ill., 5th Dist. Certiorari denied. Reported below: 149 Ill. App. 3d 434, 500 N. E. 2d 971.

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No. 86-6699. *BOGGINS v. UNITED STATES PAROLE COMMISSION*. C. A. 3d Cir. Certiorari denied. Reported below: 813 F. 2d 396.

No. 86-6703. *HILTON v. SOUTH CAROLINA*. Sup. Ct. S. C. Certiorari denied. Reported below: 291 S. C. 276, 353 S. E. 2d 282.

No. 86-6705. *BALL v. WHITE, WARDEN, ET AL.* C. A. 11th Cir. Certiorari denied. Reported below: 812 F. 2d 1413.

No. 86-6707. *RAINES v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 812 F. 2d 1402.

No. 86-6709. *CHAGRA v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 807 F. 2d 398.

No. 86-6716. *NEELY v. UNITED STATES*. C. A. D. C. Cir. Certiorari denied. Reported below: 256 U. S. App. D. C. 295, 804 F. 2d 1324.

No. 86-6719. *RUBALCABA v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 811 F. 2d 491.

No. 86-6735. *CALLANAN ET AL. v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 810 F. 2d 544.

No. 86-6737. *BRADLEY v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 812 F. 2d 774.

No. 86-6745. *MILLS ET AL. v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 810 F. 2d 907.

No. 86-6755. *BROOKS v. ILLINOIS*. App. Ct. Ill., 2d Dist. Certiorari denied. Reported below: 147 Ill. App. 3d 1160, 512 N. E. 2d 138.

No. 86-6766. *KNIGHT v. JAGO, SUPERINTENDENT, LONDON CORRECTIONAL INSTITUTION*. C. A. 6th Cir. Certiorari denied. Reported below: 812 F. 2d 1407.

No. 86-6770. *MOSES v. PARWATIKAR*. C. A. 8th Cir. Certiorari denied. Reported below: 813 F. 2d 891.

No. 86-6782. *MCCABE v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 812 F. 2d 1060.

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No. 86-6784. *RIOS v. WYOMING*. Sup. Ct. Wyo. Certiorari denied. Reported below: 733 P. 2d 242.

No. 86-6793. *PRIEST v. KANSAS*. Sup. Ct. Kan. Certiorari denied. Reported below: 240 Kan. xli, 761 P. 2d 1253.

No. 86-6794. *LIFFITON v. TOWN OF AMHERST ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 810 F. 2d 1160.

No. 86-6800. *DENBY v. SITTON ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 808 F. 2d 55.

No. 86-6808. *CANNON v. UNITED STATES*. C. A. 11th Cir. Certiorari denied. Reported below: 807 F. 2d 1528.

No. 86-6812. *WILLIAMS v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 805 F. 2d 1038.

No. 86-6813. *SABLOSKY v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 810 F. 2d 167.

No. 86-6828. *FILAR v. GIELOW, CHAIRMAN, RAILROAD RETIREMENT BOARD*. C. A. 7th Cir. Certiorari denied. Reported below: 810 F. 2d 1167.

No. 86-6839. *WILLIAMS v. TEXAS*. Ct. App. Tex., 14th Dist. Certiorari denied. Reported below: 720 S. W. 2d 236.

No. 86-6841. *GORDON v. BOWEN, SECRETARY OF HEALTH AND HUMAN SERVICES*. C. A. 9th Cir. Certiorari denied. Reported below: 803 F. 2d 1071.

No. 86-6846. *CLEVELAND v. WARDEN, MARYLAND HOUSE OF CORRECTIONS*. C. A. 4th Cir. Certiorari denied. Reported below: 803 F. 2d 1180.

No. 86-6847. *HAWKINS v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 811 F. 2d 210.

No. 86-6854. *CARTER v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 812 F. 2d 713.

No. 86-6858. *JOHNSON v. UNITED STATES*. Ct. App. D. C. Certiorari denied.

No. 86-6859. *SOTO v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 779 F. 2d 558 and 793 F. 2d 217.

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No. 86-6863. *ROCHON v. ACADIA PARISH SHERIFF DEPARTMENT ET AL.* C. A. 5th Cir. Certiorari denied.

No. 86-6864. *CRANE v. KENTUCKY.* Sup. Ct. Ky. Certiorari denied. Reported below: 726 S. W. 2d 302.

No. 86-6879. *KENNEDY v. BEYER, ADMINISTRATOR, NEW JERSEY STATE PRISON, ET AL.* C. A. 3d Cir. Certiorari denied.

No. 86-6881. *SCOTT v. CALIFORNIA.* Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 86-6889. *BANKS v. NEW YORK.* App. Div., Sup. Ct. N. Y., 4th Jud. Dept. Certiorari denied. Reported below: 124 App. Div. 2d 1064, 508 N. Y. S. 2d 962.

No. 86-6890. *DAWSON v. UNITED STATES.* C. A. 11th Cir. Certiorari denied. Reported below: 790 F. 2d 1565.

No. 86-6891. *MITCHELL v. HENDERSON, SUPERINTENDENT, AUBURN CORRECTIONAL FACILITY.* C. A. 2d Cir. Certiorari denied.

No. 86-6897. *STRADER v. JOHNSON ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 808 F. 2d 836.

No. 86-6899. *CROCKETT v. UNITED STATES;* and  
No. 86-6901. *CREWS v. UNITED STATES.* C. A. 4th Cir. Certiorari denied. Reported below: 813 F. 2d 1310.

No. 86-6905. *FAWOLE v. UNITED STATES.* C. A. 11th Cir. Certiorari denied. Reported below: 815 F. 2d 716.

No. 86-6906. *CROSBY v. UNITED STATES.* C. A. 3d Cir. Certiorari denied. Reported below: 808 F. 2d 1518.

No. 86-6907. *BRUMBAUGH v. BRUMBAUGH.* Sup. Ct. Fla. Certiorari denied. Reported below: 506 So. 2d 1040.

No. 86-6908. *ANDERSON v. SOUTH CAROLINA EMPLOYMENT COMMISSION ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 811 F. 2d 1504.

No. 86-6909. *IRWIN v. MINNESOTA.* Sup. Ct. Minn. Certiorari denied.

No. 86-6910. *COLEMAN v. ACME MARKETS, INC.* C. A. 3d Cir. Certiorari denied. Reported below: 817 F. 2d 751.

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No. 86-6911. *COLEMAN v. TOWNSHIP OF GEORGETOWN, DELAWARE*. C. A. 3d Cir. Certiorari denied. Reported below: 817 F. 2d 751.

No. 86-6912. *COLEMAN v. SUSSEX COUNTY, DELAWARE*. C. A. 3d Cir. Certiorari denied. Reported below: 817 F. 2d 751.

No. 86-6913. *COLEMAN v. UNITED STATES DEPARTMENT OF THE TREASURY*. C. A. 3d Cir. Certiorari denied. Reported below: 817 F. 2d 751.

No. 86-6915. *REIF v. COMMISSIONER OF INTERNAL REVENUE*. C. A. 7th Cir. Certiorari denied. Reported below: 812 F. 2d 1410.

No. 86-6920. *BOUDREAUX v. UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA ET AL.* C. A. 5th Cir. Certiorari denied.

No. 86-6922. *COMSIA v. MANGNONE ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 815 F. 2d 76.

No. 86-6924. *BECKER v. ILLINOIS REAL ESTATE ADMINISTRATION AND DISCIPLINARY BOARD ET AL.* C. A. 7th Cir. Certiorari denied.

No. 86-6929. *GARDNER v. SODERMAN ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 817 F. 2d 756.

No. 86-6930. *GOFF ET AL. v. NIX, WARDEN, ET AL.* C. A. 8th Cir. Certiorari denied. Reported below: 803 F. 2d 358.

No. 86-6931. *MORGAN v. CALIFORNIA*. Ct. App. Cal., 5th App. Dist. Certiorari denied.

No. 86-6932. *HICKS v. MUNCY, WARDEN*. C. A. 4th Cir. Certiorari denied. Reported below: 815 F. 2d 74.

No. 86-6934. *WILLIAMS v. MARYLAND*. Ct. Sp. App. Md. Certiorari denied. Reported below: 69 Md. App. 805.

No. 86-6935. *BUTLER v. COLLINS ET AL.* C. A. 11th Cir. Certiorari denied. Reported below: 816 F. 2d 686.

No. 86-6936. *SARADETCH v. UNITED STATES*. C. A. 11th Cir. Certiorari denied. Reported below: 815 F. 2d 715.

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No. 86-6938. *DUTTON v. MAYNARD, WARDEN, ET AL.* C. A. 10th Cir. Certiorari denied. Reported below: 812 F. 2d 593.

No. 86-6942. *GOREE v. CUNNINGHAM.* C. A. 6th Cir. Certiorari denied. Reported below: 816 F. 2d 679.

No. 86-6946. *KIDD ET AL. v. CITY OF ENNIS, TEXAS, ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 813 F. 2d 405.

No. 86-6947. *HENSON v. NEVADA.* Sup. Ct. Nev. Certiorari denied. Reported below: 103 Nev. 806.

No. 86-6948. *CABAL v. ENVIRODYNE ENGINEERS, INC.* C. A. 8th Cir. Certiorari denied. Reported below: 815 F. 2d 710.

No. 86-6949. *CARVER v. JACK ECKERD CORP.* C. A. 11th Cir. Certiorari denied.

No. 86-6950. *MMOE v. CROTHERS ET AL.* Sup. Jud. Ct. Mass. Certiorari denied.

No. 86-6951. *LYONS v. SCOTT ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 808 F. 2d 1521.

No. 86-6952. *BEAMER v. MUNCY, WARDEN, ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 815 F. 2d 74.

No. 86-6956. *MARTIN v. MORRIS, SUPERINTENDENT, SOUTHERN OHIO CORRECTIONAL FACILITY.* Sup. Ct. Ohio. Certiorari denied.

No. 86-6957. *SUEING v. COURT OF APPEALS OF MICHIGAN.* Sup. Ct. Mich. Certiorari denied.

No. 86-6958. *YOUNG v. UNITED STATES.* C. A. 8th Cir. Certiorari denied. Reported below: 806 F. 2d 805.

No. 86-6959. *McLINDON v. OHIO.* Ct. App. Ohio, Hamilton County. Certiorari denied.

No. 86-6963. *KELLY v. UNITED STATES.* C. A. 9th Cir. Certiorari denied. Reported below: 808 F. 2d 57.

No. 86-6965. *BURRELL v. DAVIS, WARDEN.* C. A. 11th Cir. Certiorari denied.

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No. 86-6966. *AKIODE v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 812 F. 2d 1402.

No. 86-6967. *CRUZ v. MICHIGAN*. Sup. Ct. Mich. Certiorari denied. Reported below: 428 Mich. 881.

No. 86-6968. *PUGHSLEY v. O'LEARY, WARDEN*. C. A. 7th Cir. Certiorari denied.

No. 86-6970. *ORTLOFF v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 818 F. 2d 863.

No. 86-6971. *TURNER v. FOLTZ, WARDEN*. C. A. 6th Cir. Certiorari denied.

No. 86-6973. *COOK v. WALLACE ET AL.* C. A. 11th Cir. Certiorari denied.

No. 86-6974. *COOK v. FOLTZ, WARDEN*. C. A. 6th Cir. Certiorari denied. Reported below: 814 F. 2d 1109.

No. 86-6975. *MACK v. AMERICAN TELEPHONE & TELEGRAPH CO., LONG LINES, ET AL.* C. A. 11th Cir. Certiorari denied. Reported below: 808 F. 2d 59.

No. 86-6976. *GLICK v. LOCKHART, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION*. C. A. 8th Cir. Certiorari denied. Reported below: 815 F. 2d 712.

No. 86-6979. *BROWN v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 813 F. 2d 1353.

No. 86-6981. *FRIPP v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 819 F. 2d 1129.

No. 86-6982. *HADDIX v. CITY OF DAYTON*. Ct. App. Ohio, Montgomery County. Certiorari denied.

No. 86-6986. *BUTLER v. BREEDING ET AL.* C. A. 8th Cir. Certiorari denied. Reported below: 822 F. 2d 1092.

No. 86-6988. *MCMURRY v. UNITED STATES*. C. A. 10th Cir. Certiorari denied. Reported below: 818 F. 2d 24.

No. 86-6990. *HENDERSON v. CARLSON ET AL.* C. A. 3d Cir. Certiorari denied. Reported below: 812 F. 2d 874.

No. 86-6991. *LINN v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 811 F. 2d 1509.

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No. 86-6992. *YOUNG v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 814 F. 2d 392.

No. 86-6993. *DELESPINE v. TEXAS*. Ct. Crim. App. Tex. Certiorari denied.

No. 86-6994. *GRAY EAGLE ET AL. v. UNITED STATES ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 813 F. 2d 400.

No. 86-6995. *MANGONE v. PENKOWER, JUDGE, COURT OF COMMON PLEAS OF ALLEGHENY COUNTY*. C. A. 3d Cir. Certiorari denied.

No. 86-6997. *MCDANIEL v. ARKANSAS*. Ct. App. Ark. Certiorari denied. Reported below: 20 Ark. App. 201, 726 S. W. 2d 688.

No. 86-6998. *SIMMONS v. BROWN, HORRY COUNTY SHERIFF, ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 816 F. 2d 673.

No. 86-6999. *ROSE v. KENTUCKY*. Sup. Ct. Ky. Certiorari denied. Reported below: 725 S. W. 2d 588.

No. 86-7000. *LISTERMAN v. UNITED STATES DEPARTMENT OF JUSTICE*. C. A. Fed. Cir. Certiorari denied. Reported below: 818 F. 2d 877.

No. 86-7003. *SHEARS v. WISCONSIN*. Sup. Ct. Wis. Certiorari denied. Reported below: 136 Wis. 2d 562, 407 N. W. 2d 559.

No. 86-7004. *TURNPAUGH v. FOLTZ, WARDEN*. C. A. 6th Cir. Certiorari denied. Reported below: 811 F. 2d 608.

No. 86-7006. *MARTIN v. MYERS ET AL.* C. A. 3d Cir. Certiorari denied. Reported below: 817 F. 2d 752.

No. 86-7007. *MILLARD v. LYNAUGH, DIRECTOR, TEXAS DEPARTMENT OF CORRECTIONS*. C. A. 5th Cir. Certiorari denied. Reported below: 810 F. 2d 1403.

No. 86-7008. *SINGFIELD v. UNITED STATES*. C. A. 11th Cir. Certiorari denied. Reported below: 813 F. 2d 409.

No. 86-7014. *TAYLOR v. UNITED STATES*. C. A. 10th Cir. Certiorari denied. Reported below: 800 F. 2d 1012.

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No. 86-7016. REITER *v.* CROSIER ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 814 F. 2d 656.

No. 86-7017. COLEMAN *v.* DELAWARE. Sup. Ct. Del. Certiorari denied. Reported below: 524 A. 2d 679.

No. 86-7018. COLEMAN *v.* CARVEL GARDENS APARTMENTS. Sup. Ct. Del. Certiorari denied. Reported below: 525 A. 2d 582.

No. 86-7019. TRICKER *v.* CUPP, SUPERINTENDENT, OREGON STATE PENITENTIARY. C. A. 9th Cir. Certiorari denied. Reported below: 812 F. 2d 1411.

No. 86-7020. BROWN *v.* DYKE ET AL. C. A. 3d Cir. Certiorari denied.

No. 86-7021. BLADE *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 811 F. 2d 461.

No. 86-7024. KNUCKLES *v.* OHIO. C. A. 6th Cir. Certiorari denied. Reported below: 816 F. 2d 680.

No. 86-7026. HOWLETT *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 86-7027. CHANSON *v.* BUTLER, WARDEN, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 816 F. 2d 676.

No. 86-7028. LONG *v.* COUNTY OF PULASKI, MISSOURI, ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 822 F. 2d 1093.

No. 86-7030. WAYNE *v.* TRICKEY, SUPERINTENDENT, MISSOURI EASTERN CORRECTIONAL INSTITUTION. C. A. 8th Cir. Certiorari denied. Reported below: 815 F. 2d 712.

No. 86-7031. STONE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 813 F. 2d 1536.

No. 86-7033. PRATT *v.* THORNBURGH, GOVERNOR OF PENNSYLVANIA, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 807 F. 2d 355.

No. 86-7034. REIDT *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied.

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No. 86-7035. *OCHOA v. CALIFORNIA*. Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 86-7036. *WHITCOMB v. MINNESOTA*. Ct. App. Minn. Certiorari denied. Reported below: 399 N. W. 2d 124.

No. 86-7037. *SCHUBERT v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 800 F. 2d 1141.

No. 86-7038. *MITCHELL v. CREECY ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 813 F. 2d 1228.

No. 86-7039. *PLAIN v. CITY OF BATON ROUGE ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 813 F. 2d 405.

No. 86-7041. *BALSAVIAS v. NEW YORK*. Ct. App. N. Y. Certiorari denied. Reported below: 69 N. Y. 2d 683, 504 N. E. 2d 393.

No. 86-7042. *LEGRAND v. SCULLY, SUPERINTENDENT, GREEN HAVEN CORRECTIONAL FACILITY, ET AL.* C. A. 2d Cir. Certiorari denied.

No. 86-7043. *SEALS ET AL. v. PITTMAN ET AL.* Ct. App. La., 1st Cir. Certiorari denied. Reported below: 499 So. 2d 114.

No. 86-7044. *STICKLES v. MERIT SYSTEMS PROTECTION BOARD*. C. A. Fed. Cir. Certiorari denied. Reported below: 818 F. 2d 877.

No. 86-7047. *HAYWOOD v. MASSEY ET AL.* C. A. 8th Cir. Certiorari denied. Reported below: 822 F. 2d 1093.

No. 86-7049. *LAY v. KIDWELL ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 815 F. 2d 74.

No. 86-7050. *DIXON v. INDIANA*. Ct. App. Ind. Certiorari denied. Reported below: 499 N. E. 2d 1187.

No. 86-7051. *BECKER v. NEW YORK ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 816 F. 2d 669.

No. 86-7055. *CHESTNUT v. ILLINOIS*. App. Ct. Ill., 4th Dist. Certiorari denied. Reported below: 148 Ill. App. 3d 1159, 513 N. E. 2d 168.

No. 86-7056. *SHAKUR v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 817 F. 2d 189.

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No. 86-7057. *PRENZLER v. BOWEN, SECRETARY OF HEALTH AND HUMAN SERVICES*. C. A. 9th Cir. Certiorari denied.

No. 86-7058. *WITHERSPOON v. W. R. GRACE & CO.* C. A. 4th Cir. Certiorari denied. Reported below: 818 F. 2d 862.

No. 86-7062. *STEVENS v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 816 F. 2d 683.

No. 86-7063. *MERRIAN v. TATE, SUPERINTENDENT, CHILLICOTHE CORRECTIONAL INSTITUTE*. C. A. 6th Cir. Certiorari denied. Reported below: 816 F. 2d 681.

No. 86-7064. *STEPHENS v. SULLIVAN, WARDEN, ET AL.* C. A. 10th Cir. Certiorari denied.

No. 86-7067. *POTEE v. SAMBERG, WARDEN, ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 813 F. 2d 1228.

No. 86-7068. *REED v. UNITED STATES*. C. A. 11th Cir. Certiorari denied. Reported below: 817 F. 2d 759.

No. 86-7069. *MOSELY v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 810 F. 2d 93.

No. 86-7070. *SABOL v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 814 F. 2d 654.

No. 86-7072. *BARBARA v. SCULLY, SUPERINTENDENT, GREEN HAVEN CORRECTIONAL FACILITY, ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 816 F. 2d 669.

No. 86-7073. *ELLINGTON v. COOMBE, SUPERINTENDENT, EASTERN CORRECTIONAL FACILITY*. C. A. 2d Cir. Certiorari denied.

No. 86-7076. *GIALTO v. REAGAN, PRESIDENT OF THE UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 814 F. 2d 653.

No. 86-7079. *EDWARDS v. UNITED STATES*. C. A. 10th Cir. Certiorari denied. Reported below: 818 F. 2d 24.

No. 86-7080. *BURTON v. PALMER ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 815 F. 2d 702.

No. 86-7081. *CALDWELL v. UNITED STATES*. Ct. App. D. C. Certiorari denied.

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No. 86-7083. *BIGLER v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 810 F. 2d 1317.

No. 86-7084. *REICH v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 816 F. 2d 683.

No. 86-7087. *SERVER v. ILLINOIS*. App. Ct. Ill., 4th Dist. Certiorari denied. Reported below: 148 Ill. App. 3d 888, 499 N. E. 2d 1019.

No. 86-7088. *ROBINSON v. WHITE, WARDEN, ET AL.* C. A. 11th Cir. Certiorari denied.

No. 86-7089. *SMITH v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 815 F. 2d 74.

No. 86-7090. *HILL v. IWECO, INC.* C. A. 5th Cir. Certiorari denied. Reported below: 800 F. 2d 1143.

No. 86-7091. *BARRON v. NEW JERSEY*. Sup. Ct. N. J. Certiorari denied. Reported below: 107 N. J. 129, 526 A. 2d 195.

No. 86-7092. *BROWN v. OHIO*. Sup. Ct. Ohio. Certiorari denied.

No. 86-7093. *WABEKE v. MUTUAL HOME FEDERAL SAVINGS & LOAN ASSN. ET AL.* Ct. App. Mich. Certiorari denied.

No. 86-7095. *MARROW v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 815 F. 2d 1493.

No. 86-7096. *THOMAS v. LYNAUGH, DIRECTOR, TEXAS DEPARTMENT OF CORRECTIONS*. C. A. 5th Cir. Certiorari denied. Reported below: 812 F. 2d 225.

No. 86-7097. *NOWAK v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 817 F. 2d 757.

No. 86-7099. *STRADER v. ROGERS ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 805 F. 2d 393.

No. 86-7101. *BARTKUS v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 816 F. 2d 255.

No. 86-7102. *ABDUS-SAMMAD v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 820 F. 2d 1220.

No. 86-7104. *JONES v. UNITED STATES*. C. A. 11th Cir. Certiorari denied. Reported below: 817 F. 2d 760.

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No. 86-7105. *BURTON v. LAMBERT ET AL.* C. A. 8th Cir. Certiorari denied.

No. 86-7107. *HULSEY v. UNITED STATES.* C. A. 9th Cir. Certiorari denied. Reported below: 812 F. 2d 714.

No. 86-7108. *DANDAR v. DWYER ET AL.* C. A. 3d Cir. Certiorari denied.

No. 86-7110. *LIETZKE v. WALKER.* Sup. Ct. Ala. Certiorari denied. Reported below: 514 So. 2d 346.

No. 86-7111. *JULIAN v. KOEHLER, WARDEN.* C. A. 6th Cir. Certiorari denied. Reported below: 815 F. 2d 78.

No. 86-7116. *JOHNSON v. UNITED STATES.* C. A. 5th Cir. Certiorari denied. Reported below: 818 F. 2d 863.

No. 86-7117. *GANT v. ILLINOIS ET AL.* Sup. Ct. Ill. Certiorari denied. Reported below: 114 Ill. 2d 549, 508 N. E. 2d 731.

No. 86-7118. *GRAY v. WHITE, WARDEN, ET AL.* C. A. 11th Cir. Certiorari denied.

No. 86-7119. *LATSHAW v. MCA, INC.* C. A. 3d Cir. Certiorari denied. Reported below: 813 F. 2d 397.

No. 86-7122. *COLLIER v. REPUBLICAN NATIONAL COMMITTEE ET AL.* Ct. App. D. C. Certiorari denied.

No. 86-7123. *NEJAD v. FARRIS.* C. A. D. C. Cir. Certiorari denied.

No. 86-7124. *GANDIA v. HOKE, SUPERINTENDENT, EASTERN CORRECTIONAL FACILITY.* C. A. 2d Cir. Certiorari denied. Reported below: 819 F. 2d 1129.

No. 86-7125. *DANDAR v. SPAEDER, EXECUTOR OF THE ESTATE OF READ.* Sup. Ct. Pa. Certiorari denied.

No. 86-7127. *LEBRON-GONZALEZ ET AL. v. UNITED STATES.* C. A. 1st Cir. Certiorari denied. Reported below: 816 F. 2d 823.

No. 86-7128. *PERRI v. LANE, DIRECTOR, ILLINOIS DEPARTMENT OF CORRECTIONS.* C. A. 7th Cir. Certiorari denied. Reported below: 817 F. 2d 448.

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No. 86-7130. PAUL *v.* IOWA. Dist. Ct. Iowa, Marshall County. Certiorari denied.

No. 86-7133. WRIGHT *v.* KENTUCKY. Ct. App. Ky. Certiorari denied.

No. 86-7134. RAMIREZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 810 F. 2d 1338.

No. 86-7135. MILLER *v.* HENMAN, WARDEN. C. A. 7th Cir. Certiorari denied. Reported below: 804 F. 2d 421.

No. 86-7136. THOMPSON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 817 F. 2d 107.

No. 86-7137. McELROY-EL *v.* DAVIS, WARDEN. C. A. 11th Cir. Certiorari denied.

No. 86-7138. SPIGELSKI *v.* PITTSBURGH HUMAN RELATIONS COMMISSION. C. A. 3d Cir. Certiorari denied. Reported below: 817 F. 2d 752.

No. 86-7139. STRINGER *v.* CALIFORNIA. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 86-7140. LONG *v.* CALIFORNIA. Ct. App. Cal., 6th App. Dist. Certiorari denied. Reported below: 189 Cal. App. 3d 77, 234 Cal. Rptr. 271.

No. 86-7144. CASTRO *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 813 F. 2d 571.

No. 86-7145. GRIFFIN *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 818 F. 2d 97.

No. 86-7146. CONLEY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 817 F. 2d 759.

No. 86-7148. SALMASIAN *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 819 F. 2d 1130.

No. 86-7150. LAWSON *v.* MORRIS, SUPERINTENDENT, SOUTHERN OHIO CORRECTIONAL FACILITY. C. A. 6th Cir. Certiorari denied. Reported below: 815 F. 2d 704.

No. 86-7152. KILLINGSWORTH *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied.

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No. 86-7155. *WALKER v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 812 F. 2d 716.

No. 86-7156. *SZILI ET AL. v. UNITED STATES*. C. A. 11th Cir. Certiorari denied. Reported below: 808 F. 2d 1522.

No. 86-7157. *MCGOVERN v. UNITED STATES*. C. A. 11th Cir. Certiorari denied. Reported below: 818 F. 2d 872.

No. 86-7158. *HINES v. JOHNSON, WARDEN*. C. A. 11th Cir. Certiorari denied.

No. 86-7159. *HICKSON v. McDONALD, JUDGE, UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF TEXAS*. C. A. 5th Cir. Certiorari denied.

No. 86-7161. *CHAUSSARD v. FULCOMER, WARDEN, ET AL.* C. A. 3d Cir. Certiorari denied. Reported below: 816 F. 2d 925.

No. 86-7163. *REED v. DOUGLAS, WARDEN, ET AL.* C. A. 10th Cir. Certiorari denied.

No. 86-7165. *WALKER v. OKLAHOMA*. Ct. Crim. App. Okla. Certiorari denied.

No. 87-1. *HANSEN BROTHERS ENTERPRISES v. NATIONAL LABOR RELATIONS BOARD*. C. A. D. C. Cir. Certiorari denied. Reported below: 259 U. S. App. D. C. 49, 812 F. 2d 1443.

No. 87-2. *VAHLSING v. BANGOR & AROOSTOOK RAILROAD CO. ET AL.* Sup. Jud. Ct. Me. Certiorari denied. Reported below: 522 A. 2d 912.

No. 87-5. *SASSE v. CUNNINGHAM ET AL.* Ct. App. N. C. Certiorari denied. Reported below: 83 N. C. App. 343, 350 S. E. 2d 178.

No. 87-9. *MCDONNELL DOUGLAS CORP. v. WORKERS' COMPENSATION APPEALS BOARD OF CALIFORNIA ET AL.* Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 87-11. *MOR-FLO INDUSTRIES, INC., ET AL. v. STATE INDUSTRIES, INC.* C. A. Fed. Cir. Certiorari denied. Reported below: 818 F. 2d 875.

No. 87-12. *EASTERN CONNECTICUT HEALTH SERVICES, INC., DBA NEW LONDON CONVALESCENT HOME v. NATIONAL LABOR*

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RELATIONS BOARD. C. A. 2d Cir. Certiorari denied. Reported below: 815 F. 2d 517.

No. 87-13. CHARLTON *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied.

No. 87-17. COWAN ET AL. *v.* MYERS, ACTING DIRECTOR, CALIFORNIA DEPARTMENT OF HEALTH SERVICES, ET AL. Ct. App. Cal., 3d App. Dist. Certiorari denied. Reported below: 187 Cal. App. 3d 968, 232 Cal. Rptr. 299.

No. 87-18. CAHOKIA MARINE SERVICE, INC., ET AL. *v.* AMERICAN BARGE & TOWING CO. ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 815 F. 2d 711.

No. 87-20. KASHANI *v.* PURDUE UNIVERSITY ET AL.; and  
No. 87-68. PURDUE UNIVERSITY ET AL. *v.* KASHANI. C. A. 7th Cir. Certiorari denied. Reported below: 813 F. 2d 843.

No. 87-21. MORGAN ET AL. *v.* ST. JOSEPH TERMINAL RAILROAD CO. ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 815 F. 2d 1232.

No. 87-22. OSBORNE *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 813 F. 2d 105.

No. 87-25. NORTHERN IMPROVEMENT CO. ET AL. *v.* UNITED STATES; and

No. 87-60. MCCORMICK *v.* UNITED STATES ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 814 F. 2d 540.

No. 87-26. STUBBS *v.* UNITED STATES (two cases). Ct. Mil. App. Certiorari denied. Reported below: 23 M. J. 188 (first case); 24 M. J. 222 (second case).

No. 87-27. THIER *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 354 Pa. Super. 7, 510 A. 2d 1251.

No. 87-30. SISSON *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 814 F. 2d 634.

No. 87-33. WIEDEMANN & FRANSEN, A. P. L. C. *v.* HOLLYWOOD MARINE, INC. C. A. 5th Cir. Certiorari denied. Reported below: 811 F. 2d 864.

No. 87-35. PALMER *v.* CITY OF SEATTLE. Ct. App. Wash. Certiorari denied.

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No. 87-36. INVESTMENT COMPANY INSTITUTE ET AL. *v.* FEDERAL DEPOSIT INSURANCE CORPORATION ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 259 U. S. App. D. C. 339, 815 F. 2d 1540.

No. 87-37. EADES *v.* STERLINSKE ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 810 F. 2d 723.

No. 87-38. GRANADA ELECTRONICS, INC. *v.* ORIGINAL APPALACHIAN ARTWORKS, INC. C. A. 2d Cir. Certiorari denied. Reported below: 816 F. 2d 68.

No. 87-39. GREGORY, SHERIFF OF PATRICK COUNTY, VIRGINIA *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 818 F. 2d 1114.

No. 87-41. BELAK ET AL. *v.* UNITED STATES STEEL CORPORATION PLAN FOR EMPLOYEE PENSION BENEFITS. C. A. 3d Cir. Certiorari denied. Reported below: 815 F. 2d 697.

No. 87-43. CONNERS *v.* CULINARY WORKERS UNION, LOCAL 226. C. A. 9th Cir. Certiorari denied. Reported below: 813 F. 2d 408.

No. 87-44. TULANE HOTEL INVESTORS LIMITED PARTNERSHIP *v.* FIRST FINANCIAL BANK, FSB, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 820 F. 2d 1221.

No. 87-46. FONDO *v.* SHEINDLIN, INDIVIDUALLY AND AS JUDGE OF THE FAMILY COURT OF THE STATE OF NEW YORK, BRONX COUNTY, ET AL. App. Div., Sup. Ct. N. Y., 1st Jud. Dept. Certiorari denied.

No. 87-47. COURTRIGHT *v.* OHIO. Ct. App. Ohio, Franklin County. Certiorari denied.

No. 87-48. A. W., A MINOR, BY AND THROUGH HIS FATHER AND NEXT FRIEND, N. W., ET AL. *v.* NORTHWEST R-1 SCHOOL DISTRICT ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 813 F. 2d 158.

No. 87-49. ALASKA AIRLINES, INC., ET AL. *v.* BROCK, SECRETARY OF LABOR, ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 258 U. S. App. D. C. 89, 809 F. 2d 930.

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No. 87-50. *ROE I ET AL. v. ABORTION ABOLITION SOCIETY ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 811 F. 2d 931.

No. 87-52. *MERRELL v. THOMAS, ADMINISTRATOR, ENVIRONMENTAL PROTECTION AGENCY, ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 807 F. 2d 776.

No. 87-53. *KRILETICH v. COMMISSION ON JUDICIAL PERFORMANCE ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 815 F. 2d 82.

No. 87-54. *MARTIN, AKA MARCUS v. UNITED STATES.* C. A. 4th Cir. Certiorari denied. Reported below: 815 F. 2d 74.

No. 87-55. *TRANSCOAST NAVIGATION, LTD., ET AL. v. AMERADA HESS CORP. ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 816 F. 2d 671.

No. 87-58. *COVINGTON v. SOUTHERN ILLINOIS UNIVERSITY.* C. A. 7th Cir. Certiorari denied. Reported below: 816 F. 2d 317.

No. 87-63. *NORTHEASTERN PHARMACEUTICAL & CHEMICAL CO. ET AL. v. UNITED STATES.* C. A. 8th Cir. Certiorari denied. Reported below: 810 F. 2d 726.

No. 87-64. *NEHER v. MISSOURI.* Ct. App. Mo., Western Dist. Certiorari denied. Reported below: 726 S. W. 2d 362.

No. 87-66. *BERKMAN v. CITY OF NEW YORK ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 812 F. 2d 52.

No. 87-67. *JAMES, SUPERINTENDENT, WOMEN'S CORRECTIONAL INSTITUTION AT HARDWICK, GEORGIA v. WISECUP.* C. A. 11th Cir. Certiorari denied. Reported below: 815 F. 2d 716.

No. 87-71. *JACOWAY v. ANDERSON ET AL.* C. A. 8th Cir. Certiorari denied. Reported below: 816 F. 2d 1222.

No. 87-72. *RUTLEDGE v. RUTLEDGE.* Ct. App. Tex., 2d Dist. Certiorari denied. Reported below: 709 S. W. 2d 389, 711 S. W. 2d 437, and 720 S. W. 2d 633.

No. 87-73. *NICHOLS ET AL. v. RYSAVY ET AL.* C. A. 8th Cir. Certiorari denied. Reported below: 809 F. 2d 1317.

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No. 87-74. *BRYAN MEMORIAL HOSPITAL v. NATIONAL LABOR RELATIONS BOARD*. C. A. 8th Cir. Certiorari denied. Reported below: 814 F. 2d 1259.

No. 87-77. *HEATH v. CAST ET AL.*; and *McKINLEY v. CITY OF RIVERSIDE ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 813 F. 2d 254 (first case); 819 F. 2d 1146 (second case).

No. 87-78. *PERRY v. RAPOSO*. C. A. 9th Cir. Certiorari denied.

No. 87-80. *VIDA, PERSONAL REPRESENTATIVE OF THE ESTATE OF VIDA v. PATAPSCO & BACK RIVERS RAILROAD CO.* C. A. 4th Cir. Certiorari denied. Reported below: 814 F. 2d 655.

No. 87-81. *CHEEK v. LOS ANGELES POLICE DEPARTMENT ET AL.* Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 87-83. *CITY OF PITTSBURGH, PENNSYLVANIA, ET AL. v. SULLIVAN ET AL.* C. A. 3d Cir. Certiorari denied. Reported below: 811 F. 2d 171.

No. 87-84. *E. I. DU PONT DE NEMOURS & Co., INC. v. JOHANSEN*. C. A. 5th Cir. Certiorari denied. Reported below: 810 F. 2d 1377.

No. 87-85. *BUSHONG v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 805 F. 2d 391.

No. 87-88. *MABRY v. STATE BOARD FOR COMMUNITY COLLEGES AND OCCUPATIONAL EDUCATION ET AL.* C. A. 10th Cir. Certiorari denied. Reported below: 813 F. 2d 311.

No. 87-90. *BURTON, BY HER FATHER AND NEXT FRIEND AND NATURAL GUARDIAN, BURTON, ET AL. v. WILCOX ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 793 F. 2d 1289.

No. 87-91. *BREWSTER v. MOUNT VERNON HOSPITAL ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 838 F. 2d 465.

No. 87-93. *FUSCO ET UX. v. CONNECTICUT ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 815 F. 2d 201.

No. 87-94. *AMERICAN CYANAMID Co. v. DOW CHEMICAL Co.* C. A. Fed. Cir. Certiorari denied. Reported below: 816 F. 2d 617.

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No. 87-95. HAGEBUSH ET AL. *v.* FIRST NATIONAL BANK OF OMAHA; and HAGEBUSH ET AL. *v.* NEBRASKA STATE BAR ASSN. ET AL. Sup. Ct. Neb. Certiorari denied. Reported below: 225 Neb. 711, 407 N. W. 2d 787 (first case); 225 Neb. xxvi (second case).

No. 87-96. ONETT *v.* FLORIDA BAR. Sup. Ct. Fla. Certiorari denied. Reported below: 504 So. 2d 388.

No. 87-99. ARCHER *v.* UNITED STATES. Ct. Mil. App. Certiorari denied. Reported below: 24 M. J. 330.

No. 87-101. HERBSTER *v.* NORTH AMERICAN COMPANY FOR LIFE & HEALTH INSURANCE. App. Ct. Ill., 2d Dist. Certiorari denied. Reported below: 150 Ill. App. 3d 21, 501 N. E. 2d 343.

No. 87-102. FIRST AFFILIATED SECURITIES, INC., ET AL. *v.* SULLIVAN ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 813 F. 2d 1368.

No. 87-105. COMBS *v.* SEABOARD SYSTEM RAILROAD, INC. Ct. App. Ky. Certiorari denied.

No. 87-106. HART ET AL. *v.* ZAMORA, EXECUTOR OF THE ESTATE OF ZAMORA. C. A. 9th Cir. Certiorari denied. Reported below: 812 F. 2d 716.

No. 87-108. FURGATCH *v.* FEDERAL ELECTION COMMISSION. C. A. 9th Cir. Certiorari denied. Reported below: 807 F. 2d 857.

No. 87-109. CREAMER *v.* RAFFETY ET AL. Ct. App. Ariz. Certiorari denied.

No. 87-110. TERRY *v.* NEW YORK. County Court, Broome County, N. Y. Certiorari denied.

No. 87-111. 5 WEST 14TH OWNERS CORP. *v.* WEST 14TH STREET COMMERCIAL CORP. ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 815 F. 2d 188.

No. 87-112. UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA, AFL-CIO, LOCAL 2247, ET AL. *v.* ENDICOTT ENTERPRISES, INC. C. A. 9th Cir. Certiorari denied. Reported below: 806 F. 2d 918.

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No. 87-114. *MAGYAR ET UX. v. UNITED FIRE INSURANCE CO. ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 811 F. 2d 1330.

No. 87-115. *OLAVARRIETA v. UNITED STATES ET AL.* C. A. 11th Cir. Certiorari denied. Reported below: 812 F. 2d 640.

No. 87-117. *OKC LIMITED PARTNERSHIP v. PHILLIPS OIL CO.* C. A. 5th Cir. Certiorari denied. Reported below: 812 F. 2d 265.

No. 87-118. *MAYNARD v. PRIESTER.* Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 87-122. *MOSCO v. BALTIMORE & OHIO RAILROAD CO.* C. A. 4th Cir. Certiorari denied. Reported below: 817 F. 2d 1088.

No. 87-124. *TAFOYA v. ADAMS ET AL.* C. A. 10th Cir. Certiorari denied. Reported below: 816 F. 2d 555.

No. 87-125. *NEC ELECTRONICS INC. v. CAL CIRCUIT ABCO, INC., ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 810 F. 2d 1506.

No. 87-127. *WILLIAMS v. UNITED STATES.* C. A. 5th Cir. Certiorari denied. Reported below: 816 F. 2d 675.

No. 87-128. *POSTEL v. TEXAS WATER DEVELOPMENT BOARD ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 816 F. 2d 675.

No. 87-130. *BELL ET AL. v. TEAMSTERS LOCAL UNION NO. 317, SYRACUSE, NEW YORK, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA, ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 819 F. 2d 1129.

No. 87-132. *PENNSYLVANIA DENTAL ASSN. ET AL. v. MEDICAL SERVICE ASSOCIATION OF PENNSYLVANIA, DBA PENNSYLVANIA BLUE SHIELD.* C. A. 3d Cir. Certiorari denied. Reported below: 815 F. 2d 270.

No. 87-136. *SPAGNUOLO v. UNITED STATES.* C. A. 6th Cir. Certiorari denied. Reported below: 815 F. 2d 81.

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No. 87-139. *CITY AND BOROUGH OF SITKA v. R. W. BECK & ASSOCIATES ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 812 F. 2d 715.

No. 87-143. *WELLS v. VIRGINIA COMMONWEALTH UNIVERSITY ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 816 F. 2d 674.

No. 87-149. *NIEDZWIECKI v. CITY OF BRIDGEPORT.* App. Ct. Conn. Certiorari denied. Reported below: 9 Conn. App. 807, 518 A. 2d 406.

No. 87-150. *KARL SCHERMER & Co. v. ALPHA INTERNATIONAL ET AL.* Super. Ct. N. J., Law Div., Union County. Certiorari denied.

No. 87-151. *YATES v. UNITED STATES.* Ct. Mil. App. Certiorari denied. Reported below: 24 M. J. 114.

No. 87-152. *BERGMAN v. UNITED STATES.* C. A. 9th Cir. Certiorari denied. Reported below: 813 F. 2d 1027.

No. 87-155. *NATIONAL RAILROAD PASSENGER CORPORATION (AMTRAK) v. CUMMINGS ET AL.* Sup. Ct. Pa. Certiorari denied. Reported below: 514 Pa. 230, 523 A. 2d 338.

No. 87-164. *BROTHERHOOD OF TEAMSTERS & AUTO TRUCK DRIVERS LOCAL 70 OF ALAMEDA COUNTY ET AL. v. WESTERN PACIFIC RAILROAD Co. ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 809 F. 2d 607.

No. 87-165. *LOGAN v. ABSHIRE, WARDEN.* C. A. 6th Cir. Certiorari denied. Reported below: 819 F. 2d 289.

No. 87-166. *HILL ET AL. v. CHILEAN LINE ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 815 F. 2d 699.

No. 87-167. *MAREK ET VIR v. MARPAN TWO, INC., ET AL.* C. A. 3d Cir. Certiorari denied. Reported below: 817 F. 2d 242.

No. 87-172. *DUNLAP, DBA AMERICAN ARCADE v. ARKANSAS.* Sup. Ct. Ark. Certiorari denied. Reported below: 292 Ark. 51, 728 S. W. 2d 155.

No. 87-175. *TANGO v. NEW JERSEY.* Super. Ct. N. J., App. Div. Certiorari denied.

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No. 87-177. *QUAST v. QUAST*. Dist. Ct. App. Fla., 4th Dist. Certiorari denied. Reported below: 498 So. 2d 1307.

No. 87-178. *PACIFIC GAS & ELECTRIC CO. v. PUBLIC UTILITIES COMMISSION OF CALIFORNIA*. Sup. Ct. Cal. Certiorari denied.

No. 87-181. *SRULOWITZ v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 819 F. 2d 37.

No. 87-182. *ALOE COAL CO. ET AL. v. CLARK EQUIPMENT CO.* C. A. 3d Cir. Certiorari denied. Reported below: 816 F. 2d 110.

No. 87-184. *SCHARFFE v. PERKINS ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 817 F. 2d 392.

No. 87-185. *PAYNE v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 812 F. 2d 1403.

No. 87-187. *WRIGHT v. CAYAN*. C. A. 2d Cir. Certiorari denied. Reported below: 817 F. 2d 999.

No. 87-189. *KING ET VIR v. CLARE ET AL.* Super. Ct. Pa. Certiorari denied. Reported below: 356 Pa. Super. 595, 512 A. 2d 56.

No. 87-190. *MARTIN v. ST. JOE CONTAINER CO.* C. A. 6th Cir. Certiorari denied. Reported below: 817 F. 2d 105.

No. 87-191. *FLAMM ET VIR v. EBERSTADT ET AL.* C. A. 7th Cir. Certiorari denied. Reported below: 814 F. 2d 1169.

No. 87-192. *FUNNELL, INDIVIDUALLY AND AS ADMINISTRATRIX OF THE ESTATE OF FUNNELL, ET AL. v. JONES ET AL.* Sup. Ct. Okla. Certiorari denied. Reported below: 737 P. 2d 105.

No. 87-194. *TI-COATING, INC. v. SCHWARZKOPF DEVELOPMENT CORP.* C. A. 2d Cir. Certiorari denied. Reported below: 816 F. 2d 670.

No. 87-195. *PENK ET AL. v. OREGON STATE BOARD OF HIGHER EDUCATION*. C. A. 9th Cir. Certiorari denied. Reported below: 816 F. 2d 458.

No. 87-196. *DOBBS v. FORD MOTOR CO. ET AL.* (two cases). C. A. 3d Cir. Certiorari denied. Reported below: 819 F. 2d 1132.

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No. 87-197. GENERAL AMERICAN COMMUNICATIONS CORP. ET AL. *v.* NOTTINGHAM ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 811 F. 2d 873.

No. 87-198. SERRANO *v.* CITY OF GARY ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 818 F. 2d 32.

No. 87-199. COEUR D'ALENE TRIBE OF INDIANS *v.* IDAHO ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 814 F. 2d 1288.

No. 87-200. VANYA ET AL. *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 817 F. 2d 1235.

No. 87-202. FONG ET AL. *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 9th Cir. Certiorari denied. Reported below: 816 F. 2d 684.

No. 87-203. HARVEY *v.* SUBATCH. C. A. 1st Cir. Certiorari denied. Reported below: 808 F. 2d 1513.

No. 87-207. KERR *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 361 Pa. Super. 635, 517 A. 2d 1365.

No. 87-209. SHERMAN COLLEGE OF STRAIGHT CHIROPRACTIC ET AL. *v.* AMERICAN CHIROPRACTIC ASSN., INC., ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 813 F. 2d 349.

No. 87-210. PRICE *v.* WARNECKE. C. A. 9th Cir. Certiorari denied. Reported below: 789 F. 2d 921.

No. 87-214. MOORE ET AL. *v.* BOATING INDUSTRY ASSNS. ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 819 F. 2d 693.

No. 87-218. YEITER, A LEGALLY INCAPACITATED PERSON, BY AND THROUGH HER GUARDIAN, YEITER *v.* BOWEN, SECRETARY OF HEALTH AND HUMAN SERVICES. C. A. 6th Cir. Certiorari denied. Reported below: 818 F. 2d 8.

No. 87-219. BASTIEN ET AL. *v.* R. ROWLAND & Co., INC., ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 815 F. 2d 713.

No. 87-221. FOREMAN *v.* ILLINOIS. App. Ct. Ill., 2d Dist. Certiorari denied. Reported below: 153 Ill. App. 3d 346, 505 N. E. 2d 731.

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No. 87-223. SEABOARD SURETY CO. ET AL. *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 817 F. 2d 956.

No. 87-227. SLOVACEK *v.* UNITED STATES. Ct. Mil. App. Certiorari denied. Reported below: 24 M. J. 140.

No. 87-228. ALUMINA PARTNERS OF JAMAICA *v.* CABLE BELT CONVEYORS, INC., ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 857 F. 2d 1461.

No. 87-232. LEICHHIMAN *v.* PICKWICK INTERNATIONAL ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 814 F. 2d 1263.

No. 87-233. HAYES *v.* ALABAMA. Sup. Ct. Ala. Certiorari denied. Reported below: 507 So. 2d 995.

No. 87-235. GIRY ET AL. *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 818 F. 2d 120.

No. 87-236. CAMPBELL *v.* BOEING Co. Ct. App. Wash. Certiorari denied.

No. 87-238. COBB *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 818 F. 2d 30.

No. 87-242. YARBROUGH, IN DERIVATIVE ACTION ON BEHALF OF LAVENDER HOUSE, INC. *v.* SMALL BUSINESS ADMINISTRATION. C. A. 3d Cir. Certiorari denied. Reported below: 800 F. 2d 1138.

No. 87-243. BROWN *v.* PATTERSON ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 823 F. 2d 167.

No. 87-254. SMITH *v.* MARTIN, GOVERNOR OF NORTH CAROLINA, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 816 F. 2d 673.

No. 87-285. DOWELL, FOR DOWELL, DECEASED *v.* BOWEN, SECRETARY OF HEALTH AND HUMAN SERVICES. C. A. 6th Cir. Certiorari denied. Reported below: 816 F. 2d 679.

No. 87-288. SAMPANG *v.* MARSH ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 813 F. 2d 1228.

No. 87-290. ROMAN *v.* SUNNY SLOPE FARMS, INC. C. A. 4th Cir. Certiorari denied. Reported below: 817 F. 2d 1116.

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No. 87-295. *BARRETT v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 818 F. 2d 330.

No. 87-301. *MITCHELL ET AL. v. UNITED STATES ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 787 F. 2d 466.

No. 87-306. *CONDREN ET AL. v. AIRCRAFT TRADING & SERVICES, INC.* C. A. 2d Cir. Certiorari denied. Reported below: 819 F. 2d 1227.

No. 87-310. *WIEGAND v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 812 F. 2d 1239.

No. 87-321. *O'CONNOR v. ESTATE OF MILHOLLAN ET AL.* Sup. Ct. Nev. Certiorari denied. Reported below: 103 Nev. 815.

No. 87-322. *CHASE REVEL, INC., DBA ENTREPRENEUR MAGAZINE v. STRAW, DBA BUSINESS OPPORTUNITIES DIGEST*. C. A. 11th Cir. Certiorari denied. Reported below: 813 F. 2d 356.

No. 87-335. *CRISP v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 817 F. 2d 256.

No. 87-5001. *RUSSELL v. TEXAS*. Ct. Crim. App. Tex. Certiorari denied. Reported below: 727 S. W. 2d 573.

No. 87-5003. *WAGSTAFF-EL v. RUPPERSBERG, WHITE, WINTER, CLARK & MISTER ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 812 F. 2d 1402.

No. 87-5005. *ROBINSON v. FOLTZ, WARDEN*. C. A. 6th Cir. Certiorari denied. Reported below: 815 F. 2d 705.

No. 87-5006. *YOUNG v. UNITED BANK OF BISMARCK ET AL.* Sup. Ct. N. D. Certiorari denied. Reported below: 401 N. W. 2d 517.

No. 87-5007. *WEAVER v. PARKER, WARDEN*. C. A. 11th Cir. Certiorari denied. Reported below: 812 F. 2d 1413.

No. 87-5009. *O'CONNOR v. TAYLOR ET AL.* C. A. 11th Cir. Certiorari denied.

No. 87-5010. *HATTON v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 818 F. 2d 869.

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No. 87-5012. COLUNGA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 812 F. 2d 196.

No. 87-5013. ANDREWS *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 817 F. 2d 1277.

No. 87-5014. DIAZ *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 814 F. 2d 454.

No. 87-5015. DAVIS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 817 F. 2d 268.

No. 87-5016. FONFRIAS *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 816 F. 2d 823.

No. 87-5017. FOREMAN *v.* INTERNAL REVENUE SERVICE ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 817 F. 2d 758.

No. 87-5018. BUCK *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 813 F. 2d 588.

No. 87-5019. BOLES *v.* FOLTZ, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 816 F. 2d 1132.

No. 87-5020. TUBBS ET AL. *v.* LYNAUGH, DIRECTOR, TEXAS DEPARTMENT OF CORRECTIONS, ET AL. C. A. 5th Cir. Certiorari denied.

No. 87-5021. EASLEY *v.* KOSCINSKI ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 817 F. 2d 751.

No. 87-5022. JEWELL *v.* NEW YORK. App. Div., Sup. Ct. N. Y., 2d Jud. Dept. Certiorari denied. Reported below: 126 App. Div. 2d 567, 510 N. Y. S. 2d 686.

No. 87-5023. VAN SANT *v.* ARLINGTON COUNTY, VIRGINIA. C. A. 4th Cir. Certiorari denied. Reported below: 816 F. 2d 674.

No. 87-5024. MIXON *v.* NEW ORLEANS POLICE DEPARTMENT ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 816 F. 2d 675.

No. 87-5026. SAUNDERS *v.* RASKIN ET AL. C. A. 3d Cir. Certiorari denied.

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No. 87-5027. *VILLALOBOS v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 815 F. 2d 1493.

No. 87-5028. *MITCHELL v. OFFICE OF THE LOS ANGELES COUNTY SUPERINTENDENT OF SCHOOLS ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 805 F. 2d 844.

No. 87-5030. *NICHOLAS v. KULBETH*. C. A. 1st Cir. Certiorari denied.

No. 87-5034. *LICKER v. TEXAS*. Ct. Crim. App. Tex. Certiorari denied.

No. 87-5035. *HANSON v. BOARD OF ATTORNEYS PROFESSIONAL RESPONSIBILITY OF WISCONSIN*. Sup. Ct. Wis. Certiorari denied. Reported below: 136 Wis. 2d 536, 402 N. W. 2d 707.

No. 87-5036. *GROSS v. MARYLAND*. Ct. Sp. App. Md. Certiorari denied. Reported below: 69 Md. App. 792.

No. 87-5041. *RODGER v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 822 F. 2d 1092.

No. 87-5043. *MONTGOMERY v. WHITLEY, WARDEN*. C. A. 5th Cir. Certiorari denied.

No. 87-5044. *SHIELDS v. DUGGER, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS*. C. A. 11th Cir. Certiorari denied. Reported below: 813 F. 2d 1123.

No. 87-5047. *PAREZ v. CITY AND COUNTY OF SAN DIEGO*. C. A. 9th Cir. Certiorari denied. Reported below: 812 F. 2d 1411.

No. 87-5049. *BALDWIN v. COMMISSIONER OF INTERNAL REVENUE*. C. A. 9th Cir. Certiorari denied. Reported below: 813 F. 2d 1230.

No. 87-5051. *HUGHES v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 817 F. 2d 268.

No. 87-5055. *DUNCAN v. UNITED STATES*. Ct. App. D. C. Certiorari denied.

No. 87-5056. *WYATT v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 807 F. 2d 1480.

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No. 87-5058. *O'DELL v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 805 F. 2d 637.

No. 87-5059. *PRENZLER v. SUPERIOR COURT OF CALIFORNIA, ORANGE COUNTY*. Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 87-5060. *SMITH v. WARDEN, MARYLAND PENITENTIARY*. C. A. 4th Cir. Certiorari denied. Reported below: 819 F. 2d 1139.

No. 87-5061. *ROBINSON v. DELAWARE ET AL.* C. A. 3d Cir. Certiorari denied. Reported below: 817 F. 2d 752.

No. 87-5063. *CADE ET AL. v. NEW MEXICO*. Sup. Ct. N. M. Certiorari denied.

No. 87-5067. *ANNONSON v. GROVER ET AL.* Sup. Ct. Wis. Certiorari denied. Reported below: 136 Wis. 2d 564, 407 N. W. 2d 561.

No. 87-5068. *FREEMAN v. HATFIELD*. C. A. 4th Cir. Certiorari denied. Reported below: 816 F. 2d 671.

No. 87-5069. *DINITZ v. JUSTICES OF THE SUPREME COURT OF KINGS COUNTY*. Ct. App. N. Y. Certiorari denied. Reported below: 69 N. Y. 2d 607, 507 N. E. 2d 321.

No. 87-5071. *EULER-MARKUS v. UNITED STATES*. C. A. 11th Cir. Certiorari denied. Reported below: 817 F. 2d 759.

No. 87-5072. *D'AMARIO v. PROVIDENCE CIVIC CENTER AUTHORITY ET AL.* C. A. 1st Cir. Certiorari denied. Reported below: 815 F. 2d 692.

No. 87-5073. *GARCIA v. UNITED STATES*. Ct. Mil. App. Certiorari denied. Reported below: 24 M. J. 69.

No. 87-5074. *BELL v. COLORADO*. Sup. Ct. Colo. Certiorari denied.

No. 87-5075. *LEE v. NEW YORK*. Ct. App. N. Y. Certiorari denied. Reported below: 70 N. Y. 2d 649, 512 N. E. 2d 568.

No. 87-5076. *FLOYD v. CONNECTICUT*. App. Ct. Conn. Certiorari denied. Reported below: 10 Conn. App. 361, 523 A. 2d 1323.

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No. 87-5078. *BUTTS v. DUGGER, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL.* C. A. 11th Cir. Certiorari denied. Reported below: 816 F. 2d 686.

No. 87-5079. *COGSHELL v. GENERAL MOTORS CORP.* C. A. 10th Cir. Certiorari denied.

No. 87-5080. *BASNIGHT v. UNITED STATES.* Ct. App. D. C. Certiorari denied.

No. 87-5081. *GILBERT v. UNITED STATES.* C. A. 9th Cir. Certiorari denied. Reported below: 813 F. 2d 1523.

No. 87-5084. *FOSTER v. MENCL ET AL.* C. A. 8th Cir. Certiorari denied. Reported below: 815 F. 2d 712.

No. 87-5086. *FURLOUGH v. DUGGER, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL.* C. A. 11th Cir. Certiorari denied. Reported below: 815 F. 2d 715.

No. 87-5087. *HUFFAKER v. UNITED STATES.* C. A. 9th Cir. Certiorari denied. Reported below: 817 F. 2d 108.

No. 87-5088. *KRAPP v. UNITED STATES.* C. A. 8th Cir. Certiorari denied. Reported below: 815 F. 2d 1183.

No. 87-5090. *COLEMAN v. UNITED STATES.* C. A. 11th Cir. Certiorari denied. Reported below: 818 F. 2d 872.

No. 87-5091. *REDD v. UNITED STATES.* C. A. 5th Cir. Certiorari denied. Reported below: 818 F. 2d 864.

No. 87-5093. *BEARD v. DUTTON ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 820 F. 2d 405.

No. 87-5094. *WERNER v. UNITED STATES.* C. A. 3d Cir. Certiorari denied. Reported below: 819 F. 2d 1136.

No. 87-5097. *ONAFOWOKAN v. UNITED STATES.* C. A. D. C. Cir. Certiorari denied. Reported below: 259 U. S. App. D. C. 293, 815 F. 2d 724.

No. 87-5099. *MCCOY v. NEW JERSEY.* Super. Ct. N. J., App. Div. Certiorari denied.

No. 87-5101. *GANTOS v. UNITED STATES.* C. A. 8th Cir. Certiorari denied. Reported below: 817 F. 2d 41.

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No. 87-5104. *GILBERT v. ALABAMA*. C. A. 11th Cir. Certiorari denied. Reported below: 815 F. 2d 716.

No. 87-5108. *YOUNG v. HAWAII*. Sup. Ct. Haw. Certiorari denied.

No. 87-5109. *BRAMLET v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 820 F. 2d 851.

No. 87-5110. *GAY v. UNITED STATES*. C. A. 11th Cir. Certiorari denied. Reported below: 816 F. 2d 614.

No. 87-5111. *KENNARD v. ALABAMA*. Sup. Ct. Ala. Certiorari denied. Reported below: 531 So. 2d 934.

No. 87-5112. *MALIK v. BALL ET AL.* C. A. 2d Cir. Certiorari denied.

No. 87-5113. *MALIK v. COSTELLO*. C. A. 2d Cir. Certiorari denied. Reported below: 857 F. 2d 1461.

No. 87-5114. *PENIX v. JAGO, SUPERINTENDENT, LONDON CORRECTIONAL INSTITUTION*. C. A. 6th Cir. Certiorari denied. Reported below: 815 F. 2d 79.

No. 87-5116. *PERLAZA v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 818 F. 2d 1354.

No. 87-5118. *ROTH v. PENNSYLVANIA*. Super. Ct. Pa. Certiorari denied. Reported below: 362 Pa. Super. 639, 520 A. 2d 1216.

No. 87-5119. *SEIGLER v. BAIR, WARDEN, ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 818 F. 2d 861.

No. 87-5120. *VALENCIANO v. TEXAS*. Ct. App. Tex., 4th Dist. Certiorari denied. Reported below: 705 S. W. 2d 339.

No. 87-5121. *LOVE v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 815 F. 2d 53.

No. 87-5123. *THOMAS v. HUMFIELD ET AL.* C. A. 5th Cir. Certiorari denied.

No. 87-5127. *DANIELS v. WOOD, WARDEN*. C. A. 8th Cir. Certiorari denied. Reported below: 819 F. 2d 195.

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No. 87-5128. *SULLIVAN v. MINNESOTA*. C. A. 8th Cir. Certiorari denied. Reported below: 818 F. 2d 664.

No. 87-5129. *SPANN v. MISSISSIPPI*. Sup. Ct. Miss. Certiorari denied. Reported below: 505 So. 2d 1021.

No. 87-5131. *FIXEL v. WARDEN, NORTHERN NEVADA CORRECTIONAL CENTER, ET AL.* Sup. Ct. Nev. Certiorari denied. Reported below: 103 Nev. 803.

No. 87-5132. *GERHARD v. PENNSYLVANIA*. Sup. Ct. Pa. Certiorari denied. Reported below: 515 Pa. 574, 527 A. 2d 535.

No. 87-5133. *SAVAGE v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 819 F. 2d 1139.

No. 87-5135. *RUSHTON v. TEXAS*. Ct. App. Tex., 13th Dist. Certiorari denied. Reported below: 698 S. W. 2d 451.

No. 87-5136. *BRYANT v. MCGINNIS, WARDEN, ET AL.* C. A. 7th Cir. Certiorari denied. Reported below: 819 F. 2d 1144.

No. 87-5138. *MARTINEZ v. FLORIDA*. Dist. Ct. App. Fla., 3d Dist. Certiorari denied. Reported below: 502 So. 2d 910.

No. 87-5140. *GRAYS v. GORDON*. C. A. 5th Cir. Certiorari denied.

No. 87-5141. *ESPENSHADE v. PENNSYLVANIA STATE UNIVERSITY ET AL.* C. A. 3d Cir. Certiorari denied. Reported below: 815 F. 2d 694.

No. 87-5142. *JOHNSON v. RUCKER ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 820 F. 2d 1224.

No. 87-5144. *SMITH v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 857 F. 2d 1462.

No. 87-5145. *SPEARMAN v. LYNAUGH, DIRECTOR, TEXAS DEPARTMENT OF CORRECTIONS*. Ct. Crim. App. Tex. Certiorari denied.

No. 87-5146. *OAKLEY v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 817 F. 2d 753.

No. 87-5148. *STURDIVANT v. ALABAMA*. Ct. Crim. App. Ala. Certiorari denied. Reported below: 507 So. 2d 1008.

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No. 87-5151. *KOST v. CAPITOL CORP. ET AL.* C. A. 10th Cir. Certiorari denied.

No. 87-5158. *VRTISKA v. NEBRASKA.* Sup. Ct. Neb. Certiorari denied. Reported below: 225 Neb. 454, 406 N. W. 2d 114.

No. 87-5159. *BARNES v. UNITED STATES.* C. A. 5th Cir. Certiorari denied. Reported below: 819 F. 2d 1141.

No. 87-5162. *SMITH v. WHITE, WARDEN, ET AL.* C. A. 11th Cir. Certiorari denied. Reported below: 815 F. 2d 1401.

No. 87-5164. *WALKER v. UNITED STATES.* C. A. 8th Cir. Certiorari denied. Reported below: 817 F. 2d 461.

No. 87-5165. *GARDNER v. MALONEY, SUPERINTENDENT, MASSACHUSETTS CORRECTIONAL INSTITUTION, ET AL.* C. A. 1st Cir. Certiorari denied. Reported below: 817 F. 2d 183.

No. 87-5166. *BAXTER v. ILLINOIS.* App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 149 Ill. App. 3d 1157, 514 N. E. 2d 606.

No. 87-5171. *NATHAN v. CALIFORNIA.* Ct. App. Cal., 3d App. Dist. Certiorari denied.

No. 87-5174. *PONDER ET AL. v. FULTON-DEKALB HOSPITAL AUTHORITY, DBA GRADY MEMORIAL HOSPITAL.* Sup. Ct. Ga. Certiorari denied. Reported below: 256 Ga. 833, 353 S. E. 2d 515.

No. 87-5175. *PIKO v. OKU, ADMINISTRATOR, HALAWA HIGH SECURITY FACILITY, ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 816 F. 2d 684.

No. 87-5176. *DODSON v. FULCOMER, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT HUNTINGDON, ET AL.* C. A. 3d Cir. Certiorari denied. Reported below: 819 F. 2d 1133.

No. 87-5177. *BRIGHT v. CITY OF ATLANTA ET AL.* C. A. 11th Cir. Certiorari denied. Reported below: 815 F. 2d 716.

No. 87-5178. *DOBSON v. UNITED STATES.* C. A. 4th Cir. Certiorari denied. Reported below: 823 F. 2d 549.

No. 87-5180. *DOOLEY v. PETSOCK, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AND DIAGNOSTIC AND CLASSIFICA-*

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TION CENTER AT PITTSBURGH. C. A. 3d Cir. Certiorari denied. Reported below: 816 F. 2d 885.

No. 87-5181. GRANT *v.* NEW YORK. Ct. App. N. Y. Certiorari denied. Reported below: 69 N. Y. 2d 1004, 511 N. E. 2d 96.

No. 87-5184. SUEING *v.* HEFFRON, SHERIFF OF KENT COUNTY. C. A. 6th Cir. Certiorari denied. Reported below: 815 F. 2d 706.

No. 87-5185. PRENZLER *v.* ORANGE COUNTY BOARD OF SUPERVISORS. C. A. 9th Cir. Certiorari denied.

No. 87-5186. YOUNG *v.* COUGHLIN, COMMISSIONER, NEW YORK DEPARTMENT OF CORRECTIONAL SERVICES, ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 823 F. 2d 545.

No. 87-5187. SMITH *v.* WOODS ET AL. C. A. 8th Cir. Certiorari denied.

No. 87-5189. WILLIAMS *v.* UNITED STATES POSTAL SERVICE ET AL. C. A. 11th Cir. Certiorari denied.

No. 87-5190. ANGLIN *v.* FOLTZ, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 819 F. 2d 289.

No. 87-5191. HOWARD *v.* DAVIS ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 815 F. 2d 1429.

No. 87-5197. ATAMIAN *v.* RUBIN ET AL. Sup. Ct. N. J. Certiorari denied. Reported below: 107 N. J. 147, 526 A. 2d 208.

No. 87-5198. KENYATTA *v.* VASSAR ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 819 F. 2d 1138.

No. 87-5200. ROBERTS *v.* DILL ET AL. C. A. 8th Cir. Certiorari denied.

No. 87-5202. PAOLI *v.* LALLY ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 812 F. 2d 1489.

No. 87-5204. WILLIAMS *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied.

No. 87-5207. KAJITA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 819 F. 2d 1146.

No. 87-5209. ARANGO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 820 F. 2d 1221.

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No. 87-5210. *JAMES v. MARYLAND*. C. A. 4th Cir. Certiorari denied. Reported below: 813 F. 2d 1228.

No. 87-5211. *HOWELL v. DUCKWORTH ET AL.* C. A. 7th Cir. Certiorari denied.

No. 87-5213. *BARNES v. SAMBERG, WARDEN, ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 818 F. 2d 861.

No. 87-5214. *BECKLIN v. HAWAII*. Sup. Ct. Haw. Certiorari denied.

No. 87-5216. *GRAVES v. JONES, WARDEN, ET AL.* C. A. 11th Cir. Certiorari denied.

No. 87-5217. *OGRIZOVICH v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 816 F. 2d 681.

No. 87-5218. *RYAN v. ILLINOIS*. Sup. Ct. Ill. Certiorari denied. Reported below: 117 Ill. 2d 28, 509 N. E. 2d 1001.

No. 87-5219. *TAYLOR v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 814 F. 2d 172.

No. 87-5220. *MAURO v. BOARD OF HIGHER EDUCATION ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 819 F. 2d 1130.

No. 87-5221. *MARR v. UNITED STATES*. C. A. 10th Cir. Certiorari denied. Reported below: 819 F. 2d 1542.

No. 87-5225. *HOPPINS v. ALABAMA ET AL.* C. A. 11th Cir. Certiorari denied. Reported below: 822 F. 2d 64.

No. 87-5226. *KENDALL v. VIRGINIA*. Sup. Ct. Va. Certiorari denied.

No. 87-5227. *DITGES v. SANBORN ET AL.* C. A. 10th Cir. Certiorari denied.

No. 87-5229. *RAPRAGER v. ILLINOIS*. App. Ct. Ill., 2d Dist. Certiorari denied. Reported below: 156 Ill. App. 3d 1172, 522 N. E. 2d 360.

No. 87-5232. *WILLIAMS v. JOINER*. C. A. 7th Cir. Certiorari denied. Reported below: 818 F. 2d 33.

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No. 87-5235. *WILLIAMS v. CITY OF WASHINGTON, D. C., ET AL.* C. A. D. C. Cir. Certiorari denied.

No. 87-5236. *THOMAS v. WARDEN, MARYLAND HOUSE OF CORRECTIONS.* C. A. 4th Cir. Certiorari denied. Reported below: 820 F. 2d 1220.

No. 87-5237. *WARREN v. WYOMING, MICHIGAN, POLICE DEPARTMENT ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 815 F. 2d 706.

No. 87-5238. *SMITH v. CALIFORNIA.* Ct. App. Cal., 5th App. Dist. Certiorari denied. Reported below: 188 Cal. App. 3d 1495, 234 Cal. Rptr. 142.

No. 87-5239. *RAITPORT v. EVERSHERE, INC., ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 857 F. 2d 1461.

No. 87-5240. *HOFFLER v. A & H GARCIA TRASH HAULING, INC.* Ct. App. D. C. Certiorari denied.

No. 87-5242. *VAN SANT v. HUDSON ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 816 F. 2d 674.

No. 87-5243. *MORGAN v. ILLINOIS.* App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 152 Ill. App. 3d 97, 504 N. E. 2d 172.

No. 87-5245. *GENTRY v. FOLTZ, WARDEN.* C. A. 6th Cir. Certiorari denied. Reported below: 815 F. 2d 77.

No. 87-5249. *WALKER v. LEAK, DIRECTOR, DEPARTMENT OF CORRECTIONS, COOK COUNTY, ILLINOIS.* Sup. Ct. Ill. Certiorari denied. Reported below: 116 Ill. 2d 413, 507 N. E. 2d 849.

No. 87-5250. *SWEENEY v. UNITED STATES.* C. A. 8th Cir. Certiorari denied. Reported below: 817 F. 2d 1323.

No. 87-5252. *JOHNSON v. CHANDLER, MAYOR, ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 816 F. 2d 680.

No. 87-5253. *ABAYOMI v. UNITED STATES.* C. A. 7th Cir. Certiorari denied. Reported below: 820 F. 2d 902.

No. 87-5254. *ALLAH v. LEFEVRE, SUPERINTENDENT, CLINTON CORRECTIONAL FACILITY.* C. A. 2d Cir. Certiorari denied. Reported below: 819 F. 2d 1129.

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No. 87-5255. *BEJARANO v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 817 F. 2d 755.

No. 87-5260. *WILLIAMS v. BROWN*. C. A. 6th Cir. Certiorari denied. Reported below: 822 F. 2d 60.

No. 87-5262. *BULLED v. GRIFFIN ET AL.* C. A. 11th Cir. Certiorari denied. Reported below: 820 F. 2d 1229.

No. 87-5263. *BRYAN v. WARDEN, INDIANA STATE REFORMATORY*. C. A. 7th Cir. Certiorari denied. Reported below: 820 F. 2d 217.

No. 87-5264. *FOSTER v. LYNAUGH, DIRECTOR, TEXAS DEPARTMENT OF CORRECTIONS*. C. A. 5th Cir. Certiorari denied. Reported below: 824 F. 2d 970.

No. 87-5270. *MARTIN v. TOWNSEND ET AL.* C. A. 3d Cir. Certiorari denied. Reported below: 826 F. 2d 1056.

No. 87-5271. *ROMERO-ROMERO v. UNITED STATES*; and

No. 87-5281. *GOMEZ-PARRA v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 813 F. 2d 1229.

No. 87-5274. *MASON v. BRASHER ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 820 F. 2d 405.

No. 87-5275. *SHIPLEY v. CALIFORNIA*. Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 87-5276. *EAGLE ELK v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 820 F. 2d 959.

No. 87-5278. *MCGILL v. NEW YORK*. C. A. 2d Cir. Certiorari denied.

No. 87-5279. *WALLACE v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 815 F. 2d 74.

No. 87-5280. *ZATKO v. UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF CALIFORNIA*. C. A. 9th Cir. Certiorari denied.

No. 87-5282. *PINKINS v. PENNSYLVANIA*. Sup. Ct. Pa. Certiorari denied. Reported below: 514 Pa. 418, 525 A. 2d 1189.

No. 87-5285. *STEWART v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 820 F. 2d 1107.

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No. 87-5286. *HOLMES v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 822 F. 2d 1090.

No. 87-5287. *LAWSON v. OKLAHOMA EX REL. OKLAHOMA BAR ASSN.* Sup. Ct. Okla. Certiorari denied.

No. 87-5289. *VASS v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 819 F. 2d 1131.

No. 87-5290. *MOORE v. ZIMMERMAN, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AND DIAGNOSTIC AND CLASSIFICATION CENTER AT GRATERFORD*. C. A. 3d Cir. Certiorari denied. Reported below: 822 F. 2d 53.

No. 87-5291. *MELIA v. BOWEN, SECRETARY OF HEALTH AND HUMAN SERVICES*. C. A. 5th Cir. Certiorari denied.

No. 87-5293. *SANDIDGE v. UNITED STATES*. Ct. App. D. C. Certiorari denied. Reported below: 520 A. 2d 1057.

No. 87-5297. *RIVERA v. WELLS FARGO CREDIT CORP. ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 820 F. 2d 1228.

No. 87-5303. *TRATAR v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 818 F. 2d 870.

No. 87-5305. *TISDALE v. UNITED STATES*. C. A. 11th Cir. Certiorari denied. Reported below: 817 F. 2d 1552.

No. 87-5306. *PASKINS ET AL. v. ILLINOIS*. App. Ct. Ill., 3d Dist. Certiorari denied. Reported below: 154 Ill. App. 3d 417, 506 N. E. 2d 1037.

No. 87-5308. *THACKER ET UX. v. GREAT AMERICAN INSURANCE Co.* C. A. 4th Cir. Certiorari denied. Reported below: 812 F. 2d 1402.

No. 87-5309. *DE LA CERDA v. CHEMEKETA COMMUNITY COLLEGE DISTRICT ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 812 F. 2d 714.

No. 87-5317. *SMITH v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 817 F. 2d 757.

No. 87-5324. *RODGER v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 815 F. 2d 712.

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No. 87-5326. *KING v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 820 F. 2d 1220.

No. 87-5339. *MASSEY v. UNITED STATES*. C. A. 11th Cir. Certiorari denied. Reported below: 823 F. 2d 557.

No. 87-5342. *NEALY v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 818 F. 2d 30.

No. 87-5358. *SAULSBERRY v. BARKSDALE, SHERIFF OF SHELBY COUNTY, TENNESSEE, ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 817 F. 2d 757.

No. 87-5368. *BARCO v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 810 F. 2d 1165.

No. 87-5372. *NOVACHICH v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 820 F. 2d 1225.

No. 87-5386. *PARKER v. UNITED STATES*. C. A. 11th Cir. Certiorari denied. Reported below: 823 F. 2d 556.

No. 87-5395. *MUNOZ v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 857 F. 2d 1462.

No. 87-5397. *SILVA-PIEDRAHITA v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 819 F. 2d 1140.

No. 86-1170. *MCKINNEY v. MISSOURI*. Ct. App. Mo., Eastern Dist. Certiorari denied. JUSTICE BRENNAN and JUSTICE MARSHALL would grant the petition for writ of certiorari and reverse the judgment of conviction. Reported below: 718 S. W. 2d 583.

No. 86-1470. *CROWLEY ET AL. v. SHULTZ, SECRETARY OF STATE, ET AL.* C. A. D. C. Cir. Certiorari denied. JUSTICE SCALIA took no part in the consideration or decision of this petition. Reported below: 255 U. S. App. D. C. 422, 802 F. 2d 498.

No. 86-1871. *NATIONAL FUEL GAS SUPPLY CORP. v. FEDERAL ENERGY REGULATORY COMMISSION ET AL.* C. A. D. C. Cir. Certiorari denied. JUSTICE SCALIA took no part in the consideration or decision of this petition. Reported below: 258 U. S. App. D. C. 374, 811 F. 2d 1563.

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No. 86-1967. TAVOULAREAS *v.* WASHINGTON POST CO. ET AL. C. A. D. C. Cir. Certiorari denied. JUSTICE SCALIA took no part in the consideration or decision of this petition. Reported below: 260 U. S. App. D. C. 39, 817 F. 2d 762.

No. 86-1627. CITY OF ANGOON ET AL. *v.* HODEL, SECRETARY OF THE INTERIOR, ET AL. C. A. 9th Cir. Motion of Nunam Kitlutsisti for leave to file a brief as *amicus curiae* granted. Certiorari denied. Reported below: 803 F. 2d 1016.

No. 86-1681. RUSSO ET AL. *v.* MITCHELL ET AL. C. A. D. C. Cir. Certiorari denied. THE CHIEF JUSTICE and JUSTICE SCALIA took no part in the consideration or decision of this petition. Reported below: 257 U. S. App. D. C. 59, 807 F. 2d 204.

No. 86-1704. MAYNARD, WARDEN, ET AL. *v.* DUTTON. C. A. 10th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 812 F. 2d 593.

No. 86-1936. MURRAY, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS *v.* WILSON. C. A. 4th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 806 F. 2d 1232.

No. 86-1943. MCCARTHY, DIRECTOR, CALIFORNIA DEPARTMENT OF CORRECTIONS *v.* CARTER. C. A. 9th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 806 F. 2d 1373.

No. 86-2064. PIPES ET AL. *v.* BENNY. C. A. 9th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 799 F. 2d 489.

No. 87-89. FOLTZ, WARDEN *v.* THOMAS. C. A. 6th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 818 F. 2d 476.

No. 87-97. DUGGER, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS *v.* BUNDY. C. A. 11th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 816 F. 2d 564.

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No. 87-213. *KINCHELOE v. HAYES*. C. A. 9th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 784 F. 2d 1434.

No. 86-1712. *TRANSAMERICAN NATURAL GAS CORP. v. UNITED STATES DEPARTMENT OF THE INTERIOR ET AL.* Temp. Emerg. Ct. App. Motion of petitioner to defer consideration of the petition for certiorari denied. Certiorari denied. Reported below: 816 F. 2d 689.

No. 86-1719. *EXECUTIVE COMMITTEE MEMBERS ET AL. v. UNION OF INDIA ET AL.*; and

No. 86-1860. *UNION OF INDIA v. UNION CARBIDE CORP. ET AL.* C. A. 2d Cir. Motion of National Council of Churches of Christ in the U. S. A. for leave to file a brief as *amicus curiae* granted. Certiorari denied. Reported below: 809 F. 2d 195.

No. 86-1733. *FOUNDING CHURCH OF SCIENTOLOGY OF WASHINGTON, D. C. v. DIRECTOR, FEDERAL BUREAU OF INVESTIGATION, ET AL.* C. A. D. C. Cir. Certiorari denied. JUSTICE BRENNAN took no part in the consideration or decision of this petition. Reported below: 256 U. S. App. D. C. 54, 802 F. 2d 1448.

No. 86-1767. *WALTON ET UX. v. CALIFORNIA*. App. Dept., Super. Ct. Cal., San Diego County. Certiorari denied. JUSTICE BRENNAN and JUSTICE MARSHALL would grant the petition for writ of certiorari and reverse the judgment.

No. 86-1870. *CRONSON, AUDITOR GENERAL OF ILLINOIS v. CLARK, CHIEF JUSTICE, SUPREME COURT OF ILLINOIS, ET AL.* C. A. 7th Cir. Motion of petitioner to consider this case with No. 86-1773, *Cronson, Auditor General of Illinois v. Madden, Acting Director, Administrative Office of the Illinois Courts*, granted. Certiorari denied. Reported below: 810 F. 2d 662.

No. 86-1981. *SUN SHIP, INC. v. CALIFORNIA & HAWAIIAN SUGAR CO. ET AL.* C. A. 9th Cir. Motion of respondent California & Hawaiian Sugar Co. for damages denied. Certiorari denied. Reported below: 794 F. 2d 1433.

No. 86-1990. *WEST 14TH STREET COMMERCIAL CORP. ET AL. v. 5 WEST 14TH OWNERS CORP.* C. A. 2d Cir. Motion of Council for Owner-Occupied Housing, Inc., for leave to file a brief as

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*amicus curiae* granted. Certiorari denied. Reported below: 815 F. 2d 188.

No. 86-2042. *STANDLEY ET AL. v. UNITED STATES TAX COURT (COMMISSIONER OF INTERNAL REVENUE, REAL PARTY IN INTEREST)*. C. A. 9th Cir. Motion of petitioners to consolidate this case with No. 86-1217, *Russoniello et al. v. Olaques et al.* [certiorari granted, 481 U. S. 1012], denied. Certiorari denied.

No. 86-2068. *HARDIN v. MCMASTER*. C. A. 5th Cir. Motion of petitioner for leave to proceed as a veteran denied. Certiorari denied. Reported below: 816 F. 2d 675.

- No. 86-6765. *MARQUEZ v. TEXAS*. Ct. Crim. App. Tex.;
- No. 86-6845. *JOHNSON v. DUGGER, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS*. C. A. 11th Cir.;
- No. 86-6855. *HOGAN v. NEVADA*. Sup. Ct. Nev.;
- No. 86-6865. *SNELL v. ARKANSAS*. Sup. Ct. Ark.;
- No. 86-6878. *ALLEN v. CALIFORNIA*. Sup. Ct. Cal.;
- No. 86-6880. *RECTOR v. TEXAS*. Ct. Crim. App. Tex.;
- No. 86-6887. *SOUTH v. SOUTH CAROLINA*. Ct. Common Pleas of Lexington County, S. C.;
- No. 86-6904. *CANTU v. TEXAS*. Ct. Crim. App. Tex.;
- No. 86-6933. *JEFFERSON v. GEORGIA*. Sup. Ct. Ga.;
- No. 86-6937. *HOWARD v. NEVADA*. Sup. Ct. Nev.;
- No. 86-6941. *BYRD v. MISSOURI*. Ct. App. Mo., Eastern Dist.;
- No. 86-6953. *THOMPSON v. ALABAMA*. Sup. Ct. Ala.;
- No. 86-6978. *BOBO v. TENNESSEE*. Sup. Ct. Tenn.;
- No. 86-6983. *AUSTIN v. TENNESSEE*. Ct. Crim. App. Tenn.;
- No. 86-6989. *GRANVIEL v. TEXAS*. Ct. Crim. App. Tex.;
- No. 86-7005. *SPARKS v. TENNESSEE*. Sup. Ct. Tenn.;
- No. 86-7015. *PERRY v. LOUISIANA*. Sup. Ct. La.;
- No. 86-7022. *JOHNSON v. DUGGER, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS*. C. A. 11th Cir.;
- No. 86-7040. *LAGRAND v. ARIZONA*. Sup. Ct. Ariz.;
- No. 86-7061. *PALMER v. NEBRASKA*. Sup. Ct. Neb.;
- No. 86-7074. *LINGAR v. MISSOURI*. Sup. Ct. Mo.;
- No. 86-7082. *MAY v. TEXAS*. Ct. Crim. App. Tex.;
- No. 86-7103. *HARRIS v. TEXAS*. Ct. Crim. App. Tex.;
- No. 86-7112. *LAGRAND v. ARIZONA*. Sup. Ct. Ariz.;

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- No. 86-7114. *GRAY v. VIRGINIA*. Sup. Ct. Va.;
- No. 86-7129. *POPE v. GEORGIA*. Sup. Ct. Ga.;
- No. 87-5011. *DAVIS v. DUGGER, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS*. Sup. Ct. Fla.;
- No. 87-5025. *HILL v. ARKANSAS*. Sup. Ct. Ark.;
- No. 87-5029. *CHRISTIANSSEN v. ILLINOIS*. Sup. Ct. Ill.;
- No. 87-5033. *BUSH v. FLORIDA*. Sup. Ct. Fla.;
- No. 87-5040. *WORKMAN v. TENNESSEE*. Ct. Crim. App. Tenn.;
- No. 87-5042. *DEMPS v. DUGGER, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL.* C. A. 11th Cir.;
- No. 87-5089. *BOLENDER v. FLORIDA*. Sup. Ct. Fla.;
- No. 87-5098. *MCNISH v. TENNESSEE*. Sup. Ct. Tenn.;
- No. 87-5100. *GUINAN v. MISSOURI*. Ct. App. Mo., Eastern Dist.;
- No. 87-5117. *FELDE v. BUTLER, WARDEN*. C. A. 5th Cir.;
- No. 87-5139. *TITONE v. ILLINOIS*. Sup. Ct. Ill.;
- No. 87-5152. *BANKS v. PENNSYLVANIA*. Sup. Ct. Pa.;
- No. 87-5192. *BROWN v. KEMP, SUPERINTENDENT, GEORGIA DIAGNOSTIC AND CLASSIFICATION CENTER*. Super. Ct. Ga., Butts County;
- No. 87-5203. *WILLIAMS v. DUGGER, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS*. Sup. Ct. Fla.;
- No. 87-5215. *BATES v. FLORIDA*. Sup. Ct. Fla.;
- No. 87-5258. *SILAGY v. ILLINOIS*. Sup. Ct. Ill.; and
- No. 87-5268. *MOORE v. OKLAHOMA*. Ct. Crim. App. Okla. Certiorari denied. Reported below: No. 86-6765, 725 S. W. 2d 217; No. 86-6845, 778 F. 2d 623; No. 86-6855, 103 Nev. 21, 732 P. 2d 422; No. 86-6865, 290 Ark. 503, 721 S. W. 2d 628; No. 86-6878, 42 Cal. 3d 1222, 729 P. 2d 115; No. 86-6880, 738 S. W. 2d 235; No. 86-6904, 738 S. W. 2d 249; No. 86-6933, 256 Ga. 821, 353 S. E. 2d 468; No. 86-6937, 102 Nev. 572, 729 P. 2d 1341; No. 86-6941, 723 S. W. 2d 37; No. 86-6953, 503 So. 2d 887; No. 86-6978, 727 S. W. 2d 945; No. 86-6989, 723 S. W. 2d 141; No. 86-7005, 727 S. W. 2d 480; No. 86-7015, 502 So. 2d 543; No. 86-7022, 806 F. 2d 1479; No. 86-7040, 152 Ariz. 483, 733 P. 2d 1066; No. 86-7061, 224 Neb. 282, 399 N. W. 2d 706; No. 86-7074, 726 S. W. 2d 728; No. 86-7082, 738 S. W. 2d 261; No. 86-7103, 738 S. W. 2d 207; No. 86-7112, 153 Ariz. 21, 734 P. 2d 563; No. 86-7114, 233 Va. 313, 356 S. E. 2d 157; No. 86-7129, 257 Ga. 32, 354 S. E. 2d 429;

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No. 87-5011, 498 So. 2d 857; No. 87-5025, 292 Ark. 144, 728 S. W. 2d 510; No. 87-5029, 116 Ill. 2d 96, 506 N. E. 2d 1253; No. 87-5033, 505 So. 2d 409; No. 87-5042, 805 F. 2d 1426; No. 87-5089, 503 So. 2d 1247; No. 87-5098, 727 S. W. 2d 490; No. 87-5100, 726 S. W. 2d 754; No. 87-5117, 817 F. 2d 281; No. 87-5139, 115 Ill. 2d 413, 505 N. E. 2d 300; No. 87-5152, 513 Pa. 318, 521 A. 2d 1; No. 87-5203, 503 So. 2d 890; No. 87-5215, 506 So. 2d 1033; No. 87-5258, 116 Ill. 2d 357, 507 N. E. 2d 830; No. 87-5268, 736 P. 2d 161.

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. 86-6809. MABRY ET AL. *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. JUSTICE STEVENS took no part in the consideration or decision of this petition. Reported below: 809 F. 2d 671.

No. 87-40. ALLSTATE INSURANCE CO. *v.* HAWKINS ET UX. Sup. Ct. Ariz. Certiorari denied. JUSTICE STEVENS took no part in the consideration or decision of this petition. Reported below: 152 Ariz. 490, 733 P. 2d 1073.

No. 86-6923. BROWN *v.* DODD, SHERIFF. Sup. Ct. Ga. Certiorari denied.

JUSTICE MARSHALL, with whom JUSTICE BRENNAN joins, dissenting.

I continue to believe 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, 231 (1976) (MARSHALL, J., dissenting). But even if I did not hold this view, I would grant the petition for writ of certiorari in order to consider whether a defendant evaluated for competency by a state-appointed examiner has a due process right to an examiner whose qualifications and procedures meet minimal professional standards. The trial court failed to consider this question, and its conclusory order raises doubt as to whether the strictures of due process were met in this case.

## I

Petitioner James Willie Brown has a 20-year history of severe mental illness. When he was arrested for murder in 1975, petitioner already had been institutionalized on three prior occasions. Over the next six years, petitioner was continually adjudged incompetent to stand trial. Petitioner spent most of that time institutionalized at Central State Hospital, where he was consistently diagnosed as a paranoid schizophrenic. In 1977, the hospital reported that petitioner was competent to stand trial, but petitioner's mental condition deteriorated after he was transferred to the local jail and on the joint motion of the State and his counsel, he was recommitted to Central State as incompetent. Petitioner remained at Central State until 1980, when a hospital doctor again determined petitioner could stand trial. Although petitioner's doctors had noted his history of aggravated illness during periods of incarceration and had recommended that he be kept at the hospital until just before trial, petitioner was jailed until his competency trial in April 1981. During this time, a physician at the jail examined petitioner and once again found him incompetent; petitioner's counsel was never informed of this evaluation.

Petitioner filed a demand for speedy trial early in 1981, and a competency trial was scheduled before a special jury. The morning of trial, the court appointed Lewis Collins to evaluate petitioner's competency. Collins had received his Ph.D. from the Georgia State University only 10 days before. He was not a licensed psychologist, and in fact later failed the state licensing examination twice. He had received no formal training in conducting competency evaluations. Collins' entire evaluation of petitioner's competency consisted of one 20-minute interview. Collins did not talk to any of the doctors who previously had examined petitioner, he performed no psychological testing, and the only record he examined was a short discharge summary from Central State. From this meager examination, Collins concluded that petitioner was competent to stand trial. The jury agreed, and three months later petitioner was tried and convicted of murder and sentenced to death.

At the instant state habeas proceeding, a number of experts testified that Collins' qualifications and examination for competency were substandard. The trial court nevertheless determined without explanation that Collins "was qualified by his education and experience to give an opinion as to the sanity of the Peti-

tioner." App. to Pet. for Cert. B-2. The court therefore concluded that "[t]he jury properly found the Petitioner competent to stand trial based upon the evidence before it." *Ibid.* The Supreme Court of Georgia then denied petitioner's application for a certificate of probable cause to appeal.

## II

In *Ake v. Oklahoma*, 470 U. S. 68, 83 (1985), this Court held that "when a defendant demonstrates to the trial judge that his sanity at the time of the offense is to be a significant factor at trial, the State must, at a minimum, assure the defendant access to a competent psychiatrist who will conduct an appropriate examination and assist in evaluation, preparation, and presentation of the defense." The guarantee recognized in *Ake*, it is important to stress, is not just that the State ensure access to a psychiatrist, but that it ensure that the psychiatrist be a *competent* professional who will perform an *appropriate* examination. Similarly, our cases interpreting the constitutional guarantee of counsel have recognized that that guarantee comprehends a degree of competence; thus, a State cannot discharge its duty to provide counsel by appointing an attorney who fails to render adequate legal assistance. *Strickland v. Washington*, 466 U. S. 668, 685-686 (1984). See *Evitts v. Lucey*, 469 U. S. 387, 396 (1985) ("[N]ominal representation on an appeal as of right—like nominal representation at trial—does not suffice to render the proceedings constitutionally adequate; a party whose counsel is unable to provide effective representation is in no better position than one who has no counsel at all").

The instant case calls upon the Court to determine whether an expert appointed by the State to evaluate a defendant's competency to stand trial must meet similar minimum standards. Although we have never confronted the issue directly, I have no doubt that the Due Process Clause incorporates such a safeguard. We already have recognized that "the failure to observe procedures adequate to protect a defendant's right not to be tried or convicted while incompetent to stand trial deprives him of his due process right to a fair trial." *Drope v. Missouri*, 420 U. S. 162, 172 (1975). An examination that meets minimum professional standards performed by a competent psychologist or psychiatrist must count among these adequate procedures. Expert testimony is the most compelling evidence offered to a jury charged

with the task of evaluating a defendant's competency to stand trial. As we have recognized in the context of an evaluation of sanity, "[w]hen jurors make this determination about issues that inevitably are complex and foreign, the testimony of psychiatrists can be crucial . . ." *Ake v. Oklahoma*, *supra*, at 81. Indeed, a defendant subjected to a substandard examination by an unqualified professional may be placed in a worse position than a defendant who is denied an evaluation in the first place. If the "expert" concludes the defendant is competent to stand trial, that conclusion is cloaked in the special authority that we have recognized an expert witness conveys to the jury. See 470 U. S., at 81, n. 7. I therefore believe that when a State appoints an examiner to evaluate a defendant's competency to stand trial, the Constitution requires that the examiner possess minimum professional qualifications and that his examination procedures conform to minimum professional standards.

The trial court apparently did not believe this case raised any constitutional concerns, and it did not consider whether Collins' examination was consistent with the requirements of the Due Process Clause. In my view, there appears to be serious doubt as to whether petitioner's due process rights were met in this case. Collins' qualifications were, at best, undistinguished. Collins, who had received his psychology degree only 10 days before he evaluated petitioner, had never taken Georgia's licensing examination, and he later failed that examination twice. The Chairman of the Board of Examiners of Psychology for the State of Georgia testified at the habeas trial that the licensing examination measures minimum skills and that a person who had failed the test twice might not be qualified to act as a psychologist. Pet. for Cert. 7. Even if Collins were considered qualified to make an evaluation of competency, his examination of petitioner in this case appears to have been hopelessly substandard. Every expert who testified at the habeas trial indicated that Collins' examination was deficient. Collins performed no psychological tests, consulted none of the doctors who previously had examined petitioner, and did not even bother to read most of petitioner's file. This approach is especially suspect in light of petitioner's long history of mental illness and 6-year history of incompetency. I would grant the petition for certiorari to consider whether this treatment can be squared with the due process right not to be tried or convicted while incompetent to stand trial.

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No. 86-7054. JOHNSON v. OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied. Reported below: 731 P. 2d 993.

JUSTICE MARSHALL, with whom JUSTICE BRENNAN joins, dissenting.

Adhering to my view that the death penalty is in all circumstances cruel and unusual punishment prohibited by the Eighth and Fourteenth Amendments, *Gregg v. Georgia*, 428 U. S. 153, 231 (1976) (MARSHALL, J., dissenting), I would vacate the judgment of the Oklahoma Court of Criminal Appeals insofar as it left undisturbed the death sentence imposed in this case. But even if I did not hold this view, I would grant this petition for certiorari for two reasons. First, the trial court incorrectly decided an unsettled question of law concerning an accused's right to the assistance of experts in preparing his defense. Second, the trial court's instructions at the sentencing hearing, in combination with the prosecutor's closing argument, deprived petitioner of his right to have the sentencing jury consider all of the mitigating evidence he offered.

## I

Petitioner Malcolm Johnson was charged with the first-degree murder of Ura Thompson, an elderly woman who had been raped and suffocated in her apartment. Recognizing that the prosecution's case against petitioner rested largely on the opinion of a police chemist, who would testify that petitioner's hair, blood, semen, and clothing were consistent with physical evidence found in Thompson's apartment, petitioner's counsel requested the court prior to trial to appoint a chemist to aid in petitioner's defense. Counsel argued that a chemist was needed to challenge the police chemist's qualifications and testimony and to conduct an electrophoresis test, which even the prosecution conceded could show that petitioner was not the perpetrator of the crime. The trial court agreed with counsel that the appointment of a chemist was warranted, but denied the request on the ground that the Oklahoma Court of Criminal Appeals previously had rejected the view that criminal defendants were entitled to the assistance of such experts. Brief in Opposition 8.

At trial, the prosecution presented two kinds of evidence. First, the prosecution offered evidence showing that petitioner had in his possession at the time of his arrest several items missing from Thompson's apartment. Second, the prosecution pre-

sented the testimony of the police chemist. The prosecutor referred to the chemist's testimony as the "real crux" of the State's case against petitioner. *Id.*, at 15. The jury convicted petitioner of first-degree murder.

During a separate sentencing proceeding, defense counsel offered mitigating evidence relating to petitioner's personal background. Witnesses testifying on behalf of petitioner stated, for example, that petitioner's father frequently had beaten petitioner and his mother, that petitioner's parents eventually had separated, that petitioner had grown up in poverty, and that petitioner as a youngster had suffered from a mysterious and debilitating illness requiring a long hospital stay. Immediately after defense counsel offered this evidence, the trial court instructed the jury. As part of the charge, the trial court stated: "[Y]ou should not allow sympathy, sentiment or prejudice to affect you in reaching your decision. You should avoid any influence of passion, prejudice, or any other arbitrary factor when imposing sentence." *Id.*, at 19. After the delivery of these instructions, the prosecutor gave his closing argument, in which he ridiculed the mitigating evidence that petitioner's counsel had offered. The prosecutor stated:

"I've got great empathy for his folks. But so what? . . . [H]is parents divorced when he was young. Oh, wow. . . . That's a mitigating factor for violent conduct. That's bologna [*sic*]. . . . Deprivation builds character. We ought to have fewer silver spoons in the mouths of our children and a little more deprivation. He wants to use that as a mitigating circumstance. . . . I was offended by what happened in this courtroom when the little children were placed on the witness stand to try to generate sympathy for a cold-blooded killer. . . . So what if he was sick or retarded: What's that got to do with—we're dealing with what he is today. . . . Not whether he had a disease when he was a baby, not whether he was mildly retarded at some time in his life." *Id.*, at 20-21.

At the close of the sentencing hearing, the jury recommended a sentence of death, and the court imposed that sentence.

## II

This Court long has acknowledged that when a State brings criminal proceedings against an indigent defendant, it must take

steps to ensure that the accused has a meaningful opportunity to present a defense. See, e. g., *Douglas v. California*, 372 U. S. 353 (1963); *Griffin v. Illinois*, 351 U. S. 12 (1956). Although the State need not purchase for an indigent defendant all of the services that the wealthy may buy, see *Ross v. Moffitt*, 417 U. S. 600, 616 (1974), the State must provide the defendant with the "basic tools of an adequate defense," *Britt v. North Carolina*, 404 U. S. 226, 227 (1971). We recently have begun to confront the questions whether and when expert assistance is such a basic tool. In *Ake v. Oklahoma*, 470 U. S. 68, 80 (1985), we recognized that when a defendant's mental condition is at issue, the assistance of a psychiatrist is "crucial to the defendant's ability to marshal his defense" and the State must therefore provide psychiatric assistance. A few months later, in *Caldwell v. Mississippi*, 472 U. S. 320, 323, n. 1 (1985), we reserved the equally important questions whether and when an indigent defendant is entitled to nonpsychiatric expert assistance. This case demonstrates the pressing need to consider and resolve those questions.

The denial of petitioner's request for the appointment of an expert chemist resulted in a fundamentally unfair trial in two respects. First, the denial prevented petitioner from raising doubts about the strength of the State's evidence against him. The prosecution's case against petitioner rested largely on the testimony of the police chemist that petitioner's bodily fluids, hair, and clothing comported with samples found at the scene of the crime. We previously have recognized that "[t]estimony emanating from the depth and scope of specialized knowledge is very impressive to a jury." *Ake v. Oklahoma*, *supra*, at 81, n. 7 (quoting F. Bailey & H. Rothblatt, *Investigation and Preparation of Criminal Cases* § 175 (1970)). Without expert assistance, a defendant will usually be powerless to create doubts in the jury's mind about such testimony's strength or correctness. As Justice (then Chief Judge) Cardozo once stated, a defendant is "at an unfair disadvantage if he is unable because of poverty to parry by his own [expert] witnesses the thrusts of those against him." *Reilly v. Berry*, 250 N. Y. 456, 461, 166 N. E. 165, 167 (1929). Petitioner here was at such a disadvantage with respect to testimony that the prosecutor termed the "real crux" of the State's case. Second and equally important, the denial of the request for expert assistance prevented petitioner from gaining potentially conclusive exculpatory evidence in support of his affirmative alibi defense. As petition-

er's counsel explained to the trial court, petitioner desired expert assistance partly because he wanted to undergo a test that could have conclusively disproved his commission of the crime. In *Little v. Streater*, 452 U. S. 1 (1981), this Court held that a State's refusal to pay for a blood-grouping test in the context of a quasi-criminal proceeding to establish paternity violated the requirements of due process. Yet the trial court here effectively prevented an accused charged with a capital offense from gaining access to a similar kind of test. By denying petitioner the chance to obtain potentially conclusive exculpatory evidence, as well as by denying him the means to challenge the testimony of the police witness, the rejection of the request for expert assistance deprived petitioner of a meaningful opportunity to present a defense.

## III

In *California v. Brown*, 479 U. S. 538 (1987), this Court upheld a jury instruction cautioning jurors that they "must not be swayed by mere sentiment, conjecture, sympathy, passion, prejudice, public opinion or public feeling" during the penalty phase of a capital murder trial. In holding that the instruction did not suggest to the jury that it should disregard sympathetic aspects of the accused's background or character, the Court argued primarily that by cautioning the jury not to rely on "mere sympathy," the instruction directed the jury to ignore "only the sort of sympathy that would be totally divorced from the evidence adduced during the penalty phase." *Id.*, at 542. In a concurring opinion, JUSTICE O'CONNOR stated that although this jury instruction, taken alone, was constitutional, courts must recognize and guard against the possibility that instructions "attempt[ing] to remove emotion from capital sentencing," especially when combined with certain kinds of prosecutorial remarks, will mislead juries into thinking that they should ignore mitigating evidence about a defendant's background or character. *Id.*, at 545-546. I continue to believe that any instruction forbidding the sentencer to take sympathy into account "precludes precisely the response that a defendant's evidence of character and background is designed to elicit, thus effectively negating the intended effect of the Court's requirement that all mitigating evidence be considered." *Id.*, at 548 (BRENNAN, J., dissenting). But even under the majority's view in *Brown*, the instruction in this case, when considered in conjunction with the prosecutor's comments, diverted the jury from its

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constitutional duty to consider all mitigating evidence introduced by the defendant at the sentencing phase of the trial.

The problem in this case arises both from the trial court's instruction to the jury and from the prosecutor's closing argument. The instruction cautioned the jury to disregard not "mere sympathy," but "sympathy" in general, which surely includes the sympathy deriving from petitioner's mitigating evidence. The prosecutor's closing argument emphatically endorsed the suggestion that the jury should disregard the mitigating evidence petitioner had offered. By consistently ridiculing the evidence relating to petitioner's background—by saying time and again "so what?"—the prosecutor indicated that such evidence was irrelevant to the sentencing determination. Thus, the conjunction of the court's antisympathy instruction and the prosecutor's closing argument diverted the jury from considering the factors of background and character that this Court has decreed a jury *must* take into account in reaching a sentencing determination.

#### IV

The handling of this case almost ensured that petitioner would not prevail at either the guilt phase or the sentencing phase of his trial. The denial of the request for expert assistance deprived petitioner of a meaningful opportunity to contest his guilt. The court's antisympathy instruction and the prosecutor's closing argument denied petitioner a fair chance to challenge the appropriateness of the death penalty. Because I believe that the trial court unconstitutionally stacked the deck against petitioner at both stages of this capital proceeding, I would grant the petition for certiorari.

No. 86-7066. MUEHLEMAN *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 503 So. 2d 310.

JUSTICE BRENNAN, dissenting.

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

JUSTICE MARSHALL, dissenting.

Adhering to my view that the death penalty is in all circumstances cruel and unusual punishment prohibited by the Eighth

and Fourteenth Amendments, *Gregg v. Georgia*, 428 U. S. 153, 231 (1976) (MARSHALL, J., dissenting), I would vacate the judgment of the Florida Supreme Court insofar as it left undisturbed the sentence of death imposed in this case. But even if I did not hold this view, I would grant this petition for writ of certiorari in order to clarify the relationship between several recent precedents of this Court. Our opinions in *United States v. Henry*, 447 U. S. 264 (1980), *Maine v. Moulton*, 474 U. S. 159 (1985), and *Kuhlmann v. Wilson*, 477 U. S. 436 (1986), all examined the circumstances in which the police may, consistent with the Sixth Amendment, obtain incriminating statements from an accused through an informant. We found Sixth Amendment violations in *Henry* and *Maine*, but not in *Kuhlmann*, relying on the slightly different factual circumstances of the cases. These divergent rulings create a potential for misunderstanding when other courts seek to interpret them, as the Florida Supreme Court's opinion in this case demonstrates. We should grant certiorari to resolve the uncertainty created by our own holdings.

## I

On May 2, 1983, 96-year-old Earl Baughman hired petitioner, 18-year-old Jeffrey Allen Muehleman, as a "helper." On May 4, petitioner took Baughman to the bank to cash his Social Security check. On May 5, Baughman and his 1961 Cadillac were reported missing. The following day, sheriff's deputies of Pinellas County, Florida, detained petitioner to ask him about the disappearance. Petitioner told a deputy that his name was "Ed Buchanan." He was then arrested for obstructing justice by giving false information, an offense later declared unconstitutional by the Florida Supreme Court in *Bunnell v. State*, 453 So. 2d 808 (1984). Petitioner waived his *Miranda* rights and gave a statement that included his true name and a confession to taking some small items without Baughman's permission. Petitioner denied, however, any involvement in Baughman's disappearance. After Baughman's body was found in the trunk of his Cadillac on a St. Petersburg, Florida, street, the police again interviewed petitioner at the maximum-security county jail facility where he was being held. Petitioner continued to deny any involvement in Baughman's death.

While he was in the Pinellas County Jail, petitioner came into contact with Ronald Rewis, who was awaiting sentence on a fel-

ony conviction. According to Rewis, petitioner confessed in detail to the murder of Baughman during unsolicited conversations with Rewis in the jail laundry where both inmates worked. Rewis, who had provided information to correctional officials on at least two previous occasions, then contacted a correctional official who put him in touch with the detectives investigating Baughman's disappearance and death. The detectives told Rewis to let them know if petitioner said anything else and persuaded him to wear a wire to get a tape of petitioner's confession. Rewis then taped a conversation with petitioner in the recreation yard. On the tape, Rewis asked petitioner why he did not merely take the old man's money, to which petitioner responded that he had planned all along to kill the man. Pet. for Cert. 8. When Rewis asked petitioner whether the killing bothered him, petitioner responded "no" and laughed. *Ibid.* Although Rewis was not paid for his cooperation with the investigation, one of the detectives agreed to appear at Rewis' sentencing hearing, at which he received a much lighter sentence than that recommended by the prosecutor.

The detectives, tape in hand, interviewed petitioner again. Petitioner initially continued to deny his involvement with the crime, but when confronted with the evidence against him, including the statements taped by Rewis, petitioner admitted killing Baughman and gave a detailed statement. The detectives then booked petitioner on charges of first-degree murder.

Petitioner filed a pretrial motion to suppress his statements to Rewis and his subsequent confession. When his suppression motion was denied, petitioner entered a plea of guilty. At a penalty trial before a jury, petitioner continued to object to the admission of Rewis' testimony and the tape Rewis had made. During closing argument, the prosecution played a portion of the tape and argued that petitioner's laughter when asked about the murder supported imposition of the death penalty. By a vote of 10 to 2, the jury recommended that petitioner be sentenced to death, and the trial court so sentenced him. On appeal, petitioner raised a host of challenges to his conviction and sentence, all of which were rejected by the Florida Supreme Court. 503 So. 2d 310 (1987). In his petition for a writ of certiorari, petitioner focuses solely on the government's use of Rewis to obtain incriminating statements from him while he was in jail.

## II

We first considered the problem of the inmate informant in *United States v. Henry*, 447 U. S. 264 (1980). We held that Henry's right to counsel was violated when the Government used a paid informant's testimony regarding incriminating statements made by Henry while he was jailed awaiting trial. Three factors convinced us that the Government had overstepped the bounds of the Sixth Amendment. First, the informant was paid a contingent fee for information he obtained. Second, Henry was unaware that his confidant was in fact a Government informant. Third, Henry's incarceration imposed psychological pressures that rendered him "particularly susceptible to the ploys of undercover Government agents." *Id.*, at 274. We concluded that "[b]y intentionally creating a situation likely to induce Henry to make incriminating statements without the assistance of counsel, the Government violated Henry's Sixth Amendment right to counsel." *Ibid.*

In *Maine v. Moulton*, 474 U. S. 159 (1985), we applied the analysis developed in *Henry* to a situation outside of the jailhouse setting. We held that Moulton's right to counsel was violated when the State made a deal with his codefendant in which the codefendant would surreptitiously record Moulton's statements in return for a favorable plea bargain. The State wired the codefendant when he attended an all-day meeting with Moulton, at Moulton's request, to plan their common defense. We rejected the argument that Moulton's initiation of the meeting exonerated the State from any wrongdoing. We held that "the Sixth Amendment is violated when the State obtains incriminating statements by knowingly circumventing the accused's right to have counsel present in a confrontation between the accused and a state agent." 474 U. S., at 176.

In *Kuhlmann v. Wilson*, 477 U. S. 436 (1986), decided the same Term as *Moulton*, we returned to the jailhouse setting. Wilson was incarcerated pending trial and placed in a cell with a prisoner who had previously agreed to act as a government informant. The State instructed the informant only to listen to Wilson's comments and not to ask any questions. The informant complied with this directive. We held that the informant in this case played the constitutionally permissible role of a mere "listening post." *Kuhlmann v. Wilson*, *supra*, at 456, n. 19. We found that this fact distinguished *Kuhlmann* from *Henry* and *Moulton*, concluding that

"the defendant must demonstrate that the police and their informant took some action, beyond merely listening, that was designed deliberately to elicit incriminating remarks." 477 U. S., at 459.

In the instant case, the State of Florida, in opposition to the petition for writ of certiorari, urges that the facts found by the state court demonstrate that this case falls within *Kuhlmann's* exception to the doctrine enunciated in *Henry* and *Moulton*. The Florida Supreme Court found four facts on which it based its Sixth Amendment holding. First, petitioner was "apparently eager to talk" and initially approached Rewis to discuss the crime with him. Second, Rewis approached the authorities on his own initiative. Third, the authorities instructed Rewis not to question petitioner. Fourth, Rewis was not promised any form of compensation for his cooperation. See 503 So. 2d, at 314.

A careful reading of our precedents, however, demonstrates that these facts do not suffice to shield the government from Sixth Amendment challenge in this case. First, we explicitly rejected in *Moulton* the notion that the defendant's initiation of contact with the informant is relevant to the Sixth Amendment issue. 474 U. S., at 174-176. Second, the fact that Rewis initially approached the authorities is insignificant given that the authorities suggested that he be wired. In *Moulton*, we found it compelling that "the police asked [the informant] to let them put a body wire transmitter on him to record what was said." *Id.*, at 177. Third, the mere fact that Rewis was *instructed* not to ask petitioner questions cannot bring this case into the ambit of *Kuhlmann*, because an identical instruction was given to the informant in *Henry*. See *United States v. Henry*, *supra*, at 266. What we found compelling in *Kuhlmann* was not merely that the informant was instructed to remain silent, but that he actually did so. It is undisputed in the instant case that Rewis asked petitioner crucial questions concerning why he had killed Baughman and how he felt about it. Pet. for Cert. 8. Finally, the lack of monetary compensation offered Rewis cannot distinguish this case from our contrary holdings. Although the informant in *Henry* was paid a contingent fee, there is no suggestion that the informant in *Moulton* was offered anything other than a favorable plea bargain. The favorable sentencing treatment afforded Rewis in this case is along much the same lines. In sum, none of the facts found by the Florida court successfully distinguishes this case from *Henry* and *Moulton*. As I read our precedents, *Kuhl-*

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*mann* represents the only exception that we have yet recognized to the prohibition established in *Henry* and *Moulton*, and that exception may be invoked only in cases in which the informant can truly be described as a mere "listening post." This is not such a case.

## III

Although I think that the Florida Supreme Court misread our precedents in rejecting petitioner's Sixth Amendment claim, its error is one that is lamentably easy to make. Our precedents in this area involve several factual scenarios that vary only slightly. We have given little guidance on which factual variations are relevant to or dispositive of Sixth Amendment claims. We owe it to law enforcement officials and the courts to establish clearly the line across which constitutional error lies. For that reason, we should grant this petition for certiorari.

No. 86-7075. CRAIG ET AL. *v.* NORTH CAROLINA. Gen. Ct. Justice, Super. Ct. Div., Cabarrus County, N. C. Certiorari denied.

JUSTICE MARSHALL, with whom JUSTICE BRENNAN joins, dissenting.

I continue to believe that the death penalty is in all circumstances cruel and unusual punishment prohibited by the Eighth and Fourteenth Amendments. *Gregg v. Georgia*, 428 U. S. 153, 231 (1976) (MARSHALL, J., dissenting). But even if I did not hold this view, I would grant this petition for certiorari because the state courts failed to give proper consideration to a recantation by the prosecution's star witness that throws grave doubt on the propriety of sentencing petitioners to death.

## I

A grand jury indicted petitioners Andrew Weddington Craig and Francis Marion Anthony in 1981 for the offenses of first-degree murder, common-law robbery, and robbery with a dangerous weapon. At trial, the prosecution attempted to prove that petitioners and Betty Jean Howie had robbed Seab and Edith Ritch and then had killed Edith Ritch by stabbing her repeatedly. Howie's testimony was the only evidence offered to show that petitioners had participated in the stabbing. Howie stated that she and petitioners had taken turns stabbing Edith Ritch with a pocketknife. This testimony was, at the very least, undermined

by medical testimony that the multiple stab wounds were "very much uniform in depth, range, uniform in angle of penetration and probably uniform forcewise." Pet. for Cert. 6. At the close of trial, petitioners were convicted of all charges and sentenced to death. The Supreme Court of North Carolina affirmed the convictions and sentences. 308 N. C. 446, 302 S. E. 2d 740 (1983). Howie pleaded guilty to murder in the second degree and received a sentence of life imprisonment.

A few months after the North Carolina Supreme Court affirmed petitioners' convictions and sentences, petitioner Anthony received an unsolicited letter from Howie stating that she wanted to "g[o] back to court and tel[l] the truth" about the case. Pet. for Cert. 7. Petitioners immediately filed a joint motion for appropriate relief, and the trial court held a hearing at which Howie testified. In her testimony, Howie stated that she alone had stabbed Edith Ritch, although petitioners had participated in the robbery and remained on the scene during the murder. Howie further testified that she was recanting her trial testimony over the objections of her family and her counsel, who had warned her that the recantation would expose her to further prosecution. Howie explained that "I was trying to live with a lie and no one knows . . . what it has done to me, what it has taken me through." *Id.*, at 8. After listening to Howie's testimony, the trial court denied petitioners' motion for relief. In a cursory decision, the court first found that the recantation testimony was "probably not true" and "in some instances [was] incredible." App. to Pet. for Cert. A-2. The court then stated that even if the recantation were true, it would not change the result of the prior proceedings because the recantation itself showed that petitioners had "attempted to kill, or participated in the killing, or intended it, or contemplated that life may be taken in the commission of the felony robbery." *Id.*, at A-3.

## II

The trial court's conclusion that Howie's recantation, if believed, would not change the result of the prior proceedings is insupportable under our case law. That conclusion rests on the view that a sentencer may permissibly impose the death sentence if the defendant "contemplated that life may be taken in the commission" of a felony. In *Tison v. Arizona*, 481 U. S. 137 (1987), however, this Court explicitly rejected such a view. We stated that the death penalty is supportable in felony-murder cases only upon a

finding of intent to kill or upon a finding of reckless indifference to human life on the part of a major participant in the felony. *Id.*, at 157-158. The trial court's determination that Howie's recantation would not change the result of the sentencing proceeding thus was premised on an improper view of when the death sentence may constitutionally be imposed. In these circumstances, the determination cannot support the denial of petitioners' requested relief. That denial must rest, if at all, on the court's determination of the credibility of Howie's recantation testimony.

I believe, however, that the court's credibility finding is constitutionally deficient. This Court often has recognized that the stark finality of the death penalty creates an enhanced "need for reliability in the determination that death is the appropriate punishment in a specific case." *Woodson v. North Carolina*, 428 U. S. 280, 305 (1976) (plurality opinion). In capital cases, we therefore have "invalidated procedural rules that tended to diminish the reliability of the sentencing determination" and have imposed a range of procedural safeguards in their place. *Beck v. Alabama*, 447 U. S. 625, 638 (1980). In keeping with this practice, I previously have espoused the view that when a life is hanging in the balance, a court may not reject the recantation of critical testimony without providing a specific explanation of "what it is about that recantation that warrants a conclusion that it is not credible evidence." *Dobbert v. Wainwright*, 468 U. S. 1231, 1235-1236 (1984) (BRENNAN, J., dissenting). The lower court in this case failed to give even the semblance of such an explanation. Perhaps because the court believed the credibility determination to be superfluous in light of the court's alternative holding, the court said nothing more than that the recantation was "probably not true" and "in some instances [was] incredible" The denial of petitioners' motion for relief on so slight a basis is inconsistent with the requirement of heightened procedural protections to ensure the reliability of sentencing determinations in capital cases.

### III

Only three persons know who stabbed Edith Ritch. Two have insisted for many years that they took no part in the stabbing. The third, whose testimony provided the sole support for the prosecution's theory of the murder, now has confirmed their claim. There may be reasons to discount this recent recantation, but none has yet appeared on the record of this case. I would grant

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the petition for certiorari to ensure that petitioners do not go to their deaths before a court has given the requisite explanation.

No. 87-7. *MICHELS ET AL. v. TIMES MIRROR CABLE TELEVISION OF LOUISVILLE, INC., ET AL.* Sup. Ct. Ky. Motion of petitioners to defer consideration of the petition for certiorari denied. Certiorari denied.

No. 87-34. *MARCOS ET UX. v. UNITED STATES.* C. A. 4th Cir. Certiorari denied. JUSTICE WHITE would grant certiorari. Reported below: 817 F. 2d 1108.

No. 87-188. *RANDOM HOUSE, INC., ET AL. v. SALINGER.* C. A. 2d Cir. Motions of Organization of American Historians, Association of American Publishers, and Kenneth S. Davis et al. for leave to file briefs as *amici curiae* granted. Certiorari denied. Reported below: 811 F. 2d 90 and 818 F. 2d 252.

No. 87-366. *AKINS v. DISTRICT OF COLUMBIA ET AL.* Ct. App. D. C. Certiorari denied. JUSTICE BLACKMUN took no part in the consideration or decision of this petition. Reported below: 526 A. 2d 933.

No. 87-5066. *MORENO v. ARIZONA.* Ct. App. Ariz. Certiorari denied. JUSTICE O'CONNOR took no part in the consideration or decision of this petition. Reported below: 153 Ariz. 67, 734 P. 2d 609.

No. 87-5154. *WILLIAMS v. PLANNED PARENTHOOD ET AL.* C. A. 11th Cir. Certiorari before judgment denied.

#### *Rehearing Denied*

No. 86-1201. *VAHLSING CHRISTINA CORP. v. COMMISSIONER OF INTERNAL REVENUE*, 481 U. S. 1068; and

No. 86-6768. *LUCAS v. AIKEN, WARDEN, ET AL.*, 482 U. S. 931. Petitions for rehearing denied.

#### *Assignment Orders*

An order of THE CHIEF JUSTICE designating and assigning Justice Powell (retired) to perform judicial duties in the United States Court of Appeals for the Fourth Circuit during the period of October 5 through October 9, 1987, and for such further time as may be required to complete unfinished business, pursuant to

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28 U. S. C. § 294(a), is ordered entered on the minutes of this Court, pursuant to 28 U. S. C. § 295.

The order of July 31, 1987 [483 U. S. 1041], assigning THE CHIEF JUSTICE to the Fifth Circuit as Circuit Justice is vacated.

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*Dismissal Under Rule 53*

No. 87-5224. TRIPATI *v.* UNITED STATES. C. A. 10th Cir. Certiorari dismissed under this Court's Rule 53.

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*Miscellaneous Order*

No. A-278 (87-5638). BELL *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 by an equally divided Court.

*Certiorari Granted*

No. 87-5546. FRANKLIN *v.* LYNAUGH, DIRECTOR, TEXAS DEPARTMENT OF CORRECTIONS. C. A. 5th Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted limited to Question 3 presented by the petition. Reported below: 823 F. 2d 98.

*Certiorari Denied*

No. 87-5359 (A-261). DAUGHERTY *v.* FLORIDA. Sup. Ct. Fla. 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: 505 So. 2d 1323.

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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*Appeals Dismissed*

No. 87-137. MORIN *v.* PETRARCA. Appeal from Sup. Ct. R. I. dismissed for want of substantial federal question.

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No. 87-265. *KIMBERLIN v. OKLAHOMA*. Appeal from Ct. Crim. App. Okla. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied. Reported below: 736 P. 2d 530.

No. 87-302. *AQUARIAN FOUNDATION ET AL. v. LAW OFFICES OF EDWARDS & BARBIERI*. Appeal from Ct. App. Wash. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied.

No. 87-404. *MANUEL v. HUDGENS ET AL.* Appeal from Sup. Ct. Ga. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied. Reported below: 257 Ga. XXVII, 356 S. E. 2d 29.

No. 87-5150. *BARONOWSKI v. THE UNCONSTITUTIONALITY OF TWO SUBSECTIONS OF THE PRIVACY ACT ET AL.* Appeal from D. C. E. D. La. dismissed for want of jurisdiction.

#### *Miscellaneous Orders*

No. A-176 (87-5508). *ALMODOVAR v. CALIFORNIA*. Ct. App. Cal., 2d App. Dist. Application for stay, addressed to JUSTICE BRENNAN and referred to the Court, denied.

No. A-207 (87-405). *IN RE YEE*. Application for stay and other relief, addressed to JUSTICE SCALIA and referred to the Court, denied.

No. 9, Orig. *UNITED STATES v. LOUISIANA ET AL.* Motion of the United States for leave to file a reply to the Exceptions of Mississippi out of time granted. Exceptions to the Report of the Special Master are set for oral argument in due course. Motion of the Special Master for additional compensation and reimbursement of expenses, as set forth in the motion, is granted, and it is ordered that such costs be borne equally by the United States and Mississippi. JUSTICE MARSHALL took no part in the consideration or decision of these motions. [For earlier order herein, see, *e. g.*, 481 U. S. 1011.]

No. 94, Orig. *SOUTH CAROLINA v. BAKER, SECRETARY OF THE TREASURY*. Motion of South Carolina for divided argument to permit National Governors' Association to present oral argu-

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ment as intervenor and motion of National Governors' Association for divided argument granted. Requests for additional time for oral argument denied. [For earlier order herein, see, *e. g., ante*, p. 808.]

No. D-634. IN RE DISBARMENT OF BRYAN. Disbarment entered. [For earlier order herein, see 481 U. S. 1066.]

No. D-639. IN RE DISBARMENT OF GOLDBERG. Disbarment entered. [For earlier order herein, see 482 U. S. 903.]

No. D-655. IN RE DISBARMENT OF WOOD. It is ordered that Roger A. Wood, of Toledo, Ohio, be suspended from the practice of law in this Court and that a rule issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D-656. IN RE DISBARMENT OF FRIEDMAN. It is ordered that John Albert Friedman, of Fort Lauderdale, Fla., be suspended from the practice of law in this Court and that a rule issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D-657. IN RE DISBARMENT OF ROSENTHAL. It is ordered that Jerome Bernard Rosenthal, of Los Angeles, 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-658. IN RE DISBARMENT OF ROBINSON. It is ordered that James E. Robinson, of Houston, Tex., be suspended from the practice of law in this Court and that a rule issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. 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 Edwin Lees Shaw for leave to submit supplemental authority as *amicus curiae* denied.

No. 86-1172. GOODYEAR ATOMIC CORP. *v.* MILLER ET AL. Sup. Ct. Ohio. [Probable jurisdiction noted, 483 U. S. 1004.] Motion of appellees for divided argument denied.

No. 86-6139. WATSON *v.* FORT WORTH BANK & TRUST. C. A. 5th Cir. [Certiorari granted, 483 U. S. 1004.] Motion of the So-

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licitor General for leave to participate in oral argument as *amicus curiae* and for divided argument denied.

No. 87-318. PRATT & WHITNEY AIRCRAFT DIVISION, UNITED TECHNOLOGIES CORP. *v.* BALDRACCHI. C. A. 2d Cir. Motion of Jonna Lingle for leave to file a brief as *amicus curiae* granted.

No. 87-5315. WRENN *v.* BOARD OF DIRECTORS, WHITNEY M. YOUNG, JR., HEALTH CENTER, INC., ET AL. C. A. 2d Cir.; and

No. 87-5353. WRENN *v.* BOWEN, SECRETARY OF HEALTH AND HUMAN SERVICES. C. A. 2d Cir. Motions of petitioner for leave to proceed *in forma pauperis* denied. Petitioner is allowed until November 3, 1987, within which to pay the docketing fee required by Rule 45(a) and to submit petitions in compliance with Rule 33 of the Rules of this Court.

JUSTICE BRENNAN and JUSTICE MARSHALL, dissenting.

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

No. 87-291. IN RE CONSTANT. C. A. Fed. Cir. Petition for writ of common-law certiorari denied. Reported below: 827 F. 2d 728.

No. 87-5435. IN RE CALLANAN; and

No. 87-5487. IN RE FRASSETTO. Petitions for writs of habeas corpus denied.

#### *Certiorari Granted*

No. 86-1845. TORRES *v.* OAKLAND SCAVENGER CO. ET AL. C. A. 9th Cir. Certiorari granted. Reported below: 807 F. 2d 178.

No. 86-1908. STEWART ORGANIZATION, INC., ET AL. *v.* RICOH CORP. ET AL. C. A. 11th Cir. Certiorari granted. Reported below: 810 F. 2d 1066.

No. 86-2000. UNITED STATES *v.* KOZMINSKI ET AL. C. A. 6th Cir. Certiorari granted. Reported below: 821 F. 2d 1186.

No. 87-6. HUDDLESTON *v.* UNITED STATES. C. A. 6th Cir. Certiorari granted. Reported below: 811 F. 2d 974.

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No. 87-259. LINGLE *v.* NORGE DIVISION OF MAGIC CHEF, INC. C. A. 7th Cir. Certiorari granted. Reported below: 823 F. 2d 1031.

No. 87-283. BUDINICH *v.* BECTON DICKINSON & Co. C. A. 10th Cir. Certiorari granted. Reported below: 807 F. 2d 155.

No. 86-1052. VOLKSWAGENWERK AKTIENGESELLSCHAFT *v.* SCHLUNK, ADMINISTRATOR OF THE ESTATES OF SCHLUNK ET AL. App. Ct. Ill., 1st Dist. Motion of Motor Vehicle Manufacturers Association of the United States, Inc., et al. for leave to file a brief as *amici curiae* granted. Certiorari granted. Reported below: 145 Ill. App. 3d 594, 503 N. E. 2d 1045.

No. 86-1824. MICHIGAN *v.* CHESTERNUT. Ct. App. Mich. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari granted. Reported below: 157 Mich. App. 181, 403 N. W. 2d 74.

No. 86-6124. BENNETT *v.* ARKANSAS. Sup. Ct. Ark. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted. Reported below: 290 Ark. 47, 716 S. W. 2d 755.

No. 86-7059. PATTERSON *v.* ILLINOIS. Sup. Ct. Ill. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted. Reported below: 116 Ill. 2d 290, 507 N. E. 2d 843.

*Certiorari Denied.* (See also Nos. 87-265, 87-302, 87-404, and 87-291, *supra.*)

No. 86-1847. EDGAR, SECRETARY OF STATE OF ILLINOIS *v.* McVEY TRUCKING, INC. C. A. 7th Cir. Certiorari denied. Reported below: 812 F. 2d 311.

No. 86-1883. TRIPLE "A" MACHINE SHOP, INC. *v.* SOUTHWEST MARINE, INC. C. A. 9th Cir. Certiorari denied. Reported below: 796 F. 2d 291 and 806 F. 2d 898.

No. 86-1971. COLEMAN *v.* WHITE, WARDEN. C. A. 11th Cir. Certiorari denied. Reported below: 813 F. 2d 409.

No. 86-1982. HOWE ET AL. *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 2d Cir. Certiorari denied. Reported below: 814 F. 2d 98.

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No. 86-7151. *HOLT v. MERIT SYSTEMS PROTECTION BOARD*; and

No. 87-5050. *HOLT v. DEPARTMENT OF THE ARMY*. C. A. Fed. Cir. Certiorari denied. Reported below: 818 F. 2d 877.

No. 87-29. *SENAWI v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 816 F. 2d 683.

No. 87-76. *LEWIS v. MYSHAK ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 805 F. 2d 1039.

No. 87-79. *MC E L V E Y v. DEPARTMENT OF TRANSPORTATION, FEDERAL AVIATION ADMINISTRATION*; and *MC CL A I N v. DEPARTMENT OF TRANSPORTATION, FEDERAL AVIATION ADMINISTRATION*. C. A. Fed. Cir. Certiorari denied. Reported below: 802 F. 2d 467 (first case); 802 F. 2d 468 (second case).

No. 87-87. *WILLIAMS v. UNITED STATES*; and

No. 87-5107. *SAHS v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 809 F. 2d 1072.

No. 87-103. *BOULEZ v. COMMISSIONER OF INTERNAL REVENUE*. C. A. D. C. Cir. Certiorari denied. Reported below: 258 U. S. App. D. C. 90, 810 F. 2d 209.

No. 87-104. *BARNSON ET AL. v. UNITED STATES*. C. A. 10th Cir. Certiorari denied. Reported below: 816 F. 2d 549.

No. 87-119. *BOLDEN v. ALSTON, SUPERINTENDENT, LINCOLN CORRECTIONAL FACILITY, ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 810 F. 2d 353.

No. 87-142. *SOUTH AFRICAN AIRWAYS v. DOLE, SECRETARY OF TRANSPORTATION*. C. A. D. C. Cir. Certiorari denied. Reported below: 260 U. S. App. D. C. 12, 817 F. 2d 119.

No. 87-173. *MASSACHUSETTS MEDICAL SOCIETY ET AL. v. DUKAKIS ET AL.* C. A. 1st Cir. Certiorari denied. Reported below: 815 F. 2d 790.

No. 87-179. *TONY SCOTT TRUCKING, INC. v. NATIONAL LABOR RELATIONS BOARD*. C. A. 6th Cir. Certiorari denied. Reported below: 821 F. 2d 312.

No. 87-193. *JOHNSON v. ILLINOIS*. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 152 Ill. App. 3d 559, 504 N. E. 2d 822.

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No. 87-208. *MIRRER v. INHAM, WARDEN*. C. A. 2d Cir. Certiorari denied. Reported below: 833 F. 2d 1003.

No. 87-231. *STOVER v. JOURNAL PUBLISHING CO. ET AL.* Sup. Ct. N. M. Certiorari denied. Reported below: 105 N. M. 290, 731 P. 2d 1334.

No. 87-241. *STOBAUGH v. TENNESSEE*. Ct. Crim. App. Tenn. Certiorari denied.

No. 87-244. *MATCHETT v. WOLD*. C. A. 7th Cir. Certiorari denied. Reported below: 818 F. 2d 574.

No. 87-252. *HAMILTON ET AL. v. MORRIS COUNTY, TEXAS, ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 812 F. 2d 1403.

No. 87-258. *BENEVENTO ET AL. v. MOBIL OIL CORP.* Ct. App. Cal., 6th App. Dist. Certiorari denied. Reported below: 189 Cal. App. 3d 485, 234 Cal. Rptr. 482.

No. 87-263. *MICHIGAN v. JOHNSON*. Ct. App. Mich. Certiorari denied. Reported below: 146 Mich. App. 705, 381 N. W. 2d 791.

No. 87-264. *SOLIS ET AL. v. BAY AREA RAPID TRANSIT DISTRICT*. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 87-266. *MARTELLI v. MARTELLI ET AL.* Sup. Ct. Pa. Certiorari denied.

No. 87-269. *DARBY ET AL. v. FLORIDA*. Dist. Ct. App. Fla., 5th Dist. Certiorari denied. Reported below: 502 So. 2d 1358.

No. 87-274. *BUNTON ET AL. v. NABISCO BRANDS, INC.* C. A. 5th Cir. Certiorari denied. Reported below: 817 F. 2d 754.

No. 87-277. *FLORIDA v. EBER ET AL.* Dist. Ct. App. Fla., 3d Dist. Certiorari denied. Reported below: 502 So. 2d 32.

No. 87-278. *RAYNOVICH v. GREGG ET AL.* Ct. Sp. App. Md. Certiorari denied. Reported below: 70 Md. App. 749.

No. 87-279. *BALLINGER v. NORTH CAROLINA AGRICULTURAL EXTENSION SERVICE ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 815 F. 2d 1001.

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No. 87-280. *PLUMMER v. LEDERLE LABORATORIES, A DIVISION OF AMERICAN CYANAMID CO.* C. A. 2d Cir. Certiorari denied. Reported below: 819 F. 2d 349.

No. 87-287. *REED v. KARPER.* Super. Ct. Pa. Certiorari denied. Reported below: 358 Pa. Super. 629, 514 A. 2d 202.

No. 87-293. *GAINES ET AL. v. WILLIAMS.* C. A. 5th Cir. Certiorari denied. Reported below: 819 F. 2d 1140.

No. 87-296. *JONES, SUPERINTENDENT, MISSOURI TRAINING CENTER FOR MEN v. GARRETT.* C. A. 8th Cir. Certiorari denied. Reported below: 815 F. 2d 509.

No. 87-298. *SIMPSON v. UNITED STATES; and*

No. 87-5366. *ANDERSON v. UNITED STATES.* C. A. 9th Cir. Certiorari denied. Reported below: 813 F. 2d 1462.

No. 87-300. *CAREY CANADA, INC. v. HINELY ET AL.* Sup. Ct. Ga. Certiorari denied. Reported below: 257 Ga. 150, 356 S. E. 2d 202.

No. 87-304. *LEIGHTON v. BEATRICE COS., INC., ET AL.* Sup. Ct. Del. Certiorari denied. Reported below: 522 A. 2d 865.

No. 87-308. *TRUSTEES OF THE OFFICE OF HAWAIIAN AFFAIRS v. YAMASAKI, DIRECTOR, DEPARTMENT OF TRANSPORTATION OF HAWAII, ET AL.* Sup. Ct. Haw. Certiorari denied. Reported below: 69 Haw. 154, 737 P. 2d 446.

No. 87-311. *UNIMILLS B. V. ET AL. v. STATISTIX SHIPPING, N. V., ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 817 F. 2d 345.

No. 87-337. *AMARIS v. UNITED STATES.* C. A. 9th Cir. Certiorari denied. Reported below: 819 F. 2d 1146.

No. 87-350. *CIANCAGLINI v. UNITED STATES.* C. A. 3d Cir. Certiorari denied. Reported below: 813 F. 2d 399.

No. 87-355. *McMILLAN v. UNITED STATES.* C. A. 8th Cir. Certiorari denied. Reported below: 820 F. 2d 251.

No. 87-356. *COLLEY v. NATIONAL BANK OF TEXAS ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 814 F. 2d 1008.

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No. 87-358. *BARSHOV ET AL. v. UNITED STATES*. C. A. 11th Cir. Certiorari denied. Reported below: 823 F. 2d 556.

No. 87-360. *JIMENEZ v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 820 F. 2d 1221.

No. 87-384. *BELIZAIRE v. UNITED STATES*. Ct. Mil. App. Certiorari denied. Reported below: 24 M. J. 183.

No. 87-387. *HEYDEN v. SCHOENFELD ET AL.* C. A. 7th Cir. Certiorari denied. Reported below: 819 F. 2d 1144.

No. 87-401. *GRIMES v. BOWEN, SECRETARY OF HEALTH AND HUMAN SERVICES*. C. A. 11th Cir. Certiorari denied. Reported below: 813 F. 2d 410.

No. 87-5103. *HERNANDEZ-LOPEZ v. UNITED STATES*. C. A. 11th Cir. Certiorari denied. Reported below: 820 F. 2d 1230.

No. 87-5161. *WATSON v. BUTLER, WARDEN*. C. A. 5th Cir. Certiorari denied. Reported below: 823 F. 2d 842.

No. 87-5173. *WAYNO v. BOB STEELE CHEVROLET, INC., ET AL.* C. A. 11th Cir. Certiorari denied. Reported below: 819 F. 2d 1148.

No. 87-5194. *CULLY v. CUTLIP ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 817 F. 2d 756.

No. 87-5195. *CULLY v. LUTHERAN MEDICAL CENTER*. C. A. 6th Cir. Certiorari denied. Reported below: 817 F. 2d 756.

No. 87-5223. *CHESTER v. ST. LOUIS HOUSING AUTHORITY*. C. A. 8th Cir. Certiorari denied. Reported below: 820 F. 2d 259.

No. 87-5234. *BANKS v. UNITED STATES*. Ct. App. D. C. Certiorari denied.

No. 87-5241. *FLETCHER v. HOOD ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 825 F. 2d 410.

No. 87-5246. *LEFFLER v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 819 F. 2d 1146.

No. 87-5247. *MASTERS ET UX. v. COMMISSIONER OF INTERNAL REVENUE*. C. A. 9th Cir. Certiorari denied. Reported below: 815 F. 2d 82.

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No. 87-5267. PUZZANGHERA *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 820 F. 2d 25.

No. 87-5284. McDONALD *v.* DUGGER, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied. Reported below: 817 F. 2d 759.

No. 87-5288. STEWART *v.* CHRANS. C. A. 7th Cir. Certiorari denied. Reported below: 822 F. 2d 1090.

No. 87-5292. ROBERTS *v.* SARGENT. C. A. 8th Cir. Certiorari denied. Reported below: 822 F. 2d 1095.

No. 87-5294. CHISHOLM *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 826 F. 2d 1057.

No. 87-5296. CHAMORRO, AKA HERNANDEZ *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 823 F. 2d 542.

No. 87-5299. BOYER *v.* OSWEGO COUNTY BOARD OF COOPERATIVE EDUCATIONAL SERVICES. C. A. 2d Cir. Certiorari denied. Reported below: 812 F. 2d 712.

No. 87-5300. TILLI *v.* SPAZIANI ET AL. Super. Ct. Pa. Certiorari denied. Reported below: 361 Pa. Super. 641, 517 A. 2d 1369.

No. 87-5301. STEPHENS *v.* MISSOURI. Ct. App. Mo., Eastern Dist. Certiorari denied. Reported below: 686 S. W. 2d 503.

No. 87-5307. JOHNSON *v.* DIXON, JUDGE, DISTRICT COURT OF OKLAHOMA COUNTY, OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied.

No. 87-5310. TROCHE *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 800 F. 2d 1141.

No. 87-5312. CHAMBERS *v.* ARMSTRONG BLUM MANUFACTURING Co. C. A. 7th Cir. Certiorari denied. Reported below: 818 F. 2d 32.

No. 87-5313. ZULU, AKA ROBINSON *v.* BUTLER, WARDEN, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 820 F. 2d 1222.

No. 87-5314. HARRIS *v.* VIRGINIA. C. A. 4th Cir. Certiorari denied. Reported below: 820 F. 2d 1219.

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No. 87-5318. *HADDIX v. CITY OF DAYTON, OHIO, ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 821 F. 2d 649.

No. 87-5322. *QUINN v. NEW JERSEY.* C. A. 3d Cir. Certiorari denied. Reported below: 819 F. 2d 1135.

No. 87-5325. *ZENO v. BLACKBURN, WARDEN.* C. A. 5th Cir. Certiorari denied.

No. 87-5328. *LINDH v. UNITED STATES.* C. A. 4th Cir. Certiorari denied. Reported below: 820 F. 2d 1220.

No. 87-5331. *FIGUEROA v. UNITED STATES.* C. A. 5th Cir. Certiorari denied. Reported below: 823 F. 2d 551.

No. 87-5332. *BENTLEY v. UNITED STATES.* C. A. 7th Cir. Certiorari denied. Reported below: 825 F. 2d 1104.

No. 87-5333. *DUNCAN v. ALABAMA.* C. A. 11th Cir. Certiorari denied. Reported below: 819 F. 2d 1148.

No. 87-5334. *SMITH v. FAIRMAN, WARDEN.* C. A. 7th Cir. Certiorari denied. Reported below: 822 F. 2d 1091.

No. 87-5336. *WILSON v. FOTI, WARDEN.* C. A. 5th Cir. Certiorari denied. Reported below: 819 F. 2d 1140.

No. 87-5337. *BENNETT v. GOVERNMENT OF THE VIRGIN ISLANDS.* C. A. 3d Cir. Certiorari denied. Reported below: 791 F. 2d 917.

No. 87-5338. *CHRAPPA v. KEMP, SUPERINTENDENT, ADULT DIAGNOSTIC AND TREATMENT CENTER, ET AL.* C. A. 3d Cir. Certiorari denied. Reported below: 819 F. 2d 1132.

No. 87-5340. *PROPHET v. LYNAUGH, DIRECTOR, TEXAS DEPARTMENT OF CORRECTIONS.* C. A. 5th Cir. Certiorari denied. Reported below: 822 F. 2d 57.

No. 87-5341. *MUNOZ v. WYOMING.* Dist. Ct. Freemont County, Wyo. Certiorari denied.

No. 87-5343. *DOE v. APPEALS COURT OF MASSACHUSETTS.* App. Ct. Mass. Certiorari denied. Reported below: 23 Mass. App. 1107, 503 N. E. 2d 479.

No. 87-5345. *BEHR v. TOWNE ASSOCIATES ET AL.* C. A. 2d Cir. Certiorari denied.

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No. 87-5346. *BROOKTER v. UNITED STATES ET AL.* C. A. 10th Cir. Certiorari denied.

No. 87-5347. *PAYNE v. BOWEN, SECRETARY OF HEALTH AND HUMAN SERVICES.* C. A. 3d Cir. Certiorari denied. Reported below: 810 F. 2d 1164.

No. 87-5348. *PLEBAN v. JONES, SUPERINTENDENT, GREAT MEADOW CORRECTIONAL FACILITY, ET AL.* C. A. 2d Cir. Certiorari denied.

No. 87-5349. *MURRAY v. PLAUT, ADMINISTRATOR, MAXIMUM SECURITY FACILITY, LORTON, VIRGINIA.* C. A. D. C. Cir. Certiorari denied.

No. 87-5352. *ALI v. UNITED STATES.* C. A. 5th Cir. Certiorari denied. Reported below: 822 F. 2d 57.

No. 87-5370. *EVANS v. UNITED STATES.* Ct. Mil. App. Certiorari denied. Reported below: 24 M. J. 344.

No. 87-5384. *GREEN v. UNITED STATES.* C. A. 9th Cir. Certiorari denied. Reported below: 820 F. 2d 1228.

No. 87-5392. *POWELL v. DALTUVA ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 820 F. 2d 405.

No. 87-5405. *MCEVOY v. UNITED STATES.* C. A. 11th Cir. Certiorari denied. Reported below: 820 F. 2d 1170.

No. 87-5406. *HILL v. UNITED STATES.* C. A. 11th Cir. Certiorari denied. Reported below: 824 F. 2d 973.

No. 87-5415. *VANDESTEEG ET AL. v. UNITED STATES;* and

No. 87-5422. *VALDEZ v. UNITED STATES.* C. A. 4th Cir. Certiorari denied. Reported below: 823 F. 2d 549.

No. 87-5416. *DIANA v. UNITED STATES.* C. A. 11th Cir. Certiorari denied. Reported below: 823 F. 2d 556.

No. 87-5421. *BATTLE v. UNITED STATES PAROLE COMMISSION ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 824 F. 2d 971.

No. 87-5426. *SCHASTOK v. TIME INC.* C. A. 2d Cir. Certiorari denied. Reported below: 816 F. 2d 670.

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No. 87-5429. *FRYBERGER v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 822 F. 2d 1089.

No. 87-5430. *APODACA v. UNITED STATES*. C. A. 10th Cir. Certiorari denied. Reported below: 820 F. 2d 348.

No. 87-5438. *TINDER v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 825 F. 2d 408.

No. 87-5455. *SMITH v. UNITED STATES*. C. A. 10th Cir. Certiorari denied.

No. 87-5457. *SWIATEK v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 819 F. 2d 721.

No. 87-5459. *ROVETUSO v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 840 F. 2d 363.

No. 87-5467. *FALAQ v. NEW YORK*. Ct. App. N. Y. Certiorari denied. Reported below: 70 N. Y. 2d 646, 512 N. E. 2d 564.

No. 87-5476. *DEMPEWOLF v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 817 F. 2d 1318.

No. 87-5483. *DAME v. MUNCY, WARDEN, ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 828 F. 2d 17.

No. 86-6884. *WELCH v. SMITH, SUPERINTENDENT, ATTICA CORRECTIONAL FACILITY, ET AL.* C. A. 2d Cir.; and

No. 86-7132. *MILLER v. SIMMONS ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: No. 86-6884, 810 F. 2d 40; No. 86-7132, 814 F. 2d 962.

JUSTICE WHITE, with whom JUSTICE BLACKMUN joins, dissenting.

The issue here is whether an order denying a civil rights plaintiff's motion for appointment of counsel is immediately appealable under 28 U. S. C. § 1291, as interpreted by *Cohen v. Beneficial Industrial Loan Co.*, 337 U. S. 541 (1949), and its progeny. In both of these cases petitioners brought their actions under 42 U. S. C. § 1983, and sought appointment of counsel under 28 U. S. C. § 1915(d). The District Courts denied those motions and petitioners appealed. In *Welch v. Smith*, although stating that if the question were before the court "as one of first impression, we would find it of considerable intricacy, in light of the weighty competing interests involved and the varying resolutions of our sister

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circuits," 810 F. 2d 40, 41 (1987), a panel of the Second Circuit held that the denial was not immediately appealable under its earlier decision in *Miller v. Pleasure*, 425 F. 2d 1205, cert. denied, 400 U. S. 880 (1970), which itself had overruled an even earlier decision concluding the opposite, *Miller v. Pleasure*, 296 F. 2d 283 (1961), cert. denied, 370 U. S. 964 (1962). The position of the Second and Fourth Circuits, which is consistent with that of a number of the Circuits, conflicts with the position of two other Circuits. *Jackson v. Dallas Police Dept.*, 811 F. 2d 260 (CA5 1986) (*per curiam*); *Slaughter v. Maplewood*, 731 F. 2d 587 (CA8 1984). The confusion in this area is further exemplified by the Ninth Circuit's position that civil rights plaintiffs proceeding under Title VII of the Civil Rights Act of 1964 may immediately appeal a denial of their motion for appointment of counsel, while those proceeding under § 1983 may not. Compare *Wilborn v. Escalderon*, 789 F. 2d 1328 (1986), with *Bradshaw v. Zoological Society of San Diego*, 662 F. 2d 1301 (1981). I have previously dissented from denial of certiorari in a case raising this question in the context of suits filed under Title VII and § 1983, *Henry v. Detroit Manpower Dept.*, 474 U. S. 1036 (1985). The continued split amongst the Circuits on this issue warrants our granting certiorari.

No. 86-6914. *MOORE v. GEORGIA*. Ct. App. Ga. Certiorari denied. Reported below: 181 Ga. App. 548, 352 S. E. 2d 821.

JUSTICE WHITE, dissenting.

In *Scott v. Illinois*, 440 U. S. 367 (1979), this Court held that an uncounseled misdemeanor conviction is constitutionally valid if the offender is not incarcerated. The following Term, however, in *Baldasar v. Illinois*, 446 U. S. 222 (1980) (*per curiam*), this Court held that such a conviction may not be used under an enhanced penalty statute to convert a subsequent misdemeanor conviction into a felony with a prison term.

Here, petitioner was convicted and sentenced to a prison term under Ga. Code Ann. § 40-6-391(C) (Supp. 1987) which imposes a mandatory minimum sentence on a person convicted of driving under the influence of alcohol, where such person has at least two prior convictions for the same offense. Petitioner argued that *Baldasar* prohibited her conviction under § 40-6-391(C), because this conviction relied upon her two prior, uncounseled convictions for driving under the influence. The Court of Appeals of Georgia

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rejected this contention, and determined that *Baldasar* was inapplicable here because § 40-6-391(C) merely imposes a *minimum* prison term based on petitioner's prior convictions, and does not "increas[e] the *maximum* confinement authorized [or] conver[t] a misdemeanor offense into a felony." 181 Ga. App. 548, 549, 352 S. E. 2d 821, 822 (1987) (emphasis added).

Possibly because this Court was sharply divided in *Baldasar*, with no opinion for reversal gaining more than three votes, courts attempting to apply that decision have come to different conclusions concerning its meaning. See *Schindler v. Clerk of Circuit Court*, 715 F. 2d 341, 344 (CA7 1983) ("In light of . . . the failure of the *Baldasar* majority to agree upon a rationale for its result, the scope of the decision remains unclear"), cert denied, 465 U. S. 1068 (1984). Some courts have applied *Baldasar* as the Georgia court did here, and have allowed the use of prior, uncounseled convictions in cases quite similar to this one. *E. g.*, *Commonwealth v. Thomas*, 510 Pa. 106, 112-114, 507 A. 2d 57, 60-61 (1986); *State v. Orr*, 375 N. W. 2d 171, 175-176 (N. D. 1985). Others, however, have read *Baldasar* more broadly, and have disallowed the use of prior, uncounseled convictions in prosecutions akin to petitioner's. *E. g.*, *State v. Oehm*, 9 Kan. App. 2d 399, 401-403, 680 P. 2d 309, 311-312 (1984); *State v. Dowd*, 478 A. 2d 671, 677-678 (Me. 1984).

Because the confusion over *Baldasar*'s holding has led to uneven application of that case and conflicting decisions in the courts below, I would grant certiorari here to answer the outstanding questions concerning *Baldasar*'s scope and proper application.

No. 86-7162. *JOUBERT v. NEBRASKA*. Sup. Ct. Neb.;

No. 87-5048. *HALL v. DUGGER, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL.* C. A. 11th Cir.;

No. 87-5082. *HORTON v. GEORGIA*. Sup. Ct. Ga.;

No. 87-5083. *GARDNER v. TEXAS*. Ct. Crim. App. Tex.; and

No. 87-5360. *DUREN v. ALABAMA*. Sup. Ct. Ala. Certiorari denied. Reported below: No. 86-7162, 224 Neb. 411, 399 N. W. 2d 237; No. 87-5048, 805 F. 2d 945; No. 87-5083, 730 S. W. 2d 675; No. 87-5360, 507 So. 2d 121.

JUSTICE BRENNAN and JUSTICE MARSHALL, dissenting.

Adhering to our views that the death penalty is in all circumstances cruel and unusual punishment prohibited by the Eighth and Fourteenth Amendments, *Gregg v. Georgia*, 428 U. S. 153,

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

No. 87-32. *MOREY ET UX. v. BARRINGTON PRESS, INC.* C. A. 7th Cir. Certiorari denied. Reported below: 816 F. 2d 341.

JUSTICE WHITE, with whom JUSTICE BRENNAN joins, dissenting.

In *White v. New Hampshire Dept. of Employment Security*, 455 U. S. 445, 451 (1982), we held that a claim "for attorney's fees under 42 U. S. C. § 1988 raises legal issues collateral to the main cause of action," and that such a request was not a motion to alter or amend a judgment under Federal Rule of Civil Procedure 59(e). In the years that have followed, we have not determined if *White's* holding applies only to fee requests under a separate statutory provision like § 1988, or if it also renders "collateral" those fee requests made in cases where the fee award arises as an integral part of the underlying dispute between the parties.

Consequently, several questions concerning the finality (and, as a result, the appealability) of judgments encompassing fee awards in cases of the latter type have been the subject of confusion in the Courts of Appeals. This case raises such a question. Here, respondent prevailed in its action seeking judgment on four promissory notes executed by petitioners. The District Court awarded respondent principal and interest "plus reasonable attorney's fees incurred" by respondent. App to Pet. for Cert. D-7. The District Court did not fix an amount for the attorney's fees at that time. The Court of Appeals affirmed the judgment below; it mentioned, but did not specifically review, the District Court's award of attorney's fees. 752 F. 2d 307, 308 (CA7 1985). On respondent's subsequent petition for fees, however, the District Court entertained petitioners' Illinois law challenge to the fee award, and determined that Illinois law prohibited a fee award in this case. 635 F. Supp. 1257 (ND Ill. 1986). The Court of Appeals reversed this decision, finding that "reservation of the determination of the amount of attorney's fees does not deprive the initial [district court] judgment of finality," and therefore the District Court could not reconsider respondent's entitlement to fees in its second decision. 816 F. 2d 341, 342 (CA7 1987).

The Courts of Appeals are sharply divided over the question presented here: whether an award of attorney's fees, when it arises out of a claimant's underlying cause of action, is final before that award is quantified. See *Beckwith Machinery Co. v. Travelers Indem-*

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nity Co., 815 F. 2d 286, 288-289 (CA3 1987) (canvassing the Courts of Appeals decisions). Four Circuits have held that an attorney's fee award, when that award is not won in a collateral proceeding (such as a § 1988 action), is not final until the amount of the award is quantified. *Beckwith Machinery Co.*, *supra*, at 290; *F. H. Krear & Co. v. Nineteen Named Trustees*, 776 F. 2d 1563, 1564 (CA2 1985); *Todd Shipyards Corp. v. Auto Transportation, S. A.*, 763 F. 2d 745, 751 (CA5 1985); *Fort v. Roadway Express, Inc.*, 746 F. 2d 744, 747 (CA11 1984). Two other Courts of Appeals have taken the approach applied by the Seventh Circuit here, according finality to all attorney's fees awards prior to their quantification. *Budinich v. Becton Dickinson & Co.*, 807 F. 2d 155, 157-158 (CA10 1986); *Morgan v. Union Metal Mfg.*, 757 F. 2d 792, 794-796 (CA6 1985). At least one other Court of Appeals has recognized the split, but has declined to take a position. *Crossman v. Maccoccio*, 792 F. 2d 1, 3 (CA1 1986) (*per curiam*).

Because the Courts of Appeals have divided in their attempt to apply the principles of our decision in *White*, I would grant certiorari in this case to resolve the conflict and answer the question presented here.

No. 87-129. ST. LOUIS SOUTHWESTERN RAILWAY CO. *v.* BROTHERHOOD OF RAILWAY, AIRLINE & STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS & STATION EMPLOYEES. C. A. 5th Cir. Certiorari denied. Reported below: 820 F. 2d 1222.

JUSTICE WHITE, with whom JUSTICE BRENNAN joins, dissenting.

This case presents the question whether under the Railway Labor Act an arbitrator exceeds the scope of his or her jurisdiction by awarding, without explicit authorization in the collective-bargaining agreement, pure penalty pay. See 45 U. S. C. § 153, First (q). "Pure penalty pay" is a monetary penalty assessed for breach of the collective-bargaining agreement when there is no showing of compensatory loss from the breach. In the present case, the arbitrator found that petitioner violated the collective-bargaining agreement by contracting out work to nonunion members. The arbitrator also found that the named union employees failed to prove damages to support a compensatory award and that no provision of the agreement explicitly authorized the award of penalty pay but that penalty pay was supported by past practices in the railroad industry and of these parties. The District Court affirmed this award of pure penalty pay and the Fifth Circuit af-

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firmed that decision in an unpublished memorandum. Judgt. order reported at 820 F. 2d 1222 (1987). This case conflicts with *Norfolk & Western R. Co. v. Brotherhood of Railway, Airline & Steamship Clerks*, 657 F. 2d 596 (CA4 1981), which held that pure penalty pay cannot be awarded, absent explicit contractual authorization. I would grant certiorari to resolve the conflict in the Courts of Appeals over this important question of federal law, particularly since these rulings could easily result in the same collective-bargaining contract, or identical ones, being interpreted in different ways in different circuits.

No. 87-256. CHRISTENSEN ET AL. *v.* KIEWIT-MURDOCK INVESTMENT CORP. ET AL. C. A. 2d Cir. Certiorari denied. JUSTICE WHITE would grant certiorari. Reported below: 815 F. 2d 206.

No. 87-261. PACIFIC GAS & ELECTRIC CO. *v.* TELLEZ. C. A. 9th Cir. Motion of California Employment Law Council et al. for leave to file a brief as *amici curiae* granted. Certiorari denied. Reported below: 817 F. 2d 536.

No. 87-284. TEXAS *v.* BROADWAY. Ct. Crim. App. Tex. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied.

No. 87-5409. MARTIN *v.* PENNSYLVANIA STATE REAL ESTATE COMMISSION ET AL. C. A. 3d Cir. Certiorari denied. JUSTICE BRENNAN took no part in the consideration or decision of this petition.

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*Miscellaneous Order*

No. A-288. DUGGER, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. *v.* DAUGHERTY. 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 O'CONNOR, and by her referred to the Court, denied.

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*Appeals Dismissed*

No. 87-307. KONDOR *v.* PENNSYLVANIA. Appeal from Super. Ct. Pa. dismissed for want of substantial federal question. Reported below: 357 Pa. Super. 636, 513 A. 2d 1076.

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No. 87-314. *QUALITY MARKETS, INC. v. PENNSYLVANIA*. Appeal from Sup. Ct. Pa. dismissed for want of substantial federal question. Reported below: 514 Pa. 586, 526 A. 2d 357.

No. 87-345. *IN RE ASAM*. Appeal from C. A. 11th Cir. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari and the petition for writ of mandamus denied.

No. 87-390. *IN RE ASAM*. Appeal from C. A. 11th Cir. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari and the petition for writ of mandamus denied.

No. 87-398. *RUSS BUILDING PARTNERSHIP v. CITY AND COUNTY OF SAN FRANCISCO ET AL.* Appeal from Ct. App. Cal., 1st App. Dist., dismissed for want of jurisdiction. Reported below: 188 Cal. App. 3d 977, 234 Cal. Rptr. 1.

No. 87-5378. *ANDREGG v. PACIFIC TELEPHONE & TELEGRAPH CO. ET AL.* Appeal from Ct. App. Cal., 3d App. Dist., dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied.

No. 87-5439. *DEHNHOFF v. VINYARD 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: 818 F. 2d 868.

*Certiorari Granted—Vacated and Remanded*

No. 87-146. *SMITH BARNEY, HARRIS UPHAM & Co., INC., ET AL. v. ADRIAN ET UX.* C. A. 11th Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Shearson/American Express Inc. v. McMahon*, 482 U. S. 220 (1987). Reported below: 815 F. 2d 655.

No. 87-169. *SCULLY ET AL. v. FROMER.* C. A. 2d Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *O'Lone v. Estate of Shabazz*, 482 U. S. 342 (1987), and *Turner v. Safley*, 482 U. S. 78 (1987). Reported below: 817 F. 2d 227.

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*Certiorari Granted—Reversed.* (See No. 87-75, *ante*, p. 3.)

*Miscellaneous Orders*

No. A-265. LORENZINI ET UX. *v.* NEW JERSEY ET AL. Super. Ct. N. J., App. Div. Application for stay, addressed to JUSTICE O'CONNOR and referred to the Court, denied.

No. A-270 (87-544). COOMBE, SUPERINTENDENT, EASTERN CORRECTIONAL FACILITY *v.* ESCALERA. C. A. 2d Cir. Application of Robert Escalera for bail, presented to JUSTICE MARSHALL, and by him referred to the Court, denied.

No. A-284. ROSENTHAL *v.* STATE BAR OF CALIFORNIA. Sup. Ct. Cal. Application for stay and other relief, addressed to JUSTICE BRENNAN and referred to the Court, denied.

No. D-651. IN RE DISBARMENT OF RIGOLOSI, 483 U. S. 1051. Motion to defer filing a response to the rule to show cause denied.

No. 105, Orig. KANSAS *v.* COLORADO. It is ordered that Arthur L. Littleworth, Esq., of Riverside, Cal., be appointed Special Master in place of the Honorable Wade H. McCree, Jr., deceased.

The Special Master shall have authority to fix the time and conditions for the filing of additional pleadings and to direct subsequent proceedings, and authority to summon witnesses, issue subpoenas, and take such evidence as may be introduced and such as he may deem it necessary to call for. The Special Master is directed to submit such reports as he may deem appropriate.

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. [For earlier order herein, see, *e. g.*, 478 U. S. 1018.]

No. 86-181. DIXON *v.* WESTINGHOUSE ELECTRIC CORP. C. A. 4th Cir. Motion of the Solicitor General for leave to file a supplemental brief as *amicus curiae* granted.

No. 86-728. HONIG, CALIFORNIA SUPERINTENDENT OF PUBLIC INSTRUCTION *v.* DOE ET AL. C. A. 9th Cir. [Certiorari granted, 479 U. S. 1084.] Motion of the Solicitor General to per-

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mit Glen D. Nager, Esq., to present oral argument *pro hac vice* granted.

No. 86-1512. PIERCE, SECRETARY OF HOUSING AND URBAN DEVELOPMENT *v.* UNDERWOOD ET AL. C. A. 9th Cir. [Certiorari granted, 481 U. S. 1047.] Motion of the Solicitor General to dispense with printing the joint appendix granted.

No. 86-1602. UNITED SAVINGS ASSOCIATION OF TEXAS *v.* TIMBERS OF INWOOD FOREST ASSOCIATES, LTD. C. A. 5th Cir. [Certiorari granted, 481 U. S. 1068.] Motion of Global Marine, Inc., for leave to participate in oral argument as *amicus curiae*, for divided argument, and for additional time for oral argument denied.

No. 86-1650. TRANS WORLD AIRLINES, INC. *v.* INDEPENDENT FEDERATION OF FLIGHT ATTENDANTS. C. A. 8th Cir. [Certiorari granted, 482 U. S. 913.] Motion of American Federation of Labor and Congress of Industrial Organizations et al. for leave to file a brief as *amici curiae* granted.

No. 87-376. LOS ANGELES MEMORIAL COLISEUM COMMISSION *v.* NATIONAL BASKETBALL ASSN. ET AL. C. A. 9th Cir. Motion of the parties to defer consideration of the petition for writ of certiorari granted.

No. 87-5374. IN RE ROSS. Petition for writ of mandamus denied.

No. 87-5381. IN RE CLARK. Petition for writ of mandamus and/or prohibition denied.

No. 87-5391. IN RE FAHNTRAPP. Petition for writ of prohibition denied.

*Probable Jurisdiction Noted*

No. 87-82. FEDERAL DEPOSIT INSURANCE CORPORATION *v.* MALLEN ET AL. Appeal from D. C. N. D. Iowa. Probable jurisdiction noted. Reported below: 667 F. Supp. 652.

No. 87-328. RILEY, DISTRICT ATTORNEY OF THE TENTH PROSECUTORIAL DISTRICT OF NORTH CAROLINA, ET AL. *v.* NATIONAL FEDERATION OF THE BLIND OF NORTH CAROLINA, INC., ET AL. Appeal from C. A. 4th Cir. Probable jurisdiction noted. Reported below: 817 F. 2d 102.

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*Certiorari Granted*

No. 87-352. *SUN OIL CO. v. WORTMAN ET AL.* Sup. Ct. Kan. Certiorari granted. Reported below: 241 Kan. 226, 734 P. 2d 1190.

No. 87-5096. *WEST v. ATKINS.* C. A. 4th Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted. Reported below: 815 F. 2d 993.

No. 87-5277. *AMADEO v. KEMP, WARDEN.* C. A. 11th Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted. Reported below: 816 F. 2d 1502.

*Certiorari Denied.* (See also Nos. 87-345, 87-390, 87-5378, and 87-5439, *supra.*)

No. 86-1935. *MASON v. UNITED STATES.* Ct. Mil. App. Certiorari denied. Reported below: 24 M. J. 127.

No. 86-2018. *TURCHI v. UNITED STATES.* C. A. 3d Cir. Certiorari denied. Reported below: 815 F. 2d 697.

No. 86-2030. *ANDRZJEWSKI ET AL. v. HORNER, DIRECTOR, OFFICE OF PERSONNEL MANAGEMENT.* C. A. Fed. Cir. Certiorari denied. Reported below: 811 F. 2d 571.

No. 86-6987. *CAMPOS ET AL. v. UNITED STATES.* C. A. 4th Cir. Certiorari denied. Reported below: 816 F. 2d 673.

No. 86-7001. *TOBIAS v. FAIRMAN, WARDEN.* C. A. 7th Cir. Certiorari denied. Reported below: 818 F. 2d 33.

No. 86-7045. *BROWN v. J. I. CASE Co.* C. A. 7th Cir. Certiorari denied. Reported below: 813 F. 2d 848.

No. 86-7046. *JORDAN v. MANZIE ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 817 F. 2d 104.

No. 86-7085. *ROBERTSON v. UNITED STATES.* C. A. 9th Cir. Certiorari denied. Reported below: 815 F. 2d 714.

No. 86-7115. *LEWIS v. KERBY, WARDEN.* C. A. 10th Cir. Certiorari denied.

No. 86-7141. *LEGARE v. GEORGIA.* Sup. Ct. Ga. Certiorari denied.

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No. 87-19. *WATTS v. OFFICE OF PERSONNEL MANAGEMENT*. C. A. Fed. Cir. Certiorari denied. Reported below: 814 F. 2d 1576.

No. 87-70. *WILLIAMS v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 809 F. 2d 1072.

No. 87-147. *MADRID-PALACIOS v. UNITED STATES*. C. A. 11th Cir. Certiorari denied. Reported below: 817 F. 2d 759.

No. 87-215. *CINTOLO v. UNITED STATES*. C. A. 1st Cir. Certiorari denied. Reported below: 818 F. 2d 980.

No. 87-217. *COOK ET AL. v. PAN AMERICAN WORLD AIRWAYS, INC., ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 817 F. 2d 1030.

No. 87-226. *BEAUFORD v. SISTERS OF MERCY, PROVINCE OF DETROIT, INC., ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 816 F. 2d 1104.

No. 87-270. *DUTTON, WARDEN v. JOHNSON*. C. A. 6th Cir. Certiorari denied. Reported below: 819 F. 2d 289.

No. 87-272. *ENDICOTT ENTERPRISES, INC. v. UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA, AFL-CIO, LOCAL 2247, ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 806 F. 2d 918.

No. 87-309. *RITTER v. MOUNT ST. MARY'S COLLEGE*. C. A. 4th Cir. Certiorari denied. Reported below: 814 F. 2d 986.

No. 87-319. *ABRAHAMS ET AL. v. SHULMAN, DERIVATIVELY ON BEHALF OF CENTRAL JERSEY INDUSTRIES, INC., ET AL.* C. A. 3d Cir. Certiorari denied. Reported below: 819 F. 2d 1132.

No. 87-320. *PATTERSON v. AIKEN ET AL.; and PATTERSON v. FLINT ET AL.* Ct. App. Ga. Certiorari denied. Reported below: 182 Ga. App. 343, 355 S. E. 2d 738 (first case); 182 Ga. App. 650, 356 S. E. 2d 670 (second case).

No. 87-325. *WINSLOWET-ALPS v. EDMONSTONE*. C. A. 2d Cir. Certiorari denied. Reported below: 816 F. 2d 670.

No. 87-327. *WHEELER v. ARAVE*. C. A. 9th Cir. Certiorari denied. Reported below: 819 F. 2d 1147.

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No. 87-331. *DEAVER v. CABLE NEWS NETWORK, INC., ET AL.* C. A. D. C. Cir. Certiorari denied. Reported below: 263 U. S. App. D. C. 66, 824 F. 2d 1046.

No. 87-334. *ADRIAN ET UX. v. SMITH BARNEY, HARRIS UPHAM & CO., INC., ET AL.* C. A. 11th Cir. Certiorari denied. Reported below: 815 F. 2d 655.

No. 87-338. *EVICH ET AL. v. MORRIS, PERSONAL REPRESENTATIVE OF THE ESTATE OF CONNELLY, ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 819 F. 2d 256.

No. 87-344. *DRESSER INDUSTRIES, INC. v. HUGHES TOOL CO.* C. A. Fed. Cir. Certiorari denied. Reported below: 816 F. 2d 1549.

No. 87-349. *NORTHROP CORP. v. TRIAD INTERNATIONAL MARKETING, S. A., ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 811 F. 2d 1265.

No. 87-353. *ARNOLD v. SOUTH CAROLINA PUBLIC SERVICE AUTHORITY.* Sup. Ct. S. C. Certiorari denied. Reported below: 292 S. C. 396, 356 S. E. 2d 837.

No. 87-362. *HYSLIP v. SLOAN, MAYOR OF VILLAGE OF ALFRED, ET AL.* App. Div., Sup. Ct. N. Y., 4th Jud. Dept. Certiorari denied. Reported below: 124 App. Div. 2d 1060, 508 N. Y. S. 2d 732.

No. 87-406. *GRACEY v. UNITED STATES.* C. A. 3d Cir. Certiorari denied.

No. 87-422. *JUDSON v. COMMISSIONER OF INTERNAL REVENUE.* C. A. 9th Cir. Certiorari denied. Reported below: 820 F. 2d 407.

No. 87-426. *STEFANOPOULOS v. UNITED STATES ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 818 F. 2d 867.

No. 87-440. *HUGER v. UNITED STATES.* C. A. Fed. Cir. Certiorari denied. Reported below: 824 F. 2d 980.

No. 87-449. *ALVIS v. UNITED STATES.* C. A. 9th Cir. Certiorari denied. Reported below: 816 F. 2d 443.

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No. 87-463. *MEHRA ET AL. v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 824 F. 2d 297.

No. 87-5122. *WHITE v. UNITED STATES*. C. A. 5th Cir. Certiorari denied.

No. 87-5199. *SPENCER v. PENNSYLVANIA UNEMPLOYMENT COMPENSATION BOARD OF REVIEW*. Pa. Commw. Ct. Certiorari denied. Reported below: 93 Pa. Commw. 270, 504 A. 2d 991.

No. 87-5212. *ABRAHAM v. WHITE, WARDEN*. C. A. 4th Cir. Certiorari denied. Reported below: 820 F. 2d 1219.

No. 87-5356. *BOYER v. PENNSYLVANIA*. Super. Ct. Pa. Certiorari denied. Reported below: 362 Pa. Super. 632, 520 A. 2d 1211.

No. 87-5357. *YOUNG v. RABIDEAU ET AL.* C. A. 7th Cir. Certiorari denied. Reported below: 821 F. 2d 373.

No. 87-5361. *GRAY v. PEPCO ET AL.* Ct. App. D. C. Certiorari denied.

No. 87-5371. *MARTIN v. ILLINOIS*. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 150 Ill. App. 3d 1160, 514 N. E. 2d 1241.

No. 87-5373. *HUNTER v. EVANS ET AL.* C. A. 11th Cir. Certiorari denied.

No. 87-5375. *BATTLE v. DUGGER, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS*. C. A. 11th Cir. Certiorari denied.

No. 87-5376. *PEREZ v. SULLIVAN, SUPERINTENDENT, SING SING CORRECTIONAL FACILITY, ET AL.* C. A. 2d Cir. Certiorari denied.

No. 87-5377. *MAHDAVI v. THELEN, MARRIN, JOHNSON & BRIDGES ET AL.* C. A. 9th Cir. Certiorari denied.

No. 87-5379. *KOCHEL v. KOCHEL*. C. A. 4th Cir. Certiorari denied. Reported below: 819 F. 2d 1138.

No. 87-5380. *RHONE v. ALABAMA*. Ct. Crim. App. Ala. Certiorari denied. Reported below: 507 So. 2d 1071.

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No. 87-5383. *KURTZ v. KURTZ*. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 87-5385. *MUSTARD v. TEXAS*. Ct. App. Tex., 5th Dist. Certiorari denied. Reported below: 711 S. W. 2d 71.

No. 87-5387. *WALL v. PENNSYLVANIA*. Super. Ct. Pa. Certiorari denied. Reported below: 360 Pa. Super. 626, 517 A. 2d 205.

No. 87-5390. *ROBERTS v. PETERSON, SUPERINTENDENT, OREGON STATE CORRECTIONAL INSTITUTE*. C. A. 9th Cir. Certiorari denied. Reported below: 822 F. 2d 61.

No. 87-5393. *WILLIAMS v. LENSING ET AL.* C. A. 5th Cir. Certiorari denied.

No. 87-5394. *OWENS v. FULCOMER*. C. A. 3d Cir. Certiorari denied. Reported below: 829 F. 2d 32.

No. 87-5396. *FELTON v. DIXON ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 823 F. 2d 547.

No. 87-5398. *ADAMS v. DUGGER, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS*. C. A. 11th Cir. Certiorari denied. Reported below: 824 F. 2d 973.

No. 87-5399. *SIMMONS v. RUTHERFORD, CROCKETT & DE-MARCO ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 825 F. 2d 411.

No. 87-5400. *FORD v. BUNNELL, SUPERINTENDENT, CALIFORNIA CORRECTIONAL INSTITUTION*. Sup. Ct. Cal. Certiorari denied.

No. 87-5442. *AUSTIN v. NORTH CAROLINA*. Sup. Ct. N. C. Certiorari denied. Reported below: 320 N. C. 276, 357 S. E. 2d 641.

No. 87-5450. *FREEMAN v. UNITED STATES*. C. A. 8th Cir. Certiorari denied.

No. 87-5452. *SOLEK v. NEW JERSEY DEPARTMENT OF PUBLIC ADVOCATE ET AL.* Super. Ct. N. J., App. Div. Certiorari denied.

No. 87-5488. *COLLINS v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 829 F. 2d 32.

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No. 87-5495. HOK HO KWAN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 823 F. 2d 555.

No. 87-5496. RICHARDSON *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 520 A. 2d 692.

No. 87-5498. ZUMBADO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 826 F. 2d 14.

No. 86-1796. SEQUOIA BOOKS, INC. *v.* ILLINOIS. App. Ct. Ill., 2d Dist. Certiorari denied. JUSTICE BRENNAN and JUSTICE MARSHALL would grant the petition for writ of certiorari and reverse the judgment. Reported below: 149 Ill. App. 3d 383, 500 N. E. 2d 82.

No. 86-1987. SEQUOIA BOOKS, INC. *v.* ILLINOIS. App. Ct. Ill., 2d Dist. Certiorari denied. JUSTICE BRENNAN and JUSTICE MARSHALL would grant the petition for writ of certiorari and reverse the judgment of conviction. Reported below: 150 Ill. App. 3d 211, 501 N. E. 2d 856.

No. 87-134. UNITED STATES *v.* SHONDE. C. A. 8th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. JUSTICE BLACKMUN would grant certiorari. Reported below: 803 F. 2d 937.

No. 87-305. CONE *v.* FLORIDA BAR ET AL. C. A. 11th Cir. Motion of Ohio State Bar Association for leave to file a brief as *amicus curiae* granted. Certiorari denied. Reported below: 819 F. 2d 1002.

No. 87-326. G. D. SEARLE & Co. *v.* SIMON ET AL. C. A. 8th Cir. Motions of Defense Research Institute and Trial Lawyers Association, Chamber of Commerce of the United States, Pharmaceutical Manufacturers Association, American Corporate Counsel Association, and American Insurance Association for leave to file briefs as *amici curiae* granted. Certiorari denied. JUSTICE BLACKMUN and JUSTICE O'CONNOR would grant certiorari. Reported below: 816 F. 2d 397.

No. 87-357. ARKANSAS *v.* PICKENS. Sup. Ct. Ark. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 292 Ark. 362, 730 S. W. 2d 230.

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No. 87-359. CITY OF NEW YORK ET AL. *v.* EASTWAY CONSTRUCTION CORP. ET AL. C. A. 2d Cir. Certiorari denied. JUSTICE WHITE would grant certiorari. Reported below: 821 F. 2d 121.

No. 87-5327. ROBBINS *v.* NORTH CAROLINA. Sup. Ct. N. C.;  
 No. 87-5364. WATKINS *v.* ALABAMA. Sup. Ct. Ala.; and  
 No. 87-5448. COLEMAN *v.* BASS, WARDEN. Sup. Ct. Va. Certiorari denied. Reported below: No. 87-5327, 319 N. C. 465, 356 S. E. 2d 279; No. 87-5364, 509 So. 2d 1074.

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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*Miscellaneous Order*

No. A-334 (87-5699). JONES *v.* BUTLER, WARDEN. Sup. Ct. La. Application for stay of execution of sentence of death, presented to JUSTICE WHITE, and by him referred to the Court, granted pending the disposition by this Court of the petition for writ of certiorari. Should the petition for writ of certiorari be denied, this stay terminates automatically. In the event the petition for writ of certiorari is granted, this stay shall continue pending the issuance of the mandate of this Court.

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*Appeals Dismissed*

No. 87-230. BOWEN, SECRETARY OF HEALTH AND HUMAN SERVICES *v.* JORDAN ET AL. Appeal from D. C. W. D. Okla. dismissed for want of jurisdiction.

No. 87-411. CASILLAS ET AL. *v.* TEXAS. Appeal from Ct. Crim. App. Tex. dismissed for want of substantial federal question. Reported below: 733 S. W. 2d 158.

No. 87-439. ENCALADE ET AL. *v.* LOUISIANA. Appeal from Ct. App. La., 4th Cir., dismissed for want of substantial federal question. Reported below: 505 So. 2d 87.

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No. 87-414. POLYAK *v.* BOSTON ET AL. Appeal from C. A. 6th Cir. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied. Reported below: 817 F. 2d 757.

No. 87-5523. DENARDO *v.* ALASKA. Appeal from Sup. Ct. Alaska dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied. Reported below: 740 P. 2d 453.

*Certiorari Granted—Vacated and Remanded*

No. 87-5231. MALONE *v.* UNITED STATES. C. A. 5th Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted limited to the first question presented, judgment vacated, and case remanded for further consideration in light of the position presently asserted by the Solicitor General in his brief filed October 5, 1987. THE CHIEF JUSTICE dissents. Reported below: 816 F. 2d 675.

*Miscellaneous Orders*

No. — — —. CLARK-COWLITZ JOINT OPERATING AGENCY *v.* FEDERAL ENERGY REGULATORY COMMISSION. Motion for leave to dispense with printing portions of the appendix to the petition for writ of certiorari denied. JUSTICE BLACKMUN, JUSTICE STEVENS, and JUSTICE O'CONNOR would grant the motion. JUSTICE SCALIA took no part in the consideration or decision of this motion.

No. — — —. GREENE *v.* FRIEND OF THE COURT, POLK COUNTY, IOWA, ET AL. Motion to direct the Clerk to file a petition for writ of certiorari which does not comply with the Rules of this Court denied.

No. — — —. MILLER *v.* CALIFORNIA. Motion to direct the Clerk to file the petition for writ of certiorari denied.

No. A-272 (87-535). DEBOCK *v.* FLORIDA. Sup. Ct. Fla. Application to continue stay of proceedings, addressed to THE CHIEF JUSTICE and referred to the Court, denied.

No. A-289. GILBERT ET AL. *v.* SUPERIOR COURT OF CALIFORNIA, TULARE COUNTY, ET AL. Application for stay, addressed to JUSTICE BRENNAN and referred to the Court, denied.

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No. D-642. *IN RE DISBARMENT OF PALOMO*. Disbarment entered. [For earlier order herein, see 482 U. S. 911.]

No. D-648. *IN RE DISBARMENT OF MONOKER*. Disbarment entered. [For earlier order herein, see 483 U. S. 1040.]

No. D-649. *IN RE DISBARMENT OF FILSOOF*. Fred F. Filsoof, of Atlanta, Ga., 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 July 29, 1987 [483 U. S. 1040], is hereby discharged.

No. D-659. *IN RE DISBARMENT OF SHIRLEY*. It is ordered that George P. Shirley, of Pebble Beach, 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. 9, Orig. *UNITED STATES v. LOUISIANA ET AL.* Motion of Alaska for leave to participate in oral argument as *amicus curiae* and for divided argument denied. JUSTICE MARSHALL took no part in the consideration or decision of this motion. [For earlier order herein, see, *e. g., ante*, p. 892.]

No. 94, Orig. *SOUTH CAROLINA v. BAKER, SECRETARY OF THE TREASURY*. It is ordered that the Honorable Matthew J. Jasen, retired, of Buffalo, N. Y., be appointed Special Master in place of the Honorable Samuel J. Roberts, deceased.

The Special Master shall have 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 it necessary to call for. The Special Master is directed to submit such reports as he may deem appropriate.

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. [For earlier order herein, see, *e. g., ante*, p. 892.]

No. 104, Orig. *NEW JERSEY v. NEVADA ET AL.* It is ordered that Ralph I. Lancaster, Jr., Esq., of Portland, Me., be ap-

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pointed Special Master in place of the Honorable Wade H. McCree, Jr., deceased.

The Special Master shall have 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 it necessary to call for. The Special Master is directed to submit such reports as he may deem appropriate.

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. [For earlier order herein, see, *e. g.*, 474 U. S. 1045.]

No. 86-1357. UNITED STATES DEPARTMENT OF JUSTICE ET AL. *v.* JULIAN ET AL. C. A. 9th Cir. [Certiorari granted, 482 U. S. 926.] Motion of respondent Margaret J. Wallace for leave to proceed further herein *in forma pauperis* granted.

No. 86-1552. DEPARTMENT OF THE NAVY *v.* EGAN. C. A. Fed. Cir. [Certiorari granted, 481 U. S. 1068.] Motion of Ralph B. Bogdanowicz for leave to participate in oral argument as *amicus curiae*, for divided argument, and for additional time for oral argument denied.

No. 86-1715. FEDERAL LABOR RELATIONS AUTHORITY *v.* ABERDEEN PROVING GROUND, DEPARTMENT OF THE ARMY. C. A. 4th Cir. [Certiorari granted, *ante*, p. 813.] Motion of petitioner to dispense with printing the joint appendix granted.

No. 86-1753. DOE *v.* UNITED STATES. C. A. 5th Cir. [Certiorari granted, *ante*, p. 813.] Motion of petitioner to dispense with printing the joint appendix granted.

No. 86-1781. SCHWEIKER ET AL. *v.* CHILICKY ET AL. C. A. 9th Cir. [Certiorari granted, *ante*, p. 814.] Motion of the Solicitor General to dispense with printing the joint appendix granted.

No. 86-6124. BENNETT *v.* ARKANSAS. Sup. Ct. Ark. [Certiorari granted, *ante*, p. 895.] Motion for appointment of counsel granted, and it is ordered that Thomas M. Carpenter, Esq., of Little Rock, Ark., be appointed to serve as counsel for petitioner in this case.

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No. 87-4. *WHEAT v. UNITED STATES*. C. A. 9th Cir. [Certiorari granted, *ante*, p. 814.] Motion of petitioner to dispense with printing the joint appendix denied.

No. 87-251. *BOWEN, SECRETARY OF HEALTH AND HUMAN SERVICES v. RUSSELL*. C. A. 3d Cir. Motion of respondent for leave to proceed *in forma pauperis* granted.

No. 87-382. *STATE TAX COMMISSION OF THE STATE OF NEW YORK ET AL. v. HERZOG BROTHERS TRUCKING, INC., AKA HERZOG BROTHERS, INC., ET AL.* Ct. App. N. Y. The Solicitor General is invited to file a brief in this case expressing the views of the United States.

No. 87-5411. *IN RE SHIBUYA*. Motion of petitioner for leave to proceed *in forma pauperis* denied. Petitioner is allowed until November 23, 1987, within which to pay the docketing fee required by Rule 45(a) and to submit a petition in compliance with Rule 33 of the Rules of this Court.

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

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

No. 87-5425. *ROBERTS v. ROBERTS*. App. Ct. Ill., 3d Dist. Motion of petitioner for leave to proceed *in forma pauperis* denied. Petitioner is allowed until November 23, 1987, within which to pay the docketing fee required by Rule 45(a) and to submit a petition in compliance with Rule 33 of the Rules of this Court.

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

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

No. 87-5436. *JONES v. FARM CREDIT ADMINISTRATION*. C. A. 8th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied. Petitioner is allowed until November 23, 1987, within

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which to pay the docketing fee required by Rule 45(a) and to submit a petition in compliance with Rule 33 of the Rules of this Court.

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

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

No. 87-5571. IN RE BROWN. Petition for writ of habeas corpus denied.

No. 87-405. IN RE YEE; and

No. 87-5555. IN RE ORCHARD. Petitions for writs of mandamus denied.

*Probable Jurisdiction Noted*

No. 87-267. D. H. HOLMES CO., LTD. v. MCNAMARA, SECRETARY OF REVENUE AND TAXATION OF LOUISIANA. Appeal from Ct. App. La., 4th Cir. Probable jurisdiction noted. Reported below: 505 So. 2d 102.

No. 87-367. BENDIX AUTOLITE CORP. v. MIDWESCO ENTERPRISES, INC., ET AL. Appeal from C. A. 6th Cir. Probable jurisdiction noted. Reported below: 820 F. 2d 186.

No. 87-399. SUPREME COURT OF VIRGINIA ET AL. v. FRIEDMAN. Appeal from C. A. 4th Cir. Probable jurisdiction noted. Reported below: 822 F. 2d 423.

*Certiorari Granted*

No. 87-5461. HENSON v. EAST LINCOLN TOWNSHIP ET AL. C. A. 7th Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted. Reported below: 814 F. 2d 410.

*Certiorari Denied.* (See also Nos. 87-414 and 87-5523, *supra*.)

No. 86-2053. PERTUIT ET UX. v. AMERICAN BANK. Ct. App. La., 5th Cir. Certiorari denied. Reported below: 503 So. 2d 154.

No. 86-6954. MARSH v. CITY OF MARYSVILLE. Ct. App. Ohio, Union County. Certiorari denied.

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No. 86-7011. *COLLINS v. TEXAS*. Ct. Crim. App. Tex. Certiorari denied. Reported below: 727 S. W. 2d 565.

No. 86-7025. *EARNEST v. NEW MEXICO*. Sup. Ct. N. M. Certiorari denied. Reported below: 106 N. M. 411, 744 P. 2d 539.

No. 86-7060. *PICKENS v. BUTLER, WARDEN, ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 814 F. 2d 237.

No. 86-7071. *KEHOE v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 817 F. 2d 440.

No. 86-7078. *AMES v. NEW YORK*. App. Div., Sup. Ct. N. Y., 2d Jud. Dept. Certiorari denied. Reported below: 126 App. Div. 2d 731, 511 N. Y. S. 2d 320.

No. 87-69. *SACILOR, ACIERIES ET LAMINOIRS DE LORRAINE ET AL. v. UNITED STATES ET AL.* C. A. Fed. Cir. Certiorari denied. Reported below: 815 F. 2d 1488.

No. 87-92. *ANR GASIFICATION PROPERTIES CO. v. UNITED STATES ET AL.* C. A. 8th Cir. Certiorari denied. Reported below: 813 F. 2d 193.

No. 87-98. *BROWN ET UX. v. COMMISSIONER OF INTERNAL REVENUE*. C. A. 5th Cir. Certiorari denied. Reported below: 817 F. 2d 754.

No. 87-116. *OCHOA v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 814 F. 2d 660.

No. 87-144. *BOARD OF EDUCATION OF THE POLARIS JOINT VOCATIONAL SCHOOL DISTRICT ET AL. v. TYE*. C. A. 6th Cir. Certiorari denied. Reported below: 811 F. 2d 315.

No. 87-145. *BISHOP v. NEBRASKA*. Sup. Ct. Neb. Certiorari denied. Reported below: 224 Neb. 522, 399 N. W. 2d 271.

No. 87-153. *MR. W. FIREWORKS, INC. v. BROCK, SECRETARY OF LABOR*. C. A. 5th Cir. Certiorari denied. Reported below: 814 F. 2d 1042.

No. 87-176. *WHITE ET AL. v. ELROD, SHERIFF OF COOK COUNTY, ET AL.* C. A. 7th Cir. Certiorari denied. Reported below: 816 F. 2d 1172.

No. 87-180. *SCHINMANN ET AL. v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 811 F. 2d 1508.

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No. 87-186. MOLDED ACOUSTICAL PRODUCTS, INC. *v.* NATIONAL LABOR RELATIONS BOARD ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 815 F. 2d 934.

No. 87-204. EXPLOSIVES CORPORATION OF AMERICA ET AL. *v.* GARLAM ENTERPRISES CORP. ET AL.; and

No. 87-332. GARLAM ENTERPRISES CORP. *v.* EXPLOSIVES CORPORATION OF AMERICA ET AL. C. A. 1st Cir. Certiorari denied. Reported below: 817 F. 2d 894.

No. 87-212. AMATEYUS LTD., DBA VOLK & HUXLEY, ET AL. *v.* NATIONAL LABOR RELATIONS BOARD. C. A. 2d Cir. Certiorari denied. Reported below: 817 F. 2d 996.

No. 87-225. WILCOX *v.* FORD, WARDEN. C. A. 11th Cir. Certiorari denied. Reported below: 813 F. 2d 1140.

No. 87-245. BOWEN, SECRETARY OF HEALTH AND HUMAN SERVICES *v.* JORDAN ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 808 F. 2d 733.

No. 87-247. ARMSTRONG *v.* CORN BELT BANK; and

No. 87-432. CORN BELT BANK *v.* ARMSTRONG. C. A. 7th Cir. Certiorari denied. Reported below: 812 F. 2d 1024.

No. 87-249. HANDY *v.* NATIONAL SECURITY AGENCY ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 813 F. 2d 1228.

No. 87-262. STANTON *v.* UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA. C. A. D. C. Cir. Certiorari denied.

No. 87-282. SOUTH BEND COMMUNITY SCHOOL CORP. ET AL. *v.* BRITTON ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 819 F. 2d 766.

No. 87-286. U. S. TELECOM, INC., FKA U. S. TELEPHONE, INC., ET AL. *v.* SPEAKERS OF SPORT, INC. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 149 Ill. App. 3d 898, 501 N. E. 2d 318.

No. 87-365. BRIAN CLEWER, INC. *v.* PAN AMERICAN WORLD AIRWAYS, INC., ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 811 F. 2d 1507.

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No. 87-369. *O'DONNELL v. LOCAL 165, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL-CIO*. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 151 Ill. App. 3d 1156, 515 N. E. 2d 485.

No. 87-378. *NEWTON B. SCHWARTZ, P. C., ET AL. v. DEAN*. C. A. 2d Cir. Certiorari denied. Reported below: 818 F. 2d 216.

No. 87-379. *KRUZELOCK v. ILLINOIS*. App. Ct. Ill., 2d Dist. Certiorari denied.

No. 87-383. *FORT WAYNE MORTGAGE CO. v. WOOD*. C. A. 11th Cir. Certiorari denied. Reported below: 818 F. 2d 754.

No. 87-385. *PAUL, AKA PEREZ v. WATCHTOWER BIBLE & TRACT SOCIETY OF NEW YORK, INC.* C. A. 9th Cir. Certiorari denied. Reported below: 819 F. 2d 875.

No. 87-386. *LISTER v. NORTH AMERICAN ROCKWELL, AUTONETICS*. C. A. 9th Cir. Certiorari denied. Reported below: 785 F. 2d 316.

No. 87-392. *CORRIGAN, GUARDIAN OF CORRIGAN v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 815 F. 2d 954.

No. 87-393. *CENTRAL STATES, SOUTHEAST & SOUTHWEST AREAS PENSION FUND ET AL. v. CENTRAL TRANSPORT, INC., ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 816 F. 2d 678.

No. 87-396. *ILLINOIS STATE BOARD OF EDUCATION ET AL. v. BOARD OF EDUCATION OF CITY OF PEORIA, SCHOOL DISTRICT NO. 150*. App. Ct. Ill., 3d Dist. Certiorari denied. Reported below: 150 Ill. App. 3d 755, 502 N. E. 2d 730.

No. 87-402. *INTERNATIONAL ASSOCIATION OF MACHINISTS & AEROSPACE WORKERS, AFL-CIO, ET AL. v. ALASKA AIRLINES, INC.* C. A. 9th Cir. Certiorari denied. Reported below: 813 F. 2d 1038.

No. 87-408. *STRIPLIN v. KANSAS*. Ct. App. Kan. Certiorari denied. Reported below: 12 Kan. App. 2d lxxi, 761 P. 2d 1282.

No. 87-409. *BUDINSKY, TDBA COLPAT MINE v. PENNSYLVANIA DEPARTMENT OF ENVIRONMENTAL RESOURCES ET AL.* C. A. 3d Cir. Certiorari denied. Reported below: 819 F. 2d 418.

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No. 87-410. *MEXICANA AIRLINES v. WOLGEL ET UX.* C. A. 7th Cir. Certiorari denied. Reported below: 821 F. 2d 442.

No. 87-418. *MCARDLE v. E. R. SQUIBB & SONS, INC.* C. A. 10th Cir. Certiorari denied.

No. 87-419. *1111 19TH STREET ASSOCIATES v. DISTRICT OF COLUMBIA.* Ct. App. D. C. Certiorari denied. Reported below: 521 A. 2d 260.

No. 87-420. *BLUMENTHAL v. PENNSYLVANIA.* Super. Ct. Pa. Certiorari denied. Reported below: 362 Pa. Super. 632, 520 A. 2d 1211.

No. 87-423. *GARRATT ET AL. v. INVST FINANCIAL GROUP, INC.* C. A. 6th Cir. Certiorari denied. Reported below: 815 F. 2d 391.

No. 87-424. *GAINNEY v. GILMAN PAPER CO., INC., ET AL.* C. A. 11th Cir. Certiorari denied. Reported below: 819 F. 2d 1149.

No. 87-427. *EARHART v. PENNSYLVANIA.* Super. Ct. Pa. Certiorari denied. Reported below: 362 Pa. Super. 634, 520 A. 2d 1212.

No. 87-428. *EDGERTON v. OFFICE OF PERSONNEL MANAGEMENT.* C. A. Fed. Cir. Certiorari denied. Reported below: 824 F. 2d 978.

No. 87-429. *ADOLF, JUDGE, CIRCUIT COURT OF CITY OF ST. LOUIS v. WICHITA FALLS GENERAL HOSPITAL.* Ct. App. Mo., Eastern Dist. Certiorari denied. Reported below: 728 S. W. 2d 604.

No. 87-430. *ROJICEK v. COOLEY ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 819 F. 2d 1130.

No. 87-433. *VENCE ET AL. v. BOLIVAR COUNTY COMMUNITY ACTION PROGRAM, INC., ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 817 F. 2d 755.

No. 87-434. *CONNECTICUT v. MITCHELL ET AL.* Sup. Ct. Conn. Certiorari denied. Reported below: 204 Conn. 187, 527 A. 2d 1168.

No. 87-435. *HAIGHT v. CALIFORNIA.* App. Dept., Super. Ct. Cal., County of Santa Cruz. Certiorari denied.

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No. 87-444. *SMEGAL ET AL. v. GATEWAY FOODS OF MINNEAPOLIS, INC., ET AL.* C. A. 8th Cir. Certiorari denied. Reported below: 819 F. 2d 191.

No. 87-457. *DUNSTER ET AL. v. METROPOLITAN DADE COUNTY ET AL.* C. A. 11th Cir. Certiorari denied. Reported below: 791 F. 2d 1516.

No. 87-467. *PENNSYLVANIA v. NELSON.* Sup. Ct. Pa. Certiorari denied. Reported below: 514 Pa. 262, 523 A. 2d 728.

No. 87-471. *HEILGEIST v. SUPREME COURT OF WISCONSIN.* Sup. Ct. Wis. Certiorari denied. Reported below: 138 Wis. 2d 503, 406 N. W. 2d 424.

No. 87-473. *GENINA MARINE SERVICES, INC. v. MOBIL OIL EXPLORATION & PRODUCTION SOUTHEAST, INC.* Ct. App. La., 1st Cir. Certiorari denied. Reported below: 506 So. 2d 922.

No. 87-475. *RODNITE ET UX. v. GRAHAM, GOVERNOR OF FLORIDA, ET AL.* C. A. 11th Cir. Certiorari denied. Reported below: 818 F. 2d 872.

No. 87-479. *ENERGY COOPERATIVE, INC., BY STEINBERG, TRUSTEE v. PHILLIPS PETROLEUM CO.* C. A. 7th Cir. Certiorari denied. Reported below: 814 F. 2d 1226.

No. 87-493. *SATO v. UNITED STATES.* C. A. 7th Cir. Certiorari denied. Reported below: 814 F. 2d 449.

No. 87-500. *STEPHENS v. UNITED STATES.* C. A. 5th Cir. Certiorari denied. Reported below: 819 F. 2d 1140.

No. 87-501. *LENNON v. UNITED STATES.* C. A. 5th Cir. Certiorari denied. Reported below: 814 F. 2d 185.

No. 87-503. *GANOE ET AL. v. LUMMIS, TEMPORARY ADMINISTRATOR OF THE ESTATE OF HUGHES, ET AL.* App. Div., Sup. Ct. N. Y., 4th Jud. Dept. Certiorari denied. Reported below: 129 App. Div. 2d 1006, 514 N. Y. S. 2d 303.

No. 87-511. *VACCARO v. UNITED STATES.* C. A. 9th Cir. Certiorari denied. Reported below: 816 F. 2d 443.

No. 87-528. *LACHANCE v. UNITED STATES.* C. A. 11th Cir. Certiorari denied. Reported below: 817 F. 2d 1491.

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No. 87-534. *MOATES v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 822 F. 2d 56.

No. 87-536. *JERRY v. UAW, LOCAL 735, ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 818 F. 2d 866.

No. 87-5031. *PROWS v. UNITED STATES*. C. A. 11th Cir. Certiorari denied. Reported below: 808 F. 2d 1522.

No. 87-5046. *MEDINA v. CALIFORNIA*. Ct. App. Cal., 5th App. Dist. Certiorari denied. Reported below: 189 Cal. App. 3d 39, 234 Cal. Rptr. 256.

No. 87-5057. *VARONA-ALGOS v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 819 F. 2d 81.

No. 87-5064. *TRUJILLO v. SULLIVAN, WARDEN, ET AL.* C. A. 10th Cir. Certiorari denied. Reported below: 815 F. 2d 597.

No. 87-5095. *SHEPARD v. LANE, DIRECTOR, ILLINOIS DEPARTMENT OF CORRECTIONS, ET AL.* C. A. 7th Cir. Certiorari denied. Reported below: 818 F. 2d 615.

No. 87-5134. *WILLIAMS v. MISSOURI*. Sup. Ct. Mo. Certiorari denied. Reported below: 729 S. W. 2d 197.

No. 87-5156. *CARMONA v. UNITED STATES*. C. A. 11th Cir. Certiorari denied. Reported below: 820 F. 2d 1229.

No. 87-5182. *JOSEPH v. BUTLER, WARDEN*. Sup. Ct. La. Certiorari denied. Reported below: 506 So. 2d 1221.

No. 87-5206. *KUNKEL v. WISCONSIN*. Sup. Ct. Wis. Certiorari denied. Reported below: 138 Wis. 2d 531, 412 N. W. 2d 893.

No. 87-5283. *JARMAN v. UNITED STATES DEPARTMENT OF COMMERCE ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 814 F. 2d 655.

No. 87-5329. *CABRERA v. ILLINOIS*. Sup. Ct. Ill. Certiorari denied. Reported below: 116 Ill. 2d 474, 508 N. E. 2d 708.

No. 87-5330. *COLES v. BOWEN, SECRETARY OF HEALTH AND HUMAN SERVICES*. C. A. D. C. Cir. Certiorari denied.

No. 87-5403. *LEWIS v. SHERIFF'S DEPARTMENT FOR THE CITY OF ST. LOUIS ET AL.* C. A. 8th Cir. Certiorari denied. Reported below: 817 F. 2d 465.

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No. 87-5404. *GORDON v. YOUNG, MAYOR*. C. A. 11th Cir. Certiorari denied.

No. 87-5410. *ROBINSON v. ROSE, WARDEN, ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 823 F. 2d 553.

No. 87-5412. *MOORE v. NEW JERSEY*. Super. Ct. N. J., App. Div. Certiorari denied.

No. 87-5417. *LEE v. ILLINOIS*. Sup. Ct. Ill. Certiorari denied. Reported below: 117 Ill. 2d 28, 509 N. E. 2d 1001.

No. 87-5420. *CHILDS v. HEHMAN, CLERK, UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT, ET AL.* C. A. 6th Cir. Certiorari denied.

No. 87-5423. *HULSEY v. SARGENT, WARDEN*. C. A. 8th Cir. Certiorari denied. Reported below: 821 F. 2d 469.

No. 87-5424. *PACCHETTI v. MISSOURI*. Ct. App. Mo., Southern Dist. Certiorari denied. Reported below: 729 S. W. 2d 621.

No. 87-5437. *WOODEN v. MARTIN*. Ct. App. Tenn. Certiorari denied.

No. 87-5441. *LUTTRELL ET AL. v. MARTINEZ, GOVERNOR OF FLORIDA, ET AL.* Sup. Ct. Fla. Certiorari denied. Reported below: 511 So. 2d 999.

No. 87-5443. *EMANUEL v. FOLTZ, WARDEN*. C. A. 6th Cir. Certiorari denied. Reported below: 825 F. 2d 410.

No. 87-5444. *BOATWRIGHT v. DUGGER, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS*. C. A. 11th Cir. Certiorari denied. Reported below: 822 F. 2d 63.

No. 87-5446. *HENRIKSEN v. HENRIKSEN*. Sup. Ct. Del. Certiorari denied. Reported below: 527 A. 2d 281.

No. 87-5447. *WRIGHT v. VIRGINIA STATE BAR*. Sup. Ct. Va. Certiorari denied. Reported below: 233 Va. 491, 357 S. E. 2d 518.

No. 87-5456. *PEDRAZA v. HEARD ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 817 F. 2d 754.

No. 87-5460. *CARTER v. UNITED STATES*. Ct. App. D. C. Certiorari denied.

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No. 87-5462. *BURSE v. TEXAS*. Ct. Crim. App. Tex. Certiorari denied.

No. 87-5463. *BROWN v. PARKER, WARDEN*. C. A. 11th Cir. Certiorari denied.

No. 87-5464. *BROWN v. NEWSOME, SUPERINTENDENT, GEORGIA STATE PRISON, ET AL.* C. A. 11th Cir. Certiorari denied.

No. 87-5465. *HART v. HEDRICK*. C. A. 4th Cir. Certiorari denied. Reported below: 825 F. 2d 406.

No. 87-5466. *LEGRAND v. SCULLY, SUPERINTENDENT, GREEN HAVEN CORRECTIONAL FACILITY, ET AL.* C. A. 2d Cir. Certiorari denied.

No. 87-5471. *GREEN v. MEACHUM ET AL.* C. A. 10th Cir. Certiorari denied.

No. 87-5473. *EL-MUMIT v. FOGG, JUDGE, TWENTY-FIRST JUDICIAL DISTRICT COURT OF LOUISIANA*. Sup. Ct. La. Certiorari denied. Reported below: 505 So. 2d 733.

No. 87-5475. *SMITH v. OKLAHOMA*. Ct. Crim. App. Okla. Certiorari denied.

No. 87-5478. *STROUSE v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 826 F. 2d 1066.

No. 87-5481. *FANT v. ENRIGHT ET AL.* Sup. Ct. Ohio. Certiorari denied.

No. 87-5485. *CHRISTOW v. CRAPELLA ET AL.* C. A. 3d Cir. Certiorari denied. Reported below: 822 F. 2d 52.

No. 87-5490. *BEY v. PHILADELPHIA PASSPORT AGENCY ET AL.* C. A. 3d Cir. Certiorari denied. Reported below: 829 F. 2d 30.

No. 87-5494. *HOLLEMAN v. LYNAUGH, DIRECTOR, TEXAS DEPARTMENT OF CORRECTIONS*. C. A. 5th Cir. Certiorari denied. Reported below: 826 F. 2d 10.

No. 87-5499. *MANGONE v. FULCOMER, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT HUNTINGDON*. C. A. 3d Cir. Certiorari denied.

No. 87-5511. *DAVIS v. CLERK OF THE CIRCUIT COURT OF NOTTOWAY COUNTY*. C. A. 4th Cir. Certiorari denied. Reported below: 828 F. 2d 18.

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No. 87-5513. *GREEN v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 829 F. 2d 31.

No. 87-5514. *MUNOZ v. UNITED STATES*. C. A. 11th Cir. Certiorari denied. Reported below: 824 F. 2d 973.

No. 87-5515. *GATZONIS v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 805 F. 2d 72.

No. 87-5519. *HASAN v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 823 F. 2d 1553.

No. 87-5520. *LEPISCOPO v. SULLIVAN, WARDEN*. C. A. 10th Cir. Certiorari denied.

No. 87-5527. *RADEMAKER v. TEACHERS COLLEGE, COLUMBIA UNIVERSITY*. C. A. 2d Cir. Certiorari denied. Reported below: 823 F. 2d 545.

No. 87-5531. *HEATH ET AL. v. WARNER COMMUNICATIONS ET AL.* C. A. 2d Cir. Certiorari denied.

No. 87-5540. *CAVADA v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 821 F. 2d 1046.

No. 87-5542. *VAN STRATEN v. WISCONSIN*. Sup. Ct. Wis. Certiorari denied. Reported below: 139 Wis. 2d 861, 415 N. W. 2d 162.

No. 87-5552. *PARKER v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 825 F. 2d 408.

No. 87-5558. *ZATKO v. CALIFORNIA*. Sup. Ct. Cal. Certiorari denied.

No. 87-5580. *TAYLOR v. SOWDERS, WARDEN*. C. A. 6th Cir. Certiorari denied. Reported below: 826 F. 2d 1065.

No. 87-5583. *ROBINSON v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 823 F. 2d 549.

No. 87-5585. *ROLLINS ET UX. v. UNITED STATES*. C. A. 5th Cir. Certiorari denied.

No. 87-5592. *GOVE v. UNITED STATES*. C. A. 1st Cir. Certiorari denied. Reported below: 831 F. 2d 280.

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No. 87-5593. JACKSON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 818 F. 2d 867.

No. 87-5595. FALCON *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied.

No. 87-5603. LAROQUE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 822 F. 2d 56.

No. 87-5605. BAUSMAN *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 829 F. 2d 32.

No. 87-5606. DIAZ *v.* SCULLY, SUPERINTENDENT, GREEN HAVEN CORRECTIONAL FACILITY, ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 821 F. 2d 153.

No. 87-5609. WILSON *v.* MONUMENTAL LIFE INSURANCE CO. C. A. 4th Cir. Certiorari denied. Reported below: 820 F. 2d 1220.

No. 87-5619. BUSSEY *v.* LEVY, FERGUSON & GRADY ET AL. C. A. 10th Cir. Certiorari denied.

No. 87-5641. HOLLIMAN *v.* GEORGIA. Sup. Ct. Ga. Certiorari denied. Reported below: 257 Ga. 209, 356 S. E. 2d 886.

No. 86-6960. CLOZZA *v.* BAIR, WARDEN. Sup. Ct. Va.;

No. 87-5256. PETERSON *v.* BASS, WARDEN. Sup. Ct. Va.;

No. 87-5257. WHITEHEAD *v.* ILLINOIS. Sup. Ct. Ill.;

No. 87-5414. PEOPLES *v.* ALABAMA. Sup. Ct. Ala.;

No. 87-5427. LILES *v.* OKLAHOMA. Ct. Crim. App. Okla.;

No. 87-5433. GUINAN *v.* MISSOURI. Sup. Ct. Mo.;

No. 87-5445. PAYNE *v.* VIRGINIA. Sup. Ct. Va.;

No. 87-5451. ROSE *v.* DUGGER, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. Sup. Ct. Fla.;

No. 87-5469. GILMORE *v.* MISSOURI. Ct. App. Mo., Eastern Dist.;

No. 87-5493. MALLETT *v.* MISSOURI. Sup. Ct. Mo.;

No. 87-5627. SELVAGE *v.* LYNAUGH, DIRECTOR, TEXAS DEPARTMENT OF CORRECTIONS. C. A. 5th Cir.; and

No. 87-5638. BELL *v.* LYNAUGH, DIRECTOR, TEXAS DEPARTMENT OF CORRECTIONS. C. A. 5th Cir. Certiorari denied. Reported below: No. 87-5257, 116 Ill. 2d 425, 508 N. E. 2d 687; No. 87-5414, 510 So. 2d 574; No. 87-5433, 732 S. W. 2d 174;

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No. 87-5445, 233 Va. 460, 357 S. E. 2d 500; No. 87-5451, 508 So. 2d 321; No. 87-5469, 731 S. W. 2d 369; No. 87-5493, 732 S. W. 2d 527; No. 87-5627, 823 F. 2d 845; No. 87-5638, 828 F. 2d 1085.

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. 87-148. *LINDSEY v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 816 F. 2d 683.

JUSTICE WHITE, with whom JUSTICE BRENNAN joins, dissenting.

The issue here is whether a defendant's rights under the Due Process and Confrontation Clauses are violated when the Government forces a witness to take the stand solely to invoke his privilege against self-incrimination in front of the jury even though the Government already knew that the witness would refuse to testify. In this case, petitioner was convicted of mail fraud. At the trial, the Government called as a witness an unindicted co-conspirator who was alleged to have engaged in the same kind of conduct for which petitioner was indicted. The witness' attorney informed the prosecutor and the court that his client would invoke the privilege if he were called to testify, and the witness did invoke the privilege when he was called outside the presence of the jury. When the jury returned, the prosecution called the witness and he was permitted to testify after the trial court overruled petitioner's objection. Once again, after stating his name and place of residence, the witness invoked the Fifth Amendment privilege and refused to testify in response to five different questions. On appeal, a panel of the Sixth Circuit noted that this practice is "so imbued with the 'potential for unfair prejudice' that a trial judge should closely scrutinize any such request." *United States v. Lewis*, Nos. 86-5377 and 86-5379 (Apr. 17, 1987), App. to Pet. for Cert. 9a (quoting *United States v. Vandetti*, 623 F. 2d 1144, 1147 (CA6 1980)). Nonetheless, it held that the trial court did not commit reversible error when it permitted the witness to testify and gave a cautionary instruction to the jury not to consider the witness' actions as bearing on the guilt or innocence of any of the defendants. *Ibid.* The position of the Sixth Circuit, which is

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consistent with that of a number of the Circuits, conflicts with the position of at least two other Circuits. *United States v. King*, 461 F. 2d 53, 57, and n. 4 (CA8 1972) (calling a witness in these circumstances, where no useful purpose would be served, was error notwithstanding that a curative instruction was given); *United States v. Roselli*, 432 F. 2d 879 (CA9 1970) (disapproving the calling of a witness before the jury after he has indicated that he will decline to testify, though the error did not prejudice the defendant where it was a momentary episode in a 6-month trial), cert. denied, 401 U. S. 924 (1971). See also *United States v. Ritz*, 548 F. 2d 510 (CA5 1977). The split among the Circuits on this issue warrants our granting certiorari.

No. 87-216. *CITY OF FONTANA ET AL. v. SMITH, ADMINISTRATRIX OF THE ESTATE OF SMITH, ET AL.* C. A. 9th Cir. Certiorari denied. JUSTICE WHITE would grant certiorari. Reported below: 818 F. 2d 1411.

No. 87-370. *FAULKNER ET AL. v. MERIWETHER.* C. A. 7th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 821 F. 2d 408.

No. 87-485. *MASSACHUSETTS v. REPOZA.* Sup. Jud. Ct. Mass. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 400 Mass. 516, 510 N. E. 2d 755.

No. 87-5172. *MATTHEWS v. PIERCE, SECRETARY OF HOUSING AND URBAN DEVELOPMENT.* C. A. 3d Cir. Certiorari denied. JUSTICE WHITE and JUSTICE BLACKMUN would grant certiorari.

No. 87-5222. *WILLIAMS v. LYNAUGH, DIRECTOR, TEXAS DEPARTMENT OF CORRECTIONS.* C. A. 5th Cir. Certiorari denied. Reported below: 814 F. 2d 205.

JUSTICE MARSHALL, with whom JUSTICE BRENNAN joins, dissenting.

Adhering to my view that the death penalty is in all circumstances cruel and unusual punishment prohibited by the Eighth and Fourteenth Amendments, *Gregg v. Georgia*, 428 U. S. 153, 231-241 (1976) (MARSHALL, J., dissenting), I would grant the petition for writ of certiorari. Even if I did not hold this view, I would grant the petition in order to resolve the question whether the State may, consistent with the Eighth and Fourteenth Amend-

ments, introduce evidence of unadjudicated criminal conduct at the punishment phase of a capital trial. This claim presents a serious constitutional issue that has provoked a number of conflicting court decisions nationwide. The petition also presents a second question worthy of our review, namely, whether a State violates the Equal Protection Clause when it permits the sentencer to consider evidence of unadjudicated offenses in capital cases but not in non-capital cases.

## I

Petitioner James Williams was sentenced to death under a Texas capital punishment statute that requires the jury to determine beyond a reasonable doubt that the defendant, if permitted to live, would commit criminal acts of violence that would constitute a continuing threat to society. See Tex. Crim. Proc. Code. Ann., Art. 37.071(b)(2) (Vernon Supp. 1986-1987). To prove this circumstance, the State relied in large part on eyewitness testimony that petitioner had participated in a restaurant robbery 10 days before the murder. Petitioner never had been charged with, much less convicted of, this crime. The court did not caution the jury that it had to find petitioner had committed the crime by any particular standard of proof before considering the evidence in its calculation of future dangerousness. Indeed, the jury was encouraged not to do so by the State's attorney, who stated:

"You don't have to go back there and find him guilty of [the robbery]. You don't have to write a verdict for that. This is here to let you see what he did ten days prior." Pet. for Cert. 4.

In his federal petition for a writ of habeas corpus, petitioner argued that Texas' sentencing scheme violates the Eighth and Fourteenth Amendments because it permits the introduction of evidence of unadjudicated criminal conduct at the sentencing hearing of a capital trial. Williams also contended, in the alternative, that Texas' sentencing scheme violates the Equal Protection Clause of the Fourteenth Amendment because the State permits the introduction of unadjudicated offenses in capital-sentencing trials while forbidding the use of such evidence in noncapital-sentencing proceedings, see *Jones v. State*, 479 S. W. 2d 307 (Tex. Crim. App. 1972). The Court of Appeals for the Fifth Circuit rejected both claims. 814 F. 2d 205 (1987).

## II

Whether a State may introduce evidence of unadjudicated offenses in the sentencing phase of a capital trial is a vexing question with respect to which the state courts are in considerable need of guidance. The courts that have considered the question have provided inconsistent responses. A number have held that a State may not introduce evidence of unadjudicated crimes to prove a statutory aggravating factor at the sentencing phase of a capital trial. See *State v. Bobo*, 727 S. W. 2d 945, 952-953 (Tenn.), cert. denied, ante, p. 872; *State v. Bartholomew*, 101 Wash. 2d 631, 640-642, 683 P. 2d 1079, 1085-1086 (1984) (en banc); *State v. McCormick*, 272 Ind. 272, 277-278, 397 N. E. 2d 276, 280 (1979); *Cook v. State*, 369 So. 2d 1251, 1257 (Ala. 1978). Other state courts have held that although evidence of unadjudicated crimes is inadmissible to prove that the criminal act took place, such evidence is admissible to show "defendant's characteristics," *State v. Skipper*, 285 S. C. 42, 48-49, 328 S. E. 2d 58, 62 (1985), rev'd on other grounds, 476 U. S. 1 (1986), or "other matter[s] which the court deems relevant to sentence." *Crump v. State*, 102 Nev. 158, 161, 716 P. 2d 1387, 1388-1389 (quoting Nev. Rev. Stat. § 175.552 (1985)), cert. denied 479 U. S. 870 (1986). At least one state court has indicated that unadjudicated-crimes evidence may be admitted, but only if the court instructs the jury that it must find beyond a reasonable doubt that the defendant committed the crime before it can use the evidence in its sentencing determinations. See *People v. Easley*, 187 Cal. Rptr. 745, 758-761, 654 P. 2d 1272, 1286-1288 (1982), vacated on other grounds, 34 Cal. 3d 858, 671 P. 2d 813 (1983). Still others, including Texas, have found that that the admission of such evidence is not of constitutional significance and have required merely that the evidence be relevant. See *Milton v. State*, 599 S. W. 2d 824, 827 (Tex. Crim. App. 1980) (en banc), cert. denied, 451 U. S. 1031 (1981); *Fair v. State*, 245 Ga. 868, 870-871, 268 S. E. 2d 316, 319-320, cert. denied, 449 U. S. 986 (1980).

As Texas' prohibition against the use of unadjudicated offenses in noncapital cases suggests, the use of such evidence at sentencing is at tension with the fundamental principle that a person not be punished for a crime that the State has not shown he committed. In the context of capital sentencing, this tension becomes irreconcilable. This Court has repeatedly stressed that because the death penalty is qualitatively different from any other crimi-

nal punishment, "there is a corresponding difference in the need for reliability in the determination that death is the appropriate punishment in a specific case." *Woodson v. North Carolina*, 428 U. S. 280, 305 (1976) (opinion of Stewart, Powell, and STEVENS, JJ.). In my view, imposition of the death penalty in reliance on mere allegations of criminal behavior fails to comport with the constitutional requirement of reliability. A conviction signals that the underlying criminal behavior has been proved beyond a reasonable doubt to the satisfaction of an unbiased jury in conformance with constitutional safeguards. The testimony on which the State relied in this case, by contrast, carries with it no similar indicia of reliability.

It could be argued that the reliability problem can be mitigated by instructing the jury to consider evidence of unadjudicated offenses only if it finds beyond a reasonable doubt that the defendant committed the crime. This approach concedes that the Constitution requires a jury to determine that the alleged criminal conduct actually occurred. Once this concession is made, however, the intractability of such an approach becomes apparent. For if a defendant has a right to have a jury find that he committed a crime before it uses evidence of that crime to sentence him to die, he has a right that the jury that makes the determination be impartial. A jury that already has concluded unanimously that the defendant is a first-degree murderer cannot plausibly be expected to evaluate charges of other criminal conduct without bias and prejudice. Several state courts have concluded for this reason that introduction of evidence of unadjudicated offenses violates a defendant's due process right to an impartial jury. See *State v. Bobo*, *supra*, at 952-953; *State v. Bartholomew*, *supra*, at 640-642, 683 P. 2d, at 1085-1086; *State v. McCormick*, *supra*; *Cook v. State*, *supra*, at 1257.

In *Williams v. New York*, 337 U. S. 241 (1949), this Court let stand the imposition of the death penalty by a judge who had received evidence of unadjudicated offenses, reasoning that death is no different from any other punishment. See *id.*, at 251-252. In *Gardner v. Florida*, 430 U. S. 349, 357-358 (1977) (opinion of STEVENS, J.), however, it was recognized that the view expressed in *Williams* no longer prevails, and that the death penalty is qualitatively different from other punishments. Since then, we have invalidated a number of procedural rules that called into question the reliability of the sentencing determination. See *Beck v. Ala-*

*bama*, 447 U. S. 625, 638 (1980) (citing cases). In my view, the Court's jurisprudence in this area raises serious doubts as to whether a State may ever, consistent with the Eighth and Fourteenth Amendments, introduce evidence of unadjudicated crimes at the sentencing phase of a capital trial. In any event, it appears beyond dispute that the issue is both significant and recurring, and one on which the lower courts are in disarray. I would grant the petition for certiorari to resolve this pressing question.

### III

The State's use of evidence of unadjudicated offenses is particularly disturbing because Texas generally forbids the use of such evidence in sentencing determinations for *noncapital* crimes, reasoning that the evidence poses too great a danger of undue prejudice and confusion. See *Jones v. State*, 479 S. W. 2d 307 (Tex. Crim. App. 1972). Williams argues that Texas' practice of not adhering to this practice during capital sentencing violates the Equal Protection Clause. The Court of Appeals rejected this claim, reasoning that "[g]iven the finality of a death sentence, Texas has a strong interest in ensuring that all relevant evidence concerning the capital defendant is placed before the jury so that it can consider the evidence when answering the special issues." 814 F. 2d, at 208. I can think of no constitutionally legitimate reason why evidence of unadjudicated offenses should be admissible in capital cases but not in other cases. The decision of the Court of Appeals sanctions a *reduction* of procedural protection for the very reason that the defendant's life is at stake. This conclusion cuts sharply against the grain of this Court's capital jurisprudence. Recognizing the greater finality and severity of the death penalty, we have repeatedly scrutinized and enhanced the procedural protections afforded a defendant in a capital-sentencing proceeding. See *Eddings v. Oklahoma*, 455 U. S. 104, 117-118 (1982) (O'CONNOR, J., concurring) ("Because sentences of death are 'qualitatively different' from prison sentences, this Court has gone to extraordinary measures to ensure that the prisoner sentenced to be executed is afforded process that will guarantee, as much as is humanly possible, that the sentence was not imposed out of whim, passion, prejudice, or mistake") (citation omitted); *Ake v. Oklahoma*, 470 U. S. 68, 87 (1985) (Burger, C. J., concurring in judgment) ("In capital cases the finality of the sentence imposed warrants protections that may or may not be required in other cases").

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Texas' sentencing system adopts precisely the converse reasoning; it singles out capital defendants for less procedural protection. This diminution of safeguards for capital defendants only is both perverse and at odds with the decisions of this Court. I therefore would grant the petition for certiorari in order to consider Williams' equal protection claim should this Court reject his more sweeping attack on Texas' sentencing procedures.

*Rehearing Denied*

No. 87-5208. WILLIAMS *v.* FEDERICO ET AL., *ante*, p. 803. Petition for rehearing denied.

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*Appeals Dismissed*

No. 87-100. LYNCH ET AL. *v.* CITY OF CHICAGO ET AL. Appeal from App. Ct. Ill., 1st Dist., dismissed for want of substantial federal question. Reported below: 151 Ill. App. 3d 354, 502 N. E. 2d 283.

No. 87-441. BIRDSALL ET AL. *v.* SHEPHERD ET AL. Appeal from Sup. Ct. Va. dismissed for want of substantial federal question.

No. 87-456. SIM *v.* COMISKEY ET AL. Appeal from Sup. Ct. Neb. dismissed for want of substantial federal question. Reported below: 225 Neb. 181, 403 N. W. 2d 721.

No. 87-446. KELLER *v.* OKLAHOMA. Appeal from Ct. Crim. App. Okla. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied. Reported below: 738 P. 2d 186.

*Miscellaneous Orders*

No. D-645. IN RE DISBARMENT OF FREUDENBERG. Disbarment entered. [For earlier order herein, see 483 U. S. 1017.]

No. D-653. IN RE DISBARMENT OF VAUGHN. Disbarment entered. [For earlier order herein, see 483 U. S. 1052.]

No. D-660. IN RE DISBARMENT OF SCHULER. It is ordered that William F. Schuler, of San Francisco, 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.

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No. D-661. *IN RE DISBARMENT OF SULLIVAN*. It is ordered that Arthur J. Sullivan, of Wilmington, Del., 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-662. *IN RE DISBARMENT OF VAVRIK*. It is ordered that Robert J. Vavrik, of McHenry, 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. 86-935. *REGENTS OF THE UNIVERSITY OF CALIFORNIA v. PUBLIC EMPLOYMENT RELATIONS BOARD ET AL.* Ct. App. Cal., 1st App. Dist. [Probable jurisdiction noted, 483 U. S. 1004.] Motion of National Education Association et al. for leave to file a brief as *amici curiae* granted.

No. 86-1013. *LYNG, SECRETARY OF AGRICULTURE, ET AL. v. NORTHWEST INDIAN CEMETERY PROTECTIVE ASSN. ET AL.* C. A. 9th Cir. [Certiorari granted, 481 U. S. 1036.] Motion of respondents for leave to file out-of-time motion for divided argument denied.

No. 86-1992. *IMMIGRATION AND NATURALIZATION SERVICE v. PANGILINAN ET AL.*; and

No. 86-2019. *IMMIGRATION AND NATURALIZATION SERVICE v. MANZANO*. C. A. 9th Cir. [Certiorari granted, *ante*, p. 814.] Motion of the Solicitor General to dispense with printing the joint appendix granted.

No. 87-205. *ALASKA MINERS ASSN. v. TRUSTEES FOR ALASKA ET AL.* Sup. Ct. Alaska;

No. 87-206. *ALASKA v. TRUSTEES FOR ALASKA ET AL.* Sup. Ct. Alaska;

No. 87-371. *TRUSTEES FOR ALASKA ET AL. v. ALASKA ET AL.* Sup. Ct. Alaska; and

No. 87-482. *EASTER SEAL SOCIETY FOR CRIPPLED CHILDREN & ADULTS OF LOUISIANA, INC. v. PLAYBOY ENTERPRISES, INC., ET AL.* C. A. 5th Cir. The Solicitor General is invited to file briefs in these cases expressing the views of the United States.

No. 87-453. *AMERADA HESS CORP. ET AL. v. DIRECTOR, DIVISION OF TAXATION, NEW JERSEY DEPARTMENT OF THE TREASURY*; and

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No. 87-464. *TEXACO INC. ET AL. v. DIRECTOR, DIVISION OF TAXATION, NEW JERSEY DEPARTMENT OF THE TREASURY.* Appeals from Sup. Ct. N. J. The Solicitor General is invited to file a brief in these cases expressing the views of the United States. JUSTICE O'CONNOR took no part in the consideration or decision of this order.

No. 87-5502. *IN RE GILBERT.* Petition for writ of mandamus and/or prohibition denied.

*Probable Jurisdiction Noted*

No. 87-253. *BOWEN, SECRETARY OF HEALTH AND HUMAN SERVICES v. KENDRICK ET AL.;*

No. 87-431. *BOWEN, SECRETARY OF HEALTH AND HUMAN SERVICES v. KENDRICK ET AL.;* and

No. 87-462. *KENDRICK ET AL. v. BOWEN, SECRETARY OF HEALTH AND HUMAN SERVICES, ET AL.* Appeals from D. C. D. C. Probable jurisdiction noted, cases consolidated, and a total of one hour allotted for oral argument. Reported below: 657 F. Supp. 1547.

*Certiorari Granted*

No. 87-336. *VAN CAUWENBERGHE v. BIARD.* C. A. 9th Cir. Certiorari granted.

No. 87-526. *FELDER v. CASEY ET AL.* Sup. Ct. Wis. Certiorari granted. Reported below: 139 Wis. 2d 614, 408 N. W. 2d 19.

*Certiorari Denied.* (See also No. 87-446, *supra.*)

No. 86-6902. *FUNKHOUSER v. OKLAHOMA.* Ct. Crim. App. Okla. Certiorari denied. Reported below: 734 P. 2d 815.

No. 86-7048. *JOHNSON v. SWYKA ET AL.* C. A. 3d Cir. Certiorari denied. Reported below: 813 F. 2d 397.

No. 86-7106. *MOON v. KEMP, WARDEN.* C. A. 11th Cir. Certiorari denied. Reported below: 815 F. 2d 716.

No. 86-7121. *BURTON v. FOLTZ, WARDEN.* C. A. 6th Cir. Certiorari denied. Reported below: 810 F. 2d 118.

No. 86-7131. *WALEN v. MICHIGAN.* Ct. App. Mich. Certiorari denied.

No. 87-62. *SCHMIDT ET UX. v. OHIO.* Sup. Ct. Ohio. Certiorari denied. Reported below: 29 Ohio St. 3d 32, 505 N. E. 2d 627.

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No. 87-140. *CHAMBERLAIN ET AL. v. UNITED STATES ET AL.* Temp. Emerg. Ct. App. Certiorari denied. Reported below: 826 F. 2d 16.

No. 87-234. *ROBERTS ET AL. v. SECRETARY OF LABOR ET AL.* C. A. 1st Cir. Certiorari denied. Reported below: 813 F. 2d 524.

No. 87-239. *MOYE v. UNITED STATES.* C. A. 2d Cir. Certiorari denied. Reported below: 823 F. 2d 545.

No. 87-240. *MIZE v. UNITED STATES.* C. A. 5th Cir. Certiorari denied. Reported below: 820 F. 2d 118.

No. 87-281. *GOLDSTEIN v. CRAWFORD ET AL.* C. A. D. C. Cir. Certiorari denied. Reported below: 259 U. S. App. D. C. 279, 815 F. 2d 117.

No. 87-292. *DEL RIVO v. UNITED STATES.* C. A. 6th Cir. Certiorari denied. Reported below: 818 F. 2d 867.

No. 87-368. *BANK OF NEW ENGLAND, N. A. v. UNITED STATES.* C. A. 1st Cir. Certiorari denied. Reported below: 821 F. 2d 844.

No. 87-389. *NORRIS v. WIRTZ, TRUSTEE, ET AL.* C. A. 7th Cir. Certiorari denied. Reported below: 818 F. 2d 1329.

No. 87-412. *VILARDO ET AL. v. UNITED STATES.* C. A. 6th Cir. Certiorari denied.

No. 87-450. *BURTENSHAW v. FERRY.* Super. Ct. Pa. Certiorari denied.

No. 87-459. *NATIONAL IRANIAN OIL CO. v. ASHLAND OIL, INC.* C. A. 5th Cir. Certiorari denied. Reported below: 817 F. 2d 326.

No. 87-461. *J & J LOG & LUMBER CO. v. GLOBE MACHINE MANUFACTURING CO.* C. A. 9th Cir. Certiorari denied. Reported below: 822 F. 2d 61.

No. 87-465. *INTOWN INVESTORS, INC. v. AVIS RENT-A-CAR SYSTEM, INC.* C. A. 6th Cir. Certiorari denied. Reported below: 820 F. 2d 405.

No. 87-466. *SADLER v. ALUMISMITHS, INC., ET AL.* C. A. 7th Cir. Certiorari denied. Reported below: 822 F. 2d 1090.

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No. 87-474. *COLLIA ET AL. v. MCJUNKIN CORP.* Sup. Ct. App. W. Va. Certiorari denied. Reported below: — W. Va. —, 358 S. E. 2d 242.

No. 87-480. *HEARD, SHERIFF v. CURRY.* C. A. 5th Cir. Certiorari denied. Reported below: 819 F. 2d 130.

No. 87-481. *LYONS v. JACKSON, JUDGE, COMMON PLEAS COURT, LAKE COUNTY, OHIO.* C. A. 6th Cir. Certiorari denied. Reported below: 820 F. 2d 1225.

No. 87-483. *ATWOOD v. SIPPLE ET AL.* Ct. App. Ga. Certiorari denied. Reported below: 182 Ga. App. 831, 357 S. E. 2d 273.

No. 87-487. *WYOMING COMMUNITY DEVELOPMENT AUTHORITY ET AL. v. DURNING ET UX.* C. A. 9th Cir. Certiorari denied. Reported below: 815 F. 2d 1265.

No. 87-504. *RICHENDOLLAR v. DIAMOND M DRILLING Co., INC.* C. A. 5th Cir. Certiorari denied. Reported below: 819 F. 2d 124.

No. 87-506. *NEW JERSEY v. DELUCA.* Sup. Ct. N. J. Certiorari denied. Reported below: 108 N. J. 98, 527 A. 2d 1355.

No. 87-566. *GERMAN v. UNITED STATES.* Ct. App. D. C. Certiorari denied. Reported below: 525 A. 2d 596.

No. 87-567. *WORTHINGTON v. UNITED STATES.* C. A. 2d Cir. Certiorari denied. Reported below: 822 F. 2d 315.

No. 87-597. *ROBINSON v. SECRETARY OF TRANSPORTATION ET AL.* C. A. 10th Cir. Certiorari denied.

No. 87-598. *MARRAPESE v. UNITED STATES.* C. A. 1st Cir. Certiorari denied. Reported below: 826 F. 2d 145.

No. 87-5092. *WATTS ET AL. v. DUGGER, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS.* C. A. 11th Cir. Certiorari denied. Reported below: 814 F. 2d 612.

No. 87-5106. *WILSON v. NEW YORK.* App. Div., Sup. Ct. N. Y., 4th Jud. Dept. Certiorari denied. Reported below: 126 App. Div. 2d 970, 511 N. Y. S. 2d 746.

No. 87-5126. *MCQUEEN v. GARRISON, WARDEN, ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 814 F. 2d 951.

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No. 87-5169. SMITH *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 817 F. 2d 759.

No. 87-5304. PENNELL *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 820 F. 2d 1225.

No. 87-5344. GAUS *v.* BLUFFTON BANNER NEWSPAPER ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 822 F. 2d 1090.

No. 87-5432. WEICHERT *v.* UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT. C. A. 2d Cir. Certiorari denied.

No. 87-5474. TUITT *v.* FAIR, COMMISSIONER, MASSACHUSETTS DEPARTMENT OF CORRECTION. C. A. 1st Cir. Certiorari denied. Reported below: 822 F. 2d 166.

No. 87-5477. ANA LEON T. *v.* FEDERAL RESERVE BANK OF CHICAGO ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 823 F. 2d 928.

No. 87-5479. VEARRIER *v.* POLK COUNTY HUMANE SOCIETY ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 822 F. 2d 1094.

No. 87-5480. SEABORN *v.* MURRAY, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 823 F. 2d 548.

No. 87-5484. KEMPER *v.* ESTELLE, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 87-5486. CLARK *v.* WOOD, WARDEN. C. A. 8th Cir. Certiorari denied. Reported below: 823 F. 2d 1241.

No. 87-5492. CROSS *v.* McMACKIN, SUPERINTENDENT, MARION CORRECTIONAL INSTITUTION. C. A. 6th Cir. Certiorari denied. Reported below: 827 F. 2d 769.

No. 87-5497. PIERCE *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 827 F. 2d 765.

No. 87-5501. MOODY *v.* FERGUSON. C. A. 5th Cir. Certiorari denied.

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No. 87-5503. *GILBERT v. WILLINGBORO BOARD OF EDUCATION ET AL.* C. A. 3d Cir. Certiorari denied. Reported below: 817 F. 2d 751.

No. 87-5506. *HORTON v. TRAMMELL ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 828 F. 2d 19.

No. 87-5507. *BLACK v. TEXAS ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 828 F. 2d 771.

No. 87-5508. *ALMODOVAR v. CALIFORNIA.* Ct. App. Cal., 2d App. Dist. Certiorari denied. Reported below: 190 Cal. App. 3d 732, 235 Cal. Rptr. 616.

No. 87-5509. *WRIGHT v. DUGGER, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS.* C. A. 11th Cir. Certiorari denied. Reported below: 824 F. 2d 973.

No. 87-5518. *JOHNSON v. INDIANA.* Sup. Ct. Ind. Certiorari denied. Reported below: 507 N. E. 2d 980.

No. 87-5521. *LEPISCOPO v. KGGM TELEVISION ET AL.* C. A. 10th Cir. Certiorari denied.

No. 87-5522. *MAYBERRY v. PETSOCK.* C. A. 3d Cir. Certiorari denied. Reported below: 821 F. 2d 179.

No. 87-5529. *SMITH v. LOCKHART, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION.* C. A. 8th Cir. Certiorari denied.

No. 87-5553. *RUSSELL v. NORTH CAROLINA.* Ct. App. N. C. Certiorari denied. Reported below: 84 N. C. App. 383, 352 S. E. 2d 922.

No. 87-5554. *SHADIAN v. NORTH ORANGE COUNTY MUNICIPAL COURT ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 810 F. 2d 206.

No. 87-375. *MONGE, SHERIFF OF SARASOTA COUNTY, FLORIDA, ET AL. v. STRAUB.* C. A. 11th Cir. Certiorari denied. THE CHIEF JUSTICE took no part in the consideration or decision of this petition. Reported below: 815 F. 2d 1467.

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No. 87-447. CASTILLE, DISTRICT ATTORNEY OF PHILADELPHIA COUNTY *v.* HARRIS ET AL. C. A. 3d Cir. Motion of respondents Martin Harris et al. for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 820 F. 2d 592.

No. 87-5077. BROOKS *v.* LOUISIANA. Sup. Ct. La. Certiorari denied. Reported below: 505 So. 2d 714.

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. 87-5170. MCCULLOCH *v.* UNITED STATES; and

No. 87-5266. JONES *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 822 F. 2d 63.

JUSTICE WHITE, with whom JUSTICE BRENNAN joins, dissenting.

In March 1981, petitioners were tried for their participation in an interstate network that duplicated and distributed unauthorized reproductions of copyrighted sound recordings—so-called “pirated” tape recordings. At the conclusion of their trial, petitioners were convicted of numerous counts of interstate transportation of pirated tapes (18 U. S. C. § 2314), conspiracy to violate the copyright laws, and wire fraud. Also, using these substantive convictions as “predicate acts,” the Government successfully prosecuted petitioners for conducting (and conspiring to conduct) a racketeering enterprise in violation of the Racketeer Influenced and Corrupt Organizations Act (RICO). 18 U. S. C. §§ 1962(c) and (d).

Subsequently, in *Dowling v. United States*, 473 U. S. 207 (1985), this Court held that criminal penalties could not be imposed for interstate transportation of pirated tapes under § 2314. As a result, petitioners initiated this action, pursuant to 28 U. S. C. § 2255 to have their convictions set aside. The District Court vacated the convictions under § 2314, but refused to alter petitioners’ convictions for wire fraud or the RICO violations. *Cooper v. United States*, 639 F. Supp. 176 (MD Fla. 1986). The Court of Appeals affirmed in a judgment order, 822 F. 2d 63 (CA11 1987), relying on the District Court’s opinion. App. to Pet. for Cert. in No. 87-5170, p. A-2.

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These petitions present the question whether a RICO conviction may stand when some—but not all—of a defendant's convictions for the predicate acts which are the basis of his RICO conviction are vacated. Here, the District Court vacated 6 of petitioner McCulloch's 11 predicate-act convictions, and 6 of petitioner Jones' 14 convictions. *Cooper, supra*, at 187. The jury's verdict on the RICO counts did not indicate which of these various predicate acts formed the basis on which it found "a pattern of racketeering activity." 18 U. S. C. § 1962(c). The District Court allowed the RICO convictions to stand.

The courts below followed a prior decision of the Fifth Circuit, *United States v. Peacock*, 654 F. 2d 339 (1981), cert. denied, 464 U. S. 965 (1983). There, the Fifth Circuit vacated several convictions for predicate acts committed by three RICO defendants, but concluded that where "each of the appellants [was properly] convicted by the jury of at least two racketeering acts which were related to the . . . enterprise," their RICO convictions remained valid. 654 F. 2d, at 348. The Fifth Circuit recognized that this holding was in conflict with an opposing conclusion reached in *United States v. Brown*, 583 F. 2d 659 (1978), cert. denied, 440 U. S. 909 (1979), where the Third Circuit reversed two defendants' RICO convictions when two of their four convictions for predicate acts were found to be invalid. 583 F. 2d, at 669. The Seventh and the Ninth Circuits have recognized this conflict, but have declined to adopt either position to date. See *United States v. Anderson*, 809 F. 2d 1281, 1284-1285 (CA7 1987); *United States v. Lopez*, 803 F. 2d 969, 976 (CA9 1986), cert. denied, 481 U. S. 1030 (1987).

Because of the disagreement and uncertainty among the Courts of Appeals over the proper application of this important federal criminal statute, I would grant certiorari to resolve the conflict.

No. 87-5298. *FINESTONE v. UNITED STATES*. C. A. 11th Cir. Certiorari denied. JUSTICE WHITE would grant certiorari. Reported below: 816 F. 2d 583.

No. 87-5505. *DEVIER v. KEMP, WARDEN*. Sup. Ct. Ga. Certiorari denied.

JUSTICE MARSHALL, with whom JUSTICE BRENNAN joins, dissenting.

Adhering to my view that the death penalty is in all circumstances cruel and unusual punishment prohibited by the Eighth

and Fourteenth Amendments, *Gregg v. Georgia*, 428 U. S. 153, 231-241 (1976) (MARSHALL, J., dissenting), I would grant the petition for writ of certiorari. Yet even if I did not hold this view, I would grant the petition to resolve the question whether, or under what circumstances, evidence of crimes for which the defendant has not been tried or convicted may be introduced at the sentencing phase of a capital trial. As I recently argued in *Williams v. Lynaugh*, *ante*, p. 935 (MARSHALL, J., dissenting from denial of certiorari), the admission of evidence of unadjudicated crimes at the sentencing phase impinges on the unique constitutional concern for reliability in capital trials. The question whether the State may introduce such evidence without violating the Eighth and Fourteenth Amendments has also prompted a number of conflicting decisions nationwide. Compare *State v. Bobo*, 727 S. W. 2d 945, 952-953 (Tenn.) (unadjudicated-crimes evidence not admissible), cert. denied, *ante*, p. 872, and *State v. Bartholomew*, 101 Wash. 2d 631, 640-642, 683 P. 2d 1079, 1085-1086 (1984) (en banc) (same), with *Milton v. State*, 599 S. W. 2d 824, 827 (Tex. Crim. App. 1980) (en banc) (unadjudicated-crimes evidence admissible). This case again demonstrates that the Court should resolve this important question.

Petitioner Darrell Gene Devier was convicted of rape and murder and sentenced to death. At the sentencing phase of his trial, the State, over defense counsel's objection, introduced the testimony of Linda Elrod. Ms. Elrod, a minor, testified that she had been raped by petitioner some six months before the crime for which he was on trial. Petitioner had never been tried for the alleged rape of Ms. Elrod. Moreover, the trial court did not instruct the jury that it had to find, by any particular standard of proof, that petitioner had raped Ms. Elrod before it could consider the evidence in determining his sentence. In short, the jury was presented with unproved but highly prejudicial allegations of criminal conduct, and was given no guidance on how to consider these allegations in determining whether death was an appropriate punishment. As in *Williams*, I maintain serious doubts whether the introduction of such evidence can be reconciled with the heightened need for reliability in death sentencing proceedings. I would therefore grant the petition for certiorari.

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*Rehearing Denied*

No. 86-6846. CLEVELAND *v.* WARDEN, MARYLAND HOUSE OF CORRECTIONS, *ante*, p. 833;

No. 86-6863. ROCHON *v.* ACADIA PARISH SHERIFF DEPARTMENT ET AL., *ante*, p. 834; and

No. 87-5232. WILLIAMS *v.* JOINER, *ante*, p. 865. Petitions for rehearing denied.

*Assignment Order*

An order of THE CHIEF JUSTICE designating and assigning Justice Powell (retired) to perform judicial duties in the United States Court of Appeals for the Fourth Circuit during the period of January 4 through January 8, 1988, and for such further time as may be required to complete unfinished business, pursuant to 28 U. S. C. § 294(a), is ordered entered on the minutes of this Court, pursuant to 28 U. S. C. § 295.

NOVEMBER 10, 1987

*Miscellaneous Order*

No. A-374. DUGGER, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS *v.* DEMPS. 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 O'CONNOR, and by her referred to the Court, denied.

NOVEMBER 13, 1987

*Dismissal Under Rule 53*

No. 87-542. PARKVIEW ASSOCIATES *v.* CITY OF NEW YORK ET AL. Appeal from App. Div., Sup. Ct. N. Y., 1st Jud. Dept., dismissed under this Court's Rule 53. Reported below: 129 App. Div. 2d 405, 513 N. Y. S. 2d 342.

NOVEMBER 16, 1987

*Appeals Dismissed*

No. 87-10. BOCLAIR ET AL. *v.* ILLINOIS. Appeal from Sup. Ct. Ill. dismissed for want of substantial federal question. Reported below: 119 Ill. 2d 368, 519 N. E. 2d 437.

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No. 87-531. *ASAM v. LEE COUNTY DISTRICT SCHOOL BOARD ET AL.* Appeal from C. A. 11th Cir. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied. Reported below: 816 F. 2d 686.

No. 87-5539. *ADAMS v. FLORIDA.* Appeal from Dist. Ct. App. Fla., 1st Dist., dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied. Reported below: 508 So. 2d 1239.

No. 87-608. *PEDERSON v. SHULMAN.* Appeal from C. A. 9th Cir. dismissed for want of jurisdiction. Reported below: 815 F. 2d 714.

No. 87-5547. *FISCHER v. MICHIGAN.* Appeal from Sup. Ct. Mich. dismissed for want of jurisdiction.

#### *Miscellaneous Orders*

No. A-337. *WILLIAMS v. MINNESOTA LAWYERS PROFESSIONAL RESPONSIBILITY BOARD.* Application for temporary restraining order, addressed to JUSTICE BRENNAN and referred to the Court, denied.

No. A-345 (87-454). *DOMINICAN REPUBLIC ET AL. v. MEADOWS, DECEASED, ET AL.* C. A. 9th Cir. Application for stay, addressed to JUSTICE STEVENS and referred to the Court, denied.

No. D-651. *IN RE DISBARMENT OF RIGOLOSI.* Disbarment entered. [For earlier order herein, see 483 U. S. 1051.]

No. 86-1034. *VIRGINIA v. AMERICAN BOOKSELLERS ASSN., INC., ET AL.* C. A. 4th Cir. [Probable jurisdiction noted, 479 U. S. 1082.] Motion of appellees for leave to file a supplemental brief after argument granted.

No. 86-1172. *GOODYEAR ATOMIC CORP. v. MILLER ET AL.* Sup. Ct. Ohio. [Probable jurisdiction noted, 483 U. S. 1004.] Motion of Oil, Chemical & Atomic Workers International Union for leave to file a brief as *amicus curiae* granted.

No. 86-1357. *UNITED STATES DEPARTMENT OF JUSTICE ET AL. v. JULIAN ET AL.* C. A. 9th Cir. [Certiorari granted, 482 U. S. 926.] Motion of the Solicitor General to dispense with printing the joint appendix granted.

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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 to permit Glen D. Nager, Esq., to present oral argument *pro hac vice* granted.

No. 86-7009. IN RE SHIBUYA;

No. 86-7012. IN RE SHIBUYA; and

No. 87-5032. IN RE SHIBUYA, *ante*, p. 811. Motion of petitioner for reconsideration of order denying motions for leave to proceed *in forma pauperis* denied.

No. 87-170. COPLEY ET AL. *v.* HEIL-QUAKER CORP. ET AL. Appeal from C. A. 6th Cir. Motion of appellants to expedite consideration and/or to consolidate this case with No. 87-367, *Bendix Autolite Corp. v. Midwesco Enterprises, Inc.* [probable jurisdiction noted, *ante*, p. 923], denied.

No. 87-5489. BENNETT *v.* NORTH AMERICAN VAN LINES ET AL. C. A. 3d Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied. Petitioner is allowed until December 7, 1987, within which to pay the docketing fee required by Rule 45(a) and to submit a petition in compliance with Rule 33 of the Rules of this Court.

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

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

No. 87-580. IN RE POLYAK. C. A. 6th Cir. Petition for writ of common-law certiorari denied. Reported below: 810 F. 2d 203.

#### *Certiorari Granted*

No. 87-505. CHICK KAM CHOO ET AL. *v.* EXXON CORP. ET AL. C. A. 5th Cir. Certiorari granted. Reported below: 817 F. 2d 307.

*Certiorari Denied.* (See also Nos. 87-531, 87-5539, and 87-580, *supra*.)

No. 86-2003. BRAUNER *v.* MCCONNELL ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 815 F. 2d 701.

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No. 86-2029. *DUNLAP v. UNIVERSITY OF KENTUCKY*. C. A. 6th Cir. Certiorari denied. Reported below: 815 F. 2d 702.

No. 86-7077. *DAINWOOD v. LYNAUGH, DIRECTOR, TEXAS DEPARTMENT OF CORRECTIONS*. C. A. 5th Cir. Certiorari denied.

No. 87-138. *NICOLOSI ET AL. v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 817 F. 2d 752.

No. 87-224. *DOW CHEMICAL CO. ET AL. v. RYAN ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 821 F. 2d 139.

No. 87-297. *PORT AUTHORITY POLICE BENEVOLENT ASSN., INC., ET AL. v. PORT AUTHORITY OF NEW YORK AND NEW JERSEY ET AL.* C. A. 3d Cir. Certiorari denied. Reported below: 819 F. 2d 413.

No. 87-351. *STEARNS CO. v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 816 F. 2d 279.

No. 87-374. *CHOTIN TRANSPORTATION, INC. v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 819 F. 2d 1342.

No. 87-403. *FEDERAL PACIFIC ELECTRIC CO., INC. v. DIGHTON ET AL.* Sup. Jud. Ct. Mass. Certiorari denied. Reported below: 399 Mass. 687, 506 N. E. 2d 509.

No. 87-468. *AUSTIN v. BVA CREDIT CORP., AKA BANK OF VIRGINIA*. C. A. 11th Cir. Certiorari denied. Reported below: 818 F. 2d 873.

No. 87-472. *RICHARDSON ET AL. v. LANE ET AL.* Int. Ct. App. Haw. Certiorari denied. Reported below: 6 Haw. App. 614, 736 P. 2d 63.

No. 87-484. *VATICAN SHRIMP CO., INC. v. SOLIS*. C. A. 5th Cir. Certiorari denied. Reported below: 820 F. 2d 674.

No. 87-486. *TAYLOR ET AL. v. HUDSON PULP & PAPER CORP. ET AL.* C. A. 11th Cir. Certiorari denied. Reported below: 788 F. 2d 1455.

No. 87-488. *NATIONAL MARINE SERVICES, INC., ET AL. v. SEAFARERS INTERNATIONAL UNION OF NORTH AMERICA*. C. A. 5th Cir. Certiorari denied. Reported below: 820 F. 2d 148.

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No. 87-489. *COHERENT, INC. v. SPECTRA-PHYSICS, INC.* C. A. Fed. Cir. Certiorari denied. Reported below: 827 F. 2d 1524.

No. 87-490. *ARONSON v. ILLINOIS ET AL.* C. A. 7th Cir. Certiorari denied. Reported below: 815 F. 2d 709.

No. 87-491. *WILLIAMS ET AL. v. BAXTER.* C. A. 9th Cir. Certiorari denied. Reported below: 812 F. 2d 421.

No. 87-497. *FELDMAN ET AL. v. PIONEER PETROLEUM, INC., ET AL.* C. A. 10th Cir. Certiorari denied. Reported below: 813 F. 2d 296.

No. 87-507. *PALM BEACH NEWSPAPERS, INC. v. BURK, JUDGE, CIRCUIT COURT OF FLORIDA, PALM BEACH COUNTY, ET AL.;* and

No. 87-508. *MIAMI HERALD PUBLISHING Co. v. BURK, JUDGE, CIRCUIT COURT OF FLORIDA, PALM BEACH COUNTY, ET AL.* Sup. Ct. Fla. Certiorari denied. Reported below: 504 So. 2d 378.

No. 87-514. *HOOPER ET AL. v. SACHS ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 823 F. 2d 547.

No. 87-516. *ROMAN v. UNITED STATES.* C. A. 2d Cir. Certiorari denied. Reported below: 822 F. 2d 261.

No. 87-518. *HAGAR v. NATIONAL RAILROAD PASSENGER CORPORATION.* C. A. 2d Cir. Certiorari denied. Reported below: 822 F. 2d 1261.

No. 87-530. *JOSEPH O. FAWCETT & SONS, INC., ET AL. v. UNION PACIFIC RAILROAD Co. ET AL.* C. A. 10th Cir. Certiorari denied. Reported below: 820 F. 2d 338.

No. 87-533. *STEVEY v. NEW JERSEY.* Sup. Ct. N. J. Certiorari denied. Reported below: 107 N. J. 543, 527 A. 2d 408.

No. 87-539. *ROBERTSON v. CITY OF LOUISVILLE, BY AND THROUGH THE URBAN RENEWAL AND COMMUNITY DEVELOPMENT AGENCY OF LOUISVILLE.* Ct. App. Ky. Certiorari denied.

No. 87-554. *OKLAHOMA v. TODD.* Ct. Crim. App. Okla. Certiorari denied.

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No. 87-559. RAMSUNDAR *v.* CONNECTICUT. Sup. Ct. Conn. Certiorari denied. Reported below: 204 Conn. 4, 526 A. 2d 1311.

No. 87-565. HASTON *v.* UNITED STATES. Ct. Mil. App. Certiorari denied. Reported below: 24 M. J. 313.

No. 87-577. ANDERSON ET AL. *v.* STATE OIL AND GAS BOARD OF ALABAMA ET AL. Ct. Civ. App. Ala. Certiorari denied. Reported below: 510 So. 2d 250.

No. 87-581. PAPPANIKOLAOU *v.* ADMINISTRATOR OF VETERANS ADMINISTRATION. C. A. 2d Cir. Certiorari denied. Reported below: 857 F. 2d 1461.

No. 87-582. ADMAN *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 826 F. 2d 1072.

No. 87-596. CHEEK *v.* DOE ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 828 F. 2d 395.

No. 87-611. FEDERATION OF LORTON COMMUNITIES *v.* BARRY ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 825 F. 2d 406.

No. 87-612. DEKLE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 828 F. 2d 770.

No. 87-627. TOMASELLO *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 823 F. 2d 545.

No. 87-5054. COOK *v.* FORD, WARDEN. C. A. 11th Cir. Certiorari denied.

No. 87-5102. LAGERQUIST *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 820 F. 2d 969.

No. 87-5143. COX *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 819 F. 2d 1139.

No. 87-5149. VLASAK *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 817 F. 2d 753.

No. 87-5160. HINCAPIE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 813 F. 2d 1229.

No. 87-5163. WELCH *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 817 F. 2d 273.

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No. 87-5321. *LEE v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 818 F. 2d 1052.

No. 87-5351. *PREISLER v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 819 F. 2d 1136.

No. 87-5389. *SHUE v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 825 F. 2d 1111.

No. 87-5525. *ONTIVEROS v. SCHMIDT ET AL.* C. A. 5th Cir. Certiorari denied.

No. 87-5530. *LAUDERDALE v. SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA, ET AL.* Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 87-5533. *DAVIS v. MURRAY, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS, ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 823 F. 2d 546.

No. 87-5535. *DINGLE v. NEW YORK*. App. Div., Sup. Ct. N. Y., 2d Jud. Dept. Certiorari denied. Reported below: 130 App. Div. 2d 586, 514 N. Y. S. 2d 1015.

No. 87-5536. *HINE v. STUTSMAN*. Sup. Ct. Nev. Certiorari denied. Reported below: 103 Nev. 807.

No. 87-5541. *SAVAGE v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 825 F. 2d 408.

No. 87-5543. *MCGOVERN v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 822 F. 2d 739.

No. 87-5544. *WOODS v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 819 F. 2d 1147.

No. 87-5548. *LEVINSON v. LITTON SYSTEMS, INC.* C. A. Fed. Cir. Certiorari denied. Reported below: 826 F. 2d 1072.

No. 87-5549. *DICKERSON v. LOUISIANA ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 816 F. 2d 220.

No. 87-5551. *BAYLIS v. BUTLER, WARDEN*. C. A. 5th Cir. Certiorari denied.

No. 87-5559. *ZENDEJAS v. CALIFORNIA*. Ct. App. Cal., 1st App. Dist. Certiorari denied.

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No. 87-5563. *WARD v. THIERET, WARDEN, ET AL.* C. A. 7th Cir. Certiorari denied. Reported below: 822 F. 2d 1091.

No. 87-5566. *BROWN v. RYAN, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT DALLAS, ET AL.* C. A. 3d Cir. Certiorari denied.

No. 87-5572. *HUSKEY v. KENTUCKY ET AL.* Cir. Ct. Warren County, Ky. Certiorari denied.

No. 87-5577. *MARTIN v. COHN, SUPERINTENDENT, INDIANA STATE REFORMATORY.* C. A. 7th Cir. Certiorari denied.

No. 87-5579. *WILLIAMS v. CADILLAC INSURANCE CO. ET AL.* C. A. 6th Cir. Certiorari denied.

No. 87-5582. *LEBLANC v. NEVADA.* C. A. 9th Cir. Certiorari denied.

No. 87-5584. *RUFFIN v. UNITED STATES.* C. A. 3d Cir. Certiorari denied. Reported below: 826 F. 2d 1057.

No. 87-5588. *RAMIREZ-RIOS v. UNITED STATES.* C. A. 5th Cir. Certiorari denied. Reported below: 824 F. 2d 360.

No. 87-5591. *HAWKINS v. LYNAUGH, DIRECTOR, TEXAS DEPARTMENT OF CORRECTIONS.* C. A. 5th Cir. Certiorari denied.

No. 87-5594. *LENTZ v. UNITED STATES.* C. A. 5th Cir. Certiorari denied. Reported below: 823 F. 2d 867.

No. 87-5597. *JENNINGS v. UNITED STATES.* C. A. 9th Cir. Certiorari denied. Reported below: 810 F. 2d 206.

No. 87-5598. *CAUCHON v. UNITED STATES.* C. A. 11th Cir. Certiorari denied. Reported below: 824 F. 2d 908.

No. 87-5601. *BROWN v. LUTHER, WARDEN, ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 810 F. 2d 1160.

No. 87-5602. *ABDOUCH v. UNITED STATES.* C. A. 2d Cir. Certiorari denied. Reported below: 824 F. 2d 1294.

No. 87-5604. *BUFORD v. UNITED STATES.* C. A. 7th Cir. Certiorari denied. Reported below: 826 F. 2d 1068.

No. 87-5616. *HILL v. UNITED STATES.* C. A. 4th Cir. Certiorari denied. Reported below: 825 F. 2d 408.

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No. 87-5618. *BINDER v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 819 F. 2d 1146.

No. 87-5636. *LEIGHT v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 818 F. 2d 1297.

No. 87-5644. *LUNZ v. HENDERSON, SUPERINTENDENT, AUBURN CORRECTIONAL FACILITY, ET AL.* C. A. 2d Cir. Certiorari denied.

No. 87-5650. *LEVINE v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 825 F. 2d 408.

No. 87-5654. *STANGE v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 826 F. 2d 619.

No. 87-5657. *RODRIN v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 827 F. 2d 766.

No. 87-5662. *LIVVOY v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 829 F. 2d 33.

No. 87-5664. *COHAN v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 829 F. 2d 32.

No. 87-5668. *FLAKES v. WISCONSIN*. Ct. App. Wis. Certiorari denied.

No. 87-5671. *BERTRAM v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 828 F. 2d 770.

No. 87-5681. *NERSESIAN v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 824 F. 2d 1294.

No. 87-120. *FOLTZ, WARDEN v. HOPSON*. C. A. 6th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 818 F. 2d 866.

No. 87-162. *NEW MEXICO v. HENSEL*. Ct. App. N. M. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 106 N. M. 8, 738 P. 2d 126.

No. 87-555. *OHIO v. ROGERS, AKA HUDSON*. Sup. Ct. Ohio. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 32 Ohio St. 3d 70, 512 N. E. 2d 581.

No. 87-509. *PALM BEACH NEWSPAPERS, INC. v. HAGLER ET AL.*; and *PALM BEACH NEWSPAPERS, INC. v. FLORIDA*; and

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No. 87-510. MIAMI HERALD PUBLISHING CO. *v.* HAGLER ET AL.; and MIAMI HERALD PUBLISHING CO. *v.* FLORIDA. Dist. Ct. App. Fla., 4th Dist. Motion of respondent John W. Hagler for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 471 So. 2d 1344 (first cases); 473 So. 2d 274 (second cases).

No. 87-5528. SMITH *v.* OKLAHOMA. Ct. Crim. App. Okla.;

No. 87-5538. JONES *v.* BAIR, SUPERINTENDENT, MECKLENBURG CORRECTIONAL CENTER. Sup. Ct. Va.; and

No. 87-5562. ZUNIGA *v.* NORTH CAROLINA. Sup. Ct. N. C. Certiorari denied. Reported below: No. 87-5528, 737 P. 2d 1206; No. 87-5562, 320 N. C. 233, 357 S. E. 2d 898.

JUSTICE BRENNAN and JUSTICE MARSHALL, dissenting.

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

#### *Rehearing Denied*

No. 86-1899. POLYAK *v.* STACK ET AL., *ante*, p. 801;

No. 86-1933. HELLER *v.* CONSOLIDATED RAIL CORPORATION ET AL., *ante*, p. 824;

No. 86-2071. VERDERBER *v.* CANTELLO PLUMBING CORP., *ante*, p. 831;

No. 86-6705. BALL *v.* WHITE, WARDEN, ET AL., *ante*, p. 832;

No. 86-6907. BRUMBAUGH *v.* BRUMBAUGH, *ante*, p. 834;

No. 86-6941. BYRD *v.* MISSOURI, *ante*, p. 872;

No. 86-6982. HADDIX *v.* CITY OF DAYTON, *ante*, p. 837;

No. 86-7016. REITER *v.* CROSIER ET AL., *ante*, p. 839;

No. 86-7020. BROWN *v.* DYKE ET AL., *ante*, p. 839;

No. 86-7047. HAYWOOD *v.* MASSEY ET AL., *ante*, p. 840;

No. 86-7058. WITHERSPOON *v.* W. R. GRACE & Co., *ante*, p. 841;

No. 86-7119. LATSHAW *v.* MCA, INC., *ante*, p. 843;

No. 87-128. POSTEL *v.* TEXAS WATER DEVELOPMENT BOARD ET AL., *ante*, p. 851;

No. 87-177. QUAST *v.* QUAST, *ante*, p. 853;

No. 87-5273. NAKAGAWA *v.* COLORADO, *ante*, p. 803; and

No. 87-5435. IN RE CALLANAN, *ante*, p. 894. Petitions for rehearing denied.

November 23, 30, 1987

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NOVEMBER 23, 1987

*Dismissal Under Rule 53*

No. 87-376. LOS ANGELES MEMORIAL COLISEUM COMMISSION *v.* NATIONAL BASKETBALL ASSN. ET AL. C. A. 9th Cir. Certiorari dismissed under this Court's Rule 53. Reported below: 815 F. 2d 562.

NOVEMBER 30, 1987

*Appeals Dismissed*

No. 87-340. WYANT *v.* PENNSYLVANIA DEPARTMENT OF ENVIRONMENTAL RESOURCES ET AL. Appeal from Pa. Commw. Ct. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied.

No. 87-588. PEABODY COAL CO. *v.* STATE TAX COMMISSION OF MISSOURI ET AL. Appeal from Sup. Ct. Mo. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied. Reported below: 731 S. W. 2d 837.

No. 87-5634. WOOL *v.* RICHARDSON ET AL. Appeal from Ct. Sp. App. Md. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied.

No. 87-579. KATZ *v.* NEW YORK. Appeal from App. Term, Sup. Ct. N. Y., 1st Jud. Dept., dismissed for want of substantial federal question. Reported below: 135 Misc. 2d 857, 518 N. Y. S. 2d 721.

No. 87-625. SCHAPIRO *v.* HERITAGE MUTUAL INSURANCE CO. Appeal from Ct. App. Wis. dismissed for want of substantial federal question. Reported below: 140 Wis. 2d 868, 412 N. W. 2d 902.

No. 87-637. GREEN *v.* FRANKLIN. Appeal from Ct. App. Cal., 2d App. Dist., dismissed for want of substantial federal question.

No. 87-5596. ARMSTRONG *v.* ARMSTRONG. Appeal from Ct. App. Cal., 4th App. Dist., dismissed for want of substantial federal question.

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No. 87-5587. MURPHY *v.* AETNA LIFE & CASUALTY ET AL. Appeal from C. A. 9th Cir. dismissed for want of jurisdiction. Reported below: 815 F. 2d 714.

*Miscellaneous Orders*

No. A-342 (87-731). GLOBE NEWSPAPER CO. ET AL. *v.* KING. Sup. Jud. Ct. Mass. Motion of respondent to vacate the stay granted by JUSTICE BRENNAN denied.

No. D-650. IN RE DISBARMENT OF SLOTKIN. Disbarment entered. [For earlier order herein, see 483 U. S. 1051.]

No. D-663. IN RE DISBARMENT OF CIARDELLI. It is ordered that Victor F. Ciardelli, 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. 110, Orig. IN RE REPUBLIC OF SURINAME EX REL. BOER-ENVEEN. Motion for leave to file petition for writ of habeas corpus denied.

No. 86-1034. VIRGINIA *v.* AMERICAN BOOKSELLERS ASSN., INC., ET AL. C. A. 4th Cir. [Probable jurisdiction noted, 479 U. S. 1082.] Motion of appellant for leave to file a supplemental brief after argument granted.

No. 86-6139. WATSON *v.* FORT WORTH BANK & TRUST. C. A. 5th Cir. [Certiorari granted, 483 U. S. 1004.] Motion of Texas for leave to participate in oral argument as *amicus curiae* and for divided argument denied.

No. 87-333. DELTA AIR LINES, INC. *v.* PORT AUTHORITY OF NEW YORK AND NEW JERSEY. C. A. 2d Cir. The Solicitor General is invited to file a brief in this case expressing the views of the United States.

No. 87-5454. WRENN *v.* GOULD ET AL. C. A. 6th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied. Petitioner is allowed until December 21, 1987, within which to pay the docketing fee required by Rule 45(a) and to submit a petition in compliance with Rule 33 of the Rules of this Court.

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

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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. 87-5772. LEWIS ET AL. *v.* UNITED STATES. C. A. 6th Cir. Motion of petitioners to expedite consideration of the petition for writ of certiorari denied.

No. 87-5569. IN RE ABRAHAM; and

No. 87-5586. IN RE MCCOLLUM. Petitions for writs of mandamus denied.

No. 87-714. IN RE BRANSON. C. A. 9th Cir. Petition for writ of mandamus or certiorari denied. Reported below: 817 F. 2d 106.

*Certiorari Granted*

No. 86-2037. LANDERS *v.* NATIONAL RAILROAD PASSENGER CORPORATION ET AL. C. A. 1st Cir. Certiorari granted. Reported below: 814 F. 2d 41.

No. 87-339. CITY OF NEW YORK ET AL. *v.* FEDERAL COMMUNICATIONS COMMISSION ET AL. C. A. D. C. Cir. Certiorari granted. Reported below: 259 U. S. App. D. C. 191, 814 F. 2d 720.

No. 87-363. FEDERAL ENERGY REGULATORY COMMISSION *v.* MARTIN EXPLORATION MANAGEMENT CO. ET AL.; and

No. 87-364. PUBLIC SERVICE COMMISSION OF THE STATE OF NEW YORK ET AL. *v.* MARTIN EXPLORATION MANAGEMENT CO. ET AL. C. A. 10th Cir. Motions of Williams Natural Gas Co. and Interstate Natural Gas Association for leave to file briefs as *amici curiae* in No. 87-363 granted. Certiorari granted, cases consolidated, and a total of one hour allotted for oral argument. Reported below: 813 F. 2d 1059.

*Certiorari Denied.* (See also Nos. 87-340, 87-588, 87-5634, and 87-714, *supra.*)

No. 86-7147. MACLIN *v.* MOBILE CONSORTIUM ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 811 F. 2d 610.

No. 87-135. ENSIGN ET VIR *v.* ILLINOIS. App. Ct. Ill., 4th Dist. Certiorari denied. Reported below: 147 Ill. App. 3d 1164, 512 N. E. 2d 140.

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No. 87-222. *SILVER v. ILLINOIS*. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 151 Ill. App. 3d 156, 502 N. E. 2d 1141.

No. 87-250. *REAL, CHIEF JUDGE, UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA v. YAGMAN*. C. A. 9th Cir. Certiorari denied. Reported below: 815 F. 2d 575.

No. 87-268. *BAKER v. DEPARTMENT OF THE NAVY*. C. A. 9th Cir. Certiorari denied. Reported below: 814 F. 2d 1381.

No. 87-341. *CAMPBELL ET UX. v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 813 F. 2d 694.

No. 87-346. *FERNANDEZ v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 822 F. 2d 382.

No. 87-373. *TRANSAMERICA AIRLINES, INC. v. AIR LINE PILOTS ASSN., INTERNATIONAL*. C. A. 9th Cir. Certiorari denied. Reported below: 817 F. 2d 510.

No. 87-395. *ROE v. UNITED STATES*. C. A. D. C. Cir. Certiorari denied. Reported below: 263 U. S. App. D. C. 357, 825 F. 2d 494.

No. 87-407. *OFSHE v. UNITED STATES*. C. A. 11th Cir. Certiorari denied. Reported below: 817 F. 2d 1508.

No. 87-445. *ALLISON v. HAMILTON*. C. A. 9th Cir. Certiorari denied. Reported below: 823 F. 2d 554.

No. 87-448. *HESTER, AGENT-IN-CHARGE, WESTERN DISTRICT, TENNESSEE ALCOHOLIC BEVERAGE COMMISSION v. MCGEE, DBA THE LIQUOR CENTER*. C. A. 8th Cir. Certiorari denied. Reported below: 815 F. 2d 1193.

No. 87-455. *NAKASHIAN v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 820 F. 2d 549.

No. 87-458. *NIEVES ET AL. v. HESS OIL VIRGIN ISLANDS CORP.* C. A. 3d Cir. Certiorari denied. Reported below: 819 F. 2d 1237.

No. 87-495. *ADKINS v. SEABOARD SYSTEM RAILROAD*. C. A. 6th Cir. Certiorari denied. Reported below: 821 F. 2d 340.

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No. 87-512. *BERRY'AN v. HUGHES AIRCRAFT CO. ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 813 F. 2d 1230.

No. 87-520. *HANCICH v. GOPOIAN ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 815 F. 2d 883.

No. 87-524. *RUDOLPH v. ALABAMA.* Ct. Crim. App. Ala. Certiorari denied. Reported below: 507 So. 2d 1072.

No. 87-538. *SIMPSON ET AL. v. LOUISVILLE AND JEFFERSON COUNTY METROPOLITAN SEWER DISTRICT.* Sup. Ct. Ky. Certiorari denied. Reported below: 730 S. W. 2d 939.

No. 87-540. *GENERAL ADMINISTRATION OF CIVIL AVIATION OF THE PEOPLES REPUBLIC OF CHINA v. BARKANIC, PERSONAL REPRESENTATIVE OF THE ESTATE OF BARKANIC, ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 822 F. 2d 11.

No. 87-541. *DANBURY, INC. v. OLIVE, DIRECTOR, BUREAU OF INTERNAL REVENUE, GOVERNMENT OF THE VIRGIN ISLANDS.* C. A. 3d Cir. Certiorari denied. Reported below: 820 F. 2d 618.

No. 87-546. *UNITED AUTO WORKERS, LOCAL 422 v. TOSTI.* Sup. Jud. Ct. Mass. Certiorari denied. Reported below: 400 Mass. 224, 508 N. E. 2d 1368.

No. 87-547. *STATE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES OF KANSAS v. AMERICARE PROPERTIES, INC., DBA RUSSELL KARE CENTER ET AL.* Sup. Ct. Kan. Certiorari denied. Reported below: 241 Kan. 607, 738 P. 2d 450.

No. 87-550. *HORWITZ v. BOARD OF MEDICAL EXAMINERS OF COLORADO ET AL.* C. A. 10th Cir. Certiorari denied. Reported below: 822 F. 2d 1508.

No. 87-552. *LARY v. ANSARI ET AL.* C. A. 11th Cir. Certiorari denied. Reported below: 817 F. 2d 1521.

No. 87-556. *LEIGHTON v. UNIROYAL, INC., ET AL.* Super. Ct. N. J., App. Div. Certiorari denied. Reported below: 216 N. J. Super. 363, 523 A. 2d 1078.

No. 87-558. *HENN ET AL. v. NATIONAL GEOGRAPHIC SOCIETY.* C. A. 7th Cir. Certiorari denied. Reported below: 819 F. 2d 824.

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No. 87-561. *INSURANCE COMPANY OF NORTH AMERICA v. GLOBE TANKERS ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 820 F. 2d 546.

No. 87-568. *LOESCH v. HECK.* Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 87-569. *DAVIS v. EXXON CORP.* Ct. App. Tex., 9th Dist. Certiorari denied.

No. 87-572. *FLORIDA ET AL. v. COLEMAN ET AL.* Dist. Ct. App. Fla., 5th Dist. Certiorari denied. Reported below: 505 So. 2d 668.

No. 87-574. *DECINTIO v. WESTCHESTER COUNTY MEDICAL CENTER ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 821 F. 2d 111.

No. 87-575. *MORSE ET AL. v. THE DAILY PRESS, INC.* C. A. 4th Cir. Certiorari denied. Reported below: 826 F. 2d 1351.

No. 87-587. *SCOTT, DIRECTOR, ARKANSAS DEPARTMENT OF HUMAN SERVICES, ET AL. v. DRAKE.* C. A. 8th Cir. Certiorari denied. Reported below: 812 F. 2d 395 and 823 F. 2d 239.

No. 87-594. *LOVELACE v. ACME MARKETS, INC.* C. A. 3d Cir. Certiorari denied. Reported below: 820 F. 2d 81.

No. 87-623. *HENSLEY v. STANLEY ET AL.* C. A. 7th Cir. Certiorari denied. Reported below: 818 F. 2d 646.

No. 87-667. *SMITH v. UNITED STATES MERIT SYSTEMS PROTECTION BOARD, OFFICE OF PERSONNEL MANAGEMENT.* C. A. Fed. Cir. Certiorari denied. Reported below: 824 F. 2d 977.

No. 87-688. *ZEMSKY v. CITY OF NEW YORK ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 821 F. 2d 148.

No. 87-749. *PEACOCK v. UNITED STATES.* Ct. Mil. App. Certiorari denied. Reported below: 24 M. J. 410.

No. 87-5039. *MOORE v. UNITED STATES.* C. A. 4th Cir. Certiorari denied. Reported below: 817 F. 2d 1105.

No. 87-5137. *MCCULLUM v. MICHIGAN.* Ct. App. Mich. Certiorari denied.

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No. 87-5147. *MILLS v. UNITED STATES*. C. A. 11th Cir. Certiorari denied. Reported below: 820 F. 2d 1229.

No. 87-5179. *CALLES v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 818 F. 2d 869.

No. 87-5244. *PENA v. UNITED STATES*. C. A. 11th Cir. Certiorari denied. Reported below: 820 F. 2d 1229.

No. 87-5251. *LEE v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 817 F. 2d 268.

No. 87-5295. *JEWELL v. KASSULKE, WARDEN, ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 819 F. 2d 289.

No. 87-5316. *DAVIS v. XEROX CORP.* C. A. 9th Cir. Certiorari denied. Reported below: 811 F. 2d 1293.

No. 87-5365. *SMITH v. OREGON*. Ct. App. Ore. Certiorari denied. Reported below: 83 Ore. App. 151, 728 P. 2d 1386.

No. 87-5402. *MORENO MORALES v. UNITED STATES*. C. A. 1st Cir. Certiorari denied. Reported below: 815 F. 2d 725.

No. 87-5413. *SALVADOR v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 820 F. 2d 558.

No. 87-5440. *KELLY v. UNITED STATES*. C. A. 11th Cir. Certiorari denied. Reported below: 820 F. 2d 1173.

No. 87-5526. *MAHDAVI v. DIRECTOR, VETERANS ADMINISTRATION*. C. A. 9th Cir. Certiorari denied. Reported below: 815 F. 2d 1493.

No. 87-5545. *BAIG v. UNITED STATES IMMIGRATION AND NATURALIZATION SERVICE*. C. A. 4th Cir. Certiorari denied. Reported below: 826 F. 2d 1059.

No. 87-5573. *BURY v. CITY OF LAKELAND, FLORIDA, ET AL.* C. A. 11th Cir. Certiorari denied.

No. 87-5574. *BRUCE v. LUKE V. BELLANGER, INC.* C. A. 5th Cir. Certiorari denied. Reported below: 818 F. 2d 864.

No. 87-5576. *RIOS v. VETERANS ADMINISTRATION*. C. A. Fed. Cir. Certiorari denied. Reported below: 826 F. 2d 1072.

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No. 87-5590. *BROWN v. GEORGIA*. C. A. 11th Cir. Certiorari denied. Reported below: 828 F. 2d 774.

No. 87-5608. *IN RE KOCHER*. C. A. 4th Cir. Certiorari denied. Reported below: 829 F. 2d 35.

No. 87-5610. *WESLEY v. MICHIGAN*. Sup. Ct. Mich. Certiorari denied. Reported below: 428 Mich. 708, 411 N. W. 2d 159.

No. 87-5611. *DEL RIO v. DUGGER, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS*. C. A. 11th Cir. Certiorari denied. Reported below: 819 F. 2d 1148.

No. 87-5612. *TROTZ v. PENNSYLVANIA PUBLIC SCHOOL EMPLOYEES RETIREMENT BOARD ET AL.* C. A. 3d Cir. Certiorari denied. Reported below: 826 F. 2d 1057.

No. 87-5614. *DAVIS v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 828 F. 2d 18.

No. 87-5615. *HARPOOL v. KENTUCKY*. Ct. App. Ky. Certiorari denied.

No. 87-5622. *BOUGHER v. UNIVERSITY OF PITTSBURGH ET AL.* C. A. 3d Cir. Certiorari denied.

No. 87-5623. *EASTER v. ALLSBROOK ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 820 F. 2d 1219.

No. 87-5624. *AUGUST v. CITY OF LOS ANGELES ET AL.* C. A. 9th Cir. Certiorari denied.

No. 87-5626. *BECKER v. BURGER KING CORP.* C. A. 2d Cir. Certiorari denied. Reported below: 816 F. 2d 669.

No. 87-5629. *TRISTAN v. TEXAS*. Ct. App. Tex., 3d Dist. Certiorari denied.

No. 87-5630. *THOMAS v. NEWSOME, WARDEN*. C. A. 11th Cir. Certiorari denied. Reported below: 821 F. 2d 1550.

No. 87-5631. *SCHUETTE, AKA AGELINI v. GIESEN*. C. A. 7th Cir. Certiorari denied.

No. 87-5632. *MINGLEDOLPH v. MCKEAN, CHAIRMAN OF THE POSTAL BOARD, ET AL.* C. A. 7th Cir. Certiorari denied. Reported below: 830 F. 2d 195.

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No. 87-5633. *MOTTON v. UNION PLANTERS NATIONAL BANK*. Ct. App. Tenn. Certiorari denied.

No. 87-5637. *CHAREST v. MAINE*. Sup. Jud. Ct. Me. Certiorari denied. Reported below: 528 A. 2d 465.

No. 87-5639. *STRICKLAND v. KANSAS*. Sup. Ct. Kan. Certiorari denied. Reported below: 241 Kan. 426, 738 P. 2d 830.

No. 87-5640. *MCGLORY v. YOKA ET AL.* C. A. 3d Cir. Certiorari denied. Reported below: 829 F. 2d 31.

No. 87-5642. *JOHNSON ET AL. v. MISSISSIPPI*. Sup. Ct. Miss. Certiorari denied. Reported below: 512 So. 2d 1246.

No. 87-5643. *WILSON v. MORGAN ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 826 F. 2d 1066.

No. 87-5645. *ROSENFELD v. DUNHAM, SUPERINTENDENT, ARTHUR KILL CORRECTIONAL FACILITY*. C. A. 2d Cir. Certiorari denied. Reported below: 820 F. 2d 52.

No. 87-5649. *ZINK v. LYNAUGH, DIRECTOR, TEXAS DEPARTMENT OF CORRECTIONS*. C. A. 5th Cir. Certiorari denied.

No. 87-5663. *KENYATTA v. MUNCY, WARDEN, ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 831 F. 2d 290.

No. 87-5682. *MARTINEZ v. UNITED STATES*. C. A. 10th Cir. Certiorari denied.

No. 87-5684. *VARGAS v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 831 F. 2d 283.

No. 87-5685. *BROWN v. EVANS ET AL.* C. A. 11th Cir. Certiorari denied.

No. 87-5694. *WELLMAN v. REES, SUPERINTENDENT, KENTUCKY STATE REFORMATORY*. C. A. 6th Cir. Certiorari denied. Reported below: 819 F. 2d 290.

No. 87-5696. *JOHNSTON v. UNITED STATES*. C. A. 10th Cir. Certiorari denied.

No. 87-5704. *WALTON v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 829 F. 2d 37.

No. 87-5705. *PATTEN v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 826 F. 2d 198.

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No. 87-5710. *POWELL v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 823 F. 2d 996.

No. 87-5711. *TAYLOR v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 829 F. 2d 33.

No. 87-5718. *MINER v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 823 F. 2d 545.

No. 87-5720. *MEREDITH v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 824 F. 2d 1418.

No. 87-5727. *AYARZA-GARCIA ET AL. v. UNITED STATES*. C. A. 11th Cir. Certiorari denied. Reported below: 819 F. 2d 1043.

No. 87-5740. *COOPER v. UNITED STATES*. C. A. 8th Cir. Certiorari denied.

No. 87-5741. *JONES ET AL. v. NORTH CAROLINA*. Ct. App. N. C. Certiorari denied. Reported below: 85 N. C. App. 56, 354 S. E. 2d 251.

No. 87-5749. *SALAS v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 824 F. 2d 751.

No. 87-5756. *JONES v. UNITED STATES*. C. A. 11th Cir. Certiorari denied. Reported below: 829 F. 2d 1131.

No. 87-5759. *GIRALDO v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 822 F. 2d 205.

No. 87-5763. *HAZELTINE v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 830 F. 2d 1127.

No. 87-5780. *GIFFORD v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 827 F. 2d 773.

No. 87-571. *CITY OF LONG BEACH ET AL. v. EXXON CORP. ET AL.* Temp. Emerg. Ct. App. Petition for writ of certiorari, mandamus, and prohibition denied. Reported below: 830 F. 2d 198.

No. 87-5105. *HARPER, A MINOR, BY HER MOTHER AND NEXT FRIEND, HARPER v. BOWEN, SECRETARY OF HEALTH AND HUMAN SERVICES*. C. A. 5th Cir. Certiorari denied. JUSTICE WHITE would grant certiorari. Reported below: 813 F. 2d 737.

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No. 87-5613. *WILLIAMS v. HEVI-DUTY ELECTRIC CO.* C. A. 6th Cir. Certiorari denied. JUSTICE WHITE would grant certiorari. Reported below: 819 F. 2d 620.

No. 87-5354. *JAMES v. OKLAHOMA.* Ct. Crim. App. Okla.;  
 No. 87-5482. *CHILDS v. GEORGIA.* Sup. Ct. Ga.;  
 No. 87-5567. *BROWN v. NORTH CAROLINA.* Sup. Ct. N. C.;  
 No. 87-5568. *CARTER v. TEXAS.* Ct. Crim. App. Tex.;  
 No. 87-5607. *HALVORSEN v. KENTUCKY.* Sup. Ct. Ky.; and  
 No. 87-5688. *SNOW v. SUMNER, DIRECTOR, NEVADA DEPARTMENT OF PRISONS.* Sup. Ct. Nev. Certiorari denied. Reported below: No. 87-5354, 736 P. 2d 541; No. 87-5482, 257 Ga. 243, 357 S. E. 2d 48; No. 87-5567, 320 N. C. 179, 358 S. E. 2d 1; No. 87-5568, 717 S. W. 2d 60; No. 87-5607, 730 S. W. 2d 921; No. 87-5688, 103 Nev. 820.

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. 87-5660. *CORDEIRO v. CONNER ET AL.* Sup. Ct. Ariz. Certiorari denied. JUSTICE O'CONNOR took no part in the consideration or decision of this petition.

#### *Rehearing Denied*

No. 86-1710. *KNAPP v. ARIZONA*, *ante*, p. 816;

No. 86-1888. *MARTINELLI, INDIVIDUALLY AND AS ADMINISTRATRIX OF THE ESTATE OF MARTINELLI, ET AL. v. UNITED STATES DEPARTMENT OF THE ARMY*, *ante*, p. 822;

No. 86-1891. *HALLIWELL v. EU, SECRETARY OF STATE OF CALIFORNIA, ET AL.*, *ante*, p. 801;

No. 86-1905. *BRUMFIELD v. UNITED STATES*, *ante*, p. 822;

No. 86-1911. *CASA LINDA PRESBYTERIAN CHURCH IN AMERICA ET AL. v. GRACE UNION PRESBYTERY, INC., ET AL.*, *ante*, p. 823;

No. 86-1912. *TOTUS ET AL. v. HOLLY ET AL.*, *ante*, p. 823;

No. 86-1988. *TORRES v. STATE BOARD OF LAW EXAMINERS OF ILLINOIS*, *ante*, p. 827;

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- No. 86-2005. CASEY ET AL. *v.* TENNESSEE, *ante*, p. 828;  
No. 86-2017. HOLDING *v.* SOVRAN BANK ET AL., *ante*, p. 828;  
No. 86-2049. BAYER *v.* JOHNSON, SECRETARY OF REVENUE OF SOUTH DAKOTA, *ante*, p. 830;  
No. 86-2050. JOHNSON ET AL. *v.* COMMISSIONER OF INTERNAL REVENUE, *ante*, p. 830;  
No. 86-2066. YASUI ET AL. *v.* UNITED STATES, *ante*, p. 831;  
No. 86-6716. NEELY *v.* UNITED STATES, *ante*, p. 832;  
No. 86-6922. COMSIA *v.* MANGNONE ET AL., *ante*, p. 835;  
No. 86-6933. JEFFERSON *v.* GEORGIA, *ante*, p. 872;  
No. 86-6951. LYONS *v.* SCOTT ET AL., *ante*, p. 836;  
No. 86-6953. THOMPSON *v.* ALABAMA, *ante*, p. 872;  
No. 86-7082. MAY *v.* TEXAS, *ante*, p. 872;  
No. 86-7089. SMITH *v.* UNITED STATES, *ante*, p. 842;  
No. 86-7093. WABEKE *v.* MUTUAL HOME FEDERAL SAVINGS & LOAN ASSN. ET AL., *ante*, p. 842;  
No. 86-7138. SPIGELSKI *v.* PITTSBURGH HUMAN RELATIONS COMMISSION, *ante*, p. 844;  
No. 86-7162. JOUBERT *v.* NEBRASKA, *ante*, p. 905;  
No. 87-2. VAHLSING *v.* BANGOR & AROOSTOOK RAILROAD CO. ET AL., *ante*, p. 845;  
No. 87-9. McDONNELL DOUGLAS CORP. *v.* WORKERS' COMPENSATION APPEALS BOARD OF CALIFORNIA ET AL., *ante*, p. 845;  
No. 87-46. FONDO *v.* SHEINDLIN, INDIVIDUALLY AND AS JUDGE OF THE FAMILY COURT OF THE STATE OF NEW YORK, BRONX COUNTY, ET AL., *ante*, p. 847;  
No. 87-53. KRILETICH *v.* COMMISSION ON JUDICIAL PERFORMANCE ET AL., *ante*, p. 848;  
No. 87-91. BREWSTER *v.* MOUNT VERNON HOSPITAL ET AL., *ante*, p. 849;  
No. 87-190. MARTIN *v.* ST. JOE CONTAINER Co., *ante*, p. 853;  
No. 87-195. PENK ET AL. *v.* OREGON STATE BOARD OF HIGHER EDUCATION, *ante*, p. 853;  
No. 87-207. KERR *v.* PENNSYLVANIA, *ante*, p. 854;  
No. 87-229. KING *v.* CALIFORNIA ET AL., *ante*, p. 802;  
No. 87-288. SAMPANG *v.* MARSH ET AL., *ante*, p. 855;  
No. 87-304. LEIGHTON *v.* BEATRICE COS., INC., ET AL., *ante*, p. 898;  
No. 87-5021. EASLEY *v.* KOSCINSKI ET AL., *ante*, p. 857;  
No. 87-5023. VAN SANT *v.* ARLINGTON COUNTY, VIRGINIA, *ante*, p. 857;

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- No. 87-5062. WILLIAMS *v.* GEORGIA, *ante*, p. 803;  
 No. 87-5082. HORTON *v.* GEORGIA, *ante*, p. 905;  
 No. 87-5117. FELDE *v.* BUTLER, WARDEN, *ante*, p. 873;  
 No. 87-5151. KOST *v.* CAPITOL CORP. ET AL., *ante*, p. 863;  
 No. 87-5181. GRANT *v.* NEW YORK, *ante*, p. 864;  
 No. 87-5189. WILLIAMS *v.* UNITED STATES POSTAL SERVICE  
 ET AL., *ante*, p. 864;  
 No. 87-5191. HOWARD *v.* DAVIS ET AL., *ante*, p. 864;  
 No. 87-5212. ABRAHAM *v.* WHITE, WARDEN, *ante*, p. 915;  
 No. 87-5241. FLETCHER *v.* HOOD ET AL., *ante*, p. 899;  
 No. 87-5242. VAN SANT *v.* HUDSON ET AL., *ante*, p. 866;  
 No. 87-5258. SILAGY *v.* ILLINOIS, *ante*, p. 873;  
 No. 87-5300. TILLI *v.* SPAZIANI ET AL., *ante*, p. 900;  
 No. 87-5309. DE LA CERDA *v.* CHEMEKETA COMMUNITY COL-  
 LEGE DISTRICT ET AL., *ante*, p. 868;  
 No. 87-5318. HADDIX *v.* CITY OF DAYTON, OHIO, ET AL., *ante*,  
 p. 901;  
 No. 87-5349. MURRAY *v.* PLAUT, ADMINISTRATOR, MAXIMUM  
 SECURITY FACILITY, LORTON, VIRGINIA, *ante*, p. 902;  
 No. 87-5378. ANDREGG *v.* PACIFIC TELEPHONE & TELEGRAPH  
 CO. ET AL., *ante*, p. 909;  
 No. 87-5394. OWENS *v.* FULCOMER, *ante*, p. 916; and  
 No. 87-5396. FELTON *v.* DIXON ET AL., *ante*, p. 916. Peti-  
 tions for rehearing denied.

No. 87-40. ALLSTATE INSURANCE CO. *v.* HAWKINS ET UX.,  
*ante*, p. 874. Petition for rehearing denied. JUSTICE STEVENS  
 took no part in the consideration or decision of this petition.

No. 87-5409. MARTIN *v.* PENNSYLVANIA STATE REAL ESTATE  
 COMMISSION ET AL., *ante*, p. 908. Petition for rehearing denied.  
 JUSTICE BRENNAN took no part in the consideration or decision  
 of this petition.

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*Assignment Order*

Pursuant to the provisions of 28 U. S. C. § 42, it is ordered that  
 JUSTICE STEVENS be, and he is hereby, assigned to the Eleventh  
 Circuit as Circuit Justice, pending further order. The order of  
 September 10, 1987 [483 U. S. 1053], assigning JUSTICE O'CON-  
 NOR to the Eleventh Circuit as Circuit Justice is vacated.

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*Appeal Dismissed*

No. 87-5669. ALBERTON *v.* STATE BAR OF CALIFORNIA. Appeal from Sup. Ct. Cal. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied. Reported below: 43 Cal. 3d 638, 738 P. 2d 720.

*Certiorari Granted—Vacated and Remanded*

No. 87-635. OKLAHOMA TAX COMMISSION *v.* GRAHAM ET AL. C. A. 10th Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Caterpillar Inc. v. Williams*, 482 U. S. 386 (1987). Reported below: 822 F. 2d 951.

*Miscellaneous Orders*

No. — — —. FISHER *v.* OKLAHOMA. Motion of petitioner for leave to proceed *in forma pauperis* without an affidavit of indigency executed by the petitioner granted.

No. D-652. IN RE DISBARMENT OF CONWAY. Disbarment entered. [For earlier order herein, see 483 U. S. 1051.]

No. D-664. IN RE DISBARMENT OF WITTMACK. It is ordered that John A. Wittmack, of Hawley, Pa., be suspended from the practice of law in this Court and that a rule issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D-665. IN RE DISBARMENT OF ENRICO. It is ordered that Paul J. Enrico, of West Babylon, N. Y., be suspended from the practice of law in this Court and that a rule issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. 65, Orig. TEXAS *v.* NEW MEXICO. Report of the Special Master received and ordered filed. Exceptions to the Report, with supporting briefs, may be filed by the parties within 45 days. Replies thereto, with supporting briefs, may be filed within 30 days. [For earlier decision herein, see, *e. g.*, 482 U. S. 124.]

No. 94, Orig. SOUTH CAROLINA *v.* BAKER, SECRETARY OF THE TREASURY. Motion for compensation on behalf of the Estate of the Special Master, Samuel J. Roberts, granted. [For earlier order herein, see, *e. g.*, *ante*, p. 920.]

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No. 87-201. *MANSELL v. MANSELL*. Appeal from Ct. App. Cal., 5th App. Dist.; and

No. 87-609. *SHELL OIL CO. v. DIRECTOR OF REVENUE OF MISSOURI*. Appeal from Sup. Ct. Mo. The Solicitor General is invited to file briefs in these cases expressing the views of the United States.

No. 87-5411. *IN RE SHIBUYA*, ante, p. 922. Motion of petitioner for reconsideration of the order of this Court denying the motion for leave to proceed *in forma pauperis* denied.

No. 87-5500. *TILLER ET AL. v. NCNB BANK OF NORTH CAROLINA*. C. A. 4th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied. Petitioner is allowed until December 28, 1987, within which to pay the docketing fee required by Rule 45(a) and to submit a petition in compliance with Rule 33 of the Rules of this Court.

JUSTICE BRENNAN and JUSTICE MARSHALL, 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. 87-5648. *SHIBUYA v. VOSS ET AL.* C. A. D. C. Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied. Petitioner is allowed until December 28, 1987, within which to pay the docketing fee required by Rule 45(a) and to submit a petition in compliance with Rule 33 of the Rules of the 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. 87-5659. *TISCHIO v. NEW JERSEY*. Appeal from Sup. Ct. N. J. Motion of appellant for leave to proceed *in forma pauperis* denied. Appellant is allowed until December 28, 1987, within which to pay the docketing fee required by Rule 45(a) and to submit a statement as to jurisdiction in compliance with Rule 33 of the Rules of this Court.

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

For the reasons expressed in *Brown v. Herald Co.*, 464 U. S. 928 (1983), we would dismiss the appeal for want of substantial federal question without reaching the merits of the motion to proceed *in forma pauperis*.

No. 87-5789 (A-383). *IN RE SAFIR*. Application for injunction, addressed to JUSTICE WHITE and referred to the Court, denied. Petition for writ of mandamus denied.

*Certiorari Granted*

No. 87-354. *ARIZONA v. ROBERSON*. Ct. App. Ariz. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari granted.

No. 87-416. *UNITED STATES CATHOLIC CONFERENCE ET AL. v. ABORTION RIGHTS MOBILIZATION, INC., ET AL.* C. A. 2d Cir. Motion of National Council of Churches of Christ in the U. S. A. et al. for leave to file a brief as *amici curiae* granted. Certiorari granted. Reported below: 824 F. 2d 156.

No. 87-5367. *MILLS v. MARYLAND*. Ct. App. Md. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted. Reported below: 310 Md. 33, 527 A. 2d 3.

*Certiorari Denied.* (See also No. 87-5669, *supra*.)

No. 86-1562. *PAWTUXET COVE MARINA, INC., ET AL. v. CIBA-GEIGY CORP., INC.* C. A. 1st Cir. Certiorari denied. Reported below: 807 F. 2d 1089.

No. 86-7094. *LEON-MARTINEZ v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 815 F. 2d 1493.

No. 86-7100. *BANKS v. UNITED STATES*. Ct. App. D. C. Certiorari denied. Reported below: 516 A. 2d 524.

No. 86-7109. *DIGREGORIO v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 815 F. 2d 696.

No. 86-7143. *ALBERTINI v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 812 F. 2d 715.

No. 86-7160. *DANCY v. TEXAS*. Ct. Crim. App. Tex. Certiorari denied. Reported below: 728 S. W. 2d 772.

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No. 87-260. GENERAL DYNAMICS LAND SYSTEMS, INC. *v.* INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE & AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 259 U. S. App. D. C. 369, 815 F. 2d 1570.

No. 87-273. ST. JOHN STEVEDORING CO., INC., ET AL. *v.* WILFRED; and

No. 87-381. JONES *v.* ST. JOHN STEVEDORING CO., INC., ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 818 F. 2d 397.

No. 87-330. MARTIN-MUSUMECI *v.* CRAMER ET AL. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 87-361. SLUGOCKI ET AL. *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 816 F. 2d 1572.

No. 87-400. NUNEZ *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 819 F. 2d 1136.

No. 87-415. NORTHERN PLAINS RESOURCE COUNCIL ET AL. *v.* UNITED STATES ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 817 F. 2d 758.

No. 87-454. DOMINICAN REPUBLIC ET AL. *v.* MEADOWS, DECEASED, ET AL.; and

No. 87-634. MEADOWS, DECEASED, ET AL. *v.* DOMINICAN REPUBLIC ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 817 F. 2d 517.

No. 87-478. POPOVICH ET AL. *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 820 F. 2d 134.

No. 87-496. OVERTON *v.* UNITED STATES. Ct. Mil. App. Certiorari denied. Reported below: 24 M. J. 309.

No. 87-563. KALVANS *v.* COURT OF APPEALS OF MICHIGAN. Sup. Ct. Mich. Certiorari denied.

No. 87-564. LIGGETT GROUP, INC., ET AL. *v.* CIPOLLONE, INDIVIDUALLY AND AS EXECUTOR OF THE ESTATE OF CIPOLLONE, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 822 F. 2d 335.

No. 87-584. WEBB *v.* ARKANSAS. Ct. App. Ark. Certiorari denied. Reported below: 21 Ark. App. xx.

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No. 87-586. MAALOUF ET AL. *v.* HADDAD ET AL. C. A. 9th Cir. Certiorari denied.

No. 87-591. POLLARD *v.* REA MAGNET WIRE CO., INC. C. A. 7th Cir. Certiorari denied. Reported below: 824 F. 2d 557.

No. 87-595. DEAN WITTER REYNOLDS, INC., ET AL. *v.* WEDER-SKI. Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 87-604. McDERMOTT, INC., ET AL. *v.* SCHEXNIDER ET UX. C. A. 5th Cir. Certiorari denied. Reported below: 817 F. 2d 1159.

No. 87-617. LOONEY *v.* GRUNDY NATIONAL BANK ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 823 F. 2d 788.

No. 87-622. VALLEY LIQUORS, INC. *v.* RENFIELD IMPORTERS, LTD. C. A. 7th Cir. Certiorari denied. Reported below: 822 F. 2d 656.

No. 87-629. AMERICAN NATIONAL BANK & TRUST CO., AS TRUSTEE UNDER TRUST NUMBER 33832, ET AL. *v.* CITY OF CHICAGO ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 826 F. 2d 1547.

No. 87-631. COASTAL CORP. ET AL. *v.* APEX OIL Co.; and

No. 87-633. APEX OIL Co. *v.* DIMAURO ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 822 F. 2d 246.

No. 87-638. AUSTIN ET AL. *v.* TORRINGTON Co. C. A. 4th Cir. Certiorari denied. Reported below: 810 F. 2d 416.

No. 87-669. DAIGLE *v.* PATASCHNICK-HARRISON CONSTRUCTION Co. ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 823 F. 2d 551.

No. 87-736. GELFAND, SURROGATE JUDGE, BRONX COUNTY *v.* NEW YORK STATE COMMISSION ON JUDICIAL CONDUCT. Ct. App. N. Y. Certiorari denied. Reported below: 70 N. Y. 2d 211, 512 N. E. 2d 533.

No. 87-758. HOVATER *v.* EQUIFAX SERVICES, INC., ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 823 F. 2d 413.

No. 87-759. BURNS *v.* UNITED STATES. Ct. Mil. App. Certiorari denied. Reported below: 25 M. J. 218.

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No. 87-768. *WILLIAMS v. FORD, WARDEN*. C. A. 11th Cir. Certiorari denied. Reported below: 819 F. 2d 1149.

No. 87-5167. *DE LOS SANTOS v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 810 F. 2d 1326.

No. 87-5196. *GONZALEZ v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 819 F. 2d 1130.

No. 87-5350. *BRYANT v. NEW JERSEY*. Super. Ct. N. J., App. Div. Certiorari denied. Reported below: 217 N. J. Super. 72, 524 A. 2d 1291.

No. 87-5453. *LAWSON v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 823 F. 2d 553.

No. 87-5472. *PULEO v. UNITED STATES*. C. A. 11th Cir. Certiorari denied. Reported below: 817 F. 2d 702.

No. 87-5510. *TURNER v. CITY OF LEBANON ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 818 F. 2d 31.

No. 87-5651. *LAWRENCE v. STOKES ET AL.* C. A. 11th Cir. Certiorari denied.

No. 87-5653. *BAKER v. CHAGRIN VALLEY MEDICAL CORP. ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 817 F. 2d 756.

No. 87-5656. *BATTLE v. JONES ET AL.* C. A. 11th Cir. Certiorari denied. Reported below: 819 F. 2d 1149.

No. 87-5658. *MARQUEZ ET AL. v. TERRITORY OF GUAM*. C. A. 9th Cir. Certiorari denied. Reported below: 816 F. 2d 684.

No. 87-5665. *FREDERICK v. DUGGER, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS*. C. A. 11th Cir. Certiorari denied. Reported below: 823 F. 2d 556.

No. 87-5670. *CRESPO v. ARMONTROUT, WARDEN*. C. A. 8th Cir. Certiorari denied. Reported below: 818 F. 2d 684.

No. 87-5678. *SCOTT v. INDIANA*. Sup. Ct. Ind. Certiorari denied. Reported below: 510 N. E. 2d 170.

No. 87-5679. *WOJTALEWICZ v. SHORTRIDGE ET AL.* C. A. 8th Cir. Certiorari denied.

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No. 87-5683. *EDWARDS v. IOWA*. Sup. Ct. Iowa. Certiorari denied.

No. 87-5687. *CLEVELAND v. KUNKLE ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 825 F. 2d 406.

No. 87-5689. *RONZZO v. COTTRINGER ET AL.* C. A. 8th Cir. Certiorari denied.

No. 87-5693. *SOLOMON v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 829 F. 2d 32.

No. 87-5695. *JONES v. ROGERS, WARDEN*. C. A. 4th Cir. Certiorari denied. Reported below: 829 F. 2d 35.

No. 87-5716. *MULAZIM v. MICHIGAN DEPARTMENT OF CORRECTIONS ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 826 F. 2d 1064.

No. 87-5721. *BYNUM v. BUREAU OF PRISONS*. C. A. 11th Cir. Certiorari denied.

No. 87-5723. *VEAL v. ABBOTT, WARDEN*. C. A. 11th Cir. Certiorari denied. Reported below: 828 F. 2d 774.

No. 87-5750. *COLANGELO v. DONAHUE, SUPERINTENDENT, ALTONA CORRECTIONAL FACILITY*. C. A. 2d Cir. Certiorari denied. Reported below: 827 F. 2d 765.

No. 87-5778. *RAWLINGS v. UNITED STATES*. C. A. 11th Cir. Certiorari denied. Reported below: 821 F. 2d 1543.

No. 87-5808. *ROBLES v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 825 F. 2d 152.

No. 87-5810. *RICHARDSON v. UNITED STATES*. C. A. 10th Cir. Certiorari denied.

No. 87-5820. *GUZY v. WISCONSIN*. Sup. Ct. Wis. Certiorari denied. Reported below: 139 Wis. 2d 663, 407 N. W. 2d 548.

No. 86-1659. *CONTINENTAL CAN CO. v. GAVALIK ET AL.* C. A. 3d Cir. Certiorari denied. JUSTICE WHITE would grant certiorari. Reported below: 812 F. 2d 834.

No. 87-557. *FRESNO POLICE OFFICERS ASSN. ET AL. v. CALIFORNIA ET AL.* Ct. App. Cal., 1st App. Dist. Certiorari de-

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nied. JUSTICE WHITE would grant certiorari. Reported below: 190 Cal. App. 3d 413, 235 Cal. Rptr. 474.

No. 86-7164. MCDOWELL *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 814 F. 2d 245.

JUSTICE WHITE, with whom JUSTICE BRENNAN joins, dissenting.

In *Faretta v. California*, 422 U. S. 806 (1975), we held that an accused has a right to conduct his own defense. We also stated that, because an accused's election to do so "relinquishes, as a purely factual matter, many of the traditional benefits associated with the right to counsel," a defendant who chooses to proceed *pro se* may be allowed to do so only if he "knowingly and intelligently" [chooses to] forgo those relinquished benefits." *Id.*, at 835. We stated that an accused wishing to be tried without counsel "should be made aware of the dangers and disadvantages of self-representation, so that the record will establish that 'he knows what he is doing and his choice is made with eyes open.'" *Ibid.*

Since *Faretta*, lower federal and state courts have sought to arrive at the proper balance between allowing an accused to exercise his right of self-representation, and at the same time, insuring that a waiver of a defendant's right to counsel is only made when "knowing and intelligent" and "with eyes open." In this case, for example, after petitioner indicated to the District Court his desire to present his own defense, the trial judge conducted a short colloquy with petitioner before allowing him to proceed *pro se*. On appeal, the Court of Appeals rejected petitioner's claim that this brief exchange with the trial judge was insufficient to establish that he had "knowingly and intelligently" waived his Sixth Amendment right to counsel. The Sixth Circuit concluded that "a fair reading of the record as a whole" established that petitioner elected to represent himself with "eyes open"; therefore it affirmed petitioner's conviction. 814 F. 2d 245, 249 (1987). The Court of Appeals, however, in the exercise of its supervisory powers, required district judges in the future to conduct a more detailed inquiry of a defendant—based on the model offered at 1 Bench Book for United States District Judges §§ 1.02-2-1.02-5 (3d ed. 1986)—before allowing an accused to waive his right to counsel, as this petitioner had. 814 F. 2d, at 250-251.

In reaching this decision, the Sixth Circuit followed the approach taken by the District of Columbia Circuit in *United States v. Bailey*, 219 U. S. App. D. C. 67, 75-76, 675 F. 2d 1292, 1300-

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1301, cert. denied, 459 U. S. 853 (1982). It also rejected the position of the Third Circuit, which had reversed a conviction on facts similar to these, by interpreting *Faretta* to require a "searching inquiry" with an accused before allowing him to conduct his own defense. *United States v. Welty*, 674 F. 2d 185, 188-189 (1982); accord, *Piankhy v. Cuyler*, 703 F. 2d 728, 730-731 (CA3 1983). Two other Courts of Appeals have likewise read our decision in *Faretta* as requiring that a trial judge conduct a special "hearing to ensure that the accused understands the dangers and disadvantages of proceeding *pro se*." *United States v. Edwards*, 716 F. 2d 822, 824 (CA11 1983); accord, *United States v. Chaney*, 662 F. 2d 1148, 1152 (CA5 1981).

By contrast, four Courts of Appeals have taken the position that no specific inquiries or special hearings must be conducted before an accused's exercise of his *Faretta* rights will be considered "knowing and intelligent." *United States v. Hafen*, 726 F. 2d 21, 26 (CA1), cert. denied, 466 U. S. 962 (1984); *United States v. Kimmel*, 672 F. 2d 720, 721-722 (CA9 1982); *United States v. Trapnell*, 638 F. 2d 1016, 1029 (CA7 1980); *United States v. Tompkins*, 623 F. 2d 824, 828-829 (CA2 1980). This conflict among the Courts of Appeals has now gained the attention of, and been a source of confusion to, the state courts as well. See, *e. g.*, *State v. Christensen*, 40 Wash. App. 290, 292-297, 698 P. 2d 1069, 1071-1073 (1985) (discussing the varying applications of *Faretta*).

Because a conflict among the lower courts has emerged concerning the proper application and interpretation of our decision in *Faretta*, I would grant certiorari and address the question presented by this petition.

No. 87-615. *DETSEL, AN INFANT, BY HER MOTHER AND NEXT FRIEND, DETSEL v. BOARD OF EDUCATION OF THE AUBURN ENLARGED CITY SCHOOL DISTRICT ET AL.* C. A. 2d Cir. Motion of Advocacy Inc. et al. for leave to file a brief as *amici curiae* granted. Certiorari denied. Reported below: 820 F. 2d 587.

No. 87-618. *MEDICAL INC. v. REGENTS OF THE UNIVERSITY OF MINNESOTA.* Ct. App. Minn. Certiorari denied. JUSTICE BLACKMUN took no part in the consideration or decision of this petition. Reported below: 405 N. W. 2d 474.

No. 87-648. *PENNSYLVANIA v. CEPHAS.* Super. Ct. Pa. Motion of respondent for leave to proceed *in forma pauperis*

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granted. Certiorari denied. Reported below: 361 Pa. Super. 160, 522 A. 2d 63.

No. 87-5628. *WILLOUGHBY v. KENTUCKY*. Sup. Ct. Ky.; and No. 87-5692. *OWENS v. SOUTH CAROLINA*. Sup. Ct. S. C. Certiorari denied. Reported below: No. 87-5628, 730 S. W. 2d 921; No. 87-5692, 293 S. C. 161, 359 S. E. 2d 275.

JUSTICE BRENNAN and JUSTICE MARSHALL, dissenting.

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

#### *Rehearing Denied*

No. 86-6923. *BROWN v. DODD, SHERIFF, ante*, p. 874;

No. 87-75. *COMMISSIONER OF INTERNAL REVENUE v. MCCOY, EXECUTOR OF THE ESTATE OF MCCOY, ante*, p. 3;

No. 87-406. *GRACEY v. UNITED STATES, ante*, p. 914;

No. 87-5141. *ESPENSHADE v. PENNSYLVANIA STATE UNIVERSITY ET AL., ante*, p. 862; and

No. 87-5387. *WALL v. PENNSYLVANIA, ante*, p. 916. Petitions for rehearing denied.

No. 87-5426. *SCHASTOK v. TIME INC., ante*, p. 902. Motion for leave to file petition for rehearing denied.

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*Miscellaneous Order.* (For the Court's order amending Rule 35.3 of the Rules of this Court, see *post*, p. 1085.)

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#### *Appeals Dismissed*

No. 87-639. *PERATI v. BUELL ET AL.* Appeal from Ct. App. Cal., 1st App. Dist., dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied.

No. 87-5698. *ECKERT v. UNITED STATES.* Appeal from C. A. 8th Cir. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied.

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No. 87-658. ROSS ET UX. *v.* CITY OF ROLLING HILLS ESTATES ET AL. Appeal from Ct. App. Cal., 2d App. Dist., dismissed for want of a properly presented federal question. Reported below: 192 Cal. App. 3d 370, 238 Cal. Rptr. 561.

*Certiorari Granted—Vacated and Remanded*

No. 87-583. UNITED PAPERWORKERS INTERNATIONAL UNION, AFL-CIO, LOCAL NO. 1069 *v.* S. D. WARREN CO., A DIVISION OF SCOTT PAPER CO. C. A. 1st Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Paperworkers v. Misco, Inc.*, *ante*, p. 29. Reported below: 815 F. 2d 178.

*Miscellaneous Orders*

No. 85-1765. BANKERS LIFE & CASUALTY CO. *v.* CRENSHAW. Sup. Ct. Miss. [Probable jurisdiction noted, 480 U. S. 915.] Conditional motion of appellee for leave to file a supplemental brief after argument granted. JUSTICE STEVENS took no part in the consideration or decision of this motion.

No. 86-1052. VOLKSWAGENWERK AKTIENGESELLSCHAFT *v.* SCHLUNK, ADMINISTRATOR OF THE ESTATES OF SCHLUNK ET AL. App. Ct. Ill., 1st Dist. [Certiorari granted, *ante*, p. 895.] Motion of petitioner to dispense with printing the joint appendix granted.

No. 86-1406. PUERTO RICO DEPARTMENT OF CONSUMER AFFAIRS ET AL. *v.* ISLA PETROLEUM CORP. ET AL. Temp. Emerg. Ct. App. [Certiorari granted, *ante*, p. 814.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted. JUSTICE O'CONNOR took no part in the consideration or decision of this motion.

No. 86-1743. MONESSEN SOUTHWESTERN RAILWAY CO. *v.* MORGAN. Sup. Ct. Pa. [Probable jurisdiction noted, *ante*, p. 813.] Motion of Association of American Railroads for leave to file a brief as *amicus curiae* granted.

No. 87-65. UNITED STATES *v.* PROVIDENCE JOURNAL CO. ET AL. C. A. 1st Cir. [Certiorari granted, *ante*, p. 814.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument denied.

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No. 87-323. *SOKOLOV v. UNITED STATES*. C. A. 2d Cir. Motion of petitioner to defer consideration of the petition for writ of certiorari granted.

No. 87-329. *THE FLORIDA STAR v. B. J. F.* Appeal from Dist. Ct. App. Fla., 1st Dist. Because this appeal involves a question of law of the State of Florida which is determinative of this cause and for which there is no controlling precedent of the Supreme Court of Florida, this Court, pursuant to Article V, Section 3(b)(6) of the Florida Constitution, certifies to the Supreme Court of Florida and respectfully requests that court to answer, the following question: "Whether the Florida Supreme Court had jurisdiction, pursuant to Article V, Section 3(b)(3) of the Florida Constitution or otherwise, to hear appellant's appeal in this cause from the Florida First District Court of Appeal?" It is further ordered that the Clerk of this Court shall transmit to the Supreme Court of Florida certified copies of this order and the briefs filed in this Court in this matter. And it is further ordered that this Court shall retain jurisdiction of this matter and that the proceedings in this Court shall be held in abeyance until further order of this Court.

No. 87-636. *KARAHALIOS v. NATIONAL FEDERATION OF FEDERAL EMPLOYEES, LOCAL 1263*. C. A. 9th Cir.; and

No. 87-652. *ALBERTA GAS CHEMICALS LTD. ET AL. v. E. I. DU PONT DE NEMOURS & CO. ET AL.* C. A. 3d Cir. The Solicitor General is invited to file briefs in these cases expressing the views of the United States.

No. 87-5565. *CLARK v. JETER*. Super. Ct. Pa. Motion of Women's Legal Defense Fund for leave to file a brief as *amicus curiae* granted.

*Probable Jurisdiction Noted*

No. 87-654. *NEW ENERGY COMPANY OF INDIANA v. LIMBACH, TAX COMMISSIONER OF OHIO, ET AL.* Appeal from Sup. Ct. Ohio. Probable jurisdiction noted. Reported below: 32 Ohio St. 3d 206, 513 N. E. 2d 258.

*Certiorari Granted*

No. 87-59. *UNITED STATES POSTAL SERVICE v. NATIONAL ASSOCIATION OF LETTER CARRIERS, AFL-CIO*. C. A. D. C. Cir. Certiorari granted limited to Question 2 presented by the

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petition. Reported below: 258 U. S. App. D. C. 260, 810 F. 2d 1239.

No. 87-499. *CHRISTIANSON ET AL. v. COLT INDUSTRIES OPERATING CORP.* C. A. Fed. Cir. Certiorari granted limited to Question 1 presented by the petition. In addition to this question, the parties are directed to brief and argue the following question: "Did the United States Court of Appeals for the Federal Circuit have jurisdiction of the appeal from the District Court judgment entered on July 19, 1985?" Reported below: 822 F. 2d 1544.

*Certiorari Denied.* (See also Nos. 87-639 and 87-5698, *supra.*)

No. 86-431. *BEVLES CO., INC. v. TEAMSTERS LOCAL 986.* C. A. 9th Cir. Certiorari denied. Reported below: 791 F. 2d 1391.

No. 86-1380. *ARKANSAS PUBLIC SERVICE COMMISSION ET AL. v. FEDERAL ENERGY REGULATORY COMMISSION ET AL.;*

No. 86-1424. *ARKANSAS POWER & LIGHT CO. v. FEDERAL ENERGY REGULATORY COMMISSION ET AL.;* and

No. 87-469. *REYNOLDS METALS CO. ET AL. v. FEDERAL ENERGY REGULATORY COMMISSION ET AL.* C. A. D. C. Cir. Certiorari denied. Reported below: Nos. 86-1380 and 86-1424, 257 U. S. App. D. C. 244, 808 F. 2d 1525; No. 87-469, 257 U. S. App. D. C. 244, 808 F. 2d 1525, and 262 U. S. App. D. C. 42, 822 F. 2d 1104.

No. 86-7032. *WASHINGTON v. DEPARTMENT OF THE ARMY.* C. A. Fed. Cir. Certiorari denied. Reported below: 813 F. 2d 390.

No. 87-131. *SIERRA CLUB v. SHELL OIL CO. ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 817 F. 2d 1169.

No. 87-312. *DUNCAN v. CALIFORNIA.* Ct. App. Cal., 2d App. Dist. Certiorari denied. Reported below: 189 Cal. App. 3d 1348, 234 Cal. Rptr. 877.

No. 87-425. *LONGIOTTI ET AL. v. UNITED STATES.* C. A. 4th Cir. Certiorari denied. Reported below: 819 F. 2d 65.

No. 87-632. *CALLAHAN ET VIR v. SOUTH CENTRAL BELL TELEPHONE CO.* C. A. 5th Cir. Certiorari denied. Reported below: 826 F. 2d 10.

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No. 87-641. *SOBCZYK v. AETNA CASUALTY & SURETY CO. ET AL.* Ct. App. Wis. Certiorari denied. Reported below: 140 Wis. 2d 862, 411 N. W. 2d 428.

No. 87-657. *FOWLER v. BOARD OF EDUCATION OF LINCOLN COUNTY, KENTUCKY, ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 819 F. 2d 657.

No. 87-659. *HAMMOND v. UNITED STATES.* C. A. 8th Cir. Certiorari denied. Reported below: 821 F. 2d 473.

No. 87-663. *GREENWALD v. FLORIDA.* Dist. Ct. App. Fla., 3d Dist. Certiorari denied. Reported below: 501 So. 2d 740.

No. 87-664. *RAMMING v. NEW MEXICO.* Ct. App. N. M. Certiorari denied. Reported below: 106 N. M. 42, 738 P. 2d 914.

No. 87-665. *LYNAUGH, DIRECTOR, TEXAS DEPARTMENT OF CORRECTIONS v. YOUNG.* C. A. 5th Cir. Certiorari denied. Reported below: 821 F. 2d 1133.

No. 87-666. *WHEELER v. MAIN HURDMAN.* C. A. 10th Cir. Certiorari denied. Reported below: 825 F. 2d 257.

No. 87-672. *FOXGORD, INDIVIDUALLY AND AS TRUSTEE OF THE FOXGORD TRUST, ET UX. v. HISCHEMOELLER.* C. A. 9th Cir. Certiorari denied. Reported below: 820 F. 2d 1030.

No. 87-673. *ST. HILAIRE v. INTERNATIONAL PAPER REALTY CORP.* (two cases). Sup. Jud. Ct. Me. Certiorari denied. Reported below: 528 A. 2d 446 (first case); 525 A. 2d 1035 (second case).

No. 87-674. *MIHALEK CORP. ET AL. v. MICHIGAN ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 814 F. 2d 290.

No. 87-678. *STALLCOP v. KAISER PERMANENTE ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 820 F. 2d 1044.

No. 87-684. *GILL v. ALABAMA.* Ct. Crim. App. Ala. Certiorari denied. Reported below: 497 So. 2d 856.

No. 87-685. *CITY OF PAGEDALE, MISSOURI v. HARRIS ET AL.* C. A. 8th Cir. Certiorari denied. Reported below: 821 F. 2d 499.

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No. 87-691. *GALARDI v. LERNER*. C. A. 9th Cir. Certiorari denied.

No. 87-708. *HOLIFIELD v. ALABAMA*. Ct. Crim. App. Ala. Certiorari denied. Reported below: 511 So. 2d 275.

No. 87-757. *IN RE STURMAN*. C. A. 6th Cir. Certiorari denied.

No. 87-760. *KONG ET UX. v. HAWAIIAN MARINE LINES, INC., ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 823 F. 2d 1552.

No. 87-770. *SUAREZ v. UNITED STATES*. C. A. 11th Cir. Certiorari denied. Reported below: 820 F. 2d 1158.

No. 87-774. *AGUIAR, AKA WOODS v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 825 F. 2d 39.

No. 87-808. *FLETCHER ET AL. v. ESTATE OF CHRIST*. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 508 So. 2d 1239.

No. 87-5230. *NELSON v. UNITED STATES*;

No. 87-5621. *KILLIP v. UNITED STATES*; and

No. 87-5635. *KROUT v. UNITED STATES*. C. A. 10th Cir. Certiorari denied. Reported below: 819 F. 2d 1542.

No. 87-5233. *JACKSON v. UNITED STATES*. Ct. App. D. C. Certiorari denied.

No. 87-5369. *TINSLEY v. MURRAY, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS*. Sup. Ct. Va. Certiorari denied.

No. 87-5388. *PENNON v. UNITED STATES*. C. A. 10th Cir. Certiorari denied. Reported below: 816 F. 2d 527.

No. 87-5431. *WICKER v. SOUTH CAROLINA*. C. A. 4th Cir. Certiorari denied. Reported below: 818 F. 2d 862.

No. 87-5524. *ORELLANA v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 809 F. 2d 1072.

No. 87-5534. *HARPER v. ALABAMA STATE DEPARTMENT OF HUMAN RESOURCES ET AL.* C. A. 11th Cir. Certiorari denied.

No. 87-5537. *GROSSHANS v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 821 F. 2d 1247.

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No. 87-5680. *WINFIELD v. UNITED STATES*. C. A. 11th Cir. Certiorari denied.

No. 87-5691. *WARE v. KERBY, WARDEN, ET AL.* C. A. 10th Cir. Certiorari denied.

No. 87-5700. *BAILEY v. PRINCE GEORGE'S COUNTY, MARYLAND, ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 829 F. 2d 34.

No. 87-5701. *BAILEY v. STATE'S ATTORNEY FOR PRINCE GEORGE'S COUNTY*. C. A. 4th Cir. Certiorari denied. Reported below: 829 F. 2d 1119.

No. 87-5702. *WASHINGTON v. MAKOWSKI*. C. A. 10th Cir. Certiorari denied.

No. 87-5706. *MONDRAGON v. NEW MEXICO*. Ct. App. N. M. Certiorari denied.

No. 87-5707. *ROGERS v. KOEHLER, WARDEN*. C. A. 6th Cir. Certiorari denied. Reported below: 821 F. 2d 649.

No. 87-5708. *BENOIT v. CITY POLICE DEPARTMENT OF CROWLEY, LOUISIANA, ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 826 F. 2d 10.

No. 87-5709. *JONES v. CITY OF ST. LOUIS ET AL.* C. A. 8th Cir. Certiorari denied.

No. 87-5714. *TOTH v. AMERICAN GREETINGS CORP.* C. A. 6th Cir. Certiorari denied. Reported below: 811 F. 2d 608.

No. 87-5719. *PAYNE v. LEFEVRE, SUPERINTENDENT, CLINTON CORRECTIONAL FACILITY*. C. A. 2d Cir. Certiorari denied. Reported below: 825 F. 2d 702.

No. 87-5725. *HIGGINS v. WYOMING WORKERS' COMPENSATION DIVISION ET AL.* Sup. Ct. Wyo. Certiorari denied. Reported below: 739 P. 2d 129.

No. 87-5728. *LEPISCOPO v. WIHL*. C. A. 10th Cir. Certiorari denied.

No. 87-5730. *DAVIS v. JABE*. C. A. 6th Cir. Certiorari denied. Reported below: 824 F. 2d 483.

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No. 87-5733. *NOLL v. BLEVINS, WARDEN*. C. A. 8th Cir. Certiorari denied. Reported below: 831 F. 2d 300.

No. 87-5738. *WOOLUM v. PARKE, WARDEN*. C. A. 6th Cir. Certiorari denied. Reported below: 820 F. 2d 1226.

No. 87-5747. *TELEPO v. NEW JERSEY ET AL.* Super. Ct. N. J., App. Div. Certiorari denied.

No. 87-5758. *BILLET v. AMERICAN FAMILY PUBLISHERS ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 822 F. 2d 61.

No. 87-5800. *BERTON v. UNITED STATES*. Ct. App. D. C. Certiorari denied.

No. 87-5802. *HESTER v. KENTUCKY*. Sup. Ct. Ky. Certiorari denied. Reported below: 734 S. W. 2d 457.

No. 87-5812. *ROAN v. UNITED STATES*. C. A. 11th Cir. Certiorari denied. Reported below: 811 F. 2d 610.

No. 87-5822. *LATORRE v. UNITED STATES*. C. A. 1st Cir. Certiorari denied. Reported below: 825 F. 2d 572.

No. 87-5832. *PAGE v. UNITED STATES*. C. A. 10th Cir. Certiorari denied. Reported below: 828 F. 2d 1476.

No. 87-5845. *FINOCCHIARO v. UNITED STATES*. C. A. 1st Cir. Certiorari denied. Reported below: 823 F. 2d 542.

No. 87-5870. *SIMMONS v. TUDOR ENGINEERING CO.* C. A. 9th Cir. Certiorari denied. Reported below: 829 F. 2d 41.

No. 87-246. *L. E. MYERS CO., HIGH VOLTAGE DIVISION, ET AL. v. SECRETARY OF LABOR*. C. A. 6th Cir. Certiorari denied. Reported below: 818 F. 2d 1270.

JUSTICE WHITE, with whom JUSTICE O'CONNOR joins, dissenting.

The issue in this case is upon which party in an Occupational Safety and Health Administration (OSHA) enforcement action does the burden of proving that a workplace accident was the result of unforeseeable employee misconduct fall. The Court of Appeals for the Sixth Circuit held that the issue of unforeseeable employee misconduct is an affirmative defense: once the Government establishes a prima facie case of an employer's failure to im-

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plement an effective safety program, then the employer has the burden of proving that the violation was caused by unforeseeable employee misconduct rather than inadequacies in the enforcement of its safety program. *Brock v. L. E. Myers Co., High Voltage Div.*, 818 F. 2d 1270 (1987). In so holding, the court agreed with the position of the Eighth Circuit, *Danco Construction Co. v. OSHRC*, 586 F. 2d 1243 (1978), but reinforced the already confusing patchwork of conflicting approaches to this issue. In contrast to this position, some Circuits have held that the employer bears the burden of proving that it has implemented workplace safety rules that are effectively enforced, without imposing an initial evidentiary burden on the Government with respect to this defense. *H. B. Zachry Co. v. OSHRC*, 638 F. 2d 812 (CA5 1981); *General Dynamics Corp., Quincy Shipbuilding Div. v. OSHRC*, 599 F. 2d 453 (CA1 1979). Other Courts of Appeals place upon the Government the burden of proving that the accident was not the result of unforeseeable employee misconduct. *Pennsylvania Power & Light Co. v. OSHRC*, 737 F. 2d 350 (CA3 1984); *Capital Electric Line Builders of Kansas, Inc. v. Marshall*, 678 F. 2d 128 (CA10 1982); *Ocean Electric Corp. v. Secretary of Labor*, 594 F. 2d 396 (CA4 1979); *Brennan v. OSHRC*, 511 F. 2d 1139 (CA9 1975). This conflict among the Circuits shows no signs of abating and the issue is central to OSHA's enforcement efforts; accordingly, I would grant certiorari.

No. 87-607. *WEBB, SECRETARY OF THE NAVY v. MALDONADO*. C. A. 9th Cir. Certiorari denied. Reported below: 811 F. 2d 1341.

JUSTICE WHITE, dissenting.

In *Blum v. Stenson*, 465 U. S. 886 (1984), the Court defined what constitutes a "reasonable attorney's fee" under 42 U. S. C. § 1988 for salaried attorneys employed by legal aid organizations. We held that the fee awards of such attorneys must be calculated on the basis of the prevailing community rate for similar services by attorneys of comparable skill, experience, and reputation. *Id.*, at 895-896, and n. 11. We did not decide whether the fee awards of private attorneys with an established billing rate must be calculated in the same manner.

Here, the Court of Appeals for the Ninth Circuit upheld an attorney's fee award under 42 U. S. C. § 2000e-5(k) based on an hourly rate that was consistent with the prevailing market rate

but that substantially exceeded counsel's own customary billing rate. *Maldonado v. Lehman*, 811 F. 2d 1341 (1987). The court expressly rejected the approach adopted by the Court of Appeals for the District of Columbia Circuit in *Laffey v. Northwest Airlines, Inc.*, 241 U. S. App. D. C. 11, 746 F. 2d 4 (1984), cert. denied, 472 U. S. 1021 (1985), which held that an attorney's customary billing rate must be used in calculating a fee award so long as that rate is not unusually high or low.

It is true that the District of Columbia Circuit recently granted rehearing en banc in *Save Our Cumberland Mountains, Inc. v. Hodel*, 263 U. S. App. D. C. 409, 826 F. 2d 43 (1987), for the purpose of deciding whether *Laffey* ought to be reconsidered. The *Cumberland Mountains* case has been held in abeyance, however, pending the resolution of the petition for certiorari in this case. Hence, the conflict persists between the Ninth Circuit's decision in this case and the District of Columbia Circuit's decision in *Laffey*. It cannot be said with any certainty that the latter court will decide to overrule *Laffey* in whole or in part.

In addition, there is some tension between the Ninth Circuit's definition of a "reasonable" fee and other courts' definition of the term as "a fee large enough to induce competent counsel to handle the plaintiff's case, but no larger." *Lenard v. Argento*, 808 F. 2d 1242, 1247 (CA7 1987). See also *Coulter v. Tennessee*, 805 F. 2d 146, 148-149 (CA6 1986) ("Congress did not intend that lawyers . . . receive excess compensation or incentives beyond the amount necessary to cause competent legal work to be performed"), cert. denied, 482 U. S. 914 (1987). It is at least arguable that an attorney will have sufficient incentive to accept a case so long as he receives the same fee from suing the government as he would receive from suing a private party.

Finally, the question of what constitutes a "reasonable" fee for an attorney with an established billing rate is likely to arise in other circuits. The Court has previously observed that more than 100 federal statutes provide for an award of attorney's fees to the prevailing party, and that "the benchmark for the awards under nearly all of these statutes is that the attorney's fee must be 'reasonable.'" *Pennsylvania v. Delaware Valley Citizens' Council for Clean Air*, 478 U. S. 546, 562 (1986). Hence, since fee awards under all statutes that provide for "reasonable" attorney's fees are calculated in a similar manner, the petition raises an issue of considerable practical importance.

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Because a conflict has arisen between two Courts of Appeals concerning the calculation of a "reasonable" fee for attorneys with established billing rates, I would grant certiorari and address the question presented by this petition.

No. 87-697. *ROTHENBERG v. AMALGAMATED SUGAR CO. ET AL.* C. A. 2d Cir. Certiorari denied. JUSTICE WHITE took no part in the consideration or decision of this petition. Reported below: 825 F. 2d 634.

No. 87-791. *ELORTEGUI ET AL. v. UNITED STATES.* C. A. 11th Cir. Certiorari denied. JUSTICE WHITE would grant certiorari. Reported below: 827 F. 2d 774.

#### *Rehearing Denied*

No. 86-7015. *PERRY v. LOUISIANA*, *ante*, p. 872;

No. 87-405. *IN RE YEE*, *ante*, p. 923;

No. 87-5441. *LUTTRELL ET AL. v. MARTINEZ, GOVERNOR OF FLORIDA, ET AL.*, *ante*, p. 930;

No. 87-5506. *HORTON v. TRAMMELL ET AL.*, *ante*, p. 946; and

No. 87-5619. *BUSSEY v. LEVY, FERGUSON & GRADY ET AL.*, *ante*, p. 933. Petitions for rehearing denied.

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#### *Miscellaneous Order*

No. A-527. *STREETMAN v. LYNNAUGH, 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 BLACKMUN and JUSTICE STEVENS would grant the application.

JUSTICE BRENNAN, with whom JUSTICE MARSHALL joins, dissenting.

Adhering to my view that the death penalty is in all circumstances cruel and unusual punishment prohibited by the Eighth and Fourteenth Amendments, *Gregg v. Georgia*, 428 U. S. 153, 227 (1976), I would grant the application for a stay and vacate the death sentence in this case. Even if I did not hold this view, for the reasons stated below I still would be compelled to vote to overturn this sentence.

#### I

Streetman was convicted in Texas of murder and sentenced by a jury to die. Pursuant to Texas law, Tex. Code Crim. Proc. Ann.,

Art. 37.071(b) (Vernon 1981 and Supp. 1988), the jury was told that if they answered "yes" to two special questions, Streetman would automatically be sentenced to death.

The first question asked "whether the evidence established beyond a reasonable doubt that the murder of the deceased was committed deliberately and with the reasonable expectation that the death of the deceased or another would result." As JUSTICE BLACKMUN has observed, an affirmative answer to this question is generally a foregone conclusion because intent is usually an element of the underlying crime of capital murder. *Barefoot v. Estelle*, 463 U. S. 880, 916-917, and n. 1 (1983) (dissenting opinion). Thus, Streetman's life hinged on the second question: "whether there is a probability that the defendant would commit criminal acts of violence that would constitute a continuing threat to society."

The jury returned with their answers: "Yes" to both questions. The sentence was accordingly fixed at death, and the Texas Court of Criminal Appeals affirmed the judgment. 698 S. W. 2d 132 (1985). Streetman's first state and federal habeas corpus petitions (raising issues unrelated to the issue discussed below) were denied. 634 F. Supp. 290 (ED Tex. 1986); 812 F. 2d 950 (CA5 1987); 818 F. 2d 865 (CA5 1987). He then filed a second state habeas corpus petition in the state court calling into question, *inter alia*, the constitutionality of the Texas death penalty scheme's treatment of mitigating evidence. The petition was denied in state court, and the subsequent second federal habeas corpus petition was denied by the District Court and the Court of Appeals. 674 F. Supp. 229; 835 F. 2d 1519; 835 F. 2d 1521 (1988). This application for a stay followed.

## II

In 1976, this Court approved generally the Texas death penalty scheme. *Jurek v. Texas*, 428 U. S. 262 (1976). In the course of its analysis, the Court considered the treatment of mitigating evidence during the sentencing phase. The joint opinion announcing the judgment found that the Texas courts had construed the second special question "so as to allow a defendant to bring to the jury's attention whatever mitigating circumstances he may be able to show." *Id.*, at 272 (opinion of Stewart, Powell, and STEVENS, JJ.).

In *Lockett v. Ohio*, 438 U. S. 586, 604 (1978), the plurality held that "the Eighth and Fourteenth Amendments require that the sentencer . . . not be precluded from considering, as a *mitigating factor*, any aspect of a defendant's character or record and any of the circumstances of the offense that the defendant proffers as a basis for a sentence less than death." *Ibid.* (opinion of Burger, C. J.). The Court has applied and explained *Lockett* in the nine years since it was announced. In *Eddings v. Oklahoma*, 455 U. S. 104 (1982), the Court applied *Lockett* to strike a state statute that precluded the sentencer from considering certain relevant mitigating evidence, in support of mitigating factors. Later, in *Skipper v. South Carolina*, 476 U. S. 1 (1986), the Court expressly stated that the sentencer must be given *all* mitigating evidence, defined as any evidence that "might serve 'as a basis for a sentence less than death.'" *Id.*, at 5 (quoting *Lockett, supra*, at 604).

This line of cases culminated last term in *Hitchcock v. Dugger*, 481 U. S. 393 (1987). That unanimous opinion began "[w]e have held that in capital cases, 'the sentencer' may not refuse to consider or 'be precluded from considering' any relevant mitigating evidence." *Id.*, at 394 (quoting *Skipper, supra*, at 4, in turn quoting *Eddings, supra*, at 110). In considering the validity of a Florida death sentence, the Court concluded that "it could not be clearer that the advisory jury was instructed not to consider, and the sentencing judge refused to consider, evidence of non-statutory mitigating circumstances, and that the proceedings therefore did not comport with the requirements of *Skipper* . . . , *Eddings* . . . , and *Lockett* . . . ." 481 U. S., at 399.

From these cases it is clear that *all* relevant mitigating evidence must be available for consideration by the sentencer. The reasons underlying this firmly established rule lie in the unique nature of the death penalty. "[D]eath is a 'punishment different from all other sanctions,' . . . and . . . therefore the considerations that inform the sentencing decision may be different from those that might be relevant to other liability or punishment determinations." *Booth v. Maryland*, 482 U. S. 496, 509, n. 12 (1987) (quoting *Woodson v. North Carolina*, 428 U. S. 280, 303-304, 305 (1976) (plurality opinion of Stewart, Powell, and STEVENS, JJ.)). To this end, mitigating evidence that might be excludable in noncapital-sentencing procedures may be crucial in a capital case.

In *Sumner v. Shuman*, 483 U. S. 66 (1987), this Court held categorically that mandatory death sentences are unconstitutional, a determination foreshadowed by *Woodson, supra*. These cases recognize that a sentencer cannot make a judgment based on the facts of the particular case without all relevant mitigating evidence, *Sumner, supra*, at 75-76, and n. 5. Although disallowing such evidence would produce uniformity of sentences, the Court has "recognize[d] that a consistency produced by ignoring individual differences is a false consistency." *Eddings, supra*, at 112. This "false consistency" is a natural consequence of the unadorned jury instructions given under Texas law.

In the instant case, the record discloses that Streetman has had a history of mental illness, stemming from an injury incurred while he was in the fifth grade, a circumstance that in every other jurisdiction would be considered mitigating. Yet the jury that sentenced him to die could draw but one inference from this evidence: Streetman posed a substantial threat of future dangerousness. Streetman complains that in Texas, evidence that could evoke feelings of sympathy or convince a jury that the defendant is not culpable enough to deserve death is perversely transformed into a factor militating solely in favor of death, in violation of *Lockett, supra*, and its progeny. Indeed, without an instruction informing the jury that the second special question is far broader than its words imply, he was faced with a true dilemma: introduce the evidence and run the risk that the jury will use it to answer affirmatively the second special question, or exclude the evidence entirely. We have already granted certiorari to consider this very question: "whether the jury must be instructed on the effect of mitigating evidence under the Texas capital punishment scheme." *Franklin v. Lynaugh, ante*, p. 891. Nonetheless, the Court today refuses to stay Streetman's execution.

### III

Streetman, in his application for stay raises precisely the question we agreed to consider in *Franklin*. Despite the fact that there were sufficient votes on this Court to hold Streetman's case for *Franklin*, there were not enough votes to grant Streetman's application for a stay. Had Streetman been convicted of bank robbery, this would be of no moment. The Court would simply hold Streetman's case until *Franklin* was decided, and then take appropriate action. But death is different. Due to the unique

nature of the penalty, the relief that we could give any other type of habeas corpus petitioner is unavailable to Streetman. His case will be moot long before we can resolve *Franklin*—he will be dead. Therefore, we are presented with the same ironic situation as occurred in *Watson v. Butler*, 483 U. S. 1037 (1987), in which the normal and time-tested procedures of this Court are overcome by the different nature of the death penalty. Death is certainly different, but I had never believed it to be different in this way.

#### IV

The courts below have held that Streetman's habeas corpus petition does not actually raise the question presented in *Franklin* because he failed to preserve the issue at his trial, I suppose by failing to request a particular jury instruction. However, it is clear that under Texas law the trial court was discouraged from giving a mitigating evidence instruction. *Stewart v. State*, 686 S. W. 2d 118 (Tex. Crim. App. 1984). In fact, the court in *Stewart*, over a vigorous dissent, specifically held that "no jury charge regarding evidence of any mitigating circumstances [is] necessary since the questions prescribed under Article 37.071 clearly allow the jury to grasp the logical relevance of mitigating evidence." *Id.*, at 121 (citing *Quinones v. State*, 592 S. W. 2d 933, 947 (Tex. Crim. App. 1980)). That holding has been reiterated in numerous cases. *Clark v. State*, 717 S. W. 2d 910 (Tex. Crim. App. 1986); *Fierro v. State*, 706 S. W. 2d 310 (Tex. Crim. App. 1986); *Johnson v. State*, 691 S. W. 2d 619 (Tex. Crim. App. 1985); *Lackey v. State*, 638 S. W. 2d 439 (Tex. Crim. App. 1982); *Adams v. State*, 577 S. W. 2d 717 (Tex. Crim. App. 1979). Additionally, Texas has adopted pattern jury instructions. The instructions for death cases say nothing regarding how the jury is to consider mitigating evidence that actually supports a finding of future dangerousness. P. McClung, *Jury Charges for Texas Criminal Practice* 75-78 (rev. ed. 1981). If, as a matter of course and relying on *Stewart* and *Quinones* as well as the pattern jury instructions, Texas trial judges refuse to give such instructions when asked, Streetman surely was under no duty to make the futile request. Of course, whether or not this is the case in Texas is a question of fact. A habeas court has a duty to determine whether a hearing is necessary to resolve this question. See Habeas Corpus Rule 8. I believe that Streetman is entitled to an opportunity to make the required showing before he is executed.

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Nor do I believe that Streetman could reasonably be held barred under an abuse-of-the-writ theory, as the District Court apparently found. The *Franklin* claim was not foreseeable prior to this Court's issuance of the stay order. In light of this Court's decision in *Jurek, supra*, upholding the Texas scheme, and the citation to *Jurek* in *Lockett, supra*, coupled with the Fifth Circuit's explicit rejection of the claim, it was not abusive for Streetman to fail to raise the issue in his first federal petition.

Finally, as to the failure to raise the question on direct appeal, there is certainly no bar. Precedent in the Fifth Circuit and statements from this Court provided cause for the failure. See *Reed v. Ross*, 468 U. S. 1, 12-16 (1984).

For these reasons, I cannot conclude that Streetman's *Franklin* claim was procedurally barred. Consequently, I must dissent from the refusal of this Court to stay Streetman's death until we definitively resolve the questions his petition presents.

## V

Streetman also raises a broader challenge to the Texas death penalty scheme. He alleges that given the nature of the special death penalty questions, no instruction, however phrased, could adequately inform the jury of its constitutional duty to consider properly all mitigating evidence. As a panel of the Court of Appeals for the Fifth Circuit has cogently demonstrated, it is time for this Court to reconsider the Texas system in light of the intervening precedent. *Penry v. Lynaugh*, 832 F. 2d 915 (1987). The persuasive opinions of Judges Reavley and Garwood conclusively demonstrate to me that certiorari should be granted to consider such a challenge. Consequently, I dissent from the Court's refusal to consider this broader claim. It may be true, as some have argued, that if the Texas death penalty statute is unconstitutional, the fault lies with this Court rather than with the State. But even if that is so, it is the height of unfairness to make Streetman pay for our mistake.

I dissent.

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*Affirmed on Appeal*

No. 87-343. MONTANA ET AL. *v.* CROW TRIBE OF INDIANS ET AL. Affirmed on appeal from C. A. 9th Cir. THE CHIEF JUS-

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TICE would note probable jurisdiction and set case for oral argument. Reported below: 819 F. 2d 895.

### *Appeals Dismissed*

No. 87-719. *MARTIN v. GEORGIA DEPARTMENT OF PUBLIC SAFETY ET AL.* Appeal from Sup. Ct. Ga. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied. JUSTICE BRENNAN would postpone further consideration of the question of jurisdiction to a hearing of the case on the merits. Reported below: 257 Ga. 300, 357 S. E. 2d 569.

No. 87-720. *HAGEN, EXECUTRIX OF THE ESTATE OF HAGEN v. SOUTH DAKOTA ET AL.* Appeal from Sup. Ct. S. D. dismissed for want of jurisdiction. Reported below: 403 N. W. 2d 33.

No. 87-756. *CHAPMAN v. FLORIDA.* Appeal from Sup. Ct. Fla. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied. Reported below: 511 So. 2d 297.

No. 87-779. *DOBARD v. CITY OF OAKLAND 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: 812 F. 2d 1411.

No. 87-5625. *AUGUST v. COUNTY OF LOS ANGELES.* Appeal from Ct. App. Cal., 2d App. Dist., dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied.

No. 87-5731. *DENARDO v. WILLIAMS 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.

No. 87-5837. *BOYD v. UNITED STATES.* 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: 815 F. 2d 83.

No. 87-5872. *SPYCHALA v. MORRIS, WARDEN.* Appeal from C. A. 9th Cir. dismissed for want of jurisdiction. Treating the

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papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied. Reported below: 817 F. 2d 106.

No. 87-960. *LOSS v. SUPREME COURT OF ILLINOIS ET AL.* Appeal from Sup. Ct. Ill. dismissed for want of substantial federal question. Reported below: 119 Ill. 2d 186, 518 N. E. 2d 981.

No. 87-5504. *SARLUND v. WISCONSIN.* Appeal from Sup. Ct. Wis. dismissed for want of substantial federal question. Reported below: 139 Wis. 2d 386, 407 N. W. 2d 544.

No. 87-5903. *MOYA-GOMEZ v. WISCONSIN.* Appeal from Ct. App. Wis. dismissed for want of properly presented federal question.

*Certiorari Granted—Vacated and Remanded.*

No. 87-653. *GOVERNMENT OF THE VIRGIN ISLANDS v. JDS REALTY CORP.* C. A. 3d Cir. Certiorari granted, judgment vacated, and case remanded to the Court of Appeals to consider the question of mootness. Reported below: 824 F. 2d 256.

*Miscellaneous Orders*

No. ———. *COOPER v. RUBIN;*

No. ———. *MARENO v. UNITED STATES;* and

No. ———. *AMERICAN PETROFINA COMPANY OF TEXAS v. OIL, CHEMICAL & ATOMIC WORKERS INTERNATIONAL UNION, LOCAL No. 4-23, ET AL.* Motions to direct the Clerk to file petitions for writs of certiorari out of time denied.

No. A-438. *PEREZ ET AL. v. UNITED STATES.* C. A. 11th Cir. Application for stay, addressed to THE CHIEF JUSTICE and referred to the Court, denied.

No. A-491. *GEORGETOWN UNIVERSITY ET AL. v. GAY RIGHTS COALITION OF GEORGETOWN UNIVERSITY LAW CENTER ET AL.* C. A. D. C. Cir. Application for stay, presented to THE CHIEF JUSTICE, and by him referred to the Court, denied. The orders entered December 24, 1987, and December 31, 1987, in this case are vacated. JUSTICE SCALIA took no part in the consideration or decision of this application.

No. D-666. *IN RE DISBARMENT OF KEEHAN.* It is ordered that M. Patrick Keehan, of Towson, Md., be suspended from the practice of law in this Court and that a rule issue, returnable

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within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. 86-958. *NORWEST BANK WORTHINGTON ET AL. v. AHLERS ET UX.* C. A. 8th Cir. [Certiorari granted, 483 U. S. 1004.] Motion of petitioners for leave to file a reply brief out of time denied.

No. 86-1052. *VOLKSWAGENWERK AKTIENGESELLSCHAFT v. SCHLUNK, ADMINISTRATOR OF THE ESTATES OF SCHLUNK ET AL.* App. Ct. Ill., 1st Dist. [Certiorari granted, *ante*, p. 895.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 86-1970. *MISSISSIPPI POWER & LIGHT CO. v. MISSISSIPPI EX REL. PITTMAN, ATTORNEY GENERAL OF MISSISSIPPI, ET AL.* Sup. Ct. Miss. [Probable jurisdiction postponed, *ante*, p. 813.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 86-6124. *BENNETT v. ARKANSAS.* Sup. Ct. Ark. [Certiorari granted, *ante*, p. 895.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 86-1145. *PATRICK v. BURGET ET AL.* C. A. 9th Cir. [Certiorari granted, *ante*, p. 814.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument denied. JUSTICE BLACKMUN took no part in the consideration or decision of this motion.

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

No. 86-1685. *FLORIDA ET AL. v. LONG ET AL.* C. A. 11th Cir. [Certiorari granted, *ante*, p. 814.] Motion of Equal Employment Advisory Council et al. for leave to file a brief as *amici curiae* granted.

No. 86-7113. *KADRMAS ET AL. v. DICKINSON PUBLIC SCHOOLS ET AL.* Sup. Ct. N. D. [Probable jurisdiction noted, *ante*, p. 813.] Motion of North Dakota for leave to participate in oral argument as *amicus curiae* and for divided argument granted. Motion of appellees to dismiss appeal denied.

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No. 87-16. SHAPERO *v.* KENTUCKY BAR ASSN. Sup. Ct. Ky. [Certiorari granted, *ante*, p. 814.] Motions of The Academy of Florida Trial Lawyers and the Florida Bar for leave to file briefs as *amici curiae* granted.

No. 87-65. UNITED STATES *v.* PROVIDENCE JOURNAL CO. ET AL. C. A. 1st Cir. [Certiorari granted, *ante*, p. 814.] Motion of the Solicitor General for leave to file a brief as *amicus curiae* granted. Further consideration of motion of respondent to dismiss the writ of certiorari deferred to hearing of case on the merits. This case will be heard on oral argument January 20, 1988, in place of No. 86-1387, *Mackey et al. v. Lanier Collection Agency & Service, Inc.* [certiorari granted, 483 U. S. 1004].

No. 87-82. FEDERAL DEPOSIT INSURANCE CORPORATION *v.* MALLEN ET AL. D. C. N. D. Iowa. [Probable jurisdiction noted, *ante*, p. 911.] Motion of appellee James E. Mallen for leave to proceed further herein *in forma pauperis* granted.

No. 87-363. FEDERAL ENERGY REGULATORY COMMISSION *v.* MARTIN EXPLORATION MANAGEMENT CO. ET AL.; and

No. 87-364. PUBLIC SERVICE COMMISSION OF THE STATE OF NEW YORK ET AL. *v.* MARTIN EXPLORATION MANAGEMENT CO. ET AL. C. A. 10th Cir. [Certiorari granted, *ante*, p. 962.] Motion of the Solicitor General to dispense with printing the joint appendix granted.

No. 87-517. COE ET AL. *v.* UNITED STATES. C. A. 2d Cir. Motion of petitioners for leave to file lower court orders under seal granted.

No. 87-600. VARIABLE ANNUITY LIFE INSURANCE CO. ET AL. *v.* OTTO. C. A. 7th Cir. The Solicitor General is invited to file a brief in this case expressing the views of the United States.

No. 87-5096. WEST *v.* ATKINS. C. A. 4th Cir. [Certiorari granted, *ante*, p. 912.] Motion of American Public Health Association for leave to file a brief as *amicus curiae* granted.

No. 87-5461. HENSON *v.* EAST LINCOLN TOWNSHIP ET AL. C. A. 7th Cir. [Certiorari granted, *ante*, p. 923.] Motion of the parties to defer further proceedings granted for 60 days.

No. 87-5794. IN RE REARDON. Motion of petitioner for leave to proceed *in forma pauperis* denied. Petitioner is allowed until

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February 1, 1988, within which to pay the docketing fee required by Rule 45(a) and to submit a petition for writ of mandamus and/or prohibition in compliance with Rule 33 of the Rules of this Court.

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

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

No. 87-5840. *MCNAMARA v. COUNTY OF SAN DIEGO DEPARTMENT OF SOCIAL SERVICES*. Appeal from Ct. App. Cal., 4th App. Dist. Motion of appellant for leave to proceed *in forma pauperis* denied. Appellant is allowed until February 1, 1988, within which to pay the docketing fee required by Rule 45(a) and to submit a statement as to jurisdiction in compliance with Rule 33 of the Rules of this Court.

No. 87-700. *IN RE GOODMAN*. C. A. 11th Cir.; and

No. 87-5809. *IN RE SIMS*. C. A. 5th Cir. Petitions for writs of common-law certiorari denied.

No. 87-5943. *IN RE ROBY*; and

No. 87-5992. *IN RE OLIVER*. Petitions for writs of habeas corpus denied.

No. 87-5793. *IN RE MONTGOMERY*; and

No. 87-5811. *IN RE TETER*. Petitions for writs of mandamus denied.

No. 87-5993. *IN RE MURRY*. Petition for writ of prohibition denied.

*Probable Jurisdiction Noted or Postponed*

No. 87-775. *UNITED FAMILIES OF AMERICA v. KENDRICK ET AL.* Appeal from D. C. D. C. Probable jurisdiction noted, case consolidated with No. 87-253, *Bowen, Secretary of Health and Human Services v. Kendrick et al.* [probable jurisdiction noted, *ante*, p. 942], No. 87-431, *Bowen, Secretary of Health and Human Services v. Kendrick et al.* [probable jurisdiction noted, *ante*, p. 942], and No. 87-462, *Kendrick et al. v. Bowen, Secretary of Health and Human Services, et al.* [probable jurisdiction noted,

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*ante*, p. 942], and a total of one hour allotted for oral argument in these cases. Reported below: 657 F. Supp. 1547.

No. 87-168. FRISBY ET AL. *v.* SCHULTZ ET AL. Appeal from C. A. 7th Cir. Further consideration of question of jurisdiction postponed to hearing of case on the merits. Reported below: 822 F. 2d 642.

*Certiorari Granted*

No. 87-498. BERKOVITZ ET AL. *v.* UNITED STATES. C. A. 3d Cir. Certiorari granted. Reported below: 822 F. 2d 1322.

No. 87-645. HUFFMAN ET AL. *v.* WESTERN NUCLEAR, INC., ET AL. C. A. 10th Cir. Certiorari granted. Reported below: 825 F. 2d 1430.

No. 87-712. BOWEN, SECRETARY OF HEALTH AND HUMAN SERVICES, ET AL. *v.* MASSACHUSETTS; and

No. 87-929. MASSACHUSETTS *v.* BOWEN, SECRETARY OF HEALTH AND HUMAN SERVICES, ET AL. C. A. 1st Cir. Certiorari granted, cases consolidated, and a total of one hour allotted for oral argument. Reported below: 816 F. 2d 796.

No. 87-519. MAYNARD, WARDEN, ET AL. *v.* CARTWRIGHT. C. A. 10th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari granted limited to Question 1 presented by the petition. Reported below: 822 F. 2d 1477.

No. 87-578. BANK OF NOVA SCOTIA *v.* UNITED STATES; and

No. 87-602. KILPATRICK ET AL. *v.* UNITED STATES. C. A. 10th Cir. Certiorari granted limited to Question 1 presented by each petition, cases consolidated, and a total of one hour allotted for oral argument. Reported below: 821 F. 2d 1456.

No. 87-5565. CLARK *v.* JETER. Super. Ct. Pa. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted. Reported below: 358 Pa. Super. 550, 518 A. 2d 276.

No. 87-5468. JOHNSON *v.* MISSISSIPPI. Sup. Ct. Miss. 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: 511 So. 2d 1333.

*Certiorari Denied.* (See also Nos. 87-719, 87-756, 87-779, 87-5625, 87-5731, 87-5837, 87-5872, 87-700, and 87-5809, *supra*.)

No. 86-6296. LAMBERT *v.* DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF

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LABOR. C. A. 6th Cir. Certiorari denied. Reported below: 810 F. 2d 201.

No. 87-257. MARTINEZ *v.* LIZARRIBAR. Super. Ct. P. R. Certiorari denied.

No. 87-289. DUPAGE BANK & TRUST CO. *v.* PROPERTY TAX APPEAL BOARD OF THE ILLINOIS DEPARTMENT OF REVENUE ET AL. App. Ct. Ill., 2d Dist. Certiorari denied. Reported below: 151 Ill. App. 3d 624, 502 N. E. 2d 1250.

No. 87-313. PAUL *v.* NORTH CAROLINA. Ct. App. N. C. Certiorari denied. Reported below: 84 N. C. App. 491, 353 S. E. 2d 254.

No. 87-316. ALLEN ET AL. *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 816 F. 2d 1417.

No. 87-324. SAIPAIA *v.* UNITED STATES. Ct. Mil. App. Certiorari denied. Reported below: 24 M. J. 172.

No. 87-347. ADAMS ET AL. *v.* UNITED STATES ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 818 F. 2d 201.

No. 87-391. CHASER SHIPPING CORP. ET AL. *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 819 F. 2d 1129.

No. 87-394. CATANESE *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 817 F. 2d 753.

No. 87-397. INDEPENDENT COMMUNITY BANKERS ASSOCIATION OF SOUTH DAKOTA, INC. *v.* BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 261 U. S. App. D. C. 20, 820 F. 2d 428.

No. 87-437. PINKNEY ET AL. *v.* DOW CHEMICAL CO. ET AL.; and

No. 87-438. FRATICELLI ET AL. *v.* DOW CHEMICAL CO. ET AL. C. A. 2d Cir. Certiorari denied. Reported below: No. 87-437, 818 F. 2d 145; No. 87-438, 818 F. 2d 210.

No. 87-460. BOSCIO *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 87-513. MANVILLE FOREST PRODUCTS CORP. *v.* EVANS ET AL. Ct. App. La., 2d Cir. Certiorari denied. Reported below: 505 So. 2d 924.

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No. 87-525. *BARNES ET AL. v. HODEL, SECRETARY OF THE INTERIOR, ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 819 F. 2d 250.

No. 87-527. *CENTENO ET AL. v. SHULTZ, SECRETARY OF STATE, ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 817 F. 2d 1212.

No. 87-543. *TRANSWESTERN PIPELINE CO. v. FEDERAL ENERGY REGULATORY COMMISSION.* C. A. 5th Cir. Certiorari denied. Reported below: 820 F. 2d 733.

No. 87-549. *CITY OF EVANSTON ET AL. v. REGIONAL TRANSPORTATION AUTHORITY ET AL.* C. A. 7th Cir. Certiorari denied. Reported below: 825 F. 2d 1121.

No. 87-553. *MCCRIGHT v. UNITED STATES.* C. A. 5th Cir. Certiorari denied. Reported below: 821 F. 2d 226.

No. 87-562. *SECURITIES INDUSTRY ASSN. v. BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM ET AL.* C. A. D. C. Cir. Certiorari denied. Reported below: 261 U. S. App. D. C. 322, 821 F. 2d 810.

No. 87-589. *FAGAN v. UNITED STATES.* C. A. 5th Cir. Certiorari denied. Reported below: 821 F. 2d 1002.

No. 87-590. *SIFLINGER v. McLAUGHLIN, SECRETARY OF LABOR.* C. A. 11th Cir. Certiorari denied. Reported below: 819 F. 2d 1148.

No. 87-592. *CONNICK, DISTRICT ATTORNEY FOR THE PARISH OF ORLEANS v. MAIRENA.* C. A. 5th Cir. Certiorari denied. Reported below: 816 F. 2d 1061.

No. 87-599. *MASTERS, MATES & PILOTS PENSION PLAN v. DEAK ET AL.* C. A. 11th Cir. Certiorari denied. Reported below: 821 F. 2d 572.

No. 87-601. *BRACKEN v. UNITED STATES.* C. A. 10th Cir. Certiorari denied.

No. 87-616. *BECK ET AL. v. MANUFACTURERS HANOVER TRUST CO. ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 820 F. 2d 46.

No. 87-619. *GARCIA v. UNITED STATES.* Ct. Mil. App. Certiorari denied. Reported below: 25 M. J. 159.

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No. 87-621. CALIFORNIA ARCHITECTURAL BUILDING PRODUCTS, INC., ET AL. *v.* FRANCISCAN CERAMICS, INC., ET AL.; and

No. 87-721. FRANCISCAN CERAMICS, INC., ET AL. *v.* CALIFORNIA ARCHITECTURAL BUILDING PRODUCTS, INC., ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 818 F. 2d 1466.

No. 87-646. BLONDIN ET AL. *v.* WINNER, JUDGE, UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLORADO. C. A. 10th Cir. Certiorari denied. Reported below: 822 F. 2d 969.

No. 87-662. COOPER *v.* WILLIAMSON COUNTY BOARD OF EDUCATION ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 820 F. 2d 180.

No. 87-677. CASAZZA ET AL. *v.* HOLBROOK. Sup. Ct. Conn. Certiorari denied. Reported below: 204 Conn. 336, 528 A. 2d 774.

No. 87-681. RAWSON *v.* SEARS, ROEBUCK & Co. C. A. 10th Cir. Certiorari denied. Reported below: 822 F. 2d 908.

No. 87-686. SCHLENGER *v.* SCHLENGER, AKA PETRICEK, INDIVIDUALLY AND AS TRUSTEE OF THE UNITED WOOL PIECE DYEING & FINISHING COMPANY PENSION TRUST, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 822 F. 2d 54.

No. 87-689. UNITED TRANSPORTATION UNION *v.* NORFOLK & WESTERN RAILWAY CO. ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 262 U. S. App. D. C. 52, 822 F. 2d 1114.

No. 87-694. POITIER *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 818 F. 2d 679.

No. 87-696. SOCIETY ORDO TEMPLI ORIENTIS IN AMERICA ET AL. *v.* MCMURTRY ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 819 F. 2d 1146.

No. 87-701. BRADY *v.* PETTIT, MAYOR, LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT, ET AL. Ct. App. Ky. Certiorari denied.

No. 87-704. MASSACHUSETTS MUTUAL LIFE INSURANCE CO. *v.* LITMAN. C. A. 11th Cir. Certiorari denied. Reported below: 825 F. 2d 1506.

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No. 87-705. UNION PACIFIC RAILROAD CO. ET AL. *v.* ENERGY TRANSPORTATION SYSTEMS, INC., ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 822 F. 2d 518.

No. 87-707. JOHNSON *v.* ALABAMA. Ct. Crim. App. Ala. Certiorari denied. Reported below: 492 So. 2d 673.

No. 87-709. TRUDEAU ET AL. *v.* WISCONSIN. Sup. Ct. Wis. Certiorari denied. Reported below: 139 Wis. 2d 91, 408 N. W. 2d 337.

No. 87-713. ANDRIJEVIC, AKA ANDRIE *v.* KELLERAN ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 825 F. 2d 692.

No. 87-715. TUFFORD, DBA B & L PAWNSHOP *v.* DURGAN. Super. Ct. Alaska, 4th Jud. Dist. Certiorari denied.

No. 87-722. DODD, ADMINISTRATRIX OF THE ESTATE OF DODD *v.* CITY OF NORWICH ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 827 F. 2d 1.

No. 87-724. RIDDLE *v.* NORTH CAROLINA. Ct. App. N. C. Certiorari denied. Reported below: 86 N. C. App. 112, 356 S. E. 2d 835.

No. 87-726. DELAWARE COUNTY PRISON BOARD OF INSPECTORS *v.* HYNSON, A MINOR, BY AND THROUGH HER GRANDPARENT AND GUARDIAN, HYNSON, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 827 F. 2d 932.

No. 87-729. BARIENT, INC., ET AL. *v.* LEWMAR MARINE, INC. C. A. Fed. Cir. Certiorari denied. Reported below: 827 F. 2d 744.

No. 87-732. WHEELER ET AL. *v.* COMMISSIONER OF HIGHWAYS OF KENTUCKY. C. A. 6th Cir. Certiorari denied. Reported below: 822 F. 2d 586.

No. 87-733. ARENBURG *v.* FARMHOLME, INC., ET AL. App. Ct. Conn. Certiorari denied. Reported below: 11 Conn. App. 810, 526 A. 2d 1352.

No. 87-738. GUARINO *v.* NEW YORK. App. Div., Sup. Ct. N. Y., 1st Jud. Dept. Certiorari denied. Reported below: 131 App. Div. 2d 981, 516 N. Y. S. 2d 567.

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No. 87-739. *BOAT NIAGARA FALLS, INC. v. JOIA ET AL.* C. A. 1st Cir. Certiorari denied. Reported below: 817 F. 2d 908.

No. 87-740. *BANOS v. IOWA.* Sup. Ct. Iowa. Certiorari denied.

No. 87-743. *CAMINITI ET AL. v. BOYLE, COMMISSIONER OF PUBLIC LANDS, ET AL.* Sup. Ct. Wash. Certiorari denied. Reported below: 107 Wash. 2d 662, 732 P. 2d 989.

No. 87-744. *ARMCO INC. v. MARYLAND CASUALTY CO.* C. A. 4th Cir. Certiorari denied. Reported below: 822 F. 2d 1348.

No. 87-753. *ROSETTI v. AVONDALE SHIPYARDS, INC.* C. A. 5th Cir. Certiorari denied. Reported below: 821 F. 2d 1083.

No. 87-754. *COOMBE, DEPUTY COMMISSIONER FOR FACILITY OPERATIONS, NEW YORK DEPARTMENT OF CORRECTIONS v. JENKINS.* C. A. 2d Cir. Certiorari denied. Reported below: 821 F. 2d 158.

No. 87-755. *ARCWEL CORP. v. SOUTHWEST MARINE, INC., ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 816 F. 2d 468.

No. 87-762. *EWERS v. BOARD OF COUNTY COMMISSIONERS OF COUNTY OF CURRY.* C. A. 10th Cir. Certiorari denied. Reported below: 802 F. 2d 1242.

No. 87-763. *ELZEY v. ARCHER ET AL.* Ct. App. Ind. Certiorari denied. Reported below: 500 N. E. 2d 1253.

No. 87-766. *CUNNINGHAM ET UX., ADMINISTRATORS OF THE ESTATE OF CUNNINGHAM v. INSURANCE COMPANY OF NORTH AMERICA.* Sup. Ct. Pa. Certiorari denied. Reported below: 515 Pa. 486, 530 A. 2d 407.

No. 87-772. *IN RE YOUNG.* C. A. 6th Cir. Certiorari denied.

No. 87-773. *ALLEN ET AL. v. BOARD OF TRUSTEES OF THE CALIFORNIA STATE UNIVERSITIES AND COLLEGES ET AL.* Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 87-776. *TRANSPORTATION COMMUNICATIONS UNION v. BALTIMORE & OHIO RAILROAD Co.* C. A. 4th Cir. Certiorari denied. Reported below: 813 F. 2d 1227.

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No. 87-777. *KROWITZ v. DEPARTMENT OF AGRICULTURE, UNITED STATES FOREST SERVICE*. C. A. 6th Cir. Certiorari denied. Reported below: 826 F. 2d 1063.

No. 87-778. *MGA, INC. v. GENERAL MOTORS CORP. ET AL.* C. A. Fed. Cir. Certiorari denied. Reported below: 827 F. 2d 729.

No. 87-782. *WESNER v. INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA, LOCAL UNION NO. 764, ET AL.* C. A. 3d Cir. Certiorari denied. Reported below: 822 F. 2d 54.

No. 87-783. *CORDOVA CLAY CO., INC. v. UNITED STATES*. C. A. 11th Cir. Certiorari denied. Reported below: 825 F. 2d 1471.

No. 87-785. *DONOVAN v. DELAWARE*. Sup. Ct. Del. Certiorari denied. Reported below: 530 A. 2d 1128.

No. 87-788. *HMK CORP. v. WALSEY ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 828 F. 2d 1071.

No. 87-790. *JOHNSON v. KENTUCKY*. Ct. App. Ky. Certiorari denied.

No. 87-793. *SHAW v. UNITED STATES*. C. A. 1st Cir. Certiorari denied. Reported below: 831 F. 2d 280.

No. 87-794. *PENMAN v. INTERNATIONAL ALLIANCE OF THEATRICAL STAGE EMPLOYEES & MOVING PICTURE MACHINE OPERATORS OF THE UNITED STATES AND CANADA, PUBLICISTS GUILD, LOCAL 818*. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 87-795. *HENEIN v. SAUDI ARABIAN PARSONS LTD.* C. A. 9th Cir. Certiorari denied. Reported below: 818 F. 2d 1508.

No. 87-797. *POLLAK v. NEW YORK*. App. Div., Sup. Ct. N. Y., 3d Jud. Dept. Certiorari denied. Reported below: 130 App. Div. 2d 911, 516 N. Y. S. 2d 511.

No. 87-798. *POLLAK v. NEW YORK*. App. Div., Sup. Ct. N. Y., 3d Jud. Dept. Certiorari denied. Reported below: 130 App. Div. 2d 908, 516 N. Y. S. 2d 509.

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No. 87-799. *LINDSAY, DBA MAC ADVERTISING CO., ET AL. v. CITY OF SAN ANTONIO*. C. A. 5th Cir. Certiorari denied. Reported below: 821 F. 2d 1103.

No. 87-802. *LOMAR WHOLESALE GROCERY, INC. v. DIETER'S GOURMET FOODS, INC., ET AL.* C. A. 8th Cir. Certiorari denied. Reported below: 824 F. 2d 582.

No. 87-805. *FLEMING v. GIBSON ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 826 F. 2d 1059.

No. 87-806. *OLSON v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 830 F. 2d 195.

No. 87-807. *LATELLA v. JACKSON, WARDEN*. C. A. 2d Cir. Certiorari denied. Reported below: 817 F. 2d 12.

No. 87-809. *BULLARD v. NORTHCUTT ET AL.* C. A. 10th Cir. Certiorari denied.

No. 87-811. *KORBEL v. CALIFORNIA* (two cases). App. Dept., Super. Ct. Cal., Los Angeles County. Certiorari denied.

No. 87-812. *LEVY v. EXXON CORP.* C. A. 5th Cir. Certiorari denied. Reported below: 823 F. 2d 550.

No. 87-817. *BAYER v. PAYNE, SECRETARY OF REVENUE FOR SOUTH DAKOTA*. Sup. Ct. S. D. Certiorari denied. Reported below: 411 N. W. 2d 129.

No. 87-829. *WADE v. DISTRICT OF COLUMBIA COURT OF APPEALS*. Ct. App. D. C. Certiorari denied. Reported below: 526 A. 2d 936.

No. 87-834. *CURCIO v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 826 F. 2d 196.

No. 87-839. *ELDRIDGE v. KENTUCKY*. Ct. App. Ky. Certiorari denied.

No. 87-842. *HARRIS METHODIST H-E-B BOARD OF TRUSTEES ET AL. v. JATOI*. C. A. 5th Cir. Certiorari denied. Reported below: 807 F. 2d 1214 and 819 F. 2d 545.

No. 87-848. *COMMISSIONER, MASSACHUSETTS DEPARTMENT OF MENTAL HEALTH, ET AL. v. ROGERS ET AL.* C. A. 1st Cir. Certiorari denied.

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No. 87-857. *POHLOT v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 827 F. 2d 889.

No. 87-861. *TEAMSTERS LOCAL NO. 728 v. MIMS*. C. A. 11th Cir. Certiorari denied. Reported below: 821 F. 2d 1568.

No. 87-866. *GILLETTE v. UNITED STATES*. Ct. Mil. App. Certiorari denied. Reported below: 25 M. J. 243.

No. 87-867. *NEELEY v. UNITED STATES*. Ct. Mil. App. Certiorari denied. Reported below: 25 M. J. 105.

No. 87-880. *GENERAL ELECTRIC CO. v. M/V NEDLLOYD ROUEN ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 817 F. 2d 1022.

No. 87-881. *GROSS v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 827 F. 2d 770.

No. 87-887. *7.92 ACRES OF LAND ET AL. v. UNITED STATES*. C. A. 1st Cir. Certiorari denied. Reported below: 831 F. 2d 281.

No. 87-888. *RAFFERTY, SUPERINTENDENT, RAHWAY STATE PRISON, ET AL. v. CARTER ET AL.* C. A. 3d Cir. Certiorari denied. Reported below: 826 F. 2d 1299.

No. 87-890. *WALKER v. CONSUMERS POWER Co.* C. A. 6th Cir. Certiorari denied. Reported below: 824 F. 2d 499.

No. 87-908. *RYAN v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 825 F. 2d 853.

No. 87-923. *ROBILOTTO v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 828 F. 2d 940.

No. 87-5065. *WERNERT v. ARN, WARDEN*. C. A. 6th Cir. Certiorari denied. Reported below: 819 F. 2d 613.

No. 87-5201. *TYLER v. WADMAN ET AL.* C. A. 8th Cir. Certiorari denied. Reported below: 822 F. 2d 1093.

No. 87-5228. *TATE v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 821 F. 2d 1328.

No. 87-5248. *CARABALLO-GARCIA v. UNITED STATES*. C. A. 11th Cir. Certiorari denied. Reported below: 820 F. 2d 1229.

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No. 87-5261. *EAGLE HAWK v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 815 F. 2d 1213.

No. 87-5265. *KITCHENS-SHUMOW v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 819 F. 2d 1146.

No. 87-5272. *SMITH v. McMILLIAN ET AL.* C. A. 5th Cir. Certiorari denied.

No. 87-5302. *MONAHAN v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 820 F. 2d 1228.

No. 87-5311. *MORRIS v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 820 F. 2d 408.

No. 87-5320. *RODRIGUEZ-PAGAN v. BOWEN, SECRETARY OF HEALTH AND HUMAN SERVICES*. C. A. 1st Cir. Certiorari denied. Reported below: 819 F. 2d 1.

No. 87-5335. *NEWMAN v. TERRY, ATTORNEY GENERAL OF VIRGINIA*. C. A. 4th Cir. Certiorari denied. Reported below: 819 F. 2d 1138.

No. 87-5401. *DANNER v. UNITED STATES*. C. A. 11th Cir. Certiorari denied. Reported below: 820 F. 2d 1166.

No. 87-5407. *MARTINELLI v. DUGGER, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS*. C. A. 11th Cir. Certiorari denied. Reported below: 817 F. 2d 1499.

No. 87-5434. *GRIZZLE v. SOUTH CAROLINA*. Sup. Ct. S. C. Certiorari denied. Reported below: 293 S. C. 19, 358 S. E. 2d 388.

No. 87-5458. *PHILLIPS v. DUGGER, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS*. C. A. 11th Cir. Certiorari denied. Reported below: 822 F. 2d 63.

No. 87-5489. *BENNETT v. NORTH AMERICAN VAN LINES ET AL.* C. A. 3d Cir. Certiorari denied. Reported below: 826 F. 2d 1054.

No. 87-5517. *CASPER v. RYAN, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT DALLAS, ET AL.* C. A. 3d Cir. Certiorari denied. Reported below: 822 F. 2d 1283.

No. 87-5532. *CHAMBERS v. GETTY ET AL.* C. A. 8th Cir. Certiorari denied. Reported below: 822 F. 2d 1094.

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No. 87-5550. *MYERS v. LYNAUGH, DIRECTOR, TEXAS DEPARTMENT OF CORRECTIONS*. C. A. 5th Cir. Certiorari denied. Reported below: 826 F. 2d 11.

No. 87-5661. *ALOMIA-RIASCOS ET AL. v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 825 F. 2d 769.

No. 87-5667. *JACKSON v. UNITED STATES*. C. A. D. C. Cir. Certiorari denied. Reported below: 262 U. S. App. D. C. 294, 824 F. 2d 21.

No. 87-5703. *THOMAS v. NORBAR, INC., ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 822 F. 2d 1089.

No. 87-5724. *MARTIN v. PEREZOUS ET AL.* C. A. 3d Cir. Certiorari denied.

No. 87-5729. *LEPISCOPO v. ROBINS ET AL.* C. A. 10th Cir. Certiorari denied.

No. 87-5732. *FAY v. UNITED STATES POSTAL SERVICE ET AL.* C. A. D. C. Cir. Certiorari denied.

No. 87-5734. *SINDRAM v. READING*. Ct. App. D. C. Certiorari denied.

No. 87-5735. *RILEY v. CALIFORNIA*. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 87-5737. *WILLIAMS v. FOLTZ, WARDEN*. C. A. 6th Cir. Certiorari denied.

No. 87-5739. *MUHAMMAD v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 824 F. 2d 214.

No. 87-5742. *MCDONOUGH v. TRUSTEES OF THE UNIVERSITY SYSTEM OF NEW HAMPSHIRE ET AL.* C. A. 1st Cir. Certiorari denied. Reported below: 823 F. 2d 543.

No. 87-5743. *PHILLIPS v. HERNANDEZ*. Ct. App. La., 3d Cir. Certiorari denied. Reported below: 507 So. 2d 277.

No. 87-5744. *CONNELLY v. ARMCO FINANCIAL CORP. ET AL.* App. Div., Sup. Ct. N. Y., 1st Jud. Dept. Certiorari denied. Reported below: 128 App. Div. 2d 1030, 512 N. Y. S. 2d 611.

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No. 87-5745. *OLAN v. NEW YORK*. C. A. 2d Cir. Certiorari denied.

No. 87-5751. *BROWN v. CALIFORNIA*. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 87-5753. *HAYNES v. BUTLER, WARDEN, ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 825 F. 2d 921.

No. 87-5757. *CAMPOS v. LEFEVRE, SUPERINTENDENT, CLINTON CORRECTIONAL FACILITY, ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 825 F. 2d 671.

No. 87-5761. *MACGUIRE v. ADMINISTRATOR OF THE RAPPAHANNOCK SECURITY COMPLEX*. Sup. Ct. Va. Certiorari denied.

No. 87-5766. *WILLIAMS v. ABSHIRE, SUPERINTENDENT, RIVERSIDE CORRECTIONAL FACILITY*. C. A. 6th Cir. Certiorari denied. Reported below: 822 F. 2d 60.

No. 87-5769. *NOLL v. PETROVSKY, WARDEN, ET AL.* C. A. 8th Cir. Certiorari denied. Reported below: 828 F. 2d 461.

No. 87-5770. *MULAZIM v. MICHIGAN DEPARTMENT OF CORRECTIONS ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 831 F. 2d 296.

No. 87-5771. *CHATFIELD v. COLORADO*. Sup. Ct. Colo. Certiorari denied.

No. 87-5774. *SULLIVAN v. SILVERTHORN ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 817 F. 2d 757.

No. 87-5775. *MILLER v. CALIFORNIA*. Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 87-5776. *MONROE v. DUGGER, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS*. C. A. 11th Cir. Certiorari denied. Reported below: 824 F. 2d 973.

No. 87-5777. *MEJIA-SALCEDO v. LYNAUGH, DIRECTOR, TEXAS DEPARTMENT OF CORRECTIONS, ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 820 F. 2d 1221.

No. 87-5779. *MCLAUGHLIN v. NORTH CAROLINA*. Ct. App. N. C. Certiorari denied. Reported below: 86 N. C. App. 112, 356 S. E. 2d 836.

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No. 87-5782. *BECKER v. ADAMS DRUG CO., INC., ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 819 F. 2d 32.

No. 87-5783. *BROWN v. NEWSOME, WARDEN, ET AL.* C. A. 11th Cir. Certiorari denied. Reported below: 828 F. 2d 773.

No. 87-5784. *LEE v. PENNSYLVANIA.* Sup. Ct. Pa. Certiorari denied. Reported below: 516 Pa. 613, 531 A. 2d 779.

No. 87-5785. *NURSE v. SMITH, SUPERINTENDENT, ATTICA CORRECTIONAL FACILITY.* C. A. 2d Cir. Certiorari denied. Reported below: 857 F. 2d 1461.

No. 87-5786. *SULLEN v. DAVIS, WARDEN.* C. A. 11th Cir. Certiorari denied. Reported below: 829 F. 2d 1131.

No. 87-5791. *HALL v. VIRGINIA.* Ct. App. Va. Certiorari denied.

No. 87-5797. *VERHAGEN v. NEW YORK STATE OFFICE OF COURT ADMINISTRATION ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 857 F. 2d 1462.

No. 87-5801. *ARUNGA v. JOHNSON ET AL.* C. A. D. C. Cir. Certiorari denied.

No. 87-5804. *CAVE v. SHORTRIDGE ET AL.* C. A. 8th Cir. Certiorari denied.

No. 87-5814. *WILLIS v. INDIANA.* Sup. Ct. Ind. Certiorari denied. Reported below: 510 N. E. 2d 1354.

No. 87-5823. *FELLAY v. SECRETARY OF THE ARMY ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 826 F. 2d 1069.

No. 87-5825. *KRAHN ET AL. v. UNITED STATES.* C. A. 5th Cir. Certiorari denied.

No. 87-5827. *MACKAY v. GOSS ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 825 F. 2d 407.

No. 87-5828. *NELSON v. BLUDWORTH ET AL.* C. A. 11th Cir. Certiorari denied. Reported below: 824 F. 2d 973.

No. 87-5829. *SHOCKEY v. TATE, SUPERINTENDENT, CHILLICOTHE CORRECTIONAL INSTITUTE.* C. A. 6th Cir. Certiorari denied.

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No. 87-5830. *WOODLIFF v. HOPKINS, COMMISSIONER, MARYLAND DIVISION OF CORRECTION*. C. A. 4th Cir. Certiorari denied. Reported below: 828 F. 2d 18.

No. 87-5831. *THOMAS v. UNITED STATES*. C. A. 11th Cir. Certiorari denied. Reported below: 824 F. 2d 974.

No. 87-5838. *BERRISFORD v. WOOD, WARDEN*. C. A. 8th Cir. Certiorari denied. Reported below: 826 F. 2d 747.

No. 87-5839. *DANIELS v. SECRETARY OF HEALTH AND HUMAN SERVICES*. C. A. 6th Cir. Certiorari denied. Reported below: 825 F. 2d 410.

No. 87-5841. *HENRY v. ZIMMERMAN, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AND DIAGNOSTIC AND CLASSIFICATION CENTER AT GRATERFORD, ET AL.* C. A. 3d Cir. Certiorari denied.

No. 87-5842. *OWCHARIW v. KORN*. Sup. Ct. N. J. Certiorari denied.

No. 87-5844. *DEBARDELEBEN v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 823 F. 2d 549.

No. 87-5848. *LEOS v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 826 F. 2d 10.

No. 87-5850. *BURGESS v. BROWN ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 828 F. 2d 17.

No. 87-5851. *TOLBERT v. MISSISSIPPI*. Sup. Ct. Miss. Certiorari denied. Reported below: 511 So. 2d 1368.

No. 87-5853. *PROCTOR v. BACKRACH CLOTHING, INC., ET AL.* C. A. 8th Cir. Certiorari denied.

No. 87-5854. *MURR v. OHIO*. Ct. App. Ohio, Sandusky County. Certiorari denied.

No. 87-5855. *ROBERSON v. NORRIS ET AL.* C. A. 8th Cir. Certiorari denied.

No. 87-5856. *WILLIAMS v. CALIFORNIA*. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 87-5857. *WILSON v. CALIFORNIA*. Ct. App. Cal., 2d App. Dist. Certiorari denied.

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No. 87-5858. *MARTIN v. HAYES ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 829 F. 2d 36.

No. 87-5859. *SEBETICH v. UNITED STATES.* C. A. 3d Cir. Certiorari denied. Reported below: 776 F. 2d 412.

No. 87-5861. *BELL v. THURMAN, SUPERINTENDENT, CALIFORNIA INSTITUTION FOR MEN, ET AL.* Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 87-5862. *BRYAN v. PENNSYLVANIA.* Sup. Ct. Pa. Certiorari denied. Reported below: 515 Pa. 618, 531 A. 2d 427.

No. 87-5863. *CAUDLE v. UNITED STATES.* C. A. 6th Cir. Certiorari denied. Reported below: 830 F. 2d 194.

No. 87-5864. *GELABERT v. TEXAS.* Ct. Crim. App. Tex. Certiorari denied.

No. 87-5866. *BROWN v. BOWLES, SHERIFF, ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 822 F. 2d 57.

No. 87-5867. *NELSON v. HOKES, SUPERINTENDENT, EASTERN CORRECTIONAL FACILITY.* C. A. 2d Cir. Certiorari denied. Reported below: 831 F. 2d 284.

No. 87-5874. *BROWN v. QUILIAN ET AL.* C. A. 3d Cir. Certiorari denied. Reported below: 829 F. 2d 30.

No. 87-5881. *PEDRO v. OREGON BOARD OF PAROLE.* C. A. 9th Cir. Certiorari denied. Reported below: 825 F. 2d 1396.

No. 87-5886. *MORRIS v. UNITED STATES.* C. A. 9th Cir. Certiorari denied. Reported below: 827 F. 2d 1348.

No. 87-5887. *YEPEZ-URIAS v. UNITED STATES.* C. A. 9th Cir. Certiorari denied. Reported below: 823 F. 2d 555.

No. 87-5889. *WILLIAMS v. UNITED STATES.* C. A. 5th Cir. Certiorari denied. Reported below: 819 F. 2d 605.

No. 87-5894. *BENTLY v. UNITED STATES.* C. A. 11th Cir. Certiorari denied.

No. 87-5895. *WALLACE v. UNITED STATES.* C. A. 4th Cir. Certiorari denied. Reported below: 826 F. 2d 1061.

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No. 87-5899. SMITH *v.* COLEMAN ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 833 F. 2d 1008.

No. 87-5900. MICKENS *v.* DUCKWORTH, SUPERINTENDENT, INDIANA STATE PRISON, ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 826 F. 2d 1067.

No. 87-5906. BEECHAM *v.* SCROGGY, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 830 F. 2d 193.

No. 87-5907. GLIDEWELL *v.* BURDEN, WARDEN. C. A. 11th Cir. Certiorari denied. Reported below: 822 F. 2d 1027.

No. 87-5908. DICE *v.* BOLDEN ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 816 F. 2d 679.

No. 87-5914. SPANN *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 831 F. 2d 298.

No. 87-5924. GRAF *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 828 F. 2d 22.

No. 87-5925. DAVID *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 827 F. 2d 773.

No. 87-5934. GALONIS *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 831 F. 2d 288.

No. 87-5939. EVERETT *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied.

No. 87-5941. SUAREZ *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 831 F. 2d 283.

No. 87-5942. O'DELL *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 831 F. 2d 1069.

No. 87-5948. ANDERSON *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 87-5950. COFIELD *v.* MERIT SYSTEMS PROTECTION BOARD. C. A. D. C. Cir. Certiorari denied.

No. 87-5952. JUDD *v.* UNITED STATES ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 822 F. 2d 1096.

No. 87-5955. HOWARD *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 831 F. 2d 1064.

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No. 87-5956. MIGUENS OLLER *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 264 U. S. App. D. C. 406, 829 F. 2d 191.

No. 87-5959. MCNEIL *v.* DUNN ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 820 F. 2d 1220.

No. 87-5960. HILL *v.* PENNSYLVANIA. Sup. Ct. Pa. Certiorari denied. Reported below: 516 Pa. 625, 532 A. 2d 436.

No. 87-5963. BROWNING *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 825 F. 2d 853.

No. 87-5964. ASTLEY *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 831 F. 2d 288.

No. 87-442. PENNSYLVANIA DRILLING CO., INC. *v.* SORBA. C. A. 3d Cir. Certiorari denied. JUSTICE WHITE would grant certiorari. Reported below: 821 F. 2d 200.

No. 87-765. ARMSTRONG RUBBER CO. ET AL. *v.* LOCAL 670, UNITED RUBBER, CORK, LINOLEUM & PLASTIC WORKERS OF AMERICA, AFL-CIO, ET AL. C. A. 6th Cir. Certiorari denied. JUSTICE WHITE would grant certiorari. Reported below: 822 F. 2d 613.

No. 87-532. GUGLIELMI *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. JUSTICE BRENNAN and JUSTICE MARSHALL would grant the petition for writ of certiorari and reverse the judgment of conviction. Reported below: 819 F. 2d 451.

No. 87-545. PERALES, COMMISSIONER OF THE NEW YORK STATE DEPARTMENT OF SOCIAL SERVICES *v.* KRIEGER. Ct. App. N. Y. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 70 N. Y. 2d 637, 512 N. E. 2d 540.

No. 87-585. LINNE ET AL. *v.* UNITED STATES. C. A. 4th Cir. Motion of petitioners to defer consideration of the petition for writ of certiorari and other relief denied. Certiorari denied. Reported below: 826 F. 2d 1061.

No. 87-702. DONG *v.* BOARD OF TRUSTEES OF LELAND STANFORD JUNIOR UNIVERSITY. Ct. App. Cal., 6th App. Dist. Cer-

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tiorari denied. JUSTICE O'CONNOR took no part in the consideration or decision of this petition. Reported below: 191 Cal. App. 3d 1572, 236 Cal. Rptr. 912.

No. 87-767. SOLIMAN *v.* EBASCO SERVICES, INC. C. A. 2d Cir. Motion of respondent for damages denied. Certiorari denied. Reported below: 822 F. 2d 320.

No. 87-787. UNIVERSITY OF PITTSBURGH *v.* JACKSON. C. A. 3d Cir. Motion of respondent for costs and damages denied. Certiorari denied. Reported below: 826 F. 2d 230.

No. 87-5748. STEFFENS ET UX. *v.* WAGON WHEEL ASSOCIATES, INC., ET AL. Ct. App. Colo. Certiorari denied. JUSTICE WHITE took no part in the consideration or decision of this petition.

No. 87-5762. CRAIG *v.* FLORIDA. Sup. Ct. Fla.;

No. 87-5768. PRESTON *v.* MISSOURI. Ct. App. Mo., Eastern Dist.;

No. 87-5790. WILLIAMS *v.* VIRGINIA. Sup. Ct. Va.;

No. 87-5792. ROGERS *v.* FLORIDA. Sup. Ct. Fla.;

No. 87-5818. POLLARD *v.* MISSOURI. Sup. Ct. Mo.; and

No. 87-5846. BELL *v.* SOUTH CAROLINA. Sup. Ct. S. C. Certiorari denied. Reported below: No. 87-5762, 510 So. 2d 857; No. 87-5768, 736 S. W. 2d 53; No. 87-5790, 234 Va. 168, 360 S. E. 2d 361; No. 87-5792, 511 So. 2d 526; No. 87-5818, 735 S. W. 2d 345; No. 87-5846, 293 S. C. 391, 360 S. E. 2d 706.

JUSTICE BRENNAN and JUSTICE MARSHALL, dissenting.

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

#### *Rehearing Denied*

No. 86-1791. WARD *v.* SENTRY TITLE CO., INC., *ante*, p. 818;

No. 86-6950. MMOE *v.* CROTHERS ET AL., *ante*, p. 836;

No. 86-7077. DAINWOOD *v.* LYNAUGH, DIRECTOR, TEXAS DEPARTMENT OF CORRECTIONS, *ante*, p. 953;

No. 87-262. STANTON *v.* UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA, *ante*, p. 925;

No. 87-281. GOLDSTEIN *v.* CRAWFORD ET AL., *ante*, p. 943;

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- No. 87-286. U. S. TELECOM, INC., FKA U. S. TELEPHONE, INC., ET AL. *v.* SPEAKERS OF SPORT, INC., *ante*, p. 925;  
No. 87-345. IN RE ASAM, *ante*, p. 909;  
No. 87-390. IN RE ASAM, *ante*, p. 909;  
No. 87-414. POLYAK *v.* BOSTON ET AL., *ante*, p. 919;  
No. 87-433. VENCE ET AL. *v.* BOLIVAR COUNTY COMMUNITY ACTION PROGRAM, INC., ET AL., *ante*, p. 927;  
No. 87-504. RICHENDOLLAR *v.* DIAMOND M DRILLING CO., INC., *ante*, p. 944;  
No. 87-580. IN RE POLYAK, *ante*, p. 952;  
No. 87-5072. D'AMARIO *v.* PROVIDENCE CIVIC CENTER AUTHORITY ET AL., *ante*, p. 859;  
No. 87-5077. BROOKS *v.* LOUISIANA, *ante*, p. 947;  
No. 87-5194. CULLY *v.* CUTLIP ET AL., *ante*, p. 899;  
No. 87-5195. CULLY *v.* LUTHERAN MEDICAL CENTER, *ante*, p. 899;  
No. 87-5257. WHITEHEAD *v.* ILLINOIS, *ante*, p. 933;  
No. 87-5383. KURTZ *v.* KURTZ, *ante*, p. 916;  
No. 87-5427. LILES *v.* OKLAHOMA, *ante*, p. 933;  
No. 87-5445. PAYNE *v.* VIRGINIA, *ante*, p. 933;  
No. 87-5456. PEDRAZA *v.* HEARD ET AL., *ante*, p. 930;  
No. 87-5539. ADAMS *v.* FLORIDA, *ante*, p. 951; and  
No. 87-5579. WILLIAMS *v.* CADILLAC INSURANCE CO. ET AL., *ante*, p. 957. Petitions for rehearing denied.

No. 87-5660. CORDEIRO *v.* CONNER ET AL., *ante*, p. 970. Petition for rehearing denied. JUSTICE O'CONNOR took no part in the consideration or decision of this petition.

JANUARY 14, 1988

*Dismissal Under Rule 53*

No. 86-1621. AMERICAN STANDARD INC. ET AL. *v.* STEEL VALLEY AUTHORITY. C. A. 3d Cir. Certiorari dismissed under this Court's Rule 53. Reported below: 809 F. 2d 1006.

JANUARY 15, 1988

*Miscellaneous Order*

No. A-532. TERRENCE K. *v.* UNITED STATES DEPARTMENT OF STATE. D. C. E. D. N. Y. Application for stay, presented

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to JUSTICE BLACKMUN, and by him referred to the Court, denied. The order entered January 9, 1988, in this case is vacated.

JANUARY 19, 1988

*Appeal Dismissed*

No. 87-919. *TIMES MIRROR CO. ET AL. v. CITY OF LOS ANGELES*. Appeal from Ct. App. Cal., 2d App. Dist., dismissed for want of substantial federal question. JUSTICE STEVENS took no part in the consideration or decision of this case. Reported below: 192 Cal. App. 3d 170, 237 Cal. Rptr. 346.

*Certiorari Granted—Vacated and Remanded*

No. 86-871. *POTOMAC ELECTRIC POWER CO. v. CURRAN, ATTORNEY GENERAL OF MARYLAND, ET AL.* C. A. 4th Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Deakins v. Monaghan, ante*, p. 193, and to consider the question of mootness. Reported below: 802 F. 2d 1527.

No. 86-2015. *GENERAL ELECTRIC CO. v. UNITED STATES ET AL.* C. A. 4th Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Westfall v. Erwin, ante*, p. 292. Reported below: 813 F. 2d 1273.

No. 86-6678. *PLATH v. SOUTH CAROLINA*. Ct. Common Pleas of Beaufort County, S. C. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Yates v. Aiken, ante*, p. 211.

No. 86-6698. *ARNOLD v. SOUTH CAROLINA*. Ct. Common Pleas of Beaufort County, S. C. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Yates v. Aiken, ante*, p. 211.

No. 87-275. *SPARKS v. CHARACTER AND FITNESS COMMITTEE OF KENTUCKY ET AL.* C. A. 6th Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Forrester v. White, ante*, p. 219. Reported below: 818 F. 2d 541.

No. 87-299. *CROOKS ET AL. v. MAYNARD, JUDGE*. C. A. 9th Cir. Certiorari granted, judgment vacated, and case remanded

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for further consideration in light of *Forrester v. White*, *ante*, p. 219. Reported below: 820 F. 2d 329.

*Miscellaneous Orders*

No. — — —. MCDONALD *v.* BLACK. Motion to direct the Clerk to file a petition for writ of certiorari out of time denied.

No. 109, Orig. OKLAHOMA ET AL. *v.* NEW MEXICO. It is ordered that Jerome C. Muys, Esq., of Washington, D. C., 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 the 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.

The compensation of the 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. [For earlier order herein, see *ante*, p. 808.]

No. 85-1765. BANKERS LIFE & CASUALTY CO. *v.* CRENSHAW. Sup. Ct. Miss. [Probable jurisdiction noted, 480 U. S. 915.] Motion of appellant for leave to file a supplemental brief after argument granted. JUSTICE STEVENS took no part in the consideration or decision of this motion.

No. 86-1836. NEW YORK STATE CLUB ASSN., INC. *v.* CITY OF NEW YORK ET AL. Ct. App. N. Y. [Probable jurisdiction noted, *ante*, p. 812.] Motion of Licensing Board of the City of Boston for leave to file a brief as *amicus curiae* granted.

No. 87-59. UNITED STATES POSTAL SERVICE *v.* NATIONAL ASSOCIATION OF LETTER CARRIERS, AFL-CIO. C. A. D. C. Cir. [Certiorari granted, *ante*, p. 984.] Motion of the Solicitor General to dispense with printing the joint appendix granted.

No. 87-157. ALLIED TUBE & CONDUIT CORP. *v.* INDIAN HEAD, INC. C. A. 2d Cir. [Certiorari granted, *ante*, p. 814.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument denied.

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No. 87-354. *ARIZONA v. ROBERSON*. Ct. App. Ariz. [Certiorari granted, *ante*, p. 975.] Motion for appointment of counsel granted, and it is ordered that Robert L. Barrasso, Esq., of Tucson, Ariz., be appointed to serve as counsel for respondent in this case. Motion of petitioner to dispense with printing the joint appendix granted.

No. 87-660. *PETERS ET AL. v. CITY OF SHREVEPORT*. C. A. 5th Cir.; and

No. 87-1001. *H. K. PORTER CO., INC. v. METROPOLITAN DADE COUNTY, FLORIDA, ET AL.* C. A. 11th Cir. The Solicitor General is invited to file briefs in these cases expressing the views of the United States.

No. 87-5269. *OHSE v. HUGHES ET AL.* C. A. 7th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied. Petitioner is allowed until February 9, 1988, within which to pay the docketing fee required by Rule 45(a) and to submit a petition for writ of certiorari in compliance with Rule 33 of the Rules of this Court.

No. 87-5875. *POPHAM v. CITY OF KENNESAW ET AL.* C. A. 11th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied. Petitioner is allowed until February 9, 1988, within which to pay the docketing fee required by Rule 45(a) and to submit a petition for writ of certiorari in compliance with Rule 33 of the Rules of this Court.

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

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

No. 87-5890. *IN RE TRIPATI*. Petition for writ of mandamus denied.

*Probable Jurisdiction Noted*

No. 87-920. *MEYER, COLORADO SECRETARY OF STATE, ET AL. v. GRANT ET AL.* Appeal from C. A. 10th Cir. Probable jurisdiction noted. Reported below: 828 F. 2d 1446.

*Certiorari Granted*

No. 87-626. *SHERIDAN ET UX. v. UNITED STATES*. C. A. 4th Cir. Certiorari granted. Reported below: 823 F. 2d 820.

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No. 87-573. UNITED STATES *v.* TAYLOR. C. A. 9th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari granted. Reported below: 821 F. 2d 1377.

No. 87-5428. HOUSTON *v.* LACK, WARDEN. C. A. 6th Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted. Reported below: 819 F. 2d 289.

*Certiorari Denied*

No. 86-833. DESCHAMBAULT ET AL. *v.* SOWELL. C. A. 11th Cir. Certiorari denied. Reported below: 791 F. 2d 170.

No. 86-862. POTTS ET AL. *v.* HEATHCOAT, ADMINISTRATRIX FOR THE ESTATE OF HEATHCOAT. C. A. 11th Cir. Certiorari denied. Reported below: 790 F. 2d 1540.

No. 87-413. HUGHES ET AL. *v.* OHSE. C. A. 7th Cir. Certiorari denied. Reported below: 816 F. 2d 1144.

No. 87-492. COLLYER *v.* UNITED STATES. Ct. Mil. App. Certiorari denied. Reported below: 24 M. J. 454.

No. 87-502. ARCO OIL & GAS CO. *v.* WILLISTON BASIN INTERSTATE PIPELINE CO. ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 259 U. S. App. D. C. 473, 816 F. 2d 777.

No. 87-515. UMC ELECTRONICS Co. *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 816 F. 2d 647.

No. 87-529. POLAKOF ET AL. *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 9th Cir. Certiorari denied. Reported below: 820 F. 2d 321.

No. 87-535. DEBOCK *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 512 So. 2d 164.

No. 87-570. COLAFELLA ET AL. *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 821 F. 2d 946.

No. 87-613. BRODY, JUDGE, UNITED STATES BANKRUPTCY COURT *v.* GUERCIO. C. A. 6th Cir. Certiorari denied. Reported below: 814 F. 2d 1115.

No. 87-643. REPP *v.* UNITED STATES. Ct. Mil. App. Certiorari denied. Reported below: 24 M. J. 447.

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No. 87-650. *NIXON v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 816 F. 2d 1022.

No. 87-651. *FAKHOURY v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 819 F. 2d 1415.

No. 87-656. *NELSON v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 826 F. 2d 310.

No. 87-668. *CHELSEA LABORATORIES, INC. v. NATIONAL LABOR RELATIONS BOARD*. C. A. 2d Cir. Certiorari denied. Reported below: 825 F. 2d 680.

No. 87-675. *JOHNSTON v. MAKOWSKI, WARDEN, ET AL.* C. A. 10th Cir. Certiorari denied. Reported below: 823 F. 2d 387.

No. 87-680. *MILLER v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 829 F. 2d 33.

No. 87-692. *STARK v. UNITED STATES*. Ct. Mil. App. Certiorari denied. Reported below: 24 M. J. 381.

No. 87-693. *OWEN v. UNITED STATES*. Ct. Mil. App. Certiorari denied. Reported below: 24 M. J. 390.

No. 87-742. *SELIGMAN & ASSOCIATES, INC. v. NATIONAL LABOR RELATIONS BOARD*. C. A. 6th Cir. Certiorari denied. Reported below: 808 F. 2d 1155.

No. 87-792. *EDEN SERVICES ET AL. v. RYKO MANUFACTURING CO.* C. A. 8th Cir. Certiorari denied. Reported below: 823 F. 2d 1215.

No. 87-800. *RICHIE, INDIVIDUALLY AND DBA BROCKMAN MUSIC, ET AL. v. THOMPSON*. C. A. 9th Cir. Certiorari denied. Reported below: 820 F. 2d 408.

No. 87-804. *BEASON v. BOARD OF SCHOOL DIRECTORS OF THE CITY OF MILWAUKEE ET AL.* C. A. 7th Cir. Certiorari denied. Reported below: 826 F. 2d 1068.

No. 87-813. *BRANDT ET AL., DBA BRANDT CONSTRUCTION CO. v. UPTOWN NATIONAL BANK OF MOLINE*. C. A. 7th Cir. Certiorari denied. Reported below: 826 F. 2d 643.

No. 87-816. *JOAN G. v. ORANGE COUNTY SOCIAL SERVICES AGENCY*. Ct. App. Cal., 4th App. Dist. Certiorari denied.

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No. 87-822. *FONAR CORP. ET AL. v. JOHNSON & JOHNSON ET AL.* C. A. Fed. Cir. Certiorari denied. Reported below: 821 F. 2d 627.

No. 87-823. *LUCAS v. UNITED STATES.* Ct. Mil. App. Certiorari denied. Reported below: 25 M. J. 9.

No. 87-824. *RICE v. UNITED STATES.* Ct. Mil. App. Certiorari denied. Reported below: 25 M. J. 35.

No. 87-831. *ABEYTA v. UNITED STATES.* Ct. Mil. App. Certiorari denied. Reported below: 25 M. J. 97.

No. 87-850. *HART SCHAFFNER & MARX ET AL. v. SCHULTZ ET VIR, INDIVIDUALLY AND ON BEHALF OF THEIR MINOR DAUGHTER, SCHULTZ.* C. A. 5th Cir. Certiorari denied. Reported below: 826 F. 2d 10.

No. 87-855. *CITY OF FAYETTEVILLE, NORTH CAROLINA v. SPELL.* C. A. 4th Cir. Certiorari denied. Reported below: 824 F. 2d 1380.

No. 87-856. *MERRILL LYNCH, PIERCE, FENNER & SMITH, INC. v. RANDALL ET UX.* C. A. D. C. Cir. Certiorari denied. Reported below: 261 U. S. App. D. C. 138, 820 F. 2d 1317.

No. 87-862. *VANHERBERT v. OHIO.* Ct. App. Ohio, Summit County. Certiorari denied.

No. 87-869. *NORTH v. WALSH.* C. A. D. C. Cir. Certiorari denied. Reported below: 264 U. S. App. D. C. 265, 829 F. 2d 50.

No. 87-874. *SHASHATY v. CONNECTICUT.* Sup. Ct. Conn. Certiorari denied. Reported below: 205 Conn. 39, 529 A. 2d 1308.

No. 87-886. *HARGROVE v. BOARD OF TRUSTEES OF THE MARYLAND RETIREMENT SYSTEM.* Ct. App. Md. Certiorari denied. Reported below: 310 Md. 406, 529 A. 2d 1372.

No. 87-896. *FOSTER v. PEDDICORD.* C. A. 4th Cir. Certiorari denied. Reported below: 826 F. 2d 1370.

No. 87-899. *OGBORNE v. PENNSYLVANIA.* Super. Ct. Pa. Certiorari denied. Reported below: 366 Pa. Super. 641, 526 A. 2d 1235.

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No. 87-951. *ABBOTT v. INDIANA*. Ct. App. Ind. Certiorari denied. Reported below: 503 N. E. 2d 1265.

No. 87-957. *TVL CORP. v. SPANISH INTERNATIONAL COMMUNICATIONS CORP.* C. A. 9th Cir. Certiorari denied. Reported below: 819 F. 2d 1145.

No. 87-959. *MILLER v. BOWEN, SECRETARY OF HEALTH AND HUMAN SERVICES*. C. A. 5th Cir. Certiorari denied. Reported below: 826 F. 2d 10.

No. 87-990. *RISER v. LASALLE PARISH SCHOOL BOARD ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 826 F. 2d 10.

No. 87-5470. *ARTHUR v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 822 F. 2d 60.

No. 87-5560. *VILLALOBOS-LORDUIZ ET AL. v. UNITED STATES*. C. A. 11th Cir. Certiorari denied. Reported below: 822 F. 2d 1008.

No. 87-5561. *TRIPATI v. IMMIGRATION AND NATURALIZATION SERVICE ET AL.* C. A. 10th Cir. Certiorari denied. Reported below: 784 F. 2d 345.

No. 87-5578. *BROWN v. NEWSOME, SUPERINTENDENT, GEORGIA STATE PRISON, ET AL.* Sup. Ct. Ga. Certiorari denied. Reported below: 257 Ga. XXVI, 359 S. E. 2d 918.

No. 87-5589. *PATTERSON v. REDMAN*. C. A. 6th Cir. Certiorari denied. Reported below: 826 F. 2d 1065.

No. 87-5599. *DINICOLA v. PENNSYLVANIA*. Super. Ct. Pa. Certiorari denied. Reported below: 348 Pa. Super. 401 and 405, 502 A. 2d 604 and 606.

No. 87-5600. *BANNER v. TENNESSEE*. Sup. Ct. Tenn. Certiorari denied.

No. 87-5646. *OGAMI v. HAWAII*. Sup. Ct. Haw. Certiorari denied.

No. 87-5652. *HURLEY v. ARIZONA*. Sup. Ct. Ariz. Certiorari denied. Reported below: 154 Ariz. 124, 741 P. 2d 257.

No. 87-5697. *COX v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 826 F. 2d 1518.

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No. 87-5736. *MINCE v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 828 F. 2d 771.

No. 87-5847. *LYONS v. DEPARTMENT OF THE ARMY ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 824 F. 2d 970.

No. 87-5865. *FAIRLEY v. MISSISSIPPI*. Sup. Ct. Miss. Certiorari denied.

No. 87-5879. *FRAZIER v. RAILROAD RETIREMENT BOARD*. C. A. 9th Cir. Certiorari denied.

No. 87-5882. *BAILEY v. RIESS ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 833 F. 2d 309.

No. 87-5883. *BAILEY v. EDWARD ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 833 F. 2d 309.

No. 87-5893. *ABERNATHY v. LOCKHART, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION*. C. A. 8th Cir. Certiorari denied.

No. 87-5896. *GERMAN v. SUNDOWN VITAMINS, INC., ET AL.* C. A. 5th Cir. Certiorari denied.

No. 87-5897. *STANLEY ET UX. v. TEXAS*. C. A. 5th Cir. Certiorari denied. Reported below: 824 F. 2d 971.

No. 87-5898. *STEARNS-MILLER v. SOUTH CAROLINA DEPARTMENT OF CORRECTIONS ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 829 F. 2d 36.

No. 87-5901. *RONSON v. COMMISSIONER OF CORRECTION OF NEW YORK ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 823 F. 2d 545.

No. 87-5902. *UNDERWOOD v. BOWEN, SECRETARY OF HEALTH AND HUMAN SERVICES*. C. A. 5th Cir. Certiorari denied. Reported below: 828 F. 2d 1081.

No. 87-5905. *JONES v. GRISWOLD, ACTING WARDEN, ET AL.* C. A. 11th Cir. Certiorari denied. Reported below: 832 F. 2d 1265.

No. 87-5910. *TELEPO v. NEW JERSEY*. Super. Ct. N. J., App. Div. Certiorari denied.

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No. 87-5911. *TURNER v. CALIFORNIA*. Sup. Ct. Cal. Certiorari denied.

No. 87-5912. *WELLS v. HARDY ET AL.* C. A. 5th Cir. Certiorari denied.

No. 87-5918. *TERRY v. MORGAN ET AL.* C. A. 7th Cir. Certiorari denied. Reported below: 818 F. 2d 32.

No. 87-5922. *GARDNER v. FOLTZ, WARDEN*. C. A. 6th Cir. Certiorari denied. Reported below: 829 F. 2d 1125.

No. 87-5927. *STRONG v. MERCANTILE TRUST CO., N. A.* C. A. 8th Cir. Certiorari denied. Reported below: 816 F. 2d 429.

No. 87-5928. *WEBER v. NORDMAN, CORMANY, HAIR & COMPTON ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 829 F. 2d 41.

No. 87-5944. *NOLL v. WILKERSON ET AL.* C. A. 8th Cir. Certiorari denied.

No. 87-5949. *BRATCHER v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 833 F. 2d 69.

No. 87-5977. *BERKMAN v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 833 F. 2d 307.

No. 87-5986. *SAVAGE v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 831 F. 2d 298.

No. 87-5991. *THOMAS v. UNITED STATES*. Ct. App. D. C. Certiorari denied.

No. 87-5994. *GLASS v. UNITED STATES*. C. A. 11th Cir. Certiorari denied. Reported below: 831 F. 2d 1069.

No. 87-5998. *ELRICH ET AL. v. WRIGHT ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 829 F. 2d 38.

No. 87-6009. *MORE v. UNITED STATES*. C. A. 11th Cir. Certiorari denied. Reported below: 830 F. 2d 1130.

No. 87-6015. *FALCON v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 832 F. 2d 1262.

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No. 87-6027. *ERVIN v. TRAXLER*, JUDGE, SEVENTH JUDICIAL CIRCUIT OF SOUTH CAROLINA. C. A. 4th Cir. Certiorari denied. Reported below: 829 F. 2d 35.

No. 87-6029. *WHITEHEAD v. INDIANA*. Sup. Ct. Ind. Certiorari denied. Reported below: 511 N. E. 2d 284.

No. 87-6065. *KELLEY v. HAIL ET AL.* C. A. 11th Cir. Certiorari denied. Reported below: 823 F. 2d 557.

No. 87-6097. *HUGHES v. SOUTH CAROLINA*. C. A. 4th Cir. Certiorari denied. Reported below: 829 F. 2d 35.

No. 87-388. *LORMAND v. ARIES MARINE CORP. ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 820 F. 2d 1222.

JUSTICE WHITE, with whom JUSTICE BLACKMUN joins, dissenting.

The issue here is the proper definition of seaman status under the Jones Act. Petitioner, an employee for a welding company, was injured while working aboard a barge. He brought suit in District Court against his employer and the owner of the barge. The suit was unsuccessful, and in particular the District Court granted summary judgment for petitioner's employer on the Jones Act claim, ruling that petitioner was not a "seaman" as that term is used in 46 U. S. C. § 688. The Fifth Circuit affirmed on appeal, adhering to the test for determining seaman status that it had recently stated in an en banc decision. *Lormand v. Superior Oil Co.*, 845 F. 2d 536, 539 (1987), citing *Barrett v. Chevron U. S. A., Inc.*, 781 F. 2d 1067 (CA5 1986) (en banc). Judge Rubin stated that he concurred in the opinion only because he was bound to do so by the *Barrett* decision, though he continued to adhere to his dissent in *Barrett*. Judge Brown concurred separately on a different issue.

In *Barrett*, the Fifth Circuit as a whole reaffirmed its adherence to the test it had followed for almost 30 years, which states that to qualify as a "seaman" a person must either be assigned permanently to a vessel or perform a substantial part of his work aboard it, and also that the person's duties or capacities must contribute to the function of the vessel or to the accomplishment of its mission. *Barrett, supra*, at 1070-1074; *Offshore Co. v. Robison*, 266 F. 2d 769 (CA5 1959). Of the eight judges who formed the major-

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ity in *Barrett*, however, four concurred specially, noting that they joined the majority only to establish a firm rule but would have preferred to adopt the test formulated by the Seventh Circuit, which puts the issue of seaman status to a jury whenever the person "had a more or less permanent connection with a vessel in navigation" and "made a significant contribution to the maintenance, operation, or welfare of the transportation function of the vessel." *Johnson v. John F. Beasley Constr. Co.*, 742 F. 2d 1054, 1063, cert. denied, 469 U. S. 1211 (1985). Judge Rubin dissented, joined by five other judges, stating that the *Robison* test should be supplemented by considering the person's status not only in light of his permanent job assignment but also in light of any assignment imposed on him for a hitch of more limited duration. *Barrett, supra*, at 1077-1078.

The test used by the Fifth Circuit to determine seaman status is inconsistent with the test used by the Seventh Circuit. In addition, the Third Circuit has formulated the second part of the *Robison* test as whether the person is aboard the vessel "primarily to aid in its navigation." *Simko v. C. & C. Marine Maintenance Co.*, 594 F. 2d 960, 964, cert. denied, 444 U. S. 833 (1979). The split among the Circuits on this issue warrants our granting certiorari.

No. 87-624. CONSOLIDATED FREIGHTWAYS CORPORATION OF DELAWARE *v.* SECRETARY OF TRANSPORTATION OF PENNSYLVANIA ET AL. C. A. 3d Cir. Certiorari denied. JUSTICE WHITE and JUSTICE MARSHALL would grant certiorari. Reported below: 827 F. 2d 916.

No. 87-734. KAY ET AL. *v.* DAVID DOUGLAS SCHOOL DISTRICT NO. 40 ET AL. Sup. Ct. Ore. Certiorari denied. Reported below: 303 Ore. 574, 738 P. 2d 1389.

JUSTICE WHITE, dissenting.

This case presents the difficult question whether a plaintiff can recover attorney's fees under 42 U. S. C. § 1988 when the underlying action has become moot because of compliance by the defendant with a court order. Here petitioners challenged respondents' plans to incorporate formal public prayer in the commencement exercises of a public high school. After numerous unsuccessful attempts to persuade respondents to drop the public prayer, petitioners brought suit in state court, challenging

respondents' plans as violative of the State and Federal Constitutions and seeking attorney's fees under state law and § 1988. The trial court made an oral ruling that the planned public prayer violated state and federal law, and consequently respondents dropped the public prayer from the commencement exercises. About a month after the commencement exercises, the trial court issued a written order reaffirming the earlier oral decision and awarding attorney's fees. The Oregon Court of Appeals affirmed the holding that the planned public prayer violated the State Constitution and affirmed the award of attorney's fees under § 1988. 79 Ore. App. 384, 719 P. 2d 875 (1986).

The Oregon Supreme Court reversed the Court of Appeals and remanded the case to the trial court to vacate the judgment. 303 Ore. 574, 738 P. 2d 1389 (1987). The court reasoned that there was no longer a justiciable controversy because petitioners had already graduated, public prayer was not included in their commencement exercises, and petitioners did not seek to enjoin future repetitions of this challenged conduct. The court held that under Oregon law, the oral order was not an effective preliminary injunction or final order until it was reduced to writing and by the time it was rendered in writing the controversy was no longer justiciable.

The Oregon Supreme Court's decision that a § 1988 fees award is not available in this case creates a conflict in the courts over the award of fees when the underlying action is rendered unreviewable after it has been filed. The courts are in agreement that a § 1988 fees award is proper where the defendant "voluntarily" complies under threat of the lawsuit, for such compliance, although mooting the lawsuit, shows acquiescence in the plaintiff's position. *E. g.*, *Martin v. Heckler*, 773 F. 2d 1145, 1148-1149 (CA11 1985) (en banc); *DeMier v. Gondles*, 676 F. 2d 92 (CA4 1982); see *Hewitt v. Helms*, 482 U. S. 755, 761 (1987) ("[I]f the defendant, under pressure of the lawsuit, alters his conduct (or threatened conduct) towards the plaintiff that was the basis for the suit, the plaintiff will have prevailed"). The more difficult question presented by this case is whether a defendant's "involuntary" compliance with a seemingly valid court order supports an award of fees under § 1988, where such compliance, under fear of contempt, moots a lawsuit such as this one but does not demonstrate acquiescence in plaintiff's position. The decision here denying an award of fees under § 1988 conflicts with decisions from

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three Circuits upholding § 1988 fees awards in the involuntary-compliance-plus-mootness context. *Grano v. Barry*, 251 U. S. App. D. C. 289, 294-295, 783 F. 2d 1104, 1109-1110 (1986); *Williams v. Alioto*, 625 F. 2d 845, 847-848 (CA9 1980) (*per curiam*), cert. denied, 450 U. S. 1012 (1981); *Doe v. Marshall*, 622 F. 2d 118, 119-120 (CA5 1980), cert. denied, 451 U. S. 993 (1981).

The federal issue raised by this petition for certiorari is substantial and requires resolution by this Court. An award of fees under § 1988 to these petitioners may be appropriate, for petitioners were in one sense "prevailing parties": although the dispute was later held to be moot, the seemingly valid oral ruling by the trial court gave them all that they sought. On the other hand, there has never been a final determination, tested on appeal, that petitioners' position was legally sound. Arguably, respondents should not be forced to bear an award of fees where they have never been finally determined to have violated the Federal Constitution or laws and have steadfastly maintained the contrary position. And arguably, under *United States v. Munsingwear, Inc.*, 340 U. S. 36, 39-40 (1950), no party should be prejudiced by a decision which in the statutory scheme for judicial decisionmaking was only preliminary. The resolution of these competing concerns is plainly important to determining who is a "prevailing party" under § 1988. Because of the conflict in the courts over this question of federal law, I would grant certiorari.

No. 87-5570. *FORD v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 824 F. 2d 1430.

JUSTICE WHITE, dissenting.

The issue here is whether it is consistent with the Federal Magistrates Act for a district court to delegate jury selection to a magistrate. In this case, petitioner was convicted by a federal jury on the felony charge of stealing Government property. A United States Magistrate presided over the selection of the jury which, despite the relatively routine nature of the charges, took about four hours and was not free of difficulty. Neither the Government nor defense counsel expressly consented or objected to the Magistrate's presiding over the *voir dire* proceedings. On appeal, petitioner argued that the District Court violated the Federal Magistrates Act, 28 U. S. C. §§ 631-639 (1982 ed. and Supp. III), by allowing the Magistrate to preside over jury selection. A

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panel of the Fifth Circuit rejected this argument. 797 F. 2d 1329 (1986), cert. denied, 479 U. S. 1070 (1987).

The case was accepted for rehearing en banc, and in a split decision the full court affirmed, though on other grounds. It ruled that the Act does not grant a district court the power to delegate jury selection to a magistrate as an "additional dut[y]" under 28 U. S. C. § 636(b)(3), and that the opposite construction of this section would pose "grave constitutional issues." 824 F. 2d 1430, 1435 (1987). Nonetheless, it affirmed the conviction because petitioner had failed to object to this procedure at trial and the violation did not amount to plain error because it did not render the trial fundamentally unfair. Judge Jolly concurred in the result, concluding that under the Act and the Constitution a magistrate may conduct *voir dire* at a jury trial unless the defendant objects. *Id.*, at 1439. Judge Rubin dissented, joined by three other judges, concluding that it does not violate either the Act or the Constitution for a magistrate to conduct the *voir dire* proceedings in a criminal trial. *Id.*, at 1440-1448.

If the decision below is incorrect, and this use of the magistrate violates either the Act or the Constitution, then it is not obvious that this violation can be dismissed under the "plain error" doctrine. And the position of the Fifth Circuit on this issue conflicts with two decisions of the Ninth Circuit. *United States v. Peacock*, 761 F. 2d 1313, 1317-1319, cert. denied, 474 U. S. 847 (1985); *United States v. Bezold*, 760 F. 2d 999, 1001-1003 (1985), cert. denied, 474 U. S. 1063 (1986). See also *United States v. Rivera-Sola*, 713 F. 2d 866, 872-873 (CA1 1983) (dictum). The split among the Circuits on this issue warrants our granting certiorari.

No. 87-5620. *HOO v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 825 F. 2d 667.

JUSTICE WHITE, dissenting.

The issue presented by this petition for certiorari is what is the correct test for determining if prosecutorial preindictment delay amounts to a violation of the Due Process Clause of the Fifth Amendment. See *United States v. Lovasco*, 431 U. S. 783 (1977). In this case, the petitioner argued that he was prejudiced by the prosecutorial delay in filing the indictment against him, for it was filed 13 days after he turned 21 years of age, and consequently he was ineligible for the protections of the Federal Juvenile Delin-

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quency Act, 18 U. S. C. §5031 *et seq.* The Second Circuit held that there was no due process violation because petitioner "made no showing of an improper prosecutorial motive." 825 F. 2d 667, 671 (1987). Other Circuits have similarly required a showing of prosecutorial misconduct designed to obtain a tactical advantage over the defendant or to advance some other impermissible purpose in order to establish a due process violation. *United States v. Ismaili*, 828 F. 2d 153, 166 (CA3 1987); *United States v. Lebron-Gonzalez*, 816 F. 2d 823, 831 (CA1), cert. denied, *ante*, pp. 843, 857; *United States v. Caporale*, 806 F. 2d 1487, 1514 (CA11 1986), cert. denied, 482 U. S. 917, 483 U. S. 1021 (1987); *United States v. Jenkins*, 701 F. 2d 850, 854-855 (CA10 1983). Two Circuits, however, have concluded that intentional misconduct is not the *sine qua non* for a due process violation from prosecutorial preindictment delay, and instead they hold that the proper inquiry is to balance the prejudice to the defendant against the Government's justification for delay. *United States v. Valentine*, 783 F. 2d 1413, 1416 (CA9 1986); *United States v. Automated Medical Laboratories, Inc.*, 770 F. 2d 399, 403-404 (CA4 1985). Exemplifying the significant disagreement in the lower courts over the proper test, panels in the Fifth and Seventh Circuits have acknowledged conflicts between decisions from their own Circuits on this issue. *Dickerson v. Louisiana*, 816 F. 2d 220, 229, n. 16 (CA5), cert. denied, *ante*, p. 956; *United States v. Hollins*, 811 F. 2d 384, 387-388 (CA7 1987). The continuing conflict among the Circuits on this important question of constitutional law requires resolution by this Court; I would grant certiorari.

No. 87-5772. LEWIS ET AL. *v.* UNITED STATES. C. A. 6th Cir. Certiorari before judgment denied.

No. 87-5904. TRAPANI *v.* CBS RECORDS, INC., ET AL. C. A. 6th Cir. Certiorari before judgment denied.

No. 87-5795. SMITH *v.* KENTUCKY. Sup. Ct. Ky.;

No. 87-5877. CLANTON *v.* BAIR, WARDEN, ET AL. C. A. 4th Cir.;

No. 87-5885. RESNOVER *v.* INDIANA. Sup. Ct. Ind.;

No. 87-5892. BARNES *v.* VIRGINIA. Sup. Ct. Va.;

No. 87-5909. STOUFFER *v.* OKLAHOMA. Ct. Crim. App. Okla.;

No. 87-5913. VAN WOUDEBERG *v.* OKLAHOMA. Ct. Crim. App. Okla.; and

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No. 87-6002. *BYRD v. OHIO*. Sup. Ct. Ohio. Certiorari denied. Reported below: No. 87-5795, 734 S. W. 2d 437; No. 87-5877, 826 F. 2d 1354; No. 87-5885, 507 N. E. 2d 1382; No. 87-5892, 234 Va. 130, 360 S. E. 2d 196; No. 87-5909, 738 P. 2d 1349; No. 87-6002, 32 Ohio St. 3d 79, 512 N. E. 2d 611.

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. 87-5997. *HASKINS v. VIRGINIA*. C. A. 4th Cir. Certiorari denied. JUSTICE WHITE dissents and would grant certiorari to resolve conflicts among the Circuits. See *Kerr v. Finkbeiner*, 474 U. S. 929 (1985) (WHITE, J., dissenting from denial of certiorari). Reported below: 828 F. 2d 17.

#### *Rehearing Denied*

No. 86-7164. *MCDOWELL v. UNITED STATES*, *ante*, p. 980;

No. 87-472. *RICHARDSON ET AL. v. LANE ET AL.*, *ante*, p. 953;

No. 87-520. *HANCICH v. GOPOIAN ET AL.*, *ante*, p. 964;

No. 87-5530. *LAUDERDALE v. SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA, ET AL.*, *ante*, p. 956;

No. 87-5632. *MINGLEDOLPH v. MCKEAN, CHAIRMAN OF THE POSTAL BOARD, ET AL.*, *ante*, p. 967;

No. 87-5634. *WOOL v. RICHARDSON ET AL.*, *ante*, p. 960;

No. 87-5644. *LUNZ v. HENDERSON, SUPERINTENDENT, AUBURN CORRECTIONAL FACILITY, ET AL.*, *ante*, p. 958; and

No. 87-5721. *BYNUM v. BUREAU OF PRISONS*, *ante*, p. 979. Petitions for rehearing denied.

No. 85-429. *EXXON CORP. v. UNITED STATES ET AL.*, 474 U. S. 1105. Motion for leave to file petition for rehearing denied.

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#### *Affirmed on Appeal*

No. 87-927. *RICHARDSON ET AL. v. EDWARDS, GOVERNOR OF LOUISIANA, ET AL.* Affirmed on appeal from D. C. M. D. La.

#### *Appeals Dismissed*

No. 87-661. *NORTHWOOD NURSING & CONVALESCENT HOME, INC. v. CITY OF PHILADELPHIA BOARD OF REVISION OF TAXES.*

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Appeal from Pa. Commw. Ct. Motion of appellee for damages denied. Appeal dismissed for want of properly presented federal question. Reported below: 98 Pa. Commw. 401, 511 A. 2d 281.

No. 87-871. *HUNTER v. MURRAY*, JUDGE, COURT OF CLAIMS, ALBANY, NEW YORK, ET AL. Appeal from App. Div., Sup. Ct. N. Y., 3d Jud. Dept., dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied. Reported below: 130 App. Div. 2d 836, 515 N. Y. S. 2d 160.

No. 87-5919. *MARCH v. MARCH*. Appeal from Dist. Ct. App. Fla., 2d Dist., dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied. Reported below: 503 So. 2d 334.

No. 87-5926. *LEMONS v. DRISKILL*, ASSISTANT WARDEN, ET AL. 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: 831 F. 2d 1059.

No. 87-5974. *ROBERTSON v. JONES*, AKA ROBERTSON. Appeal from Sup. Ct. Del. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied. Reported below: 530 A. 2d 1128.

No. 87-904. *AMERICANA CORP. v. STATE HIGHWAY AND TRANSPORTATION COMMISSIONER OF VIRGINIA*. Appeal from Sup. Ct. Va. dismissed for want of properly presented federal question.

No. 87-5659. *TISCHIO v. NEW JERSEY*. Appeal from Sup. Ct. N. J. dismissed for want of substantial federal question. Reported below: 107 N. J. 504, 527 A. 2d 388.

No. 87-5988. *FLAKES v. WISCONSIN*. Appeal from Ct. App. Wis. dismissed for want of substantial federal question. Reported below: 140 Wis. 2d 411, 410 N. W. 2d 614.

#### *Miscellaneous Orders*

No. A-441. *FAZZINI v. UNITED STATES*. Application for bail, addressed to JUSTICE BLACKMUN and referred to the Court, denied.

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No. A-491. GEORGETOWN UNIVERSITY ET AL. *v.* GAY RIGHTS COALITION OF GEORGETOWN UNIVERSITY LAW CENTER ET AL., *ante*, p. 999. Motion for further consideration of application for stay denied. JUSTICE SCALIA took no part in the consideration or decision of this application.

No. A-561 (87-343). MONTANA ET AL. *v.* CROW TRIBE OF INDIANS ET AL., *ante*, p. 997. Application of appellees to issue the judgment forthwith, presented to JUSTICE O'CONNOR, and by her referred to the Court, granted.

No. A-562 (87-6173). DARDEN *v.* DUGGER, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Application for stay of execution of sentence of death, presented to JUSTICE STEVENS, and by him referred to the Court, granted pending the disposition by this Court of the petition for writ of certiorari. Should the petition for writ of certiorari be denied, this stay terminates automatically. In the event the petition for writ of certiorari is granted, this stay shall continue pending the sending down of the judgment of this Court.

No. D-644. IN RE DISBARMENT OF JAFREE. Disbarment entered. [For earlier order herein, see 483 U. S. 1017.]

No. D-654. IN RE DISBARMENT OF MILLER. Disbarment entered. [For earlier order herein, see 483 U. S. 1052.]

No. D-655. IN RE DISBARMENT OF WOOD. Disbarment entered. [For earlier order herein, see *ante*, p. 893.]

No. D-659. IN RE DISBARMENT OF SHIRLEY. Disbarment entered. [For earlier order herein, see *ante*, p. 920.]

No. D-663. IN RE DISBARMENT OF CIARDELLI. Disbarment entered. [For earlier order herein, see *ante*, p. 961.]

No. D-668. IN RE DISBARMENT OF RUBINO. It is ordered that John J. Rubino, of Levittown, N. Y., be suspended from the practice of law in this Court and that a rule issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D-669. IN RE DISBARMENT OF WADE. It is ordered that Hugh Mettys Wade, of Washington, D. C., be suspended from the practice of law in this Court and that a rule issue, returnable

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within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D-670. *IN RE DISBARMENT OF LEWIS*. It is ordered that Terrence Lee Lewis, of New York, N. Y., be suspended from the practice of law in this Court and that a rule issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D-671. *IN RE DISBARMENT OF CLINTON*. It is ordered that Daniel James Clinton, of Los Angeles, 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-672. *IN RE DISBARMENT OF COOPER*. It is ordered that Edward Samuel Cooper, of Los Angeles, 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-673. *IN RE DISBARMENT OF SIMON*. It is ordered that Nathan Simon, of Willoughby, Ohio, be suspended from the practice of law in this Court and that a rule issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D-674. *IN RE DISBARMENT OF DOZORYST*. It is ordered that Nicholas George Dozoryst II, 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. 108, Orig. *NEBRASKA v. WYOMING ET AL.* Defendants are invited to file responses within 21 days to the motion of plaintiff to amend petition for an order enforcing decree and for injunctive relief. [For earlier order herein, see, *e. g.*, 483 U. S. 1002.]

No. 87-253. *BOWEN, SECRETARY OF HEALTH AND HUMAN SERVICES v. KENDRICK ET AL.* D. C. D. C. [Probable jurisdiction noted, *ante*, p. 942];

No. 87-431. *BOWEN, SECRETARY OF HEALTH AND HUMAN SERVICES v. KENDRICK ET AL.* D. C. D. C. [Probable jurisdiction noted, *ante*, p. 942];

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No. 87-462. *KENDRICK ET AL. v. BOWEN, SECRETARY OF HEALTH AND HUMAN SERVICES, ET AL.* D. C. D. C. [Probable jurisdiction noted, *ante*, p. 942]; and

No. 87-775. *UNITED FAMILIES OF AMERICA v. KENDRICK ET AL.* D. C. D. C. [Probable jurisdiction noted, *ante*, p. 1002.] Motion of the Solicitor General for divided argument granted.

No. 87-922. *IN RE BROWN.* Petition for writ of mandamus denied.

No. 87-5932. *IN RE MARKEE.* Petition for writ of prohibition denied.

No. 87-1005. *IN RE ARLT ET UX.* Motion of petitioners for a free white male Christian bench denied. Petition for writ of prohibition denied.

*Certiorari Denied.* (See also Nos. 87-871, 87-5919, 87-5926, and 87-5974, *supra*.)

No. 86-1065. *O'SULLIVAN ET AL. v. UNITED STATES ET AL.* C. A. 7th Cir. *Certiorari* denied. Reported below: 798 F. 2d 969.

No. 87-31. *FORD MOTOR CREDIT CO. v. UNITED STATES DISTRICT COURT FOR THE DISTRICT OF OREGON (JOHN STRIBLING FORD, INC., REAL PARTY IN INTEREST).* C. A. 9th Cir. *Certiorari* denied.

No. 87-560. *FMC WYOMING CORP. v. HODEL, SECRETARY OF THE INTERIOR, ET AL.* C. A. 10th Cir. *Certiorari* denied. Reported below: 816 F. 2d 496.

No. 87-606. *HUTCHINS v. UNITED STATES.* C. A. 5th Cir. *Certiorari* denied. Reported below: 818 F. 2d 322.

No. 87-642. *LEE ET AL. v. EKLUTNA, INC., ET AL.* C. A. 9th Cir. *Certiorari* denied. Reported below: 809 F. 2d 1406.

No. 87-670. *GILARDY, SPECIAL ADMINISTRATOR OF THE ESTATE OF THOMPSON, ET AL. v. UNITED STATES.* C. A. 9th Cir. *Certiorari* denied. Reported below: 821 F. 2d 1427.

No. 87-676. *MILLER & CO. v. UNITED STATES ET AL.* C. A. Fed. Cir. *Certiorari* denied. Reported below: 824 F. 2d 961.

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No. 87-703. VAN CAUWENBERGHE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 827 F. 2d 424.

No. 87-716. KULLE *v.* IMMIGRATION AND NATURALIZATION SERVICE. C. A. 7th Cir. Certiorari denied. Reported below: 825 F. 2d 1188.

No. 87-748. GRASTY ET AL. *v.* AMALGAMATED CLOTHING & TEXTILE WORKERS UNION ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 828 F. 2d 123.

No. 87-801. ROBINSON *v.* MONTGOMERY WARD & Co., INC. C. A. 4th Cir. Certiorari denied. Reported below: 823 F. 2d 793.

No. 87-847. TALBOT *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 825 F. 2d 991.

No. 87-864. CITY OF WOODVILLE, MISSISSIPPI, ET AL. *v.* MONROE ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 819 F. 2d 507.

No. 87-878. SCHATTNER, DBA SPORICIDIN Co. *v.* UNIDISCO, INC., ET AL. C. A. Fed. Cir. Certiorari denied. Reported below: 824 F. 2d 965.

No. 87-897. J. E. BERNARD & Co. *v.* INGERSOLL MILLING MACHINE Co. ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 829 F. 2d 293.

No. 87-898. SURVIVAL SYSTEMS DIVISION OF THE WHITTAKER CORP. ET AL. *v.* UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF CALIFORNIA (RODRIGUEZ, REAL PARTY IN INTEREST). C. A. 9th Cir. Certiorari denied. Reported below: 825 F. 2d 1416.

No. 87-901. GHANDHI ET AL. *v.* FAYED ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 823 F. 2d 959.

No. 87-909. CHULA VISTA CITY SCHOOL DISTRICT ET AL. *v.* BENNETT, SECRETARY OF EDUCATION. C. A. Fed. Cir. Certiorari denied. Reported below: 824 F. 2d 1573.

No. 87-910. GREAT LAKES DREDGE & DOCK Co., INC. *v.* FURKA, ADMINISTRATRIX OF THE ESTATE OF FURKA. C. A. 4th Cir. Certiorari denied. Reported below: 824 F. 2d 330.

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No. 87-912. *KINZLI ET AL. v. CITY OF SANTA CRUZ*. C. A. 9th Cir. Certiorari denied. Reported below: 818 F. 2d 1449 and 830 F. 2d 968.

No. 87-914. *ZERNICEK v. PETROLEOS MEXICANOS*. C. A. 5th Cir. Certiorari denied. Reported below: 826 F. 2d 415.

No. 87-926. *PAGE v. COMMISSIONER OF INTERNAL REVENUE*. C. A. 8th Cir. Certiorari denied. Reported below: 823 F. 2d 1263.

No. 87-931. *PROUD v. GREYCAS, INC.* C. A. 7th Cir. Certiorari denied. Reported below: 826 F. 2d 1560.

No. 87-934. *DESHIELDS v. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION*. C. A. Fed. Cir. Certiorari denied. Reported below: 833 F. 2d 1022.

No. 87-935. *ALABAMA v. FORTIER*. Ct. Crim. App. Ala. Certiorari denied. Reported below: 515 So. 2d 101.

No. 87-936. *WITTEMAN v. JACK BARRY CABLE TV*. Ct. App. Cal., 2d App. Dist. Certiorari denied. Reported below: 192 Cal. App. 3d 1619, 228 Cal. Rptr. 584.

No. 87-939. *DORNER ET UX. v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 826 F. 2d 10.

No. 87-955. *PICKNEY v. ILLINOIS*. App. Ct. Ill., 1st Dist. Certiorari denied.

No. 87-973. *NATION v. GEORGIA ET AL.* C. A. 11th Cir. Certiorari denied. Reported below: 822 F. 2d 64.

No. 87-974. *PARLOR FURNITURE OF HICKORY, INC. v. MILLER*. Ct. App. N. C. Certiorari denied. Reported below: 85 N. C. App. 538, 355 S. E. 2d 858.

No. 87-989. *XANADU OF COCOA BEACH, INC. v. ZETLEY*. C. A. 11th Cir. Certiorari denied. Reported below: 822 F. 2d 982.

No. 87-995. *SHILLING v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 826 F. 2d 1365.

No. 87-1004. *BROBST ET AL. v. COLUMBUS SERVICES INTERNATIONAL*. C. A. 3d Cir. Certiorari denied. Reported below: 824 F. 2d 271.

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No. 87-1006. *FULTON v. UTAH*. Sup. Ct. Utah. Certiorari denied. Reported below: 742 P. 2d 1208.

No. 87-1007. *PICOZZI v. SANDALOW*. C. A. 6th Cir. Certiorari denied. Reported below: 827 F. 2d 770.

No. 87-1030. *KOVIC v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 830 F. 2d 680.

No. 87-1033. *GODOY v. UNITED STATES*. C. A. 11th Cir. Certiorari denied. Reported below: 821 F. 2d 1498.

No. 87-5408. *TEAGUE v. UNITED STATES*. C. A. 10th Cir. Certiorari denied.

No. 87-5512. *BAKER v. DUGGER, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL.* Sup. Ct. Fla. Certiorari denied. Reported below: 513 So. 2d 1060.

No. 87-5754. *AUSTIN v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 823 F. 2d 257.

No. 87-5767. *DI CICCIO v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 829 F. 2d 33.

No. 87-5871. *ROBINSON v. FEDERAL ELECTION COMMISSION*. C. A. Fed. Cir. Certiorari denied. Reported below: 831 F. 2d 305.

No. 87-5916. *MAPSON v. PERINI*. C. A. 6th Cir. Certiorari denied. Reported below: 827 F. 2d 770.

No. 87-5930. *MURPHY ET AL. v. MESCHER*. C. A. 8th Cir. Certiorari denied.

No. 87-5931. *SPAN v. MORSE*. C. A. 11th Cir. Certiorari denied.

No. 87-5933. *PETWAY v. KINCAID ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 828 F. 2d 17.

No. 87-5936. *SPARKMAN v. TEXAS*. Ct. App. Tex., 11th Dist. Certiorari denied.

No. 87-5938. *MARLOW v. UNITED STATES DEPARTMENT OF EDUCATION ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 820 F. 2d 581.

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No. 87-5951. *FREEDMAN v. UNITED STATES*. Ct. Mil. App. Certiorari denied. Reported below: 25 M. J. 219.

No. 87-5953. *JOHNSON v. OKLAHOMA*. C. A. 10th Cir. Certiorari denied.

No. 87-5965. *JAMES v. ILLINOIS*. Sup. Ct. Ill. Certiorari denied. Reported below: 118 Ill. 2d 214, 514 N. E. 2d 998.

No. 87-5967. *THOMPSON v. ILLINOIS*. App. Ct. Ill., 2d Dist. Certiorari denied. Reported below: 153 Ill. App. 3d 1163, 517 N. E. 2d 353.

No. 87-5969. *SHELL v. MEESE, ATTORNEY GENERAL OF THE UNITED STATES, ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 826 F. 2d 1065.

No. 87-5970. *MARTIN v. DUTCH FORK MAGISTRATE*. Ct. Common Pleas of Richland County, S. C. Certiorari denied.

No. 87-5978. *HEADLEY v. VIRGINIA*. Sup. Ct. Va. Certiorari denied.

No. 87-5981. *MCCHRISTION v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 828 F. 2d 399.

No. 87-5995. *GUERRERO v. WASHINGTON*. Ct. App. Wash. Certiorari denied.

No. 87-6000. *BOYER v. DAUM*. C. A. 8th Cir. Certiorari denied. Reported below: 831 F. 2d 301.

No. 87-6003. *EDWARDS v. LAMB DIN*. C. A. 11th Cir. Certiorari denied. Reported below: 827 F. 2d 774.

No. 87-6004. *LEMONS v. DRETKE ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 833 F. 2d 1007.

No. 87-6005. *LEMONS v. LYNAUGH, DIRECTOR, TEXAS DEPARTMENT OF CORRECTIONS, ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 832 F. 2d 1263.

No. 87-6007. *RADVAN-ZIEMNOWICZ v. ZIEMNOWICZ ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 826 F. 2d 1060.

No. 87-6012. *MURPHY v. NEISNER; and POOL v. BURLISON*. Sup. Ct. Mo. Certiorari denied.

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No. 87-6016. TAYLOR *v.* HENRY VOGT MACHINE CO. C. A. 6th Cir. Certiorari denied. Reported below: 825 F. 2d 412.

No. 87-6018. SOLOMON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 825 F. 2d 1292.

No. 87-6024. MILHEM *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 834 F. 2d 118.

No. 87-6025. BUSTAMANTE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 831 F. 2d 303.

No. 87-6035. ADAMS *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 834 F. 2d 632.

No. 87-6039. BRAMBLETT *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 825 F. 2d 412.

No. 87-6046. JONES *v.* SOWDERS, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 833 F. 2d 1012.

No. 87-6049. FRIEND *v.* KENTUCKY. C. A. 6th Cir. Certiorari denied. Reported below: 827 F. 2d 769.

No. 87-6056. WHITE *v.* DEPARTMENT OF JUSTICE. C. A. Fed. Cir. Certiorari denied. Reported below: 829 F. 2d 43.

No. 87-6104. ACHARYA *v.* BJORKSTEN ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 828 F. 2d 21.

No. 87-6109. TUFFORD *v.* ALASKA. Ct. App. Alaska. Certiorari denied.

No. 87-523. CARLIN *v.* MCKEAN, INDIVIDUALLY AND AS A MEMBER OF BOARD OF GOVERNORS OF THE UNITED STATES POSTAL SERVICE, ET AL. C. A. D. C. Cir. Certiorari denied. JUSTICE O'CONNOR took no part in the consideration or decision of this petition. Reported below: 262 U. S. App. D. C. 212, 823 F. 2d 620.

No. 87-698. MCMANUS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. JUSTICE BLACKMUN took no part in the consideration or decision of this petition. Reported below: 826 F. 2d 1061.

No. 87-844. CONNECTICUT *v.* MEBANE. Sup. Ct. Conn. Motion of respondent for leave to proceed *in forma pauperis* granted.

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Certiorari denied. Reported below: 204 Conn. 585, 529 A. 2d 680.

No. 87-900. REICHHOLD CHEMICALS, INC. *v.* CASSINO ET AL. C. A. 9th Cir. Motion of Equal Employment Advisory Council for leave to file a brief as *amicus curiae* granted. Certiorari denied. Reported below: 817 F. 2d 1338.

No. 87-5699. JONES *v.* BUTLER, WARDEN. Sup. Ct. La.;  
No. 87-5821. JESTER *v.* OHIO. Sup. Ct. Ohio;  
No. 87-5968. MORALES *v.* OHIO. Sup. Ct. Ohio;  
No. 87-5973. SCHNEIDER *v.* MISSOURI. Sup. Ct. Mo.; and  
No. 87-5985. ZUERN *v.* OHIO. Sup. Ct. Ohio. Certiorari denied. Reported below: No. 87-5699, 512 So. 2d 427; No. 87-5821, 32 Ohio St. 3d 147, 512 N. E. 2d 962; No. 87-5968, 32 Ohio St. 3d 252, 513 N. E. 2d 267; No. 87-5973, 736 S. W. 2d 392; No. 87-5985, 32 Ohio St. 3d 56, 512 N. E. 2d 585.

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. 87-5764. DENNIS *v.* UNITED STATES ATTORNEY GENERAL ET AL. C. A. 10th Cir. Certiorari denied. JUSTICE BRENNAN would grant certiorari.

#### *Rehearing Denied*

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., *ante*, p. 135;

No. 87-579. KATZ *v.* NEW YORK, *ante*, p. 960;

No. 87-5105. HARPER, A MINOR, BY HER MOTHER AND NEXT FRIEND, HARPER *v.* BOWEN, SECRETARY OF HEALTH AND HUMAN SERVICES, *ante*, p. 969;

No. 87-5482. CHILDS *v.* GEORGIA, *ante*, p. 970;

No. 87-5573. BURY *v.* CITY OF LAKELAND, FLORIDA, ET AL., *ante*, p. 966;

No. 87-5640. MCGLORY *v.* YOKA ET AL., *ante*, p. 968;

No. 87-5718. MINER *v.* UNITED STATES, *ante*, p. 969; and

No. 87-5789. IN RE SAFIR, *ante*, p. 975. Petitions for rehearing denied.

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No. 84-5929. *BALICH v. STANLEY*, 469 U. S. 1222. Motion for leave to file petition for rehearing denied.

No. 86-6384. *ROMINE v. GEORGIA*, 481 U. S. 1024. Petition for rehearing denied.

JUSTICE MARSHALL, dissenting.

## I

Adhering to my view that the death penalty is in all circumstances cruel and unusual punishment prohibited by the Eighth and Fourteenth Amendments, *Gregg v. Georgia*, 428 U. S. 153, 231-241 (1976) (MARSHALL, J., dissenting), I would vacate the decision below insofar as it left undisturbed the death sentence imposed in this case.

## II

Even if I did not hold this view, I would vacate petitioner's sentence of death for reconsideration in light of this Court's recent decision in *Lowenfield v. Phelps*, *ante*, p. 231. The Court in *Lowenfield* rejected a claim, similar to the one advanced by petitioner in this case, that the administration of an *Allen* charge to a capital sentencing jury was coercive. The Court recognized, however, that such a charge must be considered "in its context and under all the circumstances." *Ante*, at 237 (quoting *Jenkins v. United States*, 380 U. S. 445, 446 (1965) (*per curiam*)). Moreover, the Court explicitly limited its holding to the facts of the case before it, stating that "we do not mean to be understood as saying other combinations of supplemental charges and polling might not require a different conclusion." *Ante*, at 241. The circumstances surrounding the administration of the *Allen* charge in the instant case differed substantially from those in *Lowenfield*. Moreover, they did so in ways that the Court in *Lowenfield* recognized as relevant to the issue of coercion. The Georgia Supreme Court therefore should be given an opportunity to reevaluate petitioner's sentence in light of this Court's decision in *Lowenfield*.

Petitioner Larry Romine was convicted of capital murder and sentenced to death. His death sentence was reversed on appeal by the Georgia Supreme Court, and the case was remanded for a new sentencing trial. 251 Ga. 208 (1983). On retrial, after almost seven hours of deliberations and an overnight recess, the foreman of the jury sent the court a note that read: "We are unable to reach a unanimous decision and are certain we will not

ever be able to reach one." App. A to Pet. for Cert. 3. The court called the jury in and inquired: "[C]an you just give me the numerical breakdown of how you stand?" *Ibid.* The foreman replied that the jury was divided 11 to 1. The court sent the jury back for further deliberations, over the objection of defense counsel. When the jury still had not reached a verdict 5½ hours later, the court called the jury in again to give it "some other instructions." *Id.*, at 4. The court then administered an *Allen* charge, urging the jurors to reexamine the grounds of their opinions and attempt to reach a verdict. Two hours later, the jury returned a unanimous verdict of death.

In Georgia, as in Lowenfield's State of Louisiana, a hung jury in a capital sentencing trial results in the automatic imposition of a life sentence. See Ga. Code Ann. § 17-10-31 (1982); *Hill v. State*, 250 Ga. 821, 301 S. E. 2d 269 (1983); *Miller v. State*, 237 Ga. 557, 229 S. E. 2d 376 (1976). Thus, the State's usual interest in an *Allen* charge—avoiding the societal costs of a retrial—is not present. The Court in *Lowenfield* recognized that this difference "weighs in the constitutional calculus." *Ante*, at 238. The Court nonetheless concluded that the circumstances surrounding the administration of the charge in Lowenfield's case did not warrant a reversal on the ground of jury coercion. The discussion in *Lowenfield*, however, indicates that the circumstances relevant to petitioner's claim may produce a different result in the "constitutional calculus."

First, the jury polling that preceded the *Allen* charge in this case was far more coercive than the polling tolerated in *Lowenfield*. The Court in *Lowenfield* took great pains to establish that "the inquiry as to the numerical division of the jury was not as to how they stood on the merits of the verdict, but how they stood on the question whether further deliberations might assist them in returning a verdict." *Ante*, at 240. Here, the court's question undoubtedly was directed at the jury's division on the merits, placing it squarely within this Court's holding in *Brasfield v. United States*, 272 U. S. 448 (1926), which the *Lowenfield* Court held to be "instructive as to the potential dangers of jury polling." *Ante*, at 240.

Second, the jury's expression of its deadlock was much more unequivocal in this case than in *Lowenfield*. In *Lowenfield*, the jury's note to the court stated that it was unable to reach a verdict *at that time*. *Ante*, at 234. In the instant case, the jury not only stated that it was unable to reach a unanimous decision, but speci-

fied that "[w]e . . . are *certain* we will not *ever* be able to reach one." App. A to Pet. for Cert. 3 (emphasis added). After such an emphatic statement of deadlock, followed by 5½ hours of further unsuccessful deliberations, the jury may well have inferred from an *Allen* charge that the court was absolutely set on unanimity and unwilling to settle for anything less.

Third, the jury in this case did not request to be reinstructed, as did the jury in *Lowenfield*. Moreover, whereas the court in *Lowenfield* merely reiterated the part of its original jury instructions dealing with the jury's duty to deliberate with an open mind, the court's supplemental charge in this case was by its own admission different from the instructions given at the commencement of deliberations. The fact that the court summoned the jury on its own accord to deliver new and unfamiliar instructions heightened the coerciveness of the verdict-urging charge. See, e. g., *United States v. Seawell*, 550 F. 2d 1159, 1163 (CA9 1977) (*Allen* charge should not be given during deliberations unless jury requests it); *United States v. Blandin*, 784 F. 2d 1048, 1050 (CA10 1986) (*Allen* charge should be given during the court's original jury instructions rather than during the course of deliberations).

Finally, the polling in this case revealed a division of 11 to 1, and the trial judge knew of this division when he decided to give the *Allen* charge 5½ hours later. Furthermore, it was clear to the lone dissenting juror that the judge knew that there was only one holdout when he decided to give the charge. In *Lowenfield*, by contrast, the jury itself had requested the charge, so the single juror identified by the second poll could not have speculated that the results of the poll motivated the judge to give the charge. The dissenting juror in each case may have interpreted the charge as being directed at him or her alone. But the administration of the charge in the instant case would have communicated to the dissenter the judge's exasperation with her failure to capitulate.

I was convinced by the circumstances surrounding the *Allen* charge in *Lowenfield* that coercion of the jury had indeed occurred. But the circumstances of the instant case are significantly more coercive than those I condemned in *Lowenfield*. The majority opinion in *Lowenfield* promised that future cases would be considered on their particular facts and that the *Lowenfield* decision did not give *carte blanche* to state trial courts to use polling procedures and *Allen* charges indiscriminately during capi-

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tal sentencing proceedings. That promise requires that the Georgia Supreme Court be given an opportunity to reconsider the circumstances surrounding the *Allen* charge in this case in light of this Court's discussion of jury coercion in *Lowenfeld*. I dissent.

FEBRUARY 4, 1988

*Miscellaneous Order*

No. A-541 (87-6196). *GARDNER v. NORTH CAROLINA*. Gen. Ct. Justice, Super. Ct. Div., Forsyth County, N. C. Application for stay of execution of sentence of death, presented to THE CHIEF JUSTICE, and by him referred to the Court, denied. JUSTICE BLACKMUN and JUSTICE STEVENS would grant the 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 and the petition for writ of certiorari and would vacate the death sentence in this case.

FEBRUARY 5, 1988

*Miscellaneous Order*

No. A-599 (87-6360). *CLARK v. DUGGER, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL.* C. A. 11th Cir. Application for stay of execution of sentence of death, presented to JUSTICE STEVENS, and by him referred to the Court, granted pending the disposition by this Court of the petition for writ of certiorari. Should the petition for writ of certiorari be denied, this stay terminates automatically. In the event the petition for writ of certiorari is granted, this stay shall continue pending the sending down of the judgment of this Court. JUSTICE WHITE would deny the application. JUSTICE SCALIA took no part in the consideration or decision of this application.

FEBRUARY 10, 1988

*Miscellaneous Order*

No. A-616 (87-6406). *WILLIAMS v. LYNAUGH, DIRECTOR, TEXAS DEPARTMENT OF CORRECTIONS.* C. A. 5th Cir. Applica-

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tion for stay of execution of sentence of death, presented to JUSTICE WHITE, and by him referred to the Court, granted pending the disposition by this Court of the petition for writ of certiorari. Should the petition for writ of certiorari be denied, this stay terminates automatically. In the event the petition for writ of certiorari is granted, this stay shall continue pending the sending down of the judgment of this Court. JUSTICE WHITE took no part in the consideration or decision of this application.

FEBRUARY 18, 1988

*Miscellaneous Order.* (For Court's order making allotment of Justices, see *ante*, p. VII.)

FEBRUARY 19, 1988

*Dismissal Under Rule 53*

No. 87-858. VARANDANI *v.* BOWEN, SECRETARY OF HEALTH AND HUMAN SERVICES, ET AL. C. A. 4th Cir. Certiorari dismissed under this Court's Rule 53. Reported below: 824 F. 2d 307.

FEBRUARY 22, 1988

*Appeals Dismissed*

No. 87-820. KELLAM ET AL. *v.* PFEIFER ET AL. Appeal from Ct. App. Cal., 4th App. Dist., dismissed for want of properly presented federal question.

No. 87-918. SMITH *v.* FLORIDA DEPARTMENT OF BUSINESS REGULATION, DIVISION OF LAND SALES, CONDOMINIUMS AND MOBILE HOMES. Appeal from Dist. Ct. App. Fla., 1st Dist., dismissed for want of substantial federal question. Reported below: 504 So. 2d 1285.

No. 87-1016. STORY *v.* CALIFORNIA. Appeal from Ct. App. Cal., 2d App. Dist., dismissed for want of substantial federal question.

No. 87-1027. RESTER *v.* TEXAS. Appeal from Ct. App. Tex., 14th Dist., dismissed for want of substantial federal question.

No. 87-1035. JOYCE *v.* LEWIS BOLT & NUT CO. ET AL. Appeal from Sup. Ct. Minn. dismissed for want of substantial federal question. Reported below: 412 N. W. 2d 304.

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No. 87-1060. LOGEMANN, INDIVIDUALLY AND AS TRUSTEE OF THE MCCARTY RANCH TRUST *v.* CRAIG, TRUSTEE OF CASSIDY LAND & CATTLE CO., INC., ET AL. Appeal from Sup. Ct. Neb. dismissed for want of substantial federal question. Reported below: 226 Neb. 587, 412 N. W. 2d 857.

No. 87-1081. GRAND FORKS-TRAILL WATER USERS, INC. *v.* HJELLE, NORTH DAKOTA STATE HIGHWAY COMMISSIONER. Appeal from Sup. Ct. N. D. dismissed for want of substantial federal question. Reported below: 413 N. W. 2d 344.

No. 87-6064. SEABORNE *v.* COUNTY COMMISSIONERS OF WASHINGTON COUNTY. Appeal from Sup. Jud. Ct. Me. dismissed for want of substantial federal question. Reported below: 514 A. 2d 1203.

No. 87-946. CITY OF PALO ALTO ET AL. *v.* CENTURY FEDERAL, INC., ET AL. Appeal from D. C. N. D. Cal. dismissed for want of jurisdiction. Reported below: 710 F. Supp. 1552.

No. 87-1003. SCHAEFER *v.* STATE ADMINISTRATIVE BOARD OF ELECTION LAWS. Appeal from Ct. Sp. App. Md. dismissed for want of jurisdiction. Reported below: 71 Md. App. 740.

No. 87-1071. LIGGETT ET UX. *v.* STATE FARM FIRE & CASUALTY CO. Appeal from C. A. 10th Cir. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied.

No. 87-1096. WRIGHT ET AL. *v.* WELCH ET AL. Appeal from App. Ct. Mass. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied. Reported below: 24 Mass. App. 409, 509 N. E. 2d 923.

No. 87-1123. CHRISTIAN ET AL. *v.* BEWKES. Appeal from Sup. Jud. Ct. Mass. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied. Reported below: 400 Mass. 753, 511 N. E. 2d 587.

No. 87-1162. CLISSURAS *v.* CITY OF NEW YORK ET AL. Appeal from App. Div., Sup. Ct. N. Y., 2d Jud. Dept., dismissed for want of jurisdiction. Treating the papers whereon the appeal

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was taken as a petition for writ of certiorari, certiorari denied. Reported below: 131 App. Div. 2d 717, 517 N. Y. S. 2d 39.

No. 87-5419. *KOSS v. SLATER*, JUDGE. 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: 116 Ill. 2d 389, 507 N. E. 2d 826.

No. 87-6095. *MARTINEZ v. COLORADO*. Appeal from Sup. Ct. Colo. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied. Reported below: 739 P. 2d 838.

*Certiorari Granted—Vacated and Remanded*

No. 87-544. *COOMBE, SUPERINTENDENT, EASTERN CORRECTIONAL FACILITY v. ESCALERA*. C. A. 2d Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Taylor v. Illinois*, ante, p. 400. Reported below: 826 F. 2d 185.

No. 87-5836. *BIDDLE v. UNITED STATES*. C. A. 4th Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of the position presently asserted by the Solicitor General in his brief filed January 11, 1988. Reported below: 822 F. 2d 56.

*Miscellaneous Orders*

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]; and

No. 86-5309. *ROSS v. OKLAHOMA*. Ct. Crim. App. Okla. [Certiorari granted, 482 U. S. 926.] Cases restored to calendar for reargument.

No. 86-684. *CALIFORNIA v. GREENWOOD ET AL.* Ct. App. Cal., 4th App. Dist. [Certiorari granted, 483 U. S. 1019.] Motion of respondent Billy Greenwood for leave to file a supplemental brief after argument granted. JUSTICE KENNEDY took no part in the consideration or decision of this motion.

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 respondents for leave to file a supplemental brief after argument granted. JUSTICE KENNEDY took no part in the consideration or decision of this motion.

No. 86-1836. NEW YORK STATE CLUB ASSN., INC. *v.* CITY OF NEW YORK ET AL. Ct. App. N. Y. [Probable jurisdiction noted, *ante*, p. 812.] Motion of NOW Legal Defense and Education Fund et al. for leave to file a brief as *amici curiae* granted.

No. 86-2000. UNITED STATES *v.* KOZMINSKI ET AL. C. A. 6th Cir. [Certiorari granted, *ante*, p. 894.] Motion of International Society for Krishna Consciousness of California, Inc., for leave to file a brief as *amicus curiae* granted.

No. 86-2037. LANDERS *v.* NATIONAL RAILROAD PASSENGER CORPORATION ET AL. C. A. 1st Cir. [Certiorari granted, *ante*, p. 962.] Motion of respondents for divided argument denied.

No. 86-7059. PATTERSON *v.* ILLINOIS. Sup. Ct. Ill. [Certiorari granted, *ante*, p. 895.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 87-354. ARIZONA *v.* ROBERSON. Ct. App. Ariz. [Certiorari granted, *ante*, p. 975.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 87-82. FEDERAL DEPOSIT INSURANCE CORPORATION *v.* MALLEN ET AL. D. C. N. D. Iowa. [Probable jurisdiction noted, *ante*, p. 911.] Motion for appointment of counsel granted, and it is ordered that Mary E. Curtin, Esq., of Minneapolis, Minn., be appointed to serve as counsel for appellee James Mallen in this case.

No. 87-328. RILEY, DISTRICT ATTORNEY OF THE TENTH PROSECUTORIAL DISTRICT OF NORTH CAROLINA, ET AL. *v.* NATIONAL FEDERATION OF THE BLIND OF NORTH CAROLINA, INC., ET AL. C. A. 4th Cir. [Probable jurisdiction noted, *ante*, p. 911.] Motion of Independent Sector et al. for leave to file an out-of-time motion to participate in oral argument as *amici curiae* and for divided argument denied.

No. 87-339. CITY OF NEW YORK ET AL. *v.* FEDERAL COMMUNICATIONS COMMISSION ET AL. C. A. D. C. Cir. [Certiorari

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granted, *ante*, p. 962.] Motion of the Solicitor General for divided argument granted.

No. 87-416. UNITED STATES CATHOLIC CONFERENCE ET AL. v. ABORTION RIGHTS MOBILIZATION, INC., ET AL. C. A. 2d Cir. [Certiorari granted, *ante*, p. 975.] Motion of the Solicitor General for divided argument granted.

No. 87-352. SUN OIL CO. v. WORTMAN ET AL. Sup. Ct. Kan. [Certiorari granted, *ante*, p. 912.] Motions of GAF Corp. and Wiley Goad for leave to file briefs as *amici curiae* granted.

No. 87-363. FEDERAL ENERGY REGULATORY COMMISSION v. MARTIN EXPLORATION MANAGEMENT CO. ET AL.; and

No. 87-364. PUBLIC SERVICE COMMISSION OF THE STATE OF NEW YORK ET AL. v. MARTIN EXPLORATION MANAGEMENT CO. ET AL. C. A. 10th Cir. [Certiorari granted, *ante*, p. 962.] Motions of Interstate Natural Gas Association of America and Williams Natural Gas Co. for leave to file briefs as *amici curiae* granted. Motion of the Solicitor General for divided argument granted. JUSTICE WHITE took no part in the consideration or decision of these motions.

No. 87-519. MAYNARD, WARDEN, ET AL. v. CARTWRIGHT. C. A. 10th Cir. [Certiorari granted, *ante*, p. 1003.] Motion for appointment of counsel granted, and it is ordered that Mandy Welch, Esq., of Norman, Okla., be appointed to serve as counsel for respondent in this case.

No. 87-654. NEW ENERGY COMPANY OF INDIANA v. LIMBACH, TAX COMMISSIONER OF OHIO, ET AL. Sup. Ct. Ohio. [Probable jurisdiction noted, *ante*, p. 984.] Motion of appellees for divided argument denied.

No. 87-883. HONDA MOTOR CO., LTD., ET AL. v. CAMACHO ET UX. Sup. Ct. Colo. Motion of respondents for damages denied.

No. 87-1020. DAVIS v. MICHIGAN DEPARTMENT OF THE TREASURY. Appeal from Ct. App. Mich. The Solicitor General is invited to file a brief in this case expressing the views of the United States.

No. 87-1047. NATIONWIDE CORP. ET AL. v. HOWING CO. ET AL. C. A. 6th Cir. The Solicitor General is invited to file a brief

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in this case expressing the views of the United States. JUSTICE WHITE took no part in the consideration or decision of this order.

No. 87-5428. HOUSTON *v.* LACK, WARDEN. C. A. 6th Cir. [Certiorari granted, *ante*, p. 1025.] Motion for appointment of counsel granted, and it is ordered that Penny J. White, Esq., of Johnson City, Tenn., be appointed to serve as counsel for petitioner in this case.

No. 87-5461. HENSON *v.* EAST LINCOLN TOWNSHIP ET AL. C. A. 7th Cir. [Certiorari granted, *ante*, p. 923.] Motion of the parties to defer further proceedings granted.

No. 87-5954. LANGSTER *v.* DEPARTMENT OF HEALTH AND HUMAN SERVICES. C. A. Fed. Cir.;

No. 87-6067. FLAHERTY *v.* UNITED STATES. C. A. 11th Cir.; and

No. 87-6219. PEREZ ET UX. *v.* UNITED STATES. C. A. 11th Cir. Motions of petitioners for leave to proceed *in forma pauperis* denied. Petitioners are allowed until March 14, 1988, within which to pay the docketing fee required by Rule 45(a) and to submit petitions for writs of certiorari in compliance with Rule 33 of the Rules of this Court.

JUSTICE BRENNAN and JUSTICE MARSHALL, dissenting.

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

No. 87-1251. IN RE SOWELL. Petition for writ of habeas corpus denied.

No. 87-6059. IN RE PRATHER. Petition for writ of mandamus denied.

No. 87-1050. IN RE GOLDSTEIN. Petition for writ of mandamus and/or prohibition denied.

*Probable Jurisdiction Noted*

No. 87-826. GOLDBERG ET AL. *v.* SWEET, DIRECTOR, ILLINOIS DEPARTMENT OF REVENUE, ET AL.; and

No. 87-1101. GTE SPRINT COMMUNICATIONS CORP. *v.* SWEET, DIRECTOR, ILLINOIS DEPARTMENT OF REVENUE, ET AL. Appeals from Sup. Ct. Ill. Probable jurisdiction noted, cases

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consolidated, and a total of one hour allotted for oral argument. Reported below: 117 Ill. 2d 493, 512 N. E. 2d 1262.

No. 87-984. SHELL OIL CO. *v.* IOWA DEPARTMENT OF REVENUE. Appeal from Sup. Ct. Iowa. Probable jurisdiction noted. Reported below: 414 N. W. 2d 113.

No. 87-998. CITY OF RICHMOND *v.* J. A. CROSON CO. Appeal from C. A. 4th Cir. Motion of National League of Cities et al. for leave to file a brief as *amici curiae* granted. Probable jurisdiction noted. Reported below: 822 F. 2d 1355.

No. 87-1279 (A-606). MORRISON, INDEPENDENT COUNSEL *v.* OLSON ET AL. Appeal from C. A. D. C. Cir. Probable jurisdiction noted. Motion of Lawrence Walsh, Independent Counsel, for leave to file a brief as *amicus curiae* granted. Motions to establish an expedited schedule for briefing and oral argument granted. Appellant's brief shall be filed by 3 p.m., March 9, 1988. Appellees' briefs shall be filed by 3 p.m., April 8, 1988. Reply briefs, if any, shall be filed by 3 p.m., April 18, 1988. Oral argument is set for April 26, 1988, at 10 a.m. Motion to dispense temporarily with printing briefs denied. Motions for additional time for oral argument denied without prejudice. Application for full stay of mandate of the United States Court of Appeals for the District of Columbia Circuit, presented to THE CHIEF JUSTICE, and by him referred to the Court, is granted pending the sending down of the judgment of this Court. JUSTICE KENNEDY took no part in the consideration or decision of these motions and orders. Reported below: 267 U. S. App. D. C. 178, 838 F. 2d 476.

#### *Certiorari Granted*

No. 87-764. FLORIDA *v.* RILEY. Sup. Ct. Fla. Certiorari granted. Reported below: 511 So. 2d 282.

No. 87-821. PITTSTON COAL GROUP ET AL. *v.* SEBEN ET AL.; and

No. 87-827. McLAUGHLIN, SECRETARY OF LABOR, ET AL. *v.* SEBEN ET AL. C. A. 8th Cir. Certiorari granted, cases consolidated, and a total of one hour allotted for oral argument. Reported below: 815 F. 2d 475.

No. 87-1061. NATIONAL COLLEGIATE ATHLETIC ASSN. *v.* TARKANIAN. Sup. Ct. Nev. Certiorari granted limited to Ques-

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tion 1 presented by the petition. Reported below: 103 Nev. 331, 741 P. 2d 1345.

No. 87-6116. *PENSON v. OHIO*. Ct. App. Ohio, Montgomery County. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted.

*Certiorari Denied*. (See also Nos. 87-1071, 87-1096, 87-1123, 87-1162, 87-5419, and 87-6095, *supra*.)

No. 86-2052. *BERRYHILL v. TEXAS*. Ct. App. Tex., 3d Dist. Certiorari denied.

No. 87-522. *SMITH v. TEXAS DEPARTMENT OF WATER RESOURCES ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 818 F. 2d 363.

No. 87-537. *DARNELL v. SWINNEY, WASHOE COUNTY SHERIFF, ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 823 F. 2d 299.

No. 87-630. *DOBROWOLSKYJ v. JEFFERSON COUNTY, KENTUCKY, ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 823 F. 2d 955.

No. 87-640. *E. C. ERNST, INC., ET AL. v. DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR, ET AL.* C. A. D. C. Cir. Certiorari denied. Reported below: 262 U. S. App. D. C. 150, 822 F. 2d 1212.

No. 87-647. *DAVIS v. UNITED STATES*. Ct. Mil. App. Certiorari denied. Reported below: 24 M. J. 222.

No. 87-649. *CITY OF ANN ARBOR ET AL. v. CHRISTY*. C. A. 6th Cir. Certiorari denied. Reported below: 824 F. 2d 489.

No. 87-727. *GENERAL TELEPHONE COMPANY OF CALIFORNIA ET AL. v. ADDY*. C. A. 9th Cir. Certiorari denied. Reported below: 814 F. 2d 1311.

No. 87-737. *PIZZITOLLO v. ELECTRO-COAL TRANSFER CORP. ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 812 F. 2d 977.

No. 87-741. *DOWNS v. KENTUCKY*. Sup. Ct. Ky. Certiorari denied.

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No. 87-745. *FORD MOTOR CO. ET AL. v. TUNIS BROTHERS CO., INC., ET AL.* C. A. 3d Cir. Certiorari denied. Reported below: 823 F. 2d 49.

No. 87-769. *OLAQUES v. SECURITIES AND EXCHANGE COMMISSION ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 817 F. 2d 1018.

No. 87-780. *POLLAK v. UNITED STATES.* C. A. 7th Cir. Certiorari denied.

No. 87-803. *HOUGHTON ET UX. v. UNITED STATES.* C. A. 3d Cir. Certiorari denied. Reported below: 829 F. 2d 33.

No. 87-810. *FLOREZ v. UNITED STATES.* C. A. 11th Cir. Certiorari denied. Reported below: 830 F. 2d 1130.

No. 87-815. *CORACE v. UNITED STATES.* C. A. 6th Cir. Certiorari denied. Reported below: 825 F. 2d 412.

No. 87-818. *HAYES v. PRUDENTIAL INSURANCE COMPANY OF AMERICA ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 819 F. 2d 921.

No. 87-819. *SMITH v. INTERNATIONAL FUNDING CORP. ET AL.* C. A. 9th Cir. Certiorari denied.

No. 87-825. *TILLEY v. UNITED STATES.* Ct. Mil. App. Certiorari denied. Reported below: 25 M. J. 20.

No. 87-830. *MCGREGOR, TRUSTEE IN BANKRUPTCY FOR THE ESTATE OF PARSONS STEEL INDUSTRIES, INC. v. FIRST ALABAMA BANK OF MONTGOMERY, N. A., ET AL.* C. A. 11th Cir. Certiorari denied. Reported below: 825 F. 2d 1475.

No. 87-832. *ARNOLD v. UNITED STATES.* Ct. Mil. App. Certiorari denied. Reported below: 25 M. J. 129.

No. 87-833. *HAGEN v. UNITED STATES.* Ct. Mil. App. Certiorari denied. Reported below: 25 M. J. 78.

No. 87-837. *CHERRY ET AL. v. COAST HOUSE LTD. ET AL.* Sup. Ct. Ga. Certiorari denied. Reported below: 257 Ga. 403, 359 S. E. 2d 904.

No. 87-838. *WILLIAMS v. HAWKINS ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 825 F. 2d 409.

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No. 87-840. CUMBERLAND FARMS, INC. *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 826 F. 2d 1151.

No. 87-853. SIERRA PACIFIC POWER CO. *v.* PUBLIC SERVICE COMMISSION OF NEVADA. Sup. Ct. Nev. Certiorari denied. Reported below: 103 Nev. 187, 734 P. 2d 1245.

No. 87-863. JENSEN *v.* SATRAN, WARDEN. C. A. 8th Cir. Certiorari denied.

No. 87-865. GREGORY LUMBER CO., INC. *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 831 F. 2d 305.

No. 87-868. NELSON *v.* UNITED STATES. Ct. Mil. App. Certiorari denied. Reported below: 25 M. J. 110.

No. 87-870. CONNECTICUT *v.* JARZBEK. Sup. Ct. Conn. Certiorari denied. Reported below: 204 Conn. 683, 529 A. 2d 1245.

No. 87-877. JOVANOVIC *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 824 F. 2d 677.

No. 87-879. ODEGARD *v.* UNITED STATES. Ct. Mil. App. Certiorari denied. Reported below: 25 M. J. 140.

No. 87-882. BARNES *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 820 F. 2d 1229.

No. 87-884. BENSON *v.* ALLY ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 828 F. 2d 771.

No. 87-885. KHAN *v.* JENKINS ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 814 F. 2d 655.

No. 87-891. FRIEDRICH *v.* OHIO. Ct. App. Ohio, Holmes County. Certiorari denied.

No. 87-895. HEDLUND ET AL. *v.* MILLER ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 813 F. 2d 1344.

No. 87-905. ANNABI *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 824 F. 2d 1294.

No. 87-906. ROBERTS ET AL. *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 829 F. 2d 1130.

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No. 87-917. *POST v. SUPERIOR COURT OF LOS ANGELES COUNTY ET AL.* Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 87-921. *JOHN D. COPANOS & SONS, INC., ET AL. v. UNITED STATES.* C. A. 4th Cir. Certiorari denied. Reported below: 831 F. 2d 290.

No. 87-925. *GALARDI v. STATE BAR OF CALIFORNIA.* Sup. Ct. Cal. Certiorari denied. Reported below: 43 Cal. 3d 683, 739 P. 2d 134.

No. 87-928. *METZ BAKING CO. ET AL. v. THOMAS ET AL.* C. A. 8th Cir. Certiorari denied. Reported below: 826 F. 2d 755.

No. 87-933. *MIMS v. ILLINOIS.* App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 152 Ill. App. 3d 1164, 515 N. E. 2d 1066.

No. 87-938. *ARTHUR YOUNG & CO. v. BANK OF NEW ORLEANS & TRUST CO.* C. A. 5th Cir. Certiorari denied. Reported below: 823 F. 2d 888.

No. 87-940. *SINCLAIR v. MONTGOMERY COUNTY, ALABAMA, ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 829 F. 2d 1123.

No. 87-941. *CITIBANK, N. A. v. DATA LEASE FINANCIAL CORP. ET AL.* C. A. 11th Cir. Certiorari denied. Reported below: 828 F. 2d 686.

No. 87-944. *JOHNSON ET AL. v. PACIFIC LIGHTING LAND CO.* C. A. 9th Cir. Certiorari denied. Reported below: 817 F. 2d 601.

No. 87-945. *TARALA v. ILLINOIS.* App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 153 Ill. App. 3d 199, 505 N. E. 2d 1284.

No. 87-948. *HARRIS v. ATTORNEY GRIEVANCE COMMISSION OF MARYLAND.* Ct. App. Md. Certiorari denied. Reported below: 310 Md. 197, 528 A. 2d 895.

No. 87-952. *VANDERWALL v. HORNER ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 824 F. 2d 970.

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No. 87-954. *KANSAS CITY AREA TRANSPORTATION AUTHORITY v. 4550 MAIN ASSOCIATES ET AL.* Ct. App. Mo., Western Dist. Certiorari denied. Reported below: 742 S. W. 2d 182.

No. 87-956. *ALEXANDER v. UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT.* C. A. D. C. Cir. Certiorari denied.

No. 87-962. *SOUTHERN UNION CO. v. CONSOLIDATED OIL & GAS, INC.* Sup. Ct. N. M. Certiorari denied. Reported below: 106 N. M. 719, 749 P. 2d 1098.

No. 87-965. *CITY OF SAN ANTONIO v. ROSOW.* Sup. Ct. Tex. Certiorari denied. Reported below: 734 S. W. 2d 659.

No. 87-968. *SKORKO v. SKORKO.* Sup. Ct. N. H. Certiorari denied.

No. 87-971. *LOFTIN-BOGGS v. CITY OF MERIDIAN, MISSISSIPPI, ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 824 F. 2d 971.

No. 87-983. *SGRO v. UNITED STATES.* C. A. 1st Cir. Certiorari denied. Reported below: 816 F. 2d 30.

No. 87-987. *ZAC SMITH & CO., INC. v. OTIS ELEVATOR CO.* Sup. Ct. Tex. Certiorari denied. Reported below: 734 S. W. 2d 662.

No. 87-991. *ALAMO RENT-A-CAR, INC. v. SARASOTA-MANATEE AIRPORT AUTHORITY.* C. A. 11th Cir. Certiorari denied. Reported below: 825 F. 2d 367.

No. 87-1002. *OKWUMABUA ET AL. v. UNITED STATES.* C. A. 2d Cir. Certiorari denied. Reported below: 828 F. 2d 950.

No. 87-1008. *HAYES v. ANSON ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 823 F. 2d 554.

No. 87-1009. *SCHUBERT & SALZER MASCHINENFABRIK AKTIENGESELLSCHAFT ET AL. v. SPINDELFABRIK SUESSEN-SCHURR, STAHLCKER & GRILL GMBH. ET AL.* C. A. Fed. Cir. Certiorari denied. Reported below: 829 F. 2d 1075.

No. 87-1012. *SANDERS v. RAGLAND, ARKANSAS COMMISSIONER OF REVENUES.* C. A. 6th Cir. Certiorari denied. Reported below: 825 F. 2d 411.

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No. 87-1019. *FIELDS ET AL. v. ALLEN ET AL.* Sup. Ct. Ga. Certiorari denied. Reported below: 257 Ga. XXVI, 359 S. E. 2d 918.

No. 87-1023. *BERNSTEIN ET UX. v. ILLINOIS.* App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 155 Ill. App. 3d 445, 508 N. E. 2d 277.

No. 87-1024. *LANDON v. WASHINGTON.* Ct. App. Wash. Certiorari denied. Reported below: 48 Wash. App. 1042.

No. 87-1025. *MORGAN v. OHIO.* Ct. App. Ohio, Clark County. Certiorari denied.

No. 87-1029. *MILLER INSITUFORM, INC., ET AL. v. INSITUFORM OF NORTH AMERICA, INC., ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 830 F. 2d 606.

No. 87-1034. *MECHANISED CONSTRUCTION OF PAKISTAN LTD. v. AMERICAN CONSTRUCTION MACHINERY & EQUIPMENT LTD.* C. A. 2d Cir. Certiorari denied. Reported below: 828 F. 2d 117.

No. 87-1036. *NEW ENGLAND TEAMSTERS & TRUCKING INDUSTRY PENSION FUND v. GRAF.* C. A. 1st Cir. Certiorari denied. Reported below: 828 F. 2d 877.

No. 87-1037. *DEERE & Co. v. KENNEDY ET AL.* Sup. Ct. Ill. Certiorari denied. Reported below: 118 Ill. 2d 69, 514 N. E. 2d 171.

No. 87-1041. *POSCHWATTA v. UNITED STATES.* C. A. 9th Cir. Certiorari denied. Reported below: 829 F. 2d 1477.

No. 87-1044. *HILL v. FLORIDA DEPARTMENT OF CORRECTIONS.* Sup. Ct. Fla. Certiorari denied. Reported below: 513 So. 2d 129.

No. 87-1046. *RODRIGUES v. MARTIN MARIETTA CORP., MASTER BUILDERS DIVISION, ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 829 F. 2d 39.

No. 87-1052. *PATE v. WORKMEN'S COMPENSATION APPEAL BOARD OF PENNSYLVANIA (BOEING VERTOL Co.).* Sup. Ct. Pa. Certiorari denied. Reported below: 517 Pa. 611, 536 A. 2d 1335.

No. 87-1056. *PENDLETON v. GEORGIA.* Ct. App. Ga. Certiorari denied. Reported below: 184 Ga. App. 358, 361 S. E. 2d 663.

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No. 87-1057. COOPER INDUSTRIES, INC. *v.* JUNO LIGHTING, INC. C. A. Fed. Cir. Certiorari denied. Reported below: 826 F. 2d 1073.

No. 87-1058. MORRISON *v.* GENUINE PARTS Co. C. A. 11th Cir. Certiorari denied. Reported below: 828 F. 2d 708.

No. 87-1059. DIORIO *v.* CONNECTICUT. App. Ct. Conn. Certiorari denied. Reported below: 12 Conn. App. 74, 529 A. 2d 1320.

No. 87-1063. WOLIN *v.* UNITED STATES ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 819 F. 2d 1301.

No. 87-1066. SIERRA MARKETING Co. *v.* ROTATIONAL MOLDING, INC. C. A. 9th Cir. Certiorari denied. Reported below: 825 F. 2d 414.

No. 87-1067. HOWELL *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 835 F. 2d 1430.

No. 87-1072. RUSSO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 823 F. 2d 1553.

No. 87-1073. THOMPSON ET UX. *v.* HAMMOND ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 835 F. 2d 284.

No. 87-1075. SHAKMAN ET AL. *v.* DUNNE, PRESIDENT OF THE BOARD OF COMMISSIONERS OF COOK COUNTY, ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 829 F. 2d 1387.

No. 87-1076. LAVAY CORP. ET AL. *v.* DOMINION FEDERAL SAVINGS & LOAN ASSN. ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 830 F. 2d 522.

No. 87-1078. SCHMIDT *v.* PRESIDENT OF THE UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 826 F. 2d 1065.

No. 87-1082. TARRANT COUNTY HOSPITAL DISTRICT *v.* HUGHES, JUDGE, ET AL. Sup. Ct. Tex. Certiorari denied.

No. 87-1083. AVIS RENT-A-CAR OF PUERTO RICO, INC. *v.* MARSHALL ET AL. C. A. 1st Cir. Certiorari denied. Reported below: 828 F. 2d 845.

No. 87-1085. FAITH CHRISTIAN FELLOWSHIP OF MILWAUKEE, INC., AKA WORD ALIVE CHRISTIAN FELLOWSHIP *v.* BOARD OF

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ZONING APPEALS OF THE CITY OF MILWAUKEE ET AL. Ct. App. Wis. Certiorari denied.

No. 87-1086. DAMASCUS *v.* BORGIA ET AL. C. A. 9th Cir. Certiorari denied.

No. 87-1087. CELOTEX CORP. *v.* CATRETT, ADMINISTRATRIX OF THE ESTATE OF CATRETT. C. A. D. C. Cir. Certiorari denied. Reported below: 263 U. S. App. D. C. 399, 826 F. 2d 33.

No. 87-1088. CROWDER ET AL. *v.* SOUTHERN BAPTIST CONVENTION ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 828 F. 2d 718.

No. 87-1089. THREE MOVIES OF TARZANA *v.* PACIFIC THEATRES, INC., ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 828 F. 2d 1395.

No. 87-1090. GOEL ET AL. *v.* ENTRE COMPUTER CENTERS, INC. C. A. 3d Cir. Certiorari denied. Reported below: 829 F. 2d 31.

No. 87-1094. NORTH *v.* WALSH ET AL.; and NORTH *v.* MEESE, ATTORNEY GENERAL, ET AL. C. A. D. C. Cir. Certiorari denied.

No. 87-1100. MOZERT ET AL. *v.* HAWKINS COUNTY PUBLIC SCHOOLS ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 827 F. 2d 1058.

No. 87-1107. POYSKY, DBA ALASKA TOWING Co., ET AL. *v.* PACIFIC MARINE INSURANCE Co. ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 817 F. 2d 106.

No. 87-1108. VERMEULEN ET AL. *v.* HARDY. Sup. Ct. Ohio. Certiorari denied. Reported below: 32 Ohio St. 3d 45, 512 N. E. 2d 626.

No. 87-1110. YOUNG, ADMINISTRATOR OF THE ESTATE OF YOUNG, ET AL. *v.* ATLANTIC RICHFIELD Co. Sup. Jud. Ct. Mass. Certiorari denied. Reported below: 400 Mass. 837, 512 N. E. 2d 272.

No. 87-1113. ROBERTS *v.* OHIO. Ct. App. Ohio, Cuyahoga County. Certiorari denied.

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No. 87-1114. *WHITMER v. STATE BAR OF ARIZONA*. Sup. Ct. Ariz. Certiorari denied. Reported below: 154 Ariz. 134, 741 P. 2d 267.

No. 87-1116. *ADUDELLE v. GAF CORP. ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 828 F. 2d 770.

No. 87-1118. *BELFIORE, DBA NUTMEG NEWS, ET AL. v. NEW YORK TIMES CO. ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 826 F. 2d 177.

No. 87-1121. *HOSCH v. HOSCH*. Ct. App. Ga. Certiorari denied. Reported below: 184 Ga. App. 370, 361 S. E. 2d 686.

No. 87-1126. *SPORTS DESIGN & DEVELOPMENT, INC., ET AL. v. JAMES HEDDON'S SONS, INC.* C. A. 5th Cir. Certiorari denied. Reported below: 828 F. 2d 771.

No. 87-1128. *PEABODY COAL CO. v. MAURYA*. C. A. 6th Cir. Certiorari denied. Reported below: 823 F. 2d 933.

No. 87-1135. *CADBY v. FLORIDA*. Dist. Ct. App. Fla., 4th Dist. Certiorari denied. Reported below: 512 So. 2d 987.

No. 87-1136. *AMERICAN COMMERCIAL LINES, INC., ET AL. v. DAVIS ET UX.* C. A. 6th Cir. Certiorari denied. Reported below: 823 F. 2d 1006.

No. 87-1138. *AMF TUBOSCOPE, INC. v. HOUSTON OIL & MINERALS CORP. ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 827 F. 2d 1049.

No. 87-1153. *TORRES v. ILLINOIS BELL TELEPHONE CO. ET AL.* C. A. 7th Cir. Certiorari denied.

No. 87-1172. *BEALE v. O'NEILL ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 826 F. 2d 1062.

No. 87-1181. *GAYTON v. GEORGIA*. Ct. App. Ga. Certiorari denied. Reported below: 184 Ga. App. 387, 361 S. E. 2d 691.

No. 87-1210. *AFFELDT v. CARR, MAGISTRATE, UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OHIO*. C. A. 6th Cir. Certiorari denied. Reported below: 827 F. 2d 769.

No. 87-5454. *WRENN v. GOULD ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 816 F. 2d 683.

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No. 87-5556. *SANTIAGO v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 821 F. 2d 168.

No. 87-5557. *JOHNSON v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 815 F. 2d 309.

No. 87-5672. *HERNANDEZ v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 825 F. 2d 846.

No. 87-5673. *BRADY v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 819 F. 2d 884.

No. 87-5675. *AMER v. UNITED STATES*. C. A. 11th Cir. Certiorari denied. Reported below: 824 F. 2d 906.

No. 87-5712. *CAULDER v. FLORIDA*. Dist. Ct. App. Fla., 5th Dist. Certiorari denied. Reported below: 500 So. 2d 1362.

No. 87-5715. *JOHNSON v. RUSSELL, SUPERINTENDENT, LIMA CORRECTIONAL INSTITUTION*. C. A. 6th Cir. Certiorari denied. Reported below: 827 F. 2d 769.

No. 87-5746. *SHAW v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 824 F. 2d 601.

No. 87-5760. *ROY v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 830 F. 2d 628.

No. 87-5773. *MYERS-BEY v. WOODARD ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 823 F. 2d 548.

No. 87-5796. *MYERS v. WASHINGTON*. Ct. App. Wash. Certiorari denied. Reported below: 48 Wash. App. 1055.

No. 87-5798. *MELTON v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 815 F. 2d 706.

No. 87-5805. *HULSTINE v. MORRIS*. C. A. 8th Cir. Certiorari denied. Reported below: 819 F. 2d 861.

No. 87-5807. *JOHNSON v. ARMONTROUT, WARDEN*. C. A. 8th Cir. Certiorari denied. Reported below: 821 F. 2d 510.

No. 87-5817. *SBLENDORIO ET AL. v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 830 F. 2d 1382.

No. 87-5835. *GLENN v. FLORIDA*. Dist. Ct. App. Fla., 2d Dist. Certiorari denied. Reported below: 512 So. 2d 223.

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No. 87-5852. *SALEEM ET AL. v. EVANS ET AL.* C. A. 11th Cir. Certiorari denied. Reported below: 828 F. 2d 773.

No. 87-5878. *GRAHAM v. WILSON, SUPERINTENDENT, CENTENNIAL CORRECTIONAL FACILITY, ET AL.* C. A. 10th Cir. Certiorari denied. Reported below: 828 F. 2d 656.

No. 87-5891. *SLATER ET UX. v. DELAWARE TRUST CO. ET AL.* C. A. 3d Cir. Certiorari denied.

No. 87-5923. *WOLFEL v. HOLBROOK.* C. A. 6th Cir. Certiorari denied. Reported below: 823 F. 2d 970.

No. 87-5935. *EVERETT v. UNITED STATES.* C. A. 2d Cir. Certiorari denied. Reported below: 825 F. 2d 658.

No. 87-5937. *SIMS v. UNITED STATES.* C. A. 4th Cir. Certiorari denied. Reported below: 825 F. 2d 408.

No. 87-5945. *EBERHARDT v. GEORGIA.* Sup. Ct. Ga. Certiorari denied. Reported below: 257 Ga. 420, 359 S. E. 2d 908.

No. 87-5947. *DAVIS v. UNITED STATES.* C. A. 3d Cir. Certiorari denied. Reported below: 828 F. 2d 968.

No. 87-5961. *LATSHAW v. FELDER ET AL.* Sup. Ct. Pa. Certiorari denied. Reported below: 517 Pa. 594, 535 A. 2d 83.

No. 87-5966. *CAMARATA v. UNITED STATES.* C. A. 3d Cir. Certiorari denied. Reported below: 828 F. 2d 974.

No. 87-5975. *HOWES v. UNITED STATES.* C. A. 11th Cir. Certiorari denied. Reported below: 824 F. 2d 973.

No. 87-5996. *DAVIS v. BOWEN, SECRETARY OF HEALTH AND HUMAN SERVICES, ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 825 F. 2d 799.

No. 87-6001. *BASCARO v. UNITED STATES DEPARTMENT OF JUSTICE.* C. A. 11th Cir. Certiorari denied. Reported below: 829 F. 2d 1131.

No. 87-6013. *WARD v. UNITED STATES PAROLE COMMISSION ET AL.* C. A. 7th Cir. Certiorari denied. Reported below: 830 F. 2d 196.

No. 87-6020. *PORTER v. UNITED STATES.* C. A. 8th Cir. Certiorari denied. Reported below: 831 F. 2d 760.

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No. 87-6021. *DEAN v. GEORGIA DEPARTMENT OF TRANSPORTATION ET AL.* C. A. 11th Cir. Certiorari denied.

No. 87-6023. *WILSON v. DEPARTMENT OF THE AIR FORCE.* C. A. Fed. Cir. Certiorari denied. Reported below: 824 F. 2d 980.

No. 87-6030. *WILLIAMS v. WARDEN, MARYLAND HOUSE OF CORRECTIONS, ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 831 F. 2d 1058.

No. 87-6032. *GOODROE v. MAZURKIEWICZ, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT ROCKVIEW, ET AL.* C. A. 3d Cir. Certiorari denied.

No. 87-6033. *FLOWERS v. UNITED STATES.* C. A. 11th Cir. Certiorari denied. Reported below: 832 F. 2d 1265.

No. 87-6034. *FEJERAN v. UNITED STATES.* C. A. 10th Cir. Certiorari denied.

No. 87-6036. *LINCOLN v. ISAAC ET AL.* C. A. 8th Cir. Certiorari denied. Reported below: 831 F. 2d 301.

No. 87-6040. *FORD v. TENNESSEE ET AL.* C. A. 6th Cir. Certiorari denied.

No. 87-6041. *DEVILLE v. LOUISIANA.* Sup. Ct. La. Certiorari denied. Reported below: 512 So. 2d 428.

No. 87-6042. *HERNANDEZ-SEVERA v. UNITED STATES.* C. A. 11th Cir. Certiorari denied. Reported below: 832 F. 2d 1265.

No. 87-6043. *LEE v. UNITED STATES.* C. A. 9th Cir. Certiorari denied. Reported below: 831 F. 2d 304.

No. 87-6045. *FAZZINI v. BOGAN, WARDEN, ET AL.* C. A. 8th Cir. Certiorari denied.

No. 87-6047. *KITLEY v. MORRIS, SUPERINTENDENT, SOUTHERN OHIO CORRECTIONAL FACILITY.* C. A. 6th Cir. Certiorari denied. Reported below: 827 F. 2d 770.

No. 87-6048. *FAVORS v. FOLTZ, WARDEN.* C. A. 6th Cir. Certiorari denied. Reported below: 833 F. 2d 1012.

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No. 87-6050. *WILLIAMS v. LYNAUGH, DIRECTOR, TEXAS DEPARTMENT OF CORRECTIONS*. C. A. 5th Cir. Certiorari denied. Reported below: 829 F. 2d 1123.

No. 87-6051. *CHICCO v. MARS STORES, INC.* C. A. 1st Cir. Certiorari denied.

No. 87-6052. *BROWN v. WAGONER ET AL.* C. A. 8th Cir. Certiorari denied. Reported below: 831 F. 2d 301.

No. 87-6055. *WILLIAMS v. MARSHALL, WARDEN*. C. A. 6th Cir. Certiorari denied. Reported below: 831 F. 2d 298.

No. 87-6057. *MILLER v. MCWHERTER ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 831 F. 2d 1064.

No. 87-6058. *SPENCER v. UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT*. C. A. 7th Cir. Certiorari denied.

No. 87-6060. *YOUNG v. LYNAUGH, DIRECTOR, TEXAS DEPARTMENT OF CORRECTIONS*. C. A. 5th Cir. Certiorari denied. Reported below: 821 F. 2d 1133.

No. 87-6061. *SCHMID v. UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA ET AL.* C. A. 8th Cir. Certiorari denied. Reported below: 827 F. 2d 384.

No. 87-6066. *HARRISON v. BYRD, SHERIFF, ET AL.* C. A. 5th Cir. Certiorari denied.

No. 87-6068. *DAUM v. INDIANA*. Sup. Ct. Ind. Certiorari denied.

No. 87-6069. *MATTHEWS v. BUTLER, WARDEN, ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 824 F. 2d 971.

No. 87-6070. *WATKINS v. OKLAHOMA*. Ct. Crim. App. Okla. Certiorari denied.

No. 87-6071. *VELEZ v. UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT ET AL.* C. A. 5th Cir. Certiorari denied.

No. 87-6072. *MARTIN v. PENNSYLVANIA BOARD OF LAW EXAMINERS ET AL.* C. A. 3d Cir. Certiorari denied.

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No. 87-6073. *DIXON v. VIRGINIA*. Sup. Ct. Va. Certiorari denied.

No. 87-6076. *HARJO v. DUELLO ET AL.* Sup. Ct. Okla. Certiorari denied. Reported below: 742 P. 2d 1059.

No. 87-6077. *GROFF v. TOWNSHIP OF ELIZABETH, LANCASTER COUNTY, PENNSYLVANIA*. Sup. Ct. Pa. Certiorari denied. Reported below: 516 Pa. 644, 533 A. 2d 715.

No. 87-6078. *HAGAN v. MAINE*. Sup. Jud. Ct. Me. Certiorari denied. Reported below: 527 A. 2d 1308.

No. 87-6081. *EMBREY v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 657 F. 2d 273.

No. 87-6082. *JOE v. UNITED STATES*. C. A. 10th Cir. Certiorari denied. Reported below: 831 F. 2d 218.

No. 87-6083. *SMITH, AKA LUMUMBA v. LYNAUGH, DIRECTOR, TEXAS DEPARTMENT OF CORRECTIONS*. C. A. 5th Cir. Certiorari denied. Reported below: 835 F. 2d 1431.

No. 87-6085. *WATSON v. GASCONADE COUNTY CIRCUIT COURT ET AL.* C. A. 8th Cir. Certiorari denied.

No. 87-6086. *LEWIS v. UNITED STATES*. C. A. 2d Cir. Certiorari denied.

No. 87-6088. *PARTEE v. ILLINOIS*. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 157 Ill. App. 3d 231, 511 N. E. 2d 1165.

No. 87-6089. *MORRIS v. UNITED STATES*. C. A. 11th Cir. Certiorari denied.

No. 87-6090. *SMITH v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 831 F. 2d 657.

No. 87-6091. *WIECZORKOWSKI v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 833 F. 2d 1018.

No. 87-6093. *RAMOS v. HAYMON*. C. A. 7th Cir. Certiorari denied. Reported below: 826 F. 2d 1068.

No. 87-6098. *CIMISI ET AL. v. RUTLEDGE*. C. A. 2d Cir. Certiorari denied. Reported below: 823 F. 2d 544.

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No. 87-6099. *BEY v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 831 F. 2d 303.

No. 87-6100. *BINDER v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 826 F. 2d 1070.

No. 87-6101. *FLUDD v. UNITED STATES SECRET SERVICE ET AL.* C. A. D. C. Cir. Certiorari denied.

No. 87-6102. *DAVIS v. GARRAGHTY, WARDEN, ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 831 F. 2d 1057.

No. 87-6103. *AVERHART v. SHULER ET AL.* C. A. 7th Cir. Certiorari denied. Reported below: 834 F. 2d 173.

No. 87-6106. *ESPENSHADE v. PENNSYLVANIA STATE UNIVERSITY ET AL.* Sup. Ct. Pa. Certiorari denied. Reported below: 516 Pa. 614, 531 A. 2d 780.

No. 87-6107. *KEMPER v. ARMONTROUT, WARDEN*. C. A. 8th Cir. Certiorari denied. Reported below: 831 F. 2d 301.

No. 87-6111. *BERRY v. PEACH ET AL.* C. A. 8th Cir. Certiorari denied.

No. 87-6112. *COPPLE v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 827 F. 2d 1182.

No. 87-6114. *ANDEREGG, INDIVIDUALLY AND AS NEXT FRIEND OF HOGAN v. HIGH STANDARD, INC.* C. A. 5th Cir. Certiorari denied. Reported below: 825 F. 2d 77.

No. 87-6120. *JANIS v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 831 F. 2d 773.

No. 87-6121. *WASHINGTON v. RAFFERTY, SUPERINTENDENT, NEW JERSEY STATE PRISON*. C. A. 3d Cir. Certiorari denied. Reported below: 830 F. 2d 23.

No. 87-6122. *WYLIE v. MORRIS, SUPERINTENDENT, SOUTHERN OHIO CORRECTIONAL FACILITY*. C. A. 6th Cir. Certiorari denied. Reported below: 826 F. 2d 1066.

No. 87-6123. *CALDWELL v. QUARLES, WARDEN*. C. A. 6th Cir. Certiorari denied. Reported below: 826 F. 2d 1062.

No. 87-6124. *CRAWFORD v. FORD, WARDEN*. C. A. 11th Cir. Certiorari denied.

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No. 87-6126. *YORK v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 830 F. 2d 885.

No. 87-6128. *JOHNSON v. NACHMAN ET AL.* C. A. 11th Cir. Certiorari denied.

No. 87-6130. *BERTRAM v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 830 F. 2d 1127.

No. 87-6131. *WIGGINS v. LOCKHART, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION*. C. A. 8th Cir. Certiorari denied. Reported below: 825 F. 2d 1237.

No. 87-6133. *MCCLELLAN v. TEXAS*. Ct. Crim. App. Tex. Certiorari denied. Reported below: 742 S. W. 2d 655.

No. 87-6134. *LITTLE v. UNITED STATES*. Ct. App. D. C. Certiorari denied.

No. 87-6136. *SMITH v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 828 F. 2d 23.

No. 87-6140. *PRESTON v. GOLDEN STATE FOODS*. C. A. 11th Cir. Certiorari denied. Reported below: 835 F. 2d 290.

No. 87-6141. *WASHINGTON v. ANGELONE ET AL.* C. A. 10th Cir. Certiorari denied.

No. 87-6142. *ROSENBERG v. COMERICA BANK ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 817 F. 2d 757.

No. 87-6143. *SMITH v. DUGGER, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS*. C. A. 11th Cir. Certiorari denied. Reported below: 831 F. 2d 1068.

No. 87-6144. *TYLER v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 833 F. 2d 310.

No. 87-6146. *WRIGHT v. GREENE ET AL.* Ct. App. Tenn. Certiorari denied.

No. 87-6147. *HOLDER v. ILLINOIS*. App. Ct. Ill., 3d Dist. Certiorari denied. Reported below: 153 Ill. App. 3d 884, 506 N. E. 2d 407.

No. 87-6148. *RODGER v. UNITED STATES*. C. A. 8th Cir. Certiorari denied.

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No. 87-6149. *MANGONE v. JUDGES OF THE COMMONWEALTH COURT OF PENNSYLVANIA ET AL.* C. A. 3d Cir. Certiorari denied. Reported below: 835 F. 2d 283.

No. 87-6152. *GOOCH v. BOWEN, SECRETARY OF HEALTH AND HUMAN SERVICES.* C. A. 6th Cir. Certiorari denied. Reported below: 833 F. 2d 589.

No. 87-6153. *POPE v. GRAMMER, WARDEN.* C. A. 8th Cir. Certiorari denied. Reported below: 837 F. 2d 478.

No. 87-6156. *NOTT ET AL. v. UNITED STATES ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 829 F. 2d 1127.

No. 87-6157. *LOVE v. PAHL, TRUSTEE, ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 829 F. 2d 1120.

No. 87-6160. *PINO v. UNITED STATES.* C. A. 11th Cir. Certiorari denied. Reported below: 834 F. 2d 1026.

No. 87-6161. *TEMPEL v. ALASKA ET AL.* C. A. 9th Cir. Certiorari denied.

No. 87-6163. *SMITH v. CITY OF CHESAPEAKE ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 816 F. 2d 673.

No. 87-6165. *HIGDON v. UNITED STATES.* C. A. 5th Cir. Certiorari denied. Reported below: 832 F. 2d 312.

No. 87-6166. *LASHLEY ET UX. v. FIRST NATIONAL BANK OF LIVE OAK.* C. A. 11th Cir. Certiorari denied. Reported below: 825 F. 2d 362.

No. 87-6167. *COOLEY v. KOEHLER, WARDEN.* C. A. 6th Cir. Certiorari denied.

No. 87-6169. *ALMAHDI v. UNITED STATES.* C. A. 2d Cir. Certiorari denied. Reported below: 823 F. 2d 545.

No. 87-6171. *PAIGE v. UNITED STATES.* Ct. App. D. C. Certiorari denied.

No. 87-6175. *HILL v. MCDERMOTT, INC.* C. A. 5th Cir. Certiorari denied. Reported below: 827 F. 2d 1040.

No. 87-6178. *PAGE v. ALASKA.* Ct. App. Alaska. Certiorari denied.

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No. 87-6179. *QUEENAN v. MICHIGAN*. Ct. App. Mich. Certiorari denied. Reported below: 158 Mich. App. 38, 404 N. W. 2d 693.

No. 87-6180. *QUEENAN v. MICHIGAN*. Ct. App. Mich. Certiorari denied. Reported below: 158 Mich. App. 38, 404 N. W. 2d 693.

No. 87-6181. *OLIM v. OKLAHOMA DEPARTMENT OF PUBLIC SAFETY*. C. A. 10th Cir. Certiorari denied.

No. 87-6182. *LEMONS v. LYNAUGH, DIRECTOR, TEXAS DEPARTMENT OF CORRECTIONS*. C. A. 5th Cir. Certiorari denied. Reported below: 833 F. 2d 1007.

No. 87-6184. *COLE v. LANE, DIRECTOR, ILLINOIS DEPARTMENT OF CORRECTIONS*. C. A. 7th Cir. Certiorari denied. Reported below: 830 F. 2d 104.

No. 87-6188. *TOWNES v. CHEVRON GULF CORP. ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 836 F. 2d 547.

No. 87-6191. *FERNG v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 831 F. 2d 304.

No. 87-6192. *GOMEZ-VIGIL, AKA DIA v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 833 F. 2d 1014.

No. 87-6199. *BARATA-JIMENEZ v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 835 F. 2d 875.

No. 87-6200. *DREER v. UNITED STATES*. C. A. 11th Cir. Certiorari denied. Reported below: 831 F. 2d 1069.

No. 87-6201. *THOMAS v. RAFFERTY, WARDEN, ET AL.* C. A. 3d Cir. Certiorari denied. Reported below: 833 F. 2d 307.

No. 87-6202. *CHASE v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 833 F. 2d 1017.

No. 87-6205. *WATSON v. UNITED STATES*. Ct. App. D. C. Certiorari denied.

No. 87-6206. *HOLZER v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 828 F. 2d 21.

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No. 87-6207. MEHAR *v.* C & P TELEPHONE COMPANY OF MARYLAND. C. A. 4th Cir. Certiorari denied. Reported below: 838 F. 2d 467.

No. 87-6213. HAGEN *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 831 F. 2d 298.

No. 87-6215. WOOD *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 831 F. 2d 298.

No. 87-6221. GIBSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 834 F. 2d 1026.

No. 87-6222. KINGSTRO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 834 F. 2d 1023.

No. 87-6226. VANDERBERG *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 832 F. 2d 1265.

No. 87-6239. GARRETT *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 833 F. 2d 1017.

No. 87-6245. CABEZAS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 834 F. 2d 1023.

No. 87-6246. CRUZ *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 834 F. 2d 47.

No. 87-6261. LEDESMA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 833 F. 2d 1019.

No. 87-6269. ACEVES-ROSALES *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 832 F. 2d 1155.

No. 87-6271. BUCHANAN *v.* COUNTY OF JEFFERSON ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 826 F. 2d 1062.

No. 87-6281. HARPER *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 836 F. 2d 1345.

No. 87-576. SHINTAKU ET AL. *v.* COWAN. Sup. Ct. Haw. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied.

No. 87-718. DUGGER, SECRETARY, FLORIDA OF CORRECTIONS *v.* CHRISTOPHER. C. A. 11th Cir. Motion of respondent for

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leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 824 F. 2d 836.

No. 87-1161. ILLINOIS *v.* KIRKPATRICK. App. Ct. Ill., 1st Dist. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 153 Ill. App. 3d 1158, 517 N. E. 2d 351.

No. 87-752. LIGHTNER, DBA LIGHTNER AUTO SALES *v.* JONES ET AL. C. A. 7th Cir. Certiorari denied. JUSTICE BRENNAN would grant certiorari. Reported below: 820 F. 2d 818.

No. 87-907. LARM ET UX. *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. JUSTICE KENNEDY took no part in the consideration or decision of this petition. Reported below: 824 F. 2d 780.

No. 87-1098. LAKE HAVASU CITY, ARIZONA *v.* RANCHO DISPOSAL SERVICE, INC. C. A. 9th Cir. Certiorari denied. JUSTICE KENNEDY took no part in the consideration or decision of this petition. Reported below: 818 F. 2d 869.

No. 87-988. KASPER *v.* FEDERAL NATIONAL MORTGAGE ASSOCIATION. C. A. 11th Cir. Certiorari denied. JUSTICE O'CONNOR took no part in the consideration or decision of this petition. Reported below: 823 F. 2d 451.

No. 87-997. MARTIN, TRUSTEE *v.* FIRST NATIONAL BANK OF LOUISVILLE, KENTUCKY. C. A. 6th Cir. Certiorari denied. JUSTICE WHITE would grant certiorari. Reported below: 829 F. 2d 596.

No. 87-1109. HALVORSEN *v.* FERGUSON & BURDELL ET AL. C. A. 8th Cir. Petition for writ of certiorari and/or mandamus denied.

No. 87-1131. PINHAS *v.* SUMMIT HEALTH, LTD., ET AL. C. A. 9th Cir. Certiorari before judgment denied. JUSTICE BLACKMUN took no part in the consideration or decision of this petition.

No. 87-1170 (A-372). O'REAR *v.* ATTORNEY GENERAL OF WISCONSIN. C. A. 7th Cir. Application for certificate of probable cause, addressed to JUSTICE BRENNAN and referred to the Court, denied. Certiorari denied.

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No. 87-5575. *MAYS v. TEXAS*. Ct. Crim. App. Tex.;  
No. 87-5717. *GRIFFIN v. LYNAUGH, DIRECTOR, TEXAS DEPARTMENT OF CORRECTIONS*. C. A. 5th Cir.;  
No. 87-5799. *MACIAS v. TEXAS*. Ct. Crim. App. Tex.;  
No. 87-5873. *WILSON v. BUTLER, WARDEN*. C. A. 5th Cir.;  
No. 87-5989. *DRAYTON v. SOUTH CAROLINA*. Sup. Ct. S. C.;  
No. 87-6014. *SHURN v. ILLINOIS*. Sup. Ct. Ill.;  
No. 87-6019. *STUMPF v. OHIO*. Sup. Ct. Ohio;  
No. 87-6044. *DIAZ v. FLORIDA*. Sup. Ct. Fla.;  
No. 87-6132. *FORD v. ALABAMA*. Sup. Ct. Ala.; and  
No. 87-6172. *JENNINGS v. FLORIDA*. Sup. Ct. Fla. Certiorari denied. Reported below: No. 87-5575, 726 S. W. 2d 937; No. 87-5717, 823 F. 2d 856; No. 87-5799, 733 S. W. 2d 192; No. 87-5873, 813 F. 2d 664 and 825 F. 2d 879; No. 87-5989, 293 S. C. 417, 361 S. E. 2d 329; No. 87-6014, 117 Ill. 2d 317, 512 N. E. 2d 1183; No. 87-6019, 32 Ohio St. 3d 95, 512 N. E. 2d 598; No. 87-6044, 513 So. 2d 1045; No. 87-6132, 515 So. 2d 48; No. 87-6172, 512 So. 2d 169.

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. 87-5655. *CORLEY v. MEESE, ATTORNEY GENERAL OF THE UNITED STATES*. Ct. App. D. C. Certiorari denied. JUSTICE SCALIA took no part in the consideration or decision of this petition.

No. 87-6127. *POST v. OHIO*. Sup. Ct. Ohio. Certiorari denied. Reported below: 32 Ohio St. 3d 380, 513 N. E. 2d 754.

JUSTICE MARSHALL, with whom JUSTICE BRENNAN joins, dissenting.

## I

Adhering to my view that the death penalty is in all circumstances cruel and unusual punishment prohibited by the Eighth and Fourteenth Amendments, *Gregg v. Georgia*, 428 U. S. 153, 231-241 (1976) (MARSHALL, J., dissenting), I would vacate the judgment of the Ohio Supreme Court insofar as it left undisturbed the sentence of death imposed in this case.

## II

Even if I did not hold this view, I would vacate petitioner's sentence because it was imposed under the same circumstances this Court recently condemned in *Booth v. Maryland*, 482 U. S. 496 (1987). In *Booth*, the Court invalidated a Maryland statute that required the sentencer in a capital case to consider information contained in a "victim impact statement." The statement was prepared by the Maryland State Division of Parole and Probation, and it described the emotional impact of the crime on the victim's family members as well as their opinions of the offense, the offender, and the appropriate punishment. This Court held that such information is irrelevant to a capital sentencing decision and that its admission creates a constitutionally impermissible risk that the jury will impose the death penalty in an arbitrary manner. We concluded that the introduction of such evidence is inconsistent with the reasoned decisionmaking required in capital cases.

In the instant case, petitioner Ronald Ray Post entered a plea of no contest to charges of aggravated murder and aggravated robbery arising out of the killing of a motel desk clerk during an armed robbery of the motel. A three-judge panel convicted petitioner on all counts and convened a sentencing hearing. At the sentencing hearing, the panel received a presentence report prepared by the county department of probation that contained a victim impact statement. In addition, the victim's son testified orally to the panel regarding the effect of the murder on the victim's family and urged the panel to return a sentence of death. The panel found one aggravating circumstance—that the murder was committed during the course of an armed robbery—and no mitigating circumstances; it therefore sentenced petitioner to death.

The Ohio Supreme Court affirmed petitioner's sentence on appeal, rejecting petitioner's argument that his sentence must be vacated because it was imposed in violation of *Booth v. Maryland*, *supra*. 32 Ohio St. 3d 380, 513 N. E. 2d 754 (1987). The court recognized that the admission of the written victim impact statement and the oral testimony of the victim's son was error under both Ohio law and the federal constitutional analysis of *Booth*. But the court concluded that the error was not prejudicial

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because the sentencer was a three-judge panel rather than a jury. Citing a pre-*Booth* Ohio case, the court invoked the presumption that judges consider only relevant evidence and found that a court's capital sentencing decision must stand absent an indication that the court "was influenced by or considered" victim impact evidence in arriving at its decision. 32 Ohio St. 3d, at 384, 513 N. E. 2d, at 759. Observing that the panel's written opinion mentioned the victim impact evidence but did not cite it as a basis for its decision, the court concluded that petitioner's sentence could stand. *Ibid.*

The reasoning of the Ohio Supreme Court is flatly inconsistent with both the holding and the reasoning of this Court's decision in *Booth*. The Maryland statute considered in *Booth* required that victim impact evidence be considered by *both* courts and juries.\* This Court's complete invalidation of that statute in no way distinguished or preserved a question as to nonjury sentencings. Moreover, in *Booth*, both the Maryland Court of Appeals and the State in its argument to this Court relied primarily on a prior Maryland case in which the capital sentencer was a judge. See *Lodowski v. State*, 302 Md. 691, 490 A. 2d 1228 (1985). This Court noted that argument and cited *Lodowski* in *Booth* without according any relevance to the identity of sentencer. See *Booth v. Maryland*, *supra*, at 506-507, n. 9. Furthermore, the reasoning of the *Booth* opinion made clear that the result in that case did not require a showing that the victim impact evidence actually "influenced" the sentencer. Rather, the Court expressly stated that the victim impact evidence was inadmissible because it created "a constitutionally unacceptable *risk*" that the sentencer would impose the death penalty in an arbitrary manner. 482 U. S., at 503 (emphasis added). Indeed, the Court summarized its holding by stating: "We conclude that *the introduction* of a [victim impact statement] at the sentencing phase of a capital murder trial violates the Eighth Amendment . . ." *Id.*, at 509 (emphasis added). The Ohio Supreme Court could have reached its conclu-

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\*The Maryland statute read in relevant part:

"In any case in which the death penalty is requested . . . a presentence investigation, including a victim impact statement, shall be completed by the Division of Parole and Probation, and shall be considered by *the court or jury* before whom the separate sentencing proceeding is conducted . . ." Md. Ann. Code, Art. 41, § 4-609(d) (1957) (emphasis added).

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sion only be ignoring these significant aspects of this Court's decision in *Booth*.

I am mindful of the established presumption that judges are able to distinguish between relevant and irrelevant evidence. There is every indication in this case, however, that the three-judge panel failed to make any such distinction. The panel's written opinion explicitly notes that it "considered" the presentence report submitted to it, which contained the victim impact statement, and that it "heard" the statement of the victim's son. App. to Pet. for Cert. 39, 40. At no point either at the hearing or in its opinion did the panel demonstrate any awareness that such evidence was inadmissible under state law or prohibited by the Federal Constitution. More important, the presumption that judges know and apply the rules of evidence should not be converted into license to conclude that judges are inhuman, incapable of being moved by passion as well as by reason. It would be unrealistic and unwise to presume that no judge could be moved, in both heart and deed, by the anguish and rage expressed by a murder victim's family. The potentially inflammatory effect of such evidence convinced this Court in *Booth* that its admission endangered the reasoned decisionmaking required in capital cases. In the instant case, in which the evidence took the form of personal testimony as well as third-person, written description, there is no reason to denigrate that danger simply because the recipients of the evidence wore judicial robes.

The Ohio Supreme Court's decision in this case threatens to undermine both the holding and the reasoning of this Court's decision in *Booth*. The Court should grant certiorari in order to preserve the integrity of its recent pronouncement. I dissent.

#### *Rehearing Denied*

No. 85-673. HARTIGAN, ATTORNEY GENERAL OF THE STATE OF ILLINOIS, ET AL. *v.* ZBARAZ ET AL., *ante*, p. 171;

No. 86-1415. MARINO ET AL. *v.* ORTIZ ET AL.; and COSTELLO ET AL. *v.* NEW YORK CITY POLICE DEPARTMENT ET AL., *ante*, p. 301;

No. 86-7032. WASHINGTON *v.* DEPARTMENT OF THE ARMY, *ante*, p. 985;

No. 87-115. OLAVARRIETA *v.* UNITED STATES ET AL., *ante*, p. 851;

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No. 87-131. SIERRA CLUB *v.* SHELL OIL CO. ET AL., *ante*, p. 985;

No. 87-302. AQUARIAN FOUNDATION ET AL. *v.* LAW OFFICES OF EDWARDS & BARBIERI, *ante*, p. 892;

No. 87-409. BUDINSKY, TDBA COLPAT MINE *v.* PENNSYLVANIA DEPARTMENT OF ENVIRONMENTAL RESOURCES ET AL., *ante*, p. 926;

No. 87-531. ASAM *v.* LEE COUNTY DISTRICT SCHOOL BOARD ET AL., *ante*, p. 951;

No. 87-674. MIHALEK CORP. ET AL. *v.* MICHIGAN ET AL., *ante*, p. 986;

No. 87-685. CITY OF PAGEDALE, MISSOURI *v.* HARRIS ET AL., *ante*, p. 986;

No. 87-5197. ATAMIAN *v.* RUBIN ET AL., *ante*, p. 864;

No. 87-5477. ANA LEON T. *v.* FEDERAL RESERVE BANK OF CHICAGO ET AL., *ante*, p. 945;

No. 87-5708. BENOIT *v.* CITY POLICE DEPARTMENT OF CROWLEY, LOUISIANA, ET AL., *ante*, p. 988;

No. 87-5724. MARTIN *v.* PEREZOUS ET AL., *ante*, p. 1013;

No. 87-5841. HENRY *v.* ZIMMERMAN, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AND DIAGNOSTIC AND CLASSIFICATION CENTER AT GRATERFORD, ET AL., *ante*, p. 1016; and

No. 87-5903. MOYA-GOMEZ *v.* WISCONSIN, *ante*, p. 999. Petitions for rehearing denied. JUSTICE KENNEDY took no part in the consideration or decision of these petitions.

