

ORDERS FROM JUNE 20 THROUGH
SEPTEMBER 30, 1988

JUNE 20, 1988

Affirmed on Appeal

No. 87-170. COPLEY ET AL. *v.* HEIL-QUAKER CORP. ET AL. Affirmed on appeal from C. A. 6th Cir. *Bendix Autolite Corp. v. Midwesco Enterprises, Inc.*, 486 U. S. 888 (1988). Reported below: 818 F. 2d 866.

Appeals Dismissed

No. 87-1582. FITZGERALD *v.* MONTANA DEPARTMENT OF FAMILY SERVICES ET AL. Appeal from Sup. Ct. Mont. dismissed for want of properly presented federal question. Reported below: 228 Mont. 184, 741 P. 2d 770.

No. 87-1654. CARKULIS *v.* MONTANA ET AL. Appeal from Sup. Ct. Mont. dismissed for want of jurisdiction. Reported below: 229 Mont. 265, 746 P. 2d 604.

No. 87-1802. VETTER *v.* CITY OF BISMARCK. Appeal from Sup. Ct. N. D. dismissed for want of substantial federal question. Reported below: 417 N. W. 2d 186.

No. 87-6335. SIVLEY *v.* TEXAS. Appeal from C. A. 5th Cir. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied. Reported below: 831 F. 2d 1059.

Certiorari Granted—Vacated and Remanded

No. 87-1621. UNITED STATES INTERNAL REVENUE SERVICE ET AL. *v.* LONG ET VIR. C. A. 9th Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Church of Scientology of California v. IRS*, 484 U. S. 9 (1987). JUSTICE KENNEDY took no part in the consideration or decision of this case. Reported below: 825 F. 2d 225.

No. 87-6760. BURR *v.* FLORIDA. Sup. Ct. Fla. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case remanded for further

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consideration in light of *Johnson v. Mississippi*, 486 U. S. 578 (1988). Reported below: 518 So. 2d 903.

Miscellaneous Orders

No. A-610. NEVILLE *v.* MOLLEN ET AL. Application for injunction, addressed to JUSTICE BRENNAN and referred to the Court, denied.

No. A-789. NEVILLE *v.* MOLLEN ET AL. C. A. 2d Cir. Application for stay and other relief, addressed to JUSTICE BRENNAN and referred to the Court, denied.

No. A-895 (87-7083). MARTINEZ *v.* UNITED STATES. C. A. 11th Cir. Application for stay, addressed to JUSTICE BRENNAN and referred to the Court, denied.

No. A-928. GRACEY *v.* DAY ET AL. Application for injunction and other relief, addressed to JUSTICE KENNEDY and referred to the Court, denied.

No. D-684. IN RE DISBARMENT OF SCHULTZ. Disbarment entered. [For earlier order herein, see 485 U. S. 973.]

No. D-702. IN RE DISBARMENT OF SIERRA. Disbarment entered. [For earlier order herein, see 485 U. S. 1002.]

No. D-705. IN RE DISBARMENT OF SEAMAN. Roger George Seaman, of Chicago, Ill., having requested to resign as a member of the Bar of this Court, it is ordered that his name be stricken from the roll of attorneys admitted to practice before the Bar of this Court. The rule to show cause, heretofore issued on April 25, 1988 [485 U. S. 1019], is hereby discharged.

No. D-716. IN RE DISBARMENT OF TIRELLI. It is ordered that Louis Anthony Tirelli, of Spring Valley, 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-717. IN RE DISBARMENT OF ALFIERI. It is ordered that Richard Joseph Alfieri, 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-718. IN RE DISBARMENT OF MORALES. It is ordered that Frank C. Morales, of Los Angeles, Cal., be suspended from

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the practice of law in this Court and that a rule issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D-719. *IN RE DISBARMENT OF EZRIN*. It is ordered that Herbert Stanley Ezrin, of Potomac, Md., be suspended from the practice of law in this Court and that a rule issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. 87-548. *TRANS WORLD AIRLINES, INC. v. INDEPENDENT FEDERATION OF FLIGHT ATTENDANTS*. C. A. 8th Cir. [Certiorari granted, 485 U. S. 958.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 87-984. *SHELL OIL CO. v. IOWA DEPARTMENT OF REVENUE*. Sup. Ct. Iowa. [Probable jurisdiction noted, 484 U. S. 1058.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 87-1245. *TEXAS MONTHLY, INC. v. BULLOCK, COMPTROLLER OF PUBLIC ACCOUNTS OF THE STATE OF TEXAS, ET AL.* Ct. App. Tex., 3d Dist. [Probable jurisdiction noted, 485 U. S. 958.] Motion of Magazine Publishers of America, Inc., for leave to file a brief as *amicus curiae* granted.

No. 87-1252. *H. J. INC. ET AL. v. NORTHWESTERN BELL TELEPHONE CO. ET AL.* C. A. 8th Cir. [Certiorari granted, 485 U. S. 958.] Motion of petitioners for divided argument denied.

No. 87-1661. *ASARCO INC. ET AL. v. KADISH ET AL.* Sup. Ct. Ariz. The Solicitor General is invited to file a brief in this case expressing the views of the United States. JUSTICE O'CONNOR took no part in the consideration or decision of this order.

No. 87-6814. *IN RE ZUSCHLAG*. Petition for writ of mandamus denied.

Certiorari Granted

No. 87-1437. *BLANTON ET AL. v. CITY OF NORTH LAS VEGAS, NEVADA*. Sup. Ct. Nev. Certiorari granted. Reported below: 103 Nev. 623, 748 P. 2d 494.

No. 87-1816. *GREEN v. BOCK LAUNDRY MACHINE CO.* C. A. 3d Cir. Certiorari granted. Reported below: 845 F. 2d 1011.

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- No. 87-1614. MARTIN ET AL. *v.* WILKS ET AL.;
- No. 87-1639. PERSONNEL BOARD OF JEFFERSON COUNTY, ALABAMA, ET AL. *v.* WILKS ET AL.; and
- No. 87-1668. ARRINGTON ET AL. *v.* WILKS ET AL. C. A. 11th 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: 833 F. 2d 1492.
- No. 87-1622. BRENDALE *v.* CONFEDERATED TRIBES AND BANDS OF THE YAKIMA INDIAN NATION ET AL.;
- No. 87-1697. WILKINSON *v.* CONFEDERATED TRIBES AND BANDS OF THE YAKIMA INDIAN NATION ET AL.; and
- No. 87-1711. COUNTY OF YAKIMA ET AL. *v.* CONFEDERATED TRIBES AND BANDS OF THE YAKIMA INDIAN NATION ET AL. C. A. 9th Cir. Certiorari granted, cases consolidated, and a total of one hour allotted for oral argument. Reported below: 828 F. 2d 529.
- Certiorari Denied.* (See also No. 87-6335, *supra.*)
- No. 86-1725. ONE LEAR JET AIRCRAFT, SERIAL No. 35A-280, REGISTRATION No. YN-BVO, ET AL. *v.* UNITED STATES; and
- No. 87-1608. ONE LEAR JET AIRCRAFT, SERIAL No. 35A-280, REGISTRATION No. YN-BVO, ET AL. *v.* UNITED STATES. C. A. 11th Cir. Reported below: No. 86-1725, 808 F. 2d 765; No. 87-1608, 836 F. 2d 1571.
- No. 87-171. COPLEY ET AL. *v.* HEIL-QUAKER CORP. ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 818 F. 2d 866.
- No. 87-706. LEAMAN *v.* OHIO DEPARTMENT OF MENTAL RETARDATION AND DEVELOPMENTAL DISABILITIES ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 825 F. 2d 946.
- No. 87-843. FERRARI, ADMINISTRATOR OF THE ESTATE OF FERRARI *v.* WOODSIDE RECEIVING HOSPITAL ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 827 F. 2d 769.
- No. 87-846. DAVIS ET AL. *v.* OFFICIAL UNSECURED CREDITORS' COMMITTEES FOR KENDAVIS HOLDING CO. ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 830 F. 2d 1128.
- No. 87-1180. UNITED STATES *v.* BAKER ET UX. C. A. 9th Cir. Certiorari denied. Reported below: 817 F. 2d 560.

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No. 87-1439. *REVIE v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 834 F. 2d 1198.

No. 87-1525. *PACIFIC FRUIT EXPRESS AND UNION PACIFIC FRUIT EXPRESS JOINT PROTECTIVE BOARD, BROTHERHOOD RAILWAY CARMEN DIVISION, TRANSPORTATION COMMUNICATIONS INTERNATIONAL UNION v. UNION PACIFIC FRUIT EXPRESS CO. ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 826 F. 2d 920.

No. 87-1556. *NATES v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 831 F. 2d 860.

No. 87-1593. *NORMAN'S COUNTRY MARKET, INC., ET AL. v. McLAUGHLIN, SECRETARY OF LABOR*. C. A. 11th Cir. Certiorari denied. Reported below: 835 F. 2d 823.

No. 87-1599. *CECIL ET AL. v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 836 F. 2d 1431.

No. 87-1600. *PENNINGTON ET AL. v. McLAUGHLIN, SECRETARY OF LABOR*. C. A. 5th Cir. Certiorari denied. Reported below: 832 F. 2d 909.

No. 87-1603. *ROMANO v. MERRILL LYNCH, PIERCE, FENNER & SMITH ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 834 F. 2d 523.

No. 87-1657. *MUSSO ET AL., TRUSTEES OF TEAMSTERS LOCAL #641 PENSION FUND v. BAKER, SECRETARY OF THE TREASURY, ET AL.* C. A. 3d Cir. Certiorari denied. Reported below: 834 F. 2d 78.

No. 87-1669. *DUGGER, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS v. AGAN*. C. A. 11th Cir. Certiorari denied. Reported below: 835 F. 2d 1337.

No. 87-1751. *BENNETT v. UNITED STATES*. C. A. 11th Cir. Certiorari denied. Reported below: 836 F. 2d 1314.

No. 87-1758. *MEYERS INDUSTRIES, INC. v. NATIONAL LABOR RELATIONS BOARD ET AL.* C. A. D. C. Cir. Certiorari denied. Reported below: 266 U. S. App. D. C. 385, 835 F. 2d 1481.

No. 87-1768. *BREEDEN v. MUNCY, WARDEN*. C. A. 4th Cir. Certiorari denied. Reported below: 838 F. 2d 465.

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No. 87-1771. *RICHARDS v. NICHOLSON, PERSONAL REPRESENTATIVE OF THE ESTATE OF RICHARDS*. Ct. Sp. App. Md. Certiorari denied. Reported below: 68 Md. App. 737.

No. 87-1772. *SCHUYLKILL COUNTY TAX CLAIM BUREAU ET AL. v. TREMONT TOWNSHIP ET AL.* Pa. Commw. Ct. Certiorari denied. Reported below: 104 Pa. Commw. 338, 522 A. 2d 102.

No. 87-1773. *PENDER COUNTY BOARD OF EDUCATION ET AL. v. PIVER*. C. A. 4th Cir. Certiorari denied. Reported below: 835 F. 2d 1076.

No. 87-1774. *METROPOLITAN COUNTY BOARD OF EDUCATION OF NASHVILLE AND DAVIDSON COUNTY, TENNESSEE, ET AL. v. TENNESSEE ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 836 F. 2d 986.

No. 87-1776. *PERKINS v. EASTERN NEBRASKA HUMAN SERVICES AGENCY*. C. A. 8th Cir. Certiorari denied. Reported below: 845 F. 2d 1026.

No. 87-1778. *SKOLNICK v. HARLOW ET AL.* C. A. 1st Cir. Certiorari denied. Reported below: 836 F. 2d 1340.

No. 87-1787. *CITY OF LONG BEACH v. SOUTHWEST AIRCRAFT SERVICES, INC.* C. A. 9th Cir. Certiorari denied. Reported below: 831 F. 2d 848.

No. 87-1792. *GANOE ET AL. v. LUMMIS, TEMPORARY ADMINISTRATOR OF THE ESTATE OF HUGHES*. C. A. 2d Cir. Certiorari denied. Reported below: 841 F. 2d 1116.

No. 87-1798. *EQUITABLE LIFE ASSURANCE SOCIETY OF THE UNITED STATES v. MARSHALL DURBIN FOOD CORP.* C. A. 11th Cir. Certiorari denied. Reported below: 834 F. 2d 949.

No. 87-1809. *HOFFMAN v. GLIDDEN COATINGS & RESINS DIVISION OF SCM CORP.* C. A. 6th Cir. Certiorari denied. Reported below: 838 F. 2d 470.

No. 87-1813. *GRIFFIN v. UNITED STATES*. Ct. Mil. App. Certiorari denied. Reported below: 25 M. J. 423.

No. 87-1819. *VARANESE v. GALL ET AL.* Sup. Ct. Ohio. Certiorari denied. Reported below: 35 Ohio St. 3d 78, 518 N. E. 2d 1177.

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No. 87-1822. *DAVIDSON ET AL. v. UNITED STATES DEPARTMENT OF ENERGY ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 838 F. 2d 850.

No. 87-1861. *GREEN, CITY CLERK, HIGHLAND PARK, MICHIGAN, ET AL. v. FRANKLIN ET AL.* Sup. Ct. Mich. Certiorari denied. Reported below: 429 Mich. 856.

No. 87-1874. *DENSON v. UNITED STATES.* C. A. 5th Cir. Certiorari denied. Reported below: 838 F. 2d 1212.

No. 87-1878. *THORNTON v. UNITED STATES.* C. A. 9th Cir. Certiorari denied. Reported below: 842 F. 2d 335.

No. 87-1879. *NOEL v. BOWEN, SECRETARY OF HEALTH AND HUMAN SERVICES.* C. A. 2d Cir. Certiorari denied. Reported below: 838 F. 2d 1203.

No. 87-1899. *QURESHI v. NATIONAL SAVINGS & TRUST CO. ET AL.* C. A. D. C. Cir. Certiorari denied. Reported below: 266 U. S. App. D. C. 120, 833 F. 2d 370.

No. 87-1924. *WILMSHURST ET AL. v. CHEVROLET MOTOR DIVISION, GENERAL MOTORS CORP.* C. A. 9th Cir. Certiorari denied. Reported below: 835 F. 2d 1437.

No. 87-5868. *MILLER v. UNITED STATES.* C. A. 9th Cir. Certiorari denied. Reported below: 823 F. 2d 555.

No. 87-6238. *THORNE v. LOCKHART, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION.* C. A. 8th Cir. Certiorari denied.

No. 87-6356. *SHABAZZ v. THURMAN, SUPERINTENDENT, CALIFORNIA INSTITUTION FOR MEN, ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 833 F. 2d 149.

No. 87-6468. *ZIMMERLEE v. MAASS, SUPERINTENDENT, OREGON STATE PENITENTIARY.* C. A. 9th Cir. Certiorari denied. Reported below: 831 F. 2d 183.

No. 87-6486. *LEVERT v. ESTELLE, WARDEN, ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 835 F. 2d 1435.

No. 87-6588. *STEPHANY v. WAGNER ET AL.* C. A. 3d Cir. Certiorari denied. Reported below: 835 F. 2d 497.

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No. 87-6640. *BRONSON v. DOKNOVITCH ET AL.* C. A. 3d Cir. Certiorari denied. Reported below: 835 F. 2d 282.

No. 87-6655. *SMALLS v. SOUTH CAROLINA.* Sup. Ct. S. C. Certiorari denied.

No. 87-6680. *COLLINS v. UNITED STATES.* C. A. 6th Cir. Certiorari denied. Reported below: 837 F. 2d 477.

No. 87-6839. *KRAMER v. SECRETARY, UNITED STATES DEPARTMENT OF THE ARMY, ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 827 F. 2d 765.

No. 87-6847. *BEHRING v. LYNAUGH, DIRECTOR, TEXAS DEPARTMENT OF CORRECTIONS.* C. A. 5th Cir. Certiorari denied. Reported below: 841 F. 2d 394.

No. 87-6853. *WILLIAMS v. PENNSYLVANIA.* Sup. Ct. Pa. Certiorari denied. Reported below: 514 Pa. 124, 522 A. 2d 1095.

No. 87-6857. *WILLIAMS v. LANE ET AL.* C. A. 7th Cir. Certiorari denied. Reported below: 840 F. 2d 920.

No. 87-6860. *WALEN v. MICHIGAN.* Ct. App. Mich. Certiorari denied.

No. 87-6864. *SPENCER v. ILLINOIS.* C. A. 7th Cir. Certiorari denied.

No. 87-6870. *FISHER v. SLATE, JUDGE, MORGAN COUNTY CIRCUIT, ET AL.* C. A. 11th Cir. Certiorari denied.

No. 87-6871. *GLAVE v. KELLOGG FOUNDATION BOARD OF TRUSTEES ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 840 F. 2d 17.

No. 87-6872. *BOSHELL v. WILSON, JUDGE, WALKER COUNTY, ET AL.* C. A. 11th Cir. Certiorari denied.

No. 87-6875. *TROTZ v. PENNSYLVANIA UNEMPLOYMENT COMPENSATION BOARD OF REVIEW.* C. A. 3d Cir. Certiorari denied. Reported below: 845 F. 2d 1016.

No. 87-6876. *ROBERTSON v. ROHR INDUSTRIES, INC.* C. A. 9th Cir. Certiorari denied. Reported below: 838 F. 2d 474.

No. 87-6877. *ESPARZA v. GLENN ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 841 F. 2d 394.

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No. 87-6881. SEALS *v.* ZIMMERMAN, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AND DIAGNOSTIC AND CLASSIFICATION CENTER AT GRATERFORD, PENNSYLVANIA. C. A. 3d Cir. Certiorari denied. Reported below: 845 F. 2d 1015.

No. 87-6883. FOWLER *v.* NAGLE, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 837 F. 2d 1093.

No. 87-6885. WILLIAMS *v.* DISTRICT OF COLUMBIA DEPARTMENT OF EMPLOYMENT SERVICES. Ct. App. D. C. Certiorari denied.

No. 87-6887. MCFARLAND *v.* ILLINOIS. App. Ct. Ill., 4th Dist. Certiorari denied. Reported below: 161 Ill. App. 3d 163, 514 N. E. 2d 72.

No. 87-6892. ROBINSON *v.* ZIMMERMAN, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AND DIAGNOSTIC AND CLASSIFICATION CENTER AT GRATERFORD, PENNSYLVANIA, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 845 F. 2d 1014.

No. 87-6894. DORTCH ET AL. *v.* O'LEARY, WARDEN, ET AL. C. A. 7th Cir. Certiorari denied.

No. 87-6896. ERICKSON *v.* WASHINGTON. Ct. App. Wash. Certiorari denied. Reported below: 48 Wash. App. 1079.

No. 87-6912. WATERS *v.* NEUBERT ET AL. C. A. 3d Cir. Certiorari denied.

No. 87-6923. VILLARRUBIA *v.* UNITED STATES POSTAL OFFICES ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 840 F. 2d 13.

No. 87-6936. GOMEZ DESIERRA *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 845 F. 2d 1017.

No. 87-6946. FERNANDEZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 837 F. 2d 1092.

No. 87-6959. MCGEE *v.* RANDALL DIVISION OF TEXTRON, INC., OF GRENADA, MISSISSIPPI. C. A. 5th Cir. Certiorari denied. Reported below: 837 F. 2d 1365.

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No. 87-6966. KING *v.* UNITED STATES. Ct. App. D. C. Certiorari denied.

No. 87-6968. FOSTER *v.* WELLS, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 87-6969. CLINE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 833 F. 2d 1008.

No. 87-6971. ARCIDIACONO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 838 F. 2d 474.

No. 87-6976. PATTERSON *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 841 F. 2d 1408.

No. 87-1200. BOARD OF TRUSTEES OF ALABAMA STATE UNIVERSITY ET AL. *v.* AUBURN UNIVERSITY ET AL. C. A. 11th Cir. Motion of respondent Auburn University to strike reply brief denied. Certiorari denied. Reported below: 828 F. 2d 1532.

No. 87-1532. ARMONTROUT, WARDEN *v.* LITTLE. C. A. 8th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 835 F. 2d 1240.

No. 87-1785. MAYO CLINIC ET AL. *v.* HUGHES ET VIR. C. A. 8th Cir. Certiorari denied. JUSTICE BLACKMUN took no part in the consideration or decision of this petition. Reported below: 834 F. 2d 713.

No. 87-1786. CARPENTERS 46 NORTHERN CALIFORNIA COUNTIES JOINT APPRENTICESHIP AND TRAINING COMMITTEE AND TRAINING BOARD *v.* ELDREDGE. C. A. 9th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 833 F. 2d 1334.

No. 87-6393. FARAGA *v.* MISSISSIPPI. Sup. Ct. Miss.;

No. 87-6794. LOCKETT *v.* MISSISSIPPI (two cases). Sup. Ct. Miss.; and

No. 87-6848. LIVINGSTON *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied. Reported below: No. 87-6393, 514 So. 2d 295; No. 87-6794, 517 So. 2d 1317 (first case), 517 So. 2d 1346 (second case); No. 87-6848, 739 S. W. 2d 311.

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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. 87-6663. *GALLOP v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. JUSTICE WHITE would grant certiorari. Reported below: 838 F. 2d 105.

Rehearing Denied

No. 87-999. *MCQUILLEN v. WISCONSIN EDUCATION ASSOCIATION COUNCIL ET AL.*, 485 U. S. 914;

No. 87-1457. *HURLEY ET AL. v. WEST AMERICAN INSURANCE CO. OF OHIO CASUALTY GROUP ET AL.*, 485 U. S. 1001;

No. 87-6462. *SELTENRICH v. TITUS ET AL.*, 485 U. S. 1022;

No. 87-6522. *MESSER v. ZANT, WARDEN*, 485 U. S. 1029;

No. 87-6523. *MARCH v. BREWSTER ET AL.*, 485 U. S. 1023;

No. 87-6679. *GOROD v. DEMONG ET AL.*, 485 U. S. 1037; and

No. 87-6692. *BECKER v. WENCO FOODS/WENDY'S INTERNATIONAL INC.*, 486 U. S. 1013. Petitions for rehearing denied.

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Dismissal Under Rule 53

No. 85-1645. *LUKENS STEEL Co. v. UNITED POLITICAL ACTION COMMITTEE ET AL.* C. A. 3d Cir. Certiorari dismissed under this Court's Rule 53. Reported below: 777 F. 2d 113.

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Dismissals Under Rule 53

No. 104, Orig. *NEW JERSEY v. NEVADA ET AL.* Bill of complaint dismissed under this Court's Rule 53. [For earlier order herein, see, *e. g.*, 484 U. S. 920.]

No. 87-717. *FIRST FAMILY MORTGAGE CORPORATION OF FLORIDA v. DURHAM ET AL.* Sup. Ct. N. J. [Probable jurisdiction noted, 485 U. S. 957.] Appeal dismissed under this Court's Rule 53.

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Certiorari Granted. (See No. 86-1970, *ante*, at 369, n. 10.)

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Appeals Dismissed

No. 87-1412. DAVIDSON *v.* ILLINOIS. Appeal from App. Ct. Ill., 5th Dist., dismissed for want of substantial federal question. Reported below: 160 Ill. App. 3d 99, 514 N. E. 2d 17.

No. 87-1829. PRE-SCHOOL OWNERS ASSOCIATION OF ILLINOIS ET AL. *v.* ILLINOIS DEPARTMENT OF CHILDREN AND FAMILY SERVICES ET AL. Appeal from Sup. Ct. Ill. dismissed for want of substantial federal question. Reported below: 119 Ill. 2d 268, 518 N. E. 2d 1018.

No. 87-1812. PETITIONERS SEEKING TO INCORPORATE LIBERTY LAKES *v.* VILLAGE OF LINDENHURST ET AL. Appeal from Sup. Ct. Ill. dismissed for want of properly presented federal question. Reported below: 119 Ill. 2d 179, 518 N. E. 2d 132.

Certiorari Granted—Vacated and Remanded

No. 86-1813. COOPER ET AL. *v.* KOTARSKI. C. A. 9th Cir. *Certiorari* granted, judgment vacated, and case remanded for further consideration in light of *Schweiker v. Chilicky*, *ante*, p. 412. Reported below: 799 F. 2d 1342.

No. 87-174. TURNER *v.* MCINTOSH ET AL. C. A. 8th Cir. *Certiorari* granted, judgment vacated, and case remanded for further consideration in light of *Schweiker v. Chilicky*, *ante*, p. 412. JUSTICE BRENNAN and JUSTICE BLACKMUN would deny *certiorari*. Reported below: 810 F. 2d 1411.

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. Motion of Seneca Nation of Indians for leave to file a brief as *amicus curiae* denied. *Certiorari* granted, judgment vacated, and case remanded for further consideration in light of proposed regulations formally published for comment by the Commissioner of Taxation and Finance of the State of New York on March 8, 1988. Reported below: 69 N. Y. 2d 536, 508 N. E. 2d 914.

No. 87-477. FERENS ET UX. *v.* DEERE & Co. C. A. 3d Cir. *Certiorari* granted, judgment vacated, and case remanded for fur-

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ther consideration in light of *Sun Oil Co. v. Wortman*, 486 U. S. 717 (1988). Reported below: 819 F. 2d 423.

No. 87-682. TECHNOGRAPH LIQUIDATING TRUST *v.* GENERAL MOTORS CORP. C. A. 3d Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Christianson v. Colt Industries Operating Corp.*, 486 U. S. 800 (1988). Reported below: 822 F. 2d 52.

No. 87-687. SESSIONS TANK LINERS, INC., DBA SOUTHWEST TANK LINERS, INC. *v.* JOOR MANUFACTURING, INC.; and

No. 87-916. JOOR MANUFACTURING, INC. *v.* SESSIONS TANK LINERS, INC., DBA SOUTHWEST TANK LINERS, INC. C. A. 9th Cir. Certiorari granted, judgment vacated, and cases remanded for further consideration in light of *Allied Tube & Conduit Corp. v. Indian Head, Inc.*, 486 U. S. 492 (1988). Reported below: 827 F. 2d 458.

No. 87-1522. KOONTZ ET UX., ADMINISTRATORS OF THE ESTATE OF KOONTZ *v.* INTERNATIONAL HARVESTER CO. C. A. 3d Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Sun Oil Co. v. Wortman*, 486 U. S. 717 (1988). Reported below: 838 F. 2d 461.

No. 87-5690. LOWE *v.* ANCELLOTTI ET AL. 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 *West v. Atkins*, *ante*, p. 42. Reported below: 823 F. 2d 547.

No. 87-6582. FRANKS *v.* BAUER ET AL. C. A. 5th 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 *Houston v. Lack*, *ante*, p. 266.

Certiorari Dismissed

No. 87-937. ATTORNEY GENERAL OF NEW JERSEY *v.* FIRST FAMILY MORTGAGE CORPORATION OF FLORIDA ET AL. Sup. Ct. N. J. [Certiorari granted, 485 U. S. 957.] Writ of certiorari dismissed as moot.

Miscellaneous Orders

No. — — —. BURNS *v.* NAVARRO, SHERIFF OF BROWARD COUNTY, FLORIDA, ET AL. Motion to direct the Clerk to file petition for writ of certiorari out of time denied.

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No. — — —. *MOLINA v. UNITED STATES*. Motion to direct the Clerk to file petition for writ of certiorari out of time denied. JUSTICE KENNEDY took no part in the consideration or decision of this motion.

No. — — —. *HARDWICK v. FLORIDA*. Motion for leave to proceed *in forma pauperis* without an affidavit of indigency executed by petitioner granted.

No. A-922. *TIMES MIRROR CO. ET AL. v. SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO (DOE, REAL PARTY IN INTEREST)*. Ct. App. Cal., 4th App. Dist. Application for stay, addressed to JUSTICE BRENNAN and referred to the Court, denied.

No. D-675. *IN RE DISBARMENT OF PRICE*. Disbarment entered. [For earlier order herein, see 485 U. S. 952.]

No. D-678. *IN RE DISBARMENT OF FLUME*. Disbarment entered. [For earlier order herein, see 485 U. S. 952.]

No. D-680. *IN RE DISBARMENT OF MALONE*. Disbarment entered. [For earlier order herein, see 485 U. S. 952.]

No. D-689. *IN RE DISBARMENT OF TRILLING*. Disbarment entered. [For earlier order herein, see 485 U. S. 974.]

No. D-694. *IN RE DISBARMENT OF SMITH*. Disbarment entered. [For earlier order herein, see 485 U. S. 985.]

No. D-698. *IN RE DISBARMENT OF MCCOY*. Disbarment entered. [For earlier order herein, see 485 U. S. 985.]

No. D-720. *IN RE DISBARMENT OF MACGUIRE*. It is ordered that William Anthony MacGuire, of Orange, Va., 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-721. *IN RE DISBARMENT OF ROMAN*. It is ordered that Peter Thomas Roman, of Dunedin, 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. 104, Orig. *NEW JERSEY v. NEVADA ET AL.* Motion of the Special Master for award of compensation and for reimbursement

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of expenses granted, and the Special Master is awarded \$6,143.65 to be paid one-half by plaintiff and one-half by defendants jointly. This case having been dismissed on stipulation pursuant to Rule 53.1 of the Rules of this Court, it is further ordered that the Special Master is hereby discharged. [For earlier order herein, see, *e. g.*, *ante*, p. 1211.]

No. 106, Orig. ILLINOIS *v.* KENTUCKY. It is ordered that the Honorable Matthew J. Jasen, retired, of Buffalo, N. Y., be appointed Special Master in place of the Honorable Robert Van Pelt, 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.*, 486 U. S. 1052.]

No. 113, Orig. MISSISSIPPI *v.* UNITED STATES. It is ordered that the Honorable Walter P. Armstrong, Jr., of Memphis, Tenn., be appointed Special Master.

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.

No. 86-1940. SHEET METAL WORKERS' INTERNATIONAL ASSN. ET AL. *v.* LYNN. C. A. 9th Cir. [Certiorari granted, 485 U. S. 958.] Motion of respondent to dismiss writ of certiorari as im-

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providently granted denied. JUSTICE KENNEDY took no part in the consideration or decision of this motion.

No. 87-154. DESHANEY, A MINOR, BY HIS GUARDIAN AD LITEM, ET AL. *v.* WINNEBAGO COUNTY DEPARTMENT OF SOCIAL SERVICES ET AL. C. A. 7th Cir. [Certiorari granted, 485 U. S. 958.] Motions of American Civil Liberties Union Children's Rights Project et al. and Massachusetts Committee for Children and Youth for leave to file briefs as *amici curiae* granted.

No. 87-271. HARBISON-WALKER REFRACTORIES, A DIVISION OF DRESSER INDUSTRIES, INC. *v.* BRIECK. C. A. 3d Cir. [Certiorari granted, 485 U. S. 958.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 87-1469. HORNSBY, ADJUTANT GENERAL OF THE ALABAMA NATIONAL GUARD, ET AL. *v.* STINSON. C. A. 11th Cir.; and No. 87-1796. MASSINGA ET AL. *v.* L. J. ET AL. C. A. 4th Cir. The Solicitor General is invited to file briefs in these cases expressing the views of the United States.

No. 87-7028. MISTRETTA *v.* UNITED STATES; and

No. 87-1904. UNITED STATES *v.* MISTRETTA. C. A. 8th Cir. [Certiorari granted, 486 U. S. 1054.] Motion of the Solicitor General to dispense with printing the joint appendix granted.

No. 87-6958. RUTHERFORD *v.* SECURITIES AND EXCHANGE COMMISSION. Appeal from C. A. 9th Cir. Motion of appellant for leave to proceed *in forma pauperis* denied. Appellant is allowed until July 18, 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.

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 dismiss the appeal for want of jurisdiction and, treating the papers whereon the appeal was taken as a petition for writ of certiorari, deny the petition for writ of certiorari without reaching the merits of the motion to proceed *in forma pauperis*.

No. 87-1950. IN RE CHEEK. Petition for writ of prohibition denied.

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Probable Jurisdiction Noted

No. 87-201. MANSELL *v.* MANSELL. Appeal from Ct. App. Cal., 5th App. Dist. Probable jurisdiction noted.

No. 87-1020. DAVIS *v.* MICHIGAN DEPARTMENT OF THE TREASURY. Appeal from Ct. App. Mich. Probable jurisdiction noted. Reported below: 160 Mich. App. 98, 408 N. W. 2d 433.

No. 87-1821. MODJESKI & MASTERS *v.* CARTER ET AL. Appeal from Sup. Ct. La. Probable jurisdiction noted. Reported below: 519 So. 2d 133.

Certiorari Granted. (See also No. 87-168, *ante*, at 479.)

No. 87-248. BROWER, INDIVIDUALLY AND AS ADMINISTRATOR OF THE ESTATE OF CALDWELL (BROWER), ET AL. *v.* COUNTY OF INYO ET AL. C. A. 9th Cir. *Certiorari* granted. Reported below: 817 F. 2d 540.

No. 87-1485. BLANCHARD *v.* BERGERON ET AL. C. A. 5th Cir. *Certiorari* granted. Reported below: 831 F. 2d 563.

No. 87-1905. MIDLAND ASPHALT CORP. ET AL. *v.* UNITED STATES. C. A. 2d Cir. *Certiorari* granted. Reported below: 840 F. 2d 1040.

No. 87-1703. ROBERTSON, CHIEF OF THE FOREST SERVICE, ET AL. *v.* METHOW VALLEY CITIZENS COUNCIL ET AL.; and

No. 87-1704. MARSH, SECRETARY OF THE ARMY, ET AL. *v.* OREGON NATURAL RESOURCES COUNCIL ET AL. C. A. 9th Cir. *Certiorari* granted, cases consolidated, and a total of one hour allotted for oral argument. Reported below: No. 87-1703, 833 F. 2d 810; No. 87-1704, 832 F. 2d 1489.

No. 87-1815. KENTUCKY DEPARTMENT OF CORRECTIONS ET AL. *v.* THOMPSON ET AL. C. A. 6th Cir. Motion of respondents for leave to proceed *in forma pauperis* granted. *Certiorari* granted. Reported below: 833 F. 2d 614.

Certiorari Denied

No. 85-6825. ANDERSON *v.* FLORIDA. Dist. Ct. App. Fla., 3d Dist. *Certiorari* denied. Reported below: 463 So. 2d 276.

No. 87-377. MCINTOSH ET AL. *v.* CARLUCCI, SECRETARY OF DEFENSE, ET AL. C. A. 8th Cir. *Certiorari* denied. Reported below: 810 F. 2d 1411.

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No. 87-517. COE ET AL. *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 826 F. 2d 1166.

No. 87-551. MELGUIZO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 824 F. 2d 370.

No. 87-1068. OKLAHOMA TAX COMMISSION *v.* MUSCOGEE (CREEK) NATION ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 829 F. 2d 967.

No. 87-1152. PUBLIC UTILITIES COMMISSION OF HAWAII ET AL. *v.* HAWAIIAN TELEPHONE CO. C. A. 9th Cir. Certiorari denied. Reported below: 827 F. 2d 1264.

No. 87-1183. CELOTEX CORP. ET AL. *v.* GOAD. C. A. 4th Cir. Certiorari denied. Reported below: 831 F. 2d 508.

No. 87-1509. HODDER *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 828 F. 2d 23.

No. 87-1541. MAJOR, ADMINISTRATOR OF THE ESTATE OF SPRADLIN, ET AL. *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 835 F. 2d 641.

No. 87-1566. GUINAN *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 836 F. 2d 350.

No. 87-1667. BELL *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 831 F. 2d 292.

No. 87-1761. AMERICAN PRESIDENT LINES, LTD. *v.* ZACHRY-DILLINGHAM. Ct. App. Tex., 4th Dist. Certiorari denied. Reported below: 739 S. W. 2d 420.

No. 87-1764. ALIMEG, INC. *v.* SHLIM ET AL. Ct. App. Ore. Certiorari denied. Reported below: 87 Ore. App. 178, 742 P. 2d 54.

No. 87-1801. ROBLES *v.* INDIANA. Sup. Ct. Ind. Certiorari denied. Reported below: 510 N. E. 2d 660.

No. 87-1810. WARREN ET AL. *v.* HALSTEAD INDUSTRIES, INC. C. A. 4th Cir. Certiorari denied. Reported below: 835 F. 2d 535.

No. 87-1817. FERREIRA ET AL. *v.* BRUCE'S SPLICING & RIGGING Co., INC. C. A. Fed. Cir. Certiorari denied. Reported below: 837 F. 2d 1097.

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No. 87-1823. *MEN'S INTERNATIONAL PROFESSIONAL TENNIS COUNCIL ET AL. v. VOLVO NORTH AMERICA CORP. ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 839 F. 2d 69.

No. 87-1824. *SKRIPICK v. OHIO.* Ct. App. Ohio, Lucas County. Certiorari denied.

No. 87-1825. *WASTE MANAGEMENT OF WISCONSIN, INC. v. WISCONSIN DEPARTMENT OF NATURAL RESOURCES.* Ct. App. Wis. Certiorari denied. Reported below: 142 Wis. 2d 944, 419 N. W. 2d 573.

No. 87-1826. *SMITH v. ROLEWICK, ADMINISTRATOR, ILLINOIS ATTORNEY REGISTRATION AND DISCIPLINARY COMMISSION.* Sup. Ct. Ill. Certiorari denied.

No. 87-1828. *ANDREWS ET AL. v. ADAMS ET AL.* Sup. Ct. Ark. Certiorari denied. Reported below: 294 Ark. 160, 741 S. W. 2d 257.

No. 87-1832. *DONNELLS v. WOODRIDGE POLICE PENSION BOARD ET AL.* App. Ct. Ill., 2d Dist. Certiorari denied. Reported below: 159 Ill. App. 3d 735, 512 N. E. 2d 1082.

No. 87-1833. *FLORIDA v. SLAPPY.* Sup. Ct. Fla. Certiorari denied. Reported below: 522 So. 2d 18.

No. 87-1849. *GALLOWAY FARMS, INC. v. PHOENIX MUTUAL LIFE INSURANCE CO.* Sup. Ct. Iowa. Certiorari denied. Reported below: 415 N. W. 2d 640.

No. 87-1880. *KELLY v. ALABAMA.* Ct. Crim. App. Ala. Certiorari denied. Reported below: 519 So. 2d 1384.

No. 87-1937. *CARL MARKS & CO. INC. ET AL. v. UNION OF SOVIET SOCIALIST REPUBLICS.* C. A. 2d Cir. Certiorari denied. Reported below: 841 F. 2d 26.

No. 87-6584. *DAVIS v. UNITED STATES.* C. A. 11th Cir. Certiorari denied. Reported below: 835 F. 2d 274.

No. 87-6623. *MAKER v. UNITED STATES.* C. A. 3d Cir. Certiorari denied. Reported below: 838 F. 2d 463.

No. 87-6638. *COOKUS v. SALAZAR, ADMINISTRATOR, ARIZONA STATE PRISON COMPLEX AT FLORENCE.* C. A. 9th Cir. Certiorari denied. Reported below: 838 F. 2d 473.

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No. 87-6811. *SMEGO v. UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF PENNSYLVANIA*. C. A. 3d Cir. Certiorari denied.

No. 87-6824. *PRINCE v. UNITED STATES*. C. A. 10th Cir. Certiorari denied.

No. 87-6863. *TROTZ, INDIVIDUALLY AND AS ADMINISTRATRIX OF THE ESTATE OF TROTZ v. LAWYER ET AL., T/A PENN ALTO HOTEL*. C. A. 3d Cir. Certiorari denied. Reported below: 845 F. 2d 1016.

No. 87-6879. *ANDERSON v. LOVE, WARDEN, ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 837 F. 2d 475.

No. 87-6880. *NUNEZ v. SECRETARY OF HEALTH AND HUMAN SERVICES*. C. A. 9th Cir. Certiorari denied.

No. 87-6893. *SAUNDERS v. CASTLE, GOVERNOR OF DELAWARE, ET AL.* Sup. Ct. Del. Certiorari denied. Reported below: 540 A. 2d 1089.

No. 87-6900. *PERKINS v. CLARKE, WARDEN*. C. A. 8th Cir. Certiorari denied. Reported below: 838 F. 2d 294.

No. 87-6903. *MARTIN v. SHANK ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 838 F. 2d 1210.

No. 87-6909. *BATTLE v. NORTH CAROLINA*. Sup. Ct. N. C. Certiorari denied. Reported below: 322 N. C. 69, 366 S. E. 2d 454.

No. 87-6910. *ABDUL-MATIYN v. HENDERSON, SUPERINTENDENT, AUBURN CORRECTIONAL FACILITY, ET AL.; and ABDUL-MATIYN v. NEW YORK ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 841 F. 2d 31 (first case); 847 F. 2d 835 (second case).

No. 87-6916. *BELT v. UTAH*. Sup. Ct. Utah. Certiorari denied. Reported below: 748 P. 2d 1091.

No. 87-6917. *MARCUS v. COUGHLIN, COMMISSIONER, NEW YORK DEPARTMENT OF CORRECTIONAL SERVICES*. C. A. 2d Cir. Certiorari denied.

No. 87-6918. *BURY v. CITY OF LAKELAND, FLORIDA, ET AL.* C. A. 11th Cir. Certiorari denied.

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No. 87-6919. *HARRIS v. THIERET, WARDEN*. C. A. 7th Cir. Certiorari denied.

No. 87-6920. *WELCH v. BUTLER, WARDEN, ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 835 F. 2d 92.

No. 87-6921. *FULLER v. HARRIS, GOVERNOR OF GEORGIA, ET AL.* C. A. 11th Cir. Certiorari denied. Reported below: 842 F. 2d 338.

No. 87-6922. *AGNES, AKA MARTIN v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 838 F. 2d 463.

No. 87-6924. *JACKSON v. CUYAHOGA COUNTY WELFARE DEPARTMENT ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 843 F. 2d 1393.

No. 87-6928. *JOHNSON v. PENNSYLVANIA*. Super. Ct. Pa. Certiorari denied. Reported below: 366 Pa. Super. 639, 526 A. 2d 1233.

No. 87-6930. *TERRY v. JABE, WARDEN*. C. A. 6th Cir. Certiorari denied. Reported below: 840 F. 2d 18.

No. 87-6932. *MABERY v. JOHNSON ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 842 F. 2d 1291.

No. 87-6933. *WILLIAMS v. PLANNED PARENTHOOD ASSOCIATION OF THE ATLANTA AREA, INC., ET AL.* C. A. 11th Cir. Certiorari denied.

No. 87-6934. *ZANOS v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 822 F. 2d 54.

No. 87-6938. *GILLESPIE, PERSONAL REPRESENTATIVE OF THE ESTATE OF GILLESPIE v. CHERRY CREEK NATIONAL BANK*. C. A. 10th Cir. Certiorari denied.

No. 87-6944. *BRAKKE ET UX. v. FEDERAL LAND BANK OF ST. PAUL ET AL.* Sup. Ct. N. D. Certiorari denied. Reported below: 417 N. W. 2d 380.

No. 87-6953. *MOTTON v. THE JACKSON SUN*. C. A. 6th Cir. Certiorari denied. Reported below: 840 F. 2d 17.

No. 87-6955. *RAINE v. HENMAN, WARDEN*. C. A. 7th Cir. Certiorari denied.

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No. 87-6957. *SVEE v. DUNN COUNTY, WISCONSIN*. Ct. App. Wis. Certiorari denied. Reported below: 142 Wis. 2d 942, 419 N. W. 2d 360.

No. 87-6963. *GRAVES v. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 836 F. 2d 1342.

No. 87-6965. *CONOVER v. PENNSYLVANIA*. Super. Ct. Pa. Certiorari denied.

No. 87-6985. *BUTLER v. UNITED STATES*. Ct. App. D. C. Certiorari denied.

No. 87-6992. *COMAS-BARRAZA v. UNITED STATES*. C. A. 11th Cir. Certiorari denied. Reported below: 841 F. 2d 397.

No. 87-7000. *PROCTOR v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 838 F. 2d 1210.

No. 87-7008. *MCGHEE v. UNITED STATES*. C. A. 11th Cir. Certiorari denied. Reported below: 838 F. 2d 1220.

No. 87-7010. *MILBURN v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 836 F. 2d 419.

No. 87-7014. *ALVARADO v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 838 F. 2d 311.

No. 87-7015. *KESSLER v. UNITED STATES*. C. A. 10th Cir. Certiorari denied.

No. 87-7019. *ALI-KHAN v. UNITED STATES*. C. A. 10th Cir. Certiorari denied. Reported below: 835 F. 2d 749.

No. 87-7021. *FARBER v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 843 F. 2d 735.

No. 87-7022. *MUZA v. UNITED STATES*. C. A. 8th Cir. Certiorari denied.

No. 87-7029. *ROY v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 843 F. 2d 305.

No. 87-7037. *HEARN v. CITY OF HOUSTON*. C. A. 5th Cir. Certiorari denied. Reported below: 836 F. 2d 1344.

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No. 87-7038. *KINSEY v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 843 F. 2d 383.

No. 87-7040. *HUMPHREY v. UNITED STATES*. C. A. 7th Cir. Certiorari denied.

No. 87-7041. *ALLEN v. MOORE ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 831 F. 2d 1057.

No. 87-7044. *RIVERA-LOPEZ v. UNITED STATES*; and
No. 87-7074. *JIMENEZ-RIVERA v. UNITED STATES*. C. A. 1st Cir. Certiorari denied. Reported below: 842 F. 2d 545.

No. 87-7045. *GALLO v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 812 F. 2d 1409.

No. 87-7080. *NORRIS v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 837 F. 2d 476.

No. 87-7083. *JACOBS ET AL. v. UNITED STATES*. C. A. 11th Cir. Certiorari denied. Reported below: 839 F. 2d 1461.

No. 87-7087. *PARHAM v. WILLIAMS*. Cir. Ct. Va., Dinwiddie County. Certiorari denied.

No. 86-1442. *DOE v. WEBSTER, DIRECTOR OF CENTRAL INTELLIGENCE*. C. A. D. C. Cir. Certiorari denied. JUSTICE BRENNAN and JUSTICE MARSHALL would grant certiorari. Reported below: 254 U. S. App. D. C. 282, 796 F. 2d 1508.

No. 87-348. *PHILLIPS PETROLEUM Co. v. SHUTTS ET AL.* Sup. Ct. Kan. Petition for writ of certiorari and mandamus denied. Reported below: 240 Kan. 764, 732 P. 2d 1286.

No. 87-1481. *MORREL ET AL. v. TRINITY BROADCASTING CORP.* C. A. 10th Cir. Certiorari denied. JUSTICE WHITE and JUSTICE KENNEDY would grant certiorari. Reported below: 827 F. 2d 673.

No. 87-1605. *SCHOOL BOARD OF PARISH OF LIVINGSTON, LOUISIANA, ET AL. v. LOUISIANA STATE BOARD OF ELEMENTARY AND SECONDARY EDUCATION ET AL.* C. A. 5th Cir. Certiorari denied. JUSTICE MARSHALL would grant certiorari. Reported below: 830 F. 2d 563.

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No. 87-1643. SPANGLER *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 838 F. 2d 85.

JUSTICE WHITE, dissenting.

Petitioner was charged with several counts of extortion. At trial, he testified in his own behalf and presented several witnesses who testified in support of his character and reputation. He requested that the jury be instructed that evidence of good reputation, even standing alone, may be sufficient to create a reasonable doubt about whether the defendant is guilty of the charges. Instead, the jury was instructed to consider such character evidence along with all the other evidence presented in the case to determine whether the prosecution had proved beyond a reasonable doubt that the defendant committed the particular crimes charged. The jury convicted petitioner, and the Third Circuit affirmed, holding that the trial judge did not abuse his discretion by refusing to give the requested instruction. 838 F. 2d 85 (1988).

The decision below adds to the considerable disagreement that has arisen in the Courts of Appeals about whether and when it is proper for the judge to give the "standing alone" instruction to the jury. Some courts have held that such an instruction is never necessary and often, if not always, is improper because it actually misleads the jury. See, *e. g.*, *United States v. Burke*, 781 F. 2d 1234, 1238-1242 (CA7 1985); *United States v. Winter*, 663 F. 2d 1120, 1146-1149 (CA1 1981); *Black v. United States*, 309 F. 2d 331, 343-344 (CA8 1962), cert. denied, 372 U. S. 934 (1963). Other courts have disagreed with this view, stating that at least in certain kinds of cases, if not always, a defendant is entitled to have the jury be instructed that reputation evidence in and of itself can create a reasonable doubt as to guilt. See, *e. g.*, *United States v. Lewis*, 157 U. S. App. D. C. 43, 48, 482 F. 2d 632, 637 (1973); *United States v. Cramer*, 447 F. 2d 210, 219 (CA2 1971), cert. denied, 404 U. S. 1024 (1972). In addition, many of the pattern jury instructions that have been used by District Courts around the country have included some kind of "standing alone" instruction. See, *e. g.*, *Burke, supra*, at 1238; *United States v. Callahan*, 588 F. 2d 1078, 1086, n. 1. (CA5 1979). This confusion can be traced directly to statements made by this Court in *Edgington v. United States*, 164 U. S. 361, 366 (1896), and in *Michelson v. United States*, 335 U. S. 469, 476 (1948). I would

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grant certiorari to resolve the longstanding division in the courts on this point.

No. 87-1757. REED *v.* COLLYER, GENERAL COUNSEL, NATIONAL LABOR RELATIONS BOARD. C. A. 6th Cir. Certiorari denied. Reported below: 837 F. 2d 1091.

JUSTICE SCALIA, dissenting.

This is a suit against the General Counsel of the National Labor Relations Board, alleging that in dismissing unfair labor practice charges filed by petitioner she violated petitioner's due process and equal protection rights under the Fifth Amendment. The District Court, in an unpublished opinion, dismissed the suit on the ground that the General Counsel's decision to dismiss was not subject to judicial review. The United States Court of Appeals for the Sixth Circuit, also in an unpublished opinion, affirmed. Judgt. order reported at 837 F. 2d 1091 (1988).

While this petition for certiorari was pending, this Court decided *Webster v. Doe*, 486 U. S. 592 (1988), applying for the first time the principle that Congress' intent to preclude judicial review of "constitutional claims" must be expressed with greater clarity than its intent to preclude judicial review of other claims. *Id.*, at 603-604. The statute that *Webster* found insufficiently clear for that purpose pertained to the Central Intelligence Agency, and provided that "[n]otwithstanding . . . the provisions of any other law, the Director of Central Intelligence may, in his discretion, terminate the employment of any officer or employee of the Agency whenever he shall deem such termination necessary or advisable in the interests of the United States." 50 U. S. C. § 403(c). The statute at issue in the present case pertains to the NLRB, and provides that the General Counsel "shall have final authority, on behalf of the Board, in respect of the investigation of charges and issuance of complaints under section 160 of this title, and in respect of the prosecution of such complaints before the Board" 29 U. S. C. § 153(d). The present case, involving constitutional claims, is unquestionably a prime candidate for application of the new principle we adopted in *Webster*. While the area of administrative activity to which the suit pertains (enforcement discretion) is one in which agencies have traditionally been accorded broad insulation from judicial review, see *Heckler v. Chaney*, 470 U. S. 821 (1985), so was the area of managing the Nation's intelligence services at issue in *Webster*. And the

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text of the statute in *Webster* was much more suggestive of total unreviewability.

Petitioner has filed a supplemental brief persuasively arguing that *Webster* supports his position. Our denial of his petition is a puzzling departure from our standard practice of *remanding* (without opinion) pending cases whose outcome could well be affected by a decision we have promulgated after the judgment below. See R. Stern, E. Gressman, & S. Shapiro, *Supreme Court Practice* § 5.12, p. 279 (6th ed. 1986). If we adhere to the rationale of *Webster*, we should certainly grant this petition for certiorari, vacate the judgment of the Sixth Circuit, and remand this case for reconsideration in light of *Webster*. It was my view that the rationale of *Webster* was wrong, because it did not square with the outcome of perfectly commonplace and perfectly correct decisions such as that of the Sixth Circuit here. See 486 U. S., p. 606 (SCALIA, J., dissenting). I would grant certiorari in this case in order to begin the necessary process of limiting *Webster* to its facts.

No. 87-1799. NOBEL SCIENTIFIC INDUSTRIES, INC. *v.* BECKMAN INSTRUMENTS, INC. C. A. 4th Cir. Motion of Competitive Americas Project for leave to file a brief as *amicus curiae* granted. Certiorari denied. Reported below: 831 F. 2d 537.

No. 87-6573. LEWIS *v.* MODULAR QUARTERS ET AL. Ct. App. La., 3d Cir. Certiorari denied. Reported below: 508 So. 2d 975.

JUSTICE WHITE, with whom JUSTICE BLACKMUN joins, dissenting.

This case presents the question whether an injured worker who is receiving benefits under the Longshore and Harbor Workers' Compensation Act (LHWCA), 33 U. S. C. § 901 *et seq.*, may be barred by a state-law immunity available to "statutory employers" from asserting a tort claim against a contractor for whom his immediate employer was performing work at the time of the injury.

Respondent Universal Fabricators, Inc. (Unifab), hired petitioner's employer, 4-D Corrosion Control, to perform painting and sandblasting work at Unifab's shipyard. Petitioner was injured while setting up sandblasting equipment at the shipyard in the course of his employment with 4-D Corrosion Control. Petitioner began receiving LHWCA benefits on account of his injury.

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He subsequently filed a tort suit against Unifab and others in Louisiana state court.

The trial court granted summary judgment in favor of Unifab, and the Louisiana Court of Appeal affirmed. 508 So. 2d 975 (1987). The Court of Appeal rejected petitioner's contention that, when a worker who is receiving LHWCA benefits seeks to recover in tort from those allegedly responsible for his injury, the LHWCA pre-empts any "statutory employer" immunity to which the defendants might otherwise be entitled under state law. The court could discern in the language and legislative history of the LHWCA "no intent by Congress to negate the available defenses provided by state law to third-party claims brought pursuant to state law." *Id.*, at 982. Accordingly, because petitioner's suit against Unifab was based on state law rather than federal law, the suit was held to be barred by the "statutory employer" immunity available to Unifab under the Louisiana Worker's Compensation Law, La. Rev. Stat. Ann. §§ 23:1032, 23:1061 (West 1985). The Louisiana Supreme Court, with two justices dissenting, denied discretionary review. 514 So. 2d 127 (1987).

The decision below is consistent with the decision of the Court of Appeals for the Fourth Circuit in *Garvin v. Alumax of South Carolina, Inc.*, 787 F. 2d 910, 916-918, cert. denied, 479 U. S. 914 (1986), but inconsistent with the decisions of the Court of Appeals for the Fifth Circuit in *Gates v. Shell Oil*, 812 F. 2d 1509, 1513-1514 (1987), and *Martin v. Ingalls Shipbuilding*, 746 F. 2d 231 (1984) (*per curiam*).

Appellate courts having major concern with maritime law are thus in conflict over the pre-emptive scope of the LHWCA. For this reason, I would grant certiorari.

No. 87-6731. *MONTOYA v. TEXAS*. Ct. Crim. App. Tex. Certiorari denied. Reported below: 744 S. W. 2d 15.

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. 87-6964. *BROOKS v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. JUSTICE KENNEDY took no part in the con-

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sideration or decision of this case. Reported below: 841 F. 2d 268.

Rehearing Denied

- No. 87-1027. *RESTER v. TEXAS*, 484 U. S. 1052;
 No. 87-1250. *BICOY v. HAWAII*, 485 U. S. 962;
 No. 87-1503. *SHIPPS v. STOUGHTON POLICE DEPARTMENT ET AL.*, 485 U. S. 1017;
 No. 87-1526. *CHRISTENSEN v. UTAH STATE TAX COMMISSION*, 485 U. S. 1030;
 No. 87-1679. *RIVERA v. FRANK, POSTMASTER GENERAL OF THE UNITED STATES, ET AL.*, 486 U. S. 1009;
 No. 87-6287. *BROWN v. LOUISIANA*, 486 U. S. 1017;
 No. 87-6521. *QUALMAN v. UNITED STATES ET AL.*, 486 U. S. 1024;
 No. 87-6616. *IN RE MARTIN*, 486 U. S. 1004;
 No. 87-6622. *IN RE MARTIN*, 486 U. S. 1004; and
 No. 87-6648. *MAY v. WARNER AMEX CABLE COMMUNICATIONS ET AL.*, 486 U. S. 1011. Petitions for rehearing denied.

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Appeals Dismissed

- No. 87-1750. *IRR v. KENTUCKY*. Appeal from Ct. App. Ky. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied.
- No. 87-1884. *KING v. KAPLAN 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: 829 F. 2d 1128.
- No. 87-1866. *EAVES ET AL. v. HARRIS, GOVERNOR OF GEORGIA, ET AL.* Appeal from Sup. Ct. Ga. dismissed for want of substantial federal question. Reported below: 258 Ga. 1, 364 S. E. 2d 854.
- No. 87-6363. *CASTILLO v. TEXAS*. Appeal from Ct. Crim. App. Tex. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied. Reported below: 739 S. W. 2d 280.

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JUSTICE BRENNAN and JUSTICE MARSHALL, dissenting.

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

Certiorari Granted—Vacated and Remanded

No. 85-516. DUBOSE ET AL. *v.* PIERCE, SECRETARY OF HOUSING AND URBAN DEVELOPMENT, ET AL. C. A. 2d Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Pierce v. Underwood*, *ante*, p. 552. Reported below: 761 F. 2d 913.

No. 86-1055. PRICE ET AL. *v.* INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE & AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, ET AL. C. A. 2d Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Communications Workers v. Beck*, *ante*, p. 735. Reported below: 795 F. 2d 1128.

No. 86-1343. TAFOYA *v.* NEW MEXICO. Ct. App. N. M. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Coy v. Iowa*, *ante*, p. 1012. JUSTICE BLACKMUN would deny the petition. Reported below: 105 N. M. 117, 729 P. 2d 1371.

No. 86-1661. BATTLES FARM CO. ET AL. *v.* PIERCE, SECRETARY OF HOUSING AND URBAN DEVELOPMENT. C. A. D. C. Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Pierce v. Underwood*, *ante*, p. 552. Reported below: 257 U. S. App. D. C. 6, 806 F. 2d 1098.

No. 87-251. BOWEN, SECRETARY OF HEALTH AND HUMAN SERVICES *v.* RUSSELL. C. A. 3d Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Pierce v. Underwood*, *ante*, p. 552. Reported below: 814 F. 2d 148.

No. 87-893. EMANUEL *v.* MARSH, SECRETARY OF THE ARMY, ET AL. C. A. 8th Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Watson v. Fort Worth Bank & Trust*, *ante*, p. 977. Reported below: 828 F. 2d 438.

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No. 87-6129. *JONES v. MISSISSIPPI*. Sup. Ct. Miss. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Thompson v. Oklahoma*, *ante*, p. 815, and *Maynard v. Cartwright*, 486 U. S. 356 (1988). Reported below: 517 So. 2d 1295.

No. 87-6135. *POWELL v. TEXAS*. Ct. Crim. App. Tex. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Satterwhite v. Texas*, 486 U. S. 249 (1988). Reported below: 742 S. W. 2d 353.

No. 87-6190. *CONLEY v. WISCONSIN*. Ct. App. Wis. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Coy v. Iowa*, *ante*, p. 1012. Reported below: 141 Wis. 2d 384, 416 N. W. 2d 69.

No. 87-6639. *BOWIE v. CALIFORNIA*. 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 *Houston v. Lack*, *ante*, p. 266.

Miscellaneous Orders

No. — — —. *MINCEY v. SUPERINTENDENT, ARIZONA STATE PRISON*. Motion to direct the Clerk to file petition for writ of certiorari out of time denied.

No. A-900. *WINSLOW ET AL. v. WILLIAMS ET AL.* Application for injunction and other relief, addressed to JUSTICE BRENNAN and referred to the Court, denied.

No. A-930. *MCDONALD v. METROPOLITAN GOVERNMENT, ACTING BY AND THROUGH THE TAXICAB AND WRECKER LICENSING BOARD*. Chan. Ct., Davidson County, Tenn. Application for stay and other relief, addressed to JUSTICE KENNEDY and referred to the Court, denied.

No. A-974. *DETROIT FREE PRESS ET AL. v. WAYNE CIRCUIT JUDGE*. Application for injunction and other relief, addressed to JUSTICE BRENNAN and referred to the Court, denied.

No. D-704. *IN RE DISBARMENT OF PACIONE*. Disbarment entered. [For earlier order herein, see 485 U. S. 1019.]

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No. D-706. IN RE DISBARMENT OF PURVIS. Disbarment entered. [For earlier order herein, see 485 U. S. 1033.]

No. 108, Orig. NEBRASKA *v.* WYOMING ET AL. Motion of the Special Master for award of interim compensation and for reimbursement of expenses granted, and the Special Master is awarded \$101,129.97 to be paid one-half by Nebraska and one-half by Wyoming. [For earlier order herein, see, *e. g.*, 485 U. S. 931.]

No. 112, Orig. WYOMING *v.* OKLAHOMA. Motions of Wyoming Mining Association and Alabama Power Co. for leave to file briefs as *amici curiae* granted. Motion for leave to file bill of complaint granted. Defendant is allowed 60 days within which to file an answer.

No. 87-107. PATTERSON *v.* MCLEAN CREDIT UNION. C. A. 4th Cir. [Certiorari granted, 484 U. S. 814.] Motion of American Jewish Congress et al. for leave to file a brief as *amici curiae* out of time granted.

No. 87-796. CITIES SERVICE GAS CO. ET AL. *v.* MOBIL OIL CORP. ET AL. C. A. 10th Cir. Motion of the parties to defer consideration of the petition for writ of certiorari granted.

No. 87-1346. BONITO BOATS, INC. *v.* THUNDER CRAFT BOATS, INC. Sup. Ct. Fla. [Certiorari granted, 486 U. S. 1004.] Charles Lipsey, Esq., of Washington, D. C., is invited to brief and argue this case in support of the judgment below as *amicus curiae*.

No. 87-1589. PITTSBURGH & LAKE ERIE RAILROAD Co. *v.* RAILWAY LABOR EXECUTIVES' ASSN. ET AL. C. A. 3d Cir.; and

No. 87-1888. PITTSBURGH & LAKE ERIE RAILROAD Co. *v.* RAILWAY LABOR EXECUTIVES' ASSN. 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. 87-7028. MISTRETTA *v.* UNITED STATES; and

No. 87-1904. UNITED STATES *v.* MISTRETTA. C. A. 8th Cir. [Certiorari granted, 486 U. S. 1054.] Motion of the Solicitor General for divided argument to permit the United States Sentencing Commission to participate in oral argument as *amicus curiae* and for additional time for oral argument granted, and 20 additional

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minutes are allotted for that purpose to be divided as follows: Mistretta, 40 minutes; the Solicitor General, 25 minutes; and the United States Sentencing Commission, 15 minutes.

No. 87-1911. RAILWAY LABOR EXECUTIVES' ASSN. ET AL. *v.* GUILFORD TRANSPORTATION INDUSTRIES, INC., ET AL. C. A. 1st Cir. Motion of petitioners to expedite consideration of the petition for writ of certiorari denied.

No. 87-2049. RAILWAY LABOR EXECUTIVES' ASSN. ET AL. *v.* CHICAGO & NORTH WESTERN TRANSPORTATION CO. ET AL. C. A. 8th Cir. Motion of petitioners to expedite consideration of the petition for writ of certiorari denied.

No. 87-6980. VENTURI *v.* CALIFORNIA. Ct. App. Cal., 5th App. Dist. Motion of petitioner for leave to proceed *in forma pauperis* denied. Petitioner is allowed until July 21, 1988, 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. 87-7128. IN RE MAHDI. Petition for writ of habeas corpus denied.

Probable Jurisdiction Noted

No. 87-1224. ORING *v.* STATE BAR OF CALIFORNIA. Appeal from Sup. Ct. Cal. Probable jurisdiction noted.

Certiorari Granted

No. 87-1939. BARNARD, CHAIRMAN OF THE COMMITTEE OF BAR EXAMINERS OF THE VIRGIN ISLANDS *v.* THORSTENN ET AL.; and

No. 87-2008. VIRGIN ISLANDS BAR ASSN. *v.* THORSTENN ET AL. C. A. 3d Cir. Certiorari granted, cases consolidated, and a total of one hour allotted for oral argument. Reported below: 842 F. 2d 1393.

No. 87-1387. WARDS COVE PACKING CO., INC., ET AL. *v.* ATONIO ET AL. C. A. 9th Cir. Certiorari granted limited to

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Questions 1, 2, and 3 presented by the petition. Reported below: 827 F. 2d 439.

No. 87-5666. *HIGH v. ZANT, WARDEN*. C. A. 11th Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted limited to Question 1 presented by the petition and case set for oral argument in tandem with No. 87-6026, *Wilkins v. Missouri*, immediately *infra*. Reported below: 819 F. 2d 988.

No. 87-6026. *WILKINS v. MISSOURI*. Sup. Ct. Mo. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted limited to Question 1 presented by the petition and case set for oral argument in tandem with No. 87-5666, *High v. Zant, Warden*, immediately *supra*. Reported below: 736 S. W. 2d 409.

No. 87-6177. *PENRY 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 Questions 1 and 2 presented by the petition. Reported below: 832 F. 2d 915.

Certiorari Denied. (See also Nos. 87-1750, 87-1884, and 87-6363, *supra*.)

No. 85-1529. *GRUMMAN AEROSPACE CORP. v. SHAW*. C. A. 11th Cir. Certiorari denied. Reported below: 778 F. 2d 736.

No. 86-379. *DOWD ET AL. v. TEXTRON, INC., ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 792 F. 2d 409.

No. 86-674. *TOZER ET AL. v. LTV CORP. ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 792 F. 2d 403.

No. 86-678. *SILVESTRI v. UNITED STATES*. C. A. 1st Cir. Certiorari denied. Reported below: 787 F. 2d 736.

No. 86-966. *BECK ET AL. v. COMMUNICATIONS WORKERS OF AMERICA ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 776 F. 2d 1187 and 800 F. 2d 1280.

No. 86-1386. *SALGADO v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 807 F. 2d 603.

No. 86-1573. *CONNER AIR LINES, INC. v. FEDERAL AVIATION ADMINISTRATION*. C. A. 11th Cir. Certiorari denied.

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No. 86-2013. *WHITEHORN, AKA MORRISON v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 813 F. 2d 646.

No. 86-6712. *VAN ORSOW v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 811 F. 2d 1509.

No. 86-7065. *TACKETT v. ILLINOIS*. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 150 Ill. App. 3d 406, 501 N. E. 2d 891.

No. 87-372. *AMOCO PRODUCTION CO. v. HODEL, SECRETARY OF THE INTERIOR, ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 815 F. 2d 352.

No. 87-436. *LOMBARDI ET AL. v. DOW CHEMICAL CO. ET AL.*; and

No. 87-620. *KRUPKIN ET AL. v. DOW CHEMICAL CO. ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: No. 87-436, 818 F. 2d 187; No. 87-620, 818 F. 2d 179.

No. 87-593. *MAINE v. EVENTS INTERNATIONAL, INC., ET AL.* Sup. Jud. Ct. Me. Certiorari denied. Reported below: 528 A. 2d 458.

No. 87-1124. *BYRD v. OHIO*. Ct. App. Ohio, Warren County. Certiorari denied.

No. 87-1498. *ROBBINS ET AL. v. EASTER ENTERPRISES, INC., DBA ACE LINES, INC.* C. A. 8th Cir. Certiorari denied. Reported below: 828 F. 2d 1348.

No. 87-1499. *ANDERSON ET AL. v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 829 F. 2d 1121.

No. 87-1505. *FLAVEL v. OREGON*. Ct. App. Ore. Certiorari denied. Reported below: 84 Ore. App. 742, 735 P. 2d 380.

No. 87-1516. *FRANK, POSTMASTER GENERAL OF THE UNITED STATES POSTAL SERVICE v. SHIDAKER*. C. A. 7th Cir. Certiorari denied. Reported below: 833 F. 2d 627.

No. 87-1547. *CALIFORNIA TEAMSTERS PUBLIC, PROFESSIONAL & MEDICAL EMPLOYEES UNION LOCAL 911, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA v. GHEBRESELASSIE*. C. A. 9th Cir. Certiorari denied. Reported below: 829 F. 2d 892.

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No. 87-1569. *PIMENTEL ET AL. v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 841 F. 2d 1117.

No. 87-1607. *SILVERSTEIN ET AL. v. UNITED STATES*. C. A. 11th Cir. Certiorari denied. Reported below: 835 F. 2d 1439.

No. 87-1609. *GRIFFIN & BRAND OF MCALLEN, INC., ET AL. v. REYES ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 814 F. 2d 168.

No. 87-1642. *CABLEVISION CO. v. MOTION PICTURE ASSOCIATION OF AMERICA, INC., ET AL.*; and

No. 87-1814. *NATIONAL CABLE TELEVISION ASSN., INC. v. COLUMBIA PICTURES INDUSTRIES, INC., ET AL.* C. A. D. C. Cir. Certiorari denied. Reported below: 266 U. S. App. D. C. 435, 836 F. 2d 599.

No. 87-1676. *SAUL ET AL., CO-EXECUTORS OF THE ESTATE OF SAUL v. UNITED STATES*. C. A. 11th Cir. Certiorari denied. Reported below: 835 F. 2d 1439.

No. 87-1685. *SHELL OIL CO. v. CITY OF SANTA MONICA*; and
No. 87-1841. *CITY OF SANTA MONICA v. SHELL OIL CO.* C. A. 9th Cir. Certiorari denied. Reported below: 830 F. 2d 1052.

No. 87-1715. *HALE v. MCLAUGHLIN, SECRETARY OF LABOR, ET AL.* C. A. 7th Cir. Certiorari denied. Reported below: 830 F. 2d 196.

No. 87-1733. *SAMPSON ET UX. v. COMMISSIONER OF INTERNAL REVENUE*. C. A. 6th Cir. Certiorari denied. Reported below: 829 F. 2d 39.

No. 87-1735. *FISHMAN ET AL. v. COMMISSIONER OF INTERNAL REVENUE*. C. A. 7th Cir. Certiorari denied. Reported below: 837 F. 2d 309.

No. 87-1795. *RAINBOW TOURS, INC., DBA RAINBOW COACHES v. NATIONAL LABOR RELATIONS BOARD*. C. A. 9th Cir. Certiorari denied. Reported below: 835 F. 2d 1436.

No. 87-1803. *UNITED STATES FIDELITY & GUARANTY CO. v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 837 F. 2d 116.

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No. 87-1834. *PEARSON v. LOUISIANA*. Ct. App. La., 2d Cir. Certiorari denied. Reported below: 513 So. 2d 459.

No. 87-1843. *KOLENBERG v. BOARD OF EDUCATION OF STAMFORD, CONNECTICUT*. Sup. Ct. Conn. Certiorari denied. Reported below: 206 Conn. 113, 536 A. 2d 577.

No. 87-1846. *LAMBERT GRAVEL CO., INC. v. J. A. JONES CONSTRUCTION CO. ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 835 F. 2d 1105.

No. 87-1851. *DAVIS PACIFIC CORP. v. VENTURA COUNTY FLOOD CONTROL DISTRICT*. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 87-1856. *RAMSEY ASSOCIATES, INC., ET AL. v. COTY ET AL.* Sup. Ct. Vt. Certiorari denied. Reported below: 149 Vt. 451, 546 A. 2d 196.

No. 87-1857. *DRUMMER v. NOEL ET AL.* Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 520 So. 2d 587.

No. 87-1859. *AIR TRANSPORT ASSOCIATION OF AMERICA ET AL. v. PUBLIC UTILITIES COMMISSION OF CALIFORNIA ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 833 F. 2d 200.

No. 87-1863. *COMPLIANCE MARINE, INC. v. CAMPBELL, TRUSTEE*. C. A. 4th Cir. Certiorari denied. Reported below: 839 F. 2d 203.

No. 87-1871. *CAVE v. PITTSBURGH CORNING CORP. ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 843 F. 2d 1386.

No. 87-1872. *ROSENSTEIN ET AL. v. UNITED STATES*;

No. 87-6673. *NIGO-MARTINEZ ET AL. v. UNITED STATES*; and

No. 87-6808. *WILSON v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 841 F. 2d 1300.

No. 87-1875. *LEE v. ALBEMARLE COUNTY, VIRGINIA, SCHOOL BOARD ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 829 F. 2d 1120.

No. 87-1881. *WICKSTROM, BY WICKSTROM ET AL., CONSERVATORS OF THE PERSON AND ESTATE OF WICKSTROM v. MAPLEWOOD TOYOTA, INC., ET AL.* Ct. App. Minn. Certiorari denied. Reported below: 416 N. W. 2d 838.

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No. 87-1887. *SHELLEY v. CITY OF LOS ANGELES*. C. A. 9th Cir. Certiorari denied. Reported below: 835 F. 2d 1436.

No. 87-1913. *RESHARD v. BURNLEY, SECRETARY, UNITED STATES DEPARTMENT OF TRANSPORTATION*. C. A. D. C. Cir. Certiorari denied.

No. 87-1952. *VANLANDINGHAM v. COMMISSIONER OF INTERNAL REVENUE*. C. A. 4th Cir. Certiorari denied. Reported below: 836 F. 2d 1343.

No. 87-1982. *AVERY v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 837 F. 2d 482.

No. 87-1993. *ROBINSON v. VIRGINIA STATE BAR EX REL. THIRD DISTRICT COMMITTEE*. Sup. Ct. Va. Certiorari denied.

No. 87-1996. *AYARS ET UX. v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 845 F. 2d 1009.

No. 87-1998. *FERNANDEZ v. UNITED STATES*. C. A. 11th Cir. Certiorari denied. Reported below: 841 F. 2d 1546.

No. 87-1999. *PFLUGER ET UX. v. COMMISSIONER OF INTERNAL REVENUE*. C. A. 7th Cir. Certiorari denied. Reported below: 840 F. 2d 1379.

No. 87-2005. *HENRY v. MROSAK ET UX*. Ct. App. Minn. Certiorari denied. Reported below: 415 N. W. 2d 98.

No. 87-5940. *WHITEHORN v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 829 F. 2d 1225.

No. 87-6615. *RILEY v. SMITH*. C. A. 6th Cir. Certiorari denied. Reported below: 836 F. 2d 550.

No. 87-6625. *TRACY v. UNITED STATES*. C. A. 10th Cir. Certiorari denied.

No. 87-6651. *REID v. MISSOURI*. Ct. App. Mo., Western Dist. Certiorari denied. Reported below: 741 S. W. 2d 716.

No. 87-6667. *LEACH v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 833 F. 2d 1017.

No. 87-6754. *ALLEN v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 831 F. 2d 1487.

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No. 87-6837. *SPENCER v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 839 F. 2d 1341.

No. 87-6850. *GREENE v. UNITED STATES*. C. A. D. C. Cir. Certiorari denied. Reported below: 266 U. S. App. D. C. 220, 834 F. 2d 1067.

No. 87-6861. *RUSH v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 840 F. 2d 574.

No. 87-6884. *FELTON v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 845 F. 2d 1028.

No. 87-6890. *REIDT v. UNITED STATES*; and

No. 87-6945. *GEURIN v. UNITED STATES*. C. A. Fed. Cir. Certiorari denied.

No. 87-6898. *JUSTICE v. UNITED STATES*. C. A. 10th Cir. Certiorari denied. Reported below: 835 F. 2d 1310.

No. 87-6937. *ROBINSON v. LOCKHART, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION*. C. A. 8th Cir. Certiorari denied. Reported below: 835 F. 2d 1271.

No. 87-6951. *RACHALS v. GEORGIA*. Sup. Ct. Ga. Certiorari denied. Reported below: 258 Ga. 48, 364 S. E. 2d 867.

No. 87-6960. *RAUSER v. FREEMAN, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AND DIAGNOSTIC AND CLASSIFICATION CENTER AT CAMP HILL, PENNSYLVANIA, ET AL.* C. A. 3d Cir. Certiorari denied.

No. 87-6961. *STRICKLAND v. LANE, DIRECTOR, ILLINOIS DEPARTMENT OF CORRECTIONS*. C. A. 7th Cir. Certiorari denied.

No. 87-6967. *CORTEZ v. HOKE, SUPERINTENDENT, EASTERN NEW YORK CORRECTIONAL FACILITY*. C. A. 2d Cir. Certiorari denied. Reported below: 841 F. 2d 1116.

No. 87-6970. *JACKSON v. CLEVELAND STATE UNIVERSITY*. C. A. 6th Cir. Certiorari denied. Reported below: 841 F. 2d 1127.

No. 87-6972. *HICKS v. LOFFREDO ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 842 F. 2d 1287.

No. 87-6973. *DANIELS v. MARYLAND*. Ct. Sp. App. Md. Certiorari denied. Reported below: 71 Md. App. 729.

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No. 87-6975. SEBASTIAN-ANDRES *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied.

No. 87-6988. CLOYD, AKA FRANCIS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 840 F. 2d 574.

No. 87-6990. GORMAN *v.* JONES, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied.

No. 87-6991. FINCH *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 842 F. 2d 201.

No. 87-6999. BEALS *v.* BENNETT, SHERIFF, ET AL. C. A. 10th Cir. Certiorari denied.

No. 87-7007. MAY *v.* BERTELSMAN; and MAY *v.* COURT OF APPEALS, FIRST APPELLATE DISTRICT OF OHIO, ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 848 F. 2d 192.

No. 87-7017. FLORES ET AL. *v.* MUNICIPALITY OF CAROLINA. Super. Ct. P. R. Certiorari denied.

No. 87-7030. MOBLEY *v.* WHITFIELD. C. A. D. C. Cir. Certiorari denied.

No. 87-7032. COLON *v.* NEW YORK. Ct. App. N. Y. Certiorari denied. Reported below: 71 N. Y. 2d 410, 521 N. E. 2d 1075.

No. 87-7046. SCHROEDER *v.* OREGON ET AL. Ct. App. Ore. Certiorari denied. Reported below: 87 Ore. App. 210, 741 P. 2d 937.

No. 87-7064. DAVIS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 845 F. 2d 1028.

No. 87-7073. BROWN *v.* MURRAY, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 838 F. 2d 465.

No. 87-7090. ARRINGTON *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied.

No. 87-7091. CADAVID-GOMEZ *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 845 F. 2d 1017.

No. 87-7104. SANCHEZ *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 847 F. 2d 836.

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No. 87-7106. *TOWNS v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 842 F. 2d 740.

No. 87-7113. *GITTLEMAN v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 845 F. 2d 1017.

No. 87-7130. *TURNER v. SULLIVAN, WARDEN*. C. A. 2d Cir. Certiorari denied. Reported below: 842 F. 2d 1288.

No. 87-7133. *THORNBERG v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 844 F. 2d 573.

No. 87-7155. *MATHEWS v. UNITED STATES*. C. A. 5th Cir. Certiorari denied.

No. 87-1302. *GUSHIKEN ET AL. v. FUJIKAWA*. C. A. 9th Cir. Certiorari denied. JUSTICE WHITE and JUSTICE O'CONNOR would grant certiorari. Reported below: 823 F. 2d 1341.

No. 87-1497. *EASTER ENTERPRISES, INC., DBA ACE LINES, INC. v. ROBBINS ET AL.* C. A. 8th Cir. Certiorari denied. JUSTICE BRENNAN, JUSTICE WHITE, and JUSTICE KENNEDY would grant certiorari. Reported below: 828 F. 2d 1348.

No. 87-1693. *KNIES v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. JUSTICE WHITE would grant certiorari. Reported below: 837 F. 2d 1404.

No. 87-1712. *DOE ET AL. v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. JUSTICE WHITE would grant certiorari. Reported below: 836 F. 2d 1468.

No. 87-1701. *DUGGER, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS v. FOSTER*. Sup. Ct. Fla. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 518 So. 2d 901.

No. 87-1756. *SUNDQUIST v. CHASTAIN*. C. A. D. C. Cir. Certiorari denied. JUSTICE WHITE, JUSTICE BLACKMUN, and JUSTICE O'CONNOR would grant certiorari. Reported below: 266 U. S. App. D. C. 61, 833 F. 2d 311.

No. 87-5418. *HOUSEL v. GEORGIA*. Sup. Ct. Ga.;

No. 87-5876. *CORDOVA v. TEXAS*. Ct. Crim. App. Tex.;

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No. 87-6137. *FOSTER v. DUGGER*, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir.;

No. 87-6381. *BARRIENTES v. TEXAS*. Ct. Crim. App. Tex.;

No. 87-6436. *KING v. FLORIDA*. Sup. Ct. Fla.;

No. 87-6873. *ARANDA v. TEXAS*. Ct. Crim. App. Tex.;

No. 87-6886. *JACKSON v. TEXAS*. Ct. Crim. App. Tex.; and

No. 87-7255. *ROSALES v. TEXAS*. Ct. Crim. App. Tex. Certiorari denied. Reported below: No. 87-5418, 257 Ga. 115, 355 S. E. 2d 651; No. 87-5876, 733 S. W. 2d 175; No. 87-6137, 823 F. 2d 402; No. 87-6381, 752 S. W. 2d 524; No. 87-6436, 514 So. 2d 354; No. 87-6873, 736 S. W. 2d 702; No. 87-6886, 745 S. W. 2d 4; No. 87-7255, 748 S. W. 2d 451.

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. 87-6437. *BAKER v. PIGGOTT*. C. A. 11th Cir. Certiorari denied. JUSTICE BLACKMUN would grant certiorari. Reported below: 833 F. 2d 1539.

No. 87-6977. *NICKS v. ALABAMA*. Sup. Ct. Ala. Certiorari denied. Reported below: 521 So. 2d 1035.

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, 231-241 (1976) (MARSHALL, J., dissenting). But even if I did not hold this view, I would grant the petition for writ of certiorari and vacate the death sentence in this case, because the sentence was secured in flagrant violation of our decision in *Caldwell v. Mississippi*, 472 U. S. 320 (1985).

In *Caldwell* we vacated a sentence of death because the prosecutor "sought to minimize the jury's sense of the importance of its role" by stressing to the jury that its verdict would be subject to appellate review. *Id.*, at 325. The prosecutor told the jury during the sentencing phase that "your decision is not the final de-

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cision. . . . Your job is reviewable." *Ibid.* We held that "it is constitutionally impermissible to rest a death sentence on a determination made by a sentencer who has been led to believe that the responsibility for determining the appropriateness of the defendant's death rests elsewhere." *Id.*, at 328-329.

Petitioner's sentence of death cannot be squared with our decision in *Caldwell*. The prosecutor in this case made the following argument to the jury at the penalty phase of petitioner's trial:

"The opinion, which you will come to a conclusion when you go back and deliberate—Let me say this, it will be only an advisory opinion. The law provides for you to present this to the Court for their consideration. The ultimate decisions [*sic*] rests with Judge Reynolds. He will be the one to take whatever ruling that you send out and decide whether it will be life without parole or death by electrocution in the electric chair." Pet. for Cert. 3.

This argument, perhaps even more baldly than the statements in *Caldwell*, sought to minimize the jury's sense of its awesome responsibility to determine whether petitioner would live or die by encouraging the jury to view its verdict as merely "advisory." This shifting of the jury's sense of responsibility to another decisionmaker, as we explained at length in *Caldwell*, undermines the reliability of the jury's decision and conditions the jury to return the death penalty. See 472 U. S., at 330-333.

That the prosecutor in this case told the jury that the trial judge would make the ultimate decision, whereas the prosecutor in *Caldwell* identified the appellate court as the ultimate decisionmaker, is a distinction without a difference. *Caldwell* makes plain that a death penalty cannot stand where the jury is led to believe that the defendant's life rests in some other hands. The constitutional infirmity here is thus no different from that in *Caldwell*, and the sentence of death no less intolerable. I therefore would grant the petition and reverse the judgment of the Supreme Court of Alabama to the extent it sustains the imposition of the death penalty.

No. 87-7185. BYRNE v. BUTLER, WARDEN. C. A. 5th Cir. Certiorari denied. JUSTICE BRENNAN and JUSTICE BLACKMUN would dismiss the petition for writ of certiorari as moot. Reported below: 845 F. 2d 501.

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Rehearing Denied

- No. 87-4. *WHEAT v. UNITED STATES*, 486 U. S. 153;
No. 87-1692. *MAROTTA v. UNITED STATES*, 486 U. S. 1009;
No. 87-5946. *JOHNSON v. ARTIM TRANSPORTATION SYSTEM, INC., ET AL.*, 486 U. S. 1023;
No. 87-6189. *ERICKSON v. ILLINOIS*, 486 U. S. 1017;
No. 87-6331. *FINNEY v. TEXAS*, 486 U. S. 1010;
No. 87-6490. *FABBRI v. SHERATON PLAZA LA REINA HOTEL*, 486 U. S. 1024;
No. 87-6491. *PAVLICO v. UNITED STATES*, 486 U. S. 1034;
No. 87-6598. *PHILLIPPE v. SHAPELL INDUSTRIES, INC.*, 486 U. S. 1011;
No. 87-6612. *WILLIAMS v. YORK STEAK HOUSE ET AL.*, 486 U. S. 1044;
No. 87-6613. *SWIFT v. LEWIS, DIRECTOR, ARIZONA DEPARTMENT OF CORRECTIONS*, 486 U. S. 1029;
No. 87-6621. *BILDER v. CITY OF AKRON, OHIO*, 486 U. S. 1011;
No. 87-6627. *FRAZIER v. GEORGIA*, 486 U. S. 1017;
No. 87-6650. *WATSON v. JARVIS, SHERIFF, DEKALB COUNTY, GEORGIA*, 486 U. S. 1034;
No. 87-6659. *VAN STRATEN v. KEENE ET AL.*, 486 U. S. 1012;
No. 87-6715. *SELTZER v. OFFICE OF PERSONNEL MANAGEMENT*, 486 U. S. 1024;
No. 87-6776. *MCGOVERN v. UNITED STATES*, 486 U. S. 1014;
No. 87-6790. *IN RE MARTIN*, 486 U. S. 1041;
No. 87-6834. *FIELDS v. STEINBRENNER ET AL.*, 486 U. S. 1058; and
No. 87-6843. *JOHNSON v. BOWEN, SECRETARY OF HEALTH AND HUMAN SERVICES*, 486 U. S. 1045. Petitions for rehearing denied.
- No. 86-1145. *PATRICK v. BURGET ET AL.*, 486 U. S. 94. Petition for rehearing denied. JUSTICE BLACKMUN took no part in the consideration or decision of this petition.
- No. 87-391. *CHASER SHIPPING CORP. ET AL. v. UNITED STATES*, 484 U. S. 1004. Motion for leave to file petition for rehearing denied. JUSTICE KENNEDY took no part in the consideration or decision of this motion.

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No. 87-1202. HUTTER NORTHERN TRUST ET AL. *v.* CITY OF CHICAGO ET AL., 485 U. S. 936. Motion for leave to file petition for rehearing denied.

JULY 11, 1988

Dismissal Under Rule 53

No. 87-1957. ALLEN-SHERMAN-HOFF CO., INC., ET AL. *v.* HARDY. C. A. 3d Cir. Certiorari dismissed under this Court's Rule 53. Reported below: 841 F. 2d 1118.

JULY 28, 1988

Certiorari Denied

No. 88-5174 (A-84). MESSER *v.* ZANT, WARDEN. C. A. 11th Cir. Application for stay of execution of sentence of death, presented to JUSTICE KENNEDY, and by him referred to the Court, denied. 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, 227, 231-241 (1976) (MARSHALL, J., dissenting), I would grant the application for stay and the petition for writ of certiorari and would vacate the death sentence in this case.

But even if I did not hold these views, I would grant the stay and vacate petitioner's death sentence for the reasons I expressed in *Messer v. Kemp*, 474 U. S. 1088 (1986) (dissent from denial of certiorari). Petitioner has clearly met the standard that this Court set in *Strickland v. Washington*, 466 U. S. 668 (1984), for establishing ineffective assistance of counsel during the sentencing phase of his trial.

AUGUST 2, 1988

Dismissal Under Rule 53

No. 87-2095. CHICAGO, MILWAUKEE, ST. PAUL & PACIFIC RAILROAD Co. *v.* WILSON. C. A. 7th Cir. Certiorari dismissed under this Court's Rule 53. Reported below: 841 F. 2d 1347.

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AUGUST 3, 1988

Miscellaneous Order

No. 87-796. CITIES SERVICE GAS CO. ET AL. *v.* MOBIL OIL CORP. ET AL. C. A. 10th Cir. Joint application to vacate the stay entered on June 13, 1988 [486 U. S. 1051], presented to JUSTICE WHITE, and by him referred to the Court, granted only to the limited extent that this Court's order of June 13, 1988, granting the motion for recall and stay of the mandate of the United States Court of Appeals for the Tenth Circuit in this case pending this Court's action on the petition for certiorari, shall be modified in the following respect: The United States Court of Appeals for the Tenth Circuit is authorized to remand the case to the United States District Court for the District of Kansas for the sole purpose of determining whether the settlement should be approved. The District Court is authorized only to carry out the necessary proceedings to determine whether the settlement should be approved, and either to disapprove the settlement or to enter the appropriate orders disposing of the case if the settlement is approved. If the settlement is disapproved, then this Court's order of June 13, 1988, remains in effect without further modification. This Court's order of June 30, 1988 [*ante*, p. 1231], granting the motion to defer consideration of the petition for certiorari in this case, remains in effect without modification.

AUGUST 4, 1988

Rehearing Denied

- No. — — —. MOLINA *v.* UNITED STATES, *ante*, p. 1214;
No. 87-1122. CROWLEY MARITIME CORP. ET AL. *v.* ZIPFEL ET AL., 486 U. S. 1054;
No. 87-1391. HALLIBURTON CO. ET AL. *v.* ZIPFEL ET AL., 486 U. S. 1054;
No. 87-1251. IN RE SOWELL, 484 U. S. 1057;
No. 87-1492. SPIEGEL *v.* CONTINENTAL ILLINOIS NATIONAL BANK & TRUST COMPANY OF CHICAGO ET AL., 485 U. S. 1009;
No. 87-1523. MORRIS *v.* COMPAGNIE MARITIME DES CHARGEURS REUNIS, S. A., ET AL., 485 U. S. 1022;
No. 87-1582. FITZGERALD *v.* MONTANA DEPARTMENT OF FAMILY SERVICES ET AL., *ante*, p. 1201;
No. 87-1601. BELL, INDIVIDUALLY AND DBA WES OUTDOOR ADVERTISING CO. *v.* NEW JERSEY ET AL., 486 U. S. 1001;

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- No. 87-1694. *ROSE v. TEXAS*, 486 U. S. 1055;
- No. 87-1820. *HYSLEP ET UX. v. COMMISSIONER OF INTERNAL REVENUE*, 486 U. S. 1044;
- No. 87-5425. *ROBERTS v. ROBERTS*, 485 U. S. 963;
- No. 87-6008. *FISHER v. OKLAHOMA*, 486 U. S. 1061;
- No. 87-6096. *KYLES v. LOUISIANA*, 486 U. S. 1027;
- No. 87-6196. *GARDNER v. NORTH CAROLINA*, 486 U. S. 1061;
- No. 87-6365. *KNOX v. TEXAS*, 486 U. S. 1061;
- No. 87-6486. *LEVERT v. ESTELLE, WARDEN, ET AL.*, *ante*, p. 1207;
- No. 87-6746. *MIRANDA v. CALIFORNIA*, 486 U. S. 1038;
- No. 87-6816. *MAY v. PRO-GUARD, INC.*, 486 U. S. 1045;
- No. 87-6817. *WILLIAMS v. PLANNED PARENTHOOD FEDERATION OF AMERICA ET AL.*, 486 U. S. 1047;
- No. 87-6863. *TROTZ, INDIVIDUALLY AND AS ADMINISTRATRIX OF THE ESTATE OF TROTZ v. LAWYER ET AL.*, T/A PENN ALTO HOTEL, *ante*, p. 1220;
- No. 87-6864. *SPENCER v. ILLINOIS*, *ante*, p. 1208;
- No. 87-6875. *TROTZ v. PENNSYLVANIA UNEMPLOYMENT COMPENSATION BOARD OF REVIEW*, *ante*, p. 1208;
- No. 87-6905. *FOSTER v. ILLINOIS*, 486 U. S. 1047;
- No. 87-6912. *WATERS v. NEUBERT ET AL.*, *ante*, p. 1209;
- No. 87-6926. *JOHNSON v. ILLINOIS*, 486 U. S. 1047;
- No. 87-6959. *MCGEE v. RANDALL DIVISION OF TEXTRON, INC., OF GRENADA, MISSISSIPPI*, *ante*, p. 1209; and
- No. 87-7017. *FLORES ET AL. v. MUNICIPALITY OF CAROLINA*, *ante*, p. 1239. Petitions for rehearing denied.
- No. 87-1520. *WILEY v. MISSISSIPPI*, 486 U. S. 1036. Motion of petitioner for leave to proceed further herein *in forma pauperis* granted. Petition for rehearing denied.
- No. 87-1780. *BURT v. JUSTICES OF THE SUPREME COURT OF IDAHO ET AL.*, 486 U. S. 1061. Petition for rehearing denied. JUSTICE KENNEDY took no part in the consideration or decision of this petition.
- No. 87-6447. *THACKER v. BUMGARNER, SUPERINTENDENT, NORTH CAROLINA SOUTHERN CORRECTIONAL CENTER*, 485 U. S. 1011. Motion for leave to file petition for rehearing denied.
- No. 87-6752. *GAUNCE v. UNITED STATES; GAUNCE v. DE-VINCENTIS ET AL.*; and *GAUNCE v. NATIONAL TRANSPORTATION*

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SAFETY BOARD ET AL., 486 U. S. 1039. Motion for leave to file petition for rehearing denied. JUSTICE KENNEDY took no part in the consideration or decision of this motion.

AUGUST 9, 1988

Dismissal Under Rule 53

No. 87-1790. AMERICAN MANAGEMENT & AMUSEMENT, INC. v. BARONA GROUP OF THE CAPITAN GRANDE BAND OF MISSION INDIANS. C. A. 9th Cir. Certiorari dismissed under this Court's Rule 53. Reported below: 840 F. 2d 1394.

AUGUST 23, 1988

Certiorari Denied

No. 88-236 (A-120). MONROE v. BUTLER, WARDEN. C. A. 5th Cir. Application for stay of execution of sentence of death, presented to JUSTICE WHITE, and by him referred to the Court, denied. Certiorari denied. Reported below: 853 F. 2d 924.

JUSTICE BRENNAN, dissenting.

Adhering to my view that the death penalty is in all circumstances cruel and unusual punishment prohibited by the Eighth and Fourteenth Amendments, *Gregg v. Georgia*, 428 U. S. 153, 227 (1976), I would grant the application for stay and the petition for writ of certiorari and would 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, 231-241 (1976) (MARSHALL, J., dissenting), I would grant the application for stay and the petition for writ of certiorari and would vacate the death sentence in this case.

But even if I did not hold these views, I would grant the stay and vacate petitioner's death sentence for the reasons I expressed in *Monroe v. Butler*, 485 U. S. 1024, 1024-1028 (1988) (dissent from denial of certiorari). After petitioner was convicted, state officials became aware of, but suppressed, information strongly suggesting that petitioner did not commit the crime for which he was found guilty. Petitioner has, however, neither been released

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nor received a new trial. Because petitioner has received woefully inadequate relief to vindicate the State's violation of his constitutional rights under *Brady v. Maryland*, 373 U. S. 83 (1963), I would stay his death sentence.

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Miscellaneous Orders

No. D-677. IN RE DISBARMENT OF BELMONT. Disbarment entered. [For earlier order herein, see 485 U. S. 952.]

No. D-701. IN RE DISBARMENT OF MEROS. Disbarment entered. [For earlier order herein, see 485 U. S. 1002.]

No. D-703. IN RE DISBARMENT OF GUSSOW. Disbarment entered. [For earlier order herein, see 485 U. S. 1019.]

No. D-707. IN RE DISBARMENT OF BLECHER. Disbarment entered. [For earlier order herein, see 486 U. S. 1003.]

No. D-708. IN RE DISBARMENT OF LEWIS. Disbarment entered. [For earlier order herein, see 486 U. S. 1003.]

No. D-709. IN RE DISBARMENT OF KANTOR. Disbarment entered. [For earlier order herein, see 486 U. S. 1030.]

No. D-713. IN RE DISBARMENT OF FOOTE. Disbarment entered. [For earlier order herein, see 486 U. S. 1041.]

No. D-716. IN RE DISBARMENT OF TIRELLI. Disbarment entered. [For earlier order herein, see *ante*, p. 1202.]

No. D-722. IN RE DISBARMENT OF DOHERTY. It is ordered that Jerome J. Doherty, of Seattle, Wash., 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-723. IN RE DISBARMENT OF STARK. It is ordered that William C. Stark, of Chicago, Ill., be suspended from the practice of law in this Court and that a rule issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D-724. IN RE DISBARMENT OF STORTS. It is ordered that Brick P. Storts III, of Tucson, Ariz., be suspended from the

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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-725. *IN RE DISBARMENT OF PAUL.* It is ordered that Jerome Paul, 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-726. *IN RE DISBARMENT OF CHOWANIEC.* It is ordered that Chester L. Chowaniec, of Oak Lawn, Ill., be suspended from the practice of law in this Court and that a rule issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D-727. *IN RE DISBARMENT OF BLUMTHAL.* It is ordered that William J. Blumthal, of Libertyville, Ill., be suspended from the practice of law in this Court and that a rule issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D-728. *IN RE DISBARMENT OF LORENZ.* It is ordered that Gary Richard Lorenz, of Louisville, Ky., 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-729. *IN RE DISBARMENT OF BONGIORNO.* It is ordered that Peter T. Bongiorno, of Paterson, N. J., be suspended from the practice of law in this Court and that a rule issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D-730. *IN RE DISBARMENT OF SWOFFORD.* It is ordered that Herbert Reginald Swofford, of Orlando, 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-731. *IN RE DISBARMENT OF CLAYTON.* It is ordered that William Norris Clayton, 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.

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Rehearing Denied

No. 85-1529. GRUMMAN AEROSPACE CORP. *v.* SHAW, *ante*, p. 1233;

No. 86-379. DOWD ET AL. *v.* TEXTRON, INC., ET AL., *ante*, p. 1233;

No. 86-5309. ROSS *v.* OKLAHOMA, *ante*, p. 81;

No. 87-171. COPLEY ET AL. *v.* HEIL-QUAKER CORP. ET AL., *ante*, p. 1204;

No. 87-377. MCINTOSH ET AL. *v.* CARLUCCI, SECRETARY OF DEFENSE, ET AL., *ante*, p. 1217;

No. 87-1509. HODDER *v.* UNITED STATES, *ante*, p. 1218;

No. 87-1563. MATT *v.* LAROCCA, COMMISSIONER, NEW YORK STATE DEPARTMENT OF TRANSPORTATION, 486 U. S. 1007;

No. 87-1826. SMITH *v.* ROLEWICK, ADMINISTRATOR, ILLINOIS ATTORNEY REGISTRATION AND DISCIPLINARY COMMISSION, *ante*, p. 1219;

No. 87-1913. RESHARD *v.* BURNLEY, SECRETARY, UNITED STATES DEPARTMENT OF TRANSPORTATION, *ante*, p. 1237;

No. 87-1993. ROBINSON *v.* VIRGINIA STATE BAR EX REL. THIRD DISTRICT COMMITTEE, *ante*, p. 1237;

No. 87-1996. AYARS ET UX. *v.* UNITED STATES, *ante*, p. 1237;

No. 87-5418. HOUSEL *v.* GEORGIA, *ante*, p. 1240;

No. 87-6573. LEWIS *v.* MODULAR QUARTERS ET AL., *ante*, p. 1226;

No. 87-6760. BURR *v.* FLORIDA, *ante*, p. 1201;

No. 87-6794. LOCKETT *v.* MISSISSIPPI (two cases), *ante*, p. 1210;

No. 87-6922. AGNES, AKA MARTIN *v.* UNITED STATES, *ante*, p. 1221;

No. 87-6975. SEBASTIAN-ANDRES *v.* UNITED STATES, *ante*, p. 1239; and

No. 87-7022. MUZA *v.* UNITED STATES, *ante*, p. 1222. Petitions for rehearing denied.

No. 87-1792. GANOE ET AL. *v.* LUMMIS, TEMPORARY ADMINISTRATOR OF THE ESTATE OF HUGHES, *ante*, p. 1206; and

No. 87-6527. JONES *v.* ST. LOUIS-SAN FRANCISCO RAILWAY, 486 U. S. 1010. Motions for leave to file petitions for rehearing denied.

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August 26, September 1, 1988

AUGUST 26, 1988

Dismissal Under Rule 53

No. 87-7346. VASQUEZ *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari dismissed under this Court's Rule 53.

SEPTEMBER 1, 1988

Miscellaneous Order

No. A-172. SPALLONE *v.* UNITED STATES ET AL.;

No. A-173. LONGO ET AL. *v.* UNITED STATES ET AL.;

No. A-174. CHEMA *v.* UNITED STATES ET AL.; and

No. A-175. CITY OF YONKERS *v.* UNITED STATES ET AL. C. A. 2d Cir. Applications for stay of Henry G. Spallone, Nicholas Longo, Edward Fagan, and Peter Chema, presented to JUSTICE MARSHALL, and by him referred to the Court, granted pending the timely filing and disposition by this Court of petitions for writs of certiorari. Application for stay of city of Yonkers, presented to JUSTICE MARSHALL, and by him referred to the Court, denied.

JUSTICE MARSHALL, joined by JUSTICE BRENNAN, concurring in the denial of stay in No. A-175, and dissenting from the grant of stay in Nos. A-172, A-173, and A-174.

On August 26, 1988, the Court of Appeals for the Second Circuit upheld both the District Court's determination that the city of Yonkers and four members of its city council were in contempt of court and its imposition of sanctions for their failure to abide by a consent decree committing the city to implement a housing desegregation plan. 856 F. 2d 444. The Court of Appeals stayed issuance of its mandate until September 2, to permit application for a stay of the contempt sanctions pending filing and consideration of petitions for writs of certiorari. The city of Yonkers and the four councilmembers have sought such a stay. Today the Court denies a stay as to the city but grants it as to the four councilmembers. I believe that the Court should deny the stay as to the councilmembers as well.

I

In 1980, the United States filed suit against the city of Yonkers, claiming it had intentionally perpetuated and aggravated residential racial segregation in violation of the Constitution and Title

VIII of the Civil Rights Act of 1968, 82 Stat. 81, 42 U. S. C. §§ 3601-3619, and had intentionally segregated its schools in violation of the Constitution. The National Association for the Advancement of Colored People (NAACP) was accorded plaintiff-intervenor status. In 1985, the District Court held the city liable for intentional housing and school segregation, *United States v. Yonkers Board of Education*, 624 F. Supp. 1276 (SDNY 1985), finding, *inter alia*, that the city had deliberately concentrated virtually all of its public and subsidized housing in southwest Yonkers in order to maintain residential segregation. The District Court issued a Housing Remedy Order which directed the city to establish a fair housing policy, to construct 200 units of public housing, and to plan additional units of subsidized housing. The Court of Appeals for the Second Circuit affirmed both the liability and remedy rulings, *United States v. Yonkers Board of Education*, 837 F. 2d 1181 (1987), and the Court denied the city's petition for a writ of certiorari. 486 U. S. 1055 (1988).

On November 15, 1986, the city informed the District Court that it would not comply with the Housing Remedy Order. The United States and the NAACP moved for an adjudication of civil contempt and the imposition of coercive sanctions, but the District Court instead sought voluntary compliance with its earlier order. After negotiations, the city council—the city's sole governing authority—agreed to appoint an outside housing adviser to identify sites for the 200 units of public housing and to draft a long-term plan for subsidized housing. Over a year passed. On January 28, 1988, the parties entered into a consent decree, approved by the District Court, which set a new timetable for the construction of the 200 public housing units. The city pledged that it would not seek further review of the Housing Remedy Order or any subsequently entered decree relating to these 200 units. In addition, the city agreed that the construction of 800 units of subsidized housing was an appropriate remedy and pledged to make good-faith efforts to build the additional 600 units within the next three years. Section 17 of the consent decree obligated the city "to adopt . . . legislation" necessary to meet the goal of 800 units, including tax abatements, zoning changes, and, within 90 days, a package of incentives for local development. Section 18 provided for further negotiations and the submission of a draft of a second consent decree setting forth long-range plans for subsidized hous-

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ing by February 15, 1988. The council approved the consent decree by a vote of 5 to 2.

Within two months, the city demonstrated its unwillingness to comply with the consent decree by moving unsuccessfully to delete the provision in which it promised not to seek further review of its obligation to build the 200 units, and by offering to return approximately \$30 million in federal funds in the event this Court set aside the public housing provisions of the Housing Remedy Order. On April 12, 1988, the city announced that it was "not interested" in completing negotiations on the long-term plan for subsidized housing as required by § 18 of the consent decree. Following a hearing on June 13, the District Court entered a Long Term Plan Order outlining the legislation that the city had committed itself to adopt in § 17 of the consent decree. The order was based on a draft prepared by the city's lawyers during earlier negotiations and accommodated most of the city's objections.

The next day, June 14, 1988, the council adopted a resolution declaring a moratorium on all public housing construction in Yonkers. A week later, on June 21, the city announced that it had retained a consulting firm to draft housing legislation, and that the next council meeting was tentatively scheduled for August. The District Court, expressing concern about delay, asked the council to pass a resolution adopting the provisions of the Long Term Plan Order. On June 28, the council voted down a resolution indicating its commitment to implementing the Housing Remedy Order, the consent decree, and the Long Term Plan Order. The following day, the District Court directed the plaintiffs to submit an order requiring the city to take "specific implementing action" under a prescribed timetable on penalty of a contempt adjudication and imposition of fines. At a hearing held to consider the proposed order, the city stated that it would not voluntarily comply with the Long Term Plan Order and urged the court to enter an order adopting the necessary legislation. The city also objected to the creation of an Affordable Housing Commission to exercise the council's responsibilities for implementing the District Court's orders and the consent decree. The city argued that such a commission would impermissibly interfere with the council's "core legislative as well as executive functions."

On July 26, 1988, the District Court ordered the city to enact by August 1 "the legislative package relating to the long-term plan as described in Section 17 of the [consent decree] and the Long Term

Plan Order.” This “legislative package” was set forth in a detailed Affordable Housing Ordinance drafted by the city’s consultants. The July 26 order warned that if the legislation were not adopted by August 1, the city and the councilmembers would face contempt adjudication and the following fines: on the city, a fine starting at \$100 on August 1 and doubling every day until the legislation was passed, so that the cumulative total of the fines would exceed \$10,000 by day 7, \$1 million by day 14, \$200 million by day 21, and \$26 billion by day 28; on the councilmembers, a fine of \$500 per day on each member who voted against the legislative package, with the additional threat of incarceration on August 10 if the package were not adopted by the council by that time. To accommodate the city’s expressed concern that it could not adopt legislation by August 1 without running afoul of state notice and hearing requirements, the District Court specified that its July 26 order would be “satisfied if the City Council, on or before August 1st, adopts a resolution committing itself to enact the Affordable Housing Ordinance within the minimum time prescribed for notice pursuant to state law.” On August 1, the council rejected such a resolution by a vote of 4 to 3.

As contemplated by the July 26 order, the District Court held a hearing on August 2 to afford the city and councilmembers an opportunity to show cause why they should not be adjudicated in civil contempt. As for the city, the District Court “reject[ed] [its] contention that a dichotomy can be drawn between the city and the city council.” Further, the District Court declined to adopt the Affordable Housing Ordinance for the city, as requested by the city, noting that the city should directly meet its responsibilities under the Constitution and the consent decree. As for the four councilmembers who had voted against the resolution of intent to adopt the Affordable Housing Ordinance, the District Court rejected their request for a continuance, observing that they had been on notice since July 26 of the prospect of contempt and the need for counsel, and that they had rejected the court’s offer of an immediate evidentiary hearing. The District Court agreed nonetheless that it would permit argument at a later date on any theory or circumstance not then available to counsel. The District Court held the city and the councilmembers in contempt and imposed the sanctions set forth in the July 26 order.

On August 9, the Court of Appeals stayed the District Court’s contempt sanctions against the city and the four councilmembers

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pending appeal. On August 26, the Court of Appeals, in a unanimous opinion by Judge Newman, affirmed the District Court's contempt orders and the imposition of coercive monetary sanctions, with one modification in the city's sanctions. 856 F. 2d 444. First addressing the claims of the councilmembers, the Court of Appeals found that the procedural due process requirements attendant to the contempt adjudications were, with one exception, fully observed. The July 26 order provided sufficient notice to councilmembers of the consequences of noncompliance. Each member appeared with counsel and had an opportunity to present evidence and legal argument. Although the Court of Appeals found that it would have been preferable to have accorded counsel a few days to prepare, it declined to remand the matter given the absence of factual disputes and its decision on the merits. The Court of Appeals also rejected the councilmembers' First Amendment argument, stating that the public interest in obtaining compliance with federal-court judgments that remedy constitutional violations justifies whatever burden there may have been on the councilmembers' free expression rights.

As for the argument that the councilmembers were entitled to some form of legislative immunity, the Court of Appeals noted that, even if such immunity extends to individuals performing legislative functions at the purely local level, it would not bar district court orders requiring compliance with decrees redressing constitutional violations. The Court of Appeals stressed, however, that it was not necessary to answer the broad question whether a district court could order local legislators to vote in favor of a particular ordinance to redress a constitutional violation, because the council had approved, and the city had signed, a consent decree requiring the enactment of legislation necessary to implement the District Court's earlier order. The Court of Appeals found that all councilmembers, including those who had voted against the consent decree, were obligated to enforce it, and that their failure to do so made appropriate contempt adjudications and the imposition of sanctions.

Along these same lines, the Court of Appeals also decided that the District Court did not abuse its discretion in directing the council to adopt the Affordable Housing Ordinance, and in imposing coercive contempt sanctions to compel compliance, given that the city had agreed in the consent decree to adopt necessary implementing legislation. As for the claim that the July 26 order

compelled the council to violate state notice and hearing requirements, the Court of Appeals stressed the supremacy of federal court orders in implementing remedies for constitutional violations. The Court of Appeals added that, in any event, the council could have satisfied the July 26 order by passing a resolution committing itself to enact the legislation in accordance with state-law procedures. As for the city's claims, the Court of Appeals rejected the defense of impossibility, noting that the city had not done everything it could under city law to obtain compliance with the orders of the District Court. In particular, the city had not tried to coerce councilmembers into compliance by applying to the Emergency Financial Control Board to take action with respect to the city's financial affairs, or by requesting the Governor of New York to remove the recalcitrant councilmembers for misconduct. In any event, the Court of Appeals concluded, "[f]or purposes of taking official governmental action, the City of Yonkers is the City Council and vice versa." 856 F. 2d, at 458. The Court of Appeals noted in this regard that the city has no separate executive authority in that its mayor merely serves on the council, and that the city manager serves at the pleasure of the council.

Finally, as to the amount of the coercive fines, the Court of Appeals found that the Excessive Fines Clause of the Eighth Amendment does not apply to civil contempt sanctions imposed to obtain compliance with court orders. Although the court noted that the Due Process Clause of the Fifth Amendment arguably provides a limit, it relied on an abuse-of-discretion standard to review the amount of the fines. The Court of Appeals held that the District Court acted within its discretion in imposing cumulative fines and in starting the fine schedule at \$100 a day, but it modified the schedule so that the fine would be \$1 million on day 15 and \$1 million for every subsequent day of noncompliance. Given the city's annual budget of \$337 million, the Court of Appeals found that a \$1 million a day fine was within "reasonable limits." 856 F. 2d, at 460.

II

The city argues that the fines imposed by the District Court violate the Excessive Fines Clause of the Eighth Amendment and the Due Process Clause of the Fifth Amendment; that the Court of Appeals erred in affirming the contempt adjudication because the District Court did not adopt less restrictive alternatives; that the city had a valid impossibility defense; and that the order

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violated state law. Councilmembers Spallone and Chema claim legislative immunity. Chema also argues that the contempt sanction violates the First Amendment and his procedural due process rights. Councilmembers Longo and Fagan claim generally that the sanction was an abuse of discretion and unconstitutional.

A. *The City*

The city's first contention is that the Excessive Fines Clause of the Eighth Amendment is applicable to contempt sanctions and that the particular sanctions imposed here were constitutionally excessive. The city accurately observes in this regard that the Court has indicated that the applicability of this Clause to punitive damages in civil cases is "a question of some moment and difficulty." *Bankers Life & Casualty Co. v. Crenshaw*, 486 U. S. 71, 79 (1988). But, even if the Clause applies to punitive damages, the city offers no compelling reason why we should extend its reach to civil contempt sanctions. Indeed, it appears settled that the Cruel and Unusual Punishments Clause does not apply to civil contempt sanctions. See *Ingraham v. Wright*, 430 U. S. 651, 668 (1977). This is not surprising since the Cruel and Unusual Punishments Clause, like the Excessive Fines Clause, applies to punishments for past conduct, while civil contempt sanctions are designed to secure future compliance with judicial decrees. See *ibid.*; *Uphaus v. Wyman*, 360 U. S. 72, 81 (1959). In any event, even assuming that the size of monetary contempt sanctions is limited by the Excessive Fines Clause or even the Due Process Clause, I do not think that the fines against the city, as modified by the Court of Appeals, are unreasonable. The city of Yonkers has an annual budget of \$337 million. At one point, it offered to forfeit \$30 million in federal funds to avoid compliance with the consent decree. Under these circumstances, a fine schedule which imposes \$1 million a day only after noncompliance for 15 consecutive days can hardly be deemed unreasonable.

The city's second contention is that the contempt adjudication itself was improper because the District Court should have adopted less restrictive alternatives such as direct enactment of the legislation or appointment of an Affordable Housing Commission, and because the city had a valid impossibility defense. Neither contention has merit. First, the District Court had no need to resort to its equitable authority, codified in Federal Rule of Civil Procedure 70, to deem the legislation enacted, as the city had committed

itself to adopting that legislation in a court-approved consent order. Surely it is both less disruptive and more effective to order compliance with that order than to usurp completely the council's legislative authority and enact the legislation directly. Second, having previously objected to the creation of an Affordable Housing Commission, the city cannot now claim that the District Court should have created such an entity. The city also contends the District Court erred by rejecting its impossibility defense. It claims that it does not have the ability to compel the councilmembers to enact the legislation or to remove recalcitrant members. The city's attempt to divorce itself from the actions of its councilmembers is disingenuous. As the city repeatedly points out in its application, "Yonkers is relatively unique in that most of the governmental power in the city is centralized in the legislative branch." For this reason, the city *is* the council. Indeed, because the council sets municipal policy, see *Pembaur v. Cincinnati*, 475 U. S. 469, 481 (1986), it is reasonable to attribute to the city the acts of its elected policymakers.

B. *The Councilmembers*

The councilmembers' primary argument is that a federal court lacks authority to order an individual local legislator, as opposed to the body in which he serves, to enact specific legislation. In the councilmembers' view, a federal court, by entering such an order, runs roughshod over what they see as the local legislator's right to be absolutely free from such restraints. While this issue arguably is of substantial interest, this case is not a proper vehicle for addressing it. In the first place, the broad question raised by the councilmembers is not presented by these facts. As the Court of Appeals stressed below, this is not a case where a federal court enjoined local legislators to vote in favor of a particular bill in order to remedy a constitutional violation. Far from that, this case presents the much more narrow question whether a federal court may order local officials to abide by an explicit obligation—here, a promise to enact legislation—contained in a consent decree that the officials voted to adopt and that the District Court agreed to accept. In short, this case is about a District Court's ability to enforce its consent decrees. In no way did the Court of Appeals even hint that federal courts possess the broad powers over local legislators that the councilmembers claim that the Court of Appeals arrogated to itself and the District Court.

In any event, it is not at all clear that federal courts lack authority in all circumstances to enter orders affecting a local legislator's performance of his legislative duties. In *Milliken v. Bradley*, 433 U. S. 267 (1977), the Court held that a District Court could order local school authorities to implement certain programs designed to ameliorate the effects of prior segregation policies. As a practical matter, the import of the Court's decision was that the individual members of the local school authority were required to vote a certain way for specific remedial programs. This necessary effect of a remedial order is highlighted by the Court's earlier decision in *Griffin v. Prince Edward County School Board*, 377 U. S. 218 (1964). There, the Court noted that a District Court possessed authority to order county supervisors "to exercise the power that is theirs to levy taxes" in order to reopen public schools that had been closed in an attempt to avoid a prior desegregation order. *Id.*, at 233. As in this case, the individual local officials in *Griffin* openly flouted clear commands of a District Court.

Although cases like *Milliken* and *Griffin* may stand for the proposition that the district courts may enjoin local legislators to take certain affirmative steps in order to remedy constitutional violations, the Court has never squarely addressed the question whether these local legislators are entitled to some form of legislative immunity. In *Lake Country Estates, Inc. v. Tahoe Regional Planning Agency*, 440 U. S. 391, 404, n. 26 (1979), the Court specifically left open the question whether local legislators are entitled to any immunity. (Earlier, in *Tenney v. Brandhove*, 341 U. S. 367, 376 (1951), state legislators were afforded absolute immunity for activities within "the sphere of legislative activity"; *Lake Country* extended such immunity to "regional legislators," 440 U. S., at 405.) Since *Lake Country* issued, seven Courts of Appeals have held that local legislators are entitled to absolute legislative immunity. None of these cases, however, involved situations where the District Court sought to compel certain behavior to redress constitutional violations, let alone situations where the District Court merely sought to enforce a consent decree. Instead, the cases typically involved private-party damages actions against individual members of local governing boards. It would seem sensible to allow the lower courts to be the first to resolve the question whether legislative immunity protects local officials against the imposition of contempt sanctions for noncompliance with a consent decree imposing legislative obligations.

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Even assuming that this question warrants the Court's immediate attention, the instant case contains a factual peculiarity that makes it unsuitable for review. The city stresses its "extraordinary" system of governance, in which the council exercises both legislative *and* executive powers. This necessarily complicates any legislative immunity analysis, particularly if one believes that the council exercised its *executive* prerogatives by not complying with the consent decree, and by not abiding by the July 26, 1988, order. Before the Court takes up the issue of local legislative immunity, it should wait for a case in which the legislative body is exercising *only* legislative powers.

Finally, the First Amendment and procedural due process claims strike me as totally meritless for the reasons articulated in the Court of Appeals' opinion. In any event, they involve the application of settled law to a particular set of facts.

III

In my view, the claims presented by the city and the four councilmembers do not merit review by the Court. I therefore vote to deny the applications for stay.

SEPTEMBER 8, 1988

Dismissals Under Rule 53

No. 88-5098. BROWN ET UX. *v.* FIRST NATIONAL BANK IN LENOX. C. A. 8th Cir. Certiorari dismissed under this Court's Rule 53. Reported below: 844 F. 2d 580.

No. 87-1985. JOYNES, LEGAL REPRESENTATIVE OF THE FUTURE TORT CLAIMANTS OF A. H. ROBINS CO., INC. *v.* A. H. ROBINS CO., INC., ET AL. C. A. 4th Cir. Certiorari dismissed under this Court's Rule 53. Reported below: 839 F. 2d 198.

No. 87-2038. HONDA MOTOR CO., LTD. *v.* SALZMAN. Sup. Ct. Alaska. Certiorari dismissed under this Court's Rule 53. Reported below: 751 P. 2d 489.

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Miscellaneous Order

No. A-215. BRIDGE *v.* LYNAUGH, DIRECTOR, TEXAS DEPARTMENT OF CORRECTIONS. Application for stay of execution of sentence of death, presented to JUSTICE WHITE, and by him referred

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to the Court, granted pending the timely filing and disposition by this Court of a 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. THE CHIEF JUSTICE, JUSTICE WHITE, and JUSTICE O'CONNOR would deny the application.

SEPTEMBER 15, 1988

Miscellaneous Orders

No. A-45. LAUPOT *v.* BERLEY ET AL. Application for stay and other relief, addressed to JUSTICE BRENNAN and referred to the Court, denied.

No. A-106. ALEXANDER *v.* UNITED STATES. Application for immediate release or reinstatement of bond, addressed to JUSTICE WHITE and referred to the Court, denied.

No. D-697. IN RE DISBARMENT OF REDDAN. Disbarment entered. [For earlier order herein, see 485 U. S. 985.]

No. D-700. IN RE DISBARMENT OF CULMER. Disbarment entered. [For earlier order herein, see 485 U. S. 1002.]

No. D-721. IN RE DISBARMENT OF ROMAN. Disbarment entered. [For earlier order herein, see *ante*, p. 1214.]

No. D-732. IN RE DISBARMENT OF ANTON. It is ordered that Donald C. Anton, of St. Louis, Mo., be suspended from the practice of law in this Court and that a rule issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. 87-107. PATTERSON *v.* MCLEAN CREDIT UNION. C. A. 4th Cir. [Certiorari granted, 484 U. S. 814.] Motion of American Bar Association for leave to file a brief as *amicus curiae* granted. Motion of Members of the United States Senate et al. for leave to add 27 Members of the United States House of Representatives to the *amici curiae* brief granted.

No. 87-201. MANSELL *v.* MANSELL. Ct. App. Cal., 5th App. Dist. [Probable jurisdiction noted, *ante*, p. 1217.] Motion of the parties to dispense with printing the joint appendix granted.

No. 87-821. PITSTON COAL GROUP ET AL. *v.* SEBEN ET AL. C. A. 8th Cir. [Certiorari granted, 484 U. S. 1058.]

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No. 87-827. MCLAUGHLIN, SECRETARY OF LABOR, ET AL. *v.* SEBEN ET AL. C. A. 8th Cir. [Certiorari granted, 484 U. S. 1058]; and

No. 87-1095. DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR *v.* BROYLES ET AL. C. A. 4th Cir. [Certiorari granted, 485 U. S. 987.] Motion of the Solicitor General for divided argument granted.

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. Sup. Ct. Ill. [Probable jurisdiction noted, 484 U. S. 1057.] Motion of MCI Telecommunications Corp. for leave to file a brief as *amicus curiae* granted.

No. 87-980. MISSISSIPPI BAND OF CHOCTAW INDIANS *v.* HOLYFIELD ET AL. Sup. Ct. Miss. [Probable jurisdiction postponed, 486 U. S. 1021.] Motions of Navajo Nation, Menominee Indian Tribe of Wisconsin, and Association on American Indian Affairs, Inc., et al. for leave to file briefs as *amici curiae* granted.

No. 87-996. COIT INDEPENDENCE JOINT VENTURE *v.* FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION, AS RECEIVER OF FIRSTSOUTH, F. A. C. A. 5th Cir. [Certiorari granted, 485 U. S. 933.] Motion of Federal Home Loan Bank of Dallas et al. for leave to file a brief as *amici curiae* granted.

No. 87-1055. CHAN ET AL. *v.* KOREAN AIR LINES, LTD. C. A. D. C. Cir. [Certiorari granted, 485 U. S. 986.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 87-1327. COTTON PETROLEUM CORP. ET AL. *v.* NEW MEXICO ET AL. Ct. App. N. M. [Probable jurisdiction noted, 485 U. S. 1005.] Motion of Jicarilla Apache Tribe for leave to file a brief as *amicus curiae* granted.

No. 87-1372. ARGENTINE REPUBLIC *v.* AMERADA HESS SHIPPING CORP. ET AL. C. A. 2d Cir. [Certiorari granted, 485 U. S. 1005.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

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No. 87-1485. *BLANCHARD v. BERGERON ET AL.* C. A. 5th Cir. [Certiorari granted, *ante*, p. 1217.] Motion of petitioner to dispense with printing the joint appendix granted.

No. 87-1651. *MASSACHUSETTS v. OAKES.* Sup. Jud. Ct. Mass. [Certiorari granted, 486 U. S. 1022.] Motions of Massachusetts Society for Prevention of Cruelty to Children et al. and Covenant House et al. for leave to file briefs as *amici curiae* granted.

No. 87-1905. *MIDLAND ASPHALT CORP. ET AL. v. UNITED STATES.* C. A. 2d Cir. [Certiorari granted, *ante*, p. 1217.] Motion of the Solicitor General to dispense with printing the joint appendix granted.

No. 87-5840. *McNAMARA v. COUNTY OF SAN DIEGO DEPARTMENT OF SOCIAL SERVICES.* Ct. App. Cal., 4th App. Dist. [Probable jurisdiction postponed, 485 U. S. 1005.] Motion of American Civil Liberties Union et al. for leave to file a brief as *amici curiae* granted.

Rehearing Denied

No. 86-1386. *SALGADO v. UNITED STATES*, *ante*, p. 1233;

No. 86-1685. *FLORIDA ET AL. v. LONG ET AL.*, *ante*, p. 223;

No. 87-1799. *NOBEL SCIENTIFIC INDUSTRIES, INC. v. BECKMAN INSTRUMENTS, INC.*, *ante*, p. 1226;

No. 87-5546. *FRANKLIN v. LYNAUGH, DIRECTOR, TEXAS DEPARTMENT OF CORRECTIONS*, *ante*, p. 164;

No. 87-6393. *FARAGA v. MISSISSIPPI*, *ante*, p. 1210;

No. 87-6460. *RUPE v. WASHINGTON*, 486 U. S. 1061;

No. 87-6811. *SMEGO v. UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF PENNSYLVANIA*, *ante*, p. 1220;

No. 87-6814. *IN RE ZUSCHLAG*, *ante*, p. 1203;

No. 87-6839. *KRAMER v. SECRETARY, UNITED STATES DEPARTMENT OF THE ARMY, ET AL.*, *ante*, p. 1208;

No. 87-6860. *WALEN v. MICHIGAN*, *ante*, p. 1208;

No. 87-6870. *FISHER v. SLATE, JUDGE, MORGAN COUNTY CIRCUIT, ET AL.*, *ante*, p. 1208;

No. 87-6903. *MARTIN v. SHANK ET AL.*, *ante*, p. 1220;

No. 87-6918. *BURY v. CITY OF LAKELAND, FLORIDA, ET AL.*, *ante*, p. 1220; and

No. 87-6977. *NICKS v. ALABAMA*, *ante*, p. 1241. Petitions for rehearing denied.

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

No. 86-2019. IMMIGRATION AND NATURALIZATION SERVICE *v.* MANZANO, 486 U. S. 875. Petition of respondent Litonjua for rehearing denied. JUSTICE KENNEDY took no part in the consideration or decision of this petition.

No. 87-1388. ANTONIO ET AL. *v.* WARDS COVE PACKING CO., INC., ET AL., 485 U. S. 989. Motion for leave to file petition 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 October 3, 1988, to June 9, 1989, 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.

SEPTEMBER 19, 1988

Dismissal Under Rule 53

No. 87-1916. ZANT, WARDEN *v.* GODFREY. C. A. 11th Cir. Certiorari dismissed under this Court's Rule 53. Reported below: 836 F. 2d 1557.

Certiorari Denied

No. 88-5328 (A-142). ALLEN *v.* CALIFORNIA. Sup. Ct. Cal. Application for stay of execution of sentence of death, presented to JUSTICE O'CONNOR, and by her referred to the Court, denied. Certiorari denied.

JUSTICE BRENNAN, with whom JUSTICE MARSHALL joins, dissenting.

I dissent and would grant the stay and the petition for certiorari.

This Court's denials today of certiorari and of the stay of execution, of course, have no effect on the current proceedings in the United States District Court for the Eastern District of California. While Allen's applications were pending here, he sought and obtained from the District Court a stay of execution pending disposition of his petition for habeas corpus, and that stay continues undisturbed.

487 U. S. September 20, 23, 26, 27, 1988

SEPTEMBER 20, 1988

Dismissal Under Rule 53

No. 88-322. *AMBICO, INC., ET AL. v. DIAMOND SCIENTIFIC CO.* C. A. Fed. Cir. Certiorari dismissed under this Court's Rule 53. Reported below: 848 F. 2d 1220.

SEPTEMBER 23, 1988

Dismissal Under Rule 53

No. 87-796. *CITIES SERVICE GAS CO. ET AL. v. MOBIL OIL CORP. ET AL.* C. A. 10th Cir. Certiorari dismissed under this Court's Rule 53. Reported below: 818 F. 2d 730.

Miscellaneous Order

No. A-216. *PRESTON v. FLORIDA.* Application for stay of execution of sentence of death, presented to JUSTICE KENNEDY, and by him referred to the Court, granted pending the timely filing and disposition by this Court of a 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.

SEPTEMBER 26, 1988

Miscellaneous Orders

No. A-240. *MEYERS, GUARDIAN AD LITEM v. LEWIS.* Ct. App. Mich. Application for stay, presented to JUSTICE SCALIA, and by him referred to the Court, denied. Motion of petitioner to dispense with printing the petition for writ of certiorari denied.

No. A-244. *LEWIS v. LEWIS.* Ct. App. Mich. Application for stay, presented to JUSTICE SCALIA, and by him referred to the Court, denied.

SEPTEMBER 27, 1988

Dismissal Under Rule 53

No. 87-1782. *GORDON v. UNITED STATES.* C. A. 11th Cir. Certiorari dismissed under this Court's Rule 53. Reported below: 817 F. 2d 1538 and 836 F. 2d 1312.

September 27, 29, 30, 1988

487 U. S.

Miscellaneous Order

No. A-198. CLARK ET AL. *v.* ROEMER, GOVERNOR OF LOUISIANA, ET AL. Application to vacate a stay entered by the United States Court of Appeals for the Fifth Circuit, presented to JUSTICE MARSHALL, and by him referred to the Court, denied.

SEPTEMBER 29, 1988

Dismissal Under Rule 53

No. 88-297. CNA CASUALTY OF CALIFORNIA *v.* ROUHE. Ct. App. Cal., 4th App. Dist. Certiorari dismissed under this Court's Rule 53.

SEPTEMBER 30, 1988

Dismissal Under Rule 53

No. 88-110. BRADY *v.* UNITED STATES. C. A. 11th Cir. Certiorari dismissed under this Court's Rule 53. Reported below: 844 F. 2d 795.

STATEMENT SHOWING THE NUMBER OF CASES FILED, DISPOSED OF AND REMAINING ON
DOCKETS AT CONCLUSION OF OCTOBER TERMS, 1985, 1986 AND 1987

	ORIGINAL			PAID			IN FORMA PAUPERIS			TOTALS		
	1985	1986	1987	1985	1986	1987	1985	1986	1987	1985	1986	1987
Number of cases on dockets.....	10	12	16	2,571	2,547	2,577	2,577	2,575	2,675	5,158	5,134	5,268
Number of disposed of during term	2	1	5	2,095	2,105	2,131	2,178	2,254	2,251	4,275	4,360	4,387
Number remaining on dockets.....	8	11	11	476	442	446	399	321	424	883	774	881
TERMS												
Cases argued during term.....										1985	1986	1987
Number disposed of by full opinions.....										171	175	167
Number disposed of by per curiam opinions.....										161	164	151
Number set for reargument.....										10	10	9
Cases granted review this term.....										1	1	7
Cases reviewed and decided without oral argument.....										187	167	180
Total cases to be available for argument at outset of following term.....										103	113	95
										101	91	105

JUNE 30, 1988

