

ORDERS FROM FEBRUARY 21 THROUGH
MARCH 27, 1989

FEBRUARY 21, 1989

Appeals Dismissed

No. 88-669. HOFLEY MANUFACTURING CO. *v.* WILLIAMS. Appeal from Sup. Ct. Mich. Motion of appellee for leave to proceed *in forma pauperis* granted. Appeal dismissed for want of substantial federal question. Reported below: 430 Mich. 603, 424 N. W. 2d 278.

No. 88-877. KARST *v.* WOODS. Appeal from C. A. 9th Cir. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied. JUSTICE KENNEDY took no part in the consideration or decision of this case.

No. 88-895. STANTON *v.* DISTRICT OF COLUMBIA COURT OF APPEALS. Appeal from Ct. App. D. C. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied.

No. 88-5392. BULLER *v.* FIRST LEASING CO. Appeal from Sup. Ct. S. D. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied. Reported below: 428 N. W. 2d 545.

No. 88-5536. BULLER *v.* HURLEY STATE BANK. Appeal from Cir. Ct. S. D., Turner County, dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied.

No. 88-5580. WEHRINGER *v.* NEW HAMPSHIRE. Appeal from Sup. Ct. N. H. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied. Reported below: 130 N. H. 707, 547 A. 2d 252.

No. 88-5914. IN RE WILLIAMS. Appeal from C. A. 1st Cir. dismissed for want of jurisdiction. Treating the papers whereon

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the appeal was taken as a petition for writ of certiorari, certiorari denied.

No. 88-6180. *RODRIGUES v. EGGER, COMMISSIONER OF INTERNAL REVENUE, ET AL.* Appeal from C. A. 9th Cir. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied. Reported below: 818 F. 2d 869.

No. 88-960. *LIBERTY MOBILEHOME SALES, INC. v. EAMIELLO ET UX.* Appeal from Sup. Ct. Conn. dismissed for want of jurisdiction. Reported below: 208 Conn. 620, 546 A. 2d 805.

No. 88-1067. *KAVANAGH v. COVEN.* Appeal from Ct. App. N. Y. dismissed for want of jurisdiction. Reported below: 70 N. Y. 2d 1002, 521 N. E. 2d 445.

No. 88-1009. *HOUDE ET VIR v. STARKWEATHER ET AL.* Appeal from App. Div., Sup. Ct. N. Y., 4th Jud. Dept., dismissed for want of substantial federal question. Reported below: 143 App. Div. 2d 504, 533 N. Y. S. 2d 259.

No. 88-1059. *VROOM DEVELOPMENTS (FLORIDA), INC. v. TOWN OF LONGBOAT KEY.* Appeal from Dist. Ct. App. Fla., 2d Dist., dismissed for want of substantial federal question. Reported below: 531 So. 2d 974.

No. 88-1097. *RICHARDS v. TEXAS.* Appeal from Ct. App. Tex., 1st Dist., dismissed for want of substantial federal question. Reported below: 743 S. W. 2d 747.

Certiorari Granted—Vacated and Remanded

No. 87-6315. *KAISER v. UNITED STATES.* C. A. 11th 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 *United States v. Broce*, 488 U. S. 563 (1989). Reported below: 833 F. 2d 1019.

No. 88-764. *JONES v. PREUIT & MAULDIN ET AL.* C. A. 11th Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Owens v. Okure*, 488 U. S. 235 (1989). Reported below: 851 F. 2d 1321.

Certificate Dismissed

No. 88-1179. *UNITED STATES v. FAFOWORA.* Certificate from C. A. D. C. Cir. Question certified by the United States

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Court of Appeals for the District of Columbia Circuit dismissed. Reported below: 275 U. S. App. D. C. 141, 865 F. 2d 360.

Miscellaneous Orders. (See also No. 88-5890, *ante*, p. 180.)

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

No. A-524. AARON *v.* JONES, WARDEN, ET AL. Application for bail, addressed to JUSTICE MARSHALL and referred to the Court, denied.

No. A-567. ASSOCIATED GENERAL CONTRACTORS OF AMERICA ET AL. *v.* OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION, UNITED STATES DEPARTMENT OF LABOR, ET AL. (No. 88-1070); and ASSOCIATED BUILDERS & CONTRACTORS, INC., ET AL. *v.* OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION, UNITED STATES DEPARTMENT OF LABOR, ET AL. (two cases) (No. 88-1075). C. A. 3d Cir. Application for stay, addressed to THE CHIEF JUSTICE and referred to the Court, denied.

No. A-582. EUBANKS ET AL. *v.* WILKINSON, GOVERNOR OF KENTUCKY, ET AL. D. C. W. D. Ky. Application for stay pending appeal to the United States Court of Appeals for the Sixth Circuit, presented to JUSTICE SCALIA, and by him referred to the Court, denied.

No. A-641. SHORT *v.* KLEIN, GUARDIAN OF KLEIN, ET AL. App. Div., Sup. Ct. N. Y., 2d Jud. Dept. Application for stay, addressed to JUSTICE SCALIA and referred to the Court, denied.

No. A-642. CARDEN ET AL. *v.* ARKOMA ASSOCIATES. Application for stay of enforcement of the mandate of the United States Court of Appeals for the Fifth Circuit, presented to JUSTICE WHITE, and by him referred to the Court, granted pending the timely filing and disposition of a petition for writ of certiorari. This order is conditioned upon the posting of a good and sufficient security with the Clerk of the United States District Court for the Eastern District of Louisiana, the adequacy of such security to be determined by a judge of that court.

No. D-737. IN RE DISBARMENT OF WEATHERLY. Motion to defer consideration denied. Disbarment entered. [For earlier order herein, see 488 U. S. 906.]

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No. D-738. IN RE DISBARMENT OF BURKE. Disbarment entered. [For earlier order herein, see 488 U. S. 906.]

No. D-744. IN RE DISBARMENT OF HECHT. Motion to defer consideration denied. Disbarment entered. [For earlier order herein, see 488 U. S. 963.]

No. D-745. IN RE DISBARMENT OF DENKER. Disbarment entered. [For earlier order herein, see 488 U. S. 963.]

No. D-747. IN RE DISBARMENT OF WILLIAMS. Disbarment entered. [For earlier order herein, see 488 U. S. 978.]

No. D-752. IN RE DISBARMENT OF ALBIN. Disbarment entered. [For earlier order herein, see 488 U. S. 1026.]

No. D-766. IN RE DISBARMENT OF HALPER. It is ordered that Donald Kenneth Halper, of Sherman Oaks, Cal., be suspended from the practice of law in this Court and that a rule issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D-767. IN RE DISBARMENT OF ESTON. It is ordered that Leonard Raymond Eston, of Detroit, Mich., be suspended from the practice of law in this Court and that a rule issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D-768. IN RE DISBARMENT OF SANDERS. It is ordered that Samuel Henry Sanders III, of Birmingham, Ala., 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-769. IN RE DISBARMENT OF SMITH. It is ordered that William Trickett Smith, of Harrisburg, Pa., be suspended from the practice of law in this Court and that a rule issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D-770. IN RE DISBARMENT OF MATTHEWS. It is ordered that Michael Joseph Matthews, of Gonzales, La., be suspended from the practice of law in this Court and that a rule issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

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No. 65, Orig. TEXAS *v.* NEW MEXICO. Motion of the River Master for approval of fees and expenses granted, and the River Master is awarded \$5,154.73 for the period July 1 through December 31, 1988, to be paid equally by the parties. [For earlier order herein, see, *e. g.*, 488 U. S. 921.]

No. 105, Orig. KANSAS *v.* COLORADO. Motion to refer to the Special Master the motion for leave to amend the complaint granted. [For earlier order herein, see, *e. g.*, 488 U. S. 978.]

No. 109, Orig. OKLAHOMA ET AL. *v.* NEW MEXICO. Motion of New Mexico for leave to file a supplemental answer granted. Motion of the Special Master for award of fees and expenses granted, and the Special Master is awarded \$22,744.99 to be paid equally by the parties. [For earlier order herein, see, *e. g.*, 488 U. S. 989.]

No. 111, Orig. DELAWARE *v.* NEW YORK. Motion of Texas for leave to file complaint in intervention granted. The parties are allowed 60 days within which to answer. [For earlier order herein, see, *e. g.*, 488 U. S. 990.]

No. 87-1589. PITTSBURGH & LAKE ERIE RAILROAD CO. *v.* RAILWAY LABOR EXECUTIVES' ASSN. ET AL.; and

No. 87-1888. PITTSBURGH & LAKE ERIE RAILROAD CO. *v.* RAILWAY LABOR EXECUTIVES' ASSN. ET AL. C. A. 3d Cir. [Certiorari granted, 488 U. S. 965.] Motion of respondent Interstate Commerce Commission for divided argument denied. Motion of the Acting Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted to be divided as follows: 30 minutes for petitioner; 30 minutes for respondent; and 30 minutes for the Acting Solicitor General, as *amicus curiae*.

No. 87-1759. TEXAS STATE TEACHERS ASSN. ET AL. *v.* GARLAND INDEPENDENT SCHOOL DISTRICT ET AL. C. A. 5th Cir. [Certiorari granted, 488 U. S. 815.] Motion of Texas Association of School Boards et al. for leave to file a brief as *amici curiae* granted.

No. 88-40. UNITED STATES *v.* ZOLIN ET AL. C. A. 9th Cir. [Certiorari granted, 488 U. S. 907.] Motion of Bernard M. Barrett, Jr., for leave to participate in oral argument as *amicus curiae*, for divided argument, and for additional time for oral

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argument denied. JUSTICE BRENNAN took no part in the consideration or decision of this motion.

No. 88-192. MCKESSON CORP. *v.* DIVISION OF ALCOHOLIC BEVERAGES AND TOBACCO, DEPARTMENT OF BUSINESS REGULATION OF FLORIDA, ET AL. Sup. Ct. Fla. [Certiorari granted, 488 U. S. 954]; and

No. 88-325. AMERICAN TRUCKING ASSNS., INC., ET AL. *v.* SMITH, DIRECTOR, ARKANSAS HIGHWAY AND TRANSPORTATION DEPARTMENT, ET AL. Sup. Ct. Ark. [Certiorari granted, 488 U. S. 954.] Motion of respondents for divided argument granted. Request for additional time for oral argument denied. Motion of petitioners for divided argument granted. Request for additional time for oral argument denied.

No. 88-305. SOUTH CAROLINA *v.* GATHERS. Sup. Ct. S. C. [Certiorari granted, 488 U. S. 888.] Motions of SOLACE et al. and Barbara Babcock et al. for leave to file briefs as *amici curiae* granted.

No. 88-389. PUBLIC EMPLOYEES RETIREMENT SYSTEM OF OHIO *v.* BETTS. C. A. 6th Cir. [Probable jurisdiction noted, 488 U. S. 907.] Motion of the Acting Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 88-411. MURRAY, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS, ET AL. *v.* GIARRATANO ET AL. C. A. 4th Cir. [Certiorari granted, 488 U. S. 923.] Motions of American Civil Liberties Union, National Legal Aid & Defender Association et al., and Maryland State Bar Association et al. for leave to file briefs as *amici curiae* granted.

No. 88-420. JONES, SUPERINTENDENT, MISSOURI TRAINING CENTER FOR MEN AT MOBERLY *v.* THOMAS. C. A. 8th Cir. [Certiorari granted, 488 U. S. 1003.] Motion for appointment of counsel granted, and it is ordered that Springfield Baldwin, Esq., of Shrewsburg, Mo., be appointed to serve as counsel for respondent in this case.

No. 88-429. PUBLIC CITIZEN *v.* UNITED STATES DEPARTMENT OF JUSTICE ET AL.; and

No. 88-494. WASHINGTON LEGAL FOUNDATION *v.* UNITED STATES DEPARTMENT OF JUSTICE ET AL. D. C. D. C. [Proba-

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ble jurisdiction noted, 488 U. S. 979.] Motion of the Acting Solicitor General for divided argument denied. Motion of appellants for divided argument granted. JUSTICE SCALIA took no part in the consideration or decision of these motions.

No. 88-449. HEALY ET AL. *v.* THE BEER INSTITUTE ET AL.; and

No. 88-513. WINE & SPIRITS WHOLESALERS OF CONNECTICUT, INC. *v.* THE BEER INSTITUTE ET AL. C. A. 2d Cir. [Probable jurisdiction noted, 488 U. S. 954.] Motion of Wine & Spirits Wholesalers of America, Inc., for leave to file a brief as *amicus curiae* granted.

No. 88-454. UNITED STATES *v.* MONSANTO. C. A. 2d Cir. [Certiorari granted, 488 U. S. 941.] Motion of Committee on Criminal Advocacy et al. for leave to participate in oral argument as *amici curiae* and for divided argument denied.

No. 88-515. SABLE COMMUNICATIONS OF CALIFORNIA, INC. *v.* FEDERAL COMMUNICATIONS COMMISSION ET AL.; and

No. 88-525. FEDERAL COMMUNICATIONS COMMISSION ET AL. *v.* SABLE COMMUNICATIONS OF CALIFORNIA, INC. D. C. C. D. Cal. [Probable jurisdiction noted, 488 U. S. 1003.] Motion of the Acting Solicitor General to dispense with printing the joint appendix granted.

No. 88-556. BROWNING-FERRIS INDUSTRIES OF VERMONT, INC., ET AL. *v.* KELCO DISPOSAL, INC., ET AL. C. A. 2d Cir. [Certiorari granted, 488 U. S. 980.] Motions of Metromedia, Inc., and Goodyear Tire & Rubber Co. for leave to file briefs as *amici curiae* granted.

No. 88-681. CALIFORNIA STATE BOARD OF EQUALIZATION *v.* SIERRA SUMMIT, INC. C. A. 9th Cir. [Certiorari granted, 488 U. S. 992.] Motion of National Governors' Association et al. for leave to file a brief as *amici curiae* granted.

No. 88-927. KEYSTONE SHIPPING CO. *v.* NEW ENGLAND ENERGY, INC., ET AL. C. A. 1st Cir. Motion of respondents to expedite consideration of the petition for writ of certiorari denied.

No. 88-1207. G. K. C. MICHIGAN THEATRES, INC., ET AL. *v.* NATIONAL AMUSEMENTS, INC. C. A. 6th Cir. The Solicitor General is invited to file a brief in this case expressing the views of the United States.

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No. 88-5853. *CORCH v. DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR*. C. A. 3d Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied. Petitioner is allowed until March 14, 1989, within which to pay the docketing fee required by Rule 45(a) and to submit a petition in compliance with Rule 33 of the Rules of this Court.

JUSTICE BRENNAN and JUSTICE MARSHALL, dissenting.

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

No. 88-6060. *TUCKER v. PRUDENTIAL INSURANCE CO.* C. A. 3d Cir.; and

No. 88-6177. *GARDNER v. UNITED STATES*. C. A. 7th Cir. Motions of petitioners for leave to proceed *in forma pauperis* denied. Petitioners are allowed until March 14, 1989, within which to pay the docketing fee required by Rule 45(a) and to submit petitions in compliance with Rule 33 of the Rules of this Court.

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

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

No. 88-6131. *WRENN v. UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OHIO*. C. A. 6th Cir.; and

No. 88-6263. *WRENN v. NEW YORK CITY HEALTH & HOSPITALS CORP. ET AL.* C. A. 2d Cir. Motions of petitioner for leave to proceed *in forma pauperis* denied. Petitioner is allowed until March 14, 1989, within which to pay the docketing fee required by Rule 45(a) and to submit petitions in compliance with Rule 33 of the Rules of this Court.

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

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

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

No. 88-6181. *IN RE HARRISON*. Ct. App. Ga. Petition for writ of common-law certiorari denied. Reported below: 187 Ga. App. 268, 370 S. E. 2d 7.

No. 88-5958. *IN RE SIMANONOK*;

No. 88-5988. *IN RE MARTIN*;

No. 88-6043. *IN RE MULAZIM*;

No. 88-6051. *IN RE BARNETT*; and

No. 88-6234. *IN RE GAY*. Petitions for writs of mandamus denied.

No. 88-971. *IN RE DOLENZ*;

No. 88-6072. *IN RE YOUNGS*;

No. 88-6128. *IN RE JONES*; and

No. 88-6227. *IN RE THEODOROPOULOS*. Petitions for writs of mandamus and/or prohibition denied.

Probable Jurisdiction Noted

No. 88-952. *UNITED STATES v. SPERRY CORP. ET AL.* Appeal from C. A. Fed. Cir. Probable jurisdiction noted. Reported below: 853 F. 2d 904.

No. 88-1048. *QUINN ET AL. v. MILLSAP ET AL.* Appeal from Sup. Ct. Mo. Probable jurisdiction noted. Reported below: 757 S. W. 2d 591.

Certiorari Granted

No. 88-124. *BREININGER v. SHEET METAL WORKERS INTERNATIONAL ASSOCIATION LOCAL UNION NO. 6*. C. A. 6th Cir. Certiorari granted. Reported below: 849 F. 2d 997.

No. 88-791. *PAVELIC & LEFLORE v. MARVEL ENTERTAINMENT GROUP, A DIVISION OF CADENCE INDUSTRIES CORP., ET AL.* C. A. 2d Cir. Certiorari granted. Reported below: 854 F. 2d 1452.

No. 88-1083. *JOHN DOE AGENCY ET AL. v. JOHN DOE CORP.* C. A. 2d Cir. Certiorari granted. Reported below: 850 F. 2d 105.

No. 87-1979. *CHESAPEAKE & OHIO RAILWAY CO. v. SCHWALB ET AL.*; and

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No. 88-127. NORFOLK & WESTERN RAILWAY Co. v. GOODE. Sup. Ct. Va. Certiorari granted, cases consolidated, and a total of one hour allotted for oral argument. Reported below: No. 87-1979, 235 Va. 27, 365 S. E. 2d 742.

No. 88-512. MICHIGAN v. HARVEY. Ct. App. Mich. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari granted.

No. 88-840. GOLDEN STATE TRANSIT CORP. v. CITY OF LOS ANGELES. C. A. 9th Cir. Certiorari granted limited to the following question: "Whether in the absence of a direct violation of a federal statute, an allegation that a state statute is preempted by a federal statute is cognizable under 42 U. S. C. § 1983?" Reported below: 857 F. 2d 631.

No. 88-5909. MCKOY v. NORTH CAROLINA. Sup. Ct. N. C. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted. Reported below: 323 N. C. 1, 372 S. E. 2d 12.

No. 88-6075. JAMES v. ILLINOIS. Sup. Ct. Ill. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted. Reported below: 123 Ill. 2d 523, 528 N. E. 2d 723.

Certiorari Denied. (See also Nos. 88-877, 88-895, 88-5392, 88-5536, 88-5580, 88-5914, 88-6180, and 88-6181, *supra*.)

No. 88-541. NORTH CAROLINA v. TARANTINO. Sup. Ct. N. C. Certiorari denied. Reported below: 322 N. C. 386, 368 S. E. 2d 588.

No. 88-614. 9/1 KG CONTAINERS, MORE OR LESS, OF AN ARTICLE OF DRUG FOR VETERINARY USE ET AL. v. UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 854 F. 2d 173.

No. 88-687. LIBERTY LOBBY, INC. v. REES ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 271 U. S. App. D. C. 297, 852 F. 2d 595.

No. 88-701. INTERNATIONAL ASSOCIATION OF MACHINISTS & AEROSPACE WORKERS, DISTRICT LODGE NO. 19 v. SOO LINE RAILROAD Co. C. A. 8th Cir. Certiorari denied. Reported below: 850 F. 2d 368.

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No. 88-753. UNIVERSAL COOPERATIVES, INC. *v.* FCX, INC. C. A. 4th Cir. Certiorari denied. Reported below: 853 F. 2d 1149.

No. 88-768. FRANCO *v.* DEPARTMENT OF HEALTH AND HUMAN SERVICES. C. A. Fed. Cir. Certiorari denied. Reported below: 852 F. 2d 1292.

No. 88-778. WORLD COLOR PRESS, INC. *v.* DOLE, SECRETARY OF LABOR, ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 269 U. S. App. D. C. 162, 843 F. 2d 1490.

No. 88-792. MILLER *v.* PERSON ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 854 F. 2d 656.

No. 88-795. JUDGE ET AL. *v.* UNITED STATES DEPARTMENT OF AGRICULTURE. C. A. 11th Cir. Certiorari denied. Reported below: 856 F. 2d 199.

No. 88-803. ANTHONY *v.* NEWMAN, ACTING SECRETARY, UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES. C. A. D. C. Cir. Certiorari denied. Reported below: 270 U. S. App. D. C. 246, 848 F. 2d 1278.

No. 88-807. CHILDS ET AL. *v.* UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA. C. A. 9th Cir. Certiorari denied. Reported below: 844 F. 2d 791.

No. 88-830. QUALITY INN SOUTH ET AL. *v.* PATEL. C. A. 11th Cir. Certiorari denied. Reported below: 846 F. 2d 700.

No. 88-839. ARRUZA *v.* UNITED STATES. Ct. Mil. App. Certiorari denied. Reported below: 26 M. J. 234.

No. 88-846. SPARKS *v.* CHARACTER AND FITNESS COMMITTEE OF KENTUCKY ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 859 F. 2d 428.

No. 88-848. AMERICAN MINING CONGRESS ET AL. *v.* ENVIRONMENTAL DEFENSE FUND ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 271 U. S. App. D. C. 349, 852 F. 2d 1316.

No. 88-851. PIDCOCK *v.* OREGON. Sup. Ct. Ore. Certiorari denied. Reported below: 306 Ore. 335, 759 P. 2d 1092.

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No. 88-853. *BMT COMMODITY CORP. ET AL. v. UNITED STATES*. C. A. Fed. Cir. Certiorari denied. Reported below: 852 F. 2d 1285.

No. 88-857. *ROSZKOS ET UX. v. COMMISSIONER OF INTERNAL REVENUE*. C. A. 9th Cir. Certiorari denied. Reported below: 850 F. 2d 514.

No. 88-858. *WELLS, ADMINISTRATRIX OF THE ESTATE OF SANDERLIN, ET AL. v. WALKER ET AL.* C. A. 8th Cir. Certiorari denied. Reported below: 852 F. 2d 368.

No. 88-865. *SUN EXPLORATION & PRODUCTION CO. ET AL. v. LUJAN, SECRETARY OF THE INTERIOR, ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 848 F. 2d 1441.

No. 88-866. *QUANTUM CHEMICAL CORP. v. PRATT*; and
No. 88-1078. *PRATT v. QUANTUM CHEMICAL CORP.* C. A. 6th Cir. Certiorari denied. Reported below: 853 F. 2d 1329.

No. 88-873. *SHROEDER v. UNITED STATES*. Ct. Mil. App. Certiorari denied. Reported below: 27 M. J. 87.

No. 88-875. *TAYLOR v. TAYLOR*. Super. Ct. Pa. Certiorari denied. Reported below: 373 Pa. Super. 648, 536 A. 2d 834.

No. 88-878. *ROBERTS v. HARDIN*. C. A. 6th Cir. Certiorari denied. Reported below: 852 F. 2d 568.

No. 88-879. *LOWEN v. OREGON*. Ct. App. Ore. Certiorari denied. Reported below: 91 Ore. App. 187, 754 P. 2d 632.

No. 88-880. *TRUMP ET AL. v. FIELD*. C. A. 2d Cir. Certiorari denied. Reported below: 850 F. 2d 938.

No. 88-886. *TAYLOR MADE OFFICE SYSTEMS, INC. v. NATIONAL LABOR RELATIONS BOARD ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 857 F. 2d 1479.

No. 88-887. *CUEVAS v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 847 F. 2d 1417.

No. 88-889. *MILLERS NATIONAL INSURANCE CO. ET AL. v. AXEL'S EXPRESS, INC., ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 851 F. 2d 267.

No. 88-891. *HOLEMAN v. DIRECTOR, FEDERAL EMERGENCY MANAGEMENT AGENCY FOR THE NATIONAL FLOOD INSURANCE*

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PROGRAM. C. A. 5th Cir. Certiorari denied. Reported below: 857 F. 2d 789.

No. 88-913. CALIFORNIA *v.* ALLISON. Ct. App. Cal., 2d App. Dist. Certiorari denied. Reported below: 202 Cal. App. 3d 1084, 249 Cal. Rptr. 218.

No. 88-916. MITCHELL ET AL. *v.* FRANK R. HOWARD MEMORIAL HOSPITAL ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 853 F. 2d 762.

No. 88-921. NETSKY, EXECUTOR OF THE ESTATE OF NETSKY *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 859 F. 2d 1.

No. 88-922. HEILY *v.* MERRILL LYNCH, PIERCE, FENNER & SMITH, INC., ET AL. Ct. App. Cal., 1st App. Dist. Certiorari denied. Reported below: 202 Cal. App. 3d 255, 248 Cal. Rptr. 673.

No. 88-923. HOWELL *v.* HOMECRAFT LAND DEVELOPMENT, INC., ET AL. Sup. Ct. Tex. Certiorari denied.

No. 88-925. HARRIS ET AL. *v.* ISRAELITE BIBLE CLASS, INC. App. Ct. Ill., 5th Dist. Certiorari denied.

No. 88-933. HEMMERT SHIPPING CORP. ET AL. *v.* FURNESS WITHY (CHARTERING) PANAMA, INC. C. A. 11th Cir. Certiorari denied. Reported below: 854 F. 2d 410.

No. 88-935. SCKOLNICK *v.* WELLS. C. A. 1st Cir. Certiorari denied.

No. 88-936. SCHWARZ *v.* CITY OF WARWICK, RHODE ISLAND, ET AL. C. A. 1st Cir. Certiorari denied.

No. 88-939. LEON, PERSONAL REPRESENTATIVE OF THE ESTATE OF MORALES *v.* AVINO, COUNTY MANAGER OF METROPOLITAN DADE COUNTY, FLORIDA, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 848 F. 2d 1145.

No. 88-942. LABOURE ASSOCIATES PERSONNEL SERVICES, INC. *v.* WHITMIRE ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 854 F. 2d 1319.

No. 88-943. BARROW *v.* WALKER, TAX COLLECTOR, COLUMBIA COUNTY, FLORIDA. C. A. 11th Cir. Certiorari denied. Reported below: 845 F. 2d 1030.

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No. 88-945. *ERVIN v. COUNTY OF LOS ANGELES*. C. A. 9th Cir. Certiorari denied. Reported below: 848 F. 2d 1018.

No. 88-946. *APLIN v. ALABAMA*. Ct. Crim. App. Ala. Certiorari denied. Reported below: 531 So. 2d 63.

No. 88-954. *LACZAY ET UX. v. ROSS ADHESIVES, A DIVISION OF CONROS CORP., ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 855 F. 2d 351.

No. 88-956. *LSLJ PARTNERSHIP v. FRITO-LAY, INC.* C. A. 7th Cir. Certiorari denied. Reported below: 860 F. 2d 1082.

No. 88-957. *TOUSSAINT v. LAURENS COUNTY HEALTH CARE SYSTEM ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 857 F. 2d 1469.

No. 88-961. *SCHMIDT v. GEORGIA*. Ct. App. Ga. Certiorari denied. Reported below: 188 Ga. App. 85, 372 S. E. 2d 440.

No. 88-962. *VARMA ET AL. v. BLOUSTEIN ET AL.* C. A. 3d Cir. Certiorari denied. Reported below: 860 F. 2d 1077.

No. 88-964. *HOWES v. NORTH DAKOTA WORKERS COMPENSATION BUREAU ET AL.* Sup. Ct. N. D. Certiorari denied. Reported below: 429 N. W. 2d 730.

No. 88-965. *EWELL ET AL. v. THOMPSON, COMMISSIONER OF CONSERVATION AND ASSISTANT SECRETARY, OFFICE OF CONSERVATION OF LOUISIANA, ET AL.* Sup. Ct. La. Certiorari denied. Reported below: 525 So. 2d 1050.

No. 88-970. *ROSELIN v. ARAIN*. Super. Ct. N. J., App. Div. Certiorari denied.

No. 88-972. *MAISONET v. CONNECTICUT*. App. Ct. Conn. Certiorari denied. Reported below: 16 Conn. App. 89, 546 A. 2d 951.

No. 88-976. *LANDANO v. RAFFERTY, SUPERINTENDENT, RAHWAY STATE PRISON, ET AL.* C. A. 3d Cir. Certiorari denied. Reported below: 856 F. 2d 569.

No. 88-981. *LAWSON ET UX., INDIVIDUALLY AND ON BEHALF OF THEIR MINOR CHILDREN, LAWSON ET AL. v. DIAMOND M Co.* C. A. 5th Cir. Certiorari denied. Reported below: 856 F. 2d 189.

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No. 88-983. *LACEY v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 857 F. 2d 1475.

No. 88-985. *TECHNOGRAPH LIQUIDATING TRUST v. GENERAL MOTORS CORP.* C. A. 3d Cir. Certiorari denied. Reported below: 857 F. 2d 197.

No. 88-987. *HESSE v. BOARD OF EDUCATION OF TOWNSHIP HIGH SCHOOL DISTRICT No. 211, COOK COUNTY, ILLINOIS, ET AL.* C. A. 7th Cir. Certiorari denied. Reported below: 848 F. 2d 748.

No. 88-991. *U. S. ROOFING CORP. v. OWENS-CORNING FIBERGLAS CORP.* C. A. 6th Cir. Certiorari denied. Reported below: 853 F. 2d 458.

No. 88-993. *LINKOUS v. LINKOUS*. Ct. App. Tex., 14th Dist. Certiorari denied.

No. 88-997. *HIGGINS v. UNITED STATES*. Ct. Mil. App. Certiorari denied. Reported below: 27 M. J. 150.

No. 88-1001. *OIL, CHEMICAL & ATOMIC WORKERS INTERNATIONAL UNION, AFL-CIO, ET AL. v. CONOCO, INC.* C. A. 10th Cir. Certiorari denied.

No. 88-1002. *BROIDA v. NEWBOLD*. C. A. 11th Cir. Certiorari denied. Reported below: 854 F. 2d 1324.

No. 88-1004. *CAMBRIDGE PROPERTIES, INC. v. BATON ROUGE PRODUCTION CREDIT ASSN.* C. A. 5th Cir. Certiorari denied. Reported below: 859 F. 2d 918.

No. 88-1005. *HAYNES v. SEATTLE SCHOOL DISTRICT No. 1 ET AL.* Sup. Ct. Wash. Certiorari denied. Reported below: 111 Wash. 2d 250, 758 P. 2d 7.

No. 88-1006. *JAYNES v. TEXAS*. Ct. App. Tex., 14th Dist. Certiorari denied.

No. 88-1007. *LINN v. PIERCE, SECRETARY, DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT*. C. A. 7th Cir. Certiorari denied. Reported below: 860 F. 2d 1082.

No. 88-1010. *LANDAHL, BROWN & WEED ASSOCIATES, INC. v. LONGARDNER & ASSOCIATES, INC.* C. A. 7th Cir. Certiorari denied. Reported below: 855 F. 2d 455.

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No. 88-1014. BROTHERHOOD OF RAILWAY CARMEN, DIVISION OF TRANSPORTATION, COMMUNICATIONS INTERNATIONAL UNION *v.* CSX TRANSPORTATION, INC. C. A. 11th Cir. Certiorari denied. Reported below: 855 F. 2d 745.

No. 88-1015. CULLY *v.* GRACE HOSPITAL. C. A. 6th Cir. Certiorari denied. Reported below: 849 F. 2d 608.

No. 88-1016. CHAMBERS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 831 F. 2d 302.

No. 88-1018. LITTLE ET AL. *v.* LESSLER. C. A. 1st Cir. Certiorari denied. Reported below: 857 F. 2d 866.

No. 88-1020. W. SCHLAFHORST & CO. ET AL. *v.* SCHUBERT & SALZER MASCHINENFABRIK AKTIENGESELLSCHAFT. C. A. Fed. Cir. Certiorari denied. Reported below: 856 F. 2d 202.

No. 88-1022. HENRICO COUNTY PUBLIC SCHOOLS ET AL. *v.* SPIELBERG, A MINOR BY HIS PARENTS, SPIELBERG ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 853 F. 2d 256.

No. 88-1023. UNITED STATES *v.* CHRISTEY ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 841 F. 2d 809.

No. 88-1024. PIERSON *v.* CONNECTICUT. Sup. Ct. Conn. Certiorari denied. Reported below: 208 Conn. 683, 546 A. 2d 268.

No. 88-1025. LARKINS ET AL. *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 852 F. 2d 189.

No. 88-1028. SCANLON *v.* SCHRINAR, COMMISSIONER OF PUBLIC LANDS OF WYOMING, ET AL. Sup. Ct. Wyo. Certiorari denied. Reported below: 759 P. 2d 1243.

No. 88-1030. BROWN *v.* ARKANSAS. Ct. App. Ark. Certiorari denied. Reported below: 25 Ark. App. xvii.

No. 88-1032. JUTKOFSKY *v.* MAESTRI ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 860 F. 2d 50.

No. 88-1033. NORFOLK & WESTERN RAILWAY CO. *v.* GARDNER ET AL. Sup. Ct. App. W. Va. Certiorari denied. Reported below: — W. Va. —, 372 S. E. 2d 786.

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No. 88-1040. *MANCINONE v. CONNECTICUT*. App. Ct. Conn. Certiorari denied. Reported below: 15 Conn. App. 251, 545 A. 2d 1131.

No. 88-1041. *HUNTZINGER v. MARSH, SECRETARY OF THE ARMY, ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 856 F. 2d 186.

No. 88-1045. *WILLIAMS v. ATTORNEY GENERAL OF PENNSYLVANIA*. C. A. 3d Cir. Certiorari denied.

No. 88-1046. *TORRES ET AL. v. WISCONSIN DEPARTMENT OF HEALTH AND SOCIAL SERVICES ET AL.* C. A. 7th Cir. Certiorari denied. Reported below: 859 F. 2d 1523.

No. 88-1047. *BECHTEL CONSTRUCTION, INC. v. LABORERS DISTRICT COUNCIL ET AL.* C. A. 3d Cir. Certiorari denied. Reported below: 865 F. 2d 249.

No. 88-1050. *APPLEGATE ET VIR v. CALIFORNIA ET AL.*; and
No. 88-1054. *CALIFORNIA v. FREEMAN*. Sup. Ct. Cal. Certiorari denied. Reported below: 46 Cal. 3d 419, 758 P. 2d 1128.

No. 88-1051. *JACKS v. DUCKWORTH, SUPERINTENDENT, INDIANA STATE PRISON, ET AL.* C. A. 7th Cir. Certiorari denied. Reported below: 857 F. 2d 394.

No. 88-1057. *NEC AMERICA, INC. v. UNITED STATES*. C. A. Fed. Cir. Certiorari denied. Reported below: 857 F. 2d 787.

No. 88-1058. *TREEBY ET AL. v. GORMAN ET AL.*; and
No. 88-1080. *SWAGGART ET AL. v. ADLER, TRUSTEE IN BANKRUPTCY, ET AL.* Ct. App. La., 4th Cir. Certiorari denied. Reported below: 524 So. 2d 915.

No. 88-1060. *POWERS v. BOARD OF COUNTY COMMISSIONERS OF KINGMAN COUNTY, KANSAS, ET AL.* Ct. App. Kan. Certiorari denied. Reported below: 12 Kan. App. 2d lxii, 758 P. 2d 754.

No. 88-1061. *HAMMOND v. AUBURN UNIVERSITY ET AL.* C. A. 11th Cir. Certiorari denied. Reported below: 858 F. 2d 744.

No. 88-1065. *PATTERSON v. ATLANTA BAR ASSN. ET AL.* Sup. Ct. Ga. Certiorari denied. Reported below: — Ga. —, 373 S. E. 2d 514.

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No. 88-1073. *SIERRA v. UNITED STATES*. C. A. 11th Cir. Certiorari denied. Reported below: 860 F. 2d 1091.

No. 88-1077. *ALCAN ALUMINIO DO BRASIL, S. A., ET AL. v. BENITEZ-ALLENDE ET AL.* C. A. 1st Cir. Certiorari denied. Reported below: 857 F. 2d 26.

No. 88-1082. *PATEL ET AL. v. MARYLAND CASUALTY CO.* C. A. 7th Cir. Certiorari denied.

No. 88-1084. *FISCHER v. BAR HARBOR BANKING & TRUST CO.* C. A. 1st Cir. Certiorari denied. Reported below: 857 F. 2d 4.

No. 88-1086. *ALBUQUERQUE A. R. T. CO. v. MIRAGE EDITIONS, INC., ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 856 F. 2d 1341.

No. 88-1087. *HENAO-OSPINA ET AL. v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 867 F. 2d 1425.

No. 88-1090. *TRESIZE ET UX. v. UNITED STATES*. C. A. 11th Cir. Certiorari denied. Reported below: 854 F. 2d 1324.

No. 88-1091. *POWELL v. NIGRO ET AL.* C. A. D. C. Cir. Certiorari denied.

No. 88-1092. *MARYLAND CASUALTY CO. v. LOZANO*. C. A. 11th Cir. Certiorari denied. Reported below: 850 F. 2d 1470.

No. 88-1093. *HILL v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 859 F. 2d 918.

No. 88-1096. *ADAMS v. ARKANSAS*. Ct. App. Ark. Certiorari denied. Reported below: 26 Ark. App. 15, 758 S. W. 2d 709.

No. 88-1102. *WESTMINSTER MANAGEMENT CORP. ET AL. v. MITCHELL, DIRECTOR OF FINANCE, CITY OF NEW ORLEANS, ET AL.* Ct. App. La., 4th Cir. Certiorari denied. Reported below: 525 So. 2d 1171.

No. 88-1104. *PENNSYLVANIA v. GIANNINI ET AL.* Super. Ct. Pa. Certiorari denied. Reported below: 377 Pa. Super. 651, 541 A. 2d 1150.

No. 88-1106. *AIELLO ET AL. v. UNITED STATES*. C. A. 2d Cir. Certiorari denied.

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No. 88-1107. *BROWN v. CITY OF FORT LAUDERDALE ET AL.* C. A. 11th Cir. Certiorari denied.

No. 88-1110. *HARDY ET AL. v. UNITED STATES.* C. A. 11th Cir. Certiorari denied. Reported below: 855 F. 2d 753.

No. 88-1113. *MIKULEC INDUSTRIES, INC. v. ICI AMERICAS, INC.* C. A. 2d Cir. Certiorari denied. Reported below: 856 F. 2d 181.

No. 88-1117. *OSWALD v. COMMISSIONER OF INTERNAL REVENUE.* C. A. 3d Cir. Certiorari denied. Reported below: 860 F. 2d 1075.

No. 88-1118. *LUTZ ET AL. v. UNITED STATES.* C. A. 6th Cir. Certiorari denied. Reported below: 859 F. 2d 153.

No. 88-1120. *WILLIAMS ET UX. v. TUCSON UNIFIED SCHOOL DISTRICT No. 1 OF PIMA COUNTY, ARIZONA, ET AL.* Ct. App. Ariz. Certiorari denied. Reported below: 158 Ariz. 32, 760 P. 2d 1081.

No. 88-1123. *LANDERS SEED CO., INC. v. CHAMPAIGN NATIONAL BANK.* App. Ct. Ill., 4th Dist. Certiorari denied. Reported below: 165 Ill. App. 3d 1090, 519 N. E. 2d 957.

No. 88-1126. *RYAN v. UNITED STATES.* C. A. 5th Cir. Certiorari denied. Reported below: 860 F. 2d 435.

No. 88-1127. *UBEROI v. UNIVERSITY OF COLORADO ET AL.* C. A. 10th Cir. Certiorari denied.

No. 88-1133. *OSTER v. NEWMAN, ACTING SECRETARY OF HEALTH AND HUMAN SERVICES, ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 859 F. 2d 150.

No. 88-1141. *DEMOCRATIC CENTRAL COMMITTEE OF THE DISTRICT OF COLUMBIA ET AL. v. D. C. TRANSIT SYSTEM, INC.* C. A. D. C. Cir. Certiorari denied. Reported below: 268 U. S. App. D. C. 406, 842 F. 2d 402.

No. 88-1152. *INCOME PROPERTIES, INC., ET AL. v. LUNSFORD ET AL.* Sup. Ct. Ga. Certiorari denied.

No. 88-1156. *BLANCO v. UNITED STATES.* C. A. 2d Cir. Certiorari denied. Reported below: 861 F. 2d 773.

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No. 88-1158. *PEREZ ET AL. v. CONNECTICUT*. Sup. Ct. Conn. Certiorari denied.

No. 88-1162. *MOORE v. CITY OF RICHMOND ET AL.* Sup. Ct. Va. Certiorari denied.

No. 88-1164. *SPECTRON BROADCASTING CORP. v. FEDERAL COMMUNICATIONS COMMISSION*. C. A. D. C. Cir. Certiorari denied. Reported below: 273 U. S. App. D. C. 179, 858 F. 2d 774.

No. 88-1167. *DANIEL CONSTRUCTION CO., A DIVISION OF DANIEL INTERNATIONAL CORP. v. LOCAL 257, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL-CIO, ET AL.* C. A. 8th Cir. Certiorari denied. Reported below: 856 F. 2d 1174.

No. 88-1171. *GRAHAM v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 858 F. 2d 986.

No. 88-1189. *KETCHUM v. ADMINISTRATOR, ATTORNEY REGISTRATION AND DISCIPLINARY COMMISSION OF ILLINOIS*. Sup. Ct. Ill. Certiorari denied. Reported below: 124 Ill. 2d 50, 528 N. E. 2d 689.

No. 88-5188. *BENNETT v. CORROON & BLACK CORP. ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 845 F. 2d 104.

No. 88-5438. *TERREBONNE v. BUTLER, WARDEN*. C. A. 5th Cir. Certiorari denied. Reported below: 848 F. 2d 500.

No. 88-5573. *CONN v. PENNSYLVANIA*. Super. Ct. Pa. Certiorari denied. Reported below: 376 Pa. Super. 636, 541 A. 2d 789.

No. 88-5715. *GATES v. VASQUEZ, WARDEN, ET AL.* C. A. 9th Cir. Certiorari denied.

No. 88-5754. *RONNING v. ARKANSAS*. Sup. Ct. Ark. Certiorari denied. Reported below: 295 Ark. 228, 748 S. W. 2d 633.

No. 88-5802. *HAWLEY ET AL. v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 855 F. 2d 595.

No. 88-5825. *STOKES v. MURRAY, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS, ET AL.* C. A. 4th Cir. Certiorari denied.

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No. 88-5857. *HIGHFILL v. WISCONSIN*. Ct. App. Wis. Certiorari denied. Reported below: 146 Wis. 2d 867, 431 N. W. 2d 328.

No. 88-5858. *KARLIN v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 852 F. 2d 968.

No. 88-5869. *BREWER v. UNITED STATES*; and

No. 88-6129. *FERGUSON v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 853 F. 2d 1319.

No. 88-5894. *DAVIS v. GIBBONS, JUDGE, UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TENNESSEE*. C. A. 6th Cir. Certiorari denied.

No. 88-5895. *CALDWELL v. MILLER, WARDEN, ET AL.* C. A. 7th Cir. Certiorari denied. Reported below: 857 F. 2d 1476.

No. 88-5897. *DEL RAINE v. UNITED STATES ET AL.* C. A. 7th Cir. Certiorari denied. Reported below: 857 F. 2d 1476.

No. 88-5900. *HOOD v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 857 F. 2d 1469.

No. 88-5913. *DEL RAINE v. BANKS ET AL.* C. A. 7th Cir. Certiorari denied. Reported below: 857 F. 2d 1476.

No. 88-5916. *DAVIS v. BARBER, PAROLE OFFICER, INDIANA DEPARTMENT OF CORRECTIONS, ET AL.* C. A. 7th Cir. Certiorari denied. Reported below: 853 F. 2d 1418.

No. 88-5917. *HOLMAN v. ILLINOIS*. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 168 Ill. App. 3d 172, 522 N. E. 2d 635.

No. 88-5922. *DENSON v. UNITED STATES*. C. A. 11th Cir. Certiorari denied. Reported below: 859 F. 2d 925.

No. 88-5925. *TORRES-LOPEZ v. UNITED STATES*. C. A. 1st Cir. Certiorari denied. Reported below: 851 F. 2d 520.

No. 88-5926. *VALDES v. UNITED STATES*. C. A. 11th Cir. Certiorari denied. Reported below: 859 F. 2d 925.

No. 88-5937. *SANCHEZ v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 859 F. 2d 483.

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No. 88-5944. *SUN v. UNITED STATES*. C. A. 11th Cir. Certiorari denied. Reported below: 859 F. 2d 926.

No. 88-5965. *BEY v. ZIMMERMAN, ATTORNEY GENERAL OF PENNSYLVANIA, ET AL.* C. A. 3d Cir. Certiorari denied. Reported below: 860 F. 2d 1074.

No. 88-5971. *GRAHAM v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 856 F. 2d 756.

No. 88-5980. *MIDDLETON v. FULCOMER, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT HUNTINGDON*. C. A. 3d Cir. Certiorari denied. Reported below: 860 F. 2d 1075.

No. 88-5993. *FOREMAN v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 845 F. 2d 1017.

No. 88-6000. *MURPHY, AKA O'MURCHU v. UNITED STATES*. C. A. 1st Cir. Certiorari denied. Reported below: 852 F. 2d 1.

No. 88-6021. *MOLINA-URIBE v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 853 F. 2d 1193.

No. 88-6022. *MUSSER v. UNITED STATES*; and

No. 88-6027. *HARVEY v. UNITED STATES*. C. A. 11th Cir. Certiorari denied. Reported below: 856 F. 2d 1484.

No. 88-6037. *ZOLA v. NEW JERSEY*. Sup. Ct. N. J. Certiorari denied. Reported below: 112 N. J. 384, 548 A. 2d 1022.

No. 88-6046. *DURHAM v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 850 F. 2d 692.

No. 88-6049. *NIKOLAOU v. DEPARTMENT OF THE NAVY*. C. A. Fed. Cir. Certiorari denied. Reported below: 854 F. 2d 1327.

No. 88-6050. *MALIZIA v. SCULLY, SUPERINTENDENT, GREEN HAVEN CORRECTIONAL FACILITY, ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 862 F. 2d 304.

No. 88-6052. *MURR v. JACKSON, SUPERINTENDENT, PICK-AWAY CORRECTIONAL INSTITUTION*. C. A. 6th Cir. Certiorari denied. Reported below: 860 F. 2d 1079.

No. 88-6054. *TEAGLER v. LYNAUGH, DIRECTOR, TEXAS DEPARTMENT OF CORRECTIONS*. Ct. Crim. App. Tex. Certiorari denied.

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No. 88-6055. *STIVERS v. DEPARTMENT OF THE NAVY*. C. A. Fed. Cir. Certiorari denied. Reported below: 848 F. 2d 1244.

No. 88-6057. *SMITH v. OFFICE OF DISCIPLINARY COUNSEL*. Sup. Ct. Pa. Certiorari denied.

No. 88-6058. *SGARAGLINO v. STATE FARM FIRE & CASUALTY CO.* C. A. 9th Cir. Certiorari denied. Reported below: 855 F. 2d 862.

No. 88-6061. *SMITH v. FULCOMER, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT HUNTINGDON*. C. A. 3d Cir. Certiorari denied. Reported below: 862 F. 2d 310.

No. 88-6065. *MILLER v. ILLINOIS*. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 170 Ill. App. 3d 1158, 542 N. E. 2d 185.

No. 88-6067. *GREEN v. UNITED STATES*. C. A. 9th Cir. Certiorari denied.

No. 88-6068. *FRIEL v. OWENS, COMMISSIONER, PENNSYLVANIA DEPARTMENT OF CORRECTIONS, ET AL.* C. A. 3d Cir. Certiorari denied.

No. 88-6071. *MITCHELL v. HENDERSON, SUPERINTENDENT, AUBURN CORRECTIONAL FACILITY, ET AL.* C. A. 2d Cir. Certiorari denied.

No. 88-6077. *MEZO v. ILLINOIS*. App. Ct. Ill., 5th Dist. Certiorari denied. Reported below: 170 Ill. App. 3d 679, 525 N. E. 2d 134.

No. 88-6081. *JONES v. CITY OF ST. LOUIS ET AL.* C. A. 8th Cir. Certiorari denied. Reported below: 860 F. 2d 1085.

No. 88-6085. *WASHINGTON v. YLST, WARDEN, ET AL.* C. A. 9th Cir. Certiorari denied.

No. 88-6087. *LITTLETON v. ALEXANDER ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 857 F. 2d 1474.

No. 88-6089. *LEPISCOPO v. BLACKHURST, JUDGE, DISTRICT COURT OF NEW MEXICO, SECOND JUDICIAL DISTRICT*. Sup. Ct. N. M. Certiorari denied.

No. 88-6091. *POOL v. ARMONTROUT, WARDEN*. C. A. 8th Cir. Certiorari denied. Reported below: 852 F. 2d 372.

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No. 88-6095. *CORTEZ v. PRICE ET AL.* C. A. 5th Cir. Certiorari denied.

No. 88-6099. *SHAYANFAR v. UNITED STATES.* C. A. 11th Cir. Certiorari denied. Reported below: 855 F. 2d 1492.

No. 88-6102. *LEMONS v. COX ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 857 F. 2d 1471.

No. 88-6103. *TRAVIS v. ILLINOIS.* App. Ct. Ill., 4th Dist. Certiorari denied. Reported below: 170 Ill. App. 3d 873, 525 N. E. 2d 1137.

No. 88-6106. *LARKINS v. MICHIGAN ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 859 F. 2d 152.

No. 88-6107. *EIERLE v. ELLIS, SUPERINTENDENT, UNION CORRECTIONAL INSTITUTION, ET AL.* C. A. 11th Cir. Certiorari denied. Reported below: 859 F. 2d 925.

No. 88-6109. *WILSON v. TENOGLIA ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 853 F. 2d 927.

No. 88-6110. *WILSON v. SEITER, DIRECTOR, OHIO DEPARTMENT OF REHABILITATION AND CORRECTION, ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 856 F. 2d 197.

No. 88-6111. *WILSON v. DENTON ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 860 F. 2d 1081.

No. 88-6112. *WILSON v. SEITER, DIRECTOR, OHIO DEPARTMENT OF REHABILITATION AND CORRECTION, ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 860 F. 2d 1081.

No. 88-6114. *DAVENPORT v. OHIO.* Ct. App. Ohio, Hamilton County. Certiorari denied.

No. 88-6115. *BALAWAJDER v. CRIMINAL DISTRICT COURT OF TEXAS AT FORT WORTH, TEXAS, ET AL.* C. A. 5th Cir. Certiorari denied.

No. 88-6116. *SCHULTZ ET UX. v. SWANHORST ET AL.* C. A. 8th Cir. Certiorari denied. Reported below: 855 F. 2d 859.

No. 88-6118. *JANES v. UNITED STATES.* C. A. 7th Cir. Certiorari denied. Reported below: 863 F. 2d 885.

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No. 88-6119. *MOTEN v. JOHNSON ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 861 F. 2d 265.

No. 88-6123. *CASTANEDA v. UNITED STATES.* C. A. 5th Cir. Certiorari denied. Reported below: 860 F. 2d 435.

No. 88-6124. *JONES v. ZIMMERMAN, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT GRATERFORD, PENNSYLVANIA, ET AL.* C. A. 3d Cir. Certiorari denied.

No. 88-6125. *TROTZ v. SUPREME COURT OF THE UNITED STATES.* C. A. 3d Cir. Certiorari denied.

No. 88-6130. *MURRIETTA v. UNITED STATES.* C. A. 9th Cir. Certiorari denied. Reported below: 860 F. 2d 1090.

No. 88-6132. *SEMENCHUK v. MORRIS, SUPERINTENDENT, SOUTHERN OHIO CORRECTIONAL FACILITY.* C. A. 6th Cir. Certiorari denied. Reported below: 859 F. 2d 153.

No. 88-6134. *DAY v. UNITED STATES.* C. A. 9th Cir. Certiorari denied. Reported below: 862 F. 2d 318.

No. 88-6137. *SWENSON v. MARSH, SECRETARY OF THE ARMY.* C. A. D. C. Cir. Certiorari denied.

No. 88-6139. *HARRIS v. WARDEN, MARYLAND HOUSE OF CORRECTIONS.* C. A. 4th Cir. Certiorari denied. Reported below: 802 F. 2d 451.

No. 88-6143. *GRAY v. TEXAS.* Ct. App. Tex., 6th Dist. Certiorari denied.

No. 88-6144. *EVANS v. PENNSYLVANIA.* Super. Ct. Pa. Certiorari denied. Reported below: 377 Pa. Super. 650, 541 A. 2d 1150.

No. 88-6145. *MARTIN v. SHANK ET AL.* C. A. D. C. Cir. Certiorari denied.

No. 88-6146. *DIAMOND v. DISCIPLINARY COUNSEL ET AL.* Sup. Ct. Pa. Certiorari denied.

No. 88-6147. *STOGNER v. PICKETT ET AL.* C. A. 10th Cir. Certiorari denied.

No. 88-6149. *CHILDS v. WISCONSIN.* Ct. App. Wis. Certiorari denied. Reported below: 146 Wis. 2d 116, 430 N. W. 2d 353.

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No. 88-6151. *HAMILTON v. DISTRICT COURT OF MONTANA, THIRD JUDICIAL DISTRICT*. Sup. Ct. Mont. Certiorari denied.

No. 88-6152. *WILKINSON v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 867 F. 2d 1425.

No. 88-6156. *WOLFE v. ALEXANDRIA, VIRGINIA, ET AL.*; and *WOLFE v. UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA ET AL.* C. A. 9th Cir. Certiorari denied.

No. 88-6157. *YOUNG v. KRAATZ ET AL.* Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 88-6158. *WALLS v. PROTHONOTARY, NEW CASTLE COUNTY*. Sup. Ct. Del. Certiorari denied. Reported below: 549 A. 2d 699.

No. 88-6160. *HUNT v. VERMONT*. Sup. Ct. Vt. Certiorari denied. Reported below: 150 Vt. 483, 555 A. 2d 369.

No. 88-6162. *FICA v. SCHWARTZ*. Sup. Ct. Fla. Certiorari denied. Reported below: 534 So. 2d 399.

No. 88-6163. *ARONHALT, AKA JONJOCK v. DEEDS, WARDEN*. C. A. 9th Cir. Certiorari denied.

No. 88-6164. *HUANG v. STERN, ROSENAU & ROSENTHAL*. Ct. App. D. C. Certiorari denied.

No. 88-6165. *MOORE v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 860 F. 2d 1089.

No. 88-6167. *FERDIK v. LEWIS, DIRECTOR, ARIZONA DEPARTMENT OF CORRECTIONS, ET AL.* Sup. Ct. Ariz. Certiorari denied.

No. 88-6168. *KURBEGOVICH v. VASQUEZ, WARDEN, ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 859 F. 2d 154.

No. 88-6169. *DEMOS v. UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF WASHINGTON*. C. A. 9th Cir. Certiorari denied.

No. 88-6170. *SCHIEFELBEIN v. GEORGIA*. Sup. Ct. Ga. Certiorari denied. Reported below: 258 Ga. 623, 373 S. E. 2d 354.

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No. 88-6171. *TURNER v. CALIFORNIA*. Sup. Ct. Cal. Certiorari denied.

No. 88-6172. *RAGHEB v. BLUE CROSS & BLUE SHIELD OF MICHIGAN*. C. A. 6th Cir. Certiorari denied. Reported below: 852 F. 2d 1288.

No. 88-6173. *LEVY v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 852 F. 2d 1175.

No. 88-6174. *ROTMAN v. WORCESTER HOUSING AUTHORITY*. C. A. 1st Cir. Certiorari denied. Reported below: 867 F. 2d 606.

No. 88-6175. *RYNKIEWICZ v. JEANES HOSPITAL ET AL.* C. A. 3d Cir. Certiorari denied. Reported below: 862 F. 2d 310.

No. 88-6176. *MAULDIN v. FIELDS, WARDEN, ET AL.* C. A. 10th Cir. Certiorari denied.

No. 88-6178. *HERNANDEZ v. UNITED STATES*. C. A. 11th Cir. Certiorari denied. Reported below: 856 F. 2d 198.

No. 88-6179. *MCDEVITT v. BLUMENSTEIN*. C. A. 3d Cir. Certiorari denied. Reported below: 860 F. 2d 1075.

No. 88-6182. *ORTEGA v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 859 F. 2d 327.

No. 88-6183. *EDWARDS v. CALIFORNIA*. Ct. App. Cal., 1st App. Dist. Certiorari denied. Reported below: 203 Cal. App. 3d 1358, 248 Cal. Rptr. 53.

No. 88-6184. *SLABY v. AMERICAN PHYSICAL SOCIETY ET AL.* C. A. D. C. Cir. Certiorari denied.

No. 88-6185. *HALL v. CALIFORNIA*. Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 88-6186. *HERBAGE v. UNITED STATES*. C. A. 11th Cir. Certiorari denied. Reported below: 850 F. 2d 1463.

No. 88-6191. *BAKER v. MCMACKIN, SUPERINTENDENT, MARION CORRECTIONAL INSTITUTION*. C. A. 6th Cir. Certiorari denied. Reported below: 859 F. 2d 152.

No. 88-6192. *JACKSON v. DUTTON, WARDEN, ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 861 F. 2d 720.

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No. 88-6194. *BARNETTE v. UNITED STATES*. C. A. 10th Cir. Certiorari denied.

No. 88-6195. *MOORE v. CUPP, SUPERINTENDENT, OREGON STATE PENITENTIARY*. C. A. 9th Cir. Certiorari denied. Reported below: 860 F. 2d 1089.

No. 88-6196. *HILLARY v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 862 F. 2d 315.

No. 88-6197. *WILLIAMS v. ALABAMA*. Ct. Crim. App. Ala. Certiorari denied. Reported below: 548 So. 2d 501.

No. 88-6198. *MORNES v. UNITED STATES*. C. A. 10th Cir. Certiorari denied.

No. 88-6199. *STEWART v. ST. PETERSBURG TIMES*. C. A. 11th Cir. Certiorari denied. Reported below: 853 F. 2d 928.

No. 88-6200. *WILLIAMS v. ILLINOIS*. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 169 Ill. App. 3d 1171, 540 N. E. 2d 581.

No. 88-6201. *WHITE, BY HIS NEXT FRIEND SWAFFORD v. GERBITZ ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 860 F. 2d 661.

No. 88-6205. *DARROW v. DAVIS, WARDEN, ET AL.* C. A. 11th Cir. Certiorari denied. Reported below: 856 F. 2d 199.

No. 88-6206. *MAULICK v. VIRGINIA*. C. A. 4th Cir. Certiorari denied. Reported below: 856 F. 2d 187.

No. 88-6208. *HARVEY v. LYNAUGH, DIRECTOR, TEXAS DEPARTMENT OF CORRECTIONS*. C. A. 5th Cir. Certiorari denied.

No. 88-6209. *GRIFFIN v. ILLINOIS*. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 167 Ill. App. 3d 1165, 538 N. E. 2d 919.

No. 88-6210. *BOX v. PETSOCK, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AND DIAGNOSTIC (AND CLASSIFICATION CENTER) AT PITTSBURGH, ET AL.* C. A. 3d Cir. Certiorari denied. Reported below: 860 F. 2d 1074.

No. 88-6213. *BOTSCH v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 862 F. 2d 315.

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No. 88-6214. *FISHER v. SCULLY, SUPERINTENDENT, GREEN HAVEN CORRECTIONAL FACILITY, ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 863 F. 2d 45.

No. 88-6215. *SOSA v. UNITED STATES.* C. A. 11th Cir. Certiorari denied. Reported below: 861 F. 2d 1280.

No. 88-6217. *DUNCAN v. UNITED STATES.* C. A. 11th Cir. Certiorari denied. Reported below: 855 F. 2d 1528.

No. 88-6218. *ARIAS GOMEZ v. UNITED STATES.* C. A. 9th Cir. Certiorari denied. Reported below: 858 F. 2d 1387.

No. 88-6219. *WALKER v. DUGGER, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS.* C. A. 11th Cir. Certiorari denied. Reported below: 860 F. 2d 1010.

No. 88-6220. *BOWER v. TEXAS.* Ct. App. Tex., 5th Dist. Certiorari denied.

No. 88-6221. *GREGORY v. PENNSYLVANIA.* Super. Ct. Pa. Certiorari denied. Reported below: 371 Pa. Super. 551, 538 A. 2d 578.

No. 88-6223. *HANNAFORD v. MICHIGAN.* Ct. App. Mich. Certiorari denied. Reported below: 167 Mich. App. 147, 421 N. W. 2d 608.

No. 88-6225. *JARAMILLO v. UNITED STATES.* C. A. 10th Cir. Certiorari denied.

No. 88-6226. *LAWRENCE v. UNITED STATES.* C. A. 5th Cir. Certiorari denied. Reported below: 859 F. 2d 919.

No. 88-6228. *MALEKZADEH v. UNITED STATES.* C. A. 11th Cir. Certiorari denied. Reported below: 855 F. 2d 1492.

No. 88-6229. *WHITE v. UNITED STATES.* C. A. 8th Cir. Certiorari denied. Reported below: 858 F. 2d 416.

No. 88-6230. *PEROTTI v. SHANER.* C. A. 6th Cir. Certiorari denied. Reported below: 856 F. 2d 195.

No. 88-6231. *MILLER v. OKLAHOMA.* Ct. Crim. App. Okla. Certiorari denied.

No. 88-6232. *OUTLAW v. UNITED STATES.* C. A. 6th Cir. Certiorari denied. Reported below: 859 F. 2d 922.

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No. 88-6233. *SCOTT v. DANTES, CHAIRMAN, MARYLAND PAROLE COMMISSION*. C. A. 4th Cir. Certiorari denied. Reported below: 861 F. 2d 265.

No. 88-6235. *GILES v. GARWOOD ET AL.* C. A. 11th Cir. Certiorari denied. Reported below: 853 F. 2d 876.

No. 88-6238. *FELDMAN v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 853 F. 2d 648.

No. 88-6239. *WILSON v. DENTON ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 860 F. 2d 1081.

No. 88-6240. *SPAN v. DUGGER, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL.* C. A. 11th Cir. Certiorari denied.

No. 88-6241. *NEAL v. IAM LOCAL LODGE 2386*. C. A. 5th Cir. Certiorari denied. Reported below: 856 F. 2d 189.

No. 88-6244. *KELLY v. MCWHERTER, WARDEN*. Ct. Crim. App. Tenn. Certiorari denied.

No. 88-6246. *DUPREE v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 862 F. 2d 871.

No. 88-6247. *HERMAN v. GEER ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 847 F. 2d 838.

No. 88-6248. *HELWIG v. LECUREAUX, WARDEN*. C. A. 6th Cir. Certiorari denied. Reported below: 860 F. 2d 1079.

No. 88-6249. *LOWE v. KING ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 860 F. 2d 436.

No. 88-6250. *CHURCH v. WARREN, JUDGE, CIRCUIT COURT OF VIRGINIA, AMELIA COUNTY, ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 861 F. 2d 263.

No. 88-6251. *HUNTER v. LEWIS ET AL.* C. A. 11th Cir. Certiorari denied.

No. 88-6252. *AINSWORTH v. ROBERTS, SUPERINTENDENT, RANKIN COUNTY CORRECTIONAL FACILITY*. C. A. 5th Cir. Certiorari denied.

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No. 88-6253. ALLEN *v.* HARRIS ET AL. Ct. App. Mo., Eastern Dist. Certiorari denied. Reported below: 755 S. W. 2d 393.

No. 88-6254. NOBLE *v.* REES, SUPERINTENDENT, DEUEL VOCATIONAL INSTITUTION. C. A. 9th Cir. Certiorari denied. Reported below: 855 F. 2d 862.

No. 88-6256. MCSWAIN *v.* BEYER, ADMINISTRATOR, NEW JERSEY STATE PRISON, ET AL. C. A. 3d Cir. Certiorari denied.

No. 88-6257. PEARSALL *v.* DISTRICT OF COLUMBIA DEPARTMENT OF HUMAN SERVICES. Ct. App. D. C. Certiorari denied.

No. 88-6259. WHITESIDE *v.* MINNESOTA ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 860 F. 2d 1085.

No. 88-6261. NUTTELMAN *v.* JULCH ET AL. Sup. Ct. Neb. Certiorari denied. Reported below: 228 Neb. 750, 424 N. W. 2d 333.

No. 88-6262. PAREZ *v.* GENERAL ATOMIC. C. A. 9th Cir. Certiorari denied. Reported below: 852 F. 2d 572.

No. 88-6266. OLIVE *v.* SEARS, ROEBUCK & Co. C. A. 6th Cir. Certiorari denied. Reported below: 849 F. 2d 609.

No. 88-6276. MANN *v.* BURKE ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 855 F. 2d 862.

No. 88-6278. STRICKLAND *v.* TILLMAN, CHIEF JUDGE, DEKALB COUNTY SUPERIOR COURT, ET AL. C. A. 11th Cir. Certiorari denied.

No. 88-6279. MORRISON *v.* DEPARTMENTAL DISCIPLINARY COMMITTEE FOR THE FIRST JUDICIAL DEPARTMENT. App. Div., Sup. Ct. N. Y., 1st Jud. Dept. Certiorari denied. Reported below: 137 App. Div. 2d 70, 527 N. Y. S. 2d 792.

No. 88-6280. GARCIA *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 867 F. 2d 1424.

No. 88-6284. WINTERS *v.* LYNCH ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 856 F. 2d 197.

No. 88-6291. ADESIJI *v.* MINNESOTA. C. A. 8th Cir. Certiorari denied. Reported below: 854 F. 2d 299.

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No. 88-6302. HENRY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 863 F. 2d 889.

No. 88-6303. HANDAL *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 858 F. 2d 743.

No. 88-6304. BUELOW ET AL. *v.* BABLITCH, ADMINISTRATOR, WISCONSIN DEPARTMENT OF HEALTH AND SOCIAL SERVICES, DIVISION OF CORRECTIONS. C. A. 7th Cir. Certiorari denied. Reported below: 847 F. 2d 420.

No. 88-6312. TAUBER *v.* BROWN ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 859 F. 2d 152.

No. 88-6314. LEWIS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 862 F. 2d 748.

No. 88-6322. MCNAIR *v.* UNITED STATES. Ct. App. D. C. Certiorari denied.

No. 88-6323. GARDNER *v.* BORGERT, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 857 F. 2d 1474.

No. 88-6332. TORRES-BENAVIDEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 862 F. 2d 875.

No. 88-6339. BISBICUS *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 868 F. 2d 1267.

No. 88-6344. KENNEDY *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 865 F. 2d 1269.

No. 88-6351. LOWENBERG *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 853 F. 2d 295.

No. 88-6355. QUINONES *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 862 F. 2d 17.

No. 88-6357. PROVENCIO-MARTINEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 861 F. 2d 1278.

No. 88-6364. STRIFLER ET AL. *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 851 F. 2d 1197.

No. 88-399. HAMMOND *v.* TERMINAL RAILROAD ASSOCIATION OF ST. LOUIS. C. A. 7th Cir. Certiorari denied. JUSTICE

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BRENNAN and JUSTICE WHITE would grant certiorari. Reported below: 848 F. 2d 95.

No. 88-651. RICHARD ANDERSON PHOTOGRAPHY *v.* RADFORD UNIVERSITY ET AL. C. A. 4th Cir. Motions of American Intellectual Property Law Association and Association of American Publishers, Inc., et al. for leave to file briefs as *amici curiae* granted. Certiorari denied. Reported below: 852 F. 2d 114.

No. 88-776. RAFF, ARKANSAS STATE PROSECUTOR, ET AL. *v.* LEWELLEN. C. A. 8th Cir. Certiorari denied. JUSTICE WHITE would grant certiorari. Reported below: 843 F. 2d 1103.

No. 88-777. GUANGZHOU MARITIME TRANSPORT BUREAU OF CHINA *v.* HUGHES DRILLING FLUIDS. C. A. 5th Cir. Motion of Maritime Law Association of the United States for leave to file a brief as *amicus curiae* granted. Certiorari denied. Reported below: 852 F. 2d 840.

No. 88-813. CINCINNATI POST ET AL. *v.* GENERAL ELECTRIC CO. C. A. 6th Cir. Certiorari denied. THE CHIEF JUSTICE took no part in the consideration or decision of this petition. Reported below: 854 F. 2d 900.

No. 88-850. BLINDER, ROBINSON & Co., INC., ET AL. *v.* SECURITIES AND EXCHANGE COMMISSION. C. A. 10th Cir. Certiorari denied. JUSTICE MARSHALL took no part in the consideration or decision of this petition. Reported below: 855 F. 2d 677.

No. 88-920. DIXON, WARDEN, ET AL. *v.* McDOWELL. C. A. 4th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 858 F. 2d 945.

No. 88-1026. ARMONTROUT, WARDEN *v.* POOL. C. A. 8th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 852 F. 2d 372.

No. 88-1043. ZANT, WARDEN *v.* CERVI. C. A. 11th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 855 F. 2d 702.

No. 88-950. PAGE *v.* E. I. DU PONT DE NEMOURS & Co. C. A. 4th Cir. Certiorari denied. JUSTICE O'CONNOR took no

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part in the consideration or decision of this petition. Reported below: 857 F. 2d 1469.

No. 88-975. DUDLEY *v.* STUBBS. C. A. 2d Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 849 F. 2d 83.

JUSTICE O'CONNOR, with whom THE CHIEF JUSTICE and JUSTICE KENNEDY join, dissenting.

Because the judgment below rests upon a fundamental misconception of this Court's decision in *Whitley v. Albers*, 475 U. S. 312 (1986), and conflicts with the approach taken by the vast majority of the Courts of Appeals, including a prior decision of the Second Circuit itself, I would grant the petition for certiorari. Under the decision which the Court declines to review today, prison officials are essentially held strictly liable under the Eighth Amendment for split-second decisions made in the face of serious threats to the security of the prison facility. This is precisely the result that our decision in *Whitley* was designed to avoid.

I

On February 4, 1977, the Arthur Kill Correctional Facility was the site of an institution-wide sitdown strike orchestrated and controlled by a group of prisoners known as the "Muslims." That evening, as respondent, John Stubbs, an inmate at the institution, was walking down the main corridor of C control area of the prison to make a telephone call, he was confronted by a gang of 20 to 30 Muslim prisoners. The gang was armed with homemade knives up to 16 inches in length as well as other weapons wrapped in sheets. The mob began to chase respondent through the corridors of the prison, throwing garbage cans and table legs down the hallways. As respondent ran toward the telephone room, he noticed petitioner, Robert Dudley, and another guard standing in front of a door leading to the administrative control center of the prison. Neither Officer Dudley nor the correctional officer with him had a firearm, a baton, or a two-way radio. The prison arsenal, the offices of the prison superintendent, and the prison hospital are all accessible from the administration corridor.

When respondent approached the door to the administration area with the armed mob directly behind him, Officer Dudley and the other corrections officer entered the administration corridor and secured the door from the other side. Officer Dudley refused

to open the door to the administration corridor, despite the entreaties of respondent. Respondent then ran down another corridor and jumped over the counter of the telephone room and cried for help. The correctional officers in the telephone room, and one inmate present there, immediately removed themselves to positions of safety. At this point the angry mob caught up with respondent and beat him severely.

Respondent brought this action under 42 U. S. C. § 1983 against petitioner and other corrections officials, alleging that the failure to aid him during the disturbance constituted a violation of his Eighth Amendment rights. The case was tried to a jury before a Magistrate. Officer Dudley testified that he did not open the administration door because he never had the chance to, but indicated that he would not have done so in any event, given the fact that the prison arsenal and the superintendent's office lay on the other side. As he put it at trial, "[T]here is no way you are to allow inmates to go up into that area, especially in that type of situation." Pet. for Cert. 5. In addition, there was expert testimony at trial that Officer Dudley had followed proper procedure in securing the administration corridor door. At the close of the evidence, petitioner asked for an instruction to the jury that his conduct must have been "malicious and sadistic" to support Eighth Amendment liability under this Court's decision in *Whitley v. Albers*, *supra*. The trial court rejected petitioner's proposed instruction and instead delivered a "deliberate indifference" charge. The jury returned a verdict against Officer Dudley in the amount of \$26,000 for alleged violations of respondent's Eighth Amendment rights.

The Magistrate subsequently granted petitioner's motion for a judgment notwithstanding the verdict. The Magistrate found this case "akin" to the situation presented in *Whitley*, and emphasized that "'prison administrators . . . should be accorded wide ranging deference in the adoption and execution of policies and practices that in their judgment are needed to preserve internal order and discipline and to maintain institutional security.'" App. to Pet. for Cert. 5b, quoting *Whitley, supra*, at 321-322 (citation omitted). The Magistrate cited three factors which justified the entry of judgment for petitioner. First, "there was a serious threat to prison security at the time Stubbs sought Dudley's protection." App. to Pet. for Cert. 7b. Second, "Dudley acted without ill will or malice"; and third, "prior to the attack upon

Stubbs, Dudley had no knowledge of either a threat to Stubbs' life, or the possibility that Stubbs would be attacked." *Ibid.* The Magistrate concluded that, "[g]iven the exigent circumstances, it is obvious that Dudley acted quickly to respond to the dangerous situation with which he was confronted. His failure to take into account Stubbs' welfare may have been unfortunate but it cannot fairly be characterized as deliberately indifferent." *Id.*, at 9b.

The Court of Appeals for the Second Circuit reversed the judgment for petitioner and reinstated the jury's verdict. 849 F. 2d 83 (1988). The crux of the lower court's holding in this case is contained in the following passage:

"*Whitley* involved a full-blown prison riot. In the present case the condition creating the 'prison disturbance' was the Stubbs incident itself: twenty or more angry prisoners wanted to hurt one prisoner. The issue put to the jury was whether the defendant corrections officers acted unconstitutionally in allowing them to do so. The only 'competing institutional concern[]' in this context was whether the defendants, by aiding Stubbs, might plausibly put prison security (or their own safety) at risk. This was for the jury to decide under the 'deliberate indifference' standard." *Id.*, at 86 (footnote omitted).

The Court of Appeals noted that there was evidence that the prison's Muslim population had engaged in a "sit down strike" on the day of the incident, but found that "the situation apparently created no unusual threat to prison security." *Id.*, at 86, n. 3.

In *Whitley* this Court analyzed the dictates of the Eighth Amendment in the context of a prison disturbance that involved the taking of a correctional officer as a hostage. In response to the hostage taking, prison officials determined that forceful intervention was necessary to protect the life of the hostage and the safety of the prisoners not connected with the riot. During the assault on a barricade erected by the prisoners holding the hostage, a prisoner was hit in the knee by a shotgun blast. The prisoner brought a § 1983 action against prison officials, claiming violation of his Eighth Amendment rights. The District Court directed a verdict for the prison officials, finding that the use of deadly force was justified "under the unique circumstances of this case." 475 U. S., at 317. The Court of Appeals reversed, find-

ing that because the prison riot was subsiding at the time the rescue plan was carried out, a reasonable jury could find that the use of force entailed a "deliberate indifference" to the injured prisoner's Eighth Amendment rights. *Id.*, at 318.

This Court reversed, noting that the "deliberate indifference" standard of *Estelle v. Gamble*, 429 U. S. 97 (1976), "was appropriate in the context presented in that case because the State's responsibility to attend to the medical needs of prisoners does not ordinarily clash with other equally important governmental responsibilities." *Whitley*, 475 U. S., at 320. The Court found that the balance must be struck differently where prison security and the safety of both prison officials and inmates is threatened. "In this setting, a deliberate indifference standard does not adequately capture the importance of such competing obligations, or convey the appropriate hesitancy to critique in hindsight decisions necessarily made in haste, under pressure, and frequently without the luxury of a second chance." *Ibid.* Accordingly, the Court set out the following test to be applied in such cases:

"Where a prison security measure is undertaken to resolve a disturbance, such as occurred in this case, that indisputably poses significant risks to the safety of inmates and prison staff, we think the question whether the measure taken inflicted unnecessary and wanton pain and suffering ultimately turns on 'whether force was applied in a good faith effort to maintain or restore discipline or maliciously and sadistically for the very purpose of causing harm.'" *Id.*, at 320-321 (citation omitted).

The Court indicated that the standard it enunciated applied to "prophylactic or preventive measures intended to reduce the incidence of these or any other breaches of prison discipline." *Id.*, at 322. Decisions made "in bad faith or for no legitimate purpose" are not insulated from review, but judge and jury may not substitute their judgment as to the reasonableness of the action taken by prison officials. Unless an inference of wanton and sadistic infliction of pain arises from the facts as pled, "the case should not go to the jury." *Ibid.*

The Court of Appeals' determination that "deliberate indifference" was the correct Eighth Amendment standard under which to assess the correctional officer's action in this case is directly contrary to our decision in *Whitley*. The court's opinion acknowl-

edges that the very kind of "competing institutional concerns" present in *Whitley* were present here, but then goes on to find that the deliberate indifference standard was appropriate. The situation here was arguably *more* dangerous than in *Whitley*, where, although a hostage had been taken, the situation had stabilized and the correction officials had time to plan a course of action. Here a split-second decision had to be made. A single door stood between armed prisoners, who had engaged in a sit-in earlier in the day, and the prison arsenal and the office of the prison superintendent. Application of the deliberate indifference standard in a setting like this one essentially renders prison officials strictly liable for putting the security of the prison and the lives of *all* its inhabitants before the physical security of one inmate. In this case, if Officer Dudley had attempted to aid respondent by opening the door, and tragedy had ensued, he would no doubt have been subject to disciplinary action by his superiors, not to mention state law tort liability for any ensuing injuries caused by his decision.

The judgment here also conflicts with the decision of another panel of the Second Circuit which held that the *Whitley* standard applied to a correctional officer's use of force in the face of an explosive situation created by a prisoner's use of racial slurs in a crowded cafeteria and his subsequent resistance to orders to leave the scene. See *Corselli v. Coughlin*, 842 F. 2d 23, 26 (1988) ("*Whitley* is distinguishable on the facts, since that case involved a full-scale prison riot and the incident here was far from that. Nevertheless, the test under *Whitley* applies . . ."). Moreover, no other Court of Appeals has interpreted *Whitley* as limited to "full-blown prison riots," and it is clear that this case would have been decided differently in other Circuits in the country. See, e. g., *Hines v. Boothe*, 841 F. 2d 623, 625 (CA5 1988) (applying *Whitley* where single prisoner resisted order to return to his cell); *Holloway v. Lockhart*, 813 F. 2d 874, 879 (CA8 1987) (applying *Whitley* standard to use of tear gas to end occupation of prison day room); *Ort v. White*, 813 F. 2d 318, 323 (CA11 1987) ("Although *Whitley* was decided in the the extremely volatile context of a prison riot, its reasoning may be applied to other prison situations requiring immediate coercive action").

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II

While the resources of this Court are scarce, and the judgment the Court declines to review today is aberrational enough that correction within the Second Circuit appears likely, in my view the great potential for disruption of prison security engendered by the judgment of the Court of Appeals in this case merits the strong medicine of summary reversal. There are 64 state run correctional institutions within the jurisdiction of the Second Circuit with a total prison population of over 40,000 inmates. U. S. Dept. of Justice, Sourcebook of Criminal Justice Statistics—1987, pp. 449, 493 (1988). The Federal Government runs five correctional institutions within the same geographic region, housing almost 4,000 federal detainees. U. S. Dept. of Justice, Federal Prison System, Monday Morning Highlights, Jan. 23, 1989. In all of these institutions, prison officials and correctional officers must now choose between their sworn duty to maintain the security of the institution and the dictates of the Eighth Amendment as interpreted by the Second Circuit. Because nothing in the Constitution creates such a Hobson's choice, and because this Court has explicitly so held in *Whitley*, I would grant the petition for certiorari and reverse the judgment below. I respectfully dissent.

No. 88-998. CALDWELL *v.* UNITED STATES. C. A. 9th Cir. Motion of petitioner to defer consideration of the petition for writ of certiorari denied. Certiorari denied. JUSTICE STEVENS took no part in the consideration or decision of this motion and this petition. Reported below: 859 F. 2d 805.

No. 88-1008. ALMAN *v.* GEORGE MANUFACTURING CORP. ET AL. C. A. 1st Cir. Motion of National Coordinating Committee for Multiemployer Plans for leave to file a brief as *amicus curiae* granted. Certiorari denied.

No. 88-1062. BEER WHOLESALERS, INC. *v.* MILLER BREWING CO. ET AL. Ct. App. Minn. Certiorari denied. JUSTICE BLACKMUN took no part in the consideration or decision of this petition. Reported below: 426 N. W. 2d 438.

No. 88-1089. BENSON *v.* FAUL ET AL; IN RE BENSON; and BENSON *v.* ALLY ET AL. C. A. 5th Cir. Motion of petitioner to defer consideration of the petition for writ of certiorari denied. Certiorari denied.

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No. 88-1112. *HONOLULU FEDERAL SAVINGS & LOAN ASSN. v. MURABAYASHI ET AL.* C. A. 9th Cir. Certiorari denied. JUSTICE STEVENS took no part in the consideration or decision of this petition. Reported below: 848 F. 2d 1243.

No. 88-5586. *BURTON v. CALIFORNIA.* Sup. Ct. Cal.;
 No. 88-5871. *SLOAN v. MISSOURI.* Sup. Ct. Mo.;
 No. 88-6079. *JONES v. ILLINOIS.* Sup. Ct. Ill.;
 No. 88-6082. *HARDY v. GEORGIA.* Sup. Ct. Ga.;
 No. 88-6101. *TURNER v. FLORIDA.* Sup. Ct. Fla.;
 No. 88-6135. *BOLIEK v. MISSOURI.* Ct. App. Mo., Southern Dist.;

No. 88-6136. *HARVEY v. FLORIDA.* Sup. Ct. Fla.;
 No. 88-6166. *ALLRIDGE v. TEXAS.* Ct. Crim. App. Tex.;
 No. 88-6190. *WILLIAMS v. OHIO.* Sup. Ct. Ohio;
 No. 88-6202. *HAMILTON v. CALIFORNIA.* Sup. Ct. Cal.;
 No. 88-6290. *GILMORE v. MISSOURI.* Ct. App. Mo., Eastern Dist.; and

No. 88-6325. *BROWN v. OHIO.* Sup. Ct. Ohio. Certiorari denied. Reported below: No. 88-5871, 756 S. W. 2d 503; No. 88-6079, 123 Ill. 2d 387, 528 N. E. 2d 648; No. 88-6082, 258 Ga. 523, 371 S. E. 2d 849; No. 88-6101, 530 So. 2d 45; No. 88-6135, 755 S. W. 2d 417; No. 88-6136, 529 So. 2d 1083; No. 88-6166, 762 S. W. 2d 146; No. 88-6190, 38 Ohio St. 3d 346, 528 N. E. 2d 910; No. 88-6202, 46 Cal. 3d 123, 756 P. 2d 1348; No. 88-6290, 755 S. W. 2d 419; No. 88-6325, 38 Ohio St. 3d 305, 528 N. E. 2d 523.

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. 88-5892. *IN RE S.* Sup. Ct. Mo. Motion of petitioner to seal the appendix to the petition for writ of certiorari granted. Certiorari denied.

No. 88-6009. *CRAWFORD v. GEORGIA.* Sup. Ct. Ga. Certiorari denied. JUSTICE BLACKMUN would grant certiorari. Reported below: 257 Ga. 681, 362 S. E. 2d 201.

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JUSTICE BRENNAN, dissenting.

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

JUSTICE MARSHALL, dissenting.

Adhering to my view that the death penalty is in all circumstances cruel and unusual punishment prohibited by the Eighth and Fourteenth Amendments, *Gregg v. Georgia*, 428 U. S. 153, 231 (1976) (MARSHALL, J., dissenting), I would grant the petition for writ of certiorari and vacate the death sentence in this case. Even if I did not take this view, I would grant the petition to resolve the question whether Georgia's standard for change of venue—prohibiting changes in venue unless prejudice renders a fair trial impossible—comports with the requirements of due process.

Eddie Crawford was convicted of murder and sentenced to death. The Supreme Court of Georgia reversed on the grounds that the jury might actually have convicted Crawford not of murder but felony murder, a crime not charged in the indictment. On retrial, Crawford's attorney filed a motion for change of venue, which was denied. He also objected to the seating of any juror who had knowledge of the prior proceeding. This motion was also denied. According to the petition in this case, of the 90 venirepersons, 57 indicated that they were aware of the prior proceedings, 50 indicated that they knew that Crawford had been convicted, and 32 knew that the first jury had sentenced him to death. The jury that was finally empaneled contained eight persons who knew about the prior trial, five who knew that Crawford had been convicted, and three who knew that he had been sentenced to death. The jury convicted Crawford of murder and sentenced him to death.

On appeal, Crawford challenged, *inter alia*, the trial court's refusal to grant him a change of venue. The Supreme Court of Georgia rejected this claim, holding that the setting of the trial was not "inherently prejudicial as a result of the pretrial publicity." 257 Ga. 681, 683, 362 S. E. 2d 201, 203 (1987) (quoting *Chancey v. State*, 256 Ga. 415, 431, 349 S. E. 2d 717, 732 (1986)). The court concluded that the jury selection did not show "actual

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prejudice to a degree that rendered a fair trial impossible." 257 Ga., at 683, 362 S. E. 2d, at 203.

In my view, Georgia's standard for change of venue is so hard to satisfy that it violates any conceivable notion of due process. It totally ignores this Court's repeated recognition that "our system of law has always endeavored to prevent *even the probability of unfairness.*" *In re Murchison*, 349 U. S. 133, 136 (1955) (emphasis added); see also *Sheppard v. Maxwell*, 384 U. S. 333, 352 (1966); *Estes v. Texas*, 381 U. S. 532, 544 (1965). As I argued recently in *Brecheen v. Oklahoma*, 485 U. S. 909, 911 (1988) (opinion dissenting from denial of certiorari), a State's change of venue standard must reflect that a "defendant's interest in a fundamentally fair trial outweighs the State's interest in holding that trial in a particular district." That standard has been flagrantly violated in this case by the seating of a jury a majority of which knew of Crawford's past trial and a quarter of which knew of his prior death sentence.

In the absence of guidance from this Court, the States continue to take divergent paths. It is time we addressed the minimal due process requirements for state change of venue standards. See, e. g., *Lee v. Georgia*, 488 U. S. 879 (1988) (MARSHALL, J., dissenting from denial of certiorari); *Hale v. Oklahoma*, 488 U. S. 878 (1988) (MARSHALL, J., dissenting from denial of certiorari). I would grant the petition.

No. 88-6059. DEPEW v. OHIO. Sup. Ct. Ohio. Certiorari denied. Reported below: 38 Ohio St. 3d 275, 528 N. E. 2d 542.

JUSTICE MARSHALL, with whom JUSTICE BRENNAN joins, dissenting.

Adhering to my view that the death penalty is in all circumstances cruel and unusual punishment prohibited by the Eighth and Fourteenth Amendments, *Gregg v. Georgia*, 428 U. S. 153, 231 (1976) (MARSHALL J., dissenting), I would grant the petition for certiorari and vacate the death sentence in this case. Even if I did not hold these views, I would still grant the petition for certiorari. By any reasonable measure, the prosecutor's comments to the jury "so infected the trial with unfairness as to make the resulting conviction a denial of due process." *Darden v. Wainwright*, 477 U. S. 168, 181 (1986), quoting *Donnelly v. DeChristoforo*, 416 U. S. 637, 643 (1974).

Petitioner was convicted of aggravated murder and sentenced to death. The Ohio Supreme Court identified four instances of prosecutorial misconduct, but concluded that, because of the brutal nature of the crime, they neither singly nor cumulatively deprived petitioner of a fair trial.

The first was the prosecution's inquiry, during cross-examination of a defense witness, into a "knife fight" during which petitioner had allegedly been cut. The knife fight was wholly unrelated to the alleged murder, and the judge accordingly admonished the jury to disregard the prosecutor's reference to it. 38 Ohio St. 3d 275, 284, 528 N. E. 2d 542, 553 (1988).

The second was the prosecutor's comment during closing argument that, if petitioner had taken the stand, the prosecutor would have inquired into petitioner's criminal convictions *after* the date of the alleged murder. The judge again ordered that the jury disregard the prosecutor's comment, and the prosecutor apologized to the jury, saying: "I shouldn't have said that. I wish you would just forget that because there's nothing like that here." *Ibid.*

The third was the prosecutor's introduction into evidence, during the penalty phase, of a photograph of petitioner standing next to a marijuana plant. The prosecutor adverted to this photograph during the penalty phase. The State Supreme Court found the introduction of this photograph to be error, but concluded: "The factors supporting death as a penalty were so persuasive and so numerous that this single photograph cannot be regarded as having materially prejudiced [petitioner]." *Id.*, at 287, 528 N. E. 2d, at 555.

Fourth and finally, the prosecutor made various improper closing-argument comments, "by reminding the jury that any sentence less than death could result in eventual parole, by alluding to facts not in evidence, by asking the jury why [petitioner] did not call certain persons to the stand, and by appealing to the jury's desire for law and order." *Ibid.* The State Supreme Court again found these comments only harmless error.

In my view, it is beyond serious dispute that these prosecutorial actions cumulatively deprived petitioner of a fair trial. The dissenting State Supreme Court judge characterized these actions, quite properly in my view, as "prosecutorial misconduct of the worst sort." *Id.*, at 293, 528 N. E. 2d, at 560 (Wright, J., concurring in part and dissenting in part). Even the majority, so

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tolerant of these abuses, found it necessary to state: "While the prosecutorial misconduct in this case does not require a reversal of appellant's sentence, we express our mounting alarm over the increasing incidence of misconduct by both prosecutors and defense counsel in capital cases." *Id.*, at 288, 528 N. E. 2d, at 556. I would accordingly grant certiorari here to clarify that behavior such as that outlined above is simply not constitutionally acceptable and to correct the errors in this case which may have been responsible for putting petitioner on death row.

No. 88-6078. *BRITZ v. ILLINOIS*. Sup. Ct. Ill. Certiorari denied. Reported below: 123 Ill. 2d 446, 528 N. E. 2d 703.

JUSTICE MARSHALL, with whom JUSTICE BRENNAN joins, dissenting.

Adhering to my view that the death penalty is in all circumstances cruel and unusual punishment prohibited by the Eighth and Fourteenth Amendments, *Gregg v. Georgia*, 428 U. S. 153, 231 (1976) (MARSHALL, J., dissenting), I would grant the petition for writ of certiorari and vacate the death sentence in this case. Even if I did not hold this view, I would grant the petition to consider whether a jury instruction that sympathy should not influence a decision regarding the imposition of the death penalty violates the Eighth and Fourteenth Amendments.

I

Dewayne C. Britz was convicted of murder, aggravated kidnapping, aggravated criminal sexual assault, armed robbery, and concealment of a homicidal death. At the penalty phase, the trial judge charged the jury that "[n]either sympathy nor prejudice should influence you." 123 Ill. 2d 446, 479, 528 N. E. 2d 703, 719 (1988), quoting Illinois Pattern Jury Instructions, Criminal, No. 1.01 (2d ed. 1981). Defense counsel specifically objected to this instruction. The jury unanimously found that statutory aggravating factors existed and that no mitigating factors precluded the imposition of the death sentence. Petitioner was sentenced to death.

The Illinois Supreme Court affirmed. 123 Ill. 2d 446, 528 N. E. 2d 703 (1988). The court held that the trial court's no-sympathy jury instruction was similar to the instruction approved in *California v. Brown*, 479 U. S. 538 (1987). Relying on its decision in *People v. Stewart*, 104 Ill. 2d 463, 473 N. E. 2d 1227 (1984), cert.

denied, 471 U. S. 1120 (1985), the court further held that the instruction did not deny petitioner a fair trial because the jury was also instructed that it could consider any other facts or circumstances that favored imposition of a sentence other than death, and because the defendant was permitted to introduce all evidence he considered mitigating, including evidence ruled inadmissible during the guilt phase.

II

We have recognized repeatedly that, in a capital case, the sentencer must not be precluded from considering any mitigating evidence relating to the defendant or the crime. See, e. g., *Eddings v. Oklahoma*, 455 U. S. 104, 111-112 (1982); *Lockett v. Ohio*, 438 U. S. 586, 604 (1978) (plurality opinion). Mitigating evidence is allowed at the penalty phase so the sentencer may consider "compassionate . . . factors stemming from the diverse frailties of humankind." *Woodson v. North Carolina*, 428 U. S. 280, 304 (1976) (plurality opinion). "Nothing in any of our cases suggests that the decision to afford an individual defendant mercy violates the Constitution." *Gregg v. Georgia*, *supra*, at 199 (joint opinion of Stewart, Powell, and STEVENS, JJ.); see also *Caldwell v. Mississippi*, 472 U. S. 320, 330-331 (1985).

The Court reaffirmed the importance of considering mitigating evidence in *California v. Brown*, *supra*. There, the trial judge instructed the jury that it must not be swayed by "mere sentiment, conjecture, sympathy, passion, prejudice, public opinion or public feeling." 479 U. S., at 542. The majority held that this instruction did not violate the Eighth and Fourteenth Amendments for two reasons. First, it found that the word "mere" informed the jury "to ignore *only* the sort of sympathy that would be totally divorced from the evidence adduced during the penalty phase." *Ibid.* (emphasis added). "By concentrating on the noun 'sympathy,'" the defendant had "ignore[d] the crucial fact that the jury was instructed to avoid basing its decision on *mere* sympathy." *Ibid.* (emphasis in original). Second, the majority deemed it "highly unlikely that any reasonable juror would almost perversely single out the word 'sympathy' from the other nouns which accompany it in the instruction: conjecture, passion, prejudice, public opinion, or public feeling." *Id.*, at 542-543. "Reading the instruction as a whole," *id.*, at 543, a rational juror could only conclude that the instruction was intended simply to confine

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the jury's deliberations to considerations arising from the evidence presented.

Neither of the reasons relied upon by the majority to uphold the instruction in *California v. Brown*, *supra*, is applicable to the jury instruction at issue in this case. Here, the jury was informed that sympathy should not influence its decision *under any circumstances*. The trial court's all-inclusive no-sympathy instruction, thus, embraced sympathy engendered by facts in the record as well as sympathy engendered by "extraneous emotional factors." *Ibid.* Furthermore, unlike the instruction in *Brown*, the instruction here was not contained in "a catalog of the kind of factors that could improperly influence a juror's decision to vote for or against the death penalty." *Ibid.* Reasonable jurors, therefore, may well have thought they were not permitted to exercise mercy or compassion when sentencing petitioner, even if such feelings were "rooted" in the evidence. *Id.*, at 542.

III

The constitutionality of a general no-sympathy instruction is a recurring issue on which the lower courts have differed. Compare *Byrne v. Butler*, 847 F. 2d 1135 (CA5 1988), and *State v. Clemmons*, 753 S. W. 2d 901 (Mo.) (en banc), cert. denied, 488 U. S. 948 (1988), with *People v. Hamilton*, 46 Cal. 3d 123, 152, and n. 7, 756 P. 2d 1348, 1364-1365, and n. 7 (1988), cert. denied, *ante*, p. 1040, and *Parks v. Brown*, 860 F. 2d 1545, 1559 (CA10 1988). The petition should be granted in order to resolve this conflict and to address this important issue. I dissent.

No. 88-6113. *COBB v. NIZAMI ET AL.* C. A. 4th Cir. Motion of NAACP Legal Defense and Educational Fund for leave to file a brief as *amicus curiae* granted. Certiorari denied. Reported below: 851 F. 2d 730.

No. 88-6133 (A-532). *TROTZ v. UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF PENNSYLVANIA.* C. A. 3d Cir. Application for stay, addressed to THE CHIEF JUSTICE and referred to the Court, denied. Certiorari denied.

No. 88-6281. *LAYTON v. UNITED STATES.* C. A. 9th Cir. Certiorari denied. JUSTICE KENNEDY took no part in the consideration or decision of this petition. Reported below: 855 F. 2d 1388.

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Rehearing Denied

No. 87-2009. GREENMAN *v.* UNITED STATES, 488 U. S. 824;
No. 88-237. NOEL *v.* DEPARTMENT OF SANITATION OF CITY OF NEW YORK, 488 U. S. 925;

No. 88-459. ANDERSON ET AL. *v.* UNITED STATES, 488 U. S. 966;

No. 88-736. WANKOFF, INDIVIDUALLY AND AS ADMINISTRATRIX OF THE ESTATE OF WANKOFF *v.* TIBBS ET AL., 488 U. S. 1007;

No. 88-751. ROWLAND *v.* ALAMEDA COUNTY PROBATION DEPARTMENT, 488 U. S. 982;

No. 88-896. POLYAK *v.* HULEN ET AL., 488 U. S. 999;

No. 88-5603. INGRAM *v.* KEMP, WARDEN, 488 U. S. 975;

No. 88-5701. SPAN *v.* DUGGER, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL., 488 U. S. 973;

No. 88-5716. LEMBERG *v.* TSENG ET AL., 488 U. S. 984;

No. 88-5768. SELLNER *v.* PRINCE GEORGE'S COUNTY, MARYLAND, ET AL., 488 U. S. 985;

No. 88-5852. BETKA *v.* CITY OF WEST LINN, OREGON, ET AL. (two cases), 488 U. S. 999;

No. 88-5860. TROTZ *v.* UNITED STATES DISTRICT COURT, WESTERN DISTRICT OF PENNSYLVANIA, ET AL., 488 U. S. 1015;

No. 88-5880. SINGLETON *v.* THIGPEN, COMMISSIONER, ALABAMA DEPARTMENT OF CORRECTIONS, 488 U. S. 1019; and

No. 88-5982. IN RE GILL, 488 U. S. 1002. Petitions for rehearing denied.

No. 87-7311. POINDEXTER *v.* OHIO, 488 U. S. 916. Motion for leave to file petition for rehearing denied.

No. 88-575. BURT *v.* MAUI ARCHITECTURAL GROUP, INC., ET AL., 488 U. S. 962. Motion of appellant to consolidate denied. Petition for rehearing denied.

No. 88-647. WHITEHORN ET UX. *v.* MURPHY ET AL., 488 U. S. 997. Petition for rehearing denied. JUSTICE BRENNAN and JUSTICE STEVENS took no part in the consideration or decision of this petition.

No. 88-656. FRIEDMAN *v.* FERGUSON ET AL., 488 U. S. 993;

No. 88-677. BOYLE, PERSONAL REPRESENTATIVE OF THE HEIRS AND ESTATE OF BOYLE *v.* UNITED TECHNOLOGIES CORP., 488 U. S. 994; and

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No. 88-5921. *IN RE MARTIN*, 488 U. S. 1002. Petitions for rehearing denied. JUSTICE BRENNAN took no part in the consideration or decision of these petitions.

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Miscellaneous Orders

No. A-638 (88-6585). *FETTERLY v. IDAHO*. Sup. Ct. Idaho. Application to continue stay of execution of death warrant, presented to JUSTICE O'CONNOR, and by her referred to the Court, denied.

JUSTICE BRENNAN and JUSTICE MARSHALL, dissenting.

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

No. A-671 (88-6635). *WILLIAMS v. KEMP, WARDEN*. C. A. 11th Cir. Application of respondent for an order to vacate the stay of execution of sentence of death entered by the United States Court of Appeals for the Eleventh Circuit, presented to JUSTICE KENNEDY, and by him referred to the Court, denied.

FEBRUARY 27, 1989

Dismissal Under Rule 53

No. 88-1017. *AJAX NAVIGATION CORP. v. DOS SANTOS*. Dist. Ct. App. Fla., 3d Dist. Certiorari dismissed under this Court's Rule 53. Reported below: 531 So. 2d 231.

Appeals Dismissed

No. 88-715. *BURLESON v. BURLESON*. Appeal from Ct. App. Cal., 3d App. Dist., dismissed for want of substantial federal question.

No. 88-5990. *ROBINSON v. UNITED STATES DEPARTMENT OF EDUCATION*. Appeal from D. C. E. D. Pa. dismissed for want of jurisdiction.

No. 88-6242. *ROBINSON v. ENGLISH DEPARTMENT OF THE UNIVERSITY OF PENNSYLVANIA ET AL.* Appeal from D. C. E. D. Pa. dismissed for want of jurisdiction.

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Certiorari Granted—Vacated and Remanded

No. 87-1784. MASSACHUSETTS *v.* GRAY, TRUSTEE IN BANKRUPTCY OF NEWBURY CAFE, INC., DBA 29 NEWBURY. C. A. 1st Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *United States v. Ron Pair Enterprises, Inc.*, ante, p. 235. Reported below: 841 F. 2d 20.

No. 87-2070. DEGEARE ET AL. *v.* SLATTERY GROUP, INC., ET AL. C. A. 8th Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Firestone Tire & Rubber Co. v. Bruch*, ante, p. 101. Reported below: 837 F. 2d 812.

No. 87-6063. MEADOWS *v.* HOLLAND, WARDEN. 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 *Harris v. Reed*, ante, p. 255. Reported below: 831 F. 2d 493.

No. 87-7320. SPARKS *v.* FOLTZ, WARDEN. C. A. 6th 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 *Harris v. Reed*, ante, p. 255. Reported below: 848 F. 2d 194.

No. 88-163. COMBUSTION ENGINEERING, INC., ET AL. *v.* SAVORITO ET AL. C. A. 3d Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Firestone Tire & Rubber Co. v. Bruch*, ante, p. 101. Reported below: 843 F. 2d 666.

No. 88-729. ROWE ET AL. *v.* ALLIED CHEMICAL HOURLY EMPLOYEES' PENSION PLAN ET AL. C. A. 6th Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Firestone Tire & Rubber Co. v. Bruch*, ante, p. 101. Reported below: 852 F. 2d 569.

Miscellaneous Orders

No. D-723. IN RE DISBARMENT OF STARK. Disbarment entered. [For earlier order herein, see 487 U. S. 1248.]

No. D-735. IN RE DISBARMENT OF STOLL. Disbarment entered. [For earlier order herein, see 488 U. S. 885.]

No. D-771. IN RE DISBARMENT OF BIAGGI. It is ordered that Mario Biaggi, of New York, N. Y., be suspended from the prac-

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tice 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. 114, Orig. LOUISIANA *v.* MISSISSIPPI ET AL., 488 U. S. 990. Petition for rehearing and alternative motion to file separate complaint denied.

No. 87-2127. AMERICAN FOREIGN SERVICE ASSN. ET AL. *v.* GARFINKEL, DIRECTOR, INFORMATION SECURITY OVERSIGHT OFFICE, ET AL. D. C. D. C. [Probable jurisdiction noted, 488 U. S. 923.] Motions of United States Senate and Speaker and Leadership Group for leave to file briefs as *amici curiae* out of time granted.

No. 88-148. SOUTHERN NATURAL GAS CO. *v.* FRITZ ET AL. Sup. Ct. Miss. Motion of petitioner to defer consideration of the petition for writ of certiorari granted.

No. 88-293. COMMUNITY FOR CREATIVE NON-VIOLENCE ET AL. *v.* REID. C. A. D. C. Cir. [Certiorari granted, 488 U. S. 940.] Motion of Volunteer Lawyers for the Arts Inc. et al. for leave to file a brief as *amici curiae* granted.

No. 88-309. WYOMING *v.* UNITED STATES ET AL. Sup. Ct. Wyo. [Certiorari granted, 488 U. S. 1040.] Motion of petitioner to dispense with printing the joint appendix granted.

No. 88-1105. GUIDRY *v.* SHEET METAL WORKERS NATIONAL PENSION FUND ET AL. C. A. 10th Cir. The Solicitor General is invited to file a brief in this case expressing the views of the United States.

No. 88-6265. CARLSON ET UX. *v.* COUNTY OF HENNEPIN, MINNESOTA, ET AL. Ct. App. Minn. Motion of petitioners for leave to proceed *in forma pauperis* denied. Petitioners are allowed until March 20, 1989, within which to pay the docketing fee required by Rule 45(a) and to submit a petition in compliance with Rule 33 of the Rules of this Court.

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

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

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No. 88-6285. IN RE TODD; and

No. 88-6334. IN RE JONES. Petitions for writs of mandamus denied.

Certiorari Granted

No. 88-928. WHITE, EXECUTOR OF THE ESTATE OF SMITH *v.* UNITED STATES ET AL. C. A. 2d Cir. Certiorari granted. Reported below: 853 F. 2d 107.

No. 88-995. NORTHBROOK NATIONAL INSURANCE CO. *v.* BREWER. C. A. 5th Cir. Certiorari granted. Reported below: 854 F. 2d 742.

No. 87-2012. FW/PBS, INC., DBA PARIS ADULT BOOKSTORE II, ET AL. *v.* CITY OF DALLAS ET AL.;

No. 87-2051. M. J. R., INC., ET AL. *v.* CITY OF DALLAS; and

No. 88-49. BERRY ET AL. *v.* CITY OF DALLAS ET AL. C. A. 5th Cir. Motion of Citizens For Decency Through Law, Inc., for leave to file a brief as *amicus curiae* in No. 87-2012 granted. Certiorari granted in No. 87-2012 limited to Questions I, II, and III presented by the petition. Certiorari granted in No. 87-2051 limited to Questions 1 and 2 presented by the petition. Certiorari granted in No. 88-49. Cases consolidated and a total of one hour allotted for oral argument. Reported below: 837 F. 2d 1298.

No. 88-5050. HOLLAND *v.* ILLINOIS. Sup. Ct. Ill. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted. Reported below: 121 Ill. 2d 136, 520 N. E. 2d 270.

No. 88-6025. DOWLING *v.* UNITED STATES. C. A. 3d Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted. Reported below: 855 F. 2d 114.

Certiorari Denied

No. 87-1283. HIGGINS *v.* CITY OF VALLEJO, CALIFORNIA, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 823 F. 2d 351.

No. 87-1754. CITY OF SOUTH BEND ET AL. *v.* JANOWIAK. C. A. 7th Cir. Certiorari denied. Reported below: 836 F. 2d 1034.

No. 87-2022. ANDERSON ET AL. *v.* SLATTERY GROUP, INC., ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 836 F. 2d 1512.

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No. 87-2052. *M. E. F. ENTERPRISES, INC., ET AL. v. CITY OF HOUSTON ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 837 F. 2d 1268.

No. 87-5813. *YATES v. HARDIMAN, EXECUTIVE DIRECTOR OF THE COOK COUNTY DEPARTMENT OF CORRECTIONS, ET AL.* C. A. 7th Cir. Certiorari denied. Reported below: 830 F. 2d 195.

No. 87-5816. *NEWSOME v. LANE, DIRECTOR, ILLINOIS DEPARTMENT OF CORRECTIONS, ET AL.* C. A. 7th Cir. Certiorari denied. Reported below: 828 F. 2d 21.

No. 87-5884. *MILLER v. O'LEARY, WARDEN, ET AL.* C. A. 7th Cir. Certiorari denied. Reported below: 828 F. 2d 22.

No. 87-6031. *ROMAN v. ABRAMS, ATTORNEY GENERAL OF NEW YORK.* C. A. 2d Cir. Certiorari denied. Reported below: 822 F. 2d 214.

No. 87-6154. *SCHREIBER v. SALAMACK, SUPERINTENDENT, EDGEcombe CORRECTIONAL FACILITY.* C. A. 2d Cir. Certiorari denied. Reported below: 822 F. 2d 214.

No. 87-6302. *SMITH v. MISSOURI.* Ct. App. Mo., Western Dist. Certiorari denied. Reported below: 737 S. W. 2d 731.

No. 87-6789. *HARREN v. THORNBURG, ATTORNEY GENERAL OF NORTH CAROLINA.* C. A. 4th Cir. Certiorari denied. Reported below: 836 F. 2d 546.

No. 88-828. *BIAGGI ET AL. v. UNITED STATES.* C. A. 2d Cir. Certiorari denied. Reported below: 853 F. 2d 89.

No. 88-892. *KINOY v. TOLSON, EXECUTOR OF THE ESTATE OF HOOVER, ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 851 F. 2d 591.

No. 88-907. *SKELTON v. ACTION.* C. A. D. C. Cir. Certiorari denied.

No. 88-919. *MCCARTHY v. UNITED STATES.* C. A. 9th Cir. Certiorari denied. Reported below: 850 F. 2d 558.

No. 88-924. *GRONDA v. NEWMAN, ACTING SECRETARY OF HEALTH AND HUMAN SERVICES.* C. A. 6th Cir. Certiorari denied. Reported below: 856 F. 2d 36.

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No. 88-940. *BANK ONE, STEVENS POINT, NA v. UNITED STATES DEPARTMENT OF COMMERCE ET AL.* C. A. 7th Cir. Certiorari denied. Reported below: 854 F. 2d 223.

No. 88-947. *HARRISON ET UX. v. COMMISSIONER OF INTERNAL REVENUE.* C. A. 7th Cir. Certiorari denied. Reported below: 854 F. 2d 263.

No. 88-948. *CITY OF BRUNSWICK, GEORGIA v. UNITED STATES.* C. A. 11th Cir. Certiorari denied. Reported below: 849 F. 2d 501.

No. 88-966. *SWEENEY ET AL. v. ILLINOIS.* App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 166 Ill. App. 3d 1147, 537 N. E. 2d 465.

No. 88-979. *BAUM ET AL. v. NOLAN ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 853 F. 2d 1071.

No. 88-990. *DEHAL v. FRANK, POSTMASTER GENERAL.* C. A. 9th Cir. Certiorari denied. Reported below: 859 F. 2d 154.

No. 88-999. *FRACCOLA v. CITY OF UTICA ET AL.* App. Div., Sup. Ct. N. Y., 4th Jud. Dept. Certiorari denied. Reported below: 135 App. Div. 2d 1112, 523 N. Y. S. 2d 292.

No. 88-1064. *MILLER v. CONAGRA, INC., ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 846 F. 2d 1383.

No. 88-1085. *ESTATE OF WILLIS ET AL. v. ESTATE OF RILEY ET AL.* C. A. 5th Cir. Certiorari denied.

No. 88-1098. *BERG v. HUNTER ET AL.* C. A. 7th Cir. Certiorari denied. Reported below: 854 F. 2d 238.

No. 88-1101. *MADISON v. DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION.* Ct. App. D. C. Certiorari denied.

No. 88-1103. *WILDER ET AL. v. NEW YORK STATE URBAN DEVELOPMENT CORP. ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 854 F. 2d 605.

No. 88-1115. *WILMOTH v. VIRGINIA.* Sup. Ct. Va. Certiorari denied.

No. 88-1122. *GOETZ v. NEW YORK.* Ct. App. N. Y. Certiorari denied. Reported below: 73 N. Y. 2d 751, 532 N. E. 2d 1273.

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No. 88-1124. *CITY OF BERWYN ET AL. v. PIZZATO'S INC. ET AL.* App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 168 Ill. App. 3d 796, 523 N. E. 2d 51.

No. 88-1129. *ALWAN BROTHERS CO. ET AL. v. GNIDOVEC ET AL.* Sup. Ct. Ky. Certiorari denied.

No. 88-1130. *NUTRI/SYSTEM, INC., ET AL. v. HERSKOWITZ ET AL.* C. A. 3d Cir. Certiorari denied. Reported below: 857 F. 2d 179.

No. 88-1131. *HARBOR INSURANCE CO. v. CROW ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 854 F. 2d 94.

No. 88-1132. *FINN v. CHEVRON, U. S. A., INC.* C. A. 9th Cir. Certiorari denied. Reported below: 851 F. 2d 1227.

No. 88-1134. *SMITH v. COMBUSTION ENGINEERING, INC., ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 856 F. 2d 196.

No. 88-1135. *LARRANCE v. ILLINOIS HUMAN RIGHTS COMMISSION ET AL.* App. Ct. Ill., 4th Dist. Certiorari denied. Reported below: 166 Ill. App. 3d 224, 519 N. E. 2d 1203.

No. 88-1137. *INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE & AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, UAW v. MACK TRUCKS, INC.* C. A. 3d Cir. Certiorari denied. Reported below: 856 F. 2d 579.

No. 88-1140. *LUDWIG v. EVERGREEN OVERLOOK, INC., ET AL.* Ct. Sp. App. Md. Certiorari denied. Reported below: 75 Md. App. 731.

No. 88-1172. *GOWNARIS ET VIR v. UNITED STATES POSTAL SERVICE.* C. A. 3d Cir. Certiorari denied. Reported below: 865 F. 2d 250.

No. 88-1183. *WHITE, WARDEN v. CHATOM.* C. A. 11th Cir. Certiorari denied. Reported below: 858 F. 2d 1479.

No. 88-1196. *GOREE ET AL. v. LAVELLE ET AL.* App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 169 Ill. App. 3d 696, 523 N. E. 2d 1078.

No. 88-1205. *HAGGERTY v. CITY OF POMPANO BEACH, FLORIDA.* Dist. Ct. App. Fla., 4th Dist. Certiorari denied. Reported below: 530 So. 2d 1023.

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No. 88-1219. *BIELICKI ET UX. v. PAKISTAN NATIONAL SHIPPING CORP. ET AL.* C. A. 3d Cir. Certiorari denied. Reported below: 857 F. 2d 1463.

No. 88-1226. *BRYANT v. CALIFORNIA.* App. Dept., Super. Ct. Cal., County of Alameda. Certiorari denied.

No. 88-1230. *MANUEL v. VETERANS ADMINISTRATION HOSPITAL ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 857 F. 2d 1112.

No. 88-1231. *MOELLER v. UNITED STATES ET AL.* C. A. 8th Cir. Certiorari denied. Reported below: 860 F. 2d 1086.

No. 88-1235. *BOINEAU v. UNITED STATES ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 856 F. 2d 187.

No. 88-1251. *VELEZ ET AL. v. UNITED STATES.* C. A. 2d Cir. Certiorari denied. Reported below: 867 F. 2d 1425.

No. 88-1262. *BURKE, AKA OWENS v. UNITED STATES.* C. A. 9th Cir. Certiorari denied. Reported below: 863 F. 2d 886.

No. 88-1287. *MURRAY ET AL. v. UNITED STATES.* C. A. Fed. Cir. Certiorari denied. Reported below: 864 F. 2d 148.

No. 88-5415. *REEDY v. UNITED STATES.* C. A. 10th Cir. Certiorari denied. Reported below: 845 F. 2d 239.

No. 88-5668. *BRUNI v. LEWIS, DIRECTOR, ARIZONA DEPARTMENT OF CORRECTIONS, ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 847 F. 2d 561.

No. 88-5681. *WORKMAN v. TATE, SUPERINTENDENT, CHILLICOTHE CORRECTIONAL INSTITUTE.* C. A. 6th Cir. Certiorari denied. Reported below: 856 F. 2d 197.

No. 88-5849. *DAVIS v. OKLAHOMA.* Ct. Crim. App. Okla. Certiorari denied. Reported below: 763 P. 2d 109.

No. 88-6030. *BOWDEN, AKA DRAKEFORD v. UNITED STATES.* C. A. 11th Cir. Certiorari denied. Reported below: 858 F. 2d 743.

No. 88-6140. *BONACCI ET AL. v. KINDT, WARDEN, ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 861 F. 2d 1278.

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No. 88-6243. *HEFNER v. CALIFORNIA*. Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 88-6245. *CLARK v. FORTNEY ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 857 F. 2d 789.

No. 88-6264. *CAMBRIDGE v. DUCKWORTH, SUPERINTENDENT, INDIANA STATE PRISON, ET AL.* C. A. 7th Cir. Certiorari denied. Reported below: 859 F. 2d 526.

No. 88-6268. *MAYNARD v. MARION POWER SHOVEL, DIVISION OF DRESSER INDUSTRIES, INC.* C. A. 6th Cir. Certiorari denied. Reported below: 852 F. 2d 1287.

No. 88-6269. *FOURNETTE v. BUTLER, WARDEN, ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 860 F. 2d 436.

No. 88-6270. *JARVIS v. MEARES, SUPERINTENDENT, GASTON FACILITY, ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 838 F. 2d 1210.

No. 88-6271. *HARRELL v. BORG, WARDEN, ET AL.* C. A. 9th Cir. Certiorari denied.

No. 88-6274. *VILLAMOR v. DUGGER, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS.* C. A. 11th Cir. Certiorari denied. Reported below: 860 F. 2d 1091.

No. 88-6275. *RILEY v. DUGGER, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL.* C. A. 11th Cir. Certiorari denied. Reported below: 859 F. 2d 925.

No. 88-6282. *ELSWICK v. PARKE, WARDEN.* C. A. 6th Cir. Certiorari denied. Reported below: 861 F. 2d 720.

No. 88-6283. *CURLEY v. MORRIS, SUPERINTENDENT, SOUTHERN OHIO CORRECTIONAL FACILITY.* C. A. 6th Cir. Certiorari denied. Reported below: 853 F. 2d 926.

No. 88-6286. *PEREZ v. FLORIDA.* Dist. Ct. App. Fla., 3d Dist. Certiorari denied. Reported below: 524 So. 2d 720.

No. 88-6288. *GUTIERREZ v. SCULLY, SUPERINTENDENT, GREEN HAVEN CORRECTIONAL FACILITY.* C. A. 2d Cir. Certiorari denied. Reported below: 867 F. 2d 1423.

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No. 88-6289. JACKSON *v.* SOUTH TEXAS COLLEGE OF LAW ET AL. Ct. App. Tex., 14th Dist. Certiorari denied.

No. 88-6292. DAVIS-EL *v.* ROBINSON. C. A. 4th Cir. Certiorari denied. Reported below: 852 F. 2d 565.

No. 88-6295. MILLS *v.* TEXAS. Ct. App. Tex., 14th Dist. Certiorari denied.

No. 88-6296. SPICKLER *v.* DUBE ET AL. C. A. 1st Cir. Certiorari denied. Reported below: 852 F. 2d 564.

No. 88-6297. SMALL *v.* BUMGARNER, SUPERINTENDENT, SOUTHERN CORRECTIONAL CENTER, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 861 F. 2d 266.

No. 88-6298. MADDOX *v.* DUGGER, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 88-6299. NOBLES *v.* LYNAUGH, DIRECTOR, TEXAS DEPARTMENT OF CORRECTIONS. Ct. Crim. App. Tex. Certiorari denied.

No. 88-6300. SANDERS *v.* LANE, ILLINOIS DEPARTMENT OF CORRECTIONS. C. A. 7th Cir. Certiorari denied. Reported below: 861 F. 2d 1033.

No. 88-6301. SULTANA *v.* CALIFORNIA. Ct. App. Cal., 6th App. Dist. Certiorari denied. Reported below: 204 Cal. App. 3d 511, 251 Cal. Rptr. 115.

No. 88-6307. TINGHITELLA *v.* LYNAUGH, DIRECTOR, TEXAS DEPARTMENT OF CORRECTIONS. C. A. 5th Cir. Certiorari denied.

No. 88-6309. TAYLOR *v.* MURRAY, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 861 F. 2d 266.

No. 88-6311. ZATKO *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 88-6313. STORY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 861 F. 2d 724.

No. 88-6328. MCCABE *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

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No. 88-6340. *BARR v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 861 F. 2d 1278.

No. 88-6354. *ASANTE v. UNITED STATES*. C. A. 3d Cir. Certiorari denied.

No. 88-6362. *HARDIN v. MAKOWSKI ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 863 F. 2d 883.

No. 88-6367. *BARNHILL v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 865 F. 2d 249.

No. 88-6369. *DAWSON v. UNITED STATES*. C. A. 11th Cir. Certiorari denied. Reported below: 863 F. 2d 889.

No. 88-6371. *AFFLECK v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 861 F. 2d 97.

No. 88-6377. *RICHARDSON v. UNITED STATES*. C. A. D. C. Cir. Certiorari denied. Reported below: 274 U. S. App. D. C. 58, 861 F. 2d 291.

No. 88-6378. *SHOOK ET AL. v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 863 F. 2d 887.

No. 88-6382. *KABIR v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 865 F. 2d 261.

No. 88-6389. *VENNES v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 871 F. 2d 1091.

No. 88-6398. *SLAUGHTER v. MOODY ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 859 F. 2d 919.

No. 88-6400. *SCHLEICHER v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 862 F. 2d 1320.

No. 88-6406. *ZULUETA v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 859 F. 2d 1321.

No. 88-6407. *MORSE v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 861 F. 2d 269.

No. 88-6413. *LANDRIE v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 861 F. 2d 721.

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No. 88-6419. CHAMBERS *v.* DUCHARME, SUPERINTENDENT, WASHINGTON STATE REFORMATORY. C. A. 9th Cir. Certiorari denied. Reported below: 862 F. 2d 875.

No. 88-6421. REEVES *v.* REED. Sup. Ct. Alaska. Certiorari denied.

No. 88-6426. ROBERTS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 859 F. 2d 593.

No. 87-889. COMPOY, WARDEN *v.* TURNER. C. A. 9th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 827 F. 2d 526.

No. 87-5617. LINDSEY *v.* SMITH, COMMISSIONER, ALABAMA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir.;

No. 87-6740. DAVIS *v.* ILLINOIS. Sup. Ct. Ill.;

No. 87-7103. SIMMONS *v.* KENTUCKY. Sup. Ct. Ky.;

No. 88-5082. WILLIS *v.* ZANT, SUPERINTENDENT, GEORGIA DIAGNOSTIC AND CLASSIFICATION CENTER. C. A. 11th Cir.;

No. 88-5473. HORSLEY *v.* ALABAMA. Ct. Crim. App. Ala.;

No. 88-5687. EDWARDS *v.* BLACK, COMMISSIONER, MISSISSIPPI DEPARTMENT OF CORRECTIONS, ET AL. C. A. 5th Cir.;

No. 88-5828. DUNKINS *v.* THIGPEN, COMMISSIONER, ALABAMA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir.;

No. 88-6237. CUNNINGHAM *v.* ZANT, WARDEN. Sup. Ct. Ga.;

No. 88-6310. BROWN *v.* CALIFORNIA. Sup. Ct. Cal.;

No. 88-6383. KIRKPATRICK *v.* CALIFORNIA. Sup. Ct. Cal.;

and

No. 88-6410. NAVE *v.* MISSOURI. Ct. App. Mo., Eastern Dist. Certiorari denied. Reported below: No. 87-5617, 820 F. 2d 1137; No. 87-6740, 119 Ill. 2d 61, 518 N. E. 2d 78; No. 87-7103, 746 S. W. 2d 393; No. 88-5082, 838 F. 2d 1510; No. 88-5473, 527 So. 2d 1355; No. 88-5687, 849 F. 2d 204; No. 88-5828, 854 F. 2d 394; No. 88-6310, 46 Cal. 3d 432, 758 P. 2d 1135; No. 88-6410, 757 S. W. 2d 249.

JUSTICE BRENNAN and JUSTICE MARSHALL, dissenting.

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

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No. 88-581. *UNITED STATES v. STILL*. C. A. 9th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. JUSTICE WHITE and JUSTICE BLACKMUN would grant certiorari. Reported below: 850 F. 2d 607.

No. 88-1019. *BERKSON v. DEL MONTE CORP. ET AL.* C. A. 1st Cir. Certiorari denied. THE CHIEF JUSTICE took no part in the consideration or decision of this petition. Reported below: 852 F. 2d 564.

No. 88-1136. *CONNECTICUT NATIONAL BANK v. HERSKOWITZ ET AL.* C. A. 3d Cir. Certiorari denied. JUSTICE WHITE would grant certiorari. Reported below: 857 F. 2d 179.

No. 88-5343. *FARMER v. SUMNER, DIRECTOR, NEVADA DEPARTMENT OF PRISONS*. Sup. Ct. Nev. Certiorari denied. Reported below: 104 Nev. 856.

JUSTICE MARSHALL, with whom JUSTICE BRENNAN joins, dissenting.

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

Even if I did not hold these views, however, I would still grant this petition. Petitioner's argument here is that evidence was admitted at the penalty phase of his trial in violation of *Booth v. Maryland*, 482 U. S. 496 (1987), where we held that the Eighth Amendment prohibits a capital sentencing jury from considering victim impact statement evidence. This argument is hardly frivolous. The prosecutor at petitioner's trial described at some length the devastating emotional impact upon the mother of the man petitioner killed. He told the jury, among other things, that petitioner "shattered some other lives psychologically"; that the victim's mother has "repeated nightmares, crying, and I can see the crying for myself. Extremely emotionally traumatic"; and that petitioner "[n]ever thought about the victims. Never gave the families of the victims, a thought." The Nevada Supreme Court, however, refused to consider the merits of this *Booth* claim. It held that petitioner's claim was barred because he had not raised it below, and because this Court has given no indication that *Booth* operates retroactively.

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I am unpersuaded by these arguments. The fact that petitioner did not raise a *Booth* claim below rather obviously reflects the fact that *Booth* had not been handed down at the time. Petitioner should not be penalized for not being prescient. As for the Nevada court's second ground for rejecting petitioner's appeal, I believe that the issue whether *Booth* should have retroactive operation very much warrants this Court's attention. The abusive use by the prosecutor in this case of references to victim impact—information we held in *Booth* to be thoroughly irrelevant in capital sentencing proceedings, see 482 U. S., at 502–509 provides a graphic illustration of the harm done by decisions, like the one below, allowing *Booth* to be applied only prospectively.

Rehearing Denied. (See also No. 114, Orig., *supra*.)

No. 88–845. *BIBB ET UX. v. UNITED STATES*, 488 U. S. 1010;
No. 88–5271. *EATON v. LOUISIANA*, 488 U. S. 1019;
No. 88–5600. *GILLIARD v. SCROGGY, COMMISSIONER, MISSISSIPPI DEPARTMENT OF CORRECTIONS, ET AL.*, 488 U. S. 1019;
No. 88–5670. *LONCHAR v. GEORGIA*, 488 U. S. 1019;
No. 88–5785. *O'LEARY v. YARMOSKY*, 488 U. S. 999; and
No. 88–5920. *BURGEST v. GEARINGER, WARDEN*, 488 U. S. 1016. Petitions for rehearing denied.

No. 87–1896. *ROSENTHAL v. STATE BAR OF CALIFORNIA*, 488 U. S. 805 and 987. Motion of appellant for leave to file second petition for rehearing denied.

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Appointment of Librarian

It is ordered that Shelley L. Dowling be appointed Librarian of the Court to succeed Stephen G. Margeton, effective January 15, 1989, and that she take the oath of office as required by statute.

Affirmed on Appeal

No. 87–1860. *MILLIKEN ET AL. v. MICHIGAN ROAD BUILDERS ASSN., INC., ET AL.* Affirmed on appeal from C. A. 6th Cir. Reported below: 834 F. 2d 583.

Appeal Dismissed

No. 88–977. *COLORADO-UTE ELECTRIC ASSN., INC., ET AL. v. PUBLIC UTILITIES COMMISSION OF COLORADO ET AL.* Appeal

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from Sup. Ct. Colo. dismissed for want of properly presented federal question. Reported below: 760 P. 2d 627.

Certiorari Granted—Vacated and Remanded

No. 87-1001. H. K. PORTER CO., INC. *v.* METROPOLITAN DADE COUNTY, FLORIDA, ET AL. C. A. 11th Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Richmond v. J. A. Croson Co.*, 488 U. S. 469 (1989). JUSTICE BRENNAN, JUSTICE MARSHALL, JUSTICE BLACKMUN, and JUSTICE STEVENS would deny certiorari. Reported below: 825 F. 2d 324.

No. 88-802. SMITH ET AL. *v.* STONEKING. C. A. 3d Cir. Motion of petitioners to consolidate this case with No. 88-1350, *Smith v. Sowers*, denied. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *DeShaney v. Winnebago County Dept. of Social Services*, ante, p. 189. Reported below: 856 F. 2d 594.

No. 88-816. CITY OF NEW KENSINGTON ET AL. *v.* HORTON, INDIVIDUALLY AND AS ADMINISTRATRIX OF THE ESTATE OF POWDRILL. C. A. 3d Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *DeShaney v. Winnebago County Dept. of Social Services*, ante, p. 189. Reported below: 857 F. 2d 1464.

Miscellaneous Orders

No. — — —. LATHEN *v.* UNITED STATES. Application for extension of time within which to file petition for writ of certiorari out of time denied.

No. — — —. WARD ET AL. *v.* FREEDMAN. Motion of petitioners for leave to file petition for writ of certiorari under seal denied.

No. A-624. BOYCE *v.* ISRAELITE BIBLE CLASS, INC. App. Ct. Ill., 5th Dist. Application for stay, presented to JUSTICE STEVENS, and by him referred to the Court, denied.

No. A-690 (88-6635). WILLIAMS *v.* KEMP, WARDEN. C. A. 11th Cir. Application of the Attorney General of Georgia to vacate the stay of execution granted by the United States Court of Appeals for the Eleventh Circuit, presented to JUSTICE KENNEDY, and by him referred to the Court, denied.

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No. 112, Orig. WYOMING *v.* OKLAHOMA. It is ordered that the Hon. Philip W. Tone, of Chicago, Ill., be appointed Special Master in this case with authority to fix the time and conditions for the filing of additional pleadings and to direct subsequent proceedings, and with authority to summon witnesses, issue subpoenas, and take such evidence as may be introduced and such as he may deem necessary to call for. The 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 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.*, 488 U. S. 921.]

No. 88-333. ALABAMA *v.* SMITH. Sup. Ct. Ala. [Certiorari granted, 488 U. S. 1003.] Motion for appointment of counsel granted, and it is ordered that Delores Boyd, Esq., of Montgomery, Ala., be appointed to serve as counsel for respondent in this case.

No. 88-412. HOFFMAN, TRUSTEE *v.* CONNECTICUT DEPARTMENT OF INCOME MAINTENANCE ET AL. C. A. 2d Cir. [Certiorari granted, 488 U. S. 1003.] Motion of INSLAW, Inc., for leave to file a brief as *amicus curiae* granted.

No. 88-515. SABLE COMMUNICATIONS OF CALIFORNIA, INC. *v.* FEDERAL COMMUNICATIONS COMMISSION ET AL.; and

No. 88-525. FEDERAL COMMUNICATIONS COMMISSION ET AL. *v.* SABLE COMMUNICATIONS OF CALIFORNIA, INC. D. C. C. D. Cal. [Probable jurisdiction noted, 488 U. S. 1003.] Motions of United States Catholic Conference, American Family Association, Inc., and Morality in Media, Inc., for leave to file briefs as *amici curiae* granted.

No. 88-605. WEBSTER, ATTORNEY GENERAL OF MISSOURI, ET AL. *v.* REPRODUCTIVE HEALTH SERVICES ET AL. C. A. 8th Cir. [Probable jurisdiction noted, 488 U. S. 1003.] Motions of James Joseph Lynch, Jr., and National Legal Foundation for leave to file briefs as *amici curiae* granted. Motion of Legal Defense for Unborn Children for leave to file a brief as *amicus curiae* denied. Motion of Alan Ernest for leave to represent children unborn and born alive denied.

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No. 88-1083. JOHN DOE AGENCY ET AL. *v.* JOHN DOE CORP. C. A. 2d Cir. [Certiorari granted, *ante*, p. 1009.] Motion of respondent to advance oral argument denied.

No. 88-1281. NGIRAINGAS ET AL. *v.* SANCHEZ ET AL. C. A. 9th Cir. The Solicitor General is invited to file a brief in this case expressing the views of the United States. JUSTICE KENNEDY took no part in the consideration or decision of this order.

No. 88-6352. BURKART *v.* POST-BROWNING, INC. C. A. 6th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied. Petitioner is allowed until March 27, 1989, within which to pay the docketing fee required by Rule 45(a) and to submit a petition in compliance with Rule 33 of the Rules of this Court.

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

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

No. 88-6415. IN RE ABDULLAH, AKA WHITE; and

No. 88-6538. IN RE SINDRAM. Petitions for writs of habeas corpus denied.

Certiorari Granted

No. 87-1965. ZINERMON ET AL. *v.* BURCH. C. A. 11th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari granted. Reported below: 840 F. 2d 797.

No. 88-599. WASHINGTON ET AL. *v.* HARPER. Sup. Ct. Wash. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari granted. Reported below: 110 Wash. 2d 873, 759 P. 2d 358.

No. 88-854. SPALLONE *v.* UNITED STATES ET AL.;

No. 88-856. CHEMA *v.* UNITED STATES ET AL.; and

No. 88-870. LONGO ET AL. *v.* UNITED STATES ET AL. C. A. 2d Cir. Certiorari granted in No. 88-854. Certiorari granted in No. 88-856 limited to Questions 1 through 5 presented by the petition. Certiorari granted in No. 88-870. Cases consolidated and a total of one hour allotted for oral argument. Reported below: 856 F. 2d 444.

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Certiorari Denied

No. 87-521. LEDBETTER, COMMISSIONER OF GEORGIA DEPARTMENT OF HUMAN RESOURCES, ET AL. *v.* TAYLOR. C. A. 11th Cir. Certiorari denied. Reported below: 818 F. 2d 791.

No. 87-1926. UPPER DARBY TOWNSHIP ET AL. *v.* COLBURN, ADMINISTRATRIX OF THE ESTATE OF STIERHEIM. C. A. 3d Cir. Certiorari denied. Reported below: 838 F. 2d 663.

No. 87-2034. BARBERA, ADMINISTRATRIX OF THE GOODS, CHATTELS, AND CREDITS OF BARBERA *v.* SCHLESSINGER, UNITED STATES ATTORNEY FOR THE SOUTHERN DISTRICT OF NEW YORK. C. A. 2d Cir. Certiorari denied. Reported below: 836 F. 2d 96.

No. 87-2054. O'CONNOR ET AL. *v.* ESTATE OF CONNERS ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 846 F. 2d 1205.

No. 87-2120. JORDA *v.* CITY OF NEW BRUNSWICK ET AL. Super. Ct. N. J., App. Div. Certiorari denied. Reported below: 214 N. J. Super. 338, 519 A. 2d 874.

No. 88-576. ARCHIE ET AL. *v.* CITY OF RACINE ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 847 F. 2d 1211.

No. 88-684. MAINE ET AL. *v.* UNITED STATES ENVIRONMENTAL PROTECTION AGENCY ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 271 U. S. App. D. C. 276, 852 F. 2d 574.

No. 88-796. MCINTOSH ET AL. *v.* ARKANSAS. Sup. Ct. Ark. Certiorari denied. Reported below: 296 Ark. 167, 753 S. W. 2d 273.

No. 88-810. DISTRICT OF COLUMBIA *v.* PARKER ET UX. C. A. D. C. Cir. Certiorari denied. Reported below: 271 U. S. App. D. C. 15, 850 F. 2d 708.

No. 88-841. STEVENS *v.* TILLMAN ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 855 F. 2d 394.

No. 88-847. SIMS *v.* ALABAMA. Ct. Crim. App. Ala. Certiorari denied. Reported below: 531 So. 2d 71.

No. 88-855. CITY OF YONKERS *v.* UNITED STATES ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 856 F. 2d 444.

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No. 88-905. *KOHLMAN v. BOB MARSHALL ALLIANCE ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 852 F. 2d 1223.

No. 88-953. *PHENIX FEDERAL SAVINGS & LOAN ASSN. v. SHEARSON LEHMAN HUTTON, INC.* C. A. 8th Cir. Certiorari denied. Reported below: 856 F. 2d 1125.

No. 88-967. *SCOTTO ET AL. v. UNITED STATES*; and

No. 88-1027. *ZAUBER v. UNITED STATES.* C. A. 3d Cir. Certiorari denied. Reported below: 857 F. 2d 137.

No. 88-968. *BROTHERHOOD OF LOCOMOTIVE ENGINEERS v. NEWTON ET AL.*;

No. 88-994. *CHICAGO & NORTH WESTERN TRANSPORTATION CO. v. BEARDSLY ET AL.*;

No. 88-1169. *UNITED TRANSPORTATION UNION v. BEARDSLY ET AL.*;

No. 88-1176. *NEWTON ET AL. v. BROTHERHOOD OF LOCOMOTIVE ENGINEERS ET AL.*; and

No. 88-1184. *BEARDSLY ET AL. v. CHICAGO & NORTH WESTERN TRANSPORTATION CO. ET AL.* C. A. 8th Cir. Certiorari denied. Reported below: 850 F. 2d 1255.

No. 88-974. *KIAMICHI AREA VOCATIONAL-TECHNICAL SCHOOL DISTRICT No. 7 v. SHORT*; and

No. 88-1148. *SHORT v. KIAMICHI AREA VOCATIONAL-TECHNICAL SCHOOL DISTRICT No. 7.* Sup. Ct. Okla. Certiorari denied. Reported below: 761 P. 2d 472.

No. 88-982. *WALL STREET PUBLISHING INSTITUTE, INC. v. SECURITIES AND EXCHANGE COMMISSION.* C. A. D. C. Cir. Certiorari denied. Reported below: 271 U. S. App. D. C. 110, 851 F. 2d 365.

No. 88-1052. *JOHNS-MANVILLE CORP. ET AL. v. UNITED STATES.* C. A. Fed. Cir. Certiorari denied. Reported below: 855 F. 2d 1556.

No. 88-1100. *TENNESSEE WILDLIFE RESOURCES AGENCY v. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION.* C. A. 6th Cir. Certiorari denied. Reported below: 859 F. 2d 24.

No. 88-1138. *DELTA AIR LINES, INC. v. CRISWELL ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 860 F. 2d 1088.

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No. 88-1143. NATIONAL BANK & TRUST CO. OF NORTH AMERICA, LTD., DBA NATCORP *v.* BANCO DE VIZCAYA, S. A. Ct. App. N. Y. Certiorari denied. Reported below: 72 N. Y. 2d 1005, 531 N. E. 2d 634.

No. 88-1145. DONG-A ILBO ET AL. *v.* LEE; and

No. 88-1163. CENTRAL VIRGINIA EDUCATIONAL TELEVISION CORP. *v.* LEE. C. A. 4th Cir. Certiorari denied. Reported below: 849 F. 2d 876.

No. 88-1149. CESSNA AIRCRAFT CO. *v.* BUTCHER ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 850 F. 2d 247.

No. 88-1168. SWAIN ET AL. *v.* LINDSEY. Ct. App. Ky. Certiorari denied.

No. 88-1181. CUNNINGHAM, PER NEXT FRIEND, CUNNINGHAM, ET AL. *v.* BEAVERS, SUPERINTENDENT OF SCHOOLS, JACKSONVILLE INDEPENDENT SCHOOL DISTRICT, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 858 F. 2d 269.

No. 88-1185. WALTERS *v.* FIRST TENNESSEE BANK, N. A. MEMPHIS. C. A. 6th Cir. Certiorari denied. Reported below: 855 F. 2d 267.

No. 88-1195. SERE *v.* HEADQUARTERS, DEFENSE COMMUNICATIONS AGENCY. C. A. 4th Cir. Certiorari denied. Reported below: 861 F. 2d 265.

No. 88-1224. REED *v.* NORTHWESTERN PUBLISHING Co., DBA COMMERCIAL NEWS, ET AL. Sup. Ct. Ill. Certiorari denied. Reported below: 124 Ill. 2d 495, 530 N. E. 2d 474.

No. 88-1257. KERTESZ *v.* UNIVERSITY OF SOUTHERN CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 88-1276. MACHEN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 862 F. 2d 315.

No. 88-1301. PUGLIESE ET AL. *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 860 F. 2d 25.

No. 88-1307. POSNER ET AL. *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 863 F. 2d 1319.

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No. 88-1312. *ESTATE OF CORNETT ET AL. v. ESTATE OF SIKES ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 861 F. 2d 716.

No. 88-1326. *SCIARRA ET AL. v. UNITED STATES.* C. A. 3d Cir. Certiorari denied. Reported below: 865 F. 2d 252.

No. 88-5062. *MOLTON, ADMINISTRATOR FOR THE ESTATE OF MOLTON v. CITY OF CLEVELAND ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 839 F. 2d 240.

No. 88-5878. *PRENZLER v. DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, ET AL.* C. A. 9th Cir. Certiorari denied.

No. 88-5966. *MCDONALD v. TANSY, WARDEN.* C. A. 10th Cir. Certiorari denied.

No. 88-6008. *MUHAMMAD v. QUINLAN, DIRECTOR, BUREAU OF PRISONS, ET AL.* C. A. 8th Cir. Certiorari denied. Reported below: 845 F. 2d 175.

No. 88-6026. *GRIDER v. UNITED STATES.* C. A. 11th Cir. Certiorari denied. Reported below: 850 F. 2d 1500.

No. 88-6063. *YAGOW v. PRODUCTION CREDIT ASSOCIATION OF FARGO.* C. A. 8th Cir. Certiorari denied.

No. 88-6064. *YAGOW v. PRODUCTION CREDIT ASSOCIATION OF FARGO.* C. A. 8th Cir. Certiorari denied.

No. 88-6073. *YAGOW v. PRODUCTION CREDIT ASSOCIATION OF FARGO.* C. A. 8th Cir. Certiorari denied. Reported below: 860 F. 2d 1086.

No. 88-6105. *BELL v. UNITED STATES.* C. A. 11th Cir. Certiorari denied. Reported below: 861 F. 2d 726.

No. 88-6212. *ROBINSON v. UNITED STATES;* and

No. 88-6331. *BLANKENSHIP v. UNITED STATES.* C. A. 6th Cir. Certiorari denied. Reported below: 862 F. 2d 316.

No. 88-6258. *POTTS v. GEORGIA.* Sup. Ct. Ga. Certiorari denied. Reported below: 258 Ga. 430, 369 S. E. 2d 746.

No. 88-6293. *ROBINSON v. UNITED STATES ET AL.* C. A. 11th Cir. Certiorari denied. Reported below: 856 F. 2d 199.

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No. 88-6319. *REDWINE v. GEORGIA*. Ct. App. Ga. Certiorari denied. Reported below: 188 Ga. App. 638, 373 S. E. 2d 804.

No. 88-6320. *BROWN v. VIRGINIA*. Ct. App. Va. Certiorari denied.

No. 88-6321. *BROWN v. VIRGINIA*. Ct. App. Va. Certiorari denied.

No. 88-6324. *BOYD v. PUCKETT, SUPERINTENDENT, MISSISSIPPI STATE PENITENTIARY*. C. A. 5th Cir. Certiorari denied. Reported below: 861 F. 2d 717.

No. 88-6329. *PARKER v. SUMNER, DIRECTOR, NEVADA DEPARTMENT OF PRISONS, ET AL.* C. A. 9th Cir. Certiorari denied.

No. 88-6335. *JACKSON v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 861 F. 2d 266.

No. 88-6336. *CHIPPS v. UNITED STATES DEPARTMENT OF EDUCATION ET AL.* C. A. 3d Cir. Certiorari denied.

No. 88-6337. *ELLIOTT v. MYERS, SUPERINTENDENT, CORRECTIONAL TRAINING FACILITY AT SOLEDAD, CALIFORNIA*. C. A. 9th Cir. Certiorari denied.

No. 88-6343. *BENSON v. FLORIDA*. Dist. Ct. App. Fla., 2d Dist. Certiorari denied. Reported below: 526 So. 2d 948.

No. 88-6358. *HICKS v. FAIR, COMMISSIONER, MASSACHUSETTS DEPARTMENT OF CORRECTIONS*. C. A. 1st Cir. Certiorari denied. Reported below: 859 F. 2d 1054.

No. 88-6372. *DANIELS v. CONNECTICUT*. Sup. Ct. Conn. Certiorari denied. Reported below: 209 Conn. 225, 550 A. 2d 885.

No. 88-6373. *GREEN, AKA HORNUNG v. UNITED STATES*. C. A. 10th Cir. Certiorari denied. Reported below: 848 F. 2d 1040.

No. 88-6395. *SHANNON v. KLINCAR, CHAIRMAN, ILLINOIS PRISONER REVIEW BOARD, ET AL.* C. A. 7th Cir. Certiorari denied.

No. 88-6403. *LONG v. UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT*. C. A. Fed. Cir. Certiorari denied.

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- No. 88-6427. *HARGROVE v. UNITED STATES*. C. A. D. C. Cir. Certiorari denied. Reported below: 272 U. S. App. D. C. 248, 855 F. 2d 887.
- No. 88-6430. *DELGADO ET AL. v. UNITED STATES*. C. A. 11th Cir. Certiorari denied. Reported below: 863 F. 2d 889.
- No. 88-6432. *CABALLERO SALINAS v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 865 F. 2d 1261.
- No. 88-6433. *COLLICOTT v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 863 F. 2d 886.
- No. 88-6437. *BATES v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 865 F. 2d 255.
- No. 88-6441. *PAZOS-FLORES v. UNITED STATES*. C. A. 11th Cir. Certiorari denied. Reported below: 862 F. 2d 878.
- No. 88-6442. *ROLLING v. UNITED STATES*. C. A. 11th Cir. Certiorari denied. Reported below: 864 F. 2d 793.
- No. 88-6445. *GAMBINO v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 863 F. 2d 886.
- No. 88-6446. *COLE v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 857 F. 2d 971.
- No. 88-6451. *ENTELISANO v. FELT*. App. Div., Sup. Ct. N. Y., 4th Jud. Dept. Certiorari denied. Reported below: 135 App. Div. 2d 1096, 523 N. Y. S. 2d 314.
- No. 88-6452. *RAMEY v. UNITED STATES*. C. A. 11th Cir. Certiorari denied. Reported below: 863 F. 2d 889.
- No. 88-6459. *SOLOMON v. UNITED STATES*; and
No. 88-6499. *SOLOMON v. UNITED STATES*. C. A. 11th Cir. Certiorari denied. Reported below: 856 F. 2d 1572.
- No. 88-6462. *GARCIA ET AL. v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 867 F. 2d 1424.
- No. 88-6465. *BRYANT v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 859 F. 2d 151.
- No. 88-6478. *ORTIZ v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 857 F. 2d 900.

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No. 88-6487. GREEN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 864 F. 2d 792.

No. 88-6488. LONGMIRE *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 861 F. 2d 461.

No. 88-6492. WEISMAN *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 858 F. 2d 389.

No. 88-6495. ADEYEMI *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 862 F. 2d 870.

No. 88-6498. PACKARD *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 864 F. 2d 793.

No. 87-1460. DUGGER, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. *v.* HARGRAVE. C. A. 11th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 832 F. 2d 1528.

No. 87-2073. DUGGER, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS *v.* MANN. C. A. 11th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 844 F. 2d 1446.

No. 88-800. DUGGER, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. *v.* STONE. C. A. 11th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 837 F. 2d 1477.

No. 88-1074. VIRGINIA ET AL. *v.* STOCKTON. C. A. 4th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 852 F. 2d 740.

No. 88-958. COOPER *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. JUSTICE WHITE would grant certiorari. Reported below: 860 F. 2d 1076.

No. 88-5136. GROSSMAN *v.* FLORIDA. Sup. Ct. Fla.;

No. 88-5169. SPISAK *v.* OHIO. Sup. Ct. Ohio;

No. 88-5216. HARICH *v.* DUGGER, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir.;

No. 88-5582. FORD *v.* DUGGER, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. Sup. Ct. Fla.;

No. 88-5750. CLARK *v.* OHIO. Sup. Ct. Ohio;

No. 88-5799. BEUKE *v.* OHIO. Sup. Ct. Ohio;

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No. 88-6005. STEWART *v.* ILLINOIS. Sup. Ct. Ill.;
No. 88-6121. PRESTON *v.* FLORIDA. Sup. Ct. Fla.;
No. 88-6187. MCLAIN *v.* CALIFORNIA. Sup. Ct. Cal.;
No. 88-6224. HENDERSON *v.* OHIO. Sup. Ct. Ohio;
No. 88-6287. IRICK *v.* TENNESSEE. Sup. Ct. Tenn.;
No. 88-6317. MAURER *v.* OHIO. Ct. App. Ohio, Stark
County; and

No. 88-6353. BEDFORD *v.* OHIO. Sup. Ct. Ohio. Certiorari denied. Reported below: No. 88-5136, 525 So. 2d 833; No. 88-5169, 36 Ohio St. 3d 80, 521 N. E. 2d 800; No. 88-5216, 844 F. 2d 1464; No. 88-5582, 522 So. 2d 345; No. 88-5750, 38 Ohio St. 3d 252, 527 N. E. 2d 844; No. 88-5799, 38 Ohio St. 3d 29, 526 N. E. 2d 274; No. 88-6005, 123 Ill. 2d 368, 528 N. E. 2d 631; No. 88-6121, 528 So. 2d 896; No. 88-6187, 46 Cal. 3d 97, 757 P. 2d 569; No. 88-6224, 39 Ohio St. 3d 24, 528 N. E. 2d 1237; No. 88-6287, 762 S. W. 2d 121; No. 88-6353, 39 Ohio St. 3d 122, 529 N. E. 2d 913.

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. 88-6326 (A-600). COCKRUM *v.* TEXAS. Ct. Crim. App. Tex. Application for stay of mandate, presented to JUSTICE WHITE, and by him referred to the Court, denied. Certiorari denied. Reported below: 758 S. W. 2d 577.

JUSTICE BRENNAN and JUSTICE MARSHALL, dissenting.

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

Rehearing Denied

No. 86-1650. TRANS WORLD AIRLINES, INC. *v.* INDEPENDENT FEDERATION OF FLIGHT ATTENDANTS, 485 U. S. 175;

No. 87-2121. DOBARD *v.* OSCAR DASTE & SONS, INC., 488 U. S. 828;

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No. 88-836. ASAM *v.* SHAPIRO ET AL., 488 U. S. 1024;

No. 88-838. NIEVES *v.* MARINA GARDENS NO. 1, INC., 488 U. S. 1024;

No. 88-5561. GILMORE *v.* DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR, 488 U. S. 1031;

No. 88-5910. TALLMAN *v.* KELLEY, 488 U. S. 1025;

No. 88-5942. ROBERTSON *v.* CITY OF EUNICE, NEW MEXICO, 488 U. S. 1033; and

No. 88-5960. DODRILL *v.* TATE, SUPERINTENDENT, CHILLICOTHE CORRECTIONAL INSTITUTE, 488 U. S. 1044. Petitions for rehearing denied.

MARCH 14, 1989

Dismissal Under Rule 53

No. 88-5708. SHRAGAI *v.* SHRAGAI. Ct. App. N. Y. Certiorari dismissed under this Court's Rule 53. Reported below: 71 N. Y. 2d 949, 524 N. E. 2d 147.

Certiorari Denied

No. 88-6721 (A-696). BEAM *v.* IDAHO. Sup. Ct. Idaho. Application to continue stay of execution of death warrant, presented to JUSTICE O'CONNOR, and by her referred to the Court, denied. Certiorari denied. Reported below: 115 Idaho 208, 766 P. 2d 678.

JUSTICE BRENNAN and JUSTICE MARSHALL, dissenting.

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

MARCH 15, 1989

Miscellaneous Order

No. A-727. WHITMORE, INDIVIDUALLY AND AS NEXT FRIEND OF SIMMONS *v.* ARKANSAS. Application for stay of execution of sentence of death, presented to JUSTICE BLACKMUN, 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

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automatically. In the event the petition for writ of certiorari is granted, this stay shall continue pending the issuance of the mandate of this Court.

MARCH 16, 1989

Dismissal Under Rule 53

No. 88-1021. HANSCH ET UX. *v.* COUNTY OF LOS ANGELES ET AL. Ct. App. Cal., 2d App. Dist. Certiorari dismissed under this Court's Rule 53.

MARCH 20, 1989

Appeals Dismissed

No. 88-844. CHRISMAN *v.* TIMES MIRROR CO. Appeal from Ct. App. Cal., 4th App. Dist., dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied.

No. 88-1013. DELEO ET UX. *v.* ANTHONY A. NUNES, INC., ET AL. Appeal from Sup. Ct. R. I. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied. Reported below: 546 A. 2d 1344.

No. 88-6386. JENKINS *v.* UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT. Appeal from C. A. D. C. Cir. dismissed for want of jurisdiction.

No. 88-6471. CRIM *v.* MORRIS, SUPERINTENDENT, SOUTHERN OHIO CORRECTIONAL FACILITY, ET AL. Appeal from C. A. 6th Cir. dismissed for want of jurisdiction. Reported below: 853 F. 2d 926.

Miscellaneous Orders

No. A-601 (88-1243). COMPANY X *v.* UNITED STATES. C. A. 10th Cir. Renewed application for stay, presented to JUSTICE WHITE, and by him referred to the Court, granted pending final disposition of the petition for writ of certiorari.

No. A-695. MICHIGAN CITIZENS FOR AN INDEPENDENT PRESS ET AL. *v.* THORNBURGH, ATTORNEY GENERAL OF THE UNITED STATES, ET AL. Application for stay, presented to JUSTICE BRENNAN, and by him referred to the Court, denied. The order heretofore entered March 4, 1989, by JUSTICE BRENNAN is va-

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cated. JUSTICE BLACKMUN and JUSTICE STEVENS would grant the application.

No. A-709 (88-709). *ROE v. SUPERIOR COURT OF CALIFORNIA, COUNTY OF MARIN (DOE, REAL PARTY IN INTEREST)*. Ct. App. Cal., 1st App. Dist. Application to continue the stay entered by the Superior Court of California, County of Marin, on March 3, 1989, presented to JUSTICE O'CONNOR, and by her referred to the Court, denied.

No. D-536. *IN RE DISBARMENT OF LOVETT*, 475 U. S. 1092. Motion to vacate the order of disbarment denied.

No. D-751. *IN RE DISBARMENT OF EBERSTEIN*. Disbarment entered. [For earlier order herein, see 488 U. S. 1000.]

No. D-772. *IN RE DISBARMENT OF BROWN*. It is ordered that Rembert Thomas Brown, of San Diego, Cal., be suspended from the practice of law in this Court and that a rule issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D-773. *IN RE DISBARMENT OF GAGEN*. It is ordered that William Lee Gagen, of Lebanon, 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-774. *IN RE DISBARMENT OF GUNDERMAN*. It is ordered that James Roger Gunderman, of Buffalo, 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-775. *IN RE DISBARMENT OF GRAVES*. It is ordered that David Hardin Graves, of Houston, Tex., be suspended from the practice of law in this Court and that a rule issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. 87-6997. *CARELLA v. CALIFORNIA*. App. Dept., Super. Ct. Cal., Los Angeles County. [Probable jurisdiction noted, 488 U. S. 940 and 964.] Motion of appellant to discharge appointed counsel and appoint new counsel denied.

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No. 88-333. ALABAMA *v.* SMITH. Sup. Ct. Ala. [Certiorari granted, 488 U. S. 1003.] Motion of the Acting Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 88-348. NEW ORLEANS PUBLIC SERVICE INC. *v.* COUNCIL OF THE CITY OF NEW ORLEANS ET AL. C. A. 5th Cir. [Certiorari granted, 488 U. S. 1003.] Motion of the Acting Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 88-420. JONES, SUPERINTENDENT, MISSOURI TRAINING CENTER FOR MEN AT MOBERLY *v.* THOMAS. C. A. 8th Cir. [Certiorari granted, 488 U. S. 1003.] Motion of Criminal Justice Legal Foundation for leave to file a brief as *amicus curiae* granted. Motion of the Acting Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument denied.

No. 88-515. SABLE COMMUNICATIONS OF CALIFORNIA, INC. *v.* FEDERAL COMMUNICATIONS COMMISSION ET AL.; and

No. 88-525. FEDERAL COMMUNICATIONS COMMISSION ET AL. *v.* SABLE COMMUNICATIONS OF CALIFORNIA, INC. D. C. C. D. Cal. [Probable jurisdiction noted, 488 U. S. 1003.] Motion of Citizens for Decency Through Law, Inc., et al. for leave to file a brief as *amici curiae* in No. 88-525 granted. Motion of Minority Members of the Committee on Energy and Commerce of the United States House of Representatives for leave to file a brief as *amicus curiae* granted.

No. 88-605. WEBSTER, ATTORNEY GENERAL OF MISSOURI, ET AL. *v.* REPRODUCTIVE HEALTH SERVICES ET AL. C. A. 8th Cir. [Probable jurisdiction noted, 488 U. S. 1003.] Motion of the Acting Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 88-616. SULLIVAN, SECRETARY OF HEALTH AND HUMAN SERVICES *v.* HUDSON. C. A. 11th Cir. [Certiorari granted *sub nom.* *Bowen, Secretary of Health and Human Services v. Hudson*, 488 U. S. 980.] Motion of the Acting Solicitor General to permit Amy L. Wax, Esq., to present oral argument *pro hac vice* denied.

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No. 88-1114. *LEBMAN ET AL. v. AKTIEBOLAGET ELECTROLUX ET AL.* C. A. 5th Cir. The Solicitor General is invited to file a brief in this case expressing the views of the United States.

No. 88-5977. *WRENN v. THORNBURGH, ATTORNEY GENERAL OF THE UNITED STATES, ET AL.* C. A. 2d Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [488 U. S. 1039] denied.

No. 88-6597. *IN RE MCKNIGHT.* Petition for writ of habeas corpus denied.

No. 88-1246. *IN RE BEACHBOARD;* and

No. 88-6390. *IN RE STRABLE.* Petitions for writs of mandamus denied.

Certiorari Granted

No. 88-42. *HALLSTROM ET UX. v. TILLAMOOK COUNTY.* C. A. 9th Cir. Certiorari granted. Reported below: 844 F. 2d 598.

No. 88-1203. *HOFFMANN-LA ROCHE INC. v. SPERLING ET AL.* C. A. 3d Cir. Certiorari granted. Reported below: 862 F. 2d 439.

No. 88-1213. *EMPLOYMENT DIVISION, DEPARTMENT OF HUMAN RESOURCES OF OREGON, ET AL. v. SMITH ET AL.* Sup. Ct. Ore. Certiorari granted. Reported below: 307 Ore. 68, 763 P. 2d 146.

Certiorari Denied. (See also Nos. 88-844 and 88-1013, *supra.*)

No. 88-276. *GRIFFIN v. NEW JERSEY.* Super. Ct. N. J., App. Div. Certiorari denied.

No. 88-927. *KEYSTONE SHIPPING CO. v. NEW ENGLAND ENERGY, INC., ET AL.* C. A. 1st Cir. Certiorari denied. Reported below: 855 F. 2d 1.

No. 88-988. *TOWNLEY MANUFACTURING CO., INC. v. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION.* C. A. 9th Cir. Certiorari denied. Reported below: 859 F. 2d 610.

No. 88-1029. *YONKERS RACING CORP. v. CITY OF YONKERS ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 858 F. 2d 855.

No. 88-1034. *DERRYBERRY v. UNITED STATES.* C. A. 6th Cir. Certiorari denied. Reported below: 856 F. 2d 196.

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No. 88-1035. *NORTHSIDE SANITARY LANDFILL, INC. v. REILLY, ADMINISTRATOR, ENVIRONMENTAL PROTECTION AGENCY, ET AL.* C. A. D. C. Cir. Certiorari denied. Reported below: 270 U. S. App. D. C. 387, 849 F. 2d 1516.

No. 88-1044. *ASSOCIATION OF SEAT LIFT MANUFACTURERS ET AL. v. SULLIVAN, SECRETARY OF HEALTH AND HUMAN SERVICES, ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 858 F. 2d 308.

No. 88-1066. *ESTATE OF JOHNSON ET AL. v. ENGLE ET AL.*; and
No. 88-1232. *ENGLE ET AL. v. ESTATE OF JOHNSON ET AL.* C. A. 7th Cir. Certiorari denied. Reported below: 858 F. 2d 361.

No. 88-1068. *NANAVATI v. BURDETTE TOMLIN MEMORIAL HOSPITAL ET AL.* C. A. 3d Cir. Certiorari denied. Reported below: 857 F. 2d 96.

No. 88-1081. *WORKMAN ET AL. v. UNITED STATES.* C. A. 4th Cir. Certiorari denied. Reported below: 860 F. 2d 140.

No. 88-1108. *NEW YORK TYPOGRAPHICAL UNION, No. 6 v. ROYAL COMPOSING ROOM, INC.* C. A. 2d Cir. Certiorari denied. Reported below: 848 F. 2d 345.

No. 88-1111. *WILKINS ET AL. v. UNITED STATES.* C. A. 5th Cir. Certiorari denied. Reported below: 854 F. 2d 710.

No. 88-1128. *CALIFORNIA v. FOLKINS ET AL.* Sup. Ct. Cal. Certiorari denied. Reported below: 46 Cal. 3d 355, 758 P. 2d 606.

No. 88-1139. *CERTIFIED REGISTERED NURSE ANESTHETISTS OF ANESTHESIA GROUP PRACTICE ET AL. v. ANESTHESIA GROUP PRACTICE, INC., ET AL.* Ct. App. Ohio, Hamilton County. Certiorari denied. Reported below: 49 Ohio App. 3d 166, 551 N. E. 2d 1308.

No. 88-1174. *SIMMONS, UNITED STATES DISTRICT JUDGE FOR THE WESTERN DISTRICT OF PENNSYLVANIA v. MOODY, TRUSTEE OF THE ESTATE OF JEANNETTE CORP., ET AL.* C. A. 3d Cir. Certiorari denied. Reported below: 858 F. 2d 137.

No. 88-1175. *CLARK v. C & O RAILWAY Co.* Sup. Ct. Va. Certiorari denied.

No. 88-1180. *UTILITY WORKERS UNION OF AMERICA, AFL-CIO, LOCAL No. 246, ET AL. v. SOUTHERN CALIFORNIA EDISON*

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Co. C. A. 9th Cir. Certiorari denied. Reported below: 852 F. 2d 1083.

No. 88-1188. *LEARNED v. CITY OF BELLEVUE, WASHINGTON*. C. A. 9th Cir. Certiorari denied. Reported below: 860 F. 2d 928.

No. 88-1190. *FRIEDMAN v. MONTGOMERY COUNTY, MARYLAND*. Ct. Sp. App. Md. Certiorari denied. Reported below: 75 Md. App. 725.

No. 88-1192. *GRAHAM v. BETTIS, JUDGE, ET AL.* Ct. App. Ohio, Columbiana County. Certiorari denied.

No. 88-1193. *SOUTHWESTERN BELL TELEPHONE CO. v. CONTINENTAL CASUALTY CO.* C. A. 10th Cir. Certiorari denied. Reported below: 860 F. 2d 970.

No. 88-1197. *DRAKE TOWING CO., INC., ET AL. v. ATWOOD ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 850 F. 2d 1093.

No. 88-1199. *HEMON ET AL. v. OFFICE OF PUBLIC GUARDIAN ET AL.* Sup. Ct. N. H. Certiorari denied.

No. 88-1201. *HARDEN v. BERT ET AL.* C. A. 10th Cir. Certiorari denied.

No. 88-1202. *LEIDY v. STRANAHAN ET AL.; and LEIDY v. SHARON HERALD NEWSPAPER CO. ET AL.* C. A. 3d Cir. Certiorari denied. Reported below: 865 F. 2d 251 (first case); 862 F. 2d 308 (second case).

No. 88-1206. *DELTA TRUCK & TRACTOR, INC. v. J. I. CASE CO. ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 855 F. 2d 241.

No. 88-1209. *BAUER ET UX. v. WALDSCHMIDT, TRUSTEE OF THE BANKRUPTCY ESTATE OF BAUER, ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 859 F. 2d 438.

No. 88-1211. *HUNT ET AL. v. JEFFERSON SAVINGS & LOAN ASSN.* Ct. App. Tex., 5th Dist. Certiorari denied. Reported below: 756 S. W. 2d 762.

No. 88-1212. *HOFFMAN v. CITY OF TROY, MICHIGAN.* Ct. App. Mich. Certiorari denied.

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No. 88-1214. LEIDHOLDT *v.* L. F. P., INC., ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 860 F. 2d 890.

No. 88-1215. AULT *v.* HUSTLER MAGAZINE, INC., ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 860 F. 2d 877.

No. 88-1216. TAYLOR *v.* FIRST UNION CORPORATION OF SOUTH CAROLINA ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 857 F. 2d 240.

No. 88-1218. MARKUM ET AL. *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 373 Pa. Super. 341, 541 A. 2d 347.

No. 88-1220. ULLMANN *v.* OLWINE, CONNELLY, CHASE, O'DONNELL & WEYHER ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 857 F. 2d 1475.

No. 88-1221. WEISMAN *v.* MINNESOTA. Ct. App. Minn. Certiorari denied.

No. 88-1222. HOLLYWOOD MARINE, INC. *v.* WIEDEMANN & FRANSEN. Sup. Ct. La. Certiorari denied. Reported below: 530 So. 2d 1116.

No. 88-1225. SCANDELL *v.* NEW YORK. App. Div., Sup. Ct. N. Y., 2d Jud. Dept. Certiorari denied. Reported below: 143 App. Div. 2d 423, 532 N. Y. S. 2d 424.

No. 88-1227. RUSSO *v.* SUPERIOR COURT OF CALIFORNIA, COUNTY OF SANTA CLARA (BEAR, STEARNS & CO., INC., ET AL., REAL PARTIES IN INTEREST). Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 88-1233. GRANDCHAMP ET AL. *v.* UNITED AIR LINES, INC. C. A. 10th Cir. Certiorari denied. Reported below: 854 F. 2d 381.

No. 88-1234. UNITED SERVICES AUTOMOBILE ASSN. *v.* TUCK, ADMINISTRATOR OF THE ESTATE OF TUCK, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 859 F. 2d 842.

No. 88-1236. CITY OF WATSONVILLE, CALIFORNIA *v.* CRUZ GOMEZ ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 863 F. 2d 1407.

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No. 88-1237. *TRANSAMERICA-OCCIDENTAL LIFE INSURANCE CO. v. PROVIDENT LIFE & ACCIDENT INSURANCE CO.* C. A. 11th Cir. Certiorari denied. Reported below: 850 F. 2d 1489.

No. 88-1240. *AINSWORTH v. STATE BAR OF CALIFORNIA.* Sup. Ct. Cal. Certiorari denied. Reported below: 46 Cal. 3d 1218, 762 P. 2d 431.

No. 88-1241. *PRICE v. TANNER ET AL.* C. A. 11th Cir. Certiorari denied. Reported below: 855 F. 2d 820.

No. 88-1242. *HUGHES ET AL. v. GENERAL MOTORS CORP. ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 852 F. 2d 568.

No. 88-1244. *M/T STOLT SHEAF ET AL. v. NATIONAL PETRO-CHEMICAL COMPANY OF IRAN.* C. A. 2d Cir. Certiorari denied. Reported below: 860 F. 2d 551.

No. 88-1245. *DUCHESNE v. WILLIAMS ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 849 F. 2d 1004.

No. 88-1247. *CENTRAL MILK PRODUCERS COOPERATIVE v. NATIONAL FARMERS' ORGANIZATION;* and

No. 88-1248. *ASSOCIATED MILK PRODUCERS, INC., ET AL. v. NATIONAL FARMERS' ORGANIZATION, INC.* C. A. 8th Cir. Certiorari denied. Reported below: 850 F. 2d 1286.

No. 88-1256. *PELLIGRA v. GOODYEAR TIRE & RUBBER Co.* Ct. App. Ohio, Summit County. Certiorari denied. Reported below: 41 Ohio App. 3d 61, 534 N. E. 2d 388.

No. 88-1258. *COUNTY OF DUPAGE ET AL. v. LASALLE NATIONAL BANK OF CHICAGO ET AL.* C. A. 7th Cir. Certiorari denied. Reported below: 856 F. 2d 925.

No. 88-1261. *PESTE ET AL. v. CLUNK, JUDGE, COURT OF COMMON PLEAS, PROBATE DIVISION, STARK COUNTY, OHIO.* C. A. 6th Cir. Certiorari denied. Reported below: 861 F. 2d 721.

No. 88-1263. *HOHL, ON BEHALF OF HIMSELF AND HIS DAUGHTERS, HOHL ET AL. v. MILLER, MAGISTRATE, CASS COUNTY MAGISTRATE'S COURT.* C. A. 8th Cir. Certiorari denied.

No. 88-1267. *ODOM ET AL. v. DELAHOUSSAYE ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 859 F. 2d 919.

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No. 88-1268. *MADDOX v. AMSouth BANK, N. A.* C. A. 11th Cir. Certiorari denied.

No. 88-1269. *WISCONSIN DEPARTMENT OF HEALTH AND SOCIAL SERVICES ET AL. v. TORRES ET AL.* C. A. 7th Cir. Certiorari denied. Reported below: 859 F. 2d 1523.

No. 88-1270. *PETRAS v. MASSACHUSETTS.* App. Ct. Mass. Certiorari denied. Reported below: 26 Mass. App. 483, 529 N. E. 2d 404.

No. 88-1277. *TUCKER v. CONNECTICUT NATIONAL BANK ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 867 F. 2d 1424.

No. 88-1278. *CONSOLIDATED TELEVISION CABLE SERVICE, INC. v. CITY OF FRANKFORT, KENTUCKY, ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 857 F. 2d 354.

No. 88-1279. *SUTHERLAND v. UNITED STATES POSTAL SERVICE ET AL.* C. A. 3d Cir. Certiorari denied. Reported below: 860 F. 2d 1076.

No. 88-1293. *HOLMAN v. WALLING*; and

No. 88-1355. *WALL STREET REPORTS & INTELLIGENCE BULLETIN, INC. v. WALLING.* C. A. 2d Cir. Certiorari denied. Reported below: 858 F. 2d 79.

No. 88-1294. *SHARMA v. LOCKHEED ENGINEERING & MANAGEMENT SERVICES Co., INC.* C. A. 4th Cir. Certiorari denied. Reported below: 862 F. 2d 314.

No. 88-1296. *ANDREWS v. LOVE, JUDGE, DISTRICT COURT OF MCCLAIN COUNTY, OKLAHOMA.* Ct. Crim. App. Okla. Certiorari denied. Reported below: 763 P. 2d 714.

No. 88-1314. *CRANMER v. UNITED STATES.* C. A. 8th Cir. Certiorari denied. Reported below: 871 F. 2d 1091.

No. 88-1334. *WILLIAMS v. UNITED STATES DEPARTMENT OF ENERGY ET AL.* C. A. 10th Cir. Certiorari denied.

No. 88-1352. *RAMACHANDRAN v. UNITED STATES POSTAL SERVICE.* C. A. 9th Cir. Certiorari denied. Reported below: 848 F. 2d 1243.

No. 88-1359. *TENLEY AND CLEVELAND PARK EMERGENCY COMMITTEE ET AL. v. DISTRICT OF COLUMBIA BOARD OF ZONING*

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ADJUSTMENT ET AL. Ct. App. D. C. Certiorari denied. Reported below: 550 A. 2d 331.

No. 88-1368. CONNOLLY ET AL. *v.* MARYLAND CASUALTY CO. C. A. 11th Cir. Certiorari denied. Reported below: 849 F. 2d 525.

No. 88-1370. GALLO ET AL. *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 863 F. 2d 185.

No. 88-1372. COMUNI-CENTRE BROADCASTING, INC. *v.* FEDERAL COMMUNICATIONS COMMISSION. C. A. D. C. Cir. Certiorari denied. Reported below: 272 U. S. App. D. C. 389, 856 F. 2d 1551.

No. 88-1375. VALDEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 861 F. 2d 427.

No. 88-1386. GOICHMAN *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 9th Cir. Certiorari denied.

No. 88-1387. KINSEY *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 9th Cir. Certiorari denied. Reported below: 859 F. 2d 1361.

No. 88-1389. SWEARINGEN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 858 F. 2d 1555.

No. 88-5043. LANDRY *v.* HOEPEFNER, JUDGE. C. A. 5th Cir. Certiorari denied. Reported below: 840 F. 2d 1201.

No. 88-5231. BOUDETTE *v.* ARIZONA. Super. Ct. Ariz., Maricopa County. Certiorari denied.

No. 88-5887. COFIELD *v.* THIGPEN, COMMISSIONER, ALABAMA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 856 F. 2d 198.

No. 88-5898. BENNAFIELD *v.* CITY OF CANTON POLICE DEPARTMENT ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 856 F. 2d 192.

No. 88-5939. MCFADDEN *v.* CABANA, SUPERINTENDENT, MISSISSIPPI STATE PENITENTIARY. C. A. 5th Cir. Certiorari denied. Reported below: 851 F. 2d 784.

No. 88-5970. KRISHNAN *v.* JULIUS. Sup. Ct. Cal. Certiorari denied.

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No. 88-5998. *HAMM v. PACKARD, WARDEN*. C. A. 4th Cir. Certiorari denied. Reported below: 850 F. 2d 689.

No. 88-6096. *AUCOIN v. TENNESSEE*. Ct. Crim. App. Tenn. Certiorari denied. Reported below: 756 S. W. 2d 705.

No. 88-6108. *GRIMES v. ALABAMA*. Ct. Crim. App. Ala. Certiorari denied. Reported below: 515 So. 2d 156.

No. 88-6126. *WHITWORTH v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 856 F. 2d 1268.

No. 88-6188. *TOTH v. PENNSYLVANIA BOARD OF PROBATION AND PAROLE ET AL.* C. A. 3d Cir. Certiorari denied. Reported below: 860 F. 2d 1076.

No. 88-6193. *CORONA v. UNITED STATES*. C. A. 11th Cir. Certiorari denied. Reported below: 849 F. 2d 562.

No. 88-6207. *BAKER v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 857 F. 2d 1479.

No. 88-6236. *BLAIR v. UNITED STATES*. Ct. App. D. C. Certiorari denied.

No. 88-6260. *MURRAY v. DEPARTMENT OF THE ARMY ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 842 F. 2d 1291.

No. 88-6267. *COOK v. FLORIDA*. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 531 So. 2d 1369.

No. 88-6327. *BOUVIER-MOORE v. UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF CALIFORNIA*. C. A. 9th Cir. Certiorari denied.

No. 88-6338. *WALLS v. NEW CASTLE COUNTY POLICE DEPARTMENT ET AL.* Sup. Ct. Del. Certiorari denied. Reported below: 553 A. 2d 639.

No. 88-6342. *BOYLAN v. FRANK, POSTMASTER GENERAL, ET AL.* C. A. 11th Cir. Certiorari denied. Reported below: 858 F. 2d 743.

No. 88-6345. *CORDES v. TULSA CITY POLICE DEPARTMENT ET AL.* C. A. 10th Cir. Certiorari denied.

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No. 88-6346. *CHAMBERS v. GOODWIN, SUPERINTENDENT, CENTRAL CORRECTIONAL INSTITUTION AT MACON, GEORGIA.* C. A. 11th Cir. Certiorari denied.

No. 88-6366. *KEENAN v. EVATT, COMMISSIONER, SOUTH CAROLINA DEPARTMENT OF CORRECTIONS, ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 861 F. 2d 264.

No. 88-6370. *LOPEZ v. SUPERIOR COURT OF CALIFORNIA, SAN JOAQUIN COUNTY, ET AL.* Ct. App. Cal., 3d App. Dist. Certiorari denied.

No. 88-6374. *DOMINGUEZ v. UNITED STATES.* C. A. 11th Cir. Certiorari denied. Reported below: 861 F. 2d 1280.

No. 88-6379. *KURINA v. HAWS, WARDEN.* C. A. 7th Cir. Certiorari denied. Reported below: 853 F. 2d 1409.

No. 88-6380. *ALTIZER v. OHIO.* Ct. App. Ohio, Lake County. Certiorari denied.

No. 88-6381. *HEBEL v. ILLINOIS.* App. Ct. Ill., 5th Dist. Certiorari denied. Reported below: 174 Ill. App. 3d 1, 527 N. E. 2d 1367.

No. 88-6384. *GRACIANO v. UNITED STATES.* C. A. 1st Cir. Certiorari denied. Reported below: 860 F. 2d 1073.

No. 88-6391. *BROWN, AKA ALI v. UNITED STATES.* C. A. 4th Cir. Certiorari denied. Reported below: 774 F. 2d 1156.

No. 88-6392. *MARTIN v. PENNSYLVANIA.* Super. Ct. Pa. Certiorari denied. Reported below: 379 Pa. Super. 661, 545 A. 2d 386.

No. 88-6396. *MATUSAVAGE v. GENERAL SERVICES ADMINISTRATION.* C. A. Fed. Cir. Certiorari denied. Reported below: 838 F. 2d 1222.

No. 88-6397. *RAMIREZ v. AHN ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 843 F. 2d 864.

No. 88-6399. *MILLER v. NORTH CAROLINA ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 850 F. 2d 689.

No. 88-6402. *SCOTT v. PARSONS, WARDEN, ET AL.* C. A. 10th Cir. Certiorari denied.

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No. 88-6408. *MALONEY v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 857 F. 2d 789.

No. 88-6409. *WEAVER v. REDMAN, WARDEN, ET AL.* C. A. 3d Cir. Certiorari denied.

No. 88-6411. *DEAN v. SEABOLD, WARDEN, ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 865 F. 2d 257.

No. 88-6412. *MORLETT v. LYNAUGH, DIRECTOR, TEXAS DEPARTMENT OF CORRECTIONS*. C. A. 5th Cir. Certiorari denied. Reported below: 851 F. 2d 1521.

No. 88-6414. *KETTLESON v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 860 F. 2d 1087.

No. 88-6417. *DEMOS v. SUPREME COURT OF WASHINGTON*. Sup. Ct. Wash. Certiorari denied.

No. 88-6420. *PRICE v. MARYLAND*. C. A. 4th Cir. Certiorari denied. Reported below: 865 F. 2d 1259.

No. 88-6422. *KRAUS ET UX. v. CRETE STATE BANK*. Sup. Ct. Neb. Certiorari denied. Reported below: 229 Neb. xxii.

No. 88-6423. *MOLINA v. ALABAMA*. Ct. Crim. App. Ala. Certiorari denied. Reported below: 533 So. 2d 701.

No. 88-6425. *PRYMER v. ANDERBERG*. App. Ct. Ill., 2d Dist. Certiorari denied.

No. 88-6428. *MAULICK v. ISRAEL, WARDEN, ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 861 F. 2d 265.

No. 88-6429. *EDLIN v. MISSISSIPPI*. Sup. Ct. Miss. Certiorari denied. Reported below: 533 So. 2d 403.

No. 88-6431. *BRENNAN v. CITY OF MOUNT DORA, LAKE COUNTY, FLORIDA, ET AL.* C. A. 11th Cir. Certiorari denied. Reported below: 858 F. 2d 743.

No. 88-6436. *WAYNO v. UNITED STATES*. C. A. 9th Cir. Certiorari denied.

No. 88-6439. *DENIAL v. SMITH, SECRETARY, PENNSYLVANIA DEPARTMENT OF EDUCATION*. C. A. 3d Cir. Certiorari denied. Reported below: 865 F. 2d 250.

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No. 88-6449. *BANDA v. FLORIDA*. Sup. Ct. Fla. Certiorari denied. Reported below: 536 So. 2d 221.

No. 88-6453. *RIVAS v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 862 F. 2d 873.

No. 88-6454. *SAHAGIAN v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 864 F. 2d 509.

No. 88-6455. *MALDONADO v. NEW YORK*. App. Div., Sup. Ct. N. Y., 1st Jud. Dept. Certiorari denied. Reported below: 143 App. Div. 2d 559, 532 N. Y. S. 2d 953.

No. 88-6456. *SAYLES v. CIRCUIT COURT OF BEDFORD COUNTY, VIRGINIA*. Sup. Ct. Va. Certiorari denied.

No. 88-6460. *MUETZE v. SOLEM, WARDEN, ET AL.* C. A. 8th Cir. Certiorari denied. Reported below: 871 F. 2d 1093.

No. 88-6461. *LAMPACK v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 862 F. 2d 873.

No. 88-6463. *JACKSON v. LONG BEACH POLICE DEPARTMENT*. C. A. 9th Cir. Certiorari denied.

No. 88-6464. *FIXEL v. WHITLEY, WARDEN*. Sup. Ct. Nev. Certiorari denied. Reported below: 104 Nev. 857.

No. 88-6469. *RODMAN v. MISNER ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 852 F. 2d 569.

No. 88-6472. *MURPHY v. THEISSEN ET AL.* C. A. 8th Cir. Certiorari denied. Reported below: 860 F. 2d 1086.

No. 88-6483. *WILCHES v. UNITED STATES*. C. A. 1st Cir. Certiorari denied. Reported below: 867 F. 2d 605.

No. 88-6486. *DAHDAH v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 864 F. 2d 55.

No. 88-6490. *TRAVIS v. UNITED STATES*. C. A. 10th Cir. Certiorari denied.

No. 88-6502. *VOSS v. UNITED STATES PAROLE COMMISSION ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 863 F. 2d 50.

No. 88-6507. *SHEAR v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 825 F. 2d 783.

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No. 88-6509. *WALKER v. LOCKHART, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION*. C. A. 8th Cir. Certiorari denied. Reported below: 852 F. 2d 379.

No. 88-6510. *VIDAURE v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 861 F. 2d 1337.

No. 88-6514. *LATCHINIAN v. UNITED STATES*. C. A. 11th Cir. Certiorari denied. Reported below: 864 F. 2d 793.

No. 88-6517. *CABRERA v. SCULLY, SUPERINTENDENT, GREEN HAVEN CORRECTIONAL FACILITY*. C. A. 2d Cir. Certiorari denied. Reported below: 867 F. 2d 1423.

No. 88-6518. *COUZENS v. UNITED STATES*. C. A. 11th Cir. Certiorari denied. Reported below: 864 F. 2d 792.

No. 88-6521. *BELL v. DUCKWORTH, SUPERINTENDENT, INDIANA STATE PRISON*. C. A. 7th Cir. Certiorari denied. Reported below: 861 F. 2d 169.

No. 88-6522. *CLARK v. UNITED STATES*. C. A. 10th Cir. Certiorari denied.

No. 88-6523. *SINGH v. UNITED STATES*. C. A. 11th Cir. Certiorari denied. Reported below: 866 F. 2d 1421.

No. 88-6526. *LEIBOWITZ v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 857 F. 2d 373.

No. 88-6528. *LAROQUE v. UNITED STATES ET AL.; and IN RE LAROQUE*. C. A. D. C. Cir. Certiorari denied.

No. 88-6534. *RYAN v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 865 F. 2d 253.

No. 88-6545. *JOINER v. SOLEM, WARDEN, ET AL.* C. A. 8th Cir. Certiorari denied.

No. 88-6551. *ORTEGA v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 865 F. 2d 253.

No. 88-6556. *COX v. UNITED STATES*. C. A. 8th Cir. Certiorari denied.

No. 88-6558. *RITTENOUR v. MARYLAND*. Ct. Sp. App. Md. Certiorari denied. Reported below: 76 Md. App. 797.

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No. 88-6559. *MOORE v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 863 F. 2d 884.

No. 88-6561. *CHEESEBOROUGH v. UNITED STATES*. C. A. 11th Cir. Certiorari denied. Reported below: 864 F. 2d 792.

No. 88-6565. *EMBREY v. UNITED STATES* (three cases). C. A. 8th Cir. Certiorari denied.

No. 88-6566. *HILL v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 864 F. 2d 601.

No. 88-6569. *HALL v. SOWDERS, WARDEN*. C. A. 6th Cir. Certiorari denied. Reported below: 856 F. 2d 194.

No. 88-6576. *VILLARREAL v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 863 F. 2d 881.

No. 88-6583. *POWELL v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 865 F. 2d 265.

No. 88-6587. *RANTZ v. UNITED STATES*. C. A. 10th Cir. Certiorari denied. Reported below: 862 F. 2d 808.

No. 88-6608. *KUNEK v. COFFMAN ET AL.* C. A. 2d Cir. Certiorari denied.

No. 88-6609. *SAA v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 859 F. 2d 1067.

No. 88-6616. *AYUB v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 863 F. 2d 886.

No. 88-6625. *HEUBEL v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 866 F. 2d 1410.

No. 88-6633. *COTTEN v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 865 F. 2d 265.

No. 88-6640. *WEIR v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 861 F. 2d 542.

No. 88-6645. *LIOMIS v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 865 F. 2d 1271.

No. 88-902. *BERSANI ET AL. v. UNITED STATES ENVIRONMENTAL PROTECTION AGENCY ET AL.*; and

No. 88-929. *ROBICHAUD ET AL. v. UNITED STATES ENVIRONMENTAL PROTECTION AGENCY ET AL.* C. A. 2d Cir. Motions of

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National Association of Home Builders et al., American Planning Association, Chamber of Commerce of the United States, and Louisiana Landowners Association, Inc., for leave to file briefs as *amici curiae* in No. 88-902 granted. Motions of Pacific Legal Foundation et al. and American Association of Port Authorities for leave to file briefs as *amici curiae* granted. Certiorari denied. Reported below: 850 F. 2d 36.

No. 88-1003. COLONIAL SAVINGS ASSN. ET AL. *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 7th Cir. Motion of petitioner to defer consideration of the petition for writ of certiorari denied. Certiorari denied. Reported below: 854 F. 2d 1001.

No. 88-1099. BV ENGINEERING *v.* UNIVERSITY OF CALIFORNIA, LOS ANGELES. C. A. 9th Cir. Motions of Columbia Pictures Industries, Inc., et al., Association of American Publishers, Inc., et al., Center for the Protection of Creative Rights, and American Intellectual Property Law Association for leave to file briefs as *amici curiae* granted. Certiorari denied. Reported below: 858 F. 2d 1394.

No. 88-1165. COUNTY OF SONOMA *v.* HERRINGTON ET AL. C. A. 9th Cir. Certiorari denied. JUSTICE O'CONNOR took no part in the consideration or decision of this petition. Reported below: 834 F. 2d 1488 and 857 F. 2d 567.

No. 88-1204. AVINS ET AL. *v.* VIRGINIA COUNCIL OF HIGHER EDUCATION ET AL. Sup. Ct. Va. Motion of Coalition for Religious Freedom for leave to file a brief as *amicus curiae* granted. Certiorari denied. Reported below: 52 Ohio App. 3d 112, 557 N. E. 2d 139.

No. 88-1229. OHIO *v.* BOWE ET AL. Ct. App. Ohio, Summit County. Motion of respondents for leave to proceed *in forma pauperis* granted. Certiorari denied.

No. 88-1266. IDAHO STATE TAX COMMISSION ET AL. *v.* BLANGERS ET AL. Sup. Ct. Idaho. Certiorari denied. JUSTICE BLACKMUN and JUSTICE O'CONNOR would grant certiorari. Reported below: 114 Idaho 944, 763 P. 2d 1052.

No. 88-1275. CRIST, RECEIVER FOR TRANSIT CASUALTY CO. *v.* WAL-MART STORES, INC., ET AL. C. A. 8th Cir. Motion of Texas Property & Casualty Insurance Guaranty Association for leave to file a brief as *amicus curiae* granted. Certiorari denied. JUSTICE BLACKMUN took no part in the consideration or decision of this motion and this petition. Reported below: 855 F. 2d 1326.

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- No. 88-5961. *COPELAND v. LOUISIANA*. Sup. Ct. La.;
- No. 88-6148. *EARVIN v. LYNAUGH, DIRECTOR, TEXAS DEPARTMENT OF CORRECTIONS*. C. A. 5th Cir.;
- No. 88-6150. *BARBER v. TEXAS*. Ct. Crim. App. Tex.;
- No. 88-6203. *MATTHEWS v. SOUTH CAROLINA*. Sup. Ct. S. C.;
- No. 88-6350. *JENNINGS v. CALIFORNIA*. Sup. Ct. Cal.;
- No. 88-6361. *JOHNSON v. TENNESSEE*. Sup. Ct. Tenn.;
- No. 88-6365. *BELL v. TENNESSEE*. Sup. Ct. Tenn.;
- No. 88-6393. *WOOMER v. AIKEN, WARDEN, ET AL.* C. A. 4th Cir.;
- No. 88-6424. *MOORE v. ZANT, WARDEN*. C. A. 11th Cir.;
- No. 88-6530. *HOLLAND v. TEXAS*. Ct. Crim. App. Tex.; and
- No. 88-6655. *STEVENS v. NEVADA*. Sup. Ct. Nev. Certiorari denied. Reported below: No. 88-5961, 530 So. 2d 526; No. 88-6148, 860 F. 2d 623; No. 88-6150, 757 S. W. 2d 359; No. 88-6203, 296 S. C. 379, 373 S. E. 2d 587; No. 88-6350, 46 Cal. 3d 963, 760 P. 2d 475; No. 88-6361, 762 S. W. 2d 110; No. 88-6365, 745 S. W. 2d 858 and 759 S. W. 2d 651; No. 88-6393, 856 F. 2d 677; No. 88-6530, 761 S. W. 2d 307; No. 88-6655, 104 Nev. 867.

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. 88-6012. *TRAN v. LOCKHART, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION*. C. A. 8th Cir. Certiorari denied. JUSTICE WHITE took no part in the consideration or decision of this petition. Reported below: 849 F. 2d 1064.

No. 88-6341. *BONIN v. CALIFORNIA*. Sup. Ct. Cal. Certiorari denied. Reported below: 46 Cal. 3d 659, 758 P. 2d 1217.

JUSTICE MARSHALL, with whom JUSTICE BRENNAN joins, dissenting.

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

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if I did not hold this view, I would grant the petition to resolve the question whether a trial court may instruct a penalty phase jury that, "[i]f you conclude that the aggravating circumstances outweigh the mitigating circumstances, you *shall* impose a sentence of death." As I stated in *Hamilton v. California*, 488 U. S. 1047 (1989) (MARSHALL, J., dissenting from denial of certiorari), "I have grave doubts that such an instruction permits the individualized and reliable sentencing determination that the Constitution requires in capital cases, particularly where, as here, it is coupled with prosecutorial remarks stressing the limits on jurors' discretion." *Ibid.* I dissent.

Rehearing Denied

No. 87-1224. *ORING v. STATE BAR OF CALIFORNIA*, 488 U. S. 590;

No. 88-893. *WALKER ET AL. v. VALLEY NATIONAL BANK OF DES MOINES, IOWA, ADMINISTRATOR OF THE ESTATE OF WALKER, ET AL.*, 488 U. S. 1035;

No. 88-5864. *HOOKS v. ALABAMA*, 488 U. S. 1050;

No. 88-5936. *DAVIS v. CITY OF TUCSON*, 488 U. S. 1032; and

No. 88-6137. *SWENSON v. MARSH, SECRETARY OF THE ARMY*, *ante*, p. 1025. Petitions for rehearing denied.

No. 88-658. *PANHANDLE EASTERN PIPE LINE Co. v. ILLINOIS EX REL. HARTIGAN, ATTORNEY GENERAL OF ILLINOIS*, 488 U. S. 986. Motion for leave to file petition for rehearing denied.

No. 88-5732. *HILL v. REDMAN, WARDEN*, 488 U. S. 996. Motion for leave to file petition for rehearing denied. JUSTICE BRENNAN took no part in the consideration or decision of this motion.

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Certiorari Denied

No. 88-6857 (A-746). *KING v. LYNAUGH, DIRECTOR, TEXAS DEPARTMENT OF CORRECTIONS*. Ct. Crim. App. Tex.; and

No. A-758 (88-6861). *KING v. LYNAUGH, DIRECTOR, TEXAS DEPARTMENT OF CORRECTIONS*. C. A. 5th Cir. Applications for stay of execution of sentence of death, presented to JUSTICE WHITE, and by him referred to the Court, denied. Certiorari de-

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nied in No. 88-6857. JUSTICE BLACKMUN and JUSTICE STEVENS would grant the application for stay in No. A-758.

JUSTICE BRENNAN, with whom JUSTICE MARSHALL joins, dissenting.

Adhering to my view that the death penalty is in all circumstances cruel and unusual punishment prohibited by the Eighth and Fourteenth Amendments, *Gregg v. Georgia*, 428 U. S. 153, 227 (1976) (BRENNAN, J., dissenting), I would grant the stay of execution.

Even if I were not of the foregoing view, I would grant Leon King's applications for a stay pending our decision in *Penry v. Lynaugh*, 832 F. 2d 915 (CA5 1987), cert. granted, 487 U. S. 1233 (1988). King's claim to a stay is at least as meritorious as that presented by at least four other petitioners whose executions we have stayed. See *Williams v. Lynaugh*, 837 F. 2d 1294 (CA5), stay granted, 484 U. S. 1051 (1988); *Selvage v. Lynaugh*, 842 F. 2d 89 (CA5), stay granted, 485 U. S. 983 (1988); *Bridge v. Lynaugh*, 856 F. 2d 712 (CA5), stay granted, 487 U. S. 1260 (1988); *Bell v. Lynaugh*, 858 F. 2d 978 (CA5), stay granted, 488 U. S. 905 (1988). In none of those cases did we deny a stay on the ground that the petitioner was procedurally barred from challenging the State's capital sentencing scheme, despite the apparent failure of each of those petitioners to object at sentencing to the statutory requirement that the jury limit its consideration of mitigating evidence to its determination whether or not the defendant acted deliberately and whether he would pose a danger to society in the future. It seems to me unconscionable to deny King's application for a stay after having granted stays in *Williams*, *Selvage*, *Bridge*, and *Bell*.

No. 88-6863 (A-759). KING v. LYNAUGH, DIRECTOR, TEXAS DEPARTMENT OF CORRECTIONS. C. A. 5th Cir. Application for stay of execution of sentence of death, presented to JUSTICE WHITE, and by him referred to the Court, denied. Certiorari denied. Reported below: 850 F. 2d 1055.

JUSTICE BRENNAN and JUSTICE MARSHALL, dissenting.

Adhering to our views that the death penalty is in all circumstances cruel and unusual punishment prohibited by the Eighth and Fourteenth Amendments, *Gregg v. Georgia*, 428 U. S. 153,

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

MARCH 22, 1989

Dismissal Under Rule 53

No. 88-5772. WASHINGTON *v.* UNITED STATES. C. A. 4th Cir. Certiorari dismissed under this Court's Rule 53. Reported below: 850 F. 2d 1038.

MARCH 23, 1989

Dismissal Under Rule 53

No. 88-287. TIMES MIRROR CO. ET AL. *v.* DOE. Ct. App. Cal., 4th App. Dist. Certiorari dismissed under this Court's Rule 53. Reported below: 198 Cal. App. 3d 1420, 244 Cal. Rptr. 556.

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Appeal Dismissed

No. 88-1011. HARMAN ET AL. *v.* DOLE, SECRETARY OF LABOR, ET AL. Appeal from C. A. 3d Cir. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied. Reported below: 860 F. 2d 1075.

Certiorari Dismissed

No. 88-6635. WILLIAMS *v.* KEMP, WARDEN. C. A. 11th Cir. Motion of petitioner to defer consideration of the petition for writ of certiorari denied. Certiorari dismissed for want of jurisdiction. Reported below: 846 F. 2d 1276.

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.

Miscellaneous Orders

No. — — —. MCCONICO *v.* CONRADI. Motion to direct the Clerk to file petition for writ of certiorari out of time denied.

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No. D-746. IN RE DISBARMENT OF LINDQUIST. Disbarment entered. [For earlier order herein, see 488 U. S. 963.]

No. D-748. IN RE DISBARMENT OF JURON. Disbarment entered. [For earlier order herein, see 488 U. S. 1000.]

No. D-753. IN RE DISBARMENT OF REAVES. Disbarment entered. [For earlier order herein, see 488 U. S. 1026.]

No. D-754. IN RE DISBARMENT OF HARTMAN. Disbarment entered. [For earlier order herein, see 488 U. S. 1026.]

No. D-756. IN RE DISBARMENT OF MCCLURKIN. Disbarment entered. [For earlier order herein, see 488 U. S. 1026.]

No. D-758. IN RE DISBARMENT OF SILVERMAN. Disbarment entered. [For earlier order herein, see 488 U. S. 1027.]

No. D-759. IN RE DISBARMENT OF HARTMANN. Disbarment entered. [For earlier order herein, see 488 U. S. 1027.]

No. D-764. IN RE DISBARMENT OF SMITH. Disbarment entered. [For earlier order herein, see 488 U. S. 1039.]

No. 88-6494. WRENN *v.* BENSON ET AL. C. A. 6th Cir.;

No. 88-6497. WRENN *v.* DEPARTMENT OF MENTAL HEALTH OF OHIO. C. A. 6th Cir.; and

No. 88-6533. FERMIN *v.* COMMODITY FUTURES TRADING COMMISSION ET AL. C. A. D. C. Cir. Motions of petitioners for leave to proceed *in forma pauperis* denied. Petitioners are allowed until April 17, 1989, within which to pay the docketing fee required by Rule 45(a) and to submit petitions in compliance with Rule 33 of the Rules of this Court.

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

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

No. 88-6537. IN RE HOLMES. Petition for writ of prohibition denied.

Probable Jurisdiction Noted

No. 88-926. NORTH DAKOTA ET AL. *v.* UNITED STATES. Appeal from C. A. 8th Cir. Probable jurisdiction noted. Reported below: 856 F. 2d 1107.

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Certiorari Granted

No. 88-6222. *BLYSTONE v. PENNSYLVANIA*. Sup. Ct. Pa. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted limited to Question II presented by the petition. Reported below: 519 Pa. 450, 549 A. 2d 81.

Certiorari Denied. (See also No. 88-1011, *supra*.)

No. 88-1038. *BERBERIAN v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 851 F. 2d 236.

No. 88-1109. *CBC, INC. v. BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM*. C. A. 10th Cir. Certiorari denied. Reported below: 855 F. 2d 688.

No. 88-1155. *CROWN LIFE INSURANCE CO. v. GRIMES, INSURANCE COMMISSIONER OF OKLAHOMA AND RECEIVER FOR UNITED EQUITY LIFE INSURANCE CO., ET AL.* C. A. 10th Cir. Certiorari denied. Reported below: 857 F. 2d 699.

No. 88-1272. *H. K. PORTER CO., INC. v. UNITED STEELWORKERS OF AMERICA, AFL-CIO-CLC, ET AL.* C. A. 11th Cir. Certiorari denied. Reported below: 855 F. 2d 1499.

No. 88-1273. *ARONOV v. SECRETARY OF REVENUE, NORTH CAROLINA DEPARTMENT OF REVENUE*. Sup. Ct. N. C. Certiorari denied. Reported below: 323 N. C. 132, 371 S. E. 2d 468.

No. 88-1274. *LARSEN v. PHILADELPHIA NEWSPAPERS, INC., ET AL.* Super. Ct. Pa. Certiorari denied. Reported below: 375 Pa. Super. 66, 543 A. 2d 1181.

No. 88-1280. *PENNSYLVANIA INDEPENDENT PETROLEUM PRODUCERS v. PENNSYLVANIA DEPARTMENT OF ENVIRONMENTAL RESOURCES ET AL.* Sup. Ct. Pa. Certiorari denied. Reported below: 520 Pa. 59, 550 A. 2d 195.

No. 88-1286. *CARTER ET AL. v. BROADLAWNS MEDICAL CENTER ET AL.* C. A. 8th Cir. Certiorari denied. Reported below: 857 F. 2d 448.

No. 88-1288. *PETTY v. OHIO*. Ct. App. Ohio, Richland County. Certiorari denied.

No. 88-1289. *HOWE v. PENNSYLVANIA*. Super. Ct. Pa. Certiorari denied. Reported below: 379 Pa. Super. 659, 545 A. 2d 384.

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No. 88-1291. GREGORY ET AL. *v.* POPEYES FAMOUS FRIED CHICKEN & BISCUITS, INC. C. A. 6th Cir. Certiorari denied. Reported below: 857 F. 2d 1474.

No. 88-1292. BEEDING *v.* MILLER. App. Ct. Ill., 2d Dist. Certiorari denied. Reported below: 167 Ill. App. 3d 128, 520 N. E. 2d 1058.

No. 88-1297. GLICK ET AL. *v.* GEORGES ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 856 F. 2d 971.

No. 88-1303. BROWN *v.* MISSISSIPPI. Sup. Ct. Miss. Certiorari denied. Reported below: 533 So. 2d 1118.

No. 88-1306. KRIVANEK *v.* MAD RIVER VALLEY HEALTH CENTER, INC. C. A. 2d Cir. Certiorari denied. Reported below: 863 F. 2d 45.

No. 88-1343. DARLINGTON *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 849 F. 2d 76.

No. 88-1373. AMERICAN BICYCLE CO., INC., ET AL. *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 88-1391. AVIS *v.* CONNECTICUT. Sup. Ct. Conn. Certiorari denied. Reported below: 209 Conn. 290, 551 A. 2d 26.

No. 88-1408. LOVETT *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 854 F. 2d 1280.

No. 88-5994. VAMOS *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 838 F. 2d 1204.

No. 88-6053. MOSES *v.* MICHIGAN. Ct. App. Mich. Certiorari denied.

No. 88-6098. THOMAS *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 168 Ill. App. 3d 113, 522 N. E. 2d 253.

No. 88-6161. CANTU *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 853 F. 2d 288.

No. 88-6363. EVANS *v.* SULLIVAN, SECRETARY OF HEALTH AND HUMAN SERVICES. C. A. 5th Cir. Certiorari denied. Reported below: 857 F. 2d 790.

No. 88-6375. TAFOYA *v.* NEW MEXICO. Ct. App. N. M. Certiorari denied. Reported below: 108 N. M. 1, 765 P. 2d 1183.

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No. 88-6388. *CURRY v. BARRETT ET AL.* C. A. 5th Cir. Certiorari denied.

No. 88-6466. *BROWN v. MISSOURI ET AL.* C. A. 8th Cir. Certiorari denied.

No. 88-6467. *SIVAK v. MURPHY ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 865 F. 2d 265.

No. 88-6474. *VALDEZ v. MYERS, WARDEN.* C. A. 9th Cir. Certiorari denied.

No. 88-6475. *THOMPSON v. VELASQUEZ ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 861 F. 2d 717.

No. 88-6476. *HOCH v. MONTANA.* Sup. Ct. Mont. Certiorari denied. Reported below: 234 Mont. 405, 763 P. 2d 1119.

No. 88-6479. *CARR v. LOUISIANA.* Ct. App. La., 1st Cir. Certiorari denied. Reported below: 530 So. 2d 579.

No. 88-6485. *BOLAND v. RAFFERTY, SUPERINTENDENT, NEW JERSEY STATE PRISON AT RAHWAY, ET AL.* C. A. 3d Cir. Certiorari denied. Reported below: 865 F. 2d 249.

No. 88-6491. *GARNER v. KANSAS.* Ct. App. Kan. Certiorari denied. Reported below: 13 Kan. App. 2d xxvi, 763 P. 2d 322.

No. 88-6500. *MESSINGER v. TEXAS.* Ct. App. Tex., 14th Dist. Certiorari denied.

No. 88-6503. *MINTON v. SHEET METAL WORKERS LOCAL UNION No. 54, AFL-CIO, ET AL.* C. A. 5th Cir. Certiorari denied.

No. 88-6504. *STEWART v. DEPARTMENT OF THE NAVY.* C. A. 4th Cir. Certiorari denied. Reported below: 852 F. 2d 566.

No. 88-6506. *COX v. SHERIFF OF PINE COUNTY, MINNESOTA.* Ct. App. Minn. Certiorari denied.

No. 88-6508. *FELLS v. FULCOMER, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT HUNTINGDON, ET AL.* C. A. 3d Cir. Certiorari denied. Reported below: 866 F. 2d 1409.

No. 88-6529. *JOHNSON v. OHIO.* Sup. Ct. Ohio. Certiorari denied. Reported below: 40 Ohio St. 3d 130, 532 N. E. 2d 1295.

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No. 88-6535. *LEIBOWITZ v. MASSACHUSETTS ET AL.* C. A. 1st Cir. Certiorari denied. Reported below: 867 F. 2d 605.

No. 88-6536. *TEMPEL v. ALASKA ET AL.* C. A. 9th Cir. Certiorari denied.

No. 88-6544. *ROBBINS v. COOK, WARDEN, ET AL.* C. A. 10th Cir. Certiorari denied.

No. 88-6552. *CUNNINGHAM v. DEPARTMENT OF THE ARMY.* C. A. Fed. Cir. Certiorari denied. Reported below: 852 F. 2d 1292.

No. 88-6554. *ROBBINS ET UX. v. CITY OF AUBURN, MAINE.* Sup. Jud. Ct. Me. Certiorari denied. Reported below: 550 A. 2d 362.

No. 88-6555. *CHURCH v. WARREN, JUDGE, CIRCUIT COURT OF VIRGINIA, AMELIA COUNTY.* Sup. Ct. Va. Certiorari denied.

No. 88-6646. *BECTON v. UNITED STATES.* C. A. 8th Cir. Certiorari denied. Reported below: 860 F. 2d 1087.

No. 88-6647. *GROWNEY v. GROWNEY ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 844 F. 2d 789.

No. 88-6676. *BURNS v. NAGLE, WARDEN, ET AL.* C. A. 11th Cir. Certiorari denied. Reported below: 859 F. 2d 925.

No. 88-6694. *TOWNSEND v. PARKE, WARDEN.* C. A. 6th Cir. Certiorari denied. Reported below: 865 F. 2d 261.

No. 88-6699. *MARTINEZ-JIMENEZ v. UNITED STATES.* C. A. 9th Cir. Certiorari denied. Reported below: 864 F. 2d 664.

No. 88-6704. *SIMMONS v. UNITED STATES.* C. A. 4th Cir. Certiorari denied. Reported below: 865 F. 2d 1261.

No. 88-6709. *SMITH v. UNITED STATES.* C. A. 6th Cir. Certiorari denied. Reported below: 865 F. 2d 262.

No. 88-6861. *KING v. LYNAUGH, DIRECTOR, TEXAS DEPARTMENT OF CORRECTIONS.* C. A. 5th Cir. Certiorari denied. Reported below: 868 F. 2d 1400.

No. 88-989. *FLORIDA v. CAPLAN.* Sup. Ct. Fla. Certiorari denied. JUSTICE WHITE and JUSTICE BLACKMUN would grant certiorari. Reported below: 531 So. 2d 88.

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No. 88-1153. *W. W. RODGERS & SONS PRODUCE, INC., ET AL. v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. JUSTICE WHITE would grant certiorari limited to Question 1 presented by the petition. Reported below: 857 F. 2d 790.

No. 88-1283. *WELLS, WARDEN v. LENT*. C. A. 6th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 861 F. 2d 972.

No. 88-1299. *GEBBIE, ASSISTANT DIRECTOR, OREGON DEPARTMENT OF HUMAN RESOURCES v. BRADY*. C. A. 9th Cir. Certiorari denied. JUSTICE WHITE would grant certiorari limited to Questions 1 and 2 presented by the petition. Reported below: 859 F. 2d 1543.

No. 88-6273. *RICHARDSON v. ILLINOIS*. Sup. Ct. Ill.;

No. 88-6489. *COLEMAN v. CALIFORNIA*. Sup. Ct. Cal.;

No. 88-6493. *STARR v. ARKANSAS*. Sup. Ct. Ark.;

No. 88-6501. *SWAFFORD v. FLORIDA*. Sup. Ct. Fla.; and

No. 88-6652. *VAN HOOK v. OHIO*. Sup. Ct. Ohio. Certiorari denied. Reported below: No. 88-6273, 123 Ill. 2d 322, 528 N. E. 2d 612; No. 88-6489, 46 Cal. 3d 749, 759 P. 2d 1260; No. 88-6493, 297 Ark. 26, 759 S. W. 2d 535; No. 88-6501, 533 So. 2d 270; No. 88-6652, 39 Ohio St. 3d 256, 530 N. E. 2d 883.

JUSTICE BRENNAN and JUSTICE MARSHALL, dissenting.

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

Rehearing Denied

No. 88-6095. *CORTEZ v. PRICE ET AL.*, *ante*, p. 1024;

No. 88-6145. *MARTIN v. SHANK ET AL.*, *ante*, p. 1025;

No. 88-6146. *DIAMOND v. DISCIPLINARY COUNSEL ET AL.*, *ante*, p. 1025; and

No. 88-6210. *BOX v. PETSOCK, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AND DIAGNOSTIC (AND CLASSIFICATION CENTER) AT PITTSBURGH, ET AL.*, *ante*, p. 1028. Petitions for rehearing denied.

No. 88-6044. *ROGERS v. ILLINOIS*, 488 U. S. 1046. Motion for leave to file petition for rehearing denied.

OPINION OF INDIVIDUAL JUSTICE
IN CHAMBERS

BROTHERHOOD OF RAILROAD SIGNALMEN v. N. W.
SOUTHEASTERN PENNSYLVANIA TRANSPORTATION
TRUST COMPANY

ON APPLICATION FOR WRIT OF HABEAS CORPUS

U. S. SUPREME COURT, 1904

Application to vacate the appointment of Justice Chief of Court

JUSTICE BRENNAN,

REPORTER'S NOTE

The next page is purposely numbered 1301. The numbers between 1100 and 1301 were intentionally omitted, in order to make it possible to publish in-chambers opinions with *permanent* page numbers, thus making the official citations available upon publication of the preliminary prints of the United States Reports.

grant certiorari. *Roelker v. Goldcorp*, 482 U. S. 1204, 1206 (1987) (Brennan, J., in chambers)

