

ORDERS FOR APRIL 3 THROUGH  
JUNE 12, 1989

---

APRIL 3, 1989

*Dismissal Under Rule 53*

No. 88-1036. HODES ET UX. *v.* LAURO LINES S.R.L. ET AL. C. A. 3d Cir. Certiorari dismissed under this Court's Rule 53. Reported below: 858 F. 2d 905.

*Affirmed on Appeal*

No. 87-2118. ROJAS ET AL. *v.* VICTORIA INDEPENDENT SCHOOL DISTRICT ET AL. Affirmed on appeal from D. C. S. D. Tex. JUSTICE WHITE and JUSTICE SCALIA would note probable jurisdiction and set case for oral argument.

*Appeal Dismissed*

No. 88-1340. WISHART ET UX. *v.* BATES ET AL. Appeal from Sup. Ct. Fla. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied. Reported below: 531 So. 2d 955.

*Certiorari Granted—Vacated and Remanded*

No. 87-255. ZOHDI ET AL. *v.* FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION, AS RECEIVER OF SUN BELT FEDERAL BANK, F. S. B., ET AL. C. A. 5th Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Coit Independence Joint Venture v. FSLIC*, 489 U. S. 561 (1989). Reported below: 826 F. 2d 1391.

No. 87-1706. JENKINS, SUPERINTENDENT OF DISTRICT OF COLUMBIA PUBLIC SCHOOLS, ET AL. *v.* JONES. C. A. D. C. Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Skinner v. Railway Labor Executives' Assn.*, 489 U. S. 602 (1989), and *Treasury Employees v. Von Raab*, 489 U. S. 656 (1989). JUSTICE STEVENS would deny certiorari. Reported below: 266 U. S. App. D. C. 85, 833 F. 2d 335.

April 3, 1989

490 U. S.

No. 88-557. *MICHIGAN v. LEIGH*. Ct. App. Mich. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Arizona v. Youngblood*, 488 U. S. 51 (1988). JUSTICE STEVENS would deny certiorari.

No. 88-1121. *BRADLEY ET AL. v. UNITED STATES*. C. A. 3d Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of the position presently asserted by the Acting Solicitor General in the Brief for the United States filed March 8, 1989. THE CHIEF JUSTICE, JUSTICE WHITE, JUSTICE SCALIA, and JUSTICE KENNEDY would deny certiorari. Reported below: 856 F. 2d 575.

No. 88-1350. *SMITH ET AL. v. SOWERS*. 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*, 489 U. S. 189 (1989). Reported below: 869 F. 2d 591.

#### *Miscellaneous Orders*

No. A-761. *GARGALLO v. QUICK & REILLY CLEARING ET AL.* D. C. S. D. Ohio. Application for stay, addressed to JUSTICE BLACKMUN and referred to the Court, denied.

No. 87-1965. *ZINERMON ET AL. v. BURCH*. C. A. 11th Cir. [Certiorari granted, 489 U. S. 1064.] Motion of petitioners to dispense with printing the joint appendix granted.

No. 88-309. *WYOMING v. UNITED STATES ET AL.* Sup. Ct. Wyo. [Certiorari granted, 488 U. S. 1040.] Motion of the Acting Solicitor General for divided argument granted.

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 the Acting Solicitor General for divided argument granted.

No. 88-599. *WASHINGTON ET AL. v. HARPER*. Sup. Ct. Wash. [Certiorari granted, 489 U. S. 1064.] Motion for appointment of counsel granted, and it is ordered that Brian Reed Phillips, Esq., of Everett, Wash., be appointed to serve as counsel for respondent in this case.

490 U. S.

April 3, 1989

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 Robert Packwood et al. for leave to participate in oral argument as *amici curiae*, for divided argument, and for additional time for oral argument denied.

No. 88-5890. IN RE McDONALD. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [489 U. S. 180] denied.

No. 88-6855 (A-773). IN RE CAMPBELL. Application for stay of execution of sentence of death, presented to JUSTICE O'CONNOR, and by her referred to the Court, denied. Petition for writ of mandamus and/or prohibition 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 mandamus and/or prohibition.

*Certiorari Granted.* (See also No. 87-980, *ante*, at 41, n. 15.)

No. 88-931. CRANDON ET AL. *v.* UNITED STATES; and

No. 88-938. BOEING CO., INC. *v.* UNITED STATES. C. A. 4th Cir. *Certiorari* granted, cases consolidated, and a total of one hour allotted for oral argument. Reported below: 845 F. 2d 476.

No. 88-1182. BALTIMORE CITY DEPARTMENT OF SOCIAL SERVICES *v.* BOUKNIGHT; and

No. 88-6651. MAURICE M. *v.* BOUKNIGHT. Ct. App. Md. Motion of respondent Jacqueline Bouknight for leave to proceed *in forma pauperis* granted. *Certiorari* granted limited to the following questions:

"1. Does a court order directing a parent to produce her previously abused infant son compel incriminating testimony in violation of the parent's Fifth Amendment privilege against self-incrimination?

"2. Even if the Fifth Amendment privilege is implicated by a court order to produce a child, is the privilege overcome by the

April 3, 1989

490 U. S.

important societal interest in protecting children in jeopardy of serious injury?"

Cases consolidated and a total of one hour allotted for oral argument. Reported below: 314 Md. 391, 550 A. 2d 1135.

*Certiorari Denied.* (See also No. 88-1340, *supra.*)

No. 87-452. FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION, AS RECEIVER FOR BEVERLY HILLS SAVINGS & LOAN ASSN. *v.* MURDOCK-SC ASSOCIATES ET AL. C. A. 9th Cir. *Certiorari denied.* Reported below: 815 F. 2d 82.

No. 88-66. COPELAND *v.* PHILADELPHIA POLICE DEPARTMENT ET AL. C. A. 3d Cir. *Certiorari denied.* Reported below: 840 F. 2d 1139.

No. 88-250. LAZAR *v.* UNITED STATES; and

No. 88-278. FRIEDMAN *v.* UNITED STATES. C. A. 2d Cir. *Certiorari denied.* Reported below: 854 F. 2d 535.

No. 88-645. ALVERADO ET AL. *v.* WASHINGTON PUBLIC POWER SUPPLY SYSTEM ET AL. Sup. Ct. Wash. *Certiorari denied.* Reported below: 111 Wash. 2d 424, 759 P. 2d 427.

No. 88-659. FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION, AS RECEIVER OF EMPIRE SAVINGS & LOAN ASSN. *v.* GLEN RIDGE I CONDOMINIUMS, LTD., ET AL. Ct. App. Tex., 5th Dist. *Certiorari denied.* Reported below: 734 S. W. 2d 374.

No. 88-706. POLICEMEN'S BENEVOLENT ASSOCIATION OF NEW JERSEY, LOCAL 318, ET AL. *v.* TOWNSHIP OF WASHINGTON, NEW JERSEY, ET AL. C. A. 3d Cir. *Certiorari denied.* Reported below: 850 F. 2d 133.

No. 88-732. HELMSLEY ET UX. *v.* UNITED STATES. C. A. 2d Cir. *Certiorari denied.* Reported below: 866 F. 2d 19.

No. 88-888. POINDEXTER ET AL. *v.* UNITED STATES. C. A. D. C. Cir. *Certiorari denied.* Reported below: 273 U. S. App. D. C. 240, 859 F. 2d 216.

No. 88-1049. GRANGE INSURANCE ASSN. *v.* WASHINGTON ET AL. Sup. Ct. Wash. *Certiorari denied.* Reported below: 110 Wash. 2d 752, 757 P. 2d 933.

490 U. S.

April 3, 1989

No. 88-1055. *YEAUGER v. UNITED STATES*. Ct. Mil. App. Certiorari denied. Reported below: 27 M. J. 199.

No. 88-1072. *TENNESSEE ET AL. v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 859 F. 2d 20.

No. 88-1119. *MESSIAH BAPTIST CHURCH ET AL. v. JEFFERSON COUNTY, COLORADO, ET AL.* C. A. 10th Cir. Certiorari denied. Reported below: 859 F. 2d 820.

No. 88-1144. *PENTHOUSE INTERNATIONAL, LTD., ET AL. v. DOMINION FEDERAL SAVINGS & LOAN ASSN. ET AL.*; and

No. 88-1339. *DOMINION FEDERAL SAVINGS & LOAN ASSN. v. PENTHOUSE INTERNATIONAL, LTD., ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 855 F. 2d 963.

No. 88-1160. *CORNELIUS, PERSONAL REPRESENTATIVE OF THE ESTATE OF McDONALD v. COMMISSIONER OF INTERNAL REVENUE*. C. A. 8th Cir. Certiorari denied. Reported below: 853 F. 2d 1494.

No. 88-1161. *DORNHOFFER v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 859 F. 2d 1195.

No. 88-1166. *LOWE v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 860 F. 2d 1370.

No. 88-1170. *BOISE-KUNA IRRIGATION DISTRICT ET AL. v. UNITED STATES ET AL.* Sup. Ct. Idaho. Certiorari denied. Reported below: 115 Idaho 1, 764 P. 2d 78.

No. 88-1173. *PENDLEY, ADMINISTRATOR OF THE ESTATE OF CASSUTT v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 856 F. 2d 699.

No. 88-1187. *WINKLER ET AL. v. SPINNATO, COMMISSIONER OF THE FIRE DEPARTMENT OF THE CITY OF NEW YORK, ET AL.* Ct. App. N. Y. Certiorari denied. Reported below: 72 N. Y. 2d 402, 530 N. E. 2d 835.

No. 88-1253. *BUSACCA v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 863 F. 2d 433.

No. 88-1310. *BRENT v. NATIONAL RAILROAD PASSENGER CORPORATION, DBA AMTRAK, ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 859 F. 2d 918.

April 3, 1989

490 U. S.

No. 88-1311. ALLSTATE INSURANCE CO. *v.* BOURLAND, INDIVIDUALLY AND AS ADMINISTRATOR OF THE ESTATE OF BOURLAND. Sup. Ct. Ark. Certiorari denied. Reported below: 296 Ark. 488, 758 S. W. 2d 700.

No. 88-1313. GHOSH *v.* OHIO UNIVERSITY ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 861 F. 2d 720.

No. 88-1315. WU *v.* BOARD OF TRUSTEES OF THE UNIVERSITY OF ALABAMA ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 847 F. 2d 1480.

No. 88-1316. COMPRESSED GAS CORP. *v.* UNITED STATES STEEL CORP. ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 857 F. 2d 346.

No. 88-1320. WONDERWHEEL ET AL. *v.* BRADY ET AL. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 88-1322. CITY OF WHITTIER, CALIFORNIA *v.* WALNUT PROPERTIES, INC. C. A. 9th Cir. Certiorari denied. Reported below: 861 F. 2d 1102.

No. 88-1325. PAXSON ELECTRIC CO. ET AL. *v.* UNITED STATES; and

No. 88-1328. DYNALECTRIC CO. ET AL. *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 859 F. 2d 1559.

No. 88-1330. GETTY PETROLEUM CORP. *v.* SALEM HEAT & PETROLEUM CORP. ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 862 F. 2d 10.

No. 88-1332. GEKAS, TRUSTEE OF MET-L-WOOD CORP. *v.* PIPIN ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 861 F. 2d 1012.

No. 88-1333. ROBINSON *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 381 Pa. Super. 660, 548 A. 2d 643.

No. 88-1335. GETTY PETROLEUM CORP. *v.* BARTCO PETROLEUM CORP. ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 858 F. 2d 103.

490 U. S.

April 3, 1989

- No. 88-1337. *SOIFER v. BANKERS TRUST CO. ET AL.*; and  
No. 88-1351. *RHOADES ET AL. v. BANKERS TRUST CO. ET AL.*  
C. A. 2d Cir. Certiorari denied. Reported below: 859 F. 2d  
1096.
- No. 88-1341. *SAN FERNANDO VALLEY NEIGHBORHOOD LEGAL  
SERVICES, INC., AS COUNSEL FOR DUBOSE, ET AL. v. KEMP, SEC-  
RETARY OF HOUSING AND URBAN DEVELOPMENT, ET AL.* C. A.  
2d Cir. Certiorari denied. Reported below: 857 F. 2d 889.
- No. 88-1356. *CONSTANT v. ADVANCED MICRO-DEVICES, INC.,  
ET AL.* C. A. Fed. Cir. Certiorari denied. Reported below: 862  
F. 2d 320.
- No. 88-1390. *LOWERY v. LOWERY.* Ct. App. Ohio, Sandusky  
County. Certiorari denied.
- No. 88-1405. *BROWN v. MISSISSIPPI.* Sup. Ct. Miss. Certio-  
rari denied. Reported below: 534 So. 2d 1019.
- No. 88-1410. *KONDRAT v. MOYER ET AL.* C. A. 6th Cir.  
Certiorari denied. Reported below: 865 F. 2d 258.
- No. 88-1413. *FITZGERALD v. SULLIVAN, SECRETARY, UNITED  
STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES.* C. A.  
4th Cir. Certiorari denied. Reported below: 861 F. 2d 263.
- No. 88-1422. *WOLFSON v. UNITED STATES.* C. A. 2d Cir.  
Certiorari denied. Reported below: 867 F. 2d 1425.
- No. 88-1429. *DEVOE v. COMMISSIONER OF INTERNAL REVE-  
NUE.* C. A. 9th Cir. Certiorari denied. Reported below: 860  
F. 2d 1088.
- No. 88-1442. *NALLY ET UX. v. GRACE COMMUNITY CHURCH  
OF THE VALLEY ET AL.* Sup. Ct. Cal. Certiorari denied. Re-  
ported below: 47 Cal. 3d 278, 763 P. 2d 948.
- No. 88-1443. *BILLHIMER v. MARYLAND ADMINISTRATIVE  
BOARD OF ELECTION LAWS.* Ct. App. Md. Certiorari denied.  
Reported below: 314 Md. 46, 548 A. 2d 819.
- No. 88-1487. *ROGERS v. FIRST NATIONAL BANK OF PEORIA  
ET AL.* C. A. 7th Cir. Certiorari denied. Reported below: 851  
F. 2d 916.

April 3, 1989

490 U. S.

No. 88-1489. *WOLPERT ET UX., INDIVIDUALLY AND GUARDIANS OF WOLPERT ET AL. v. UNITED STATES.* C. A. 3d Cir. Certiorari denied.

No. 88-6204. *BRANION v. GRAMLY, WARDEN.* C. A. 7th Cir. Certiorari denied. Reported below: 855 F. 2d 1256.

No. 88-6211. *STREATER v. UNITED STATES.* C. A. 3d Cir. Certiorari denied. Reported below: 862 F. 2d 311.

No. 88-6401. *MARTIN v. COMMONWEALTH NATIONAL BANK ET AL.* Super. Ct. Pa. Certiorari denied. Reported below: 378 Pa. Super. 657, 544 A. 2d 1048.

No. 88-6457. *SMITH v. FAIRMAN, WARDEN, ET AL.* C. A. 7th Cir. Certiorari denied. Reported below: 862 F. 2d 630.

No. 88-6511. *WRIGHT v. BOGAN, WARDEN, ET AL.* C. A. 8th Cir. Certiorari denied. Reported below: 860 F. 2d 1086.

No. 88-6520. *POLING v. INDIANA.* Sup. Ct. Ind. Certiorari denied. Reported below: 515 N. E. 2d 1074.

No. 88-6527. *ERICKSON v. ERICKSON, WARDEN, ET AL.* C. A. 8th Cir. Certiorari denied. Reported below: 860 F. 2d 1086.

No. 88-6532. *LARSON v. TEXAS.* Ct. App. Tex., 14th Dist. Certiorari denied. Reported below: 759 S. W. 2d 457.

No. 88-6539. *MALLOY v. ALABAMA.* Ct. Crim. App. Ala. Certiorari denied.

No. 88-6540. *PRATT v. NEVADA.* Sup. Ct. Nev. Certiorari denied. Reported below: 104 Nev. 869.

No. 88-6541. *HENSLEY v. NORTH CAROLINA.* Ct. App. N. C. Certiorari denied. Reported below: 91 N. C. App. 282, 371 S. E. 2d 498.

No. 88-6543. *YAGOW v. MELROE ET AL.* C. A. 8th Cir. Certiorari denied.

No. 88-6547. *LEONARD v. ILLINOIS.* App. Ct. Ill., 2d Dist. Certiorari denied. Reported below: 171 Ill. App. 3d 380, 526 N. E. 2d 397.

No. 88-6548. *WILSON v. ILLINOIS.* App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 170 Ill. App. 3d 1159, 542 N. E. 2d 185.

490 U. S.

April 3, 1989

No. 88-6549. *KUKU v. IMMIGRATION AND NATURALIZATION SERVICE*. C. A. 5th Cir. Certiorari denied. Reported below: 856 F. 2d 190.

No. 88-6550. *SHUSTER v. MARTINEZ, GOVERNOR OF FLORIDA, ET AL.* Sup. Ct. Fla. Certiorari denied. Reported below: 534 So. 2d 401.

No. 88-6553. *NOLLSCH v. WYOMING*. Sup. Ct. Wyo. Certiorari denied.

No. 88-6557. *MARSHALL v. PENNSYLVANIA*. Super. Ct. Pa. Certiorari denied. Reported below: 377 Pa. Super. 653, 541 A. 2d 1152.

No. 88-6560. *HENDERSON v. GREER, WARDEN, ET AL.* C. A. 7th Cir. Certiorari denied. Reported below: 859 F. 2d 492.

No. 88-6564. *HOLGUIN v. DORSEY, WARDEN, ET AL.* C. A. 10th Cir. Certiorari denied.

No. 88-6571. *HILLMAN v. CITY OF SPOKANE*. Super. Ct. Wash., Spokane County. Certiorari denied.

No. 88-6575. *LANDES v. YOST, COMMANDANT, UNITED STATES COAST GUARD*. C. A. 3d Cir. Certiorari denied. Reported below: 869 F. 2d 590.

No. 88-6590. *WEBER v. STATE BAR OF CALIFORNIA*. Sup. Ct. Cal. Certiorari denied. Reported below: 47 Cal. 3d 492, 764 P. 2d 701.

No. 88-6591. *WOODFIN v. VIRGINIA*. Sup. Ct. Va. Certiorari denied. Reported below: 236 Va. 89, 372 S. E. 2d 377.

No. 88-6592. *PENNOCK v. ARTHUR F. SCHULTZ CO. ET AL.* C. A. 3d Cir. Certiorari denied. Reported below: 862 F. 2d 309.

No. 88-6593. *PETRARCA v. PICERNE ET AL.* C. A. 1st Cir. Certiorari denied.

No. 88-6594. *MAGHE v. WALLMAN, WARDEN*. C. A. 10th Cir. Certiorari denied.

No. 88-6596. *WOOD v. VETERANS ADMINISTRATION ET AL.* C. A. 10th Cir. Certiorari denied.

No. 88-6599. *MASON v. PARKE, WARDEN*. C. A. 6th Cir. Certiorari denied. Reported below: 860 F. 2d 1079.

April 3, 1989

490 U. S.

No. 88-6601. *CLEM v. COUNTY OF SAN DIEGO ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 857 F. 2d 1477.

No. 88-6606. *MIZELL v. MICHIGAN.* Ct. App. Mich. Certiorari denied.

No. 88-6607. *MC SHAN v. LYNAUGH, DIRECTOR, TEXAS DEPARTMENT OF CORRECTIONS.* C. A. 5th Cir. Certiorari denied.

No. 88-6637. *DAWN ET UX. v. RICHMOND ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 861 F. 2d 268.

No. 88-6643. *JOHNS v. DEPARTMENT OF THE INTERIOR.* C. A. Fed. Cir. Certiorari denied. Reported below: 868 F. 2d 1277.

No. 88-6648. *MAZAK v. RISON, WARDEN.* C. A. 10th Cir. Certiorari denied.

No. 88-6661. *THORNBERG v. UNITED STATES.* C. A. 8th Cir. Certiorari denied.

No. 88-6663. *HARRIS v. UNITED STATES.* C. A. 3d Cir. Certiorari denied. Reported below: 862 F. 2d 308.

No. 88-6672. *DONALD v. GEORGIA.* Ct. App. Ga. Certiorari denied.

No. 88-6679. *FULLER v. MARYLAND.* C. A. 4th Cir. Certiorari denied. Reported below: 867 F. 2d 608.

No. 88-6681. *MANNING v. UNITED STATES.* C. A. 2d Cir. Certiorari denied. Reported below: 867 F. 2d 1425.

No. 88-6703. *BATIN v. UNITED STATES.* C. A. 6th Cir. Certiorari denied. Reported below: 865 F. 2d 261.

No. 88-6705. *SUGIYAMA v. TERRITORY OF GUAM.* C. A. 9th Cir. Certiorari denied. Reported below: 846 F. 2d 570.

No. 88-6707. *BOGDEN v. UNITED STATES.* C. A. 7th Cir. Certiorari denied. Reported below: 865 F. 2d 124.

No. 88-6708. *VELASCO v. UNITED STATES.* C. A. 11th Cir. Certiorari denied. Reported below: 865 F. 2d 1272.

No. 88-6710. *LAURENCO v. SULLIVAN, SECRETARY, DEPARTMENT OF HEALTH AND HUMAN SERVICES.* C. A. 4th Cir. Certiorari denied. Reported below: 867 F. 2d 609.

No. 88-6712. *YARBOROUGH v. UNITED STATES.* Ct. App. D. C. Certiorari denied.

490 U. S.

April 3, 1989

- No. 88-6715. JOHNSON *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 869 F. 2d 1495.
- No. 88-6724. AMYX *v.* OHIO. Ct. App. Ohio, Hamilton County. Certiorari denied. Reported below: 55 Ohio App. 3d 54, 562 N. E. 2d 508.
- No. 88-6727. COOKSLEY *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 873 F. 2d 1446.
- No. 88-6739. SUTTON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 861 F. 2d 461.
- No. 88-6741. HAILE *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 865 F. 2d 1269.
- No. 88-6757. LOVINGOOD *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 810 F. 2d 195.
- No. 88-6775. BRAXTON, ADMINISTRATRIX AD PROSEQUENDUM OF THE ESTATE OF BRAXTON, AND ON BEHALF OF HERSELF *v.* BLANKS ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 860 F. 2d 1074.
- No. 88-6780. GOVAN *v.* WORKERS' COMPENSATION APPEALS BOARD ET AL. Ct. App. Cal., 2d App. Dist. Certiorari denied.
- No. 88-833. MARIANI *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. JUSTICE WHITE would grant certiorari. Reported below: 851 F. 2d 595.
- No. 88-1336. JIMINEZ ET AL. *v.* BP OIL, INC. C. A. 4th Cir. Certiorari denied. JUSTICE WHITE would grant certiorari. Reported below: 853 F. 2d 268.
- No. 88-1151. TAKAHASHI *v.* LIVINGSTON UNION SCHOOL DISTRICT ET AL. Ct. App. Cal., 5th App. Dist. Motion of Asian Pacific American Coalition for leave to file a brief as *amicus curiae* granted. Certiorari denied. Reported below: 202 Cal. App. 3d 1464, 249 Cal. Rptr. 578.
- No. 88-1157. MARTIN MARIETTA CORP. *v.* POLLARD; and  
No. 88-1338. POLLARD *v.* MARTIN MARIETTA CORP. C. A. 4th Cir. Motions of American Corporate Counsel Association and American Bar Association for leave to file briefs as *amici curiae* in No. 88-1157 granted. Certiorari denied. Reported below: 856 F. 2d 619.
- No. 88-1324. DUCKWORTH, SUPERINTENDENT, INDIANA STATE PRISON, ET AL. *v.* DUDLEY. C. A. 7th Cir. Motion of respond-

April 3, 1989

490 U. S.

ent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 854 F. 2d 967.

No. 88-1345. RICKETTS ET AL. *v.* VAUGHAN ET AL. C. A. 9th Cir. Motion of respondents William John Cunningham and Bruce Foy Lowry for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 859 F. 2d 736.

No. 88-6093. HOOKS *v.* OHIO. Sup. Ct. Ohio;

No. 88-6318. ESPARZA *v.* OHIO. Sup. Ct. Ohio;

No. 88-6562. HANCE *v.* ZANT, SUPERINTENDENT, GEORGIA DIAGNOSTIC AND CLASSIFICATION CENTER AT JACKSON. Sup. Ct. Ga.;

No. 88-6577. MORRISON *v.* GEORGIA. Sup. Ct. Ga.; and

No. 88-6626. KARIS *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: No. 88-6093, 39 Ohio St. 3d 67, 529 N. E. 2d 429; No. 88-6318, 39 Ohio St. 3d 8, 529 N. E. 2d 192; No. 88-6562, 258 Ga. 649, 373 S. E. 2d 184; No. 88-6577, 258 Ga. 683, 373 S. E. 2d 506; No. 88-6626, 46 Cal. 3d 612, 758 P. 2d 1189.

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. 88-6438. KEENAN *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 46 Cal. 3d 478, 758 P. 2d 1081.

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 certiorari and vacate the death sentence in this case. But

even if I did not hold this view, I would still grant the petition. The record in this case strongly suggests that, in the words of the dissenting judge below, "certain remarks by the court during the penalty phase, superimposed upon an emotional episode that had already occurred in the jury room, had an improperly coercive effect upon the jury's deliberations and improperly influenced the verdict." 46 Cal. 3d 478, 545, 758 P. 2d 1081, 1124 (1988) (Kaufman, J., dissenting in part). I would therefore grant certiorari, both to ascertain whether petitioner was denied his right to an uncoerced verdict, and to clarify our standards for determining jury coercion, a subject discussed most recently in *Lowenfield v. Phelps*, 484 U. S. 231 (1988).

The penalty phase in question was described at length in the majority and partially dissenting opinions below, 46 Cal. 3d, at 527-544, 758 P. 2d, at 1112-1124 (majority opinion); *id.*, at 545-550, 758 P. 2d, at 1124-1129 (Kaufman, J., dissenting in part), and so only a brief account is necessary here. During jury deliberations, only one juror held out: an elderly woman who refused to vote to impose the death penalty. After a day of deliberations, another juror rose out of his chair and verbally attacked her in a tirade that apparently included a death threat. *Id.*, at 545, 758 P. 2d, at 1125. Crying and shaking, she left the jury room and went to a bathroom, where she vomited. In response, the foreman sent the judge notes indicating that there was one holdout against imposing the death penalty. *Ibid.*

The judge then recalled the jury. He told the jury that the court was required to investigate the jury's "problem" by questioning the foreman and, perhaps, "the one or more jurors who may be having difficulty in reaching a verdict." *Id.*, at 546, 758 P. 2d, at 1125. He added that, if necessary, he would determine whether or not "one or more of the jurors are refusing to adhere to the law and the evidence," *ibid.* (emphasis omitted); he added that he had expected that the jury would have delivered a verdict by then. *Id.*, at 546, 758 P. 2d, at 1126. The judge told the jurors that he was sending them home for the weekend so that they could search their consciences. He then recognized the foreman, who stated that the weekend release would be a "fine gesture," and that "we should have a verdict come Monday." *Ibid.* The judge responded: "Good. Well, I'm glad to hear you say that. I appreciate that." *Ibid.* After only one hour of delib-

April 3, 1989

490 U. S.

erations Monday morning, the jurors voted unanimously to impose the death penalty.

In *Lowenfield*, the Court observed that “[a]ny criminal defendant, and especially any capital defendant, being tried by a jury is entitled to the uncoerced verdict of that body.” 484 U. S., at 241. To determine if coercion has occurred, courts must “consider the supplemental charge given by the trial court ‘in its context and under all the circumstances.’” *Id.*, at 237 (citation omitted). We held that the particular supplemental charges and jury polling at issue had not resulted in coercion, but that other instructions and comments might require a different conclusion. *Id.*, at 241.

In my view, this case presents a far more compelling circumstance for finding jury coercion than did *Lowenfield*. As the dissenting judge below observed, the holdout juror, given her emotional condition, the verbal attack upon her, and the judge’s indication that he would have to investigate one or more jurors

“may well have interpreted these statements as meaning the court *expected* a verdict on Monday and that it wanted *her personally* to resolve any lingering doubts she may have had about the appropriateness of imposing the death penalty. It is also highly likely [she] believed that, by agreeing to the death verdict on Monday, she could avoid the threatened investigation by the court and the attorneys of the jury room incident and of her reluctance to vote for death.” 46 Cal. 3d, at 547–548, 758 P. 2d, at 1127.

The petitioner here was entitled to have the decision whether he “deserve[d] to live or die . . . made on scales that are not deliberately tipped toward death.” *Witherspoon v. Illinois*, 391 U. S. 510, 521–522, n. 20 (1968). Because the actions of the trial judge in this case raise serious doubts about whether the context and circumstances of the death sentence in this case were coercive, and thus whether the scales of justice were in equipoise when the time for that decision came, I would grant the petition for review. I dissent.

#### *Rehearing Denied*

No. 87–764. FLORIDA *v.* RILEY, 488 U. S. 445;

No. 87–6031. ROMAN *v.* ABRAMS, ATTORNEY GENERAL OF NEW YORK, 489 U. S. 1052;

490 U. S.

April 3, 7, 17, 1989

No. 88-894. REARDON ET AL. *v.* MILLER, JUDGE, SUPERIOR COURT OF NEW JERSEY, CHANCERY DIVISION, CAMDEN COUNTY, ET AL., 488 U. S. 1031;

No. 88-925. HARRIS ET AL. *v.* ISRAELITE BIBLE CLASS, INC., 489 U. S. 1013;

No. 88-936. SCHWARZ *v.* CITY OF WARWICK, RHODE ISLAND, ET AL., 489 U. S. 1013; and

No. 88-6167. FERDIK *v.* LEWIS, DIRECTOR, ARIZONA DEPARTMENT OF CORRECTIONS, ET AL., 489 U. S. 1026. Petitions for rehearing denied.

No. 88-1050. APPLGATE ET VIR *v.* CALIFORNIA ET AL., 489 U. S. 1017. Petition for rehearing and other relief denied.

APRIL 7, 1989

*Miscellaneous Order*

No. 88-493. UNIVERSITY OF PENNSYLVANIA *v.* EQUAL EMPLOYMENT OPPORTUNITY COMMISSION. C. A. 3d Cir. The order entered December 12, 1988 [488 U. S. 992], granting the petition for writ of certiorari is amended to read: "Certiorari granted limited to Question 1 presented by the petition." Case is removed from the calendar for argument on April 18, 1989, and will be argued during the October Term 1989.

APRIL 17, 1989

*Appeals Dismissed*

No. 88-1491. RHINEHART ET AL. *v.* SEATTLE TIMES ET AL. Appeal from Ct. App. Wash. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied. Reported below: 51 Wash. App. 561, 754 P. 2d 1243.

No. 88-6255. SHAFFER *v.* DEPARTMENT OF SOCIAL SERVICES. Appeal from Ct. App. Mich. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied.

No. 88-6630. BONNIE MARIE H., A MINOR *v.* HANNAN ET AL. Appeal from Ct. App. Cal., 6th App. Dist., dismissed for want of properly presented federal question.

April 17, 1989

490 U. S.

*Certiorari Granted—Vacated and Remanded*

No. 88-1366. *SIMMONS ET AL. v. PEREZ*. C. A. 9th Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Canton v. Harris*, 489 U. S. 378 (1989). Reported below: 859 F. 2d 1411.

No. 88-1395. *MUNICIPAL COURT OF THE SOUTHEAST JUDICIAL DISTRICT, COUNTY OF LOS ANGELES, ET AL. v. GUTIERREZ*. C. A. 9th Cir. Motion of U. S. English Foundation, Inc., et al. for leave to file a brief as *amici curiae* granted. Certiorari granted, judgment vacated, and case remanded to the Court of Appeals with instructions to dismiss the appeal as moot. *United States v. Munsingwear, Inc.*, 340 U. S. 36 (1950). Reported below: 838 F. 2d 1031.

*Miscellaneous Orders*. (See also Nos. 88-6494 and 88-6497, *ante*, p. 89.)

No. — — —. *STEWART v. CORBIN ET AL.* Motion to direct the Clerk to file petition for writ of certiorari out of time denied.

No. A-778 (88-6904). *MCDONALD v. YELLOW CAB METRO, INC.* Sup. Ct. Tenn. Application for stay, addressed to JUSTICE STEVENS and referred to the Court, denied.

No. D-755. *IN RE DISBARMENT OF MCKAY*. Disbarment entered. [For earlier order herein, see 488 U. S. 1026.]

No. D-757. *IN RE DISBARMENT OF SACCO*. Disbarment entered. [For earlier order herein, see 488 U. S. 1026.]

No. D-763. *IN RE DISBARMENT OF GRIDLEY*. Disbarment entered. [For earlier order herein, see 488 U. S. 1038.]

No. D-765. *IN RE DISBARMENT OF DOUGLAS*. Disbarment entered. [For earlier order herein, see 488 U. S. 1039.]

No. D-776. *IN RE DISBARMENT OF WERNER*. It is ordered that Mark Eugene Werner II, of Baltimore, Md., be suspended from the practice of law in this Court and that a rule issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D-777. *IN RE DISBARMENT OF COOPER*. It is ordered that Michael Cooper, of Arlington Heights, Ill., be suspended from the practice of law in this Court and that a rule issue, return-

490 U. S.

April 17, 1989

able within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D-778. *IN RE DISBARMENT OF SHULTZ*. It is ordered that H. Barry Shultz, of Old Bridge, N. J., be suspended from the practice of law in this Court and that a rule issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D-779. *IN RE DISBARMENT OF LAMPERT*. It is ordered that Irving B. Lampert, of New York, N. Y., be suspended from the practice of law in this Court and that a rule issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D-780. *IN RE DISBARMENT OF HAYES*. It is ordered that Thomas Michael Hayes, Jr., of St. Louis, Mo., be suspended from the practice of law in this Court and that a rule issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D-781. *IN RE DISBARMENT OF BLACK*. It is ordered that Larry Thomas Black, of Telluride, Colo., 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 American Rental Association for leave to file a brief as *amicus curiae* granted.

No. 88-124. *BREININGER v. SHEET METAL WORKERS INTERNATIONAL ASSOCIATION LOCAL UNION No. 6*. C. A. 6th Cir. [Certiorari granted, 489 U. S. 1009.] Motion of Association for Union Democracy 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 respondents Bradford Bath et al. for divided argument and for additional time for oral argument denied.

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-

April 17, 1989

490 U. S.

ble jurisdiction noted, 488 U. S. 979.] Motion of People for the American Way Action Fund et al. for leave to participate in oral argument as *amici curiae*, for divided argument, and for additional time for oral argument denied. JUSTICE SCALIA took no part in the consideration or decision of this motion.

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 Elizabeth Holtzman, District Attorney of Kings County, N. Y., for leave to join *amici curiae* brief of Massachusetts et al. granted.

No. 88-1031. CITIBANK, N. A. *v.* TRINH. C. A. 6th Cir.;

No. 88-1042. FERNANDEZ *v.* FERNANDEZ. Sup. Ct. Conn.;

No. 88-1260. CITIBANK, N. A. *v.* WELLS FARGO ASIA LTD. C. A. 2d Cir.; and

No. 88-6376. MONTERO *v.* MEYER ET AL. C. A. 10th Cir. The Solicitor General is invited to file briefs in these cases expressing the views of the United States.

No. 88-6352. BURKART *v.* POST-BROWNING, INC. C. A. 6th Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [489 U. S. 1064] or for leave to proceed as a veteran denied.

No. 88-1542. IN RE BARKSDALE;

No. 88-6718. IN RE GREEN; and

No. 88-6763. IN RE WALKER. Petitions for writs of mandamus denied.

#### *Probable Jurisdiction Noted*

No. 88-1374. JIMMY SWAGGART MINISTRIES *v.* BOARD OF EQUALIZATION OF CALIFORNIA. Appeal from Ct. App. Cal., 4th App. Dist. Probable jurisdiction noted. Reported below: 204 Cal. App. 3d 1269, 250 Cal. Rptr. 891.

#### *Certiorari Granted*

No. 88-1000. NEW YORK *v.* HARRIS. Ct. App. N. Y. Certiorari granted. Reported below: 72 N. Y. 2d 614, 532 N. E. 2d 1229.

490 U. S.

April 17, 1989

No. 88-1353. UNITED STATES *v.* VERDUGO-URQUIDEZ. C. A. 9th Cir. Certiorari granted. Reported below: 856 F. 2d 1214.

No. 88-1198. FEDERAL TRADE COMMISSION *v.* SUPERIOR COURT TRIAL LAWYERS ASSN.; and

No. 88-1393. SUPERIOR COURT TRIAL LAWYERS ASSN. ET AL. *v.* FEDERAL TRADE COMMISSION. C. A. D. C. Cir. Certiorari granted, cases consolidated, and a total of one hour allotted for oral argument. Reported below: 272 U. S. App. D. C. 272, 856 F. 2d 226.

No. 88-1400. FRANCHISE TAX BOARD OF CALIFORNIA ET AL. *v.* ALCAN ALUMINIUM LTD. ET AL. C. A. 7th Cir. Motion of Multistate Tax Commission for leave to file a brief as *amicus curiae* granted. Certiorari granted. Reported below: 860 F. 2d 688.

*Certiorari Denied.* (See also Nos. 88-1491 and 88-6255, *supra.*)

No. 87-1794. TSAO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 838 F. 2d 475.

No. 87-1927. KNOX ET AL. *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 839 F. 2d 285.

No. 88-291. ZUKAS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 843 F. 2d 179.

No. 88-868. BRINGLE ET UX. *v.* WASHINGTON DEPARTMENT OF SOCIAL AND HEALTH SERVICES ET AL. Ct. App. Wash. Certiorari denied. Reported below: 51 Wash. App. 1038.

No. 88-1069. REGALADO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 857 F. 2d 789.

No. 88-1094. POINIER, AS TRANSFEREE OF HALBACH, ET AL. *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 3d Cir. Certiorari denied. Reported below: 858 F. 2d 917.

No. 88-1177. MUSTANG FUEL CORP., FKA MUSTANG ENERGY CORP. *v.* FEDERAL ENERGY REGULATORY COMMISSION ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 859 F. 2d 1447.

No. 88-1191. VERGARA-VELEZ *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

April 17, 1989

490 U. S.

No. 88-1210. *RIVERA v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 859 F. 2d 1204.

No. 88-1217. *CITY OF FORT LAUDERDALE ET AL. v. A. A. PROFILES, INC.* C. A. 11th Cir. Certiorari denied. Reported below: 850 F. 2d 1483.

No. 88-1223. *MASSACHUSETTS ET AL. v. UNITED STATES DEPARTMENT OF DEFENSE ET AL.* C. A. 1st Cir. Certiorari denied. Reported below: 859 F. 2d 1066.

No. 88-1239. *VIOLA v. UNITED STATES*. Ct. Mil. App. Certiorari denied. Reported below: 27 M. J. 456.

No. 88-1358. *FUCHS ET AL. v. RURAL ELECTRIC CONVENIENCE COOPERATIVE, INC., ET AL.* C. A. 7th Cir. Certiorari denied. Reported below: 858 F. 2d 1210.

No. 88-1360. *UNITED STATES FIRE INSURANCE CO. v. FEDERAL INSURANCE CO.* C. A. 2d Cir. Certiorari denied. Reported below: 858 F. 2d 882.

No. 88-1361. *WALLS v. ALABAMA*. Ct. Crim. App. Ala. Certiorari denied. Reported below: 536 So. 2d 137.

No. 88-1362. *MCCALL v. DUTTON, WARDEN, ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 863 F. 2d 454.

No. 88-1363. *NEYHARD, INDIVIDUALLY AND AS ADMINISTRATOR OF THE ESTATE OF NEYHARD v. STATE FARM INSURANCE Co.* Super. Ct. Pa. Certiorari denied. Reported below: 362 Pa. Super. 629, 520 A. 2d 68.

No. 88-1364. *AVERETTE ET UX. v. TRIPLE CREEK CORP.* Sup. Ct. Ga. Certiorari denied. Reported below: — Ga. —, 372 S. E. 2d 641.

No. 88-1365. *FAUVER, COMMISSIONER, NEW JERSEY DEPARTMENT OF CORRECTIONS, ET AL. v. RYAN*. C. A. 3d Cir. Certiorari denied. Reported below: 860 F. 2d 1199.

No. 88-1371. *ELLIS ET AL. v. CONSOLIDATED DIESEL ELECTRIC CORP. ET AL.* C. A. 10th Cir. Certiorari denied.

No. 88-1376. *MUSTO ET AL. v. AMERICAN GENERAL CORP. ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 861 F. 2d 897.

490 U. S.

April 17, 1989

No. 88-1384. *TELUM, INC., ET AL. v. E. F. HUTTON CREDIT CORP.* C. A. 10th Cir. Certiorari denied. Reported below: 859 F. 2d 835.

No. 88-1392. *UGALDE v. GEORGIA.* Ct. App. Ga. Certiorari denied. Reported below: 188 Ga. App. 592, 373 S. E. 2d 643.

No. 88-1394. *STANSEL ET AL. v. AMERICAN SECURITY BANK, N. A.* Ct. App. D. C. Certiorari denied. Reported below: 547 A. 2d 990.

No. 88-1401. *ANGEL ET UX. v. RENN.* Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 88-1402. *FLAYAC v. HUMRICHOUSE ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 855 F. 2d 861.

No. 88-1406. *INTRA CORP. ET AL. v. HAMAR LASER INSTRUMENTS, INC.* C. A. Fed. Cir. Certiorari denied. Reported below: 862 F. 2d 320.

No. 88-1407. *DOLENZ v. STUART YACHT BUILDERS, INC.* C. A. 11th Cir. Certiorari denied.

No. 88-1409. *WALENTAS v. LIPPER ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 862 F. 2d 414.

No. 88-1411. *BOYLE v. UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF FLORIDA.* C. A. 11th Cir. Certiorari denied.

No. 88-1416. *BARNTHOUSE v. BARNTHOUSE.* Ct. App. Colo. Certiorari denied. Reported below: 765 P. 2d 610.

No. 88-1419. *LAFFERTY v. ALYESKA PIPELINE SERVICE CO. ET AL.* Sup. Ct. Alaska. Certiorari denied.

No. 88-1420. *EREBIA v. CHRYSLER PLASTIC PRODUCTS CORP.* C. A. 6th Cir. Certiorari denied. Reported below: 863 F. 2d 47.

No. 88-1421. *MONDOZZI v. AKRON BOARD OF EDUCATION.* C. A. 6th Cir. Certiorari denied. Reported below: 863 F. 2d 49.

No. 88-1425. *TOWNSHIP OF PLYMOUTH, PENNSYLVANIA v. COUNTY OF MONTGOMERY, PENNSYLVANIA.* Pa. Commw. Ct. Certiorari denied. Reported below: 109 Pa. Commw. 200, 531 A. 2d 49.

April 17, 1989

490 U. S.

No. 88-1430. UNION ASPHALTS & ROADOLLS, INC., ET AL. *v.* MO-KAN TEAMSTERS PENSION FUND ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 857 F. 2d 1230.

No. 88-1436. FINCHER *v.* FINKBOHNER. Dist. Ct. App. Fla., 5th Dist. Certiorari denied. Reported below: 536 So. 2d 257.

No. 88-1440. GAJKOWSKI ET AL. *v.* HIGHWAY TRUCK DRIVERS & HELPERS LOCAL UNION NO. 107. Sup. Ct. Pa. Certiorari denied. Reported below: 519 Pa. 320, 548 A. 2d 533.

No. 88-1448. SALIM *v.* DISTRICT OF COLUMBIA. Ct. App. D. C. Certiorari denied.

No. 88-1452. STICH *v.* UNITED STATES BANKRUPTCY COURT ET AL. C. A. 9th Cir. Certiorari denied.

No. 88-1453. JOHN E. GRAHAM & SONS ET AL. *v.* LANDRY ET UX. Ct. App. La., 1st Cir. Certiorari denied. Reported below: 533 So. 2d 975.

No. 88-1459. DAIGLE *v.* GULF STATES UTILITY CO. C. A. 5th Cir. Certiorari denied. Reported below: 860 F. 2d 436.

No. 88-1473. BOWLINE CONSTRUCTION CO. ET AL. *v.* CAPCO PIPE CO., INC. Ct. App. Okla. Certiorari denied.

No. 88-1499. JOHNSON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 863 F. 2d 887.

No. 88-1502. ENOCHS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 857 F. 2d 491.

No. 88-1509. PATTON *v.* UNITED STATES RAILROAD RETIREMENT BOARD. C. A. 4th Cir. Certiorari denied. Reported below: 862 F. 2d 314.

No. 88-1511. RUNNELS, AKA DAVIS, ET AL. *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 866 F. 2d 1423.

No. 88-1516. MONTEMARANO *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 861 F. 2d 339.

No. 88-1538. BRENNAN *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 867 F. 2d 111.

No. 88-1540. RHONE *v.* FRANK, POSTMASTER GENERAL. C. A. 6th Cir. Certiorari denied. Reported below: 861 F. 2d 721.

490 U. S.

April 17, 1989

No. 88-1556. *CALVO v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 865 F. 2d 823.

No. 88-6100. *VILLARRUBIA v. UNITED STATES POSTAL SERVICE ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 857 F. 2d 1471.

No. 88-6177. *GARDNER v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 860 F. 2d 1391.

No. 88-6265. *CARLSON ET UX. v. COUNTY OF HENNEPIN, MINNESOTA, ET AL.* Ct. App. Minn. Certiorari denied. Reported below: 428 N. W. 2d 453.

No. 88-6294. *OLIVER ET UX. v. MERCHANTS & FARMERS BANK, MACON, MISSISSIPPI*. C. A. 5th Cir. Certiorari denied.

No. 88-6305. *WARTHEN v. BAKER ET AL.* C. A. D. C. Cir. Certiorari denied.

No. 88-6306. *WARTHEN v. DUNSMORE ET AL.* C. A. D. C. Cir. Certiorari denied.

No. 88-6333. *PRESTON v. ODEA, WARDEN*. Ct. App. Ky. Certiorari denied.

No. 88-6368. *VU DOC GUONG v. UNITED STATES*. C. A. Fed. Cir. Certiorari denied. Reported below: 860 F. 2d 1063.

No. 88-6385. *EVANS v. HATHAWAY, SHERIFF, CADDO PARISH, ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 860 F. 2d 436.

No. 88-6387. *GOODEN v. ROBERTS*. C. A. 8th Cir. Certiorari denied. Reported below: 860 F. 2d 1084.

No. 88-6394. *RENGIFO, AKA CASTRO v. UNITED STATES*;

No. 88-6443. *GONZALEZ v. UNITED STATES*; and

No. 88-6447. *GONZALES v. UNITED STATES*. C. A. 1st Cir. Certiorari denied. Reported below: 858 F. 2d 800.

No. 88-6418. *VAN LEEUWEN ET VIR v. MCCORKINDALE ET AL.* C. A. 8th Cir. Certiorari denied.

No. 88-6435. *DICKERSON v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 857 F. 2d 414.

No. 88-6477. *ESCOBALES v. CONNECTICUT*. App. Ct. Conn. Certiorari denied. Reported below: 16 Conn. App. 272, 547 A. 2d 553.

April 17, 1989

490 U. S.

No. 88-6481. *NUTTELMAN v. STROMSBURG BANK ET AL.* C. A. 8th Cir. Certiorari denied.

No. 88-6567. *GANEY v. BARNETT, SUPERINTENDENT, EASTERN CORRECTIONAL INSTITUTION AT MAURY, NORTH CAROLINA, ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 862 F. 2d 869.

No. 88-6568. *GANEY v. GARRISON ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 861 F. 2d 263.

No. 88-6570. *CRUZ v. BUTLER, WARDEN.* C. A. 5th Cir. Certiorari denied. Reported below: 861 F. 2d 1277.

No. 88-6572. *ABNER v. ESCAMBIA COUNTY SCHOOL DISTRICT, PENSACOLA, FLORIDA.* C. A. 11th Cir. Certiorari denied.

No. 88-6578. *MERKLE v. NEW YORK.* App. Div., Sup. Ct. N. Y., 2d Jud. Dept. Certiorari denied. Reported below: 143 App. Div. 2d 145, 531 N. Y. S. 2d 601.

No. 88-6584. *JACKSON v. OHIO.* Ct. App. Ohio, Cuyahoga County. Certiorari denied.

No. 88-6586. *HICKS v. OHIO.* Ct. App. Ohio, Cuyahoga County. Certiorari denied.

No. 88-6600. *HAY v. MCCOTTER ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 862 F. 2d 873.

No. 88-6603. *SCOTT v. NEBRASKA.* Sup. Ct. Neb. Certiorari denied. Reported below: 229 Neb. xxvii.

No. 88-6604. *HUMPHREY v. LYNAUGH, DIRECTOR, TEXAS DEPARTMENT OF CORRECTIONS.* C. A. 5th Cir. Certiorari denied. Reported below: 861 F. 2d 875.

No. 88-6605. *CAMPBELL v. WISCONSIN LABOR AND INDUSTRY REVIEW COMMISSION.* Ct. App. Wis. Certiorari denied.

No. 88-6610. *HOLT v. TENNESSEE.* Ct. Crim. App. Tenn. Certiorari denied.

No. 88-6614. *HUSS v. IOWA.* Sup. Ct. Iowa. Certiorari denied. Reported below: 430 N. W. 2d 621.

No. 88-6617. *BURLEY v. FORD, WARDEN.* C. A. 11th Cir. Certiorari denied. Reported below: 864 F. 2d 793.

490 U. S.

April 17, 1989

No. 88-6619. *RIGHTER v. UNITED STATES STOVE CO. ET AL.* C. A. 3d Cir. Certiorari denied. Reported below: 856 F. 2d 184.

No. 88-6620. *YOUNG v. PATTERSON.* C. A. 2d Cir. Certiorari denied. Reported below: 867 F. 2d 1425.

No. 88-6621. *ROBINSON v. BOARD OF BAR OVERSEERS ET AL.* C. A. 1st Cir. Certiorari denied. Reported below: 867 F. 2d 606.

No. 88-6622. *MUHAMMAD v. OKLAHOMA.* Ct. Crim. App. Okla. Certiorari denied.

No. 88-6628. *CLARK v. WHARTON, SUPERINTENDENT, MEN'S CORRECTIONAL INSTITUTION AT HARDWICK, GEORGIA.* C. A. 11th Cir. Certiorari denied. Reported below: 861 F. 2d 726.

No. 88-6629. *WARREN v. NAGLE ET AL.* C. A. 11th Cir. Certiorari denied. Reported below: 866 F. 2d 1422.

No. 88-6653. *TODD v. DEMPSEY, ACTING EXECUTIVE DIRECTOR, COLORADO DEPARTMENT OF CORRECTIONS.* C. A. 10th Cir. Certiorari denied.

No. 88-6657. *DUVALL v. TEXAS WATER COMMISSION ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 853 F. 2d 924.

No. 88-6659. *READ v. TAYLOR ET AL.* C. A. 3d Cir. Certiorari denied. Reported below: 865 F. 2d 252.

No. 88-6662. *ARMSTRONG v. KINCHELOE, SUPERINTENDENT, WASHINGTON STATE PENITENTIARY, ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 852 F. 2d 1289.

No. 88-6664. *JARVI v. SECRETARY OF HEALTH AND HUMAN SERVICES.* C. A. 6th Cir. Certiorari denied. Reported below: 837 F. 2d 475.

No. 88-6668. *LANCE v. SOUTH CAROLINA HIGHWAY PATROLMEN ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 861 F. 2d 714.

No. 88-6669. *SELLNER v. HUDNALL ET AL.* C. A. 11th Cir. Certiorari denied.

No. 88-6670. *SIERS v. FREEMAN, SUPERINTENDENT, STATE CORRECTION INSTITUTION (AND DIAGNOSTIC AND CLASSIFICA-*

April 17, 1989

490 U. S.

TION CENTER) AT CAMP HILL, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 773 F. 2d 37.

No. 88-6671. BONDS *v.* SHILLINGER, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied.

No. 88-6673. COLEMAN *v.* DEPARTMENT OF AGRICULTURE ET AL. C. A. 3d Cir. Certiorari denied.

No. 88-6674. ALLAH *v.* NEW YORK. App. Div., Sup. Ct. N. Y., 2d Jud. Dept. Certiorari denied. Reported below: 140 App. Div. 2d 613, 529 N. Y. S. 2d 5.

No. 88-6680. FUNKHOUSER *v.* MULLINS. C. A. 8th Cir. Certiorari denied.

No. 88-6685. IVES *v.* KELLEY, SUPERINTENDENT, ATTICA CORRECTIONAL FACILITY, ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 867 F. 2d 1423.

No. 88-6686. SCOTT *v.* DEPARTMENT OF HEALTH AND REHABILITATIVE SERVICES OF FLORIDA. C. A. 11th Cir. Certiorari denied.

No. 88-6687. STEELEY *v.* ALABAMA. Ct. Crim. App. Ala. Certiorari denied. Reported below: 533 So. 2d 665.

No. 88-6688. BROWN *v.* HOKE, SUPERINTENDENT, EASTERN CORRECTIONAL FACILITY AT NAPANOCH, NEW YORK, ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 872 F. 2d 1021.

No. 88-6689. BARKER *v.* LYNAUGH, DIRECTOR, TEXAS DEPARTMENT OF CORRECTIONS. C. A. 5th Cir. Certiorari denied.

No. 88-6690. YORK *v.* LOCKHART, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION. C. A. 8th Cir. Certiorari denied. Reported below: 856 F. 2d 61.

No. 88-6691. MORRIS *v.* CHITWOOD. Sup. Ct. Tex. Certiorari denied.

No. 88-6692. OVERSTREET *v.* TRICKEY, SUPERINTENDENT, MISSOURI EASTERN CORRECTIONAL CENTER, ET AL. C. A. 8th Cir. Certiorari denied.

No. 88-6695. SHERRILLS *v.* GRAY ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 867 F. 2d 611.

490 U. S.

April 17, 1989

No. 88-6696. TYLER ET AL. *v.* BLACK ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 865 F. 2d 181.

No. 88-6697. LEAL *v.* CORONADO. Ct. App. Ohio, Lucas County. Certiorari denied.

No. 88-6698. BROWN *v.* MISSOURI DEPARTMENT OF CORRECTIONS AND HUMAN RESOURCES ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 860 F. 2d 1087.

No. 88-6701. LUCAS *v.* ARIZONA. Sup. Ct. Ariz. Certiorari denied.

No. 88-6702. CUNNINGHAM ET UX. *v.* CUYAHOGA DEPARTMENT OF HUMAN SERVICES. Ct. App. Ohio, Cuyahoga County. Certiorari denied.

No. 88-6706. JOHNSON *v.* DISTRICT COURT OF WYOMING, FIRST JUDICIAL DISTRICT. Sup. Ct. Wyo. Certiorari denied.

No. 88-6722. EVERHART *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 865 F. 2d 265.

No. 88-6731. MORGAN *v.* SULLIVAN, WARDEN, ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 856 F. 2d 1188.

No. 88-6745. BRAUNER-EL *v.* ZIMMERMAN, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT GRATERFORD, PENNSYLVANIA, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 866 F. 2d 1409.

No. 88-6746. LAWRENCE *v.* UNITED STATES RAILROAD RETIREMENT BOARD. C. A. D. C. Cir. Certiorari denied.

No. 88-6753. OLAN *v.* RODRIGUEZ, CHAIRMAN, NEW YORK BOARD OF PAROLE. C. A. 2d Cir. Certiorari denied.

No. 88-6766. DALEY *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 865 F. 2d 485.

No. 88-6767. POLLACK *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 846 F. 2d 1383.

No. 88-6768. JORGE *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 865 F. 2d 6.

No. 88-6774. HORTON *v.* WHITWORTH, STATE ATTORNEY. C. A. 11th Cir. Certiorari denied.

April 17, 1989

490 U. S.

No. 88-6790. *FRANKLIN v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 865 F. 2d 1260.

No. 88-6795. *SUAREZ ET AL. v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 872 F. 2d 1022.

No. 88-6797. *MANGA v. UNITED STATES*. C. A. 11th Cir. Certiorari denied. Reported below: 867 F. 2d 1429.

No. 88-6800. *ADAMS v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 865 F. 2d 262.

No. 88-6805. *CLAYTON v. CRIST, WARDEN, ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 860 F. 2d 1088.

No. 88-6814. *MCINTOSH v. UNITED STATES*. C. A. 2d Cir. Certiorari denied.

No. 88-6835. *ROAN EAGLE, AKA BLINDMAN v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 867 F. 2d 436.

No. 88-6836. *CHAMBERS v. DUGGER, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL.* C. A. 11th Cir. Certiorari denied. Reported below: 864 F. 2d 792.

No. 88-6908. *CHANEY v. ROLLINS, WARDEN*. C. A. 4th Cir. Certiorari denied. Reported below: 866 F. 2d 1415.

No. 87-6338. *MOORE v. ZANT, WARDEN*. C. A. 11th Cir.;  
No. 87-7052. *FLEMING v. ZANT, WARDEN*. C. A. 11th Cir.;  
No. 88-6038. *SIMON v. TENNESSEE*. Ct. Crim. App. Tenn.;  
No. 88-6349. *BENNETT v. VIRGINIA*. Sup. Ct. Va.;  
No. 88-6496. *BRYAN v. FLORIDA*. Sup. Ct. Fla.;  
No. 88-6624. *FISHER v. VIRGINIA*. Sup. Ct. Va.;  
No. 88-6656. *SOWELL v. OHIO*. Sup. Ct. Ohio;  
No. 88-6665. *DAVIS v. ALABAMA*. Sup. Ct. Ala.;  
No. 88-6667. *GREER v. OHIO*. Sup. Ct. Ohio; and  
No. 88-6675. *WOODWARD v. MISSISSIPPI*. Sup. Ct. Miss.  
Certiorari denied. Reported below: No. 87-6338, 824 F. 2d 847; No. 87-7052, 837 F. 2d 940; No. 88-6349, 236 Va. 448, 374 S. E. 2d 303; No. 88-6496, 533 So. 2d 744; No. 88-6624, 236 Va. 403, 374 S. E. 2d 46; No. 88-6656, 39 Ohio St. 3d 322, 530 N. E. 2d 1294; No. 88-6665, 536 So. 2d 118; No. 88-6667,

490 U. S.

April 17, 1989

39 Ohio St. 3d 236, 530 N. E. 2d 382; No. 88-6675, 533 So. 2d 418.

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. 88-415. PUEBLO OF ACOMA *v.* PADILLA. Sup. Ct. N. M. Certiorari denied. JUSTICE KENNEDY took no part in the consideration or decision of this petition. Reported below: 107 N. M. 174, 754 P. 2d 845.

JUSTICE WHITE, dissenting.

Respondent Frank Padilla, a roofing consultant, filed suit in New Mexico state court alleging a breach of contract by petitioner Pueblo of Acoma, doing business as Sky City Contractors. Petitioner had hired respondent to supervise Sky City's installation of roofs on two building projects located off the Acoma Indian Reservation. The New Mexico Supreme Court held that petitioner was not protected from suit by tribal sovereign immunity. 107 N. M. 174, 754 P. 2d 845 (1988). According to the New Mexico court, a State's "exercise of jurisdiction over a sovereign Indian tribe for off-reservation conduct is solely a matter of comity." *Id.*, at 179, 754 P. 2d, at 850 (citing *Nevada v. Hall*, 440 U. S. 410 (1979)). Because the State of New Mexico allows breach of contract actions to be brought against itself, the court reasoned, such actions were allowable against Indian tribes as well.

This decision conflicts with decisions of the Arizona courts applying tribal sovereign immunity to off-reservation activities. In *Morgan v. Colorado River Indian Tribe*, 103 Ariz. 425, 427-428, 443 P. 2d 421, 423-424 (1968), the Arizona Supreme Court held that the Colorado River Indian Tribe was immune from suit for an accident at the Blue Water Marina Park, a tribal enterprise located outside the boundaries of its reservation. The court did not treat the question as one of comity; indeed, the court noted that under identical circumstances the State of Arizona would be liable. *Id.*, at 428, n. 1, 443 P. 2d, at 424, n. 1. See also *S. Unique, Ltd. v. Gila River Pima-Maricopa Indian Community*, 138 Ariz. 378, 380-381, 674 P. 2d 1376, 1378-1379 (App. 1983)

April 17, 1989

490 U. S.

(breach of contract action arising out of business transaction initiated off reservation). The doctrine of tribal sovereign immunity, as applied by the Arizona courts, extends not only to an Indian tribe but also to a "subordinate economic organization" of the tribe. *White Mountain Apache Indian Tribe v. Shelley*, 107 Ariz. 4, 6-7, 480 P. 2d 654, 656-657 (1971); *Smith Plumbing Co. v. Aetna Casualty & Surety Co.*, 149 Ariz. 524, 532, 720 P. 2d 499, 507, cert. denied, 479 U. S. 987 (1986). The New Mexico Supreme Court expressly recognized that Sky City Contractors was a subordinate economic organization of petitioner, 107 N. M., at 178, 754 P. 2d, at 849 (citing *White Mountain Apache*, *supra*), yet nevertheless held that it was not immune from suit.

An opportunity to resolve this conflict was presented by our grant of certiorari in *Oklahoma Tax Comm'n v. Graham*, 488 U. S. 816 (1988), although we ultimately decided the case on other grounds. In that case, two questions were before us: whether the case had been properly removed to federal court and whether tribal sovereign immunity barred an action to collect taxes "on commercial activities conducted by an Indian tribe on off-reservation lands." We held that the case had not been properly removed, *Oklahoma Tax Comm'n v. Graham*, 489 U. S. 838 (1989) (*per curiam*), and as a result did not need to reach the sovereign immunity question. The present case provides an opportunity to resolve the issue we did not reach in *Graham* and thereby to resolve the conflict among the state courts.

I would grant the petition for certiorari and resolve the question on which we previously granted certiorari but did not decide.

No. 88-535. LOCAL FREIGHT DRIVERS, LOCAL 208, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA *v.* ROZAY'S TRANSFER. C. A. 9th Cir. Certiorari denied. JUSTICE WHITE would grant certiorari. Reported below: 850 F. 2d 1321.

No. 88-992. DALLAS COUNTY COMMISSION ET AL. *v.* UNITED STATES (two cases). C. A. 11th Cir. Motion of Samson Crum et al. for leave to file a brief as *amici curiae* granted. Certiorari denied. JUSTICE WHITE would grant certiorari. Reported below: 850 F. 2d 1430 (first case); 850 F. 2d 1433 (second case).

No. 88-1053. ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 2d Cir. Certiorari denied. JUSTICE O'CONNOR took no part in the consid-

490 U. S.

April 17, 1989

eration or decision of this petition. Reported below: 858 F. 2d 876.

No. 88-1056. PENNSYLVANIA *v.* WAGGONER. Super. Ct. Pa. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. JUSTICE WHITE and JUSTICE O'CONNOR would grant certiorari. Reported below: 373 Pa. Super. 23, 540 A. 2d 280.

No. 88-1147. OKLAHOMA *v.* BROOKS, AKA AMENSHI, ET AL. Ct. Crim. App. Okla. Motion of Muscogee (Creek) Nation for leave to file a brief as *amicus curiae* granted. Certiorari denied. Reported below: 763 P. 2d 707.

No. 88-1347. GREEN *v.* FOLEY. C. A. 4th Cir. Motion of petitioner to defer consideration of the petition for writ of certiorari denied. Certiorari denied. Reported below: 856 F. 2d 660.

No. 88-1378. MCNEIL ET AL. *v.* SPRINGFIELD PARK DISTRICT. C. A. 7th Cir. Motion of Mexican American Legal Defense and Educational Fund et al. for leave to file a brief as *amici curiae* granted. Certiorari denied. Reported below: 851 F. 2d 937.

No. 88-1414. CALIFORNIA *v.* PARWEZ. Ct. App. Cal., 2d App. Dist. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied.

No. 88-6189. RICKS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. JUSTICE BRENNAN, JUSTICE WHITE, and JUSTICE MARSHALL would grant certiorari. Reported below: 842 F. 2d 300.

#### *Rehearing Denied*

No. 87-121. DUGGER, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. *v.* ADAMS, 489 U. S. 401;

No. 87-889. COMPOY, WARDEN *v.* TURNER, 489 U. S. 1059;

No. 87-5259. TEAGUE *v.* LANE, DIRECTOR, ILLINOIS DEPARTMENT OF CORRECTIONS, ET AL., 489 U. S. 288;

No. 87-5617. LINDSEY *v.* SMITH, COMMISSIONER, ALABAMA DEPARTMENT OF CORRECTIONS, ET AL., 489 U. S. 1059;

No. 88-875. TAYLOR *v.* TAYLOR, 489 U. S. 1012;

No. 88-895. STANTON *v.* DISTRICT OF COLUMBIA COURT OF APPEALS, 489 U. S. 1001;

No. 88-947. HARRISON ET UX. *v.* COMMISSIONER OF INTERNAL REVENUE, 489 U. S. 1053;

April 17, 24, 1989

490 U. S.

- No. 88-1115. WILMOTH *v.* VIRGINIA, 489 U. S. 1053;  
 No. 88-1127. UBEROI *v.* UNIVERSITY OF COLORADO ET AL. 489 U. S. 1019;  
 No. 88-1134. SMITH *v.* COMBUSTION ENGINEERING, INC., ET AL., 489 U. S. 1054;  
 No. 88-5687. EDWARDS *v.* BLACK, COMMISSIONER, MISSISSIPPI DEPARTMENT OF CORRECTIONS, ET AL., 489 U. S. 1059;  
 No. 88-5802. HAWLEY ET AL. *v.* UNITED STATES, 489 U. S. 1020;  
 No. 88-5944. SUN *v.* UNITED STATES, 489 U. S. 1022;  
 No. 88-6040. MCCABE *v.* DIAS ET AL., 488 U. S. 1036;  
 No. 88-6054. TEAGLER *v.* LYNAUGH, DIRECTOR, TEXAS DEPARTMENT OF CORRECTIONS, 489 U. S. 1022;  
 No. 88-6059. DEPEW *v.* OHIO, 489 U. S. 1042;  
 No. 88-6067. GREEN *v.* UNITED STATES, 489 U. S. 1023;  
 No. 88-6079. JONES *v.* ILLINOIS, 489 U. S. 1040;  
 No. 88-6116. SCHULTZ ET UX. *v.* SWANHORST ET AL., 489 U. S. 1024;  
 No. 88-6227. IN RE THEODOROPOULOS, 489 U. S. 1009;  
 No. 88-6235. GILES *v.* GARWOOD ET AL., 489 U. S. 1030;  
 No. 88-6249. LOWE *v.* KING ET AL., 489 U. S. 1030;  
 No. 88-6266. OLIVE *v.* SEARS, ROEBUCK & Co., 489 U. S. 1031; and  
 No. 88-6325. BROWN *v.* OHIO, 489 U. S. 1040. Petitions for rehearing denied.

APRIL 24, 1989

*Dismissal Under Rule 53*

No. 88-1478. CORPUS CHRISTI TAXPAYERS ASSN. ET AL. *v.* CITY OF CORPUS CHRISTI, TEXAS, ET AL. C. A. 5th Cir. Certiorari dismissed as to petitioner Tom Hunt under this Court's Rule 53. Reported below: 858 F. 2d 973.

*Appeal Dismissed*

No. 88-980. ECKLES, DBA RIVERVIEW MARINA *v.* OREGON ET AL. Appeal from Sup. Ct. Ore. dismissed for want of substantial federal question. Reported below: 306 Ore. 380, 760 P. 2d 846.

*Certiorari Granted—Vacated and Remanded*

No. 87-750. PAN AMERICAN WORLD AIRWAYS, INC. *v.* PAMPIN LOPEZ, INDIVIDUALLY AND AS ADMINISTRATOR OF THE ESTATE OF

490 U. S.

April 24, 1989

LOPEZ DE PAMPIN, ET AL. C. A. 5th Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Chan v. Korean Air Lines, Ltd.*, ante, p. 122. Reported below: 821 F. 2d 1147.

No. 88-6056. PEREZ *v.* JONES, SUPERINTENDENT, GREAT MEADOW CORRECTIONAL FACILITY. C. A. 2d 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*, 489 U. S. 255 (1989).

*Miscellaneous Orders*

No. 74, Orig. GEORGIA *v.* SOUTH CAROLINA. Second and Final Report of the Special Master received and ordered filed. Exceptions to the Report, with supporting briefs, may be filed by the parties within 45 days. Reply briefs to such Exceptions may be filed within 30 days. [For earlier order herein, see, *e. g.*, 475 U. S. 1115.]

No. 88-309. WYOMING *v.* UNITED STATES ET AL. Sup. Ct. Wyo. [Certiorari granted, 488 U. S. 1040.] Motion of respondents Shoshone Tribe and Northern Arapaho Tribe to strike brief of respondents Bradford Bath et al. denied.

No. 88-1480. REVES ET AL. *v.* ARTHUR YOUNG & CO. C. A. 8th Cir. The Solicitor General is invited to file a brief in this case expressing the views of the United States.

No. 88-6732. LASHLEY ET UX. *v.* FIRST NATIONAL BANK OF LIVE OAK. C. A. 11th Cir. Motion of petitioners for leave to proceed *in forma pauperis* denied. Petitioners are allowed until May 15, 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*.

*Certiorari Granted*

No. 88-1319. COMMISSIONER OF INTERNAL REVENUE *v.* INDIANAPOLIS POWER & LIGHT CO. C. A. 7th Cir. Certiorari granted. Reported below: 857 F. 2d 1162.

April 24, 1989

490 U. S.

No. 88-1076. PRESEULT ET UX. *v.* INTERSTATE COMMERCE COMMISSION ET AL. C. A. 2d Cir. Motions of Pacific Legal Foundation and National Association of Reversionary Property Owners for leave to file briefs as *amici curiae* granted. Certiorari granted. Reported below: 853 F. 2d 145.

No. 88-1150. MISSOURI ET AL. *v.* JENKINS ET AL. C. A. 8th Cir. Motion of National Taxpayers Union et al. for leave to file a brief as *amici curiae* granted. Certiorari granted limited to Question 2 presented by the petition. The parties are directed to brief also whether the petition for writ of certiorari is timely filed. Reported below: 855 F. 2d 1295.

No. 88-1264. SAFFLE, WARDEN, ET AL. *v.* PARKS. C. A. 10th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari granted. Reported below: 860 F. 2d 1545.

No. 88-6546. DURO *v.* REINA, CHIEF OF POLICE, SALT RIVER DEPARTMENT OF PUBLIC SAFETY, SALT RIVER PIMA-MARICOPA INDIAN COMMUNITY, ET AL. C. A. 9th Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted. Reported below: 851 F. 2d 1136.

*Certiorari Denied*

No. 88-240. GAF CORP. *v.* ERICH ET AL. Sup. Ct. N. J. Certiorari denied. Reported below: 110 N. J. 230, 540 A. 2d 518.

No. 88-963. CULBERSON *v.* VETERANS ADMINISTRATION. C. A. 6th Cir. Certiorari denied. Reported below: 849 F. 2d 1472.

No. 88-1088. ROGERS ET AL. *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 861 F. 2d 729.

No. 88-1146. NADER ET AL. *v.* ENVIRONMENTAL PROTECTION AGENCY ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 859 F. 2d 747.

No. 88-1194. CLARK ET AL. *v.* JENKINS, BY HER FRIEND, AGYEI, ET AL.; and

No. 88-1228. JACKSON COUNTY, MISSOURI, ET AL. *v.* JENKINS, BY HER FRIEND, AGYEI, ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 855 F. 2d 1295.

No. 88-1200. LAMPERT ET AL. *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 854 F. 2d 335.

490 U. S.

April 24, 1989

No. 88-1252. GURARY ET AL. *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 860 F. 2d 521.

No. 88-1255. AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS ET AL. *v.* LOVE ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 858 F. 2d 1347.

No. 88-1284. CARPENTERS LOCAL 608, UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA, AFL-CIO *v.* NATIONAL LABOR RELATIONS BOARD. C. A. 2d Cir. Certiorari denied.

No. 88-1295. TEXAS EMPLOYERS' INSURANCE ASSN. *v.* JACKSON. C. A. 5th Cir. Certiorari denied. Reported below: 862 F. 2d 491.

No. 88-1304. UNION CARBIDE CORP. *v.* SUPERIOR COURT OF CALIFORNIA, CITY AND COUNTY OF SAN FRANCISCO (VILLMAR DENTAL LABS, INC., ET AL., REAL PARTIES IN INTEREST). Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 88-1305. ASHLEY TRANSFER & STORAGE CO., INC., ET AL. *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 858 F. 2d 221.

No. 88-1354. EATON CORP. *v.* PKL COS., INC. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 88-1431. MARCOS ET AL. *v.* REPUBLIC OF THE PHILIPPINES ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 862 F. 2d 1355.

No. 88-1435. CHANDLER'S COVE INN, LTD. *v.* CEDAR TIDE CORP. C. A. 2d Cir. Certiorari denied. Reported below: 859 F. 2d 1127.

No. 88-1437. THOMAS *v.* BOARD OF EXAMINERS, CHICAGO PUBLIC SCHOOLS, ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 866 F. 2d 225.

No. 88-1438. SCHWARTZ, INDIVIDUALLY AND AS ADMINISTRATRIX OF THE ESTATE OF SCHWARTZ, ET AL. *v.* JOHN DEERE CO. ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 860 F. 2d 435.

April 24, 1989

490 U. S.

No. 88-1441. *FLEMING v. LEVY ET AL.* Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 88-1444. *GOLIN v. FMC CORP. ET AL.* C. A. 3d Cir. Certiorari denied. Reported below: 865 F. 2d 250.

No. 88-1460. *GROHS v. GOLD BOND BUILDING PRODUCTS.* C. A. 7th Cir. Certiorari denied. Reported below: 859 F. 2d 1283.

No. 88-1485. *H. C. ELLIOTT, INC. v. CARPENTERS PENSION TRUST FUND FOR NORTHERN CALIFORNIA.* C. A. 9th Cir. Certiorari denied. Reported below: 859 F. 2d 808.

No. 88-1492. *CRAWFORD v. CITY OF MACON, GEORGIA.* C. A. 11th Cir. Certiorari denied. Reported below: 864 F. 2d 794.

No. 88-1498. *BOX OFFICE, INC., ET AL. v. MISSOURI.* Sup. Ct. Mo. Certiorari denied.

No. 88-1508. *ROSS v. UNITED STATES ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 865 F. 2d 255.

No. 88-1519. *BERGMAN v. UNITED STATES.* C. A. Fed. Cir. Certiorari denied. Reported below: 865 F. 2d 268.

No. 88-1537. *MORTENSEN v. UNITED STATES.* C. A. 9th Cir. Certiorari denied. Reported below: 860 F. 2d 948.

No. 88-1561. *DI BELLA v. UNITED STATES.* C. A. 2d Cir. Certiorari denied. Reported below: 863 F. 2d 45.

No. 88-1563. *QUARLES v. UNITED STATES.* C. A. 6th Cir. Certiorari denied. Reported below: 853 F. 2d 492.

No. 88-1585. *SMITH ET AL. v. UNITED STATES.* C. A. 10th Cir. Certiorari denied. Reported below: 838 F. 2d 436.

No. 88-6080. *ANDERSON v. ILLINOIS.* App. Ct. Ill., 3d Dist. Certiorari denied. Reported below: 169 Ill. App. 3d 289, 523 N. E. 2d 1034.

No. 88-6117. *RAMIREZ-SAUSEDO v. UNITED STATES.* C. A. 11th Cir. Certiorari denied. Reported below: 861 F. 2d 725.

No. 88-6155. *CURRY v. BLANKINSHIP.* C. A. 5th Cir. Certiorari denied.

490 U. S.

April 24, 1989

- No. 88-6356. *NUCCIO v. BUTLER, WARDEN*. C. A. 5th Cir. Certiorari denied. Reported below: 860 F. 2d 435.
- No. 88-6405. *MELLO v. UNITED STATES*. C. A. 11th Cir. Certiorari denied. Reported below: 863 F. 2d 888.
- No. 88-6482. *SMITH v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 865 F. 2d 253.
- No. 88-6574. *CRANDALL v. CALIFORNIA*. Sup. Ct. Cal. Certiorari denied. Reported below: 46 Cal. 3d 833, 760 P. 2d 423.
- No. 88-6579. *SCULL v. FLORIDA*. Sup. Ct. Fla. Certiorari denied. Reported below: 533 So. 2d 1137.
- No. 88-6678. *BONANNO v. CALIFORNIA*. Ct. App. Cal., 1st App. Dist. Certiorari denied.
- No. 88-6700. *CURRY v. BLANNOCK*. C. A. 4th Cir. Certiorari denied. Reported below: 867 F. 2d 608.
- No. 88-6713. *BIRDO v. MCCOTTER ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 865 F. 2d 1264.
- No. 88-6714. *HICKS v. FLORIDA*. Dist. Ct. App. Fla., 2d Dist. Certiorari denied. Reported below: 537 So. 2d 573.
- No. 88-6717. *MCNEILL v. ARIZONA PUBLIC SERVICE CO.* Ct. App. Ariz. Certiorari denied.
- No. 88-6720. *SILLS v. TERRY, ATTORNEY GENERAL OF VIRGINIA*. C. A. 4th Cir. Certiorari denied. Reported below: 865 F. 2d 255.
- No. 88-6726. *ASBERRY v. UNITED STATES POSTAL SERVICE ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 860 F. 2d 1078.
- No. 88-6730. *HUNTER v. SAVAGE, RECORDS MANAGER, SOUTHERN NEW MEXICO CORRECTIONAL FACILITY*. Dist. Ct. N. M., 3d Jud. Dist. Certiorari denied.
- No. 88-6733. *AMAN v. DUGGER, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL.* C. A. 11th Cir. Certiorari denied. Reported below: 864 F. 2d 793.
- No. 88-6734. *ADAMO v. HOTEL, MOTEL, BARTENDERS, COOKS & RESTAURANT WORKERS UNION LOCAL 24 ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 861 F. 2d 719.

April 24, 1989

490 U. S.

No. 88-6735. *CASEY v. MILES, SUPERINTENDENT, ELMIRA CORRECTIONAL FACILITY AT ELMIRA, NEW YORK*. C. A. 2d Cir. Certiorari denied. Reported below: 868 F. 2d 1267.

No. 88-6738. *KARRIEM v. DISTRICT OF COLUMBIA*. Ct. App. D. C. Certiorari denied.

No. 88-6743. *LYNCH v. ALBERTSON FOOD CENTERS, INC., ET AL.* Ct. App. Ore. Certiorari denied. Reported below: 98 Ore. App. 216, 762 P. 2d 1069.

No. 88-6744. *CLARK ET AL. v. BORG, WARDEN, ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 862 F. 2d 318.

No. 88-6747. *DIGGS v. INDIANA*. Sup. Ct. Ind. Certiorari denied. Reported below: 531 N. E. 2d 461.

No. 88-6748. *DAVIS v. OKLAHOMA*. Ct. Crim. App. Okla. Certiorari denied.

No. 88-6750. *RICHARDS v. NEW YORK*. C. A. 2d Cir. Certiorari denied.

No. 88-6752. *SCHULER v. SHILLINGER, WARDEN, ET AL.* C. A. 10th Cir. Certiorari denied.

No. 88-6754. *SIMMONS v. BESSINGER, WARDEN, ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 865 F. 2d 255.

No. 88-6759. *COPAS ET UX. v. CABINET FOR HUMAN RESOURCES ET AL.* Ct. App. Ky. Certiorari denied.

No. 88-6786. *CASTILLO-SICAIROS v. UNITED STATES PAROLE COMMISSION*. C. A. 8th Cir. Certiorari denied. Reported below: 866 F. 2d 262.

No. 88-6793. *WOJTOWICZ v. WARNER BROTHERS, INC.* App. Div., Sup. Ct. N. Y., 1st Jud. Dept. Certiorari denied.

No. 88-6817. *TABACHNIK v. MURPHY ET AL.* C. A. 2d Cir. Certiorari denied.

No. 88-6819. *BROWN, AKA ALI v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 859 F. 2d 150.

No. 88-6832. *SERRANO v. DUGGER, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS*. C. A. 11th Cir. Certiorari denied.

490 U. S.

April 24, 1989

No. 88-6840. BALDWIN *v.* SEABOLD, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 865 F. 2d 256.

No. 88-6853. ALASAD *v.* TEXAS. Ct. App. Tex., 1st Dist. Certiorari denied.

No. 88-6858. JONES *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 863 F. 2d 888.

No. 88-6866. MILNES *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 88-1159. ARIZONA *v.* BRAVO. Sup. Ct. Ariz. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 158 Ariz. 364, 762 P. 2d 1318.

No. 88-1249. SOUTHERN BELL TELEPHONE & TELEGRAPH CO. ET AL. *v.* FEDERAL COMMUNICATIONS COMMISSION ET AL.; and

No. 88-1250. NEW ENGLAND TELEPHONE & TELEGRAPH CO. ET AL. *v.* FEDERAL COMMUNICATIONS COMMISSION ET AL. C. A. D. C. Cir. Motion of Communications Satellite Corp. for leave to file a reply as *amicus curiae* granted. Certiorari denied. JUSTICE O'CONNOR took no part in the consideration or decision of this motion and these petitions. Reported below: 264 U. S. App. D. C. 85, 826 F. 2d 1101.

No. 88-1302. BOHATCH ET VIR *v.* DELHAES ET AL. Ct. App. Ohio, Lake County. Certiorari denied. JUSTICE BLACKMUN took no part in the consideration or decision of this petition.

No. 88-1321. NAVISTAR INTERNATIONAL TRANSPORTATION CORP. *v.* UNITED STATES ENVIRONMENTAL PROTECTION AGENCY. C. A. 6th Cir. Certiorari denied. JUSTICE WHITE took no part in the consideration or decision of this petition. Reported below: 858 F. 2d 282.

No. 88-1427. INTERNATIONAL ASSOCIATION OF MACHINISTS & AEROSPACE WORKERS PENSION PLAN ET AL. *v.* MEAGHER. C. A. 9th Cir. Motions of American Society of Pension Actuaries, American Society for Personnel Administration, Chamber of Commerce of the United States of America, and American Academy of Actuaries of the United States for leave to file briefs as *amici curiae* granted. Certiorari denied. Reported below: 856 F. 2d 1418.

April 24, 1989

490 U. S.

No. 88-1447. WARD PETROLEUM CORP. ET AL. *v.* LOUISIANA LAND & EXPLORATION CO., SUCCESSOR BY MERGER AND ACQUISITION TO INEXCO OIL CO., ET AL. Sup. Ct. Okla. Motion of National Association of Royalty Owners et al. for leave to file a brief as *amici curiae* granted. Certiorari denied. Reported below: 767 P. 2d 404.

No. 88-1450. DURA-CORP. *v.* RISI STONE LTD. ET AL. C. A. 3d Cir. Motion of respondents for attorney's fees and expenses denied. Certiorari denied. Reported below: 866 F. 2d 1409.

No. 88-6448. BARON, AKA SONIDO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. JUSTICE BRENNAN and JUSTICE WHITE would grant certiorari. Reported below: 860 F. 2d 911.

No. 88-6728. CARO *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 46 Cal. 3d 1035, 761 P. 2d 680.

JUSTICE BRENNAN and JUSTICE MARSHALL, dissenting.

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

No. 88-6848. LAWS *v.* ARMONTROUT, WARDEN. C. A. 8th Cir. Certiorari denied. Reported below: 863 F. 2d 1377.

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 this view, I would still grant the petition and vacate petitioner's death sentence, so that we might address petitioner's claim that he was denied effective assistance of counsel at the penalty phase of his trial. After an extended hearing, the District Court granted petitioner's writ of habeas corpus, ruling that petitioner had not received effective assistance of counsel, and a panel of the Court of Appeals for the Eighth Circuit affirmed. The panel's judgment, however, was overturned

by the Court of Appeals sitting en banc, over a strong dissenting opinion which three judges joined. 863 F. 2d 1377, 1394 (1988) (McMillian, J., dissenting, joined by Lay, C. J., and Heaney and Arnold, JJ.).

In my view, the behavior of petitioner's attorney at the penalty phase was plainly deficient, depriving his client of "the 'counsel' guaranteed the defendant by the Sixth Amendment." *Strickland v. Washington*, 466 U. S. 668, 687 (1984). The attorney offered literally no evidence in mitigation. This inaction cannot be explained by a dearth of potentially mitigating evidence. On the contrary, the attorney knew of, but failed to investigate, a number of facts about petitioner on which quite credible arguments in mitigation could have been made. Petitioner told his attorney, for example, that he had fought for this country in Vietnam and received an honorable discharge from the Army. 863 F. 2d, at 1396 (dissenting opinion). The attorney, however, failed to pursue this claim. Had he done so, he would have learned that petitioner had earned the National Defense Service Medal, the Vietnam Service Medal, the Vietnam Campaign Medal, and the Good Conduct Medal. *Id.*, at 1397.

The attorney also knew that many of the soldiers who served in the Vietnam conflict suffered severe emotional trauma afterwards, encountering problems of socialization and readjustment. In some cases, they have suffered from posttraumatic stress disorder so severe as to induce violent criminality, a fact recognized by Congress when it passed the Veterans Health Care Amendments of 1979, 38 U. S. C. § 612 *et seq.* 863 F. 2d, at 1396-1397. The attorney failed, too, to explore this potential source of mitigating evidence, deciding after a sketchy telephone conversation with petitioner's stepmother and after a brief conversation with his brother not to interview the family. *Id.*, at 1395-1396. Had he done so, he would have learned that after his experience in Vietnam, petitioner "changed from a church-going young man who had never had any trouble with the law to a nervous and withdrawn loner constantly in trouble, in and out of prison." *Id.*, at 1397. The attorney also failed to explore petitioner's postdischarge psychiatric records, documents which would have provided "even more evidence of [petitioner's] personality change after his military service in Vietnam." *Ibid.*

April 24, 1989

490 U. S.

It is questionable, to say the least, whether under these facts counsel's performance was indeed reasonable so as to satisfy the first prong of the two-pronged test for ineffective assistance set forth in *Strickland*. This conclusion is especially doubtful given that this is a capital case, posing the heaviest professional responsibility on counsel. Yet that is precisely what the en banc Court of Appeals held in this case. 863 F. 2d, at 1394. In my view, the decision below calls into question whether the *Strickland* test is to have any vitality at all. To establish that there are minimal thresholds below which counsel cannot go, I would grant the petition for certiorari.

### *Rehearing Denied*

No. 88-1101. *MADISON v. DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION*, 489 U. S. 1053;

No. 88-5169. *SPISAK v. OHIO*, 489 U. S. 1071;

No. 88-5750. *CLARK v. OHIO*, 489 U. S. 1071;

No. 88-5990. *ROBINSON v. UNITED STATES DEPARTMENT OF EDUCATION*, 489 U. S. 1048;

No. 88-6242. *ROBINSON v. ENGLISH DEPARTMENT OF THE UNIVERSITY OF PENNSYLVANIA ET AL.*, 489 U. S. 1048;

No. 88-6005. *STEWART v. ILLINOIS*, 489 U. S. 1072;

No. 88-6009. *CRAWFORD v. GEORGIA*, 489 U. S. 1040;

No. 88-6078. *BRITZ v. ILLINOIS*, 489 U. S. 1044;

No. 88-6224. *HENDERSON v. OHIO*, 489 U. S. 1072;

No. 88-6292. *DAVIS-EL v. ROBINSON*, 489 U. S. 1057;

No. 88-6320. *BROWN v. VIRGINIA*, 489 U. S. 1069;

No. 88-6321. *BROWN v. VIRGINIA*, 489 U. S. 1069;

No. 88-6392. *MARTIN v. PENNSYLVANIA*, 489 U. S. 1085; and

No. 88-6451. *ENTELISANO v. FELT*, 489 U. S. 1070. Petitions for rehearing denied.

No. 88-489. *MCKABNEY ET UX. v. UNITED STATES*, 488 U. S. 993. Petition for rehearing denied. JUSTICE BRENNAN took no part in the consideration or decision of this petition.

No. 88-5700. *ROSBURG v. JACOB ET AL.*, 488 U. S. 984; and

No. 88-6178. *HERNANDEZ v. UNITED STATES*, 489 U. S. 1027. Motions for leave to file petitions for rehearing denied.

490 U. S.

April 25, May 1, 1989

APRIL 25, 1989

*Miscellaneous Orders.* (For the Court's orders prescribing an amendment to the Bankruptcy Rules, see *post*, p. 1121; amendments to the Federal Rules of Appellate Procedure, see *post*, p. 1127; and amendments to the Federal Rules of Criminal Procedure, see *post*, p. 1137.)

MAY 1, 1989

*Appeal Dismissed*

No. 88-773. *RODEY, DICKASON, SLOAN, AKIN & ROBB, P. A. v. REVENUE DIVISION OF THE DEPARTMENT OF TAXATION AND REVENUE OF NEW MEXICO.* Appeal from Sup. Ct. N. M. dismissed for want of substantial federal question. Reported below: 107 N. M. 399, 759 P. 2d 186.

*Certiorari Granted—Vacated and Remanded*

No. 88-1290. *BENJAMIN ET AL. v. UNITED STATES.* C. A. 9th Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Midland Asphalt Corp. v. United States*, 489 U. S. 794 (1989). Reported below: 852 F. 2d 413.

*Miscellaneous Orders*

No. — — —. *KAESTEL v. LOCKHART, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION, ET AL.* Motion to direct the Clerk to file petition for writ of certiorari out of time denied. JUSTICE BLACKMUN dissents.

No. — — —. *THOMPSON v. SCHROEDER ET AL.* Motion to direct the Clerk to file petition for writ of certiorari out of time denied.

No. A-815 (88-7008). *JAMES v. CARLSON, WARDEN.* C. A. 9th Cir. Application for release, addressed to JUSTICE MARSHALL and referred to the Court, denied.

No. D-742. *IN RE DISBARMENT OF FREDERICK.* Disbarment entered. [For earlier order herein, see 488 U. S. 963.]

No. D-769. *IN RE DISBARMENT OF SMITH.* Disbarment entered. [For earlier order herein, see 489 U. S. 1004.]

May 1, 1989

490 U. S.

No. D-770. *IN RE DISBARMENT OF MATTHEWS*. Disbarment entered. [For earlier order herein, see 489 U. S. 1004.]

No. D-771. *IN RE DISBARMENT OF BIAGGI*. Disbarment entered. [For earlier order herein, see 489 U. S. 1049.]

No. D-782. *IN RE DISBARMENT OF RICKS*. It is ordered that Everett Emmett Ricks, Jr., of Long Beach, Cal., be suspended from the practice of law in this Court and that a rule issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D-783. *IN RE DISBARMENT OF PAIGE*. It is ordered that Richard R. Paige, of Miami, Fla., be suspended from the practice of law in this Court and that a rule issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D-784. *IN RE DISBARMENT OF LILLBACK*. It is ordered that Larry G. Lillback, of Mentor, Ohio, be suspended from the practice of law in this Court and that a rule issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. 65, Orig. *TEXAS v. NEW MEXICO*. Motion of the River Master for approval of fees and expenses granted, and the River Master is awarded \$7,168.53 for the period January 1 through March 31, 1989, to be paid equally by the parties. [For earlier order herein, see, *e. g.*, 489 U. S. 1005.]

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

No. 88-127. *NORFOLK & WESTERN RAILWAY CO. v. GOODE*. Sup. Ct. Va. [Certiorari granted, 489 U. S. 1009.] Motion of Association of American Railroads et al. for leave to file a brief as *amici curiae* granted.

No. 88-124. *BREININGER v. SHEET METAL WORKERS INTERNATIONAL ASSOCIATION LOCAL UNION NO. 6*. C. A. 6th Cir. [Certiorari granted, 489 U. S. 1009.] Motion of National Right to Work Legal Defense Foundation for leave to file a brief as *amicus curiae* granted.

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 appellants John

490 U. S.

May 1, 1989

F. Healy et al. for leave to file a supplemental brief after argument granted.

No. 88-764. JONES *v.* PREUIT & MAULDIN ET AL., 489 U. S. 1002. Motion of respondents to vacate taxing of costs denied. JUSTICE BLACKMUN would grant this motion.

No. 88-1213. EMPLOYMENT DIVISION, DEPARTMENT OF HUMAN RESOURCES OF OREGON, ET AL. *v.* SMITH ET AL. Sup. Ct. Ore. [Certiorari granted, 489 U. S. 1077.] Motion of petitioners to dispense with printing the joint appendix granted.

No. 88-6589. IN RE MADDEN; and

No. 88-6827. IN RE WALKER. Petitions for writs of mandamus denied.

*Probable Jurisdiction Noted*

No. 88-1569. AUSTIN, MICHIGAN SECRETARY OF STATE, ET AL. *v.* MICHIGAN STATE CHAMBER OF COMMERCE. Appeal from C. A. 6th Cir. Probable jurisdiction noted. Reported below: 856 F. 2d 783.

*Certiorari Granted*

No. 88-1474. UNITED STATES *v.* GOODYEAR TIRE & RUBBER CO. ET AL. C. A. Fed. Cir. Certiorari granted. Reported below: 856 F. 2d 170.

No. 88-1476. CARDEN ET AL. *v.* ARKOMA ASSOCIATES. C. A. 5th Cir. Certiorari granted. Reported below: 874 F. 2d 226.

No. 88-1640. MICHIGAN CITIZENS FOR AN INDEPENDENT PRESS ET AL. *v.* THORNBURGH, ATTORNEY GENERAL OF THE UNITED STATES, ET AL. C. A. D. C. Cir. Certiorari granted. JUSTICE WHITE took no part in the consideration or decision of this petition. Reported below: 276 U. S. App. D. C. 130, 868 F. 2d 1285.

No. 88-6677. BUTLER *v.* MCKELLAR, WARDEN, ET AL. C. A. 4th Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted. Reported below: 846 F. 2d 255.

*Certiorari Denied*

No. 88-234. FLORIDA POWER & LIGHT CO. ET AL. *v.* UNITED STATES ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 269 U. S. App. D. C. 377, 846 F. 2d 765.

May 1, 1989

490 U. S.

No. 88-1142. *HELBA v. COMMISSIONER OF INTERNAL REVENUE*. C. A. 3d Cir. Certiorari denied. Reported below: 860 F. 2d 1075.

No. 88-1285. *INTERMOUNTAIN RURAL ELECTRIC ASSN. v. NATIONAL LABOR RELATIONS BOARD*. C. A. 10th Cir. Certiorari denied.

No. 88-1308. *VALERA v. UNITED STATES*. C. A. 11th Cir. Certiorari denied. Reported below: 845 F. 2d 923.

No. 88-1317. *CHURCHILL'S SUPER MARKETS, INC. v. NATIONAL LABOR RELATIONS BOARD*. C. A. 6th Cir. Certiorari denied. Reported below: 857 F. 2d 1474.

No. 88-1318. *PENNSYLVANIA v. STEIN*. Sup. Ct. Pa. Certiorari denied. Reported below: 519 Pa. 137, 546 A. 2d 36.

No. 88-1346. *MORELLA ET AL. v. COOPER/T. SMITH, INC., ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 860 F. 2d 436.

No. 88-1396. *UNITED STEELWORKERS OF AMERICA, LOCAL UNION 7533 v. DIXIE ELECTRICAL MANUFACTURING CO.* Sup. Ct. Ala. Certiorari denied. Reported below: 536 So. 2d 32.

No. 88-1397. *TELECTRONICS, INC., ET AL. v. UNITED STATES ET AL.* C. A. Fed. Cir. Certiorari denied. Reported below: 857 F. 2d 778.

No. 88-1457. *OWENS v. TEXACO INC.* C. A. 5th Cir. Certiorari denied. Reported below: 857 F. 2d 262.

No. 88-1468. *JOHNSTONE v. AMOCO OIL CO.* C. A. 7th Cir. Certiorari denied. Reported below: 856 F. 2d 967.

No. 88-1472. *FULLER, INDIVIDUALLY AND AS PROVISIONAL TUTRIX OF THE MINOR, FULLER v. UNITED STATES AIRCRAFT INSURANCE GROUP*. Ct. App. La., 2d Cir. Certiorari denied. Reported below: 530 So. 2d 1282.

No. 88-1475. *JOHNSON v. ALABAMA*. Ct. Crim. App. Ala. Certiorari denied. Reported below: 536 So. 2d 957.

No. 88-1477. *ABSENTEE SHAWNEE TRIBE OF INDIANS OF OKLAHOMA v. KANSAS*. C. A. 10th Cir. Certiorari denied. Reported below: 862 F. 2d 1415.

490 U. S.

May 1, 1989

No. 88-1484. HAWAII *v.* PROKO INDUSTRIES, INC., ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 862 F. 2d 310.

No. 88-1488. CITY OF DALLAS *v.* VIDEO INTERNATIONAL PRODUCTIONS, INC., ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 858 F. 2d 1075.

No. 88-1490. LOCAL LODGE D111 OF THE CEMENT, LIME, GYPSUM & ALLIED WORKERS, DIVISION OF THE INTERNATIONAL BROTHERHOOD OF BOILERMAKERS, IRON SHIP BUILDERS, BLACKSMITHS, FORGERS & HELPERS, AFL-CIO, ET AL. *v.* INTERNATIONAL BROTHERHOOD OF BOILERMAKERS, IRON SHIP BUILDERS, BLACKSMITHS, FORGERS & HELPERS, AFL-CIO. C. A. 11th Cir. Certiorari denied. Reported below: 858 F. 2d 1559.

No. 88-1494. BADALAMENTI *v.* DUNHAM'S, INC., ET AL. C. A. Fed. Cir. Certiorari denied. Reported below: 862 F. 2d 322.

No. 88-1495. MISSOURI STATE EMPLOYEES' RETIREMENT SYSTEM *v.* HIGGINS. Ct. App. Mo., Western Dist. Certiorari denied. Reported below: 760 S. W. 2d 449.

No. 88-1501. EASTMAN KODAK CO. *v.* POLAROID CORP. C. A. Fed. Cir. Certiorari denied. Reported below: 867 F. 2d 1415.

No. 88-1505. BROOKENS *v.* WISCONSIN. Ct. App. Wis. Certiorari denied. Reported below: 145 Wis. 2d 901, 428 N. W. 2d 645.

No. 88-1517. DUNNING *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 4th Cir. Certiorari denied. Reported below: 861 F. 2d 263.

No. 88-1521. BOOTH *v.* ARKANSAS. Ct. App. Ark. Certiorari denied. Reported below: 26 Ark. App. 115, 761 S. W. 2d 607.

No. 88-1525. LOFTICE *v.* COLORADO. Ct. App. Colo. Certiorari denied.

No. 88-1539. BAKER ET UX. *v.* PIERCE, EXECUTRIX OF THE ESTATE OF BAKER, ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 865 F. 2d 256.

No. 88-1544. ADAMS *v.* PROVIDENT MUTUAL LIFE INSURANCE COMPANY OF PHILADELPHIA ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 865 F. 2d 249.

May 1, 1989

490 U. S.

No. 88-1606. *SCOPO v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 861 F. 2d 339.

No. 88-1607. *CLARK COUNTY, NEVADA v. FRANK BRISCOE Co., INC.* C. A. 9th Cir. Certiorari denied. Reported below: 857 F. 2d 606.

No. 88-1615. *GAENSEL v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 867 F. 2d 614.

No. 88-1625. *THOMAS v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 866 F. 2d 1414.

No. 88-1641. *BODINE v. UNITED STATES*. C. A. Fed. Cir. Certiorari denied. Reported below: 865 F. 2d 269.

No. 88-6074. *MUHAMMAD, AKA METOYER v. WHITE, WARDEN, ET AL.* C. A. 10th Cir. Certiorari denied.

No. 88-6458. *MITCHELL ET AL. v. DUTTON ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 865 F. 2d 1268.

No. 88-6470. *JUVENILE MALE v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 865 F. 2d 1260.

No. 88-6505. *COLT v. UNITED STATES POSTAL SERVICE*. C. A. 3d Cir. Certiorari denied. Reported below: 865 F. 2d 250.

No. 88-6513. *ATHERTON v. ATTORNEY GENERAL OF THE UNITED STATES ET AL.* C. A. D. C. Cir. Certiorari denied. Reported below: 271 U. S. App. D. C. 273, 851 F. 2d 1500.

No. 88-6515. *BRATHWAITE v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 845 F. 2d 1016.

No. 88-6660. *PRICE v. UNITED STATES POSTAL SERVICE*. C. A. 6th Cir. Certiorari denied. Reported below: 863 F. 2d 49.

No. 88-6693. *PARKER v. UNITED STATES POSTAL SERVICE ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 859 F. 2d 922.

No. 88-6755. *LEMONS v. COX ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 857 F. 2d 1471.

No. 88-6758. *COOK v. BUTLER, WARDEN, ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 865 F. 2d 1265.

490 U. S.

May 1, 1989

No. 88-6761. *YORK v. TATE, SUPERINTENDENT, CHILLICOTHE CORRECTIONAL INSTITUTE*. C. A. 6th Cir. Certiorari denied. Reported below: 858 F. 2d 322.

No. 88-6762. *MASON v. INDIANA*. Sup. Ct. Ind. Certiorari denied. Reported below: 532 N. E. 2d 1169.

No. 88-6764. *RUSSELL v. MALDEN STATE BANK*. C. A. 8th Cir. Certiorari denied.

No. 88-6765. *TANG-FORTELECHE v. UNITED STATES*;  
No. 88-6779. *CALLEJA v. UNITED STATES*; and  
No. 88-6893. *CALLEJA v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: No. 88-6765, 865 F. 2d 1261; Nos. 88-6779 and 88-6893, 865 F. 2d 1260.

No. 88-6770. *HOHENSEE v. SMITH ET AL.* Super. Ct. Pa. Certiorari denied. Reported below: 370 Pa. Super. 657, 533 A. 2d 1081.

No. 88-6772. *LYONS v. EASTERN AIRLINES, INC.* C. A. 11th Cir. Certiorari denied. Reported below: 844 F. 2d 795.

No. 88-6773. *BARRON v. SALT LAKE CITY, UTAH*. Ct. App. Utah. Certiorari denied.

No. 88-6776. *DORTCH v. COHN, SUPERINTENDENT, INDIANA STATE REFORMATORY, ET AL.* C. A. 7th Cir. Certiorari denied. Reported below: 863 F. 2d 1337.

No. 88-6778. *ANDRADES-SALINAS ET AL. v. UNITED STATES*; and

No. 88-6781. *CRESPO-HERRERA v. UNITED STATES*. C. A. 1st Cir. Certiorari denied. Reported below: 860 F. 2d 488.

No. 88-6782. *TANGWALL v. ILLINOIS*. App. Ct. Ill., 2d Dist. Certiorari denied. Reported below: 172 Ill. App. 3d 487, 526 N. E. 2d 649.

No. 88-6784. *MAHLERWEIN v. FEDERAL LAND BANK OF LOUISVILLE ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 865 F. 2d 259.

No. 88-6787. *WHITE ET AL. v. CLEVELAND BOARD OF EDUCATION ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 861 F. 2d 722.

May 1, 1989

490 U. S.

No. 88-6796. *QUIGLEY v. CALIFORNIA*. Super. Ct. Cal., Santa Cruz County. Certiorari denied.

No. 88-6802. *STELTEN v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 867 F. 2d 453.

No. 88-6803. *FOWLER v. TEXAS*. Ct. App. Tex., 5th Dist. Certiorari denied.

No. 88-6806. *BROOKS v. ILLINOIS*. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 172 Ill. App. 3d 417, 526 N. E. 2d 420.

No. 88-6807. *REED v. BUTLER, WARDEN*. C. A. 5th Cir. Certiorari denied. Reported below: 866 F. 2d 128.

No. 88-6818. *ROOSE v. COX ET AL.* C. A. 10th Cir. Certiorari denied.

No. 88-6824. *ORTEGA v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 865 F. 2d 253.

No. 88-6829. *HALL v. UNITED STATES*. C. A. 11th Cir. Certiorari denied. Reported below: 865 F. 2d 1272.

No. 88-6842. *RUNDERSON v. UNITED STATES*. C. A. 11th Cir. Certiorari denied. Reported below: 868 F. 2d 1275.

No. 88-6849. *RICHTER v. NEW YORK ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 875 F. 2d 308.

No. 88-6854. *GLOSTER v. KELLY, SUPERINTENDENT, ATTICA CORRECTIONAL FACILITY, ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 872 F. 2d 1021.

No. 88-6859. *GONZALEZ v. DEPARTMENT OF THE NAVY*. C. A. 1st Cir. Certiorari denied. Reported below: 867 F. 2d 607.

No. 88-6868. *DRUMMOND v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 866 F. 2d 1419.

No. 88-6871. *MUHAMMAD v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 870 F. 2d 650.

No. 88-6878. *CUEVAS v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 872 F. 2d 1022.

490 U. S.

May 1, 1989

No. 88-6880. *COOPER v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 869 F. 2d 1495.

No. 88-6887. *DREAD v. UNITED STATES*. C. A. 10th Cir. Certiorari denied.

No. 88-6889. *FROMETA v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 866 F. 2d 1419.

No. 88-6894. *DAROTI-LAGOS, AKA LAGOS-DAROTI v. UNITED STATES*. C. A. 11th Cir. Certiorari denied. Reported below: 866 F. 2d 1422.

No. 88-6900. *HOFFMAN v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 865 F. 2d 261.

No. 88-6902. *HUNT v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 867 F. 2d 609.

No. 88-6905. *COLON-ORTIZ v. UNITED STATES*. C. A. 1st Cir. Certiorari denied. Reported below: 866 F. 2d 6.

No. 88-6921. *CURLEE v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 867 F. 2d 611.

No. 88-6923. *GARRETT v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 864 F. 2d 789.

No. 88-6926. *FINN v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 865 F. 2d 261.

No. 88-6933. *THOMAS v. UNITED STATES*. C. A. 11th Cir. Certiorari denied. Reported below: 867 F. 2d 1430.

No. 88-6939. *ALVAREZ v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 860 F. 2d 801.

No. 88-1381. *ROBLES v. EXXON CORP.* C. A. 5th Cir. Certiorari denied. JUSTICE BRENNAN and JUSTICE WHITE would grant certiorari. Reported below: 862 F. 2d 1201.

No. 88-1399. *PEABODY COAL CO. v. ARIZONA ET AL.* Ct. App. Ariz. Certiorari denied. JUSTICE O'CONNOR took no part in the consideration or decision of this petition. Reported below: 158 Ariz. 190, 761 P. 2d 1094.

No. 88-1482. *OKLAHOMA CORPORATION COMMISSION v. ANR PIPELINE CO. ET AL.* C. A. 10th Cir. Motion of Public Service

May 1, 1989

490 U. S.

Company of Oklahoma et al. for leave to file a brief as *amici curiae* granted. Certiorari denied. Reported below: 860 F. 2d 1571.

No. 88-5804. PAULINO *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 850 F. 2d 93.

JUSTICE WHITE, with whom JUSTICE BRENNAN joins, dissenting.

In August 1987, two police officers observed a car parked in a high-crime area of New York City. Seated in the front seat of the car was its owner and another occupant; petitioner was in the back seat. The officers approached the car and began to ask questions of the owner. As they did this, they saw petitioner lean over and appear to place an object on the floor. Fearful that the item might be a weapon, the officers ordered the men out of the car and searched its interior. The front and back seat areas were searched. When one officer lifted the rear floormat, he found a packet of currency there. He picked up the packet, removed a rubber band, and examined the bills closely. He observed that all the bills had the same serial number and concluded that they were counterfeit. Petitioner was arrested and charged with a counterfeiting offense.

The District Court granted petitioner's motion to suppress the fruits of the search of the packet, but the Second Circuit reversed. 850 F. 2d 93 (1988). The panel majority agreed with petitioner that the officer, upon determining that the item beneath the floor mat was neither a weapon nor plainly contraband, "had no basis to take any further action." *Id.*, at 98. "[A]bsent either probable cause or self-evident contraband the search and seizure of these bills was unjustified," the Court of Appeals concluded. *Ibid.* However, the Second Circuit nonetheless refused to suppress the evidence so obtained because it found that petitioner lacked a "reasonable expectation of privacy in the area searched." *Ibid.*

As I see it, the decision below was incorrect; it at least merits review here. The Fourth Amendment protects from unreasonable searches not only an individual's home and person, but also his effects. Even granting that petitioner had no "expectation of privacy" in the back seat of the car, he had standing to object to the violation of his Fourth Amendment rights when an admittedly illegal search and seizure of his property was conducted. To conclude otherwise, as the Second Circuit did here, would suggest

1052

WHITE, J., dissenting

that when someone lays a sheaf of papers down on a sales counter, or places a stack of documents on the bus seat beside him, or the like, the police may come along, pick up these items, and rifle through them—even if the officers lack probable cause or reasonable suspicion or any basis whatsoever for the search or seizure. None of our precedents reflects such an interpretation of the Fourth Amendment with respect to the right to resist the search and seizure of one's possessions, even when those possessions are in public places.

In its decision below, the Court of Appeals relied on our prior rulings in *Rawlings v. Kentucky*, 448 U. S. 98 (1980); *United States v. Salvucci*, 448 U. S. 83 (1980); and *Rakas v. Illinois*, 439 U. S. 128 (1978). These cases do support the notion that merely having a property right in a seized item does not give one standing to challenge the unlawful search of another person's property to find that item. *Salvucci*, *supra*, at 91; *Rawlings*, *supra*, at 105–106. But this case is different from the cases on which the Second Circuit relied. In those cases, the aggrieved defendants sought to challenge the legality of searches of others' private places, when those searches revealed contraband items belonging to the defendants. In this case, though, the officers opened and examined an item belonging to petitioner which, on its face, offered no justification for such an examination. This case is thus like the one we left open in *Rakas*, *supra*, at 142, n. 11.

We have noted repeatedly in the past that the Fourth Amendment "protects people, not places." *Katz v. United States*, 389 U. S. 347, 351 (1967). Just because petitioner's packet was in a place that was not private does not deprive him of a right to resist a search of that packet, any more than Chadwick was so deprived by his placement of his suitcase in a car which the police had no cause to search. See *United States v. Chadwick*, 433 U. S. 1 (1977); *United States v. Ross*, 456 U. S. 798, 812–813 (1982). Simply put, the Second Circuit confused petitioner's lack of standing to challenge the search of another's car for an item belonging to petitioner, with petitioner's right to challenge the search of an item belonging to him that was found within the car.

Nor is the sweep of the ruling below limited by observing that petitioner could have preserved his privacy interest in the packet of bills if he had kept it on his person. Such a view suggests that the officers could not have taken petitioner's wallet from his person and examined its contents but could have searched his brief-

May 1, 1989

490 U. S.

case if he had had one on the seat beside him. It also suggests that the police, without a warrant or probable cause, could search and seize a person's briefcase checked in a public checkroom, or his luggage in a hotel lobby, or his personal effects in a public place. In none of these instances would such a person have standing to object to the officer's being where he was, but to say that he may not object to the seizure of his effects is suspect and merits review here. Consequently, I dissent from the Court's denial of review in this case.

No. 88-6120. *HAMBSCH v. UNITED STATES*. C. A. Fed. Cir. Certiorari denied. Reported below: 857 F. 2d 763.

Memorandum of JUSTICE STEVENS respecting the denial of the petition for writ of certiorari.

There are times when it is important to emphasize the fact that an order denying a petition for a writ of certiorari is not a ruling on the merits of any question presented by the petition. See *Singleton v. Commissioner*, 439 U. S. 940, 942 (1978) (STEVENS, J., respecting denial of certiorari). In my opinion, this is such an occasion.

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

In this case, the Court of Appeals has misread a statute designed to protect the rights of a class of federal workers and misapplied our decision in *United States v. Testan*, 424 U. S. 392 (1976). The result is a jurisdictional ruling which even respondent here, the United States, does not defend. The Solicitor General has informed this Court that the United States views the jurisdictional holding of the Court of Appeals as plainly wrong and asks that its decision be vacated and remanded. See Brief for United States 6-7. Because the error is plain, and because it carries the clear potential of compounding itself in the Back Pay Act jurisprudence of the Court of Appeals for the Federal Circuit, I would grant the petition and summarily reverse the judgment below.

Petitioner, a former member of the United States Secret Service Uniformed Division (USSSUD), was involved in a motorcycle accident while allegedly responding to a call for relief at 1310 L Street, N. W., in Washington, D. C., which is the headquarters of the Secret Service. As he and a fellow officer were passing through a private alley on motorcycles, an automobile exited from

an underground garage and struck petitioner's motorcycle, pinning him underneath his vehicle. Petitioner received immediate medical care, and later underwent corrective surgery for damage to his left knee. After the accident, in order to receive paid administrative leave, petitioner requested a determination that the accident occurred in the performance of his duties. Such a determination was critical to petitioner's rights under 5 U. S. C. § 6324(a), which provides: "Sick leave may not be charged to the account of a member of the Metropolitan Police force or the Fire Department of the District of Columbia, the United States Park Police force, or the Executive Protective Service force for an absence due to injury or illness resulting from the performance of duty." Pursuant to agency regulations, an investigation and subsequent review by the Administrative Review Board were conducted. The agency determined that under its regulations petitioner's injury did not occur in "the performance of duty" due to the fact that he was in violation of local traffic regulations and USSSUD regulations at the time of the accident. Petitioner was thus denied administrative leave for the period of his convalescence, and after his sick leave was exhausted, he was placed on leave without pay.

Petitioner subsequently brought this action in the United States Claims Court, seeking a determination that he was erroneously denied paid administrative leave by the agency and was thus entitled to an award of backpay for the period in question. Petitioner premised the Claims Court's jurisdiction on that portion of the Tucker Act now codified at 28 U. S. C. § 1491(a)(1), which provides generally that the United States Claims Court "shall have jurisdiction to render judgment upon any claim against the United States founded . . . upon . . . any Act of Congress." The "Act of Congress" upon which petitioner relied was the Back Pay Act, 5 U. S. C. § 5596, which provides in pertinent part:

"(b)(1) An employee of an agency who . . . is found by appropriate authority under applicable law, rule, regulation, or collective bargaining agreement, to have been affected by an unjustified or unwarranted personnel action which has resulted in the withdrawal or reduction of all or part of the pay, allowances, or differentials of the employee—

"(A) is entitled . . . [to] . . .

"(i) an amount equal to all or any part of the pay, allowances or differentials, as applicable, which the employee nor-

mally would have earned or received during the period if the personnel action had not occurred."

In essence, petitioner claimed that 5 U. S. C. § 6324(a) was an "applicable law" within the meaning of the Back Pay Act and that the allegedly erroneous denial of his request for paid administrative leave was an "unwarranted personnel action" which entitled him to an award of lost wages against the United States. The Claims Court ruled against petitioner on the merits, finding that the agency's decision that petitioner was not injured in the performance of his duties was supported by substantial evidence and not legally arbitrary or capricious. 12 Cl. Ct. 744 (1987).

On appeal, the Court of Appeals for the Federal Circuit did not reach the merits of petitioner's claims. 857 F. 2d 763 (1988). Instead that court ruled that the Claims Court lacked jurisdiction over this action. Relying on our decision in *United States v. Testan*, *supra*, the Court of Appeals held that "consent to suit against the United States for back pay must be 'unequivocally expressed' and . . . 5 U. S. C. § 6324 does not express such consent." 857 F. 2d, at 764. The Court of Appeals also relied on its earlier decision in *Hambusch v. United States*, 848 F. 2d 1228 (1988), where it stated: "[T]he parties often speak of section 6324 as if it requires that police officers be placed on administrative leave if injured in the performance of duty, yet the statute doesn't say that. It says they must *not* be placed on sick leave. This implication from a negative may indicate an intent to create liability for back pay for violation, but it is hard to say that it does so 'unequivocally.'" *Id.*, at 1231. The Court of Appeals vacated the decision below and remanded to the Claims Court with instructions to dismiss petitioner's complaint for want of jurisdiction. 857 F. 2d, at 765.

In *United States v. Testan*, we dealt with a claim by Government employees that they had erroneously been classified in a pay grade lower than those who did substantially identical work in the same agency. We held that neither the Classification Act, 5 U. S. C. § 5101 *et. seq.*, nor the Back Pay Act could trigger the Tucker Act jurisdiction of the former Court of Claims in the circumstances of that case. We noted that "the Back Pay Act, as its words so clearly indicate, was intended to grant a monetary cause of action only to those who were subjected to a reduction in their duly appointed emoluments or position." 424 U. S., at 407. The

plaintiffs in *Testan* were not such employees because they were not claiming a right "to receive only the salary of the position to which [they were] appointed"; rather they sought reclassification into a *new* position and pay grade. Thus *Testan* makes clear, and our subsequent cases have reaffirmed, that the Back Pay Act *itself* is an explicit consent to suit by the United States as to a claim by a federal employee that the pay or emoluments of his or her position have been wrongfully withheld in violation of an "applicable law, rule, regulation, or collective bargaining agreement." See, e. g., *United States v. Hopkins*, 427 U. S. 123, 128 (1976) ("The Back Pay Act is the means by which appointed employees subjected to unjustified personnel action are given a cause of action against the United States"); accord, *Bush v. Lucas*, 462 U. S. 367, 385, n. 25 (1983); *Bowen v. Massachusetts*, 487 U. S. 879, 905-906, n. 42 (1988). It follows that the Court of Appeals erred in searching for an explicit waiver of immunity from suit in § 6324; that explicit waiver is found in the Back Pay Act itself. The Court of Appeals' interpretation of *Testan* would render the Back Pay Act a nullity, for rarely if ever will an agency personnel regulation or collective bargaining agreement contain an express waiver of the sovereign immunity of the United States. The proper inquiry is simply whether the employee alleges the violation of a statute, rule, or provision of a collective bargaining agreement which has resulted in the unlawful withholding of compensation to which he or she would otherwise be entitled.

There is little doubt that the violation of 5 U. S. C. § 6324 alleged by petitioner here is exactly the type of "unwarranted personnel action" addressed by the Back Pay Act. As the Claims Court put it: "In 5 U. S. C. § 6324, Congress established a statutory right to administrative leave rather than sick leave to members of the USSSUD where an absence is due to an injury or illness resulting from the performance of duty." 12 Cl. Ct., at 749. Section 6324 appears in Subchapter 2 of Chapter 63 of Title 5 which is entitled "Other Paid Leave" and stands in contradistinction to Subchapter 1 of Chapter 63 which covers "Annual and Sick Leave." Moreover, the legislative history of § 6324, which was originally enacted in 1964, indicates that Congress intended to prohibit the taxing of sick leave against USSSUD employees injured in the performance of their duties in order to make clear their entitlement to paid administrative leave. Congress expressed concern that such

employees were often required to use annual leave or leave without pay for nonwork-related illnesses because they were obligated to expend their sick leave on job-related injuries. See H. R. Rep. No. 1220, 88th Cong., 2d Sess., 1 (1964). Indeed, the Secretary of the Treasury, who is charged with promulgating regulations implementing § 6324, understands that section to create an entitlement to administrative paid leave where it is determined that the injury occurred in the performance of the officer's duties. See USSSUD Manual, chs. 2.7.22 and 2.7.23. Further, the District of Columbia Court of Appeals, which has had occasion to interpret § 6324 as it applies to members of the District of Columbia Police and Fire Departments, likewise understands that section to require that employees injured in the performance of their duties be placed on administrative paid leave. See *Brown v. Jefferson*, 451 A. 2d 74, 75 (1982). The Court of Appeals' contrary interpretation of § 6324 leads to incongruous results. It imputes to Congress an intent to deny to employees injured in the performance of their duties, and only such employees, the right to take sick leave. Thus, an employee injured at home would be entitled to expend available sick leave, while an employee injured in the performance of his or her duties would be prohibited by statute from taking such leave and thus would have to expend annual leave or go on leave without pay.

In my view, the jurisdictional holding of the Court of Appeals is quite clearly wrong, and as the Solicitor General points out, this jurisdictional error will preclude review in a rather large class of cases falling within its scope. Brief for United States 7. Moreover, the Court of Appeal's misinterpretation of our decision in *Testan* threatens to do continuing damage as that court searches for explicit waivers of the sovereign immunity of the United States in agency personnel rules and collective bargaining agreements. For these reasons, I would reverse the judgment of the Court of Appeals and remand this case for further proceedings not inconsistent with the principles enunciated above. In this regard, I note that the Court of Appeals made passing reference to the possible applicability of our decision in *United States v. Fausto*, 484 U. S. 439 (1988), to petitioner's claims. 857 F. 2d, at 764. Because the Court of Appeals did not rest its judgment on that ground, and because the Solicitor General explicitly disclaims any reliance on *Fausto* in this Court, see Brief for United States 4, n. 6, I express no opinion on this issue.

490 U. S.

May 1, 3, 1989

No. 88-6588. *MCDOWELL v. CALIFORNIA*. Sup. Ct. Cal.;  
No. 88-6650. *PURTELL v. TEXAS*. Ct. Crim. App. Tex.; and  
No. 88-6716. *NEVIUS v. SUMNER, DIRECTOR, NEVADA DEPARTMENT OF PRISONS, ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: No. 88-6588, 46 Cal. 3d 551, 763 P. 2d 1269; No. 88-6650, 761 S. W. 2d 360; No. 88-6716, 852 F. 2d 463.

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. 88-987. *HESSE v. BOARD OF EDUCATION OF TOWNSHIP HIGH SCHOOL DISTRICT NO. 211, COOK COUNTY, ILLINOIS, ET AL.*, 489 U. S. 1015;

No. 88-1240. *AINSWORTH v. STATE BAR OF CALIFORNIA*, 489 U. S. 1081;

No. 88-1279. *SUTHERLAND v. UNITED STATES POSTAL SERVICE ET AL.*, 489 U. S. 1082;

No. 88-6317. *MAURER v. OHIO*, 489 U. S. 1072; and

No. 88-6597. *IN RE MCKNIGHT*, 489 U. S. 1077. Petitions for rehearing denied.

No. 88-232. *GROSSMAN v. UNITED STATES*, 488 U. S. 1040. Motion of petitioner for leave to proceed further herein *in forma pauperis* granted. Petition for rehearing denied.

MAY 3, 1989

*Certiorari Denied*

No. 88-7140 (A-875). *ADAMS v. DUGGER, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS*. C. A. 11th Cir. Application for stay of execution of sentence of death, presented to JUSTICE KENNEDY, and by him referred to the Court, denied. Certiorari denied.

JUSTICE BRENNAN, with whom JUSTICE MARSHALL joins, dissenting.

I

Adhering to my view that the death penalty is in all circumstances cruel and unusual punishment prohibited by the Eighth

and Fourteenth Amendments, *Gregg v. Georgia*, 428 U. S. 153, 227 (1976), I would grant the motion for a stay of execution and the petition for a writ of certiorari and vacate the death sentence in this case.

## II

Even if I did not take this view, I would grant the petition to consider whether the sentencing procedure in this case violated the Eighth Amendment requirement that a convicted defendant have the opportunity to present any relevant mitigating evidence—not just statutory mitigating factors—at the sentencing hearing. *Hitchcock v. Dugger*, 481 U. S. 393 (1987). The Florida Supreme Court declined to find petitioner's *Hitchcock* claim procedurally barred and addressed this claim on the merits. *Adams v. State*, 543 So. 2d 1244, 1247 (1989). Likewise, the District Court addressed the merits, determining that petitioner's "is not a proper *Hitchcock* issue." No. 89-67-Civ-0c-16, p. 5 (MD Fla., May 3, 1989). Moreover, since *Hitchcock* was not decided until after petitioner had filed his second federal habeas petition, I detect no abuse of the writ in petitioner raising this claim now for the first time.

At the time petitioner was sentenced, Florida's "standard jury instructions included a charge which had the effect of limiting the jury's consideration to the statutory aggravating and mitigating circumstances," 543 So. 2d, at 1247, reflecting what may have been the general belief in the State, based upon decisions such as *Cooper v. State*, 336 So. 2d 1133 (Fla. 1976), that mitigating factors not specifically itemized in the statute, Fla. Stat. § 921.141 (1975), were not to be taken into account in sentencing. Reasonably believing that state law prohibited a jury or court from considering nonstatutory factors at sentencing, a Florida lawyer might rationally have declined to divert resources from other aspects of case development into the investigation, development, and presentation of evidence of such factors. Indeed, two of petitioner's counsel have filed affidavits to the effect that, operating on the basis of what they understood to be the law at the time, they did not pursue nonstatutory mitigating evidence because they did not believe it would be admissible. I would grant certiorari in this case to consider whether state-generated disincentives to the pursuit and presentation of mitigating evidence infected petitioner's sentencing with constitutional error.

490 U. S.

May 3, 9, 11, 15, 1989

The trial judge in this case initially denied petitioner's request for a sentencing instruction to the jury that they might consider nonstatutory mitigating factors. After the prosecutor's closing argument at sentencing, however, the trial judge announced that he had changed his mind, and that because the prosecutor's closing had listed statutory mitigating circumstances as the only mitigating factors the jury could consider, he would give the requested instruction that "[t]he aggravating circumstances which you may consider are limited to those upon which I've just instructed you. However, there is no such limitation upon the mitigating factors you may consider.'" See 543 So. 2d, at 1247. This change of mind appears to have come too late to allow petitioner's counsel to develop the mitigating evidence that the court's prior ruling, and existing Florida law, had reasonably led them to believe would be inadmissible. A belated instruction to consider mitigating evidence cannot cure a defect the effect of which has been to ensure that there is little or no nonstatutory mitigating evidence for the jury or court to consider.

MAY 9, 1989

*Dismissal Under Rule 53*

No. 88-1456. IPPOLITO ET AL. *v.* WNS, INC. C. A. 7th Cir. Certiorari dismissed under this Court's Rule 53. Reported below: 864 F. 2d 440.

MAY 11, 1989

*Miscellaneous Order*

No. A-881. LANKFORD *v.* IDAHO. Application for stay of execution of sentence of death, presented to JUSTICE O'CONNOR, and by her referred to the Court, granted pending the timely filing and disposition by this Court of a petition for writ of certiorari. Should the petition for writ of certiorari be denied, this stay terminates automatically. In the event the petition for writ of certiorari is granted, this stay shall continue pending the issuance of the mandate of this Court.

MAY 15, 1989

*Appeal Dismissed*

No. 88-6811. HESLER *v.* CABINET FOR HUMAN RESOURCES OF KENTUCKY. Appeal from Ct. App. Ky. dismissed for want of substantial federal question.

May 15, 1989

490 U. S.

*Certiorari Granted—Vacated and Remanded*

No. 88-1208. SANDIA FEDERAL SAVINGS & LOAN ASSN. v. FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION, AS RECEIVER FOR VERNON SAVINGS & LOAN ASSN. C. A. 5th Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Coit Independence Joint Venture v. FSLIC*, 489 U. S. 561 (1989). Reported below: 860 F. 2d 608.

No. 88-1300. FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION, AS RECEIVER FOR BOHEMIAN SAVINGS & LOAN ASSN. v. CAPOZZI ET AL. C. A. 8th Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *FSLIC v. Ticktin*, ante, p. 82. Reported below: 855 F. 2d 1319.

*Miscellaneous Orders*

No. — — —. IN RE CRAMBLET. Motion for leave to file petition for common-law writ of habeas corpus and other relief denied.

No. — — —. IN RE DEAN. Motion for an order to file petition for writ of habeas corpus and other relief denied.

No. D-750. IN RE DISBARMENT OF SOUCEK. Disbarment entered. [For earlier order herein, see 488 U. S. 1000.]

No. D-785. IN RE DISBARMENT OF ARONSON. It is ordered that Mitchell David Aronson, of North Miami, Fla., be suspended from the practice of law in this Court and that a rule issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D-786. IN RE DISBARMENT OF FORD. It is ordered that John J. Ford III, of San Francisco, Cal., be suspended from the practice of law in this Court and that a rule issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D-787. IN RE DISBARMENT OF PRANTIL. It is ordered that Frank G. Prantil, of Fair 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-788. IN RE DISBARMENT OF CATES. It is ordered that Michael H. Cates, of Key West, Fla., be suspended from the practice of law in this Court and that a rule issue, returnable within

490 U. S.

May 15, 1989

40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. 108, Orig. NEBRASKA *v.* WYOMING ET AL. Second interim motion of the Special Master for compensation and reimbursement of expenses granted, and the Special Master is awarded \$94,801.10 to be paid 40% by Nebraska, 40% by Wyoming, and 20% by the United States. [For earlier order herein, see, *e. g.*, 487 U. S. 1231.]

No. 88-124. BREININGER *v.* SHEET METAL WORKERS INTERNATIONAL ASSOCIATION LOCAL UNION No. 6. C. A. 6th Cir. [Certiorari granted, 489 U. S. 1009.] Motion of the Acting Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 88-1264. SAFFLE, WARDEN, ET AL. *v.* PARKS. C. A. 10th Cir. [Certiorari granted, *ante*, p. 1034.] Motion for appointment of counsel granted, and it is ordered that Vivian O. Berger, Esq., of New York, N. Y., be appointed to serve as counsel for respondent in this case.

No. 88-1353. UNITED STATES *v.* VERDUGO-URQUIDEZ. C. A. 9th Cir. [Certiorari granted, *ante*, p. 1019.] Motion of the Acting Solicitor General to dispense with printing the joint appendix granted.

No. 88-1374. JIMMY SWAGGART MINISTRIES *v.* BOARD OF EQUALIZATION OF CALIFORNIA. Ct. App. Cal., 4th App. Dist. [Probable jurisdiction noted, *ante*, p. 1018.] Motion of appellee to limit questions presented for review denied.

No. 88-6896. SCHAEFER *v.* TRANSPORTATION MEDIA, INC. C. A. 7th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied. Petitioner is allowed until June 5, 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*.

May 15, 1989

490 U. S.

No. 88-6966. RITA *v.* UNITED STATES. C. A. 2d Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied. Petitioner is allowed until June 5, 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, JUSTICE BLACKMUN, and JUSTICE STEVENS, dissenting.

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

No. 88-1599. IN RE VONDERSAAR;  
No. 88-6826. IN RE PHILLIPS; and  
No. 88-6971. IN RE WILLIAMS. Petitions for writs of mandamus denied.

No. 88-1609. IN RE HAYNES. Petition for writ of mandamus and/or prohibition denied.

#### *Certiorari Granted*

No. 88-1434. DOLE, SECRETARY OF LABOR, ET AL. *v.* UNITED STEELWORKERS OF AMERICA ET AL. C. A. 3d Cir. Certiorari granted. Reported below: 855 F. 2d 108.

No. 88-1512. FERENS ET UX. *v.* JOHN DEERE CO. C. A. 3d Cir. Certiorari granted. Reported below: 862 F. 2d 31.

No. 88-1377. SULLIVAN, SECRETARY OF HEALTH AND HUMAN SERVICES *v.* ZEBLEY ET AL. C. A. 3d Cir. Motion of respondents for leave to proceed *in forma pauperis* granted. Certiorari granted. Reported below: 855 F. 2d 67.

#### *Certiorari Denied*

No. 87-1594. CROMAN *v.* MANHATTAN COMMUNITY COLLEGE. C. A. 2d Cir. Certiorari denied. Reported below: 841 F. 2d 1116.

No. 87-1830. BLALOCK *v.* METALS TRADES, INC. C. A. 6th Cir. Certiorari denied. Reported below: 833 F. 2d 1011.

No. 88-1070. ASSOCIATED GENERAL CONTRACTORS OF AMERICA ET AL. *v.* OCCUPATIONAL SAFETY AND HEALTH ADMINISTRA-

490 U. S.

May 15, 1989

TION, UNITED STATES DEPARTMENT OF LABOR, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 862 F. 2d 63.

No. 88-1079. KING *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 860 F. 2d 54.

No. 88-1238. HERRINGTON ET UX. *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 5th Cir. Certiorari denied. Reported below: 854 F. 2d 755.

No. 88-1265. FAGIANO, DIRECTOR, DEPARTMENT OF INSURANCE OF IDAHO, ET AL. *v.* UNITED STATES ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 858 F. 2d 445.

No. 88-1298. MICHIGAN *v.* BOYD. Ct. App. Mich. Certiorari denied.

No. 88-1348. HELMSLEY *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 864 F. 2d 266.

No. 88-1367. A. G. BOONE CO. *v.* NATIONAL LABOR RELATIONS BOARD ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 274 U. S. App. D. C. 257, 863 F. 2d 946.

No. 88-1385. NATIONAL GRAIN & FEED ASSN., INC., ET AL. *v.* OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION, UNITED STATES DEPARTMENT OF LABOR. C. A. 3d Cir. Certiorari denied. Reported below: 862 F. 2d 63.

No. 88-1428. COMPANIA DE DESARROLLO COOPERATIVO *v.* U. S. I. PROPERTIES CORP. ET AL. C. A. 1st Cir. Certiorari denied. Reported below: 860 F. 2d 1.

No. 88-1433. VAUGHN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 859 F. 2d 863.

No. 88-1478. CORPUS CHRISTI TAXPAYERS ASSN. ET AL. *v.* CITY OF CORPUS CHRISTI, TEXAS, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 858 F. 2d 973.

No. 88-1507. MOTT *v.* KERNS ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 861 F. 2d 721.

No. 88-1510. WARD ET AL. *v.* SUCCESSION OF FREEMAN ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 854 F. 2d 780.

May 15, 1989

490 U. S.

No. 88-1514. *NEWSPAPERS OF NEW ENGLAND, INC. v. CLERK-MAGISTRATE OF THE WARE DIVISION OF THE DISTRICT COURT DEPARTMENT*. Sup. Jud. Ct. Mass. Certiorari denied. Reported below: 403 Mass. 628, 531 N. E. 2d 1261.

No. 88-1515. *UNITED STATES, ACTING THROUGH THE UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT v. RAINIER VIEW ASSOCIATES ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 848 F. 2d 988.

No. 88-1522. *MCCLATCHY NEWSPAPERS, INC., ET AL. v. MOSESIAN*. Ct. App. Cal., 5th App. Dist. Certiorari denied. Reported below: 205 Cal. App. 3d 597, 252 Cal. Rptr. 586.

No. 88-1524. *CREMEANS v. CITY OF ROSEVILLE ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 861 F. 2d 878.

No. 88-1526. *ROGERS ET UX. v. CITY OF CHEYENNE ET AL.* C. A. 10th Cir. Certiorari denied.

No. 88-1528. *STRATMORE v. GOODBODY ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 866 F. 2d 189.

No. 88-1529. *BOEHM, TAX COMMISSIONER OF NEBRASKA v. TRAILER TRAIN CO. ET AL.* C. A. 8th Cir. Certiorari denied. Reported below: 885 F. 2d 415.

No. 88-1531. *KINDNESS v. SPANG ET AL.* C. A. 3d Cir. Certiorari denied. Reported below: 865 F. 2d 251.

No. 88-1533. *TWIST v. THORNBURGH, ATTORNEY GENERAL OF THE UNITED STATES*. C. A. D. C. Cir. Certiorari denied. Reported below: 272 U. S. App. D. C. 204, 854 F. 2d 1421.

No. 88-1535. *PARKER ET AL. v. CONNORS STEEL CO. ET AL.* C. A. 11th Cir. Certiorari denied. Reported below: 855 F. 2d 1510.

No. 88-1536. *BOBO ET AL. v. TEXAS*. Ct. App. Tex., 14th Dist. Certiorari denied. Reported below: 757 S. W. 2d 58.

No. 88-1541. *FUNKHOUSER ET UX. v. OKLAHOMA*. Ct. Crim. App. Okla. Certiorari denied. Reported below: 763 P. 2d 695.

No. 88-1543. *KENTUCKY STATE POLICE DEPARTMENT v. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION*. C. A. 6th Cir. Certiorari denied. Reported below: 860 F. 2d 665.

490 U. S.

May 15, 1989

No. 88-1549. *MENKE v. TEXAS*. Ct. App. Tex., 14th Dist. Certiorari denied. Reported below: 740 S. W. 2d 861.

No. 88-1550. *MISSOURI PACIFIC RAILROAD CO. v. MACKEY, EXECUTRIX OF THE ESTATE OF MACKEY*. Sup. Ct. Ark. Certiorari denied. Reported below: 297 Ark. 137, 760 S. W. 2d 59.

No. 88-1554. *DAVIS v. HIMMELFARB ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 858 F. 2d 515.

No. 88-1555. *STEELCASE INC. v. HAWORTH, INC.* C. A. Fed. Cir. Certiorari denied. Reported below: 867 F. 2d 615.

No. 88-1557. *HILLVIEW ESTATES, LTD. v. MO-CON VENTURES, INC., ET AL.* Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 88-1558. *ARAGON, INDIVIDUALLY AND AS PERSONAL REPRESENTATIVE OF THE ESTATE OF GONZALES v. ARMENTA*. Sup. Ct. N. M. Certiorari denied.

No. 88-1559. *GLENPOOL UTILITY SERVICES AUTHORITY v. CREEK COUNTY RURAL WATER DISTRICT NO. 2 ET AL.* C. A. 10th Cir. Certiorari denied. Reported below: 861 F. 2d 1211.

No. 88-1560. *CHRISTIE v. HAWAII*. Sup. Ct. Haw. Certiorari denied. Reported below: 70 Haw. 158, 766 P. 2d 1198.

No. 88-1562. *HOLLISTER INC. v. KINGSDOWN MEDICAL CONSULTANTS, LTD., ET AL.* C. A. Fed. Cir. Certiorari denied. Reported below: 863 F. 2d 867.

No. 88-1565. *LEEMIS v. HOSPITAL CORPORATION OF AMERICA*. C. A. 6th Cir. Certiorari denied. Reported below: 863 F. 2d 48.

No. 88-1568. *DANA CORP. v. IPC LIMITED PARTNERSHIP ET AL.* C. A. Fed. Cir. Certiorari denied. Reported below: 860 F. 2d 415.

No. 88-1570. *WASHINGTON ET UX. v. FIRST FEDERAL SAVINGS & LOAN ASSOCIATION OF LAPORTE COUNTY, INDIANA, ET AL.* C. A. 7th Cir. Certiorari denied. Reported below: 863 F. 2d 885.

No. 88-1572. *CLARK v. VIRGINIA*. Sup. Ct. Va. Certiorari denied.

No. 88-1573. *ALONSO ET AL. v. LEO'S QUALITY FOODS ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 865 F. 2d 263.

May 15, 1989

490 U. S.

No. 88-1575. ADAMS, FKA KOZA *v.* NEVADA. Sup. Ct. Nev. Certiorari denied. Reported below: 104 Nev. 262, 756 P. 2d 1184.

No. 88-1576. CAMBRIDGE WIRE CLOTH CO. *v.* LAITRAM CORP. ET AL. C. A. Fed. Cir. Certiorari denied. Reported below: 863 F. 2d 855.

No. 88-1578. BOISE INDEPENDENT SCHOOL DISTRICT #1 *v.* THORNOCK, BY HIS NEXT FRIEND AND MOTHER, BAUGH, ET AL. Sup. Ct. Idaho. Certiorari denied. Reported below: 115 Idaho 466, 767 P. 2d 1241.

No. 88-1579. ROSS *v.* SOUTH CAROLINA. Sup. Ct. S. C. Certiorari denied.

No. 88-1583. SINGER, ADMINISTRATOR OF THE ESTATE OF SINGER, ET AL. *v.* GENERAL MOTORS CORP. ET AL. Super. Ct. Pa. Certiorari denied. Reported below: 378 Pa. Super. 658, 544 A. 2d 1049.

No. 88-1587. MAGBY *v.* WAWRZASZEK ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 863 F. 2d 886.

No. 88-1596. CHENNAREDDY *v.* GENERAL ACCOUNTING OFFICE. C. A. D. C. Cir. Certiorari denied. Reported below: 275 U. S. App. D. C. 230, 865 F. 2d 1329.

No. 88-1617. HULETT *v.* DEPARTMENT OF THE NAVY. C. A. 7th Cir. Certiorari denied. Reported below: 866 F. 2d 432.

No. 88-1630. NORTH AMERICAN PHILIPS CORP. ET AL. *v.* WINDMERE CORP. C. A. Fed. Cir. Certiorari denied. Reported below: 861 F. 2d 695.

No. 88-1656. 298.25 ACRES OF LAND, MORE OR LESS, SITUATE IN WAYNE COUNTY, WEST VIRGINIA, ET AL. *v.* UNITED STATES ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 865 F. 2d 255.

No. 88-1663. HIMMELWRIGHT *v.* FAUVER, COMMISSIONER, NEW JERSEY DEPARTMENT OF CORRECTIONS, ET AL. C. A. 3d Cir. Certiorari denied.

No. 88-1679. WAS ET AL. *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 869 F. 2d 34.

No. 88-6090. JONES *v.* NEFF ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 860 F. 2d 1079.

490 U. S.

May 15, 1989

No. 88-6127. *REDWING v. JOSEPH*. Sup. Ct. S. D. Certiorari denied. Reported below: 429 N. W. 2d 49.

No. 88-6141. *LINDSAY ET AL. v. BORGERT ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 852 F. 2d 1287.

No. 88-6153. *BAKER ET AL. v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 855 F. 2d 1353.

No. 88-6159. *J. Q. (NATURAL MOTHER) v. D. R. L. ET AL. (ADOPTIVE PARENTS)*. Sup. Ct. Ind. Certiorari denied. Reported below: 525 N. E. 2d 298.

No. 88-6216. *BOUIE v. NATIONAL ARCHIVES AND RECORDS ADMINISTRATION ET AL.* C. A. 8th Cir. Certiorari denied. Reported below: 871 F. 2d 1091.

No. 88-6308. *PATINO v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 862 F. 2d 128.

No. 88-6330. *PHILLIPS v. MARTINEZ ET AL.* C. A. 11th Cir. Certiorari denied. Reported below: 851 F. 2d 1422.

No. 88-6360. *LAM v. IOWA ET AL.* C. A. 8th Cir. Certiorari denied. Reported below: 860 F. 2d 873.

No. 88-6444. *KING v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 859 F. 2d 155.

No. 88-6494. *WRENN v. BENSON ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 838 F. 2d 472.

No. 88-6524. *WRENN v. SULLIVAN, SECRETARY OF HEALTH AND HUMAN SERVICES, ET AL.* C. A. 2d Cir. Certiorari denied.

No. 88-6533. *FERMIN v. COMMODITY FUTURES TRADING COMMISSION ET AL.* C. A. D. C. Cir. Certiorari denied. Reported below: 273 U. S. App. D. C. 179, 858 F. 2d 774.

No. 88-6573. *FORD v. UNITED STATES*. C. A. 11th Cir. Certiorari denied. Reported below: 864 F. 2d 793.

No. 88-6580. *PORTWOOD, AKA TUCKER, ET AL. v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 857 F. 2d 1221.

No. 88-6581. *PHILLIPS v. UNITED STATES*. C. A. 10th Cir. Certiorari denied. Reported below: 869 F. 2d 1361.

May 15, 1989

490 U. S.

No. 88-6595. *O'NEAL v. BORGERT, WARDEN*. C. A. 6th Cir. Certiorari denied. Reported below: 860 F. 2d 1080.

No. 88-6615. *COLEMAN v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 862 F. 2d 455.

No. 88-6618. *FRITZ v. BARKER, JUDGE, KENTUCKY CIRCUIT COURT AT FAYETTE, ET AL.* Sup. Ct. Ky. Certiorari denied.

No. 88-6639. *GALLO v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 865 F. 2d 1260.

No. 88-6641. *HERBERT v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 860 F. 2d 620.

No. 88-6658. *WRENN v. THORNBURGH, ATTORNEY GENERAL OF THE UNITED STATES, ET AL.* C. A. 2d Cir. Certiorari denied.

No. 88-6711. *DIAZ v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 864 F. 2d 544.

No. 88-6719. *STUMPF v. ALASKA*. Ct. App. Alaska. Certiorari denied. Reported below: 749 P. 2d 880.

No. 88-6737. *MCCOLPIN v. UNITED STATES*. C. A. Fed. Cir. Certiorari denied. Reported below: 867 F. 2d 615.

No. 88-6749. *GATES v. VASQUEZ, WARDEN*. C. A. 9th Cir. Certiorari denied.

No. 88-6751. *PAREZ v. UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF CALIFORNIA ET AL.* C. A. 9th Cir. Certiorari denied.

No. 88-6760. *SANDS v. UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ARIZONA*. C. A. 9th Cir. Certiorari denied.

No. 88-6771. *CAMPBELL v. IDAHO*. Ct. App. Idaho. Certiorari denied. Reported below: 114 Idaho 367, 757 P. 2d 230.

No. 88-6785. *FRITZ v. BARKER, JUDGE, KENTUCKY CIRCUIT COURT AT FAYETTE, ET AL.* Sup. Ct. Ky. Certiorari denied.

No. 88-6799. *FIXEL v. DISTRICT COURT OF NEVADA, FIRST JUDICIAL DISTRICT*. Sup. Ct. Nev. Certiorari denied. Reported below: 105 Nev. 1030.

No. 88-6813. *KIM v. UNITED STATES ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 855 F. 2d 861.

490 U. S.

May 15, 1989

No. 88-6815. *TRAYLOR v. CITY OF ATLANTA BUREAU OF FIRE SERVICE ET AL.* C. A. 11th Cir. Certiorari denied. Reported below: 856 F. 2d 198.

No. 88-6816. *BERRY v. DUCKWORTH, SUPERINTENDENT, INDIANA STATE PRISON, ET AL.* C. A. 7th Cir. Certiorari denied. Reported below: 866 F. 2d 432.

No. 88-6823. *ALLEN v. MORRIS, SUPERINTENDENT, SOUTHERN OHIO CORRECTIONAL FACILITY.* C. A. 6th Cir. Certiorari denied. Reported below: 863 F. 2d 883.

No. 88-6825. *MASSEY v. OREGON.* Sup. Ct. Ore. Certiorari denied.

No. 88-6830. *BENNETT v. FORTNER, SUPERINTENDENT, LAWTEY CORRECTIONAL INSTITUTION AT LAWTEY, FLORIDA, ET AL.* C. A. 11th Cir. Certiorari denied. Reported below: 863 F. 2d 804.

No. 88-6831. *SIZEMORE v. BLANKENSHIP, WARDEN, ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 866 F. 2d 1416.

No. 88-6837. *WRIGHT v. LOCKHART, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION.* C. A. 8th Cir. Certiorari denied. Reported below: 854 F. 2d 309.

No. 88-6839. *AUGUST v. SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES, ET AL.* Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 88-6844. *WILLIAMS v. MARYLAND ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 865 F. 2d 1262.

No. 88-6846. *SUMMERS v. CHAVIS, WARDEN, ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 867 F. 2d 609.

No. 88-6847. *SMITH v. BESSINGER, WARDEN, ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 862 F. 2d 870.

No. 88-6851. *MCLAUGHLIN v. REES, WARDEN.* C. A. 9th Cir. Certiorari denied.

No. 88-6852. *HOLLOWAY v. CONNECTICUT.* Sup. Ct. Conn. Certiorari denied. Reported below: 209 Conn. 636, 553 A. 2d 166.

May 15, 1989

490 U. S.

No. 88-6862. *ROARK v. FLORIDA*. Dist. Ct. App. Fla., 2d Dist. Certiorari denied. Reported below: 538 So. 2d 1262.

No. 88-6864. *UBIDE v. FLORIDA*. Dist. Ct. App. Fla., 5th Dist. Certiorari denied. Reported below: 536 So. 2d 257.

No. 88-6867. *LIS v. WOLINSKI ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 875 F. 2d 307.

No. 88-6869. *LOCKHART v. WADE ET AL.* C. A. 5th Cir. Certiorari denied.

No. 88-6874. *JOHNSON v. WHITE*. App. Div., Sup. Ct. N. Y., 1st Jud. Dept. Certiorari denied. Reported below: 139 App. Div. 2d 977, 527 N. Y. S. 2d 330.

No. 88-6877. *SMITH v. KELSO, WARDEN*. C. A. 11th Cir. Certiorari denied. Reported below: 863 F. 2d 1564.

No. 88-6883. *HAYES v. PENNSYLVANIA*. Super. Ct. Pa. Certiorari denied. Reported below: 378 Pa. Super. 647, 544 A. 2d 1041.

No. 88-6886. *FILOON v. WORKMEN'S COMPENSATION APPEAL BOARD*. Pa. Commw. Ct. Certiorari denied.

No. 88-6888. *SANDERS v. UNITED STATES ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 869 F. 2d 594.

No. 88-6892. *SMITH v. MASCHNER ET AL.* Ct. App. Kan. Certiorari denied. Reported below: 13 Kan. App. 2d xxxvi, 762 P. 2d 850.

No. 88-6907. *BAKER v. SINGLETON*. Dist. Ct. App. Fla., 2d Dist. Certiorari denied. Reported below: 541 So. 2d 1177.

No. 88-6918. *NUBINE v. HOUSTON CITY POLICE DEPARTMENT*. C. A. 5th Cir. Certiorari denied.

No. 88-6919. *TAPIA v. SEGURA ET AL.* C. A. 10th Cir. Certiorari denied.

No. 88-6922. *ALKHOVSKY v. ILLINOIS*. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 168 Ill. App. 3d 1159, 539 N. E. 2d 925.

490 U. S.

May 15, 1989

No. 88-6927. HOLOVANIA *v.* MASSACHUSETTS. App. Ct. Mass. Certiorari denied. Reported below: 26 Mass. App. 1113, 529 N. E. 2d 1369.

No. 88-6934. REIDT *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 865 F. 2d 268.

No. 88-6937. GOODSON *v.* LYNAUGH, DIRECTOR, TEXAS DEPARTMENT OF CORRECTIONS. C. A. 5th Cir. Certiorari denied.

No. 88-6938. WILLIAMS *v.* KANSAS. Ct. App. Kan. Certiorari denied. Reported below: 13 Kan. App. 2d xlii, 766 P. 2d 204.

No. 88-6942. BELL *v.* SMITH, FORMER COMMISSIONER, ALABAMA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 862 F. 2d 877.

No. 88-6943. WEEDEN *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 869 F. 2d 592.

No. 88-6945. ESPADA *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 873 F. 2d 1436.

No. 88-6946. LAROQUE *v.* DEPARTMENT OF STATE. C. A. 4th Cir. Certiorari denied. Reported below: 870 F. 2d 655.

No. 88-6949. PEROTTI ET AL. *v.* MORRIS, SUPERINTENDENT, SOUTHERN OHIO CORRECTIONAL FACILITY AT LUCASVILLE, ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 861 F. 2d 721.

No. 88-6951. CROXTON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 867 F. 2d 611.

No. 88-6955. WILLIS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 873 F. 2d 1446.

No. 88-6964. SCHUMPERT *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 859 F. 2d 926.

No. 88-6969. PROWS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 864 F. 2d 792.

No. 88-6979. LADD *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied.

No. 88-6985. DAVIS *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied.

May 15, 1989

490 U. S.

No. 88-6996. *MUNCHINSKI v. PETSOCK, WARDEN, ET AL.* C. A. 3d Cir. Certiorari denied.

No. 88-6998. *YOUNG v. SULLIVAN, SUPERINTENDENT, OSSINING CORRECTIONAL FACILITY.* C. A. 2d Cir. Certiorari denied.

No. 88-7004. *FLANAGAN v. UNITED STATES.* C. A. 5th Cir. Certiorari denied. Reported below: 866 F. 2d 1418.

No. 88-7007. *BETANCOURT v. UNITED STATES.* C. A. 11th Cir. Certiorari denied. Reported below: 866 F. 2d 1422.

No. 88-7008. *JAMES v. CARLSON, WARDEN.* C. A. 9th Cir. Certiorari denied. Reported below: 865 F. 2d 264.

No. 88-7009. *SLAUGHTER v. UNITED STATES.* C. A. 7th Cir. Certiorari denied. Reported below: 862 F. 2d 1282.

No. 88-7017. *VARELLAS v. UNITED STATES.* C. A. 6th Cir. Certiorari denied. Reported below: 869 F. 2d 277.

No. 88-7018. *HARRIATT v. UNITED STATES.* C. A. 3d Cir. Certiorari denied. Reported below: 870 F. 2d 652.

No. 88-7019. *ABRAMSON v. VIRGINIA.* Ct. App. Va. Certiorari denied.

No. 88-7025. *GBOLADE v. UNITED STATES.* C. A. 4th Cir. Certiorari denied. Reported below: 869 F. 2d 595.

No. 88-7030. *ORTIZ v. UNITED STATES.* C. A. 11th Cir. Certiorari denied. Reported below: 867 F. 2d 1429.

No. 88-7032. *MUNCY v. UNITED STATES.* C. A. 11th Cir. Certiorari denied. Reported below: 865 F. 2d 1273.

No. 88-7035. *CHAMBERS v. UNITED STATES.* C. A. 10th Cir. Certiorari denied.

No. 88-7037. *KRAGNESS v. UNITED STATES.* C. A. 8th Cir. Certiorari denied. Reported below: 871 F. 2d 1094.

No. 88-7040. *ALAIMO v. UNITED STATES.* C. A. 11th Cir. Certiorari denied. Reported below: 862 F. 2d 878.

No. 88-7042. *WORSLEY v. UNITED STATES.* C. A. 4th Cir. Certiorari denied. Reported below: 869 F. 2d 595.

490 U. S.

May 15, 1989

No. 88-7047. KAPANTAIS *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 870 F. 2d 652.

No. 88-7052. MARINE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 867 F. 2d 614.

No. 88-7053. LEE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 867 F. 2d 609.

No. 88-7056. MONZON *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 869 F. 2d 338.

No. 88-1259. GARDNER ET AL. *v.* TRIBBLE. C. A. 9th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 860 F. 2d 321.

No. 88-1380. OGLALA SIOUX TRIBE ET AL. *v.* UNITED STATES ET AL. C. A. Fed. Cir. Certiorari denied. JUSTICE BLACKMUN took no part in the consideration or decision of this petition. Reported below: 862 F. 2d 275.

No. 88-1530. JULIANO *v.* COMMERCIAL LIFE INSURANCE CO. ET AL. Sup. Ct. Cal. Motion of California Medical Association for leave to file a brief as *amicus curiae* granted. Certiorari denied. Reported below: 47 Cal. 3d 473, 764 P. 2d 1059.

No. 88-1574. BURT *v.* JUSTICES OF THE SUPREME COURT OF IDAHO ET AL. C. A. 9th Cir. Certiorari denied. JUSTICE KENNEDY took no part in the consideration or decision of this petition. Reported below: 835 F. 2d 1434.

No. 88-1662. ROMP *v.* UNITED STATES. C. A. 6th Cir. Certiorari before judgment denied.

No. 88-6516. HARRIS *v.* WASHINGTON. Sup. Ct. Wash.;  
No. 88-6642. ALBANESE *v.* ILLINOIS. Sup. Ct. Ill.;  
No. 88-6666. CHANDLER *v.* FLORIDA. Sup. Ct. Fla.;  
No. 88-6789. ZEITVOGEL *v.* MISSOURI. Ct. App. Mo., Western Dist.;

No. 88-6810. LEE *v.* GEORGIA. Sup. Ct. Ga.;  
No. 88-6812. BROOM *v.* OHIO. Sup. Ct. Ohio;  
No. 88-6860. SNELL *v.* ARKANSAS. Sup. Ct. Ark.; and  
No. 88-6891. JONES *v.* BUTLER, WARDEN. C. A. 5th Cir. Certiorari denied. Reported below: No. 88-6516, 111 Wash. 2d 691, 763 P. 2d 823; No. 88-6642, 125 Ill. 2d 100, 531 N. E.

May 15, 1989

490 U. S.

2d 17; No. 88-6666, 534 So. 2d 701; No. 88-6789, 760 S. W. 2d 466; No. 88-6810, 258 Ga. 762, 374 S. E. 2d 199; No. 88-6812, 40 Ohio St. 3d 277, 533 N. E. 2d 682; No. 88-6860, 296 Ark. xx; No. 88-6891, 864 F. 2d 348.

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. 88-6542. *GATES v. VASQUEZ, WARDEN*. C. A. 9th Cir. Petition for writ of certiorari and petition for writ of habeas corpus 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 certiorari and vacate the death sentence in this case.

No. 88-6963. *CARSETTI v. BRONSON, WARDEN*. C. A. 1st Cir. Certiorari denied. JUSTICE WHITE dissents from the denial of certiorari.

### *Rehearing Denied*

No. 87-1602. *CASTILLE, DISTRICT ATTORNEY OF PHILADELPHIA COUNTY, ET AL. v. PEOPLES*, 489 U. S. 346;

No. 87-6431. *SCHMUCK v. UNITED STATES*, 489 U. S. 705;

No. 88-900. *KERR v. BOWEN, SECRETARY OF HEALTH AND HUMAN SERVICES*, 488 U. S. 1011;

No. 88-1192. *GRAHAM v. BETTIS, JUDGE, ET AL.*, 489 U. S. 1079;

No. 88-1201. *HARDEN v. BERT ET AL.*, 489 U. S. 1079;

No. 88-1272. *H. K. PORTER CO., INC. v. UNITED STEELWORKERS OF AMERICA, AFL-CIO-CLC, ET AL.*, 489 U. S. 1096;

No. 88-1310. *BRENT v. NATIONAL RAILROAD PASSENGER CORPORATION, DBA AMTRAK, ET AL.*, *ante*, p. 1005;

No. 88-1334. *WILLIAMS v. UNITED STATES DEPARTMENT OF ENERGY ET AL.*, 489 U. S. 1082;

No. 88-5952. *BILDER v. OHIO*, 488 U. S. 1044;

490 U. S.

May 15, 18, 1989

- No. 88-5961. COPELAND *v.* LOUISIANA, 489 U. S. 1091;  
 No. 88-6096. AUCOIN *v.* TENNESSEE, 489 U. S. 1084;  
 No. 88-6126. WHITWORTH *v.* UNITED STATES, 489 U. S. 1084;  
 No. 88-6247. HERMAN *v.* GEER ET AL., 489 U. S. 1030;  
 No. 88-6393. WOOMER *v.* AIKEN, WARDEN, ET AL., 489 U. S. 1091;  
 No. 88-6401. MARTIN *v.* COMMONWEALTH NATIONAL BANK ET AL., *ante*, p. 1008;  
 No. 88-6420. PRICE *v.* MARYLAND, 489 U. S. 1086;  
 No. 88-6464. FIXEL *v.* WHITLEY, WARDEN, 489 U. S. 1087;  
 No. 88-6503. MINTON *v.* SHEET METAL WORKERS LOCAL UNION No. 54, AFL-CIO, ET AL., 489 U. S. 1098;  
 No. 88-6558. RITTENOUR *v.* MARYLAND, 489 U. S. 1088;  
 No. 88-6575. LANDES *v.* YOST, COMMANDANT, UNITED STATES COAST GUARD, *ante*, p. 1009;  
 No. 88-6647. GROWNEY *v.* GROWNEY ET AL., 489 U. S. 1099;  
 No. 88-6652. VAN HOOK *v.* OHIO, 489 U. S. 1100;  
 No. 88-6672. DONALD *v.* GEORGIA, *ante*, p. 1010;  
 No. 88-6710. LAURENCO *v.* SULLIVAN, SECRETARY, DEPARTMENT OF HEALTH AND HUMAN SERVICES, *ante*, p. 1010;  
 No. 88-6746. LAWRENCE *v.* UNITED STATES RAILROAD RETIREMENT BOARD, *ante*, p. 1027; and  
 No. 88-6780. GOVAN *v.* WORKERS' COMPENSATION APPEALS BOARD ET AL., *ante*, p. 1011. Petitions for rehearing denied.

MAY 18, 1989

*Miscellaneous Orders*

No. A-903. BOYLSTON, ATTORNEY AD LITEM FOR UNBORN CHILD OF T. W. *v.* T. W. Dist. Ct. App. Fla., 5th Dist. Motion of American Civil Liberties Union et al. for leave to file a brief as *amici curiae* denied. Application for stay, presented to JUSTICE KENNEDY, and by him referred to the Court, denied. The order heretofore entered by JUSTICE KENNEDY on May 16, 1989, is vacated.

No. A-912. WILLIS *v.* ZANT, WARDEN. Application for stay of execution of sentence of death, presented to JUSTICE KENNEDY, and by him referred to the Court, denied.

JUSTICE BRENNAN and JUSTICE MARSHALL, dissenting.

Adhering to our views that the death penalty is in all circumstances cruel and unusual punishment prohibited by the Eighth

May 18, 22, 1989

490 U. S.

and Fourteenth Amendments, *Gregg v. Georgia*, 428 U. S. 153, 227, 231 (1976), we would grant the application for stay of execution in order to give the applicant time to file a petition for writ of certiorari and would grant the petition and vacate the death sentence in this case.

MAY 22, 1989

*Appeal Dismissed*

No. 88-1095. *HOWE ET UX. v. NORCHEK OF NEWPORT, INC., DBA WOODY'S WHARF, ET AL.* Appeal from Ct. App. Cal., 4th App. Dist., dismissed for want of substantial federal question.

*Certiorari Granted—Vacated and Remanded*

No. 87-1994. *DUGGER, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. v. LAWSON ET AL.* C. A. 11th Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Thornburgh v. Abbott*, ante, p. 401. Reported below: 840 F. 2d 779 and 781.

No. 88-284. *DAIN BOSWORTH INC. v. JOHNSON ET AL.* Ct. App. Minn. Motion of Securities Industry Association et al. for leave to file a brief as *amici curiae* granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Rodriguez de Quijas v. Shearson/American Express, Inc.*, ante, p. 477. JUSTICE BLACKMUN took no part in the consideration or decision of this motion and this case. Reported below: 420 N. W. 2d 264.

*Miscellaneous Orders*

No. — — —. *IN RE BYERS.* Motion to order the Clerk to file petition for writ of habeas corpus and other relief denied.

No. — — —. *PHILLIPS PETROLEUM CO. v. GRAY ET AL.* Motion to direct the Clerk to file petition for writ of certiorari out of time denied.

No. A-819. *CRESCENZI v. DEPARTMENTAL DISCIPLINARY COMMITTEE FOR THE FIRST JUDICIAL DEPARTMENT.* App. Div., Sup. Ct. N. Y., 1st Jud. Dept. Application for stay, addressed to JUSTICE WHITE and referred to the Court, denied.

No. D-743. *IN RE DISBARMENT OF CARTER.* Disbarment entered. [For earlier order herein, see 488 U. S. 963.]

490 U. S.

May 22, 1989

No. D-774. IN RE DISBARMENT OF GUNDERMAN. Disbarment entered. [For earlier order herein, see 489 U. S. 1075.]

No. D-789. IN RE DISBARMENT OF GUINAN. It is ordered that Michael Joseph Guinan, of Oxford, Wis., be suspended from the practice of law in this Court and that a rule issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

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

No. 88-127. NORFOLK & WESTERN RAILWAY CO. *v.* GOODE. Sup. Ct. Va. [Certiorari granted, 489 U. S. 1009.] Motion of the Acting Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 88-1319. COMMISSIONER OF INTERNAL REVENUE *v.* INDIANAPOLIS POWER & LIGHT CO. C. A. 7th Cir. [Certiorari granted, *ante*, p. 1033.] Motion of the Acting Solicitor General to dispense with printing the joint appendix granted.

No. 88-6546. DURO *v.* REINA, CHIEF OF POLICE, SALT RIVER DEPARTMENT OF PUBLIC SAFETY, SALT RIVER PIMA-MARICOPA INDIAN COMMUNITY, ET AL. C. A. 9th Cir. [Certiorari granted, *ante*, p. 1034.] Motion for appointment of counsel granted, and it is ordered that John J. Trebon, Esq., of Flagstaff, Ariz., be appointed to serve as counsel for petitioner in this case.

No. 88-6677. BUTLER *v.* MCKELLAR, WARDEN, ET AL. C. A. 4th Cir. [Certiorari granted, *ante*, p. 1045.] Motion for appointment of counsel granted, and it is ordered that John H. Blume, Esq., of Columbia, S. C., be appointed to serve as counsel for petitioner in this case.

No. 88-6732. LASHLEY ET UX. *v.* FIRST NATIONAL BANK OF LIVE OAK. C. A. 11th Cir. Motion of petitioners for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 1033] denied.

No. 88-7002. IN RE GEURIN. Petition for writ of mandamus denied.

No. 88-1598. IN RE HOOKER. Petition for writ of mandamus and/or prohibition denied.

May 22, 1989

490 U. S.

*Certiorari Granted*

No. 88-1323. SULLIVAN, SECRETARY OF HEALTH AND HUMAN SERVICES, ET AL. *v.* EVERHART ET AL. C. A. 10th Cir. Motion of respondents for leave to proceed *in forma pauperis* granted. Certiorari granted. Reported below: 853 F. 2d 1532.

*Certiorari Denied*

No. 88-1012. SINGH ET AL. *v.* DREXEL BURNHAM LAMBERT INC. ET AL. Dist. Ct. App. Fla., 4th Dist. Certiorari denied. Reported below: 529 So. 2d 1235.

No. 88-1383. ROTH *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 860 F. 2d 1382.

No. 88-1463. WRENN *v.* STATE INDUSTRIAL INSURANCE SYSTEM. Sup. Ct. Nev. Certiorari denied. Reported below: 104 Nev. 536, 762 P. 2d 884.

No. 88-1464. GREENBERG *v.* FLORIDA BAR. Sup. Ct. Fla. Certiorari denied. Reported below: 534 So. 2d 1142.

No. 88-1496. CITY OF CHICAGO ET AL. *v.* BIENEMAN;  
No. 88-1497. BIENEMAN *v.* CITY OF CHICAGO ET AL.; and  
No. 88-1670. AMERICAN AIRLINES, INC., ET AL. *v.* CITY OF CHICAGO ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 864 F. 2d 463.

No. 88-1520. MEDICAL MALPRACTICE INSURANCE ASSN. *v.* SUPERINTENDENT OF INSURANCE OF NEW YORK. Ct. App. N. Y. Certiorari denied. Reported below: 72 N. Y. 2d 753, 533 N. E. 2d 1030.

No. 88-1577. FLITCRAFT ET UX. *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 863 F. 2d 342.

No. 88-1584. SIZEMORE *v.* TEXAS BOARD OF DENTAL EXAMINERS. Sup. Ct. Tex. Certiorari denied. Reported below: 759 S. W. 2d 114.

No. 88-1588. BOYCE *v.* ISRAELITE BIBLE CLASS, INC. App. Ct. Ill., 5th Dist. Certiorari denied. Reported below: 171 Ill. App. 3d 1166, 543 N. E. 2d 625.

No. 88-1589. FITANIDES *v.* NEW HAMPSHIRE. Sup. Ct. N. H. Certiorari denied. Reported below: 131 N. H. 298, 552 A. 2d 1379.

490 U. S.

May 22, 1989

No. 88-1590. *RUSSELL v. PENNSYLVANIA*. Ct. Common Pleas of Lancaster County, Pa. Certiorari denied.

No. 88-1593. *SPARKS v. ARMSTRONG RUBBER Co.* C. A. 6th Cir. Certiorari denied. Reported below: 865 F. 2d 258.

No. 88-1594. *WINROD ET VIR v. FORD MOTOR Co. ET AL.* Ct. App. Ohio, Franklin County. Certiorari denied. Reported below: 53 Ohio App. 3d 94, 557 N. E. 2d 1250.

No. 88-1605. *LUPO ET AL. v. R. ROWLAND & Co. ET AL.* C. A. 8th Cir. Certiorari denied. Reported below: 857 F. 2d 482.

No. 88-1608. *CEDAR CREST #10, INC. v. CITY OF DALLAS*. Ct. App. Tex., 11th Dist. Certiorari denied. Reported below: 754 S. W. 2d 351.

No. 88-1612. *HODGE v. KELLY ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 868 F. 2d 1267.

No. 88-1613. *DOWLING v. ALABAMA STATE BAR*. Sup. Ct. Ala. Certiorari denied. Reported below: 539 So. 2d 149.

No. 88-1614. *MOLINA v. TEXAS*. Ct. App. Tex., 14th Dist. Certiorari denied.

No. 88-1622. *MITCHELL v. BOARD OF TRUSTEES OF THE LOS ANGELES COMMUNITY COLLEGE DISTRICT ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 861 F. 2d 198.

No. 88-1631. *CUMMINGS v. ACF INDUSTRIES ET AL.* Ct. App. Mo., Eastern Dist. Certiorari denied. Reported below: 743 S. W. 2d 542.

No. 88-1632. *RAHMANI v. TEXAS*. Ct. App. Tex., 1st Dist. Certiorari denied. Reported below: 748 S. W. 2d 618.

No. 88-1645. *CRUZ v. DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, ET AL.* C. A. D. C. Cir. Certiorari denied. Reported below: 274 U. S. App. D. C. 70, 861 F. 2d 303.

No. 88-1646. *LAUPOT v. BERLEY, EXECUTOR OF THE ESTATE OF BERLEY*. C. A. 4th Cir. Certiorari denied. Reported below: 865 F. 2d 255.

No. 88-1655. *FLORES v. DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION ET AL.* Ct. App. D. C. Certiorari denied. Reported below: 547 A. 2d 1000.

May 22, 1989

490 U. S.

No. 88-1672. *ACOSTA v. SULLIVAN, SECRETARY OF HEALTH AND HUMAN SERVICES*. C. A. 1st Cir. Certiorari denied. Reported below: 860 F. 2d 1073.

No. 88-1673. *BONELLO v. CONNECTICUT*. Sup. Ct. Conn. Certiorari denied. Reported below: 210 Conn. 51, 554 A. 2d 277.

No. 88-1681. *KEEHAN v. OFFICE OF DISCIPLINARY COUNSEL OF THE SUPREME COURT OF PENNSYLVANIA*. Sup. Ct. Pa. Certiorari denied.

No. 88-1682. *BREMNER ET AL. v. HAWAII HOUSING AUTHORITY ET AL.* Sup. Ct. Haw. Certiorari denied.

No. 88-1683. *SHELDON HALL CLOTHING, INC., ET AL. v. TRUSTEES OF THE AMALGAMATED INSURANCE FUND*. C. A. 3d Cir. Certiorari denied. Reported below: 862 F. 2d 1020.

No. 88-1693. *KAZMANN v. ENVIRONMENTAL PROTECTION AGENCY ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 863 F. 2d 881.

No. 88-1734. *DAYTON v. UNITED STATES*. C. A. 11th Cir. Certiorari denied. Reported below: 869 F. 2d 1500.

No. 88-5935. *FULFORD v. BUTLER, WARDEN*. Sup. Ct. La. Certiorari denied. Reported below: 526 So. 2d 790.

No. 88-6359. *BEVERLY v. JONES, WARDEN, ET AL.* C. A. 11th Cir. Certiorari denied. Reported below: 854 F. 2d 412.

No. 88-6404. *SCOTT v. OKLAHOMA*. Ct. Crim. App. Okla. Certiorari denied.

No. 88-6440. *GOODWIN, AKA MCGAVIN v. DUGGER, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL.* C. A. 11th Cir. Certiorari denied.

No. 88-6563. *CAMPILLO v. SULLIVAN, WARDEN*. C. A. 8th Cir. Certiorari denied. Reported below: 853 F. 2d 593.

No. 88-6649. *SAVAGE v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 863 F. 2d 595.

No. 88-6808. *MONTAGUE v. CITY OF PHILADELPHIA ET AL.* C. A. 3d Cir. Certiorari denied.

490 U. S.

May 22, 1989

No. 88-6865. *ZATKO v. UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF CALIFORNIA*. C. A. 9th Cir. Certiorari denied.

No. 88-6890. *BREEST v. CUNNINGHAM, WARDEN*. C. A. 1st Cir. Certiorari denied. Reported below: 867 F. 2d 607.

No. 88-6901. *GILES v. LAND, JUDGE, SUPERIOR COURT OF GEORGIA, MUSCOGEE COUNTY*. C. A. 11th Cir. Certiorari denied.

No. 88-6903. *PATTERSON v. MICHIGAN*. Ct. App. Mich. Certiorari denied.

No. 88-6904. *MCDONALD v. YELLOW CAB METRO, INC.* Sup. Ct. Tenn. Certiorari denied.

No. 88-6906. *EAST v. LOCKHART, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION*. C. A. 8th Cir. Certiorari denied.

No. 88-6910. *MANROSS ET AL. v. OHIO*. Sup. Ct. Ohio. Certiorari denied. Reported below: 40 Ohio St. 3d 180, 532 N. E. 2d 735.

No. 88-6912. *WILLIAMS v. HARRIS*. C. A. 11th Cir. Certiorari denied.

No. 88-6915. *YATES v. BANKS*. C. A. 5th Cir. Certiorari denied. Reported below: 863 F. 2d 881.

No. 88-6916. *ROSBERG v. UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT*. C. A. 8th Cir. Certiorari denied.

No. 88-6920. *LAYTON v. WHITLEY, WARDEN*. C. A. 9th Cir. Certiorari denied. Reported below: 867 F. 2d 613.

No. 88-6924. *CRAMER v. KANSAS*. Ct. App. Kan. Certiorari denied. Reported below: 13 Kan. App. 2d xxxvi, 761 P. 2d 801.

No. 88-6925. *CHASE v. OREGON*. Ct. App. Ore. Certiorari denied.

No. 88-6928. *FICA v. DUGGER, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL.* C. A. 11th Cir. Certiorari denied.

No. 88-6932. *EUBANKS ET UX. v. SOUTH CAROLINA NATIONAL BANK ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 849 F. 2d 604.

No. 88-6940. *DE YOUNG v. NORMAN ET AL.* C. A. 8th Cir. Certiorari denied.

May 22, 1989

490 U. S.

No. 88-6950. *JOHNSON v. ILLINOIS*. App. Ct. Ill., 5th Dist. Certiorari denied. Reported below: 173 Ill. App. 3d 998, 527 N. E. 2d 1317.

No. 88-6975. *AHMED v. DEPARTMENT OF THE ARMY*. C. A. Fed. Cir. Certiorari denied. Reported below: 864 F. 2d 150.

No. 88-6984. *ARCHULETA v. KERBY, WARDEN*. C. A. 10th Cir. Certiorari denied. Reported below: 864 F. 2d 709.

No. 88-7005. *SCHULTZ v. UNITED STATES*. C. A. Fed. Cir. Certiorari denied. Reported below: 868 F. 2d 1277.

No. 88-7027. *CURTIS v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 872 F. 2d 1029.

No. 88-7034. *HERMANSKI, AKA LAMBERT v. UNITED STATES*. C. A. 11th Cir. Certiorari denied. Reported below: 861 F. 2d 1240.

No. 88-7068. *CHIZMADIA v. SMILEY'S POINT CLINIC ET AL.* Ct. App. Minn. Certiorari denied. Reported below: 428 N. W. 2d 459.

No. 88-7088. *THOMPSON v. MASSACHUSETTS ET AL.* C. A. 1st Cir. Certiorari denied.

No. 88-1178. *KEANE v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. JUSTICE BLACKMUN would grant certiorari. JUSTICE STEVENS took no part in the consideration or decision of this petition. Reported below: 852 F. 2d 199.

No. 88-1600. *HOLY SPIRIT ASSOCIATION FOR THE UNIFICATION OF WORLD CHRISTIANITY ET AL. v. MOLKO ET AL.* Sup. Ct. Cal. Motions of National Council of Churches of Christ in the U. S. A. et al. and Society for the Scientific Study of Religion et al. for leave to file briefs as *amici curiae* granted. Certiorari denied. Reported below: 46 Cal. 3d 1092, 762 P. 2d 46.

No. 88-1603. *NORTHERN PROPANE GAS CO. v. MCGAHEE*. C. A. 11th Cir. Motion of Business Roundtable for leave to file a brief as *amicus curiae* granted. Certiorari denied. JUSTICE BRENNAN and JUSTICE WHITE would grant certiorari. Reported below: 858 F. 2d 1487.

490 U. S.

May 22, 1989

No. 88-1618. *PARISIEN, DBA PARISIEN EXCAVATION v. TWIN CITY CONSTRUCTION COMPANY OF FARGO ET AL.* C. A. 8th Cir. Motion of Turtle Mountain Band of Chippewa Indians et al. for leave to file a brief as *amici curiae* granted. Certiorari denied. Reported below: 866 F. 2d 971.

No. 88-1643. *STEPHENSON v. MCLEAN CONTRACTING CO., INC.* C. A. 4th Cir. Certiorari denied. JUSTICE WHITE would grant certiorari. Reported below: 863 F. 2d 340.

No. 88-6804. *FOSTER v. GEORGIA.* Sup. Ct. Ga.;

No. 88-6828. *GACY v. ILLINOIS.* Sup. Ct. Ill.;

No. 88-6931. *POE v. TENNESSEE.* Sup. Ct. Tenn.; and

No. 88-7045. *GRUBBS v. MISSOURI.* Sup. Ct. Mo. Certiorari denied. Reported below: No. 88-6804, 258 Ga. 736, 374 S. E. 2d 188; No. 88-6828, 125 Ill. 2d 117, 530 N. E. 2d 1340; No. 88-6931, 755 S. W. 2d 41; No. 88-7045, 760 S. W. 2d 115.

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. 88-6948. *SEVER v. AKERS ET AL.* C. A. 3d Cir. Certiorari denied. JUSTICE BLACKMUN took no part in the consideration or decision of this petition. Reported below: 862 F. 2d 310.

#### *Rehearing Denied*

No. 88-1049. *GRANGE INSURANCE ASSN. v. WASHINGTON ET AL.*, *ante*, p. 1004;

No. 88-1257. *KERTESZ v. UNIVERSITY OF SOUTHERN CALIFORNIA*, 489 U. S. 1067;

No. 88-6532. *LARSON v. TEXAS*, *ante*, p. 1008;

No. 88-6571. *HILLMAN v. CITY OF SPOKANE*, *ante*, p. 1009;

No. 88-6592. *PENNOCK v. ARTHUR F. SCHULTZ CO. ET AL.*, *ante*, p. 1009;

No. 88-6593. *PETRARCA v. PICERNE ET AL.*, *ante*, p. 1009;

No. 88-6637. *DAWN ET UX. v. RICHMOND ET AL.*, *ante*, p. 1010;

No. 88-6648. *MAZAK v. RISON, WARDEN*, *ante*, p. 1010; and

No. 88-6697. *LEAL v. CORONADO*, *ante*, p. 1027. Petitions for rehearing denied.

May 22, 23, 25, 1989

490 U. S.

No. 88-6608. KUNEK *v.* COFFMAN ET AL., 489 U. S. 1089. Motion for leave to file petition for rehearing denied.

MAY 23, 1989

*Dismissal Under Rule 53*

No. 88-688. PEAT MARWICK MAIN & CO. *v.* SUPERIOR COURT OF CALIFORNIA, COUNTY OF CONTRA COSTA, ET AL. Ct. App. Cal., 1st App. Dist. Certiorari dismissed under this Court's Rule 53. Reported below: 200 Cal. App. 3d 272, 245 Cal. Rptr. 873.

*Miscellaneous Order*

No. A-923. MCCOY *v.* LYNAUGH, DIRECTOR, TEXAS DEPARTMENT OF CORRECTIONS. Application for stay of execution of sentence of death, presented to JUSTICE WHITE, and by him referred to the Court, denied. JUSTICE BLACKMUN and JUSTICE STEVENS would grant the application.

JUSTICE BRENNAN and JUSTICE MARSHALL, dissenting.

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

MAY 25, 1989

*Miscellaneous Order*

No. A-937. LINDSEY *v.* THIGPEN, COMMISSIONER, ALABAMA DEPARTMENT OF CORRECTIONS. Application for stay of execution of sentence of death, presented to JUSTICE KENNEDY, and by him referred to the Court, denied.

JUSTICE BRENNAN and JUSTICE MARSHALL, dissenting.

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

490 U. S.

May 26, 30, 1989

MAY 26, 1989

*Dismissal Under Rule 53*

No. 88-1207. G. K. C. MICHIGAN THEATRES, INC., ET AL. *v.* NATIONAL AMUSEMENTS, INC. C. A. 6th Cir. Certiorari dismissed under this Court's Rule 53. Reported below: 854 F. 2d 135.

MAY 30, 1989

*Certiorari Granted—Affirmed.* (See No. 88-6066, *ante*, p. 638.)

*Certiorari Granted—Vacated and Remanded*

No. 87-1422. JUSTICE *v.* DENNIS. C. A. 4th Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Graham v. Connor*, *ante*, p. 386. Reported below: 834 F. 2d 380.

No. 87-6899. CALLWOOD *v.* QUESTEL ET AL. C. A. 3d 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 *Hardin v. Straub*, *ante*, p. 536. Reported below: 838 F. 2d 459.

No. 88-1581. COUNTY OF LOS ANGELES ET AL. *v.* CABRALES. C. A. 9th Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Canton v. Harris*, 489 U. S. 378 (1989). JUSTICE MARSHALL and JUSTICE STEVENS dissent and would deny certiorari. Reported below: 864 F. 2d 1454.

No. 88-5152. PEROTTI *v.* CARTY ET AL. 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 *Hardin v. Straub*, *ante*, p. 536. Reported below: 848 F. 2d 193.

No. 88-5213. GAVIN *v.* WELLS, 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 *Maleng v. Cook*, *ante*, p. 488. Reported below: 842 F. 2d 331.

No. 88-5783. CHRISTIAN *v.* LARKIN ET AL. C. A. 6th Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted.

May 30, 1989

490 U. S.

Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Hardin v. Straub*, ante, p. 536. Reported below: 853 F. 2d 926.

No. 88-6316. *BLANKENSHIP v. PARRATT ET AL.* C. A. 8th 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 *Hardin v. Straub*, ante, p. 536. Reported below: 871 F. 2d 1090.

No. 88-6434. *FARMER v. SEITER ET AL.* 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 *Hardin v. Straub*, ante, p. 536. JUSTICE O'CONNOR, JUSTICE SCALIA, and JUSTICE KENNEDY would deny certiorari. Reported below: 860 F. 2d 1078.

#### *Miscellaneous Orders*

No. — — —. *ALCOLAC, INC. v. ELAM ET AL.* Motion to dispense with printing the appendix to the petition for writ of certiorari granted.

No. — — —. *PASULKA ET UX. v. KOOB, TRUSTEE, ET AL.* Motion to direct the Clerk to docket an appeal out of time denied.

No. A-911 (88-1784). *GREAT REPUBLIC INSURANCE CO. ET AL. v. CHEVAL, BY AND THROUGH HER CONSERVATOR, MILLER.* Application for stay, presented to JUSTICE O'CONNOR, and by her referred to the Court, granted, and it is ordered that the judgment of the Court of Appeal of California, First Appellate District, case No. A040344, entered January 5, 1989, be stayed pending disposition of the petition for writ of certiorari. In the event the petition for writ of certiorari is denied, this order terminates automatically. Should the petition for writ of certiorari be granted, this order is to remain in effect pending the issuance of the mandate of this Court. This order is further conditioned upon the certificates of deposit presently in the custody of the California Superior Court remaining in effect.

No. D-762. *IN RE DISBARMENT OF KOTZKER.* Disbarment entered. [For earlier order herein, see 488 U. S. 1038.]

No. D-773. *IN RE DISBARMENT OF GAGEN.* Disbarment entered. [For earlier order herein, see 489 U. S. 1075.]

490 U. S.

May 30, 1989

No. D-790. *IN RE DISBARMENT OF FITZGERALD*. It is ordered that John P. Fitzgerald, of Jupiter, Fla., be suspended from the practice of law in this Court and that a rule issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. 88-7146. *WHITMORE, INDIVIDUALLY AND AS NEXT FRIEND OF SIMMONS v. ARKANSAS ET AL.* Sup. Ct. Ark. Motion of respondent Simmons for expedited review denied. Motion of respondent Simmons for oral argument denied. Motion of respondent Simmons to be present at oral argument denied. Motion of respondent Simmons to require petitioner to post bond denied.

No. 88-6989. *IN RE BALAWAJDER*; and

No. 88-7012. *IN RE REID*. Petitions for writs of mandamus denied.

*Certiorari Granted*

No. 88-1650. *TAFFLIN ET AL. v. LEVITT ET AL.* C. A. 4th Cir. Certiorari granted limited to Question 2 presented by the petition. Reported below: 865 F. 2d 595.

*Certiorari Denied*

No. 88-589. *SULLIVAN v. HARTFORD ACCIDENT & INDEMNITY CO. ET AL.* C. A. 7th Cir. Certiorari denied. Reported below: 846 F. 2d 377.

No. 88-761. *YODER v. CELEBREZZE, ATTORNEY GENERAL OF OHIO.* C. A. 6th Cir. Certiorari denied. Reported below: 856 F. 2d 197.

No. 88-1039. *SMITH ET AL. v. PRISCO ET AL.* C. A. 3d Cir. Certiorari denied. Reported below: 851 F. 2d 93.

No. 88-1271. *KLEPAK v. DOLE, SECRETARY OF LABOR.* C. A. 5th Cir. Certiorari denied. Reported below: 853 F. 2d 1298.

No. 88-1344. *MIRON v. UNITED STATES.* C. A. 2d Cir. Certiorari denied. Reported below: 859 F. 2d 1078.

No. 88-1349. *RICHMANN v. UNITED STATES.* C. A. 8th Cir. Certiorari denied. Reported below: 860 F. 2d 837.

No. 88-1388. *LO SHIPPERS ACTION COMMITTEE v. INTERSTATE COMMERCE COMMISSION ET AL.* C. A. D. C. Cir. Certio-

May 30, 1989

490 U. S.

rari denied. Reported below: 273 U. S. App. D. C. 11, 857 F. 2d 802.

No. 88-1426. OMAHA INDIAN TRIBE ET AL. *v.* JACKSON ET AL.;

No. 88-1592. WILSON ET AL. *v.* OMAHA INDIAN TRIBE ET AL.;  
and

No. 88-1636. IOWA ET AL. *v.* UNITED STATES ET AL. C. A.  
8th Cir. Certiorari denied. Reported below: 854 F. 2d 1089.

No. 88-1445. NATIONAL ASSOCIATION OF CASUALTY & SURETY  
AGENTS ET AL. *v.* BOARD OF GOVERNORS OF THE FEDERAL RE-  
SERVE SYSTEM ET AL. C. A. D. C. Cir. Certiorari denied. Re-  
ported below: 272 U. S. App. D. C. 328, 856 F. 2d 282.

No. 88-1451. LEVY *v.* UNITED STATES. C. A. 2d Cir. Cer-  
tiorari denied. Reported below: 862 F. 2d 305.

No. 88-1458. RIDER *v.* UNITED STATES POSTAL SERVICE.  
C. A. 9th Cir. Certiorari denied. Reported below: 862 F. 2d  
239.

No. 88-1504. ETLIN *v.* ETLIN. Ct. App. Va. Certiorari  
denied.

No. 88-1527. YUN KIL MOON *v.* IMMIGRATION AND NATURAL-  
IZATION SERVICE. C. A. 6th Cir. Certiorari denied. Reported  
below: 865 F. 2d 262.

No. 88-1580. DEL PERCIO, INC., ET AL. *v.* CITY OF DAYTONA  
BEACH. C. A. 11th Cir. Certiorari denied. Reported below:  
864 F. 2d 792.

No. 88-1610. DOUGLAS COUNTY SCHOOL DISTRICT ET AL. *v.*  
JAGER ET AL. C. A. 11th Cir. Certiorari denied. Reported  
below: 862 F. 2d 824.

No. 88-1624. SAFRANEK *v.* TOWN OF LIMON ET AL. C. A.  
10th Cir. Certiorari denied.

No. 88-1627. MOTHER & UNBORN BABY CARE OF NORTH  
TEXAS, INC., ET AL. *v.* TEXAS. Ct. App. Tex., 2d Dist. Certio-  
rari denied. Reported below: 749 S. W. 2d 533.

No. 88-1629. GEORGIA ASSOCIATION FOR RETARDED CITIZENS  
ET AL. *v.* MCDANIEL ET AL. C. A. 11th Cir. Certiorari denied.  
Reported below: 855 F. 2d 805.

490 U. S.

May 30, 1989

No. 88-1633. *WARREN v. CITY OF LINCOLN, NEBRASKA, ET AL.* C. A. 8th Cir. Certiorari denied. Reported below: 864 F. 2d 1436.

No. 88-1634. *WIGGINS v. COLORADO.* Ct. App. Colo. Certiorari denied.

No. 88-1644. *LDB CORP. v. GIBRALTAR SAVINGS.* C. A. 5th Cir. Certiorari denied. Reported below: 860 F. 2d 1275.

No. 88-1652. *EMERICK v. BORDEN ET UX.* App. Ct. Conn. Certiorari denied. Reported below: 17 Conn. App. 802, 549 A. 2d 681.

No. 88-1661. *RIST, ACTING WARDEN v. SATTER.* Sup. Ct. S. D. Certiorari denied. Reported below: 434 N. W. 2d 725.

No. 88-1667. *KLEIN v. PETERSON, DEPUTY COMMISSIONER OF PATENTS AND TRADEMARKS, ET AL.* C. A. Fed. Cir. Certiorari denied. Reported below: 866 F. 2d 412.

No. 88-1676. *EXPRESS COURIER, INC. v. NEW YORK STATE DEPARTMENT OF LABOR ET AL.* App. Div., Sup. Ct. N. Y., 1st Jud. Dept. Certiorari denied. Reported below: 138 App. Div. 2d 982, 525 N. Y. S. 2d 748.

No. 88-1695. *STEVENS v. UNITED STATES.* Ct. Mil. App. Certiorari denied. Reported below: 28 M. J. 159.

No. 88-1722. *SCHNEBERGER ET AL. v. UNITED STATES TRUST COMPANY OF NEW YORK ET AL.* C. A. 11th Cir. Certiorari denied. Reported below: 859 F. 2d 1477.

No. 88-1728. *SCHIRMER v. EASTMAN KODAK CO.* C. A. 3d Cir. Certiorari denied. Reported below: 869 F. 2d 591.

No. 88-1741. *GRISWOLD INSTITUTE, INC., ET AL. v. UNITED STATES.* C. A. 6th Cir. Certiorari denied. Reported below: 865 F. 2d 261.

No. 88-1757. *COVATTO v. UNITED STATES.* C. A. 3d Cir. Certiorari denied. Reported below: 869 F. 2d 592.

No. 88-1763. *KOVEN v. UNITED STATES.* C. A. 3d Cir. Certiorari denied. Reported below: 869 F. 2d 592.

No. 88-1774. *WOO v. UNITED STATES NAVY.* C. A. Fed. Cir. Certiorari denied. Reported below: 847 F. 2d 841.

May 30, 1989

490 U. S.

No. 88-5468. *JONES v. BOARD OF POLICE COMMISSIONERS ET AL.* C. A. 8th Cir. Certiorari denied. Reported below: 844 F. 2d 500.

No. 88-6634. *BATTLE v. UNITED STATES.* C. A. 4th Cir. Certiorari denied. Reported below: 865 F. 2d 1260.

No. 88-6638. *EVANS v. UNITED STATES.* Ct. Mil. App. Certiorari denied. Reported below: 27 M. J. 447.

No. 88-6742. *DEEL v. JACKSON, COMMISSIONER, VIRGINIA DEPARTMENT OF SOCIAL SERVICES, ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 862 F. 2d 1079.

No. 88-6792. *VOLK v. HOBSON ET AL.* C. A. Fed. Cir. Certiorari denied. Reported below: 866 F. 2d 1398.

No. 88-6794. *SKAGGS v. UNITED STATES.* C. A. 10th Cir. Certiorari denied.

No. 88-6870. *BURKS v. UNITED STATES.* C. A. 3d Cir. Certiorari denied. Reported below: 869 F. 2d 587.

No. 88-6876. *HOPE v. DERWINSKI ET AL.* C. A. 8th Cir. Certiorari denied.

No. 88-6956. *DESDUNES v. LOUISIANA.* Sup. Ct. La. Certiorari denied. Reported below: 538 So. 2d 618.

No. 88-6958. *LIGHTSEY v. YEAGER, WARDEN, ET AL.* C. A. 10th Cir. Certiorari denied.

No. 88-6961. *OWEN v. FLORIDA.* Dist. Ct. App. Fla., 4th Dist. Certiorari denied. Reported below: 538 So. 2d 1269.

No. 88-6962. *THOMPSON v. LYNAUGH, DIRECTOR, TEXAS DEPARTMENT OF CORRECTIONS, ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 863 F. 2d 880.

No. 88-6973. *BEAL v. SETZER, SUPERINTENDENT, McDOWELL CORRECTIONAL CENTER AT MARION, NORTH CAROLINA, ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 865 F. 2d 1256.

No. 88-6982. *WILHELM, PERSONAL REPRESENTATIVE OF THE ESTATE OF WILHELM v. GRAY, COURT CLERK OF OKLAHOMA*

490 U. S.

May 30, 1989

COUNTY. Sup. Ct. Okla. Certiorari denied. Reported below: 766 P. 2d 1357.

No. 88-6988. CRAIG *v.* LYNAUGH, DIRECTOR, TEXAS DEPARTMENT OF CORRECTIONS. C. A. 5th Cir. Certiorari denied.

No. 88-6991. WILLIAMS *v.* BARWICK. C. A. 11th Cir. Certiorari denied.

No. 88-6992. WILLIAMS *v.* WALLMAN, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied.

No. 88-6994. WILLIAMS *v.* LITTLE FLOWER CHILDRENS SERVICES. App. Div., Sup. Ct. N. Y., 1st Jud. Dept. Certiorari denied. Reported below: 143 App. Div. 2d 1074, 533 N. Y. S. 2d 412.

No. 88-7003. BOOT *v.* ZARKO ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 859 F. 2d 154.

No. 88-7006. LINDO *v.* CITY AND COUNTY OF SAN FRANCISCO ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 865 F. 2d 264.

No. 88-7023. ELLIOTT ET VIR *v.* FELLOWS ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 857 F. 2d 1477.

No. 88-7028. BURDEN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 866 F. 2d 1422.

No. 88-7031. POWERS *v.* UNITED STATES ET AL. C. A. Fed. Cir. Certiorari denied. Reported below: 878 F. 2d 1443.

No. 88-7036. KIRKLAND *v.* NEW JERSEY. Super. Ct. N. J., App. Div. Certiorari denied.

No. 88-7039. WATSON *v.* FLORIDA. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 538 So. 2d 1258.

No. 88-7043. PETTIS *v.* TATE, SUPERINTENDENT, CHILLICOTHE CORRECTIONAL INSTITUTE. C. A. 6th Cir. Certiorari denied. Reported below: 869 F. 2d 1492.

No. 88-7059. GONZALES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 866 F. 2d 781.

No. 88-7061. BROWN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 835 F. 2d 1436.

May 30, 1989

490 U. S.

No. 88-7069. *GARCIA v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 854 F. 2d 340.

No. 88-7074. *MCNEAL v. UNITED STATES*. C. A. 10th Cir. Certiorari denied. Reported below: 865 F. 2d 1167.

No. 88-7080. *MUMFORD v. BROWN, WARDEN*. C. A. 4th Cir. Certiorari denied. Reported below: 872 F. 2d 418.

No. 88-7085. *GARCIA v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 868 F. 2d 114.

No. 88-7086. *GALLEGOS v. UNITED STATES*. C. A. 10th Cir. Certiorari denied.

No. 88-7087. *HERNANDEZ-BELTRAN v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 867 F. 2d 224.

No. 88-7091. *UNDERWOOD v. WINEBRENNER, WARDEN*. C. A. 4th Cir. Certiorari denied. Reported below: 869 F. 2d 595.

No. 88-7097. *SIMPSON v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 862 F. 2d 875.

No. 88-7106. *LANGE v. MCCAUGHTRY, SUPERINTENDENT, WAUPUN CORRECTIONAL INSTITUTION*. C. A. 7th Cir. Certiorari denied. Reported below: 869 F. 2d 1008.

No. 88-7108. *BROOKS v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 875 F. 2d 868.

No. 88-7112. *COOPER v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 868 F. 2d 1505.

No. 88-7121. *HOFFER v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 869 F. 2d 123.

No. 88-7125. *SLOVACEK v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 867 F. 2d 842.

No. 88-7127. *LEWIS v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 870 F. 2d 656.

No. 88-7144. *MORAN v. WELLS, WARDEN*. C. A. 6th Cir. Certiorari denied.

490 U. S.

May 30, 1989

No. 88-7155. SCOTT *v.* VIRGINIA. Ct. App. Va. Certiorari denied. Reported below: 7 Va. App. 252, 372 S. E. 2d 771.

No. 88-1331. ROY *v.* ILLINOIS. App. Ct. Ill., 4th Dist. Certiorari denied. JUSTICE WHITE and JUSTICE KENNEDY would grant certiorari. Reported below: 172 Ill. App. 3d 16, 526 N. E. 2d 204.

No. 88-1417. JARUSIRINUKUL *v.* WISCONSIN. Ct. App. Wis. Certiorari denied. JUSTICE WHITE would grant certiorari. Reported below: 147 Wis. 2d 884, 434 N. W. 2d 623.

No. 88-1666. CALIFORNIA *v.* LEICHTY. Ct. App. Cal., 4th App. Dist. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 205 Cal. App. 3d 914, 252 Cal. Rptr. 669.

No. 88-6736. FRANK, AKA ROY *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. JUSTICE WHITE and JUSTICE O'CONNOR would grant certiorari. Reported below: 864 F. 2d 992.

No. 88-6968. MALONE *v.* CALIFORNIA. Sup. Ct. Cal.; and

No. 88-6995. MOORE *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: No. 88-6968, 47 Cal. 3d 1, 762 P. 2d 1249; No. 88-6995, 47 Cal. 3d 63, 762 P. 2d 1218.

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. 88-1263. HOHL, ON BEHALF OF HIMSELF AND HIS DAUGHTERS, HOHL ET AL. *v.* MILLER, MAGISTRATE, CASS COUNTY MAGISTRATE'S COURT, 489 U. S. 1081;

No. 88-1336. JIMINEZ ET AL. *v.* BP OIL, INC., *ante*, p. 1011;

No. 88-6562. HANCE *v.* ZANT, SUPERINTENDENT, GEORGIA DIAGNOSTIC AND CLASSIFICATION CENTER AT JACKSON, *ante*, p. 1012;

No. 88-6567. GANEY *v.* BARNETT, SUPERINTENDENT, EASTERN CORRECTIONAL INSTITUTION AT MAURY, NORTH CAROLINA, ET AL., *ante*, p. 1024;

May 30, June 5, 1989

490 U. S.

- No. 88-6568. *GANEY v. GARRISON ET AL.*, *ante*, p. 1024;  
No. 88-6577. *MORRISON v. GEORGIA*, *ante*, p. 1012;  
No. 88-6656. *SOWELL v. OHIO*, *ante*, p. 1028;  
No. 88-6662. *ARMSTRONG v. KINCHELOE, SUPERINTENDENT, WASHINGTON STATE PENITENTIARY, ET AL.*, *ante*, p. 1025;  
No. 88-6738. *KARRIEM v. DISTRICT OF COLUMBIA*, *ante*, p. 1038; and  
No. 88-6866. *MILNES v. UNITED STATES*, *ante*, p. 1039. Petitions for rehearing denied.

JUNE 5, 1989

*Vacated and Remanded on Appeal*

No. 88-1423. *KOPFMAN v. KOPFMAN*. Appeal from Ct. App. Cal., 5th App. Dist. Judgment vacated and case remanded for further consideration in light of *Mansell v. Mansell*, *ante*, p. 581.

*Miscellaneous Orders*

No. — — —. *TUAN ANH NGUYEN v. OKLAHOMA*. Motion to file petition for writ of certiorari without an affidavit of indigency executed by petitioner granted.

No. — — —. *FOLLETT v. HERMAN*. Motion for leave to file petition for writ of habeas corpus and other relief denied.

No. A-914 (88-7246). *FREY v. PENNSYLVANIA*. Sup. Ct. Pa. Application for stay of execution of sentence of death, presented to JUSTICE BRENNAN, and by him referred to the Court, denied. JUSTICE BRENNAN, JUSTICE MARSHALL, JUSTICE BLACKMUN, and JUSTICE STEVENS would grant the application.

No. D-772. *IN RE DISBARMENT OF BROWN*. Disbarment entered. [For earlier order herein, see 489 U. S. 1075.]

No. D-775. *IN RE DISBARMENT OF GRAVES*. David Hardin Graves, of Houston, Tex., having requested to resign as a member of the Bar of this Court, it is ordered that his name be stricken from the roll of attorneys admitted to practice before the Bar of this Court. The rule to show cause, heretofore issued on March 20, 1989 [489 U. S. 1075], is hereby discharged.

No. 88-599. *WASHINGTON ET AL. v. HARPER*. Sup. Ct. Wash. [Certiorari granted, 489 U. S. 1064.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

490 U. S.

June 5, 1989

No. 88-1198. FEDERAL TRADE COMMISSION *v.* SUPERIOR COURT TRIAL LAWYERS ASSN.; and

No. 88-1393. SUPERIOR COURT TRIAL LAWYERS ASSN. ET AL. *v.* FEDERAL TRADE COMMISSION. C. A. D. C. Cir. [Certiorari granted, *ante*, p. 1019.] Motion of the parties to dispense with printing the joint appendix granted.

No. 88-7016. IN RE MARTIN; and

No. 88-7038. IN RE WATERS. Petitions for writs of mandamus and/or prohibition denied.

*Probable Jurisdiction Noted*

No. 87-1955. LEWIS, COMPTROLLER OF THE STATE OF FLORIDA *v.* CONTINENTAL BANK CORP. ET AL. Appeal from C. A. 11th Cir. Probable jurisdiction noted. Reported below: 827 F. 2d 1517 and 838 F. 2d 457.

*Certiorari Granted*

No. 88-1668. ATLANTIC RICHFIELD Co. *v.* USA PETROLEUM Co. C. A. 9th Cir. Certiorari granted. Reported below: 859 F. 2d 687.

No. 88-1369. MARYLAND *v.* BUIE. Ct. App. Md. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari granted. Reported below: 314 Md. 151, 550 A. 2d 79.

No. 88-6613. BOYDE *v.* CALIFORNIA. Sup. Ct. Cal. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted. Reported below: 46 Cal. 3d 212, 758 P. 2d 25.

*Certiorari Denied*

No. 87-1941. RUSSELL *v.* RUSSELL. Ct. App. La., 3d Cir. Certiorari denied. Reported below: 520 So. 2d 435.

No. 88-1342. SEQUOIA BOOKS, INC. *v.* ILLINOIS. App. Ct. Ill., 2d Dist. Certiorari denied. Reported below: 172 Ill. App. 3d 627, 527 N. E. 2d 50.

No. 88-1357. UGALDE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 861 F. 2d 802.

No. 88-1415. FACCHIANO ET AL. *v.* UNITED STATES DEPARTMENT OF LABOR ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 859 F. 2d 1163.

June 5, 1989

490 U. S.

No. 88-1424. *STUART-JAMES CO., INC., ET AL. v. SECURITIES AND EXCHANGE COMMISSION*. C. A. D. C. Cir. Certiorari denied. Reported below: 273 U. S. App. D. C. 5, 857 F. 2d 796.

No. 88-1446. *NEW YORK STATE OPHTHALMOLOGICAL SOCIETY ET AL. v. SULLIVAN, SECRETARY OF HEALTH AND HUMAN SERVICES*. C. A. D. C. Cir. Certiorari denied. Reported below: 272 U. S. App. D. C. 170, 854 F. 2d 1379.

No. 88-1469. *AVALOS ET AL. v. THOMPSON ET AL.* C. A. 9th Cir. Certiorari denied.

No. 88-1470. *FRIGARD ET UX. v. UNITED STATES ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 862 F. 2d 201.

No. 88-1500. *LONE STAR STEEL CO. v. UFFELMAN*. C. A. 5th Cir. Certiorari denied. Reported below: 863 F. 2d 404.

No. 88-1513. *CHRISTOFFERSEN ET AL. v. COLLINS, MAJOR GENERAL, WASHINGTON STATE AIR NATIONAL GUARD, ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 855 F. 2d 1437.

No. 88-1591. *SANTA FE PACIFIC REALTY CORP. v. CITY OF BERKELEY*. C. A. 9th Cir. Certiorari denied. Reported below: 857 F. 2d 1478.

No. 88-1658. *LOUISBURG GRAIN CO., INC., ET AL. v. CITY OF ARKANSAS CITY, KANSAS, ET AL.* Sup. Ct. Kan. Certiorari denied. Reported below: 243 Kan. 627, 762 P. 2d 183.

No. 88-1665. *BREWSTER v. MARYLAND SECURITIES COMMISSIONER*. Ct. Sp. App. Md. Certiorari denied. Reported below: 76 Md. App. 722, 548 A. 2d 157.

No. 88-1674. *HEALY v. NEW YORK LIFE INSURANCE CO.* C. A. 3d Cir. Certiorari denied. Reported below: 860 F. 2d 1209.

No. 88-1702. *LILVES v. STUART*. Ct. App. Colo. Certiorari denied.

No. 88-1705. *MONTROSE CHEMICAL CORPORATION OF CALIFORNIA v. PARR-RICHMOND TERMINAL CO. ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 860 F. 2d 344.

490 U. S.

June 5, 1989

No. 88-1717. *FASSLER v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 858 F. 2d 1016.

No. 88-1738. *MALACHOWSKI v. SILVERBERG, MARVIN & SWAIM ET AL.* C. A. 2d Cir. Certiorari denied.

No. 88-1743. *SATTI ET AL. v. DORMAN*. C. A. 2d Cir. Certiorari denied. Reported below: 862 F. 2d 432.

No. 88-1744. *WINCHESTER & WESTERN RAILROAD CO. v. VIRGINIA CORPORATION COMMISSION ET AL.* Sup. Ct. Va. Certiorari denied. Reported below: 236 Va. 473, 374 S. E. 2d 66.

No. 88-1772. *BUCKLES v. UNITED STATES*. C. A. 11th Cir. Certiorari denied. Reported below: 843 F. 2d 469.

No. 88-1799. *JACKSON v. UNITED STATES*. C. A. D. C. Cir. Certiorari denied.

No. 88-1801. *BINDER v. UNITED STATES*. C. A. 5th Cir. Certiorari denied.

No. 88-6473. *HAAKE v. FLORIDA*. Dist. Ct. App. Fla., 2d Dist. Certiorari denied. Reported below: 536 So. 2d 276.

No. 88-6531. *BURCH v. UNITED STATES*. C. A. 11th Cir. Certiorari denied. Reported below: 861 F. 2d 724.

No. 88-6598. *RYAN v. FULCOMER, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT HUNTINGDON, ET AL.* C. A. 3d Cir. Certiorari denied.

No. 88-6602. *CHAVEZ v. UNITED STATES*. C. A. 10th Cir. Certiorari denied. Reported below: 862 F. 2d 1436.

No. 88-6612. *BOUTWELL v. NAGLE, WARDEN, ET AL.* C. A. 11th Cir. Certiorari denied. Reported below: 861 F. 2d 1530.

No. 88-6631. *FONSECA-MARTINEZ, AKA MARTINEZ v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 857 F. 2d 1479.

No. 88-6632. *BANNISTER v. SUPERIOR COURT OF CALIFORNIA, LOS ANGELES COUNTY, ET AL.* Ct. App. Cal., 2d App. Dist. Certiorari denied. Reported below: 203 Cal. App. 3d 1525, 250 Cal. Rptr. 909.

No. 88-6644. *PARTIDA-PARRA v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 865 F. 2d 265.

June 5, 1989

490 U. S.

No. 88-6654. *TIPPITT v. LOCKHART, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION*. C. A. 8th Cir. Certiorari denied. Reported below: 859 F. 2d 595.

No. 88-6783. *SALCEDO v. UNITED STATES*. C. A. 11th Cir. Certiorari denied. Reported below: 866 F. 2d 1421.

No. 88-6788. *SMITH v. NORTH CAROLINA*. Sup. Ct. N. C. Certiorari denied. Reported below: 323 N. C. 703, 374 S. E. 2d 866.

No. 88-6809. *HAYES v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 869 F. 2d 592.

No. 88-6841. *VASQUEZ v. LOCKHART, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION*. C. A. 8th Cir. Certiorari denied. Reported below: 867 F. 2d 1056.

No. 88-6882. *MAHONE v. STERNWEILER ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 859 F. 2d 922.

No. 88-6899. *HENRY v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 866 F. 2d 1419.

No. 88-6954. *JOHNSON v. SPANIOL, CLERK, UNITED STATES SUPREME COURT*. C. A. D. C. Cir. Certiorari denied.

No. 88-6974. *SKOVVRAN v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 870 F. 2d 653.

No. 88-6987. *THOMPSON v. FLORIDA*. Dist. Ct. App. Fla., 5th Dist. Certiorari denied. Reported below: 537 So. 2d 582.

No. 88-6990. *HOLLOWAY v. PACK ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 866 F. 2d 1418.

No. 88-6993. *TRAINER v. YLST, WARDEN*. C. A. 9th Cir. Certiorari denied. Reported below: 859 F. 2d 924.

No. 88-7011. *WILSON v. KASSICIEH ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 872 F. 2d 1024.

No. 88-7015. *MARTIN v. C. ITOH & Co., INC., ET AL.* Sup. Ct. Del. Certiorari denied. Reported below: 558 A. 2d 297.

No. 88-7022. *HENDERSON v. BATTLE CREEK MEDICAL EDUCATION CORP. ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 860 F. 2d 1079.

490 U. S.

June 5, 1989

No. 88-7024. *ALSTON v. DELAWARE*. Sup. Ct. Del. Certiorari denied. Reported below: 554 A. 2d 304.

No. 88-7041. *WHIGHAM v. MCNAMARA ET AL.* C. A. 1st Cir. Certiorari denied. Reported below: 873 F. 2d 1434.

No. 88-7046. *DEANES v. NORTH CAROLINA*. Sup. Ct. N. C. Certiorari denied. Reported below: 323 N. C. 508, 374 S. E. 2d 249.

No. 88-7049. *DANNENBERG v. CALIFORNIA*. Ct. App. Cal., 6th App. Dist. Certiorari denied.

No. 88-7075. *LOUIS v. UNITED STATES*. C. A. 11th Cir. Certiorari denied. Reported below: 869 F. 2d 1500.

No. 88-7099. *SURBER v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 870 F. 2d 656.

No. 88-7113. *TOWNE v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 870 F. 2d 880.

No. 88-7147. *TRIPATI v. UNITED STATES*. C. A. 10th Cir. Certiorari denied.

No. 88-7151. *BEDOYA v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 872 F. 2d 1022.

No. 88-7154. *MEDRANO v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 869 F. 2d 1499.

No. 88-7159. *MOTES v. UNITED STATES*. C. A. 11th Cir. Certiorari denied. Reported below: 871 F. 2d 124.

No. 88-7162. *BAPTISTE v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 871 F. 2d 119.

No. 88-7163. *BROWN v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 869 F. 2d 592.

No. 88-7181. *SOLLES v. ISRAEL, WARDEN*. C. A. 7th Cir. Certiorari denied. Reported below: 868 F. 2d 242.

No. 88-7184. *CASTILLO ET AL. v. UNITED STATES*. C. A. 11th Cir. Certiorari denied. Reported below: 871 F. 2d 123.

No. 88-7185. *HOMAYOUNI v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 868 F. 2d 1268.

June 5, 1989

490 U. S.

No. 88-7188. *TOWNSEND v. UNITED STATES*. Ct. App. D. C. Certiorari denied. Reported below: 549 A. 2d 724.

No. 88-1546. *PACIFIC MUTUAL LIFE INSURANCE CO. ET AL. v. TURNBOW*. Sup. Ct. Nev. Motions of UNUM Life Insurance Co., Association of California Life Insurance Cos., and Merchants and Manufacturers Association for leave to file briefs as *amici curiae* granted. Certiorari denied. Reported below: 104 Nev. 676, 765 P. 2d 1160.

No. 88-1628. *MILKEN ET AL. v. SECURITIES AND EXCHANGE COMMISSION*. C. A. 2d Cir. Motions of Class Action Plaintiffs in Boesky Litigation et al. and Arden Way Associates et al. for leave to file briefs as *amici curiae* granted. Certiorari denied. Reported below: 861 F. 2d 1307.

No. 88-1651. *REDMAN v. CLARK*. C. A. 6th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 865 F. 2d 257.

No. 88-6723. *NIXON v. MISSISSIPPI*. Sup. Ct. Miss.; and

No. 88-6791. *GENTRY v. TEXAS*. Ct. Crim. App. Tex. Certiorari denied. Reported below: No. 88-6723, 533 So. 2d 1078; No. 88-6791, 770 S. W. 2d 780.

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. 88-750. *GEORGE v. MICHIGAN DEPARTMENT OF NATURAL RESOURCES ET AL.*, 488 U. S. 1008;

No. 88-1491. *RHINEHART ET AL. v. SEATTLE TIMES ET AL.*, *ante*, p. 1015;

No. 88-6418. *VAN LEEUWEN ET VIR v. MCCORKINDALE ET AL.*, *ante*, p. 1023;

No. 88-6572. *ABNER v. ESCAMBIA COUNTY SCHOOL DISTRICT, PENSACOLA, FLORIDA*, *ante*, p. 1024;

No. 88-6619. *RIGHTER v. UNITED STATES STOVE CO. ET AL.*, *ante*, p. 1025;

490 U. S.

June 5, 12, 1989

No. 88-6664. *JARVI v. SECRETARY OF HEALTH AND HUMAN SERVICES*, *ante*, p. 1025;

No. 88-6669. *SELLNER v. HUDNALL ET AL.*, *ante*, p. 1025; and

No. 88-6763. *IN RE WALKER*, *ante*, p. 1018. Petitions for rehearing denied.

No. 84-5350. *MAXWELL v. PENNSYLVANIA*, 469 U. S. 971;

No. 88-6172. *RAGHEB v. BLUE CROSS & BLUE SHIELD OF MICHIGAN*, 489 U. S. 1027; and

No. 88-6427. *HARGROVE v. UNITED STATES*, 489 U. S. 1070. Motions for leave to file petitions for rehearing denied.

JUNE 12, 1989

*Certiorari Granted—Vacated and Remanded*

No. 87-1382. *COMMISSIONER OF INTERNAL REVENUE v. STAPLES ET VIR*. C. A. 8th Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Hernandez v. Commissioner*, *ante*, p. 680. JUSTICE BRENNAN and JUSTICE KENNEDY took no part in the consideration or decision of this case. Reported below: 821 F. 2d 1324.

No. 87-1954. *CONSOLIDATED CITY OF JACKSONVILLE, DUVAL COUNTY, FLORIDA v. NASH*. C. A. 11th Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Wards Cove Packing Co. v. Atonio*, *ante*, p. 642. Reported below: 837 F. 2d 1534.

No. 88-102. *COMMISSIONER OF INTERNAL REVENUE v. FOLEY ET UX*. C. A. 2d Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Hernandez v. Commissioner*, *ante*, p. 680. JUSTICE BRENNAN and JUSTICE KENNEDY took no part in the consideration or decision of this case. Reported below: 844 F. 2d 94.

No. 88-141. *USX CORP., FKA UNITED STATES STEEL CORP. v. GREEN ET AL.* C. A. 3d Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Wards Cove Packing Co. v. Atonio*, *ante*, p. 642. Reported below: 843 F. 2d 1511.

No. 88-1742. *ADAMS ET AL. v. AVCO CORP. ET AL.* C. A. 6th Cir. Certiorari granted, judgment vacated, and case remanded

June 12, 1989

490 U. S.

for further consideration in light of *Firestone Tire & Rubber Co. v. Bruch*, 489 U. S. 101 (1989). Reported below: 862 F. 2d 316.

*Miscellaneous Orders*

No. — — —. CALDWELL *v.* CARLSON, DIRECTOR, FEDERAL BUREAU OF PRISONS. Motion to direct the Clerk to file petition for writ of certiorari out of time denied.

No. — — —. IN RE MASON ET UX. Motion for leave to file petition for writ of mandamus and other relief denied.

No. — — —. PROWS *v.* SPANIOL ET AL.; and

No. — — —. PROWS *v.* UNITED STATES ET AL. Motions to direct the Clerk to file petitions for writs of certiorari without notarized affidavits in support of motions for leave to proceed *in forma pauperis* denied.

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

No. 111, Orig. DELAWARE *v.* NEW YORK. Motion of New York for judgment of the pleadings against Texas referred to the Special Master. Motions of Idaho, Arizona, and Alabama et al. for leave to file complaints in intervention referred to the Special Master. Motions of Connecticut, New Mexico, Tennessee, Wisconsin, Virginia, and District of Columbia for leave to intervene referred to the Special Master. [For earlier order herein, see, *e. g.*, 489 U. S. 1005.]

No. A-965 (88-1178). KEANE *v.* UNITED STATES, *ante*, p. 1084. Application to suspend the effect of the order denying certiorari, presented to JUSTICE O'CONNOR, and by her referred to the Court, denied. JUSTICE STEVENS took no part in the consideration or decision of this application.

No. D-791. IN RE DISBARMENT OF KROWEN. It is ordered that Jerril J. Krowen, of Boston, Mass., 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. 87-1979. CHESAPEAKE & OHIO RAILWAY CO. *v.* SCHWALB ET AL.; and

490 U. S.

June 12, 1989

No. 88-127. NORFOLK & WESTERN RAILWAY CO. *v.* GOODE. Sup. Ct. Va. [Certiorari granted, 489 U. S. 1009.] Motion of respondents for divided argument denied.

No. 88-42. HALLSTROM ET UX. *v.* TILLAMOOK COUNTY. C. A. 9th Cir. [Certiorari granted, 489 U. S. 1077.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 88-1000. NEW YORK *v.* HARRIS. Ct. App. N. Y. [Certiorari granted, *ante*, p. 1018.] Motion of respondent for leave to proceed *in forma pauperis* granted. Motion of respondent to dismiss writ as improvidently granted denied.

*Certiorari Granted*

No. 87-2048. TEXACO INC. *v.* HASBROUCK, DBA RICK'S TEXACO, ET AL. C. A. 9th Cir. Certiorari granted. Reported below: 842 F. 2d 1034.

No. 88-1480. REVES ET AL. *v.* ARTHUR YOUNG & Co. C. A. 8th Cir. Certiorari granted. Reported below: 856 F. 2d 52.

*Certiorari Denied*

No. 87-2056. YESHIVA UNIVERSITY *v.* SOBEL. C. A. 2d Cir. Certiorari denied. Reported below: 839 F. 2d 18.

No. 88-206. TUCKER *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 836 F. 2d 334.

No. 88-520. ROBINSON *v.* ADAMS ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 847 F. 2d 1315.

No. 88-699. INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL & ORNAMENTAL IRONWORKERS, AFL-CIO *v.* BERGER ET AL.; and

No. 88-820. IRON WORKERS REINFORCED RODMEN, LOCAL 201 *v.* BERGER ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 269 U. S. App. D. C. 67, 843 F. 2d 1395, and 271 U. S. App. D. C. 321, 852 F. 2d 619.

No. 88-797. VINCENT *v.* MISSOURI. Ct. App. Mo., Eastern Dist. Certiorari denied. Reported below: 755 S. W. 2d 400.

No. 88-897. ASHENBAUGH ET AL. *v.* CRUCIBLE INC. 1975 SALARIED RETIREMENT PLAN. C. A. 3d Cir. Certiorari denied. Reported below: 854 F. 2d 1516.

June 12, 1989

490 U. S.

No. 88-1398. LUMAR MARINE, INC. *v.* SIMEON ET AL.; and  
No. 88-1462. T. SMITH & SONS, INC. *v.* SIMEON ET AL. C. A.  
5th Cir. Certiorari denied. Reported below: 852 F. 2d 1421.

No. 88-1404. MONSANTO CO. ET AL. *v.* UNITED STATES ET AL.  
C. A. 4th Cir. Certiorari denied. Reported below: 858 F. 2d  
160.

No. 88-1454. BARNES *v.* UNITED STATES. C. A. 11th Cir.  
Certiorari denied. Reported below: 859 F. 2d 926.

No. 88-1455. HATTEN *v.* RAINS, SECRETARY OF STATE OF  
TEXAS, ET AL. C. A. 5th Cir. Certiorari denied. Reported  
below: 854 F. 2d 687.

No. 88-1465. GREGORY TIMBER RESOURCES, INC. *v.* UNITED  
STATES. C. A. Fed. Cir. Certiorari denied. Reported below:  
855 F. 2d 841.

No. 88-1479. INTERNATIONAL MILL SERVICE ET AL. *v.* AUBU-  
SCHON. Sup. Ct. Ill. Certiorari denied. Reported below: 123  
Ill. 2d 555, 530 N. E. 2d 976.

No. 88-1481. OEN YIN-CHOY *v.* ROBINSON, UNITED STATES  
MARSHAL FOR THE NORTHERN DISTRICT OF CALIFORNIA. C. A.  
9th Cir. Certiorari denied. Reported below: 858 F. 2d 1400.

No. 88-1532. HAZARDOUS WASTE TREATMENT COUNCIL *v.*  
ENVIRONMENTAL PROTECTION AGENCY ET AL. (two cases).  
C. A. D. C. Cir. Certiorari denied. Reported below: 274 U. S.  
App. D. C. 44, 861 F. 2d 277 (first case); 275 U. S. App. D. C.  
232, 866 F. 2d 433 (second case).

No. 88-1548. BATES *v.* TENNESSEE VALLEY AUTHORITY ET  
AL. C. A. 11th Cir. Certiorari denied. Reported below: 851  
F. 2d 1366.

No. 88-1552. WASHINGTON INTERNATIONAL INSURANCE CO.  
*v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Re-  
ported below: 863 F. 2d 877.

No. 88-1567. CAMARENA *v.* UNITED STATES. C. A. 5th Cir.  
Certiorari denied. Reported below: 863 F. 2d 880.

No. 88-1582. O'CARROLL *v.* CHAPARRAL AIRLINES, INC.  
C. A. 5th Cir. Certiorari denied. Reported below: 863 F. 2d 11.

490 U. S.

June 12, 1989

No. 88-1586. JACKSON *v.* LIQUID CARBONIC CORP. ET AL. C. A. 1st Cir. Certiorari denied. Reported below: 863 F. 2d 111.

No. 88-1619. ALABAMA DEPARTMENT OF EDUCATION ET AL. *v.* POWERS ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 854 F. 2d 1285.

No. 88-1654. CALIFORNIA *v.* FARMER. Sup. Ct. Cal. Certiorari denied. Reported below: 47 Cal. 3d 888, 765 P. 2d 940.

No. 88-1687. DOOLEY *v.* FORT WORTH INDEPENDENT SCHOOL DISTRICT ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 866 F. 2d 1418.

No. 88-1689. COVINGTON *v.* SAPPINGTON. Ct. App. N. M. Certiorari denied. Reported below: 108 N. M. 155, 768 P. 2d 354.

No. 88-1690. GREATER BUFFALO PRESS, INC., ET AL. *v.* FEDERAL RESERVE BANK OF NEW YORK ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 866 F. 2d 38.

No. 88-1691. STERLING DRUG INC. *v.* CIRCUIT COURT FOR MILWAUKEE COUNTY ET AL. Sup. Ct. Wis. Certiorari denied.

No. 88-1694. MURPHY *v.* UNITED STATES. Ct. Mil. App. Certiorari denied. Reported below: 28 M. J. 232.

No. 88-1697. HAJOCA CORP. *v.* HEROLD. C. A. 4th Cir. Certiorari denied. Reported below: 864 F. 2d 317.

No. 88-1699. CULLEN *v.* PAINE, WEBBER, JACKSON & CURTIS, INC. C. A. 11th Cir. Certiorari denied. Reported below: 863 F. 2d 851.

No. 88-1703. SHAPERO *v.* KENTUCKY BAR ASSN. Sup. Ct. Ky. Certiorari denied. Reported below: 763 S. W. 2d 126 and 767 S. W. 2d 323.

No. 88-1704. LEUCADIA, INC. *v.* RELIANCE INSURANCE Co. C. A. 2d Cir. Certiorari denied. Reported below: 864 F. 2d 964.

No. 88-1707. ZIMMERMANN *v.* BOARD OF PROFESSIONAL RESPONSIBILITY. Sup. Ct. Tenn. Certiorari denied. Reported below: 764 S. W. 2d 757.

No. 88-1709. POTTER *v.* CALIFORNIA. Ct. App. Cal., 4th App. Dist. Certiorari denied.

June 12, 1989

490 U. S.

No. 88-1712. REARDON ET AL. *v.* REARDON ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 275 U. S. App. D. C. 230, 865 F. 2d 1329.

No. 88-1714. MILLER *v.* PUBLISHERS PAPER CO. ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 861 F. 2d 268.

No. 88-1716. BERGER *v.* SUPREME COURT OF OHIO ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 861 F. 2d 719.

No. 88-1726. DOE ET AL. *v.* HENNEPIN COUNTY ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 858 F. 2d 1325.

No. 88-1729. RODRIGUEZ *v.* DANT OF ARIZONA ET AL. Ct. App. Ariz. Certiorari denied.

No. 88-1732. CRIST *v.* ADDUCI, COMMISSIONER, NEW YORK STATE DEPARTMENT OF MOTOR VEHICLES, ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 868 F. 2d 1267.

No. 88-1739. ORN *v.* TEXAS. Ct. App. Tex., 3d Dist. Certiorari denied.

No. 88-1755. DWIGHT'S DISCOUNT VACUUM CLEANER CITY, INC. *v.* SCOTT FETZER CO., KIRBY COMPANY DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 860 F. 2d 646.

No. 88-1766. FOLTZ ET AL. *v.* U. S. NEWS & WORLD REPORT, INC., ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 275 U. S. App. D. C. 145, 865 F. 2d 364.

No. 88-1768. HEIM *v.* HIGH PLAINS AGRICULTURAL CREDIT CORP. ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 871 F. 2d 1093.

No. 88-1776. ADKINS, INDIVIDUALLY AND AS ADMINISTRATRIX OF THE ESTATE OF ADKINS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 869 F. 2d 593.

No. 88-1779. S. E. NICHOLS, INC. *v.* NATIONAL LABOR RELATIONS BOARD. C. A. 2d Cir. Certiorari denied. Reported below: 862 F. 2d 952.

490 U. S.

June 12, 1989

No. 88-1795. AHMAD ET AL. *v.* RAYNOR, ADMINISTRATOR, MARYLAND STATE ADMINISTRATIVE BOARD OF ELECTION LAWS. C. A. 4th Cir. Certiorari denied. Reported below: 862 F. 2d 313.

No. 88-1809. VADEN *v.* ALASKA. Sup. Ct. Alaska. Certiorari denied. Reported below: 768 P. 2d 1102.

No. 88-1811. MAJOR *v.* PENNWELL PUBLISHING CO. C. A. 10th Cir. Certiorari denied.

No. 88-1812. DENNARD *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 861 F. 2d 1278.

No. 88-1822. OATES ET AL. *v.* OATES ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 866 F. 2d 203.

No. 88-1827. BONSER ET AL. *v.* TOWN OF NOTTINGHAM, NEW HAMPSHIRE. Sup. Ct. N. H. Certiorari denied. Reported below: 131 N. H. 120, 552 A. 2d 58.

No. 88-1831. HOWARD, AKA BEY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 865 F. 2d 1260.

No. 88-1834. PENNZOIL CO. ET AL. *v.* KESTENBAUM. Sup. Ct. N. M. Certiorari denied. Reported below: 108 N. M. 20, 766 P. 2d 280.

No. 88-1836. HENRY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 869 F. 2d 595.

No. 88-1838. KELLERMAN *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 871 F. 2d 1333.

No. 88-1839. ROMAN *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 870 F. 2d 65.

No. 88-1843. ROGGIO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 863 F. 2d 41.

No. 88-1846. DELGEORGE *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 870 F. 2d 652.

No. 88-1856. LOUISIANA DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT *v.* NICK MARTINOLICH, INC., ET AL. Ct. App. La., 1st Cir. Certiorari denied. Reported below: 532 So. 2d 435.

June 12, 1989

490 U. S.

No. 88-5159. JACKSON *v.* NORTH CAROLINA. Sup. Ct. N. C. Certiorari denied. Reported below: 322 N. C. 251, 368 S. E. 2d 838.

No. 88-5373. CAPERS *v.* SOUTH CAROLINA. Sup. Ct. S. C. Certiorari denied.

No. 88-5381. WASHINGTON *v.* SOUTH CAROLINA. Sup. Ct. S. C. Certiorari denied.

No. 88-5874. SMITH *v.* MISSOURI. Ct. App. Mo., Western Dist. Certiorari denied. Reported below: 755 S. W. 2d 248.

No. 88-6416. SPLUNGE *v.* INDIANA. Sup. Ct. Ind. Certiorari denied. Reported below: 526 N. E. 2d 977.

No. 88-6484. TORRES *v.* SULLIVAN, SECRETARY OF HEALTH AND HUMAN SERVICES. C. A. 1st Cir. Certiorari denied. Reported below: 836 F. 2d 1340.

No. 88-6519. SANDERS *v.* ROBINSON. C. A. 9th Cir. Certiorari denied. Reported below: 864 F. 2d 630.

No. 88-6740. DAVIS ET AL. *v.* MONSANTO CHEMICAL CO. ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 858 F. 2d 345.

No. 88-6769. RISK *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 866 F. 2d 1422.

No. 88-6798. SAGER *v.* MAASS, SUPERINTENDENT, OREGON STATE PENITENTIARY. C. A. 9th Cir. Certiorari denied.

No. 88-6822. MERCER *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 853 F. 2d 630.

No. 88-6843. PALMER ET AL. *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 864 F. 2d 524.

No. 88-6879. CLEMMONS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 864 F. 2d 793.

No. 88-6885. BURTON *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 866 F. 2d 1057.

No. 88-6959. MENARD *v.* COUNTY OF HENRICO, VIRGINIA, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 857 F. 2d 1469.

490 U. S.

June 12, 1989

No. 88-6977. *JOHNSON v. DEPARTMENT OF JUSTICE*. C. A. Fed. Cir. Certiorari denied. Reported below: 864 F. 2d 149.

No. 88-7014. *GRIFFITH v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 864 F. 2d 421.

No. 88-7051. *POGUE v. COLUMBIA COUNTY*. Ct. App. Wis. Certiorari denied. Reported below: 147 Wis. 2d 882, 434 N. W. 2d 622.

No. 88-7054. *BROWN v. OHIO*. Ct. App. Ohio, Cuyahoga County. Certiorari denied.

No. 88-7057. *RUSCITTI v. ESTATE OF RUSCITTI*. Super. Ct. Pa. Certiorari denied. Reported below: 377 Pa. Super. 664, 541 A. 2d 1159.

No. 88-7058. *THEOPHILE v. PHILLIPS ET AL.* C. A. 11th Cir. Certiorari denied. Reported below: 864 F. 2d 793.

No. 88-7060. *RODMAN v. WILSON, DIRECTOR, DEPARTMENT OF REHABILITATION AND CORRECTION*. C. A. 6th Cir. Certiorari denied. Reported below: 865 F. 2d 260.

No. 88-7063. *BOYD v. GEORGIA*. Ct. App. Ga. Certiorari denied. Reported below: 189 Ga. App. 617, 377 S. E. 2d 11.

No. 88-7065. *BARNES v. DUGGER, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL.* C. A. 11th Cir. Certiorari denied. Reported below: 864 F. 2d 793.

No. 88-7066. *SCOTT v. KEMNA, SUPERINTENDENT, WESTERN MISSOURI CORRECTIONAL CENTER*. C. A. 8th Cir. Certiorari denied. Reported below: 862 F. 2d 1311.

No. 88-7067. *BAISDEN v. TATE, SUPERINTENDENT, CHILLICOTHE CORRECTIONAL INSTITUTE*. C. A. 6th Cir. Certiorari denied. Reported below: 869 F. 2d 1488.

No. 88-7071. *CUMMINGS v. DUGGER, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL.* C. A. 11th Cir. Certiorari denied. Reported below: 862 F. 2d 1504.

No. 88-7072. *BLACK v. CALIFORNIA*. Ct. App. Cal., 1st App. Dist. Certiorari denied.

June 12, 1989

490 U. S.

No. 88-7077. *SELIN v. OREGON*. Ct. App. Ore. Certiorari denied. Reported below: 94 Ore. App. 566, 767 P. 2d 119.

No. 88-7078. *NICHOLS v. TANSY, WARDEN*. C. A. 10th Cir. Certiorari denied. Reported below: 867 F. 2d 1250.

No. 88-7093. *CORBIT v. MERCER ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 869 F. 2d 1489.

No. 88-7096. *TOSTE v. MEACHUM, COMMISSIONER, CONNECTICUT DEPARTMENT OF CORRECTION*. C. A. 2d Cir. Certiorari denied. Reported below: 861 F. 2d 782.

No. 88-7122. *FLYNN v. COUNTY OF NASSAU ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 873 F. 2d 1435.

No. 88-7130. *KESSLER v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 864 F. 2d 790.

No. 88-7166. *DUPARD v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 861 F. 2d 269.

No. 88-7167. *JACK v. UNITED STATES*. C. A. 10th Cir. Certiorari denied. Reported below: 868 F. 2d 1186.

No. 88-7168. *GIBSON-BEY, AKA GIBSON v. UNITED STATES*. Ct. App. D. C. Certiorari denied.

No. 88-7171. *MAY v. HACKETT*. C. A. 6th Cir. Certiorari denied. Reported below: 863 F. 2d 883.

No. 88-7173. *WELCH v. UNITED STATES*. C. A. 10th Cir. Certiorari denied.

No. 88-7183. *BLANTON v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 868 F. 2d 689.

No. 88-7189. *RONDON-MOLINA v. UNITED STATES*. C. A. 11th Cir. Certiorari denied. Reported below: 873 F. 2d 299.

No. 88-7191. *PETERSON v. UNITED STATES*. C. A. 11th Cir. Certiorari denied. Reported below: 866 F. 2d 1422.

No. 88-7196. *WHITE, AKA WOODS v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 869 F. 2d 822.

No. 88-7198. *WEICHERT v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 873 F. 2d 1436.

490 U. S.

June 12, 1989

No. 88-7200. IRVING, AKA OWENS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 88-7205. CAMPBELL *v.* STRONG ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 865 F. 2d 1267.

No. 88-7209. ZOLICOFFER *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 869 F. 2d 771.

No. 88-7210. CARDONA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 874 F. 2d 819.

No. 88-7211. GONZALEZ-QUESADA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 872 F. 2d 431.

No. 88-7213. ELLIS *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 276 U. S. App. D. C. 409, 871 F. 2d 1149.

No. 88-7215. TOWNSEND *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 871 F. 2d 118.

No. 88-7216. BROCK *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 866 F. 2d 1423.

No. 88-7219. SCHMIDT *v.* HILLCREST HOSPITAL ET AL. Ct. App. Ohio, Cuyahoga County. Certiorari denied.

No. 88-7223. CARTER *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 866 F. 2d 1419.

No. 87-1449. MILLER *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 4th Cir. Certiorari denied. JUSTICE BRENNAN took no part in the consideration or decision of this petition. Reported below: 829 F. 2d 500.

No. 87-2023. CHRISTIANSEN ET UX. *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 10th Cir. Certiorari denied. JUSTICE BRENNAN and JUSTICE KENNEDY took no part in the consideration or decision of this petition. Reported below: 843 F. 2d 418.

No. 87-7107. SLAUGHTER *v.* KENTUCKY. Sup. Ct. Ky.;

No. 88-5241. HOWARD *v.* SOUTH CAROLINA. Sup. Ct. S. C.;

No. 88-5863. GRIFFIN *v.* MISSOURI. Sup. Ct. Mo.;

No. 88-6756. EVANS *v.* ILLINOIS. Sup. Ct. Ill.;

June 12, 1989

490 U. S.

No. 88-7124. *RICHARDSON v. JOHNSON, WARDEN, ET AL.* C. A. 11th Cir.; and

No. 88-7235. *GILMORE v. ARMONTROUT, WARDEN.* C. A. 8th Cir. Certiorari denied. Reported below: No. 87-7107, 744 S. W. 2d 407; No. 88-5241, 295 S. C. 462, 369 S. E. 2d 132; No. 88-5863, 756 S. W. 2d 475; No. 88-6756, 125 Ill. 2d 50, 530 N. E. 2d 1360; No. 88-7124, 864 F. 2d 1536; No. 88-7235, 861 F. 2d 1061.

JUSTICE BRENNAN and JUSTICE MARSHALL, dissenting.

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

No. 87-7298. *SCOTT v. OKLAHOMA.* Ct. Crim. App. Okla. Certiorari denied. JUSTICE MARSHALL would grant certiorari. Reported below: 751 P. 2d 758.

No. 88-36. *BENEFICIAL CORP. ET AL. v. DEUTSCHMAN.* C. A. 3d Cir. Certiorari denied. JUSTICE WHITE would grant certiorari. Reported below: 841 F. 2d 502.

No. 88-1379. *TINDLE v. UNITED STATES.* C. A. 4th Cir. Motion of petitioner to strike the brief of the Solicitor General denied. Certiorari denied. Reported below: 860 F. 2d 125.

No. 88-1461. *CHRISTY ET AL. v. LUJAN, SECRETARY OF THE INTERIOR, ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 857 F. 2d 1324.

JUSTICE WHITE, dissenting.

Petitioner Christy is a herder who grazed his sheep on leased land near Glacier National Park. Between July 1 and July 9, 1982, grizzly bears from the park killed 20 of Christy's sheep. Requests for assistance from park rangers yielded no results, and efforts to frighten away the bears were unsuccessful. On July 9, when two grizzlies emerged from the forest and approached Christy's sheep, he shot and killed a bear. Grizzlies, however, are an "endangered species"; Christy's killing of the bear thus violated the Endangered Species Act, which makes it unlawful to "harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect" grizzlies and other animals protected by the statute. 16 U. S. C.

1114

WHITE, J., dissenting

§§ 1538(a)(1), 1532(19). Christy was consequently assessed a \$2,500 penalty for shooting the bear.

Christy then filed this action in District Court, seeking to enjoin enforcement of the Act against herders like himself, and resisting payment of the \$2,500 penalty. Christy claimed, *inter alia*, that his actions in defense of his livestock were protected by the Due Process Clause of the Fifth Amendment; alternatively, Christy contended that the Act resulted in an uncompensated "taking" of his property. Both the District Court and the Ninth Circuit rejected these claims, and this petition ensued.

I would grant the petition for certiorari to consider Christy's constitutional claims. Christy's claim of a constitutional right to defend his property is not insubstantial. The right to defend one's property has long been recognized at common law, see W. Blackstone, Commentaries \*138-140, and is deeply rooted in the legal traditions of this country, see, *e. g.*, *Beard v. United States*, 158 U. S. 550, 555 (1895). Having the freedom to take actions necessary to protect one's property may well be a liberty "deeply rooted in this Nation's history and tradition," *Moore v. East Cleveland*, 431 U. S. 494, 503 (1977) (opinion of Powell, J.), and, therefore, entitled to the substantive protection of the Due Process Clause. In any event, Christy's claim to such protection presents an interesting and important question—the proper resolution of which is not altogether clear—that merits plenary review.

Even more substantial is Christy's claim that the Endangered Species Act operates as a governmental authorization of a "taking" of his property; leaving him uncompensated for this taking violates the Fifth Amendment, Christy contends. There can be little doubt that if a federal statute authorized park rangers to come around at night and take Christy's livestock to feed the bears, such a governmental action would constitute a "taking." The Court of Appeals below, and the federal parties in their submission here, distinguish such a case from this one, by noting that the United States "does not 'own' the wild animals it protects, nor does the government control the conduct of such animals." *Christy v. Hodel*, 857 F. 2d 1324, 1335 (CA9 1988); see Brief in Opposition 7.

Perhaps not; but the Government does make it unlawful for Christy to "harass, harm, [or] pursue" such animals when they come to take his property—and perhaps a Government edict bar-

June 12, 1989

490 U. S.

ring one from resisting the loss of one's property is the constitutional equivalent of an edict taking such property in the first place. Thus, if the Government decided (in lieu of the food stamp program) to enact a law barring grocery store owners from "harassing, harming, or pursuing" people who wish to take food off grocery shelves without paying for it, such a law might well be suspect under the Fifth Amendment. For similar reasons, the Endangered Species Act may be suspect as applied in Christy's case.

In sum, sustaining grizzly bears is a worthwhile and important governmental objective. But it "is axiomatic that the Fifth Amendment's just compensation provision is 'designed to bar Government from forcing some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole.'" *First English Evangelical Lutheran Church of Glendale v. County of Los Angeles*, 482 U. S. 304, 318-319 (1987) (quoting *Armstrong v. United States*, 364 U. S. 40, 49 (1960)). Here, Christy has been asked to bear the burden of feeding endangered grizzlies—or at the least, has been estopped from taking measures necessary to prevent the use of his property for this purpose. Thus, it seems quite possible that Christy has been denied the Fifth Amendment's protection against uncompensated takings.

Because I think that Christy's constitutional claims present interesting and important questions that merit our attention, I dissent from the Court's denial of review in this case.

No. 88-1686. COLORADO DEPARTMENT OF SOCIAL SERVICES *v.* OBERT. Sup. Ct. Colo. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 766 P. 2d 1186.

No. 88-1692. ASSOCIATED BUILDERS, INC., ET AL. *v.* MEIGGS ET AL. Ct. App. D. C. Motions of National Association of Minority Contractors and Washington Metropolitan Area Transit Authority for leave to file briefs as *amici curiae* granted. Certiorari denied. Reported below: 545 A. 2d 631.

No. 88-1711. PRUESSMAN *v.* LEWIS ET AL. C. A. 11th Cir. Motion of petitioner to strike brief in opposition of respondents City of Coral Gables et al. denied. Certiorari denied. Reported below: 865 F. 2d 1272.

No. 88-1733. SOUTHERN BELL TELEPHONE & TELEGRAPH CO. *v.* STAMEY. C. A. 11th Cir. Certiorari denied. JUSTICE

490 U. S.

June 12, 1989

O'CONNOR took no part in the consideration or decision of this petition. Reported below: 859 F. 2d 855.

*Rehearing Denied*

- No. 87-7052. FLEMING *v.* ZANT, WARDEN, *ante*, p. 1028;  
No. 88-1235. BOINEAU *v.* UNITED STATES ET AL., 489 U. S. 1055;  
No. 88-1407. DOLENZ *v.* STUART YACHT BUILDERS, INC., *ante*, p. 1021;  
No. 88-1509. PATTON *v.* UNITED STATES RAILROAD RETIREMENT BOARD, *ante*, p. 1022;  
No. 88-6675. WOODWARD *v.* MISSISSIPPI, *ante*, p. 1028;  
No. 88-6848. LAWS *v.* ARMONTROUT, WARDEN, *ante*, p. 1040;  
and  
No. 88-6888. SANDERS *v.* UNITED STATES ET AL., *ante*, p. 1072. Petitions for rehearing denied.  
No. 88-6599. MASON *v.* PARKE, WARDEN, *ante*, p. 1009. Motion for leave to file petition for rehearing denied.

On November 10, 1952, the Board of Directors of the  
 National Association of Manufacturers (NAM) advised  
 the Commission that it had received a letter from  
 the NAM dated November 10, 1952, in which the  
 NAM requested that the Commission advise it  
 whether it was possible for the Commission to  
 grant a leave of absence to the NAM representative  
 named in the letter.

The Commission advised the NAM that it was  
 possible for the Commission to grant a leave of  
 absence to the NAM representative named in the  
 letter, provided that the NAM representative  
 named in the letter was a member of the  
 Commission and that the leave of absence was  
 granted for a period of not more than 90 days.

The Commission further advised the NAM that  
 it was possible for the Commission to grant a  
 leave of absence to the NAM representative named  
 in the letter, provided that the NAM representative  
 named in the letter was a member of the  
 Commission and that the leave of absence was  
 granted for a period of not more than 90 days.

There is a possibility that the Commission's  
 decision in this case may be reviewed by the  
 Supreme Court.

No. 58-1585. COLORADO DEPARTMENT OF SOCIAL SERVICES v. *UNITED STATES*. - Sup. Ct. Colo. - Motion for remand for leave to proceed in forma pauperis granted. Certiorari denied. Reported below: 700 P. 2d 1190.

No. 58-1586. ASSOCIATED BUILDERS, INC. et al. v. *NATIONAL ASSOCIATION OF BUILDERS*. - Ct. App. D. C. - Motion of National Association of Minority Contractors and Washington Metropolitan Area Transit Authority for leave to file briefs as amici curiae granted. Certiorari denied. Reported below: 543 A. 2d 511.

No. 58-1587. *PERKINS* v. *LEWIS* et al. - U. S. Dist. Ct. - Motion of petitioner to strike brief in opposition of respondents suspended in form granted. Certiorari denied. Reported below: 365 F. 2d 1272.

No. 58-1588. *SOUTHWEST BELL TELEPHONE & TELEGRAPH CO. v. STANLEY*. - U. S. Dist. Ct. - Certiorari denied. Justice