

ORDERS FOR FEBRUARY 26 THROUGH  
APRIL 16, 1990

*Certiorari Granted—Vacated and Remanded*

No. 88-849. ACTION ALLIANCE OF SENIOR CITIZENS OF GREATER PHILADELPHIA ET AL. *v.* SULLIVAN, SECRETARY OF HEALTH AND HUMAN SERVICES, ET AL. C. A. D. C. Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Dole v. Steelworkers*, ante, p. 26. Reported below: 269 U. S. App. D. C. 463, 846 F. 2d 1449.

*Miscellaneous Orders.* (See also No. 65, Orig., ante, p. 111.)

No. D-801. IN RE DISBARMENT OF JACOBSON. Disbarment entered. [For earlier order herein, see 492 U. S. 931.]

No. D-816. IN RE DISBARMENT OF CHANDLER. Disbarment entered. [For earlier order herein, see 493 U. S. 949.]

No. D-818. IN RE DISBARMENT OF SAUL. Disbarment entered. [For earlier order herein, see 493 U. S. 949.]

No. D-829. IN RE DISBARMENT OF ISIS. Disbarment entered. [For earlier order herein, see 493 U. S. 961.]

No. D-834. IN RE DISBARMENT OF RAIKOS. Disbarment entered. [For earlier order herein, see 493 U. S. 961.]

No. D-836. IN RE DISBARMENT OF EVANS. Disbarment entered. [For earlier order herein, see 493 U. S. 972.]

No. D-841. IN RE DISBARMENT OF FARLEY. Disbarment entered. [For earlier order herein, see 493 U. S. 973.]

No. D-863. IN RE DISBARMENT OF MORRIS. It is ordered that Jerrold L. Morris, of Chicago, Ill., be suspended from the practice of law in this Court and that a rule issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D-864. IN RE DISBARMENT OF ROCKER. It is ordered that Jonathan Samuel Rocker, of Cleveland, 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.

February 26, 1990

494 U. S.

No. D-865. *IN RE DISBARMENT OF BOYCE*. It is ordered that Earl Rumsey Boyce, of Palm Beach, 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-866. *IN RE DISBARMENT OF SILVEIRA*. It is ordered that Frank Diaz Silveira, of Coral Gables, 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-867. *IN RE DISBARMENT OF DIGGES*. It is ordered that Edward S. Digges, Jr., of Rock Hall, 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-868. *IN RE DISBARMENT OF MOLONY*. It is ordered that Gerard E. Molony, of Upper Nyack, 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-869. *IN RE DISBARMENT OF BRACKEN*. It is ordered that Martin Lawrence Bracken, of Mineola, 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-870. *IN RE DISBARMENT OF TSCHIRHART*. It is ordered that William Henry Tschirhart, of Clinton, 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-871. *IN RE DISBARMENT OF PRICE*. It is ordered that William Herbert Price, of San Antonio, Tex., be suspended from the practice of law in this Court and that a rule issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. 83-243. *BROWN & ROOT, INC., ET AL. v. THORNTON ET AL.*, 464 U. S. 1052. Motion of respondent Billy Thornton for award of attorney's fees denied without prejudice.

494 U. S.

February 26, 1990

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, 490 U. S. 1003.] Motion of the Solicitor General for leave to file a supplemental brief after argument granted.

No. 89-6605. IN RE GODWIN. Petition for writ of habeas corpus denied.

No. 89-6402. IN RE EVEGELATOS. Petition for writ of mandamus denied.

*Certiorari Granted*

No. 89-994. WEST VIRGINIA UNIVERSITY HOSPITALS, INC. *v.* CASEY, GOVERNOR OF PENNSYLVANIA, ET AL. C. A. 3d Cir. Certiorari granted. Reported below: 885 F. 2d 11.

No. 89-1063. FIRSTTIER MORTGAGE CO., AKA REALBANC, INC. *v.* INVESTORS MORTGAGE INSURANCE CO. C. A. 10th Cir. Certiorari granted.

No. 89-1158. MILES, INDIVIDUALLY AND AS ADMINISTRATRIX OF THE SUCCESSION OF TORREGANO *v.* APEX MARINE CORP. ET AL. C. A. 5th Cir. Certiorari granted. Reported below: 882 F. 2d 976.

*Certiorari Denied*

No. 88-1075. ASSOCIATED BUILDERS & CONTRACTORS, INC., ET AL. *v.* OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION, UNITED STATES DEPARTMENT OF LABOR, ET AL. (two cases). C. A. 3d Cir. Certiorari denied. Reported below: 862 F. 2d 63 (first case); 855 F. 2d 108 (second case).

No. 89-344. WOODWARD *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 871 F. 2d 1068.

No. 89-564. GLOSEMEYER ET AL. *v.* MISSOURI-KANSAS-TEXAS RAILROAD ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 879 F. 2d 316.

No. 89-777. UNITED STATES GYPSUM CO. *v.* WESLEY THEOLOGICAL SEMINARY OF THE UNITED METHODIST CHURCH. C. A. D. C. Cir. Certiorari denied. Reported below: 277 U. S. App. D. C. 360, 876 F. 2d 119.

February 26, 1990

494 U. S.

No. 89-781. *TOWN OF HUNTINGTON ET AL. v. STONE, SECRETARY OF THE ARMY, ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 884 F. 2d 648.

No. 89-835. *ANTONIU v. SECURITIES AND EXCHANGE COMMISSION.* C. A. 8th Cir. Certiorari denied. Reported below: 877 F. 2d 721.

No. 89-876. *BEN-SHALOM v. STONE, SECRETARY OF THE ARMY, ET AL.* C. A. 7th Cir. Certiorari denied. Reported below: 881 F. 2d 454.

No. 89-878. *KNIGHT v. CENTRAL INTELLIGENCE AGENCY.* C. A. 5th Cir. Certiorari denied. Reported below: 872 F. 2d 660.

No. 89-898. *BYWATER NEIGHBORHOOD ASSN. v. FEDERAL COMMUNICATIONS COMMISSION ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 879 F. 2d 165.

No. 89-997. *JACKSON ET AL. v. RUSSELL.* Ct. App. Ind. Certiorari denied. Reported below: 533 N. E. 2d 153.

No. 89-1046. *FRATES ET AL. v. WEINSHIENK, JUDGE, UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLORADO, ET AL.* C. A. 10th Cir. Certiorari denied. Reported below: 882 F. 2d 1502.

No. 89-1058. *PORTER ET AL. v. CITY OF ATLANTA.* Sup. Ct. Ga. Certiorari denied. Reported below: 259 Ga. 526, 384 S. E. 2d 631.

No. 89-1068. *ROSENBAUM v. ROSENBAUM ET AL.* App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 184 Ill. App. 3d 987, 541 N. E. 2d 872.

No. 89-1073. *FANT v. BONANNO, CLERK, CLEVELAND MUNICIPAL COURT.* Sup. Ct. Ohio. Certiorari denied. Reported below: 45 Ohio St. 3d 707, 544 N. E. 2d 694.

No. 89-1086. *KLUMPNER, A MINOR, BY KAHN, HER GUARDIAN AD LITEM v. KLUMPNER.* App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 182 Ill. App. 3d 22, 537 N. E. 2d 914.

No. 89-1088. *HELENA MARINE SERVICE, INC., ET AL. v. ST. PAUL FIRE & MARINE INSURANCE CO. ET AL.* C. A. 8th Cir. Certiorari denied. Reported below: 884 F. 2d 391.

494 U. S.

February 26, 1990

No. 89-1089. ATLANTIC RICHFIELD CO. *v.* VAN VRANKEN ET AL. Temp. Emerg. Ct. App. Certiorari denied. Reported below: 890 F. 2d 421.

No. 89-1090. ELLIS *v.* RINGGOLD SCHOOL DISTRICT. C. A. 3d Cir. Certiorari denied. Reported below: 877 F. 2d 54.

No. 89-1091. SOBOL, COMMISSIONER OF THE NEW YORK STATE EDUCATION DEPARTMENT *v.* BURR, BY HIS PARENTS AND NEXT FRIENDS, BURR ET UX. C. A. 2d Cir. Certiorari denied. Reported below: 888 F. 2d 258.

No. 89-1109. MASON *v.* CITY OF GASTONIA, NORTH CAROLINA, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 884 F. 2d 1389.

No. 89-1116. BISHOP *v.* OASIS OIL CO. ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 880 F. 2d 416.

No. 89-1135. WEBER ET AL. *v.* KLUGE ET AL. Super. Ct. N. J., App. Div. Certiorari denied.

No. 89-1143. SUNG MAN KIM ET UX. *v.* SOO AN LEE ET UX. Ct. App. D. C. Certiorari denied.

No. 89-1146. BROECKL ET AL. *v.* CHICAGO PARK DISTRICT. Sup. Ct. Ill. Certiorari denied. Reported below: 131 Ill. 2d 79, 544 N. E. 2d 792.

No. 89-1171. GONZALEZ-SENTI *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 886 F. 2d 1323.

No. 89-1186. FLOCA *v.* HOMECARE HEALTH SERVICES, INC., ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 883 F. 2d 71.

No. 89-1206. ELKINS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 885 F. 2d 775.

No. 89-6005. WILKERSON *v.* SMITH, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 89-6140. NIVICA *v.* UNITED STATES; and

No. 89-6360. WELLINGTON *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 887 F. 2d 1110.

No. 89-6186. GARCIA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 888 F. 2d 1395.

February 26, 1990

494 U. S.

No. 89-6196. *DENNIS v. UNITED STATES*. C. A. 11th Cir. Certiorari denied. Reported below: 888 F. 2d 1397.

No. 89-6292. *DUBOV v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 883 F. 2d 1025.

No. 89-6331. *WOODS v. UNITED STATES*. C. A. 10th Cir. Certiorari denied. Reported below: 888 F. 2d 653.

No. 89-6357. *SLONE v. SOWDERS, WARDEN*. C. A. 6th Cir. Certiorari denied. Reported below: 883 F. 2d 76.

No. 89-6362. *SWARTZ v. COMMISSIONER OF INTERNAL REVENUE*. C. A. 8th Cir. Certiorari denied. Reported below: 876 F. 2d 657.

No. 89-6370. *BASS v. RHODE, WARDEN, ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 880 F. 2d 1323.

No. 89-6371. *SCOTT v. SUMNER ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 887 F. 2d 1089.

No. 89-6373. *KEYES v. SAN FRANCISCO PROBATION DEPARTMENT*. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 89-6376. *COLE v. REED*. C. A. 8th Cir. Certiorari denied. Reported below: 889 F. 2d 1091.

No. 89-6378. *KIM v. CALIFORNIA ET AL.* Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 89-6391. *AKMANSOY v. KLEVENHAGEN ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 884 F. 2d 575.

No. 89-6392. *HORNE v. GEORGIA*. Sup. Ct. Ga. Certiorari denied.

No. 89-6393. *LEE v. CALIFORNIA*. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 89-6395. *MCCLAIN v. MITCHELL ET AL.* C. A. 3d Cir. Certiorari denied. Reported below: 884 F. 2d 1384.

No. 89-6396. *MCCONE v. BIRGE ET AL.* C. A. 10th Cir. Certiorari denied.

No. 89-6397. *BOND v. DUNN, DEPUTY WARDEN*. C. A. 6th Cir. Certiorari denied. Reported below: 891 F. 2d 289.

494 U. S.

February 26, 1990

No. 89-6398. *BOND v. SHAMS ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 891 F. 2d 289.

No. 89-6401. *TYGART v. ARMONTROUT, WARDEN.* C. A. 8th Cir. Certiorari denied.

No. 89-6409. *WESSELMAN v. SEABOLD, WARDEN.* C. A. 6th Cir. Certiorari denied. Reported below: 881 F. 2d 1078.

No. 89-6411. *REYNA v. TEXAS.* Ct. App. Tex., 3d Dist. Certiorari denied.

No. 89-6415. *BROWN v. TATE, SUPERINTENDENT, CHILLICOTHE CORRECTIONAL INSTITUTION.* C. A. 6th Cir. Certiorari denied.

No. 89-6416. *LEPISCOPO v. REED.* C. A. 10th Cir. Certiorari denied.

No. 89-6420. *VISSER v. UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT.* C. A. D. C. Cir. Certiorari denied.

No. 89-6424. *LOCKHART v. NAGLE, WARDEN, ET AL.* C. A. 11th Cir. Certiorari denied. Reported below: 890 F. 2d 1166.

No. 89-6439. *GOODSTEIN v. UNITED STATES.* C. A. 7th Cir. Certiorari denied. Reported below: 883 F. 2d 1362.

No. 89-6449. *ELKAYAM v. SIBERT ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 869 F. 2d 1485.

No. 89-6463. *BRYANT v. UNITED STATES.* C. A. 5th Cir. Certiorari denied. Reported below: 887 F. 2d 1084.

No. 89-6468. *VASQUEZ v. UNITED STATES.* C. A. 11th Cir. Certiorari denied. Reported below: 892 F. 2d 87.

No. 89-6471. *DEDRICK v. NEW HAMPSHIRE.* Sup. Ct. N. H. Certiorari denied. Reported below: 132 N. H. 218, 564 A. 2d 423.

No. 89-6489. *SHERDIL v. UNITED STATES.* C. A. 4th Cir. Certiorari denied. Reported below: 891 F. 2d 287.

No. 89-6507. *DUPIN v. UNITED STATES.* C. A. 6th Cir. Certiorari denied. Reported below: 880 F. 2d 415.

February 26, 1990

494 U. S.

No. 89-6510. *BURNETTE v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 876 F. 2d 107.

No. 89-6514. *EUFACIO-TORRES v. UNITED STATES*. C. A. 10th Cir. Certiorari denied. Reported below: 890 F. 2d 266.

No. 89-6515. *WARREN v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 889 F. 2d 1097.

No. 89-6516. *BUTLER v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 891 F. 2d 284.

No. 89-6517. *MARTIN v. UNITED STATES*. C. A. D. C. Cir. Certiorari denied. Reported below: 281 U. S. App. D. C. 266, 889 F. 2d 281.

No. 89-6530. *CRUZ v. UNITED STATES*. C. A. 11th Cir. Certiorari denied. Reported below: 854 F. 2d 1280.

No. 89-6535. *BARNHART v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 889 F. 2d 1374.

No. 89-6539. *TWITTY v. UNITED STATES*. Ct. App. D. C. Certiorari denied. Reported below: 541 A. 2d 612.

No. 89-6545. *SISTRUNK v. UNITED STATES*. C. A. 10th Cir. Certiorari denied.

No. 89-6559. *HARRIS v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 889 F. 2d 1089.

No. 89-6562. *MOLINA v. UNITED STATES*. C. A. 11th Cir. Certiorari denied. Reported below: 888 F. 2d 1395.

No. 89-6563. *BONGA v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 889 F. 2d 1096.

No. 89-6577. *HANSEN v. SOUTH CAROLINA ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 891 F. 2d 286.

No. 89-6591. *KENNEDY v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 890 F. 2d 1056.

No. 89-888. *NEW HAMPSHIRE v. DEDRICK*. Sup. Ct. N. H. Motion of respondent for leave to proceed *in forma pauperis*

494 U. S.

February 26, 1990

granted. Certiorari denied. Reported below: 132 N. H. 218, 564 A. 2d 423.

No. 89-5295. *MALLETT v. MISSOURI*. Sup. Ct. Mo. Certiorari denied. JUSTICE BLACKMUN dissents. Reported below: 769 S. W. 2d 77.

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 grant the petition to consider whether a trial court's decision to transfer a capital trial of an Afro-American defendant to a county with no residents of the defendant's race violates the Equal Protection Clause or the Sixth Amendment's fair cross section requirement, as applied to the States by the Fourteenth Amendment. Just as state prosecutors may not use peremptory challenges to exclude members of the defendant's race from the jury, *Batson v. Kentucky*, 476 U. S. 79 (1986), state trial courts may not transfer venue of the trial to accomplish the same result by another means.

Jerome Mallett, an Afro-American, was arrested for the murder of a white police officer that occurred in Perry County, Missouri. In 1980, over 1,100 Afro-Americans lived in Perry County, out of a total population of 16,784. Mallett was originally brought to trial in that county, but he requested a change of venue because of prejudicial pretrial publicity. Both the defense and prosecution offered suggestions for an appropriate venue; defense counsel specifically expressed concern that some members of Mallett's race reside in whatever county the court chose.

The judge ordered the case transferred to Schuyler County, a location that neither attorney had suggested. According to the 1980 census figures, Schuyler County contained 4,964 whites and 3 Afro-Americans; at the time of the trial, however, there were no Afro-Americans in the county. Mallett was convicted and sentenced to death by an all-white jury in Schuyler County. His conviction was upheld on direct appeal. In his petition for state post-conviction relief, Mallett argued that the Perry County judge's decision to transfer venue to Schuyler County violated his rights

under the Equal Protection and Due Process Clauses. After a hearing, a special judge ordered a new trial on both grounds; the State Supreme Court reversed his decision and affirmed the original sentence. 769 S. W. 2d 77 (1989) (en banc).

In *Batson v. Kentucky*, *supra*, at 86, we held that “[p]urposeful racial discrimination in selection of the venire violates a defendant’s right to equal protection because it denies him the protection that a trial by jury is intended to secure.” To make out a *prima facie* case of purposeful discrimination, a defendant must establish first that he is a member of a cognizable racial group and that the state has acted to remove members of that race from the venire; second, that the procedure used by the state permits those “‘who are of a mind to discriminate’” to do so; and third, that the facts and circumstances of the case raise the inference that the state acted in a discriminatory manner. 476 U. S., at 96. Once the defendant has established a *prima facie* case, the burden shifts to the state to present a neutral explanation to rebut the inference. *Id.*, at 97.

Properly applying *Batson* to these facts, the special judge found purposeful discrimination in the court’s transfer decision. Specifically, he found that

“‘1) the case involves a cross-racial murder of a state trooper; 2) the decision of [the Perry County judge] was made without giving counsel an opportunity to object; 3) counties which were of equal convenience to witnesses; equally free of pre-trial publicity; of equal, greater or less distance; and included blacks were tendered by the defense and prosecution; 4) no specific or compelling reason existed to send the case to Schuyler County; 5) there were no blacks living in Schuyler County at the time of trial; 6) movant is a black man; 7) the defense expressed concern that the county chosen include blacks.’” 769 S. W. 2d, at 81.

These facts give rise to a *prima facie* case of purposeful discrimination. The court’s transfer decision reduced the number of Afro-Americans on Mallett’s venire; the virtually unrestricted discretion of the trial judge to make the venue determination presented an opportunity to discriminate; and the judge transferred the case to a county with no members of Mallett’s race. The trial judge failed to offer a “specific or compelling” neutral explanation for the transfer. *Ibid.*

1009

MARSHALL, J., dissenting

In light of these circumstances, *Batson* requires an examination of the trial court's justification for transferring venue in a manner that discriminated against potential Afro-American jurors. In this case, the examination was conducted by a special judge in a postconviction hearing. I do not believe that such a hearing is necessary. A reviewing court can assess the record of the trial to determine whether the judge adequately explained his decision to transfer venue to a certain county. Such review is possible in this context because a judge's rationale is openly disclosed contemporaneously with his decision, unlike a prosecutor's rationale for his exercise of peremptory challenges. Here the special judge's finding that the transfer decision was racially motivated is amply supported by the record. Accordingly, Mallett's conviction and sentence must be reversed.

Mallett also argues that the transfer of his case to Schuyler County deprived him of due process, an argument the court below characterized as a challenge under the Sixth Amendment's fair cross section guarantee. 769 S. W. 2d, at 79-80. The fair cross section requirement has been applied to the States through the Due Process Clause of the Fourteenth Amendment. *Taylor v. Louisiana*, 419 U. S. 522, 526 (1975). Although a defendant has no right to a jury of any particular racial composition, we have long held that the State cannot act so as to deprive a defendant of his right to a venire that is "truly representative of the community." *Smith v. Texas*, 311 U. S. 128, 130 (1940). Mallett was originally brought to trial in a community with a significant Afro-American population and asked for his case to be transferred to a county with Afro-American residents. Yet the State chose Schuyler County as the location for the trial, a venue that included no members of Mallett's race. Although the jury pool may have been representative of Schuyler County, it was not representative of the community in which Mallett was charged, or even of the broader community comprised of the counties to which he sought transfer. In such a situation, determining which community defines the relevant universe for Sixth Amendment purposes is crucial to the adjudication of claims like Mallett's. I would grant the petition to resolve this issue as well.

The State's only response to both of Mallett's contentions is that they cannot be considered because a decision adopting either argument would create "new law" that would not be applicable retroactively in a state postconviction relief proceeding. As support,

February 26, 1990

494 U. S.

it cites this Court's recent opinion in *Teague v. Lane*, 489 U. S. 288 (1989). The State argues further that this Court is precluded from even addressing the merits of Mallett's claims because, under *Teague*, retroactivity is a threshold matter. *Id.*, at 300-301. This response is unpersuasive. Mallett's equal protection argument is "dictated by precedent existing at the time the defendant's conviction became final." *Id.*, at 301 (emphasis omitted). The argument flows necessarily from the language in *Batson* stating that purposeful discrimination is impermissible in jury selection procedures. *Batson v. Kentucky*, 476 U. S., at 86-87. More importantly, it is not evident to me that *Teague* applies to our review of state postconviction proceedings in which the state courts have addressed the merits of the petitioner's claims. Certainly, the issue is one that merits review by this Court.

When it transferred this capital murder trial to a county with no inhabitants of Mallett's race, the trial court violated Jerome Mallett's fundamental equal protection rights. The transfer is particularly appalling because the defense counsel emphasized to the trial court that the venue should be one where members of Mallett's race resided, and because the judge could have selected other counties in Missouri that satisfied this valid concern. Accordingly, I dissent.

No. 89-6390. *ROMERO v. COLLINS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION*. C. A. 5th Cir. Certiorari denied. Reported below: 884 F. 2d 871.

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.

### *Rehearing Denied*

No. 88-1400. *FRANCHISE TAX BOARD OF CALIFORNIA ET AL. v. ALCAN ALUMINIUM LTD. ET AL.*, 493 U. S. 331;

No. 89-508. *UNITED STATES CAN CO. ET AL. v. INTERNATIONAL ASSOCIATION OF MACHINISTS & AEROSPACE WORKERS ET AL.*, 493 U. S. 1019;

494 U. S.

February 26, March 5, 1990

No. 89-788. VENUS INDEPENDENT SCHOOL DISTRICT ET AL. v. SHELLY C., BY NEXT FRIENDS, SHELBY C. ET UX., 493 U. S. 1024;

No. 89-796. IN RE POLYAK, 493 U. S. 1017;

No. 89-5879. THAKKAR v. MARTIN, 493 U. S. 1027;

No. 89-6061. RAWLS v. UNITED STATES, 493 U. S. 1013; and

No. 89-6124. FERENC v. DUGGER, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL., 493 U. S. 1060. Petitions for rehearing denied.

No. 89-741. PRICE v. VIKING PENGUIN, INC., ET AL., 493 U. S. 1036; and

No. 89-5666. LACKLAND v. J. C. PENNEY CO., 493 U. S. 1036. Petitions for rehearing denied. JUSTICE BLACKMUN took no part in the consideration or decision of these petitions.

## MARCH 5, 1990

*Certiorari Granted—Reversed.* (See No. 89-5999, *ante*, p. 541.)

*Certiorari Granted—Vacated and Remanded*

No. 88-986. FIELDS v. DURHAM ET AL. C. A. 4th Cir. *Certiorari* granted, judgment vacated, and case remanded for further consideration in light of *Zinerman v. Burch*, *ante*, p. 113. Reported below: 856 F. 2d 655.

No. 88-6104. HAWKINS v. COLLINS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. *Certiorari* granted, judgment vacated, and case remanded for further consideration in light of *Selva v. Collins*, *ante*, p. 108, and *Penry v. Lynaugh*, 492 U. S. 302 (1989). Reported below: 862 F. 2d 487.

No. 88-6347. BRIDGE v. COLLINS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. *Certiorari* granted, judgment vacated, and case remanded for further consideration in light of *Selva v. Collins*, *ante*, p. 108, and *Penry v. Lynaugh*, 492 U. S. 302 (1989). Reported below: 856 F. 2d 712, 860 F. 2d 162, and 863 F. 2d 370.

No. 89-486. HERNANDEZ v. RICE, SECRETARY OF THE AIR FORCE. C. A. 5th Cir. *Certiorari* granted, judgment vacated,

March 5, 1990

494 U. S.

and case remanded to the Court of Appeals to consider whether or not, in all of the circumstances of the case, receipt of the nondefective complaint by the District Court clerk's office constituted a "filing" for the purposes of 42 U. S. C. §2000e-16(c) (1982 ed.). Reported below: 866 F. 2d 800.

No. 89-532. PEAT MARWICK MAIN & CO. *v.* HOLLOWAY ET AL. C. A. 10th Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Reves v. Ernst & Young*, ante, p. 56. Reported below: 879 F. 2d 772.

No. 89-599. EASTER HOUSE *v.* FELDER ET AL. C. A. 7th Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Zinerman v. Burch*, ante, p. 113. Reported below: 879 F. 2d 1458.

#### *Miscellaneous Orders*

No. — — —. CITY OF RANCHO CUCAMONGA ET AL. *v.* EDWARDS THEATRES CIRCUITS, INC.; and

No. — — —. MANNING *v.* UNITED STATES ENVIRONMENTAL PROTECTION AGENCY. Motions to direct the Clerk to file petitions for writs of certiorari out of time denied.

No. — — —. THOMPSON *v.* COVINGTON HOUSING DEVELOPMENT. Motion to direct the Clerk to file petition for writ of certiorari denied.

No. D-847. IN RE DISBARMENT OF NIXON. Disbarment entered. [For earlier order herein, see 493 U. S. 1000.]

No. D-848. IN RE DISBARMENT OF WILLIAMS. Disbarment entered. [For earlier order herein, see 493 U. S. 1000.]

No. D-872. IN RE DISBARMENT OF JOYCE. It is ordered that Thomas M. Joyce, of Chicago, Ill., be suspended from the practice of law in this Court and that a rule issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D-873. IN RE DISBARMENT OF SANDBORN. It is ordered that Michael Young Sandborn, of Lansing, Mich., be suspended from the practice of law in this Court and that a rule issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

494 U. S.

March 5, 1990

No. D-874. IN RE DISBARMENT OF PEIPER. It is ordered that Jordan L. Peiper, of Philadelphia, Pa., be suspended from the practice of law in this Court and that a rule issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D-875. IN RE DISBARMENT OF STONER. It is ordered that Carl B. Stoner, Jr., of Harrisburg, Pa., be suspended from the practice of law in this Court and that a rule issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

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

No. 88-938. BOEING CO., INC. *v.* UNITED STATES. C. A. 4th Cir. [Certiorari granted, 490 U. S. 1003.] Motion of petitioners for leave to file a supplemental brief after argument granted.

No. 89-542. PERPICH, GOVERNOR OF MINNESOTA, ET AL. *v.* DEPARTMENT OF DEFENSE ET AL. C. A. 8th Cir. [Certiorari granted, 493 U. S. 1017.] Motion of National Guard Association of the United States et al. for leave to participate in oral argument as *amici curiae*, for divided argument, and for additional time for argument denied.

No. 89-700. ASTROLINE COMMUNICATIONS COMPANY LIMITED PARTNERSHIP *v.* SHURBERG BROADCASTING OF HARTFORD, INC., ET AL. C. A. D. C. Cir. [Certiorari granted, 493 U. S. 1018.] Motion of Committee to Promote Diversity for leave to file a brief as *amicus curiae* granted.

No. 89-742. COLLINS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION *v.* YOUNGBLOOD. C. A. 5th Cir. [Certiorari granted *sub nom. Lynaugh v. Youngblood*, 493 U. S. 1001.] Motion of petitioner to dispense with printing the joint appendix granted.

No. 89-6428. IN RE MADSON. Petition for writ of habeas corpus denied.

*Certiorari Granted*

No. 89-1106. TRINOVA CORP. *v.* MICHIGAN DEPARTMENT OF TREASURY. Sup. Ct. Mich. Certiorari granted. Reported below: 433 Mich. 141, 445 N. W. 2d 428.

No. 89-5120. PERRY *v.* LOUISIANA. 19th Jud. Dist. Ct., Crim. Section V, Parish of East Baton Rouge, La. Motion of pe-

March 5, 1990

494 U. S.

tioner for leave to proceed *in forma pauperis* granted. Certiorari granted.

*Certiorari Denied*

No. 88-6525. *CHARTERS v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 863 F. 2d 302.

No. 88-6972. *SPENCER v. LEE ET AL.* C. A. 7th Cir. Certiorari denied. Reported below: 864 F. 2d 1376.

No. 89-473. *DOODY ET AL. v. SINALOA LAKE OWNERS ASSN., INC., ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 882 F. 2d 1398.

No. 89-746. *GENE R. SMITH CORP. v. TERRY'S TRACTOR, INC., ET AL.* Ct. App. Cal., 4th App. Dist. Certiorari denied. Reported below: 209 Cal. App. 3d 951, 257 Cal. Rptr. 598.

No. 89-809. *PAINWEBBER INC. ET AL. v. FRYE*. C. A. 5th Cir. Certiorari denied. Reported below: 877 F. 2d 396.

No. 89-829. *DEWITT BANK & TRUST CO., CONSERVATOR OF THE ESTATE OF MCNEELY v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 878 F. 2d 246.

No. 89-922. *PATEL v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 879 F. 2d 292.

No. 89-928. *CEMENTOS GUADALAJARA, S. A., ET AL. v. UNITED STATES ET AL.* C. A. Fed. Cir. Certiorari denied. Reported below: 879 F. 2d 847.

No. 89-1087. *JOHNSON v. BANK OF AMERICA*. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 89-1096. *LAWLER v. PAULISSEN ET UX*. C. A. 5th Cir. Certiorari denied. Reported below: 884 F. 2d 575.

No. 89-1100. *ROBINSON v. POURCIAU ET AL.* C. A. 5th Cir. Certiorari denied.

No. 89-1103. *GOULD INC. ET AL. v. MINISTRY OF DEFENSE OF THE ISLAMIC REPUBLIC OF IRAN*. C. A. 9th Cir. Certiorari denied. Reported below: 887 F. 2d 1357.

No. 89-1119. *HERRING ET AL. v. DELTA AIR LINES, INC., ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 894 F. 2d 1020.

494 U. S.

March 5, 1990

No. 89-1120. CATALINA *v.* CITY OF COLUMBUS, OHIO, ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 887 F. 2d 1086.

No. 89-1121. WEBB *v.* MERCK & CO., INC., ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 887 F. 2d 264.

No. 89-1122. CHRISTENSEN *v.* PETTEY ET AL. Ct. App. Utah. Certiorari denied.

No. 89-1126. SUEHL ET AL. *v.* IOWA. C. A. 8th Cir. Certiorari denied.

No. 89-1137. RANNELS *v.* MERIDIAN BANCORP, INC. C. A. 3d Cir. Certiorari denied. Reported below: 893 F. 2d 1331.

No. 89-1154. SHELL OFFSHORE INC. *v.* GATES ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 881 F. 2d 215.

No. 89-1162. CROMPTON, DBA PRO-PAR INDUSTRIES, INC. *v.* GENERAL MOTORS CORP. C. A. 6th Cir. Certiorari denied. Reported below: 884 F. 2d 580.

No. 89-1165. SOUTHWEST FOREST INDUSTRIES, INC. *v.* SUTTON. C. A. 10th Cir. Certiorari denied. Reported below: 868 F. 2d 352.

No. 89-1234. PELULLO *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 886 F. 2d 330.

No. 89-1250. MANZI *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 888 F. 2d 204.

No. 89-1252. BASALYGA ET AL. *v.* PENNSYLVANIA ET AL. Pa. Commw. Ct. Certiorari denied. Reported below: 123 Pa. Commw. 150, 553 A. 2d 496.

No. 89-1269. METRO-GOLDWYN-MAYER, INC., ET AL. *v.* FRANK MUSIC CORP. ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 886 F. 2d 1545.

No. 89-5844. MCKINNEY *v.* MISSISSIPPI. Sup. Ct. Miss. Certiorari denied.

No. 89-6156. VELASQUEZ *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 885 F. 2d 1076.

March 5, 1990

494 U. S.

No. 89-6157. *MELO v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 887 F. 2d 1082.

No. 89-6226. *RIVERA v. UNITED STATES*; and

No. 89-6266. *BURGESS v. UNITED STATES*. C. A. 11th Cir. Certiorari denied. Reported below: 884 F. 2d 544.

No. 89-6229. *RESTREPO v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 888 F. 2d 1387.

No. 89-6238. *TOWNSEND v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 888 F. 2d 130.

No. 89-6239. *GREENE v. UNITED STATES*. C. A. 11th Cir. Certiorari denied. Reported below: 880 F. 2d 1299.

No. 89-6252. *FRANK v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 888 F. 2d 1379.

No. 89-6327. *TUTTLE v. UTAH*. Sup. Ct. Utah. Certiorari denied. Reported below: 780 P. 2d 1203.

No. 89-6338. *BROOKS v. GEORGIA*. Sup. Ct. Ga. Certiorari denied. Reported below: 259 Ga. 562, 385 S. E. 2d 81.

No. 89-6351. *JOHNSON v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 888 F. 2d 1390.

No. 89-6394. *HARRIS v. ILLINOIS*. Sup. Ct. Ill. Certiorari denied. Reported below: 129 Ill. 2d 123, 544 N. E. 2d 357.

No. 89-6418. *MORRIS v. DEPARTMENT OF SOCIAL SERVICES*. Sup. Ct. Mich. Certiorari denied. Reported below: 432 Mich. 894.

No. 89-6432. *STREET v. JABE, WARDEN*. C. A. 6th Cir. Certiorari denied.

No. 89-6436. *ARMAN v. ILLINOIS*. Sup. Ct. Ill. Certiorari denied. Reported below: 131 Ill. 2d 115, 545 N. E. 2d 658.

No. 89-6437. *BRUMMELL v. TRICKEY ET AL.* C. A. 8th Cir. Certiorari denied. Reported below: 889 F. 2d 1091.

No. 89-6440. *RODMAN v. BOWER, SUPERINTENDENT, SOUTHEASTERN CORRECTIONAL INSTITUTION*. C. A. 6th Cir. Certiorari denied. Reported below: 886 F. 2d 1316.

494 U. S.

March 5, 1990

No. 89-6458. *MACGUIRE v. MILLER, SHINE & BRYAN ET AL.* C. A. 11th Cir. Certiorari denied. Reported below: 884 F. 2d 584.

No. 89-6508. *COX v. UNITED STATES.* C. A. 11th Cir. Certiorari denied. Reported below: 876 F. 2d 900.

No. 89-6531. *FRANKS v. BAUER, POLICE CHIEF, ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 889 F. 2d 272.

No. 89-6536. *CANTU v. UNITED STATES.* C. A. 5th Cir. Certiorari denied. Reported below: 889 F. 2d 273.

No. 89-6548. *HARRISON v. OKLAHOMA.* Ct. Crim. App. Okla. Certiorari denied.

No. 89-6564. *LAND v. UNITED STATES.* C. A. 9th Cir. Certiorari denied. Reported below: 889 F. 2d 1096.

No. 89-6582. *CURREN v. UNITED STATES.* C. A. D. C. Cir. Certiorari denied. Reported below: 281 U. S. App. D. C. 194, 888 F. 2d 891.

No. 89-6598. *PEOPLES v. UNITED STATES.* C. A. 6th Cir. Certiorari denied. Reported below: 892 F. 2d 80.

No. 89-6603. *DORIA v. UNITED STATES.* C. A. 9th Cir. Certiorari denied. Reported below: 891 F. 2d 296.

No. 89-6606. *BARNES v. UNITED STATES.* C. A. 1st Cir. Certiorari denied. Reported below: 890 F. 2d 545.

No. 89-6656. *SAKOVICH v. ARMSTRONG WORLD INDUSTRIES.* App. Ct. Ill., 3d Dist. Certiorari denied. Reported below: 176 Ill. App. 3d 1174, 549 N. E. 2d 361.

No. 89-6657. *SAKOVICH v. DODT.* App. Ct. Ill., 3d Dist. Certiorari denied. Reported below: 174 Ill. App. 3d 649, 529 N. E. 2d 258.

No. 89-1075. *A. A. POULTRY FARMS, INC., ET AL. v. ROSE ACRE FARMS, INC.* C. A. 7th Cir. Certiorari denied. JUSTICE WHITE would grant certiorari. Reported below: 881 F. 2d 1396.

No. 89-6219. *BYRD v. ARMONTROUT, WARDEN, ET AL.* C. A. 8th Cir.;

March 5, 6, 1990

494 U. S.

No. 89-6404. *TOWNSEND v. INDIANA*. Sup. Ct. Ind.; and  
No. 89-6405. *STARR v. ARKANSAS*. Sup. Ct. Ark. Certiorari denied. Reported below: No. 89-6219, 880 F. 2d 1; No. 89-6404, 533 N. E. 2d 1215; No. 89-6405, 300 Ark. xxiii.

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. 89-6592. *STEWART v. WASHINGTON*. Sup. Ct. Wash. Certiorari denied. JUSTICE BRENNAN and JUSTICE WHITE would grant certiorari. Reported below: 113 Wash. 2d 462, 780 P. 2d 844.

#### *Rehearing Denied*

No. A-259. *FAZZINI v. GLUCH ET AL.*, 493 U. S. 1014;  
No. 89-415. *BROOKS v. TOWN OF ASHLAND*, 493 U. S. 936;  
No. 89-5506. *HAKIM v. DEPARTMENT OF CIVIL RIGHTS ET AL.*, 493 U. S. 940;  
No. 89-5827. *MORGAN v. TURNAGE*, 493 U. S. 1047;  
No. 89-5832. *PERRY v. BALL, SECRETARY OF THE NAVY*, 493 U. S. 1027;  
No. 89-6065. *BILAL v. LOCKHART, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION*, 493 U. S. 1032;  
No. 89-6067. *VISSER v. COURT OF APPEAL OF CALIFORNIA, SECOND APPELLATE DISTRICT*, 493 U. S. 1048;  
No. 89-6098. *MARTIN v. UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT*, 493 U. S. 1048; and  
No. 89-6224. *BOND v. RAIKES, JUDGE, NELSON CIRCUIT COURT*, 493 U. S. 1062. Petitions for rehearing denied.

MARCH 6, 1990

#### *Miscellaneous Order*

No. A-606 (89-6785). *HEISHMAN v. CALIFORNIA*. Sup. Ct. Cal. Application for stay of execution of sentence of death, presented to JUSTICE O'CONNOR, and by her referred to the Court, granted pending the disposition by this Court of the petition for writ of certiorari. Should the petition for writ of certiorari be denied, this stay terminates automatically. In the event the peti-

494 U. S.

March 6, 16, 19, 1990

tion for writ of certiorari is granted, this stay shall continue pending the issuance of the mandate of this Court.

MARCH 16, 1990

*Miscellaneous Order*

No. 89-1433. UNITED STATES *v.* EICHMAN ET AL. Appeal from D. C. D. C.; and

No. 89-1434. UNITED STATES *v.* HAGGERTY ET AL. Appeal from D. C. W. D. Wash. Motion of the Solicitor General to expedite consideration of the jurisdictional statements granted to the extent that motions to dismiss or affirm shall be received by the Clerk on or before noon, Monday, March 26, 1990.

MARCH 19, 1990

*Certiorari Granted—Vacated and Remanded*

No. 88-6277. McLAUGHLIN *v.* NORTH CAROLINA. Sup. Ct. N. C. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *McKoy v. North Carolina*, ante, p. 433. Reported below: 323 N. C. 68, 372 S. E. 2d 49.

No. 88-6348. LLOYD *v.* NORTH CAROLINA. Sup. Ct. N. C. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *McKoy v. North Carolina*, ante, p. 433. Reported below: 323 N. C. 622, 374 S. E. 2d 277.

No. 88-6450. ALLEN *v.* NORTH CAROLINA. Sup. Ct. N. C. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *McKoy v. North Carolina*, ante, p. 433. Reported below: 323 N. C. 208, 372 S. E. 2d 855.

No. 88-6480. CUMMINGS *v.* NORTH CAROLINA. Sup. Ct. N. C. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *McKoy v. North Carolina*, ante, p. 433. Reported below: 323 N. C. 181, 372 S. E. 2d 541.

March 19, 1990

494 U. S.

No. 88-6682. *BARNES v. NORTH CAROLINA*. Sup. Ct. N. C. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *McKoy v. North Carolina*, ante, p. 433. Reported below: 323 N. C. 407, 373 S. E. 2d 400.

No. 88-6683. *FULLWOOD v. NORTH CAROLINA*. Sup. Ct. N. C. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *McKoy v. North Carolina*, ante, p. 433. Reported below: 323 N. C. 371, 373 S. E. 2d 518.

No. 88-6684. *HUNT v. NORTH CAROLINA*. Sup. Ct. N. C. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *McKoy v. North Carolina*, ante, p. 433. Reported below: 323 N. C. 407, 373 S. E. 2d 400.

No. 88-7306. *GREENE v. NORTH CAROLINA*. Sup. Ct. N. C. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *McKoy v. North Carolina*, ante, p. 433. Reported below: 324 N. C. 1, 376 S. E. 2d 430.

No. 89-1297. *INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 406, ET AL. v. GUIDRY*. C. A. 5th Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Breining v. Sheet Metal Workers*, 493 U. S. 67 (1989). Reported below: 882 F. 2d 929.

No. 89-5837. *LAWS v. NORTH CAROLINA*. Sup. Ct. N. C. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *McKoy v. North Carolina*, ante, p. 433. Reported below: 325 N. C. 81, 381 S. E. 2d 609.

No. 89-6077. *QUESINBERRY v. NORTH CAROLINA*. Sup. Ct. N. C. Motion of petitioner for leave to proceed *in forma paupe-*

494 U. S.

March 19, 1990

ris granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *McKoy v. North Carolina*, ante, p. 433. Reported below: 325 N. C. 125, 381 S. E. 2d 681.

No. 89-6526. *ARTIS v. NORTH CAROLINA*. Sup. Ct. N. C. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *McKoy v. North Carolina*, ante, p. 433. Reported below: 325 N. C. 278, 384 S. E. 2d 470.

*Miscellaneous Orders*

No. — — ——. *BAKER v. GONDLES, SHERIFF, ARLINGTON COUNTY JAIL, ET AL.*; and

No. — — ——. *HICKSON v. BOWLES, SHERIFF*. Motions to direct the Clerk to file petitions for writs of certiorari out of time denied.

No. A-591. *NEVILLE v. APPELLATE DIVISION, SUPREME COURT OF NEW YORK, SECOND JUDICIAL DEPARTMENT*. C. A. 2d Cir. Application for stay of proceedings, addressed to JUSTICE BRENNAN and referred to the Court, denied.

No. A-603 (89-6461). *JACKSON v. DUGGER, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS*. Sup. Ct. Fla. 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 and the petition for writ of certiorari and would vacate the death sentence in this case.

No. A-620 (89-1303). *RESERVE LIFE INSURANCE CO. v. EICHENSEER*. C. A. 5th Cir. Application for recall and stay of mandate of the United States Court of Appeals for the Fifth Circuit, presented to JUSTICE WHITE, and by him referred to the Court, granted, and it is ordered that the mandate is stayed pending final disposition of the petition for writ of certiorari.

March 19, 1990

494 U. S.

No. D-843. IN RE DISBARMENT OF BROWN. Disbarment entered. [For earlier order herein, see 493 U. S. 988.]

No. D-850. IN RE DISBARMENT OF MORRISON. James Robert Morrison III, of Alton, Ill., having requested to resign as a member of the Bar of this Court, it is ordered that his name be stricken from the roll of attorneys admitted to practice before the Bar of this Court. The rule to show cause, heretofore issued on January 16, 1990 [493 U. S. 1040], is hereby discharged.

No. D-853. IN RE DISBARMENT OF JONES. Motion to defer further proceedings granted. [For earlier order herein, see 493 U. S. 1040.]

No. D-876. IN RE DISBARMENT OF TOBIN. It is ordered that Thomas P. Tobin, of Lloyd Harbor, 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-877. IN RE DISBARMENT OF SOLERWITZ. It is ordered that Jack B. Solerwitz, of Brookville, 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. 88-2109. KANSAS ET AL. *v.* KANSAS POWER & LIGHT CO. ET AL. C. A. 10th Cir. [Certiorari granted, 493 U. S. 1041.] Motion of Nancy Allevato, Personal Representative of Michael J. Ferrantino, Sr., deceased, for leave to file a brief as *amicus curiae* granted.

No. 89-453. METRO BROADCASTING, INC. *v.* FEDERAL COMMUNICATIONS COMMISSION ET AL. C. A. D. C. Cir. [Certiorari granted, 493 U. S. 1017.] Motion of respondent Rainbow Broadcasting Co. for divided argument granted.

No. 89-504. SULLIVAN, SECRETARY OF HEALTH AND HUMAN SERVICES *v.* FINKELSTEIN. C. A. 3d Cir. [Certiorari granted, 493 U. S. 1055.] Motion of the Solicitor General to dispense with printing the joint appendix granted.

No. 89-901. W. R. GRACE & Co.-CONN. *v.* DEPARTMENT OF REVENUE OF MONTANA ET AL., 493 U. S. 1094. Motion of re-

494 U. S.

March 19, 1990

spondent Department of Revenue of Montana for damages and costs denied.

No. 89-5691. HUGHEY *v.* UNITED STATES. C. A. 5th Cir. [Certiorari granted, 493 U. S. 1018.] Motion of Insurance Crime Prevention Institute et al. for leave to file a brief as *amici curiae* granted.

No. 89-5809. SAWYER *v.* SMITH, INTERIM WARDEN. C. A. 5th Cir. [Certiorari granted, 493 U. S. 1042.] Motion of Stephen H. Sachs et al. for leave to file a brief as *amici curiae* granted.

No. 89-5867. IRWIN *v.* DEPARTMENT OF VETERANS AFFAIRS ET AL. C. A. 5th Cir. [Certiorari granted, 493 U. S. 1069.] Motion for appointment of counsel granted, and it is ordered that Jon R. Ker, Esq., of Hewitt, Tex., be appointed to serve as counsel for petitioner in this case.

No. 89-6560. MINTZ *v.* SUPREME COURT OF CALIFORNIA. Sup. Ct. Cal. Motion of petitioner for leave to proceed *in forma pauperis* denied. Petitioner is allowed until April 9, 1990, within which to pay the docketing fee required by Rule 38(a) and to submit a petition in compliance with Rule 33 of the Rules of this Court.

JUSTICE BRENNAN and JUSTICE MARSHALL, dissenting.

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

No. 89-6455. IN RE WARREN; and

No. 89-6492. IN RE WALKER. Petitions for writs of mandamus denied.

No. 89-927. IN RE WILL, SENIOR JUDGE, UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS. C. A. 7th Cir. Motions of Loyola University of Chicago School of Law and Hans Zeisel for leave to file briefs as *amici curiae* granted. Petition for writ of mandamus or prohibition or certiorari denied. Reported below: 881 F. 2d 494.

No. 89-6551. IN RE MARTIN; and

No. 89-6594. IN RE MARTIN. Petitions for writs of mandamus and/or prohibition denied.

March 19, 1990

494 U. S.

*Certiorari Granted*

No. 89-964. *MOSKAL v. UNITED STATES*. C. A. 3d Cir. Certiorari granted. Reported below: 888 F. 2d 283.

No. 89-1166. *GROVES ET AL. v. RING SCREW WORKS, FERNDALE FASTENER DIVISION*. C. A. 6th Cir. Certiorari granted. Reported below: 882 F. 2d 1081.

*Certiorari Denied*. (See also No. 89-927, *supra*.)

No. 89-811. *NEIMAN, DBA CONCOURSE NURSING HOME v. SULLIVAN, SECRETARY OF HEALTH AND HUMAN SERVICES, ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 888 F. 2d 126.

No. 89-870. *KIESEL CO., INC. v. HOUSEHOLDER, SPECIAL AGENT, FEDERAL BUREAU OF INVESTIGATION*. C. A. 8th Cir. Certiorari denied. Reported below: 879 F. 2d 385.

No. 89-914. *NATIONAL POSTERS, INC., ET AL. v. NATIONAL LABOR RELATIONS BOARD*. C. A. 4th Cir. Certiorari denied. Reported below: 885 F. 2d 175.

No. 89-931. *PORTLAND AUDUBON SOCIETY ET AL. v. LUJAN, SECRETARY OF THE INTERIOR, ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 884 F. 2d 1233.

No. 89-973. *LOWE ET AL. v. COMMACK UNION FREE SCHOOL DISTRICT ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 886 F. 2d 1364.

No. 89-977. *BALLARD v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 887 F. 2d 1078.

No. 89-985. *JAY v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 887 F. 2d 1081.

No. 89-986. *LUCAS v. SKINNER, SECRETARY OF TRANSPORTATION*. C. A. 4th Cir. Certiorari denied. Reported below: 879 F. 2d 1240.

No. 89-992. *CERTIFIED PLAINTIFF CLASS IN MDL-250 v. FOLDING CARTON RESERVE FUND ET AL.*;

No. 89-1081. *FOLDING CARTON ADMINISTRATION COMMITTEE ET AL. v. FOLDING CARTON RESERVE FUND ET AL.*; and

494 U. S.

March 19, 1990

No. 89-1097. UNITED STATES *v.* FOLDING CARTON RESERVE FUND ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 881 F. 2d 494.

No. 89-1002. WHITE *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 879 F. 2d 1509.

No. 89-1012. FIORELLA ET AL. *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 888 F. 2d 725.

No. 89-1022. PEPSICO, INC. *v.* SHARP. Sup. Ct. Okla. Certiorari denied. Reported below: 781 P. 2d 814.

No. 89-1030. BROWN *v.* LEDBETTER, COMMISSIONER, GEORGIA DEPARTMENT OF HUMAN RESOURCES, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 875 F. 2d 1558.

No. 89-1037. XEMAS, INC. *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 889 F. 2d 1091.

No. 89-1043. HARRIS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 882 F. 2d 1334.

No. 89-1044. OCEAN STATE PHYSICIANS HEALTH PLAN, INC., ET AL. *v.* BLUE CROSS & BLUE SHIELD OF RHODE ISLAND. C. A. 1st Cir. Certiorari denied. Reported below: 883 F. 2d 1101.

No. 89-1049. DANESE, PERSONAL REPRESENTATIVE OF THE ESTATE OF DANESE, ET AL. *v.* ASMAN, CHIEF OF POLICE OF THE CITY OF ROSEVILLE, ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 875 F. 2d 1239.

No. 89-1112. WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY *v.* JOHNSON ET VIR. C. A. D. C. Cir. Certiorari denied. Reported below: 280 U. S. App. D. C. 53, 883 F. 2d 125.

No. 89-1114. DONALDSON ET AL. *v.* HOPKINS TOWNSHIP, ILLINOIS, ET AL. App. Ct. Ill., 3d Dist. Certiorari denied. Reported below: 182 Ill. App. 3d 1107, 554 N. E. 2d 1125.

No. 89-1123. FLEISCHHAUER ET AL. *v.* FELTNER ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 879 F. 2d 1290.

No. 89-1130. RUSSELL *v.* SULLIVAN, SECRETARY OF HEALTH AND HUMAN SERVICES. C. A. 8th Cir. Certiorari denied. Reported below: 887 F. 2d 170.

March 19, 1990

494 U. S.

No. 89-1134. *YOSEF v. PASSAMAQUODDY TRIBE ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 876 F. 2d 283.

No. 89-1136. *MCDONNELL v. BOARD OF COMMISSIONERS, CANYON COUNTY, IDAHO.* Sup. Ct. Idaho. Certiorari denied. Reported below: 116 Idaho 824, 780 P. 2d 146.

No. 89-1138. *STEELE v. MINNESOTA.* Ct. App. Minn. Certiorari denied.

No. 89-1139. *LOCAL 827, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS v. TRAD ET AL.* Super. Ct. N. J., App. Div. Certiorari denied.

No. 89-1144. *SARGENT ET AL. v. PAINEWEBBER INC. ET AL.* C. A. D. C. Cir. Certiorari denied. Reported below: 280 U. S. App. D. C. 7, 882 F. 2d 529.

No. 89-1145. *MCCRACKEN v. CITY OF COLLEGE PARK, GEORGIA, ET AL.* Sup. Ct. Ga. Certiorari denied. Reported below: 259 Ga. 490, 384 S. E. 2d 648.

No. 89-1150. *BLUE CROSS & BLUE SHIELD OF MARYLAND, INC. v. WEINER ET AL.* Dist. Ct. App. Fla., 4th Dist. Certiorari denied. Reported below: 543 So. 2d 794.

No. 89-1153. *FLORIDA v. CHRISTIAN;* and

No. 89-6462. *CHRISTIAN v. FLORIDA.* Sup. Ct. Fla. Certiorari denied. Reported below: 550 So. 2d 450.

No. 89-1155. *THOMAS v. CARPENTER ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 881 F. 2d 828.

No. 89-1169. *COMORA ET AL. v. RADELL ET AL.* Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 89-1174. *HIRSCH, TESTAMENTARY EXECUTOR OF THE SUCCESSION OF GODCHAUX, WIDOW OF NEWMAN, ET AL. v. CITY OF NEW ORLEANS ET AL.* Sup. Ct. La. Certiorari denied. Reported below: 549 So. 2d 1218.

No. 89-1180. *BARRETT ET AL. v. CONTINENTAL ILLINOIS NATIONAL BANK & TRUST COMPANY OF CHICAGO.* C. A. 1st Cir. Certiorari denied. Reported below: 882 F. 2d 1.

No. 89-1181. *BURLINGTON NORTHERN RAILROAD COMPANY EMPLOYEES v. MONTANA DEPARTMENT OF REVENUE ET AL.*

494 U. S.

March 19, 1990

Sup. Ct. Mont. Certiorari denied. Reported below: 239 Mont. 458, 781 P. 2d 1121.

No. 89-1183. TRUMPOLD ET UX. *v.* BESCH ET AL. App. Ct. Conn. Certiorari denied. Reported below: 19 Conn. App. 22, 561 A. 2d 438.

No. 89-1184. LACKE ET AL. *v.* GRAY, FKA LENGYEL. C. A. 7th Cir. Certiorari denied. Reported below: 885 F. 2d 399.

No. 89-1185. PUERTO RICO AQUEDUCT AND SEWER AUTHORITY ET AL. *v.* COMITE PRO RESCATE DE LA SALUD ET AL. C. A. 1st Cir. Certiorari denied. Reported below: 888 F. 2d 180.

No. 89-1187. BANFF, LTD., FKA SWEATER BEE BY BANFF, LTD. *v.* SALANT CORP., SUCCESSOR IN INTEREST TO BOTH MANHATTAN INDUSTRIES, INC., AND BAYARD SHIRT CORP. C. A. 2d Cir. Certiorari denied. Reported below: 885 F. 2d 1.

No. 89-1188. KELLY *v.* GILL, STATE ATTORNEY, FIFTH JUDICIAL CIRCUIT OF FLORIDA, ET AL. Dist. Ct. App. Fla., 5th Dist. Certiorari denied. Reported below: 544 So. 2d 1162.

No. 89-1190. AMAZING STORES, INC. *v.* NATIONAL LABOR RELATIONS BOARD. C. A. D. C. Cir. Certiorari denied. Reported below: 281 U. S. App. D. C. 100, 887 F. 2d 328.

No. 89-1196. PACYNA *v.* GREENLEY ET AL. Sup. Ct. N. Y., Erie County. Certiorari denied.

No. 89-1199. STICH *v.* UNITED STATES BANKRUPTCY COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA (ROBERTSON ET AL., REAL PARTIES IN INTEREST). C. A. 9th Cir. Certiorari denied.

No. 89-1200. DOHR, PERSONAL REPRESENTATIVE OF THE ESTATE OF DOHR *v.* PROVENCAL ET AL. Ct. App. Mich. Certiorari denied.

No. 89-1202. FOLSTAD ET AL. *v.* ILLINOIS STATE BOARD OF INVESTMENT ET AL. C. A. 7th Cir. Certiorari denied.

No. 89-1204. UNITED STATES DEPARTMENT OF DEFENSE *v.* NATIONAL SECURITY ARCHIVE. C. A. D. C. Cir. Certiorari denied. Reported below: 279 U. S. App. D. C. 308, 880 F. 2d 1381.

No. 89-1205. CALVERT *v.* ALABAMA. Ct. Crim. App. Ala. Certiorari denied. Reported below: 553 So. 2d 136.

March 19, 1990

494 U. S.

No. 89-1207. *PMI PETROLEUM MARKETERS, INC., ET AL. v. GETTY PETROLEUM CORP.* C. A. 2d Cir. Certiorari denied. Reported below: 888 F. 2d 1376.

No. 89-1208. *LOCAL 530 OF OPERATIVE PLASTERERS & CEMENT MASONS INTERNATIONAL ASSN. v. DRYWALL TAPERS & POINTERS OF GREATER NEW YORK, LOCAL 1974.* C. A. 2d Cir. Certiorari denied. Reported below: 889 F. 2d 389.

No. 89-1210. *HARDUVEL ET AL. v. GENERAL DYNAMICS CORP.* C. A. 11th Cir. Certiorari denied. Reported below: 878 F. 2d 1311.

No. 89-1211. *COGSWELL v. COLORADO.* Sup. Ct. Colo. Certiorari denied.

No. 89-1213. *CINEMA BLUE OF CHARLOTTE, INC., ET AL. v. GILCHRIST, DISTRICT ATTORNEY OF THE 26TH PROSECUTORIAL DISTRICT, NORTH CAROLINA.* C. A. 4th Cir. Certiorari denied. Reported below: 887 F. 2d 49.

No. 89-1214. *ORTHOKINETICS, INC., ET AL. v. PENOX TECHNOLOGIES, INC., ET AL.* C. A. 3d Cir. Certiorari denied. Reported below: 891 F. 2d 282.

No. 89-1222. *AHK TAR, DBA CIRCLE MOBIL v. BIRD OIL CO.* C. A. 4th Cir. Certiorari denied.

No. 89-1224. *YOUNGBERG, DBA MAKI v. UNITED STATES.* C. A. Fed. Cir. Certiorari denied. Reported below: 889 F. 2d 1099.

No. 89-1227. *CSXT, INC. v. PITZ, DIRECTOR, DEPARTMENT OF TRANSPORTATION OF MICHIGAN, ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 883 F. 2d 468.

No. 89-1229. *JASSO v. FINNEY.* Sup. Ct. Alaska. Certiorari denied. Reported below: 781 P. 2d 973.

No. 89-1231. *FAN v. MINNESOTA.* Ct. App. Minn. Certiorari denied. Reported below: 445 N. W. 2d 243.

No. 89-1235. *LANDER ET UX. v. ALABAMA.* Ct. Crim. App. Ala. Certiorari denied. Reported below: 553 So. 2d 640.

No. 89-1236. *BOARD OF COUNTY COMMISSIONERS, LAWRENCE COUNTY, OHIO v. L. ROBERT KIMBALL & ASSOCIATES.* C. A. 6th Cir. Certiorari denied. Reported below: 860 F. 2d 683.

494 U. S.

March 19, 1990

No. 89-1237. *GOGOLIN & STELTER v. FIRST CITY BANK, BELLAIRE, N. A.* C. A. 5th Cir. Certiorari denied. Reported below: 886 F. 2d 100.

No. 89-1239. *CHIA v. LUJAN, SECRETARY OF THE INTERIOR, ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 877 F. 2d 64.

No. 89-1244. *SHARP v. INDIANA.* Sup. Ct. Ind. Certiorari denied. Reported below: 534 N. E. 2d 708.

No. 89-1245. *COHEN ET AL. v. REED ET AL.* App. Div., Sup. Ct. N. Y., 2d Jud. Dept. Certiorari denied. Reported below: 120 App. Div. 2d 480, 501 N. Y. S. 2d 685.

No. 89-1248. *RAMPP v. UNITED STATES.* C. A. 3d Cir. Certiorari denied. Reported below: 882 F. 2d 512.

No. 89-1251. *WRENN v. SULLIVAN, SECRETARY OF HEALTH AND HUMAN SERVICES.* C. A. 4th Cir. Certiorari denied. Reported below: 888 F. 2d 1387.

No. 89-1260. *BAUR v. UNITED STATES.* C. A. 6th Cir. Certiorari denied. Reported below: 888 F. 2d 1391.

No. 89-1266. *CHAMBERLIN v. UNITED STATES.* C. A. 6th Cir. Certiorari denied. Reported below: 886 F. 2d 330.

No. 89-1271. *JUPIN v. STETZER ET AL.* C. A. 3d Cir. Certiorari denied.

No. 89-1278. *MERKOW v. LAWN, ADMINISTRATOR OF THE DRUG ENFORCEMENT ADMINISTRATION.* C. A. 3d Cir. Certiorari denied. Reported below: 891 F. 2d 282.

No. 89-1292. *BYERS v. UNITED STATES.* C. A. 4th Cir. Certiorari denied. Reported below: 894 F. 2d 402.

No. 89-1301. *SAFIR v. UNITED STATES LINES, INC., ET AL.* (two cases). C. A. 2d Cir. Certiorari denied.

No. 89-5448. *GROFF v. HUMMER ET AL.* C. A. 3d Cir. Certiorari denied. Reported below: 879 F. 2d 857.

No. 89-5924. *ROBTOY v. CALLAHAN, SUPERINTENDENT, MCNEIL ISLAND CORRECTION FACILITY; and*

No. 89-5925. *NORMAN v. DUCHARME, SUPERINTENDENT, WASHINGTON STATE REFORMATORY.* C. A. 9th Cir. Certiorari

March 19, 1990•

494 U. S.

denied. Reported below: No. 89-5924, 871 F. 2d 1478; No. 89-5925, 871 F. 2d 1483.

No. 89-6006. *PILKEY v. TENNESSEE*. Sup. Ct. Tenn. Certiorari denied. Reported below: 776 S. W. 2d 943.

No. 89-6083. *DAVIS v. ILLINOIS*. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 181 Ill. App. 3d 1114, 553 N. E. 2d 448.

No. 89-6146. *BLACKMON v. ALABAMA*. Ct. Crim. App. Ala. Certiorari denied. Reported below: 550 So. 2d 1085.

No. 89-6165. *LUCAS v. BUNNELL, WARDEN, ET AL.* C. A. 9th Cir. Certiorari denied.

No. 89-6176. *CURL v. CALIFORNIA*. Ct. App. Cal., 5th App. Dist. Certiorari denied. Reported below: 210 Cal. App. 3d 1310, 258 Cal. Rptr. 308.

No. 89-6178. *GROGG v. VIRGINIA*. Sup. Ct. Va. Certiorari denied.

No. 89-6189. *BLIGE v. UNITED STATES*. C. A. 11th Cir. Certiorari denied. Reported below: 888 F. 2d 76.

No. 89-6279. *ALVAREZ MORENO v. UNITED STATES*. C. A. 11th Cir. Certiorari denied. Reported below: 874 F. 2d 1402.

No. 89-6285. *CHAMBERS v. OFFICE OF FEDERAL CONTRACT COMPLIANCE PROGRAMS ET AL.* C. A. 7th Cir. Certiorari denied. Reported below: 886 F. 2d 332.

No. 89-6290. *XETHAKIS v. FULCOMER, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT HUNTINGDON, ET AL.* C. A. 3d Cir. Certiorari denied.

No. 89-6293. *FERREL v. UNITED STATES*. C. A. 11th Cir. Certiorari denied. Reported below: 864 F. 2d 792.

No. 89-6305. *WATSON v. OHIO*. Ct. App. Ohio, Noble County. Certiorari denied.

No. 89-6316. *BUCK v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 888 F. 2d 234.

No. 89-6425. *FLANAGAN v. UNITED STATES PAROLE COMMISSION ET AL.* C. A. 10th Cir. Certiorari denied.

494 U. S.

March 19, 1990

No. 89-6447. *GRAVES v. CAREERCOM CORP.* C. A. 3d Cir. Certiorari denied. Reported below: 888 F. 2d 1380.

No. 89-6451. *WASKO v. MUNICIPAL COURT OF SAN LUIS OBISPO.* Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 89-6452. *BURSON v. SCOTT, WARDEN.* Sup. Ct. Ga. Certiorari denied.

No. 89-6454. *TRAMMELL v. BERRY, WARDEN, ET AL.* C. A. 11th Cir. Certiorari denied.

No. 89-6456. *SAUNDERS v. SULLIVAN ET AL.* C. A. 3d Cir. Certiorari denied. Reported below: 888 F. 2d 1382.

No. 89-6457. *WRIGHT v. HOWSE, PAROLE OFFICER, GEORGIA STATE BOARD OF PARDONS AND PAROLES, ET AL.* C. A. 11th Cir. Certiorari denied.

No. 89-6464. *BURROUGHS v. HERTZ RENT-A-CAR.* C. A. 6th Cir. Certiorari denied. Reported below: 875 F. 2d 862.

No. 89-6466. *EAKINS v. LECUREUX ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 883 F. 2d 74.

No. 89-6469. *BENNETT v. TWEEDALE ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 886 F. 2d 1315.

No. 89-6470. *ELDRIDGE v. OKLAHOMA.* Ct. Crim. App. Okla. Certiorari denied.

No. 89-6472. *FERACI v. SMITH, WARDEN.* C. A. 5th Cir. Certiorari denied. Reported below: 888 F. 2d 1389.

No. 89-6479. *SUTTLES, ADMINISTRATRIX OF THE ESTATE OF SUTTLES v. CITY OF CHATTANOOGA ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 886 F. 2d 1316.

No. 89-6488. *THEOPHILE v. DUGGER, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS.* C. A. 11th Cir. Certiorari denied.

No. 89-6491. *ESTEVEZ v. TEXAS.* Ct. Crim. App. Tex. Certiorari denied.

No. 89-6496. *PRZYBYCSZEWSKI v. BUBBA.* C. A. 3d Cir. Certiorari denied.

March 19, 1990

494 U. S.

No. 89-6498. *BEAS v. CALIFORNIA*. Sup. Ct. Cal. Certiorari denied.

No. 89-6501. *HANNAH v. UNITED STATES*. C. A. 11th Cir. Certiorari denied. Reported below: 892 F. 2d 88.

No. 89-6502. *FERNOS-LOPEZ v. FIGARELLA-LOPEZ*. Sup. Ct. P. R. Certiorari denied.

No. 89-6504. *SULLIVAN v. ALASKA*. Ct. App. Alaska. Certiorari denied.

No. 89-6505. *WHITAKER v. SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA (BAY AREA RAPID TRANSIT, REAL PARTY IN INTEREST)*. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 89-6506. *WHITAKER v. SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA (PASCARELLA, REAL PARTY IN INTEREST)*. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 89-6511. *FIELDS v. STEINBRENNER ET AL.* C. A. 11th Cir. Certiorari denied.

No. 89-6519. *MARSH v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 889 F. 2d 1090.

No. 89-6521. *MCROY v. FOGG, SUPERINTENDENT, COXSACKIE CORRECTIONAL FACILITY, ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 884 F. 2d 1381.

No. 89-6522. *ALLEN v. COLLINS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION*. C. A. 5th Cir. Certiorari denied.

No. 89-6527. *HOBBS v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 886 F. 2d 1313.

No. 89-6528. *CARRION-COLLAZO v. BEYER, SUPERINTENDENT, NEW JERSEY STATE PRISON, ET AL.* C. A. 3d Cir. Certiorari denied. Reported below: 891 F. 2d 279.

No. 89-6529. *EASLEY v. MCANULTY ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 889 F. 2d 273.

No. 89-6533. *GILLESPIE v. WEST VIRGINIA*. Cir. Ct. Pleasants County, W. Va. Certiorari denied.

494 U. S.

March 19, 1990

No. 89-6534. *CASE v. MONDRAGON, WARDEN*. C. A. 10th Cir. Certiorari denied. Reported below: 887 F. 2d 1388.

No. 89-6537. *LEWIS v. RUSSE ET AL.* C. A. 7th Cir. Certiorari denied.

No. 89-6541. *WATTS v. CALIFORNIA*. Ct. App. Cal.; 4th App. Dist. Certiorari denied.

No. 89-6542. *PHILLIPS, AKA SHABAZZ v. OKLAHOMA*. Ct. Crim. App. Okla. Certiorari denied.

No. 89-6543. *RIVERA v. ILLINOIS*. Sup. Ct. Ill. Certiorari denied. Reported below: 131 Ill. 2d 328, 546 N. E. 2d 533.

No. 89-6544. *SCOTT v. HEATH ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 889 F. 2d 1084.

No. 89-6550. *O'HALLORAN v. RYAN, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT DALLAS, ET AL.* C. A. 3d Cir. Certiorari denied. Reported below: 887 F. 2d 262.

No. 89-6552. *HUMMEL v. JAGO, SUPERINTENDENT, LONDON CORRECTIONAL INSTITUTION*. C. A. 6th Cir. Certiorari denied. Reported below: 886 F. 2d 1316.

No. 89-6553. *GAUNCE v. BURGNER ET AL.* C. A. 9th Cir. Certiorari denied.

No. 89-6555. *HUTCHERSON v. LOCKHART, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION*. C. A. 8th Cir. Certiorari denied. Reported below: 890 F. 2d 418.

No. 89-6556. *McCONE v. SAGEBRUSH PROPERTIES, INC., ET AL.* C. A. 10th Cir. Certiorari denied.

No. 89-6557. *MINDEK v. PENNSYLVANIA*. Ct. Common Pleas, Washington County, Pa. Certiorari denied.

No. 89-6558. *HARDING v. DELAWARE*. Sup. Ct. Del. Certiorari denied. Reported below: 567 A. 2d 421.

No. 89-6566. *DICE v. TRIPPETT, WARDEN*. C. A. 6th Cir. Certiorari denied. Reported below: 886 F. 2d 1315.

No. 89-6567. *ALMOND v. COWLEY, WARDEN, ET AL.* C. A. 10th Cir. Certiorari denied.

March 19, 1990

494 U. S.

No. 89-6568. *COLEMAN v. TEXAS*. Ct. Crim. App. Tex. Certiorari denied.

No. 89-6569. *DILLARD v. OWENS, COMMISSIONER OF CORRECTIONS OF PENNSYLVANIA, ET AL.* C. A. 3d Cir. Certiorari denied. Reported below: 887 F. 2d 260.

No. 89-6570. *SUTTON v. MARYLAND ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 886 F. 2d 708.

No. 89-6575. *BARLEY v. COLLINS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION.* C. A. 5th Cir. Certiorari denied.

No. 89-6578. *SMITHERMAN v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 889 F. 2d 189.

No. 89-6580. *WEATHERSBY v. UNITED STATES*. C. A. 10th Cir. Certiorari denied.

No. 89-6588. *MOTTON v. MANN'S WRECKER SERVICE*. Sup. Ct. Tenn. Certiorari denied.

No. 89-6590. *HARRIS v. UNITED STATES*. Ct. App. D. C. Certiorari denied.

No. 89-6593. *LAWRENCE v. MOODY, SUPERINTENDENT, WILDWOOD CORRECTIONAL CENTER*. C. A. 9th Cir. Certiorari denied.

No. 89-6599. *CORN v. KNAUF ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 887 F. 2d 1086.

No. 89-6601. *POODRY v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 889 F. 2d 1410.

No. 89-6602. *KIMBERLIN v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 886 F. 2d 1318.

No. 89-6610. *BARNETT v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 887 F. 2d 1088.

No. 89-6611. *DAVIS v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 888 F. 2d 1392.

No. 89-6612. *GUTIERREZ-GONZALES v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 891 F. 2d 296.

494 U. S.

March 19, 1990

No. 89-6616. *SMITH v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 892 F. 2d 77.

No. 89-6617. *SAEID v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 891 F. 2d 904.

No. 89-6623. *O'NEILL v. FULCOMER, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT HUNTINGDON, ET AL.* C. A. 3d Cir. Certiorari denied.

No. 89-6625. *MILLINES v. UNITED STATES*. C. A. 11th Cir. Certiorari denied. Reported below: 893 F. 2d 348.

No. 89-6630. *JAMESON v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 891 F. 2d 293.

No. 89-6631. *WILLIAMS v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 891 F. 2d 212.

No. 89-6632. *DYER v. EVITTS, WARDEN, ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 894 F. 2d 407.

No. 89-6638. *MILLER v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 880 F. 2d 415.

No. 89-6639. *KIM v. UNITED STATES*. C. A. 9th Cir. Certiorari denied.

No. 89-6641. *BRAGGS v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 888 F. 2d 1391.

No. 89-6642. *DOOLAN v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 892 F. 2d 80.

No. 89-6643. *FRANKLIN v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 893 F. 2d 343.

No. 89-6649. *MARTINS v. UNITED STATES*. C. A. 11th Cir. Certiorari denied. Reported below: 892 F. 2d 88.

No. 89-6652. *BROWN v. UNITED STATES*. Ct. App. D. C. Certiorari denied. Reported below: 567 A. 2d 426.

No. 89-6658. *EDWARDS v. WALLACE, WARDEN, ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 891 F. 2d 286.

March 19, 1990

494 U. S.

No. 89-6666. *SHEEHAN v. UNITED STATES*. C. A. 10th Cir. Certiorari denied. Reported below: 890 F. 2d 1461.

No. 89-6668. *WILSON v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 891 F. 2d 293.

No. 89-6670. *RODGER v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 894 F. 2d 1341.

No. 89-6683. *FINCH v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 891 F. 2d 296.

No. 89-6686. *KIRKLAND v. UNITED STATES*. C. A. D. C. Cir. Certiorari denied.

No. 89-6695. *COLEMAN v. UNITED STATES*. Ct. App. D. C. Certiorari denied.

No. 89-6699. *FANT v. UNITED STATES*. C. A. 11th Cir. Certiorari denied. Reported below: 890 F. 2d 408.

No. 89-6710. *PETERSON v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 875 F. 2d 857.

No. 89-6717. *MEDLEY v. UNITED STATES*. Ct. App. D. C. Certiorari denied.

No. 89-6728. *HANSON v. MCCAUGHTRY, SUPERINTENDENT, WAUPUN CORRECTIONAL INSTITUTION, ET AL.* C. A. 7th Cir. Certiorari denied. Reported below: 888 F. 2d 129.

No. 89-6730. *HERNANDEZ DE ARAUJO v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 893 F. 2d 343.

- No. 88-6881. *BEAN v. CALIFORNIA*. Sup. Ct. Cal.;
- No. 88-7133. *ADCOX v. CALIFORNIA*. Sup. Ct. Cal.;
- No. 88-7246. *FREY v. PENNSYLVANIA*. Sup. Ct. Pa.;
- No. 88-7488. *WALKER v. CALIFORNIA*. Sup. Ct. Cal.;
- No. 88-7562. *KIMBLE v. VASQUEZ, WARDEN*. Sup. Ct. Cal.;
- No. 89-5201. *COLEMAN v. CALIFORNIA*. Sup. Ct. Cal.;
- No. 89-5257. *JOHNSON v. CALIFORNIA*. Sup. Ct. Cal.;
- No. 89-5444. *BONIN v. CALIFORNIA*. Sup. Ct. Cal.;
- No. 89-5515. *HICKS v. OHIO*. Sup. Ct. Ohio;
- No. 89-5621. *GRANT v. VASQUEZ, WARDEN*. Sup. Ct. Cal.;

494 U. S.

March 19, 1990

- No. 89-5892. *SILVA v. CALIFORNIA*. Sup. Ct. Cal.;  
No. 89-5898. *BURTON v. CALIFORNIA*. Sup. Ct. Cal.;  
No. 89-5997. *MCDOWELL v. CALIFORNIA*. Sup. Ct. Cal.;  
No. 89-5998. *HAMILTON v. CALIFORNIA*. Sup. Ct. Cal.;  
No. 89-6181. *MCCORMICK v. TENNESSEE*. Sup. Ct. Tenn.;  
No. 89-6194. *BLOOM v. CALIFORNIA*. Sup. Ct. Cal.;  
No. 89-6213. *LUCKY v. VASQUEZ, WARDEN*. Sup. Ct. Cal.;  
No. 89-6253. *MASSIE v. HENNESSEY ET AL.* C. A. 9th Cir.;  
No. 89-6284. *JOHNSON v. OHIO*. Sup. Ct. Ohio;  
No. 89-6322. *FOSTER v. TEXAS*. Ct. Crim. App. Tex.;  
No. 89-6342. *ROBBINS v. CALIFORNIA*. Sup. Ct. Cal.;  
No. 89-6532. *SUMMERLIN v. ARIZONA*. Super. Ct. Ariz.,  
Maricopa County;  
No. 89-6547. *LIGHTBOURNE v. DUGGER, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS*. Sup. Ct. Fla.; and  
No. 89-6584. *ROBERTS v. MISSOURI*. Sup. Ct. Mo. Certiorari denied. Reported below: No. 88-6881, 46 Cal. 3d 919, 760 P. 2d 996; No. 88-7133, 47 Cal. 3d 207, 763 P. 2d 906; No. 88-7246, 520 Pa. 338, 554 A. 2d 27; No. 88-7488, 47 Cal. 3d 605, 765 P. 2d 70; No. 89-5201, 48 Cal. 3d 112, 768 P. 2d 32; No. 89-5257, 47 Cal. 3d 1194, 767 P. 2d 1047; No. 89-5515, 43 Ohio St. 3d 72, 538 N. E. 2d 1030; No. 89-5898, 48 Cal. 3d 843, 771 P. 2d 1270; No. 89-5998, 48 Cal. 3d 1142, 774 P. 2d 730; No. 89-6181, 778 S. W. 2d 48; No. 89-6194, 48 Cal. 3d 1194, 774 P. 2d 698; No. 89-6253, 875 F. 2d 1386; No. 89-6284, 46 Ohio St. 3d 96, 545 N. E. 2d 636; No. 89-6322, 779 S. W. 2d 845; No. 89-6547, 549 So. 2d 1364; No. 89-6584, 775 S. W. 2d 92.

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. 88-7381. *BONIN v. CALIFORNIA*. Sup. Ct. Cal. Certiorari denied. Reported below: 47 Cal. 3d 808, 765 P. 2d 460.

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 penalty in this case. Even if I did not take this view, I would grant the petition because it raises several important and recurring questions concerning a criminal defendant's Sixth Amendment right to the assistance of counsel unburdened by any conflict of interest. First, on what showing must a trial court explore a possible conflict on the part of a defendant's attorney? Second, if a defendant's attorney had an actual conflict, must the defendant demonstrate that the conflict adversely affected the attorney's performance in order to obtain a new trial?

# I

On the eve of his trial for several murders and robberies, petitioner William George Bonin moved to replace Earl Hanson, who had been his attorney for over a year, with William Charvet. The prosecution opposed the motion principally on the ground that substituting Charvet would create two conflicts of interest that could jeopardize the effectiveness of Charvet's representation. First, Charvet had maintained an attorney-client relationship with James Munro, Bonin's alleged accomplice and a key prosecution witness against him, during which Charvet and Munro had discussed the facts of the case. Second, the prosecution maintained that Charvet's retainer agreement likely included a provision giving him the literary rights to Bonin's life story. The trial court initially denied Bonin's motion to substitute Charvet for Hanson, in large part because it found that Charvet's relationship with Munro created an actual conflict of interest. The court later permitted Charvet to represent Bonin, however, without addressing either conflict and without obtaining a waiver from Bonin of his right to conflict-free counsel.

Bonin subsequently was convicted of 10 counts of murder and robbery and sentenced to death. The California Supreme Court, in a split decision, affirmed the convictions and sentence, rejecting Bonin's argument that Charvet's alleged and actual conflicts of interest deprived Bonin of effective assistance of counsel. The court held that the trial court did not err by failing to explore the alleged literary rights agreement because the trial court had not been presented with sufficient evidence of such an agreement. Although the State Supreme Court did find that the trial court erred in allowing Charvet's substitution after learning of his rela-

1039

MARSHALL, J., dissenting

tionship with Munro, it refused to reverse the convictions and sentence on the ground that Bonin had not demonstrated that Charvet's performance as counsel was adversely affected by this conflict of interest. 47 Cal. 3d 808, 765 P. 2d 460 (1989).

## II

I would grant Bonin's petition to determine whether the trial court had a duty to inquire into the potential conflict of interest arising from the alleged literary rights deal between Charvet and Bonin. It is well established that the right to effective assistance of counsel carries with it "a correlative right to representation that is free from conflicts of interest." *Wood v. Georgia*, 450 U. S. 261, 271 (1981). It is also apparent that a literary rights agreement may seriously undermine an advocate's loyalty to his client's interests. In a passage quoted in the California Supreme Court's opinion, the American Bar Association underscores the dangers of such arrangements:

"A grave conflict of interest can arise out of an agreement between a lawyer and an accused giving the lawyer the right to publish books, plays, articles, interviews, pictures, or related literary rights concerning the case. . . . [I]t may place the lawyer under temptation to conduct the defense with an eye on the literary aspects and its dramatic potential. If such an arrangement or contract is part of the fee, in lieu of the fee, or a condition of accepting the employment, it is especially reprehensible." ABA Standards for Criminal Justice 4-3.4 (2d ed. 1980).

See also 47 Cal. 3d, at 836, 765 P. 2d, at 475 (quoting prior draft of ABA standards).

To protect a defendant's right to conflict-free counsel, a trial court must initiate an inquiry when it knows or reasonably should know of the possibility of a conflict of interest. *Wood v. Georgia*, *supra*, at 272, and n. 18; see also *Wheat v. United States*, 486 U. S. 153, 160 (1988); *Cuyler v. Sullivan*, 446 U. S. 335, 347 (1980). In *Wood*, the petitioners had been convicted of distributing obscene materials. Their probation was revoked when they failed to pay substantial fines. This Court vacated the probation revocation because the trial court had failed to inquire into a possible conflict of interest on the part of the petitioners' attorney. The possibility of a conflict was apparent not from any concrete

evidence, but from the circumstances of the representation. In particular, the petitioners' lawyer, who had been selected and paid by their employer, pressed a constitutional attack rather than arguing for leniency and a reduction in the fines, possibly to create a test case for the petitioners' employer. *Wood v. Georgia*, 450 U. S., at 272. Moreover, this Court found that the "the fact that the State raised the conflict problem explicitly and requested that the court look into it" should have alerted the trial court to the need for further inquiry. *Id.*, at 273. The Court held that although it was difficult to determine from the appellate record whether an *actual* conflict was present, "the *possibility* of a conflict of interest was sufficiently apparent at the time of the revocation hearing to impose upon the court a duty to inquire further." *Id.*, at 272.

The California Supreme Court departed from *Wood* in this case by holding that a defendant must present hard evidence to trigger a trial court's duty to investigate a potential conflict of interest. The possibility of a conflict here was at least as apparent as it was in *Wood*. Bonin, though indigent, was able to hire a private attorney on the eve of the trial in a highly publicized and notorious case. The prosecution specifically objected to the substitution of Charvet because of the likelihood that the retainer agreement included a literary rights deal. When the court asked Charvet whether he had made such a deal with Bonin, he answered evasively, asserting that the prosecution had no right to inquire into his fee arrangement and that this Court would sanction any literary rights agreement. Despite the clear possibility that Charvet had entered into a retainer agreement that could seriously compromise his duty of loyalty to his client, the court failed to inquire further, even after continued objection by the prosecution.

Because the trial court did not conduct the necessary inquiry, it is impossible for this Court to determine from the record whether an actual conflict resulted from a literary rights deal. As in *Wood, supra*, at 273, the only appropriate response in such a circumstance is to vacate the judgment below and remand to the trial court for it to determine whether an actual conflict existed. If the trial court were to find an actual conflict, I believe, for the reasons next set out, that Bonin is entitled to a new trial.

## III

I would also grant Bonin's petition to decide whether a criminal defendant denied the right to conflict-free counsel must show that the conflict adversely affected his attorney's performance. The California Supreme Court acknowledged Charvet's prior attorney-client relationship with Munro; it further held that the trial court erred by permitting Charvet to represent Bonin without obtaining a waiver from Bonin of his right to conflict-free counsel.\* Nevertheless, the court refused to reverse Bonin's conviction because petitioner had not shown that the conflict adversely affected Charvet's performance. In my view, we should presume adverse effect on counsel's performance once an actual conflict is shown.

This Court has never squarely resolved the question whether proof of adverse effect is required to overturn a conviction once an actual conflict is proved. In *Cuyler v. Sullivan*, the Court stated that where a trial court has no reason to suspect a possible conflict, a defendant, in order to establish a Sixth Amendment violation on appeal, must show that "an actual conflict of interest adversely affected his lawyer's performance." 446 U. S., at 348. *Sullivan* left unclear, however, whether an actual conflict should be presumed to have an adverse effect, or whether a defendant must prove both an actual conflict and an adverse effect. See *id.*, at 358 (MARSHALL, J., concurring in part and dissenting in part). *Sullivan* held merely that "the possibility of conflict is insufficient to impugn a criminal conviction" on appeal. *Id.*, at 350 (emphasis added). This Court subsequently appeared to suggest in dictum that *Sullivan* required separate showings of actual conflict and adverse effect to reverse a criminal conviction. *Strickland v. Washington*, 466 U. S. 668, 692 (1984) ("Prejudice is presumed only if the defendant demonstrates that counsel 'actively represented conflicting interests' and that 'an actual conflict of interest adversely affected his lawyer's performance'") (quoting *Cuyler v. Sullivan*, *supra*, at 350, 348). *Strickland's* reading of *Sullivan*, however, is at odds with the holding in *Wood v. Georgia*. In *Wood*, this Court not only vacated the judgment below because

\*Of course, if Bonin had knowingly, intelligently, and voluntarily waived his right to conflict-free counsel, he would have no grounds for appeal on this score. Cf. *Wheat v. United States*, 486 U. S. 153, 166-167, and n. 1 (1988) (MARSHALL, J., dissenting). Absent such a waiver, however, the trial court had a duty to inquire into possible conflicts and, upon finding an actual conflict, to deny the motion to substitute Charvet.

the trial court had failed to investigate a possible conflict, but it also instructed the trial court to conduct a new revocation hearing if it found that an actual conflict existed and that the petitioners had not waived their right to conflict-free counsel. *Wood v. Georgia*, 450 U. S., at 273-274. The Court did not require the petitioners to prove on remand that the conflict adversely affected their counsel's performance.

It is axiomatic that "the assistance of counsel is among those 'constitutional rights so basic to a fair trial that their infraction can never be treated as harmless error.'" *Holloway v. Arkansas*, 435 U. S. 475, 489 (1978) (quoting *Chapman v. California*, 386 U. S. 18, 23 (1967)). The right to counsel's undivided loyalty is a critical component of the right to assistance of counsel; when counsel is burdened by a conflict of interest, he deprives his client of his Sixth Amendment right as surely as if he failed to appear at trial. See *Holloway v. Arkansas*, *supra*, at 490 ("The mere physical presence of an attorney does not fulfill the Sixth Amendment guarantee when the advocate's conflicting obligations have effectively sealed his lips on crucial matters"). For this reason, a defendant who shows an actual conflict need not demonstrate that his counsel's divided loyalties prejudiced the outcome of his trial. *Cuyler v. Sullivan*, *supra*, at 349-350. The right to conflict-free counsel is simply too important and absolute "to allow courts to indulge in nice calculations as to the amount of prejudice arising from its denial." *Glasser v. United States*, 315 U. S. 60, 76 (1942); accord, *Cuyler v. Sullivan*, *supra*, at 349. We should be no more willing to countenance nice calculations as to how a conflict adversely affected counsel's performance. "The conflict itself demonstrate[s] a denial of the 'right to have the effective assistance of counsel.'" *Cuyler v. Sullivan*, *supra*, at 349 (quoting *Glasser v. United States*, *supra*, at 76).

Moreover, requiring proof of actual adverse effect would essentially eliminate all Sixth Amendment claims based on conflicts of interest because gauging how a conflict affected an attorney's performance is usually impossible. As this Court explained in the context of prejudice:

"[I]n a case of joint representation of conflicting interests the evil—it bears repeating—is in what the advocate finds himself compelled to *refrain* from doing, not only at trial but also as to possible pretrial plea negotiations and in the sentencing process. It may be possible in some cases to identify from

the record the prejudice resulting from an attorney's failure to undertake certain trial tasks, but even with a record of the sentencing hearing available it would be difficult to judge intelligently the impact of a conflict on the attorney's representation of a client. And to assess the impact of a conflict of interests on the attorney's options, tactics, and decisions in plea negotiations would be virtually impossible." *Holloway v. Arkansas*, *supra*, at 490-491.

The same factors that make it nearly impossible to show prejudice make it equally difficult to prove adverse effect. In this case, for example, how could petitioner demonstrate on appeal that Charvet's attorney-client relationship with Munro limited Charvet's ability to cross-examine Munro? The California Supreme Court was satisfied that Charvet's attack on Munro's credibility during cross-examination was "broad and deep." But an appellate court cannot determine what Charvet was *unable* to ask for fear of violating Munro's attorney-client privilege. Given the finding that Charvet's relationship with Munro created a conflict, it seems beyond doubt that Charvet must have refrained from pursuing certain lines of inquiry. Similarly, if the trial court on remand were to find that an actual conflict resulted from the literary rights agreement, it would be exceedingly difficult for that court, or an appellate court, to determine whether counsel's actions or inactions resulted from strategic choices made in the interest of his client or, rather, from counsel's own interest in maximizing the trial's drama so as to create a bestseller.

Conflict-of-interest claims thus differ in kind from standard ineffective-assistance-of-counsel claims. This Court has, with respect to the latter, indulged in the presumption that counsel's conduct was the result of strategic decisions made in accordance with the client's best interests. *Strickland v. Washington*, 466 U. S., at 689. Such a presumption is arguably tenable in those cases because counsel's basic loyalty to his client is not in question. When a known conflict undermines counsel's duty of loyalty, "perhaps the most basic of counsel's duties," *id.*, at 692, however, that presumption is inapplicable; instead, a court must presume that counsel's divided loyalties adversely affected his performance on behalf of his client. When the effects of a constitutional violation are not only unknown but unknowable, the Constitution demands that doubts be resolved in favor of a criminal defendant. Unless the

March 19, 1990

494 U. S.

defendant validly waived his right to conflict-free counsel, then, a showing of actual conflict alone necessitates a new trial.

## IV

Because Bonin stands to be executed, it is imperative that this Court ensure that he was fairly tried and sentenced. The Sixth Amendment demands that every criminal defendant receive the assistance of conflict-free counsel. It is undisputed that petitioner's counsel was burdened by at least one actual conflict and possibly another. It is also a fact that petitioner did not waive his right to conflict-free counsel. In these circumstances, the Sixth Amendment requires that petitioner be given a new trial. I therefore dissent from the denial of certiorari.

No. 89-773. *TENNESSEE v. PILKEY*. Sup. Ct. Tenn. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 776 S. W. 2d 943.

No. 89-1182. *KENTUCKY v. JOHNSON*. Sup. Ct. Ky. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 777 S. W. 2d 876.

No. 89-882. *CLARKE COUNTY, GEORGIA, SCHOOL DISTRICT v. DREW P. C. A.* 11th Cir. Certiorari denied. JUSTICE WHITE would grant certiorari. Reported below: 877 F. 2d 927.

No. 89-1189. *BROCK ET UX., INDIVIDUALLY AND AS NEXT FRIENDS OF BROCK, A MINOR v. MERRELL DOW PHARMACEUTICALS, INC.* C. A. 5th Cir. Certiorari denied. JUSTICE WHITE would grant certiorari. Reported below: 874 F. 2d 307 and 884 F. 2d 166.

No. 89-1016. *HERNANDEZ COLON, GOVERNOR OF PUERTO RICO, ET AL. v. MORALES FELICIANO ET AL.* C. A. 1st Cir. Motion of respondents Pedro Rivera Ortiz et al. for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 887 F. 2d 1.

No. 89-1318. *EGLY ET AL. v. MINNESOTA MINING & MANUFACTURING Co.* C. A. Fed. Cir. Certiorari denied. JUSTICE BLACKMUN took no part in the consideration or decision of this petition. Reported below: 891 F. 2d 299.

494 U. S.

March 19, 1990

No. 89-5629. WALLACE *v.* ARIZONA. Sup. Ct. Ariz. Certiorari denied. JUSTICE O'CONNOR took no part in the consideration or decision of this petition. Reported below: 160 Ariz. 424, 773 P. 2d 983.

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. 89-6347. SMITH *v.* DUGGER, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied. JUSTICE BLACKMUN dissents and would grant certiorari. Reported below: 840 F. 2d 787.

JUSTICE MARSHALL, with whom JUSTICE BRENNAN joins, dissenting.

In *Enmund v. Florida*, 458 U. S. 782, 797 (1982), we held that imposing a death sentence on a defendant "who does not himself kill, attempt to kill, or intend that a killing take place" violates the Eighth and Fourteenth Amendments' prohibitions against cruel and unusual punishment. In *Cabana v. Bullock*, 474 U. S. 376, 390-391 (1986), the Court reaffirmed and expanded upon *Enmund*, holding that the federal courts could not make the determination that a defendant met one of the *Enmund* criteria on their review of state-court judgments. Rather, we held that "the State's judicial process leading to the imposition of the death penalty must at *some* point provide for a finding of that factual predicate." 474 U. S., at 390-391. In *Tison v. Arizona*, 481 U. S. 137, 158 (1987), this Court held that a showing of both reckless indifference to human life and major participation in a felony would be sufficient to satisfy *Enmund*. The Court refused to make those findings itself, however, instead remanding to the state courts for a determination whether those factors were present. 481 U. S., at 158.

In this case, the Court of Appeals for the Eleventh Circuit found that *Enmund*, *Cabana*, and *Tison* were satisfied solely on the basis of the Florida Supreme Court's determination that there was sufficient evidence from which the jury *could* have found that

defendant had the intent to kill. In refusing to review the decision below, this Court sanctions a grave departure from our precedents by a panel of a court with a major role in the administration of this Nation's death penalty law. Accordingly, I dissent.

Respondent does not dispute the basic rule that a State may not sentence to death a defendant "who does not himself kill, attempt to kill, or intend that a killing take place," *Enmund, supra*, at 797, unless that defendant was a major participant in a felony and exhibited reckless indifference to human life, *Tison, supra*, at 158. Nor does respondent suggest that a federal court may make the required finding. Instead, the issue in this case is whether a state court's conclusion that "there was sufficient evidence from which the jury could have found [Smith] guilty of premeditated murder," *Smith v. State*, 424 So. 2d 726, 733 (1983), constitutes the culpability finding required by our cases.

The entirety of the Eleventh Circuit's reasoning on this point is that "[i]mplicit in [the Florida Supreme Court's sufficiency] finding is the conclusion that Smith had the intent to kill." 840 F. 2d 787, 793 (1988). Simply asserting a conclusion is hardly sufficient to justify it, especially where, as here, the conclusion is so plainly farfetched. The Florida court's finding that the evidence was sufficient for Smith's jury to find him guilty of premeditated murder is nothing more than a finding that reasonable people *could* have found that verdict justified; it is emphatically not a finding that this jury *did* determine that Smith's acts were premeditated. Indeed, the *Cabana* Court rejected as insufficient a state court's statement far more conclusive than the one here. There, the Mississippi Supreme Court found that "[t]he evidence [was] overwhelming that [defendant] was an active participant in the assault and homicide.'" *Cabana*, 474 U. S., at 389. Although this finding was "sufficient to make [the defendant] liable for the murder and deserving of the death penalty in light of Mississippi law," it did not satisfy the Eighth Amendment. *Ibid.*

That the Florida court did not make the required finding is particularly apparent from an examination of its opinion as a whole. In response to an unrelated guilt-phase point of error, the court found that Smith could have been found guilty and sentenced to death on either of two theories, one of which was the felony-murder doctrine. 424 So. 2d, at 731. "Under this theory the jury would not have needed to conclude that [Smith] had the req-

1047

MARSHALL, J., dissenting

uisite intent." *Id.*, at 731-732. The Florida Supreme Court's sufficiency determination thus in no way establishes that Smith's jury found the essential factual predicate to a death verdict under *Enmund*, especially in light of the court's acknowledgement that the jury was instructed that it could convict Smith regardless of his intent.\*

It is tempting to view the Eleventh Circuit's ruling in this case as an unfortunate aberration that should be disregarded as such. Perhaps such a hope has informed this Court's decision to deny certiorari. Nonetheless, the refusal to review the decision below has important consequences. A panel of a Court of Appeals with jurisdiction over the death penalty statutes of three States has equated a state appellate court's finding that there was sufficient evidence from which a jury could have found intent to kill with a finding that the defendant did in fact intend to kill. The panel came to that conclusion notwithstanding that the jury was instructed that it could return a sentence of death even if it did *not* believe that Smith had the requisite intent. Sufficiency of the evidence claims are routinely made in state death penalty appeals, and state appellate courts invariably will have to make a sufficiency finding in the course of their review. To permit such a finding to satisfy *Enmund*, *Cabana*, and *Tison* is to eviscerate their protections. Because I do not think it seemly or sensible for this Court to permit a significant violation of the Eighth Amendment to stand, simply on the hope that it will have no effect beyond the immediate case, I dissent.

Even if I did not believe that this case otherwise merited review, I would adhere 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 therefore grant the petition for certiorari and vacate the death sentence in this case.

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\*Of course, after *Tison v. Arizona*, 481 U. S. 137 (1987), the Florida courts were not required to find that Smith intended to kill in order to satisfy the Eighth Amendment. A finding that he was recklessly indifferent to human life and a major participant in the felony would have satisfied *Tison*. *Id.*, at 158. The Florida courts did not even *purport* to make the finding required by *Tison*, however. The only finding in the Florida courts on which respondent relies is the finding that there was sufficient evidence from which the jury could have found Smith guilty of premeditated murder.

March 19, 22, 26, 1990

494 U. S.

*Rehearing Denied*

- No. 88-5050. *HOLLAND v. ILLINOIS*, 493 U. S. 474;  
No. 88-6995. *MOORE v. CALIFORNIA*, 490 U. S. 1095;  
No. 89-820. *KINDIG v. PAN AMERICAN WORLD AIRWAYS, INC., ET AL.*, 493 U. S. 1025;  
No. 89-897. *GRIMES v. LOUISVILLE & NASHVILLE RAILROAD Co.*, 493 U. S. 1058;  
No. 89-5452. *WEAVER v. SHEAFFER ET AL.*, 493 U. S. 1059;  
and  
No. 89-5784. *BOWYER v. UNITED STATES AIR FORCE ET AL.*, 493 U. S. 1046. Petitions for rehearing denied.

No. 88-2137. *McMONAGLE ET AL. v. NORTHEAST WOMEN'S CENTER, INC.*, 493 U. S. 901. Motion for leave to file petition for rehearing denied.

MARCH 22, 1990

*Dismissal Under Rule 46*

No. 88-2109. *KANSAS ET AL. v. KANSAS POWER & LIGHT Co. ET AL.* C. A. 10th Cir. [Certiorari granted, 493 U. S. 1041.] Writ of certiorari dismissed as to respondent Kansas Power & Light Co. under this Court's Rule 46.

MARCH 26, 1990

*Certiorari Granted—Vacated and Remanded*

No. 88-1878. *SAFFLE, WARDEN, ET AL. v. DAVIS*. C. A. 10th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Saffle v. Parks*, ante, p. 484. JUSTICE BLACKMUN and JUSTICE STEVENS dissent. Reported below: 869 F. 2d 1401.

No. 88-7081. *MCNEIL v. NORTH CAROLINA*. Sup. Ct. N. C. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *McKoy v. North Carolina*, ante, p. 433. Reported below: 324 N. C. 33, 375 S. E. 2d 909.

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

The Court adopts what may be perceived as a prudent course by granting certiorari in this case, vacating the decision of the

494 U. S.

March 26, 1990

North Carolina Supreme Court, and remanding for consideration in light of our decision in *McKoy v. North Carolina*, ante, p. 433. It is true that petitioner was sentenced prior to our decision in *McKoy*, and that the North Carolina Supreme Court rejected his challenge to the sentence on the basis of its decision in *State v. McKoy*, 323 N. C. 1, 372 S. E. 2d 12 (1988). In the particular circumstances of this case, however, there is no basis upon which we should disturb the judgment.

The record shows that the unanimity instruction held unconstitutional in *McKoy* was *not* given in petitioner's trial. Neither did the verdict form given to the jurors contain any unanimity requirement as to mitigating circumstances. The form, reproduced as Appendix E to the petition for certiorari, required unanimity as to the presence of aggravating factors (issue 1) and as to the result of the weighing stages of the statute (issues 3 and 4), but not as to presence of mitigating factors (issue 2). Given the express unanimity requirement as to issues 1, 3, and 4, but the omission of any such requirement as to issue 2 on the verdict form, no reasonable juror would have interpreted the form or the instructions to require unanimity as to mitigating factors.

On remand, the North Carolina Supreme Court remains free to consider these facts, or any others that may affect the determination whether our opinion in *McKoy* requires alteration of its judgment. Similarly, in cases where there is a question of procedural default, *e. g.*, *Artis v. North Carolina*, ante, p. 1023, or where a unanimity requirement may have been harmless due to failure to present mitigating evidence, *e. g.*, *Hunt v. North Carolina*, ante, p. 1022; *Laws v. North Carolina*, ante, p. 1022, these issues remain open for examination on remand. Because it is in my view clear, however, that no unanimity requirement was involved in this case, I would deny the petition for certiorari.

No. 89-1128. UNITED TRANSPORTATION UNION *v.* UNITED TRANSPORTATION UNION, LOCAL 74. C. A. 6th Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Teamsters v. Terry*, ante, p. 558. Reported below: 881 F. 2d 282.

### Miscellaneous Orders

No. — — —. BROOKS *v.* SECRETARY OF HEALTH AND HUMAN SERVICES. Motion to direct the Clerk to file petition for writ of certiorari out of time denied.

March 26, 1990

494 U. S.

No. A-632 (89-7005). *HARRIS v. TEXAS*. Ct. Crim. App. Tex. Application for stay of execution of sentence of death, presented to JUSTICE WHITE, and by him referred to the Court, granted pending disposition by this Court of the petition for writ of certiorari. Should the petition for writ of certiorari be denied, this stay terminates automatically. In the event the petition for writ of certiorari is granted, this stay shall continue pending the issuance of the mandate of this Court.

No. A-651. *WALKER v. STATE BAR OF CALIFORNIA*. Sup. Ct. Cal. Application for stay, addressed to JUSTICE WHITE and referred to the Court, denied.

No. A-661 (89-939). *HEALTHAMERICA ET AL. v. MENTON*, 493 U. S. 1093. Application for stay pending disposition of a petition for rehearing, addressed to JUSTICE O'CONNOR and referred to the Court, denied.

No. D-815. *IN RE DISBARMENT OF SHIMEK*. Disbarment entered. [For earlier order herein, see 493 U. S. 949.]

No. D-821. *IN RE DISBARMENT OF ELLIOTT*. Disbarment entered. [For earlier order herein, see 493 U. S. 950.]

No. D-844. *IN RE DISBARMENT OF RAY*. Disbarment entered. [For earlier order herein, see 493 U. S. 988.]

No. D-849. *IN RE DISBARMENT OF REINER*. Disbarment entered. [For earlier order herein, see 493 U. S. 1040.]

No. D-878. *IN RE DISBARMENT OF SCHWARTZ*. It is ordered that Jeffrey Mark Schwartz, 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-879. *IN RE DISBARMENT OF ANDERSON*. It is ordered that Ronald Etheridge Anderson, of Huntington Park, 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-880. *IN RE DISBARMENT OF JACKSON*. It is ordered that Hesper A. Jackson, Jr., of Brooklyn, N. Y., be suspended from the practice of law in this Court and that a rule issue, return-

494 U. S.

March 26, 1990

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-881. *IN RE DISBARMENT OF SHOEMAKER*. It is ordered that Daniel W. Shoemaker, of Taneytown, 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-882. *IN RE DISBARMENT OF TIERNEY*. It is ordered that Thomas W. Tierney, of Kansas City, 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-883. *IN RE DISBARMENT OF SINGER*. It is ordered that Barry H. Singer, 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-884. *IN RE DISBARMENT OF SANNA*. It is ordered that Richard J. Sanna, of Bethpage, 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-885. *IN RE DISBARMENT OF SANDERS*. It is ordered that Sheldon Joel Sanders, of Lido Beach, 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. 88-2041. *SISSON v. RUBY ET AL.* C. A. 7th Cir. [Certiorari granted, 493 U. S. 1055.] Motions of American Auto, Inc., and Maritime Law Association of the United States for leave to file briefs as *amici curiae* granted.

No. 88-2109. *KANSAS ET AL. v. UTILICORP UNITED INC.* C. A. 10th Cir. [Certiorari granted *sub nom. Kansas v. Kansas Power & Light Co.*, 493 U. S. 1041.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 89-152. *ENGLISH v. GENERAL ELECTRIC CO.* C. A. 4th Cir. [Certiorari granted, 493 U. S. 1055.] Motion of the Solic-

March 26, 1990

494 U. S.

itor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 89-260. *IDAHO v. WRIGHT*. Sup. Ct. Idaho. [Certiorari granted, 493 U. S. 1041.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 89-579. *CHARTER CO. v. CERTIFIED CLASS IN THE CHARTER SECURITIES LITIGATION ET AL.* C. A. 11th Cir. Motion of the parties to defer further consideration of the petition for writ of certiorari granted until May 30, 1990.

No. 89-1040. *CHAPPELL v. UNITED STATES*. C. A. 7th Cir. Motion of petitioner to dispense with printing the reply brief granted.

No. 89-1106. *TRINOVA CORP. v. MICHIGAN DEPARTMENT OF TREASURY*. Sup. Ct. Mich. [Certiorari granted, *ante*, p. 1015.] Motion of petitioner to dispense with printing the joint appendix granted.

No. 89-5011. *POWERS v. OHIO*. Ct. App. Ohio, Franklin County. [Certiorari granted, 493 U. S. 1068.] Motion for appointment of counsel granted, and it is ordered that Robert L. Lane, Esq., of Columbus, Ohio, be appointed to serve as counsel for petitioner in this case.

No. 89-6622. *KLIEWER v. NEW JERSEY*. Super. Ct. N. J., App. Div. Motion of petitioner for leave to proceed *in forma pauperis* denied. Petitioner is allowed until April 16, 1990, within which to pay the docketing fee required by Rule 38(a) and to submit a petition in compliance with Rule 33 of the Rules of this Court.

JUSTICE BRENNAN and JUSTICE MARSHALL, dissenting.

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

No. 89-6573. *IN RE GILREATH*; and

No. 89-6705. *IN RE ROSS*. Petitions for writs of mandamus denied.

494 U. S.

March 26, 1990

*Certiorari Granted*

No. 89-1080. BOARD OF EDUCATION OF OKLAHOMA CITY PUBLIC SCHOOLS, INDEPENDENT SCHOOL DISTRICT No. 89, OKLAHOMA COUNTY, OKLAHOMA *v.* DOWELL ET AL. C. A. 10th Cir. Certiorari granted. Reported below: 890 F. 2d 1483.

No. 89-1215. INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE & AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, UAW, ET AL. *v.* JOHNSON CONTROLS, INC. C. A. 7th Cir. Certiorari granted. Reported below: 886 F. 2d 871.

No. 89-1283. ARCADIA, OHIO, ET AL. *v.* OHIO POWER CO. ET AL. C. A. D. C. Cir. Certiorari granted. Reported below: 279 U. S. App. D. C. 327, 880 F. 2d 1400.

No. 89-839. ARIZONA *v.* FULMINANTE. Sup. Ct. Ariz. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari granted. Reported below: 161 Ariz. 237, 778 P. 2d 602.

No. 89-1027. NORFOLK & WESTERN RAILWAY CO. ET AL. *v.* AMERICAN TRAIN DISPATCHERS' ASSN. ET AL.; and

No. 89-1028. CSX TRANSPORTATION, INC. *v.* BROTHERHOOD OF RAILWAY CARMEN ET AL. C. A. D. C. Cir. Certiorari granted, cases consolidated, and a total of one hour allotted for oral argument. Reported below: 279 U. S. App. D. C. 239, 880 F. 2d 562.

No. 89-5900. RUST *v.* GUNTER ET AL. C. A. 8th Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted. Reported below: 889 F. 2d 1093.

*Certiorari Denied*

No. 89-593. LIBERTY MUTUAL INSURANCE CO. ET AL. *v.* COMMISSIONER OF REVENUE OF MASSACHUSETTS. Sup. Jud. Ct. Mass. Certiorari denied. Reported below: 405 Mass. 352, 541 N. E. 2d 566.

No. 89-686. NEVINS ET AL. *v.* HOOPA VALLEY TRIBE ET AL.; and

No. 89-890. HOOPA VALLEY TRIBE ET AL. *v.* NEVINS ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 881 F. 2d 657.

March 26, 1990

494 U. S.

No. 89-847. *STUDIO ART THEATRE OF EVANSVILLE, INC. v. INDIANA*. Ct. App. Ind. Certiorari denied. Reported below: 530 N. E. 2d 750.

No. 89-865. *TRICKEY v. COFFMAN*. C. A. 8th Cir. Certiorari denied. Reported below: 884 F. 2d 1057.

No. 89-877. *WATKINS v. FOLTZ, WARDEN*. C. A. 6th Cir. Certiorari denied. Reported below: 880 F. 2d 415.

No. 89-893. *MARYLAND PEST CONTROL ASSN. ET AL. v. MONTGOMERY COUNTY, MARYLAND, ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 884 F. 2d 160.

No. 89-902. *W. R. GRACE & CO.-CONN. ET AL. v. FEDERAL DEPOSIT INSURANCE CORPORATION*. C. A. 7th Cir. Certiorari denied. Reported below: 877 F. 2d 614.

No. 89-930. *WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY v. GENERAL RAILWAY SIGNAL CO.* C. A. D. C. Cir. Certiorari denied. Reported below: 277 U. S. App. D. C. 287, 875 F. 2d 320.

No. 89-1056. *DEPARTMENT OF HEALTH SERVICES OF CALIFORNIA ET AL. v. CITIZENS ACTION LEAGUE ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 887 F. 2d 1003.

No. 89-1074. *FAIRCHILD INDUSTRIES, INC. v. MILLER ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 885 F. 2d 498.

No. 89-1124. *AMERICAN BOOKSELLERS ASSN., INC., ET AL. v. VIRGINIA*. C. A. 4th Cir. Certiorari denied. Reported below: 882 F. 2d 125.

No. 89-1219. *GILBERT v. COLVERT*. Ct. App. Okla. Certiorari denied.

No. 89-1225. *LAK, INC. v. DEER CREEK ENTERPRISES*. C. A. 6th Cir. Certiorari denied. Reported below: 885 F. 2d 1293.

No. 89-1226. *WALKER v. SUBURBAN HOSPITAL ASSN. ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 885 F. 2d 867.

494 U. S.

March 26, 1990

No. 89-1241. *ROBINSON ET AL. v. DINNER BELL MEATS ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 886 F. 2d 1316.

No. 89-1243. *GALLOWAY ET AL. v. ZUCKERT ET AL.* Ct. App. Iowa. Certiorari denied. Reported below: 447 N. W. 2d 553.

No. 89-1246. *AGAN v. GEORGIA.* Sup. Ct. Ga. Certiorari denied. Reported below: 259 Ga. 541, 384 S. E. 2d 863.

No. 89-1249. *VITALE ET UX. v. CITY OF NEW HAVEN ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 884 F. 2d 1381.

No. 89-1256. *WRENN v. MCFADDEN ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 887 F. 2d 1082.

No. 89-1257. *McMARTIN ET AL. v. CHILDREN'S INSTITUTE INTERNATIONAL ET AL.* Ct. App. Cal., 2d App. Dist. Certiorari denied. Reported below: 212 Cal. App. 3d 1393, 261 Cal. Rptr. 437.

No. 89-1259. *HUYSEN v. FIRST UNION HOME EQUITY CORP.* C. A. 5th Cir. Certiorari denied. Reported below: 888 F. 2d 1390.

No. 89-1282. *BARKER v. CITY OF PHILADELPHIA ET AL.* Pa. Commw. Ct. Certiorari denied. Reported below: 127 Pa. Commw. 666, 560 A. 2d 942.

No. 89-1304. *WICKERSHAM v. INDIANA.* Ct. App. Ind. Certiorari denied. Reported below: 523 N. E. 2d 775.

No. 89-1338. *WALTER v. UNITED STATES.* C. A. 9th Cir. Certiorari denied. Reported below: 888 F. 2d 1394.

No. 89-1347. *BESSAY v. UNITED STATES.* C. A. 1st Cir. Certiorari denied. Reported below: 889 F. 2d 352.

No. 89-1353. *R. W. MEYER, INC. v. UNITED STATES.* C. A. 6th Cir. Certiorari denied. Reported below: 889 F. 2d 1497.

No. 89-1365. *DAMIANI v. UNITED STATES.* C. A. 6th Cir. Certiorari denied. Reported below: 890 F. 2d 416.

No. 89-6043. *WILLIAMS v. MCCARTHY ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 879 F. 2d 866.

March 26, 1990

494 U. S.

No. 89-6108. *DONLEY v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 878 F. 2d 735.

No. 89-6110. *DALE v. HAEBERLIN, ACTING WARDEN*. C. A. 6th Cir. Certiorari denied. Reported below: 878 F. 2d 930.

No. 89-6230. *PARKER v. OKLAHOMA*. Ct. Crim. App. Okla. Certiorari denied.

No. 89-6296. *FULMINANTE v. ARIZONA*. Sup. Ct. Ariz. Certiorari denied. Reported below: 161 Ariz. 237, 778 P. 2d 602.

No. 89-6300. *CAMPBELL v. HORTON, WARDEN, ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 888 F. 2d 1385.

No. 89-6312. *GAINER v. JEFFES ET AL.* C. A. 3d Cir. Certiorari denied. Reported below: 888 F. 2d 1379.

No. 89-6359. *WASHINGTON v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 886 F. 2d 154.

No. 89-6364. *JACKSON v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 884 F. 2d 581.

No. 89-6433. *WEEKS v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 881 F. 2d 1085.

No. 89-6572. *PROWS v. KINDT ET AL.* C. A. 10th Cir. Certiorari denied.

No. 89-6574. *ERVIN v. CALIFORNIA*. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 89-6576. *CROCKETT v. BAPTIST MEDICAL CENTER*. C. A. 8th Cir. Certiorari denied. Reported below: 889 F. 2d 1091.

No. 89-6579. *SCHMIDT v. IOWA*. Dist. Ct. Poweshiek County, Iowa. Certiorari denied.

No. 89-6583. *SMITH ET UX. v. SOONER FEDERAL SAVINGS & LOAN ASSN.* C. A. 10th Cir. Certiorari denied.

No. 89-6595. *BAKER v. OHIO*. Sup. Ct. Ohio. Certiorari denied. Reported below: 48 Ohio St. 3d 701, 549 N. E. 2d 525.

No. 89-6597. *TURPIN v. KENTUCKY*. Sup. Ct. Ky. Certiorari denied. Reported below: 780 S. W. 2d 619.

No. 89-6607. *TYLER v. WYRICK, WARDEN*. C. A. 8th Cir. Certiorari denied. Reported below: 894 F. 2d 1340.

494 U. S.

March 26, 1990

No. 89-6614. *ASH v. SWEST, INC., ET AL.* (two cases). Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 89-6615. *ANDERSON v. WORDEN*, DISTRICT COURT JUDGE. Sup. Ct. Kan. Certiorari denied.

No. 89-6619. *FRIEND v. WILSON ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 887 F. 2d 1086.

No. 89-6620. *MCCLURE v. MAZURKIEWICZ*, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTE AT ROCKVIEW. C. A. 3d Cir. Certiorari denied. Reported below: 891 F. 2d 281.

No. 89-6621. *HUNTER v. FLORIDA*. Dist. Ct. App. Fla., 5th Dist. Certiorari denied. Reported below: 550 So. 2d 480.

No. 89-6627. *TURNER v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 893 F. 2d 1333.

No. 89-6628. *SUTHERLAND ET AL. v. FIRST NATIONAL BANK OF COMMERCE*. Ct. App. La., 5th Cir. Certiorari denied. Reported below: 545 So. 2d 692.

No. 89-6629. *MAGOON v. YOUNG*, COMMISSIONER OF SOCIAL AND REHABILITATION SERVICES OF VERMONT. Sup. Ct. Vt. Certiorari denied. Reported below: 153 Vt. 102, 569 A. 2d 463.

No. 89-6637. *LANE, AKA BROWN v. WHITTINGHILL ET AL.* C. A. 7th Cir. Certiorari denied.

No. 89-6640. *LEDET v. 15TH JUDICIAL DISTRICT COURT ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 887 F. 2d 1085.

No. 89-6647. *KLACSMANN v. FITCH*. C. A. 11th Cir. Certiorari denied.

No. 89-6661. *MARTINEZ v. UNITED STATES*. C. A. 10th Cir. Certiorari denied. Reported below: 890 F. 2d 1088.

No. 89-6662. *HILL ET AL. v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 891 F. 2d 293.

No. 89-6688. *MCCALLUM v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 892 F. 2d 84.

No. 89-6691. *WRIGHT v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 894 F. 2d 1341.

March 26, 1990

494 U. S.

No. 89-6707. *HERNANDEZ v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 890 F. 2d 1162.

No. 89-6709. *GOLDEN v. DUGGER, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL.* C. A. 11th Cir. Certiorari denied.

No. 89-6726. *NORTON v. PARKE, WARDEN*. C. A. 6th Cir. Certiorari denied. Reported below: 892 F. 2d 476.

No. 89-6740. *JAMES v. UNITED STATES*. C. A. D. C. Cir. Certiorari denied.

No. 89-6741. *JACKSON v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 891 F. 2d 287.

No. 89-6746. *MAJOR v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 893 F. 2d 1332.

No. 89-6747. *MCCRUDDEN v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 894 F. 2d 338.

No. 89-6754. *GRANDINETTI v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 891 F. 2d 1302.

No. 88-7459. *JONES v. SOUTH CAROLINA*. Sup. Ct. S. C.;

No. 88-7461. *WOOMER v. EVATT, COMMISSIONER, SOUTH CAROLINA DEPARTMENT OF CORRECTIONS, ET AL.* Sup. Ct. S. C.;

No. 88-7555. *ROE v. OHIO*. Sup. Ct. Ohio;

No. 89-5208. *McGEE v. TEXAS*. Ct. Crim. App. Tex.;

No. 89-5478. *MOORE v. KENTUCKY*. Sup. Ct. Ky.;

No. 89-5624. *SMITH v. SOUTH CAROLINA*. Sup. Ct. S. C.;

No. 89-6003. *STRONG v. PENNSYLVANIA*. Sup. Ct. Pa.;

No. 89-6383. *ANDREWS v. CALIFORNIA*. Sup. Ct. Cal.;

No. 89-6385. *FOWLER v. OKLAHOMA*. Ct. Crim. App. Okla.;

No. 89-6419. *BREWER v. OKLAHOMA*. Ct. Crim. App. Okla.;

No. 89-6538. *FIERRO v. COLLINS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION*. C. A. 5th Cir.;

No. 89-6571. *SLOAN v. MISSOURI*. Sup. Ct. Mo.;

No. 89-6608. *FOX v. OKLAHOMA*. Ct. Crim. App. Okla.;

No. 89-6653. *WALLS v. MISSOURI*. Sup. Ct. Mo.; and

No. 89-6785. *HEISHMAN v. CALIFORNIA*. Sup. Ct. Cal. Certiorari denied. Reported below: No. 88-7459, 298 S. C. 118,

494 U. S.

March 26, 1990

378 S. E. 2d 594; No. 88-7555, 41 Ohio St. 3d 18, 535 N. E. 2d 1351; No. 89-5208, 774 S. W. 2d 229; No. 89-5478, 771 S. W. 2d 34; No. 89-5624, 298 S. C. 482, 381 S. E. 2d 724; No. 89-6003, 522 Pa. 445, 563 A. 2d 479; No. 89-6383, 49 Cal. 3d 200, 776 P. 2d 285; No. 89-6385, 779 P. 2d 580; No. 89-6538, 879 F. 2d 1276; No. 89-6571, 779 S. W. 2d 580; No. 89-6608, 779 P. 2d 562; No. 89-6653, 779 S. W. 2d 560.

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. 89-527. CALLAHAN, SUPERINTENDENT, MCNEIL ISLAND CORRECTION FACILITY *v.* ROBTOTY; and DUCHARME, SUPERINTENDENT, WASHINGTON STATE REFORMATORY *v.* NORMAN. C. A. 9th Cir. Motions of respondents for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 871 F. 2d 1478 (first case) and 1483 (second case).

No. 89-707. SIMMONS, CHAIRMAN, KENTUCKY PAROLE BOARD, ET AL. *v.* DUNN. C. A. 6th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 877 F. 2d 1275.

No. 89-1142. FERLAUTO ET AL. *v.* NEW JERSEY ET AL. Sup. Ct. N. J. Motion of petitioners to defer consideration of the petition for writ of certiorari denied. Certiorari denied. Reported below: 116 N. J. 236, 561 A. 2d 552.

No. 89-1254. WHITFIELD *v.* COCA-COLA CO. ET AL. C. A. 3d Cir. Certiorari denied. JUSTICE BLACKMUN took no part in the consideration or decision of this petition. Reported below: 893 F. 2d 1333.

No. 89-1258. BHANDARI *v.* FIRST NATIONAL BANK OF COMMERCE. C. A. 5th Cir. Certiorari denied. Reported below: 887 F. 2d 609.

JUSTICE WHITE, with whom JUSTICE O'CONNOR joins, dissenting.

This petition presents the issue whether 42 U. S. C. §1981 (1982 ed.) prohibits alienage discrimination in the making of private

March 26, 1990

494 U. S.

contracts. When first considering this case, the Fifth Circuit in banc held that § 1981 does not have this effect. *Bhandari v. First National Bank of Commerce*, 829 F. 2d 1343 (1987). Petitioner sought review here. We granted the petition, vacated the Fifth Circuit's judgment, and remanded the case so that the Court of Appeals might reconsider its holding in light of our decision in *Patterson v. McLean Credit Union*, 491 U. S. 164 (1989). See 492 U. S. 901 (1989). Reaffirming *Runyon v. McCrary*, 427 U. S. 160 (1976), we held in *Patterson* that § 1981 covers acts of private discrimination. On remand, the Fifth Circuit declined to alter its original holding. The in banc court reasoned that *Patterson* was inapposite because that case concerned private racial discrimination whereas this case involves private alienage discrimination. 887 F. 2d 609 (1989).

I would grant the petition because it is not clear to me that § 1981 should be construed to prohibit private, as well as official, discrimination on the basis of race, but to prohibit only governmental discrimination on the basis of alienage. Prior cases, see *Graham v. Richardson*, 403 U. S. 365, 377 (1971), and *Takahashi v. Fish and Game Comm'n*, 334 U. S. 410, 419 (1948), have indicated that § 1981 prohibits official discrimination against aliens. In *Runyon*, we held that § 1981 extends to private conduct, a holding reaffirmed in *Patterson*. Certiorari should be granted to settle whether § 1981 proscribes private alienage discrimination.

No. 89-6123. *DELVECCHIO v. ILLINOIS*. Sup. Ct. Ill. Certiorari denied. Reported below: 129 Ill. 2d 265, 544 N. E. 2d 312.

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 grant the petition to consider whether the trial judge's failure to recuse himself violated petitioner's due process right to be tried and sentenced by an impartial judge. For the reasons set forth in Justice Clark's dissent in this case, 129 Ill. 2d 265, 297-302, 544 N. E. 2d 312, 327-330 (1989), I believe that the trial judge's participation in this case, given his involvement in the prosecution of a 1965 murder charge against the defendant, presented an unacceptable appearance of

494 U. S.

March 26, 28, 30, 1990

partiality. The Court has previously considered only charges that the adjudicator has a "direct, personal, substantial, pecuniary interest" in the case before him, *Tumey v. Ohio*, 273 U. S. 510, 523 (1927), or allegations that the judge was influenced by generalized hostility towards certain kinds of private businesses, *Aetna Life Insurance Co. v. Lavoie*, 475 U. S. 813, 820 (1986). Because I believe we should now consider petitioner's very different contentions of improper bias on the part of the trial judge, I dissent.

*Rehearing Denied*

No. 89-6044. *COLLIER v. EVANS ET AL.*, 493 U. S. 1047. Petition for rehearing denied.

No. 88-6580. *PORTWOOD, AKA TUCKER, ET AL. v. UNITED STATES*, 490 U. S. 1069;

No. 89-5819. *HOLMES v. HORTON, WARDEN, ET AL.*, 493 U. S. 996; and

No. 89-6118. *ALSTON v. LEEKE, COMMISSIONER, SOUTH CAROLINA DEPARTMENT OF CORRECTIONS, ET AL.*, 493 U. S. 1034. Motions for leave to file petitions for rehearing denied.

MARCH 28, 1990

*Miscellaneous Order*

No. A-650. *CLINTON, GOVERNOR OF ARKANSAS, ET AL. v. JEFFERS ET AL.* D. C. E. D. Ark. Application for stay pending appeal, addressed to THE CHIEF JUSTICE and referred to the Court, denied.

MARCH 30, 1990

*Probable Jurisdiction Noted*

No. 89-1433. *UNITED STATES v. EICHMAN ET AL.* Appeal from D. C. D. C.; and

No. 89-1434. *UNITED STATES v. HAGGERTY ET AL.* Appeal from D. C. W. D. Wash. Motion of the Speaker and Leadership Group of the House of Representatives for leave to file, as *amici curiae*, a printed brief that differs from the previously submitted typewritten brief granted. Motion of the Solicitor General to expedite consideration of the statements as to jurisdiction granted. Probable jurisdiction noted, cases consolidated, and a total of one hour allotted for oral argument. The brief of the Solicitor General is to be filed with the Clerk of the Court and served upon

March 30, April 2, 1990

494 U. S.

appellees on or before 3:00 p.m., Wednesday, April 18, 1990. The briefs of the appellees are to be filed with the Clerk of the Court and served upon the Solicitor General on or before 3:00 p.m., Thursday, May 3, 1990. Any reply brief is to be filed with the Clerk of the Court and served upon appellees on or before 3:00 p.m., Thursday, May 10, 1990. Cases are set for oral argument at 10:00 a.m., Monday, May 14, 1990. Reported below: No. 89-1433, 731 F. Supp. 1123; No. 89-1434, 731 F. Supp. 415.

## APRIL 2, 1990

*Certiorari Dismissed*

No. 89-6561. *MOSS v. UNITED STATES*. C. A. 11th Cir. Certiorari dismissed. Reported below: 891 F. 2d 905.

*Miscellaneous Orders*

No. — — —. *KEANE v. NEW YORK*. Motion to direct the Clerk to docket an appeal that does not comply with the Rules of this Court denied.

No. A-683. *VASQUEZ, WARDEN v. HARRIS*. Application of the Attorney General of California to vacate the order of the United States Court of Appeals for the Ninth Circuit, dated March 30, 1990, staying the execution of sentence of death, presented to JUSTICE O'CONNOR, and by her referred to the Court, denied. THE CHIEF JUSTICE, JUSTICE SCALIA, and JUSTICE KENNEDY would grant the application.

No. D-851. *IN RE DISBARMENT OF DWORKIN*. Disbarment entered. [For earlier order herein, see 493 U. S. 1040.]

No. D-886. *IN RE DISBARMENT OF MCCANN*. It is ordered that Frank Moses McCann, of Lynchburg, Va., be suspended from the practice of law in this Court and that a rule issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D-887. *IN RE DISBARMENT OF ARAGON*. It is ordered that Leopoldo Thomas Aragon, of Jackson, Miss., 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-888. *IN RE DISBARMENT OF RABEN*. It is ordered that Ronald J. Raben, of St. Louis, Mo., be suspended from the practice

494 U. S.

April 2, 1990

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-889. *IN RE DISBARMENT OF MAZUR*. It is ordered that Jack Martin Mazur, 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. 89-1296. *OKLAHOMA NATURAL GAS CO. v. WILLIAMS NATURAL GAS CO. ET AL.* C. A. 10th Cir. The Solicitor General is invited to file a brief in this case expressing the views of the United States.

No. 89-1303. *RESERVE LIFE INSURANCE CO. v. EICHENSEER*. C. A. 5th Cir. Motion of Aetna Casualty & Surety Co. for leave to file a brief as *amicus curiae* granted.

No. 89-6892. *IN RE STELTEN*. Petition for writ of habeas corpus denied.

*Certiorari Granted*

No. 89-1279. *PACIFIC MUTUAL LIFE INSURANCE CO. v. HASLIP ET AL.* Sup. Ct. Ala. Certiorari granted. Reported below: 553 So. 2d 537.

*Certiorari Denied*

No. 89-46. *WOOD ET AL. v. GENERAL MOTORS CORP.* C. A. 1st Cir. Certiorari denied. Reported below: 865 F. 2d 395.

No. 89-279. *KITTS, AS PERSONAL REPRESENTATIVE OF THE ESTATE OF KITTS v. GENERAL MOTORS CORP.* C. A. 10th Cir. Certiorari denied. Reported below: 875 F. 2d 787.

No. 89-459. *DELTA AIR LINES, INC. v. ASSOCIATION OF FLIGHT ATTENDANTS, AFL-CIO.* C. A. D. C. Cir. Certiorari denied. Reported below: 279 U. S. App. D. C. 60, 879 F. 2d 906.

No. 89-778. *HOLLANDER v. UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MISSOURI.* C. A. 8th Cir. Certiorari denied.

No. 89-852. *TAYLOR ET AL. v. GENERAL MOTORS CORP. ET AL.* C. A. 11th Cir. Certiorari denied. Reported below: 875 F. 2d 816.

April 2, 1990

494 U. S.

No. 89-879. STANGLER, DIRECTOR, DEPARTMENT OF SOCIAL SERVICES OF MISSOURI *v.* DARLING ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 878 F. 2d 1069.

No. 89-940. MEIER ET AL. *v.* NISSAN MOTOR CORPORATION IN U. S. A. ET AL. Ct. App. Cal., 2d App. Dist. Certiorari denied. Reported below: 212 Cal. App. 3d 980, 261 Cal. Rptr. 80.

No. 89-1085. SEXTON *v.* ARKANSAS SUPREME COURT COMMITTEE ON PROFESSIONAL CONDUCT. Sup. Ct. Ark. Certiorari denied. Reported below: 299 Ark. 439, 774 S. W. 2d 114.

No. 89-1118. NEW LIFE BAPTIST CHURCH ACADEMY ET AL. *v.* TOWN OF EAST LONGMEADOW ET AL. C. A. 1st Cir. Certiorari denied. Reported below: 885 F. 2d 940.

No. 89-1247. H. K. PORTER CO., INC. *v.* TRANSAMERICA INSURANCE CO. C. A. 3d Cir. Certiorari denied. Reported below: 887 F. 2d 261.

No. 89-1264. CROWN CORK & SEAL CO., INC. *v.* MCNASBY ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 888 F. 2d 270.

No. 89-1267. ROSENTHAL *v.* STATE BAR OF CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 89-1273. INTERNATIONAL LOGISTICS GROUP, LTD. *v.* CHRYSLER CORP. C. A. 6th Cir. Certiorari denied. Reported below: 884 F. 2d 904.

No. 89-1284. FOWLER INDUSTRIES, INC., ET AL. *v.* INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 613. C. A. 11th Cir. Certiorari denied. Reported below: 884 F. 2d 551.

No. 89-1285. AERON MARINE CO. *v.* MILES, INDIVIDUALLY AND AS ADMINISTRATRIX OF THE SUCCESSION OF TORREGANO. C. A. 5th Cir. Certiorari denied. Reported below: 882 F. 2d 976.

No. 89-1286. FRANK *v.* MORANDO ET AL. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 89-1288. SPEARS ET AL. *v.* CORNELIUS. C. A. 11th Cir. Certiorari denied. Reported below: 880 F. 2d 348.

494 U. S.

April 2, 1990

No. 89-1289. *CHAPMAN v. HOMCO, INC.* C. A. 5th Cir. Certiorari denied. Reported below: 886 F. 2d 756.

No. 89-1291. *MOSHKELGOSHA ET AL. v. PRINCE GEORGE'S COUNTY, MARYLAND.* Ct. Sp. App. Md. Certiorari denied. Reported below: 79 Md. App. 768.

No. 89-1294. *CASSILLY v. MARYLAND DEPARTMENT OF HUMAN RESOURCES ET AL.* Ct. App. Md. Certiorari denied. Reported below: 317 Md. 573, 565 A. 2d 1015.

No. 89-1299. *BLACKWELL v. CITY OF ST. LOUIS, MISSOURI, ET AL.* Ct. App. Mo., Eastern Dist. Certiorari denied. Reported below: 778 S. W. 2d 711.

No. 89-1302. *NZONGOLA v. GEORGIA ET AL.* Super. Ct. Ga., Fulton County. Certiorari denied.

No. 89-1308. *WILHELM ET UX. v. FIRST NATIONAL BANK & TRUST CO. ET AL.* C. A. 8th Cir. Certiorari denied.

No. 89-1337. *GARDNER v. DELAWARE.* Sup. Ct. Del. Certiorari denied. Reported below: 567 A. 2d 404.

No. 89-1342. *CANDEE CONSTRUCTION CO., INC. v. MYERS ET AL.* Sup. Ct. S. D. Certiorari denied. Reported below: 447 N. W. 2d 339.

No. 89-1369. *SCHMIDT v. COMMISSIONER OF INTERNAL REVENUE.* C. A. 3d Cir. Certiorari denied. Reported below: 891 F. 2d 283.

No. 89-1387. *BRIDGES v. NATIONWIDE MUTUAL INSURANCE CO. ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 884 F. 2d 1387.

No. 89-1394. *PENA v. NICHOLS, SHERIFF, OAKLAND COUNTY, MICHIGAN.* C. A. 6th Cir. Certiorari denied.

No. 89-5984. *BRADY v. MARTIN, WARDEN, ET AL.* C. A. 10th Cir. Certiorari denied.

No. 89-6162. *HOWELL v. UNITED STATES.* C. A. 6th Cir. Certiorari denied. Reported below: 885 F. 2d 871.

No. 89-6172. *CAREY v. UNITED STATES.* C. A. 11th Cir. Certiorari denied. Reported below: 884 F. 2d 547.

April 2, 1990

494 U. S.

No. 89-6345. *SCOTT v. SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN MATEO (CALIFORNIA, REAL PARTY IN INTEREST)*. Ct. App. Cal., 1st App. Dist. Certiorari denied. Reported below: 212 Cal. App. 3d 505, 260 Cal. Rptr. 608.

No. 89-6408. *TAYLOR v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 891 F. 2d 287.

No. 89-6438. *SMITH v. UNITED STATES*. C. A. 10th Cir. Certiorari denied. Reported below: 888 F. 2d 720.

No. 89-6589. *OSPINA v. UNITED STATES*. C. A. 11th Cir. Certiorari denied. Reported below: 892 F. 2d 88.

No. 89-6634. *ESTRADA RUIZ v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 890 F. 2d 588.

No. 89-6636. *SHERRILLS v. PERINI*. C. A. 6th Cir. Certiorari denied. Reported below: 887 F. 2d 1088.

No. 89-6644. *WILEY v. CORRECTIONS CABINET OF KENTUCKY ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 889 F. 2d 1089.

No. 89-6645. *JUSTICE v. UNITED STATES*. C. A. 11th Cir. Certiorari denied. Reported below: 893 F. 2d 347.

No. 89-6650. *HOWARD v. KENTUCKY*. Sup. Ct. Ky. Certiorari denied. Reported below: 777 S. W. 2d 888.

No. 89-6651. *ABRAMSON ET AL. v. BATEMAN ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 888 F. 2d 1385.

No. 89-6654. *RINGENBERG ET UX. v. CITY OF KAHOKA, MISSOURI, ET AL.* C. A. 8th Cir. Certiorari denied.

No. 89-6659. *GAVITT v. MICHIGAN*. Ct. App. Mich. Certiorari denied.

No. 89-6663. *HARDY v. NEW YORK*. Ct. App. N. Y. Certiorari denied. Reported below: 74 N. Y. 2d 948, 549 N. E. 2d 485.

No. 89-6667. *WALTON v. NORTHEAST WOMEN'S CENTER, INC.* C. A. 3d Cir. Certiorari denied. Reported below: 889 F. 2d 466.

No. 89-6671. *GONZALEZ v. KEOHANE, WARDEN*. C. A. 3d Cir. Certiorari denied. Reported below: 891 F. 2d 280.

494 U. S.

April 2, 1990

No. 89-6680. *RAY v. UNITED STATES SENATE ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 892 F. 2d 1041.

No. 89-6685. *MCDONALD v. SULLIVAN.* C. A. 10th Cir. Certiorari denied.

No. 89-6689. *LANE v. CHISHOLM.* Ct. App. Ind. Certiorari denied. Reported below: 543 N. E. 2d 688.

No. 89-6690. *BOCHTER v. UNITED STATES.* C. A. 3d Cir. Certiorari denied. Reported below: 891 F. 2d 284.

No. 89-6696. *PRATHER v. PARKE, WARDEN.* C. A. 6th Cir. Certiorari denied. Reported below: 889 F. 2d 1088.

No. 89-6701. *BETANCOURT v. UNITED STATES.* C. A. 3d Cir. Certiorari denied. Reported below: 891 F. 2d 284.

No. 89-6704. *GAINES v. UNITED STATES.* C. A. 6th Cir. Certiorari denied. Reported below: 892 F. 2d 80.

No. 89-6708. *PAINTER v. BEYER, ADMINISTRATOR, NEW JERSEY STATE PRISON, ET AL.* C. A. 3d Cir. Certiorari denied. Reported below: 897 F. 2d 523.

No. 89-6718. *WICKSTROM v. UNITED STATES.* C. A. 3d Cir. Certiorari denied. Reported below: 891 F. 2d 284.

No. 89-6724. *KRUSE v. KENTUCKY.* C. A. 6th Cir. Certiorari denied. Reported below: 881 F. 2d 1076.

No. 89-6725. *JUSTICE v. CITY OF COLUMBUS ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 872 F. 2d 1026.

No. 89-6727. *LAING v. UNITED STATES.* C. A. D. C. Cir. Certiorari denied. Reported below: 281 U. S. App. D. C. 266, 889 F. 2d 281.

No. 89-6729. *CANNON v. UNITED STATES.* C. A. 3d Cir. Certiorari denied. Reported below: 893 F. 2d 1332.

No. 89-6733. *JARAMILLO v. UNITED STATES;* and  
No. 89-6736. *JARAMILLO v. UNITED STATES.* C. A. 7th Cir. Certiorari denied. Reported below: 891 F. 2d 620.

No. 89-6737. *LOWE v. UNITED STATES.* C. A. 6th Cir. Certiorari denied. Reported below: 887 F. 2d 1088.

April 2, 1990

494 U. S.

No. 89-6748. *THAI DO HOANG v. KANSAS*. Sup. Ct. Kan. Certiorari denied. Reported below: 245 Kan. 560, 781 P. 2d 731.

No. 89-6762. *RODRIGUEZ v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 892 F. 2d 233.

No. 89-6781. *GASTON v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 881 F. 2d 1073.

No. 89-6782. *ESCOBAR-GARCIA v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 893 F. 2d 124.

No. 89-6788. *GRIFFITH v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 892 F. 2d 1044.

No. 89-6798. *ATKINS v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 896 F. 2d 1368.

No. 89-6805. *NEGRON-JESSURUN v. UNITED STATES*. C. A. 10th Cir. Certiorari denied.

No. 89-6812. *GARCIA v. UNITED STATES*. C. A. 10th Cir. Certiorari denied. Reported below: 893 F. 2d 250.

No. 89-6815. *WITHERS v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 892 F. 2d 1044.

No. 89-6827. *WHYTE v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 892 F. 2d 1170.

No. 89-6830. *ASHBY v. UNITED STATES*. C. A. 10th Cir. Certiorari denied. Reported below: 864 F. 2d 690.

No. 89-6843. *MARTIN v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 833 F. 2d 752.

No. 89-6864. *FISHER v. FULCOMER, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION, HUNTINGTON, PENNSYLVANIA*. Sup. Ct. Pa. Certiorari denied. Reported below: 524 Pa. 617, 571 A. 2d 380.

No. 89-6883. *TERRY v. BLUE CAB, INC., ET AL.* Ct. App. Wis. Certiorari denied.

No. 89-1141. *MINNESOTA MINING & MANUFACTURING CO. v. FREEMAN*. C. A. Fed. Cir. Certiorari denied. JUSTICE BLACK-

494 U. S.

April 2, 1990

MUN took no part in the consideration or decision of this petition. Reported below: 884 F. 2d 1398.

No. 89-6126. *DEGRAFFENREID v. MCKELLAR, WARDEN, ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 883 F. 2d 68.

JUSTICE MARSHALL, with whom JUSTICE BRENNAN joins, dissenting.

"[O]urs is an accusatorial and not an inquisitorial system—a system in which the State must establish guilt by evidence independently and freely secured and may not by coercion prove its charge against an accused out of his own mouth." *Rogers v. Richmond*, 365 U. S. 534, 541 (1961). Because the court below failed to examine fully whether petitioner's confession was obtained by inquisitorial means condemned by the Due Process Clause, I would grant certiorari in this case to clarify the nature of the voluntariness inquiry.

In 1973, Claude Killian was murdered. Police questioned petitioner Ray Charles Degraffenreid shortly after the murder, but he was not then charged. In 1977, Degraffenreid was arrested for Killian's murder while incarcerated in state prison on an unrelated conviction. Five days later, he confessed to law enforcement officials. At Degraffenreid's first trial, the state court granted his motion to suppress his confession as involuntary, and the jury was unable to reach a verdict. At Degraffenreid's retrial, a different judge admitted the confession. Degraffenreid was convicted of murder and sentenced to life imprisonment. His conviction was affirmed on appeal by the South Carolina Supreme Court. Degraffenreid then sought state postconviction relief, which was likewise denied.

In this federal habeas petition, petitioner renews his challenge to the admission of his confession. The District Court referred the petition to a Magistrate for findings of fact and recommendations. After conducting an evidentiary hearing, the Magistrate found that the State had failed to prove that the confession was voluntary. The District Court refused to adopt the Magistrate's recommendation on the ground that the Magistrate incorrectly allocated to the State the burden of proof regarding voluntariness. A divided panel of the Court of Appeals for the Fourth Circuit affirmed, 883 F. 2d 68 (1989), and the full court denied rehearing en banc by a vote of 6 to 5.

The record in this case is replete with factual findings by various state and federal judges. The Magistrate's findings, which set forth the essential and undisputed facts, are as follows:

"[P]etitioner was held incommunicado for three (3) to five (5) days in solitary confinement. He had no exercise, no visitors, no telephone calls. He ate, slept, bathed, and existed within this one cell. There were no magazines, radios, television, books or other diversions. The only window was an observation window in the cell door which when open revealed the hall and the door to the sheriff's office. The only time the petitioner was taken out of this reportedly cold cell was for questioning.

"The only safeguard taken to protect the petitioner's rights was the giving of *Miranda* warnings. Despite the presence of judicial officers on the grounds of the facility and procedures for transporting prisoners to other court officials, the petitioner was not taken before a judicial officer, was not appointed an attorney and was not given any conditions of release until after he confessed." App. to Pet. for Cert. A-45.

It is also uncontested that prison officials placed a notice on the wall of the prison facility indicating that petitioner was to have no visitors or phone calls. From these facts the Magistrate concluded that "despite the advice of rights, the only way the petitioner was going to be released from solitary confinement and allowed contact with third parties was to give a confession." *Id.*, at A-47.

The Court of Appeals did not reject this account of the facts and indeed noted that "[t]he delay in taking Degraffenreid before a judicial officer should not be sanctioned as ideal procedure." *Id.*, at A-9. The court nonetheless ruled that Degraffenreid failed to establish "that the circumstances surrounding the confession were sufficiently egregious to cause Degraffenreid's will to be overborne." *Ibid.*

In *Miller v. Fenton*, 474 U. S. 104 (1985), we held that "the ultimate question of the admissibility of a confession merits treatment as a legal inquiry requiring plenary federal review." *Id.*, at 115. We identified two distinct questions that courts must ask in determining "voluntariness": "whether the techniques for extracting the statements, as applied to *this* suspect, are compatible with a system that presumes innocence and assures that a conviction will not be secured by inquisitorial means [and] whether the defend-

1071

MARSHALL, J., dissenting

ant's will was in fact overborne." *Id.*, at 116 (citing *Gallegos v. Colorado*, 370 U. S. 49, 51 (1962)). These two inquiries safeguard two fundamental societal interests. The first inquiry ensures that inquisitorial means do not infect the criminal process. See *Gallegos, supra*, at 51. It is premised on our abiding belief "that the forfeiture of the lives, liberties or property of people accused of crime can only follow if procedural safeguards of due process have been obeyed." *Chambers v. Florida*, 309 U. S. 227, 237 (1940); see also *Miller, supra*, at 109 ("This Court has long held that certain interrogation techniques, either in isolation or as applied to the unique characteristics of a particular suspect, are so offensive to a civilized system of justice that they must be condemned under the Due Process Clause of the Fourteenth Amendment"). The second inquiry, by focusing on whether a defendant's will was in fact overborne, safeguards the Fifth Amendment right to be free from compelled self-incrimination. See *Gallegos, supra*, at 51.

In this case, the Court of Appeals focused solely on the second inquiry and failed to decide whether, as a matter of due process, the police efforts in this case were impermissibly inquisitorial. This analysis is essential because some police techniques, whether or not they actually overbear a defendant's will, are repugnant to our adversarial system and cannot lay the foundation for a criminal conviction. *Brown v. Mississippi*, 297 U. S. 278, 286 (1936) ("The due process clause requires 'that state action . . . shall be consistent with the fundamental principles of liberty and justice which lie at the base of all our civil and political institutions'") (quoting *Hebert v. Louisiana*, 272 U. S. 312, 316 (1926)); *Rogers*, 365 U. S., at 540-541 (the Due Process Clause requires suppression of confessions improperly obtained "not because such confessions are unlikely to be true but because the methods used to extract them offend an underlying principle in the enforcement of our criminal law"). Here, law enforcement officials isolated petitioner from the outside world and made unmistakably clear that his incommunicado detention would end only with his confession. Cf. *Haynes v. Washington*, 373 U. S. 503, 514 (1963) ("We cannot blind ourselves to what experience unmistakably teaches: that even apart from the express threat, the basic techniques present here—the secret and incommunicado detention and interrogation—are devices adapted and used to extort confessions from suspects"). Such techniques arguably do not conform "to the fundamental

April 2, 16, 1990

494 U. S.

standards" of our criminal justice system. *Chambers, supra*, at 238. Because the Court of Appeals did not consider that possibility, I would grant certiorari in this case to clarify the dual nature of our voluntariness inquiry.

- No. 89-6333. DAVIS *v.* MISSISSIPPI. Sup. Ct. Miss.;
- No. 89-6477. BRISBON *v.* ILLINOIS. Sup. Ct. Ill.;
- No. 89-6518. LINDSEY *v.* LOUISIANA. Sup. Ct. La.;
- No. 89-6609. WATKINS *v.* VIRGINIA. Sup. Ct. Va.;
- No. 89-6624. HICKS *v.* KEMP, WARDEN. Super. Ct. Ga.,  
Butts County;
- No. 89-6633. SPIVEY *v.* KEMP, WARDEN. Sup. Ct. Ga.;
- No. 89-6660. WILCOXSON *v.* TENNESSEE. Sup. Ct. Tenn.; and
- No. 89-6822. PARKER *v.* DUGGER, SECRETARY, FLORIDA DE-  
PARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari  
denied. Reported below: No. 89-6333, 551 So. 2d 165; No. 89-  
6477, 129 Ill. 2d 200, 544 N. E. 2d 297; No. 89-6518, 543 So.  
2d 886; No. 89-6609, 238 Va. 341, 385 S. E. 2d 50; No. 89-6660,  
772 S. W. 2d 33.

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. 89-5949. MANG SUN WONG *v.* UNITED STATES; 493 U. S. 1082;
- No. 89-6199. BOND *v.* RAIKES, JUDGE, ET AL., 493 U. S. 1062;
- No. 89-6248. BYNUM *v.* UNITED STATES, 493 U. S. 1085;
- No. 89-6356. SOLON *v.* UNITED STATES, 493 U. S. 1090;
- No. 89-6384. SCIRE *v.* UNITED STATES, 493 U. S. 1090; and
- No. 89-6396. MCCONE *v.* BIRGE ET AL., *ante*, p. 1006. Peti-  
tions for rehearing denied.

APRIL 16, 1990

#### *Certiorari Granted—Vacated and Remanded*

- No. 88-7000. STRINGER *v.* BLACK, COMMISSIONER, MISSISSIPPI DEPARTMENT OF CORRECTIONS. C. A. 5th Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari

494 U. S.

April 16, 1990

granted, judgment vacated, and case remanded for further consideration in light of *Clemons v. Mississippi*, ante, p. 738. Reported below: 862 F. 2d 1108.

No. 88-7358. *PINKNEY v. MISSISSIPPI*. Sup. Ct. Miss. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Clemons v. Mississippi*, ante, p. 738. Reported below: 538 So. 2d 329.

No. 89-1040. *CHAPPELL v. UNITED STATES*. C. A. 7th Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of the position asserted by the Solicitor General in his brief filed February 27, 1990. Reported below: 878 F. 2d 384.

No. 89-6893. *PETARY v. MISSOURI*. Sup. Ct. Mo. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *McKoy v. North Carolina*, ante, p. 433, and *Boyde v. California*, ante, p. 370. Reported below: 781 S. W. 2d 534.

#### *Miscellaneous Orders*

No. — — —. *CLARK v. COMMUNITY SERVICE PUBLISHING INC. ET AL.* Motion to direct the Clerk to file petition for writ of certiorari out of time denied.

No. A-682 (89-1399). *INTERNATIONAL SOCIETY FOR KRISHNA CONSCIOUSNESS OF CALIFORNIA ET AL. v. GEORGE ET AL.* Ct. App. Cal., 4th App. Dist. Application for stay, presented to JUSTICE O'CONNOR, and by her referred to the Court, granted, and it is ordered that execution and enforcement of the judgment of the Court of Appeal of California, Fourth Appellate District, case No. D007153, entered August 30, 1989, and modified September 29, 1989, and that execution and enforcement of the order of the Superior Court of California, in and for the County of Orange, case No. 27 75 65, entered March 16, 1990, are stayed pending this Court's action on the petition for writ of certiorari. Should the petition for writ of certiorari be denied, this stay terminates automatically. In the event the petition for writ of certiorari is granted, this stay shall continue pending issuance of the mandate of this Court.

April 16, 1990

494 U. S.

No. D-842. IN RE DISBARMENT OF EISENBERG. Disbarment entered. [For earlier order herein, see 493 U. S. 988.]

No. D-845. IN RE DISBARMENT OF DAVIS. Disbarment entered. [For earlier order herein, see 493 U. S. 988.]

No. D-862. IN RE DISBARMENT OF HELLER. Melvin A. Heller, of Chicago, Ill., having requested to resign as a member of the Bar of this Court, it is ordered that his name be stricken from the roll of attorneys admitted to practice before the Bar of this Court. The rule to show cause, heretofore issued on February 20, 1990 [493 U. S. 1067], is hereby discharged.

No. D-863. IN RE DISBARMENT OF MORRIS. Jerrold L. Morris, of Chicago, Ill., having requested to resign as a member of the Bar of this Court, it is ordered that his name be stricken from the roll of attorneys admitted to practice before the Bar of this Court. The rule to show cause, heretofore issued on February 26, 1990 [*ante*, p. 1001], is hereby discharged.

No. D-865. IN RE DISBARMENT OF BOYCE. Earl Rumsey Boyce, of Palm Beach, Fla., 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 February 26, 1990 [*ante*, p. 1002], is hereby discharged.

No. D-866. IN RE DISBARMENT OF SILVEIRA. Disbarment entered. [For earlier order herein, see *ante*, p. 1002.]

No. D-890. IN RE DISBARMENT OF HANCOCK. It is ordered that Mac W. Hancock III, of Houston, Tex., be suspended from the practice of law in this Court and that a rule issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D-891. IN RE DISBARMENT OF DAY. It is ordered that George A. Day, of Brownwood, Tex., be suspended from the practice of law in this Court and that a rule issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D-892. IN RE DISBARMENT OF SHORTER. It is ordered that John A. Shorter, Jr., of Washington, D. C., be suspended from the practice of law in this Court and that a rule issue, return-

494 U. S.

April 16, 1990

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

No. 88-2041. *SISSON v. RUBY ET AL.* C. A. 7th Cir. [Certiorari granted, 493 U. S. 1055.] Motion of the parties to dispense with printing the joint appendix granted. Motion of Hatteras Yachts Division of Genmar Industries, Inc., for leave to file a brief as *amicus curiae* granted.

No. 89-609. *PUCKETT ET AL. v. NATIVE VILLAGE OF TYONEK ET AL.* C. A. 9th Cir.; and

No. 89-1330. *INTERNATIONAL ORGANIZATION OF MASTERS, MATES & PILOTS ET AL. v. BROWN.* C. A. 4th Cir. The Solicitor General is invited to file briefs in these cases expressing the views of the United States.

No. 89-645. *MILKOVICH v. LORAIN JOURNAL CO. ET AL.* Ct. App. Ohio, Lake County. [Certiorari granted, 493 U. S. 1055.] Motion of American Civil Liberties Union et al. for leave to file a brief as *amici curiae* granted.

No. 89-711. *UNIVERSAL FABRICATORS, INC. v. SMITH ET AL.*, 493 U. S. 1070. Motion of respondent Carl Smith for approval of application for attorney's fees denied without prejudice to filing the motion in the United States Court of Appeals for the Fifth Circuit.

No. 89-1230. *CITY OF CHICAGO ET AL. v. FRIEDRICH.* C. A. 7th Cir. Motion of respondent to consolidate this case with No. 89-994, *West Virginia University Hospitals, Inc. v. Casey, Governor of Pennsylvania, et al.* [certiorari granted, *ante*, p. 1003], for purposes of oral argument denied.

No. 89-5900. *RUST v. GUNTER ET AL.* C. A. 8th Cir. [Certiorari granted, *ante*, p. 1055.] Motion for appointment of counsel granted, and it is ordered that Alvin J. Bronstein, Esq., of Washington, D. C., be appointed to serve as counsel for petitioner in this case.

No. 89-6818. *IN RE HICKS.* C. A. 10th Cir. Petition for writ of common-law certiorari denied.

No. 89-1382. *IN RE FREED*; and

No. 89-6613. *IN RE DEBARDELEBEN.* Petitions for writs of mandamus denied.

April 16, 1990

494 U. S.

*Certiorari Granted*

No. 89-1298. *INGERSOLL-RAND CO. v. MCCLENDON*. Sup. Ct. Tex. Motions of Chamber of Commerce of the United States of America, American Paper Institute, Inc., and Equal Employment Advisory Council for leave to file briefs as *amici curiae* granted. Certiorari granted. Reported below: 779 S. W. 2d 69.

*Certiorari Denied*. (See also No. 89-6818, *supra*.)

No. 89-644. *ROBINSON, PERSONAL REPRESENTATIVE OF THE ESTATE OF ROBINSON v. TOWNSHIP OF WATERFORD ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 883 F. 2d 75.

No. 89-709. *MICHIGAN v. HAWKINS*. Ct. App. Mich. Certiorari denied.

No. 89-1023. *DUBOIS ET AL. v. HOCKING*. C. A. 9th Cir. Certiorari denied. Reported below: 885 F. 2d 1449.

No. 89-1041. *MISSISSIPPI ET AL. v. FEDERAL ENERGY REGULATORY COMMISSION*. C. A. D. C. Cir. Certiorari denied. Reported below: 277 U. S. App. D. C. 346, 875 F. 2d 903.

No. 89-1094. *LITTLE EARTH OF UNITED TRIBES, INC., ET AL. v. KEMP, SECRETARY OF HOUSING AND URBAN DEVELOPMENT*. C. A. 8th Cir. Certiorari denied. Reported below: 878 F. 2d 236.

No. 89-1098. *NATIONAL ASSOCIATION OF RETIRED FEDERAL EMPLOYEES v. NEWMAN, DIRECTOR, OFFICE OF PERSONNEL MANAGEMENT*. C. A. D. C. Cir. Certiorari denied. Reported below: 279 U. S. App. D. C. 27, 879 F. 2d 873.

No. 89-1105. *ZINNIEL ET AL. v. COMMISSIONER OF INTERNAL REVENUE*. C. A. 7th Cir. Certiorari denied. Reported below: 883 F. 2d 1350.

No. 89-1108. *BIRNBAUM ET AL. v. NEW YORK*. Ct. App. N. Y. Certiorari denied. Reported below: 73 N. Y. 2d 638, 541 N. E. 2d 23.

No. 89-1110. *EDUCATIONAL DEVELOPMENT NETWORK CORP. ET AL. v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 884 F. 2d 737.

No. 89-1131. *LIAO v. DEAN ET AL.* C. A. 11th Cir. Certiorari denied. Reported below: 867 F. 2d 1366.

494 U. S.

April 16, 1990

No. 89-1140. *DOE v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 889 F. 2d 384.

No. 89-1160. *MICHIGAN ET AL. v. PANHANDLE EASTERN PIPE LINE CO. ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 887 F. 2d 1295.

No. 89-1161. *MICHIGAN ET AL. v. FEDERAL ENERGY REGULATORY COMMISSION*. C. A. D. C. Cir. Certiorari denied. Reported below: 280 U. S. App. D. C. 45, 883 F. 2d 117.

No. 89-1173. *LUSKIN v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 885 F. 2d 867.

No. 89-1175. *NUCLEAR TRANSPORT & STORAGE, INC. v. UNITED STATES, ACTING THROUGH ITS DEPARTMENT OF ENERGY, ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 890 F. 2d 1348.

No. 89-1176. *HORTON AUTOMATICS v. NATIONAL LABOR RELATIONS BOARD*. C. A. 5th Cir. Certiorari denied. Reported below: 884 F. 2d 574.

No. 89-1194. *PARK CENTER WATER DISTRICT v. UNITED STATES ET AL.* Sup. Ct. Colo. Certiorari denied. Reported below: 781 P. 2d 90.

No. 89-1198. *MARROQUIN v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 885 F. 2d 1240.

No. 89-1203. *KENTUCKY v. PETERSON*. Ct. App. Ky. Certiorari denied.

No. 89-1209. *CHICAGO & NORTH WESTERN TRANSPORTATION CO. v. RAILWAY LABOR EXECUTIVES' ASSN. ET AL.* C. A. 8th Cir. Certiorari denied. Reported below: 888 F. 2d 1227.

No. 89-1253. *BLOUNT COUNTY BOARD OF EDUCATION ET AL. v. NICHOLS*. C. A. 11th Cir. Certiorari denied. Reported below: 880 F. 2d 419.

No. 89-1262. *INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 660, ET AL. v. HESTER*. C. A. 11th Cir. Certiorari denied. Reported below: 878 F. 2d 1309.

No. 89-1270. *MCNELL ET AL. v. HUGEL*. C. A. 1st Cir. Certiorari denied. Reported below: 886 F. 2d 1.

April 16, 1990

494 U. S.

No. 89-1274. *ALBERT ET AL. v. AVERY, INC., ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 902 F. 2d 1556.

No. 89-1306. *CONSTRUCTION ENGINEERS, INC., ET AL. v. CONWAY CORP. ET AL.* Sup. Ct. Ark. Certiorari denied. Reported below: 300 Ark. 225, 782 S. W. 2d 36.

No. 89-1310. *REID v. WHITE MOTOR CORP. ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 886 F. 2d 1462.

No. 89-1312. *AMES v. AMES ET AL.* Sup. Ct. Tex. Certiorari denied. Reported below: 776 S. W. 2d 154.

No. 89-1314. *ROSSCO HOLDINGS INC., DBA QUAKER CORP., ET AL. v. CALIFORNIA ET AL.* Ct. App. Cal., 2d App. Dist. Certiorari denied. Reported below: 212 Cal. App. 3d 642, 260 Cal. Rptr. 736.

No. 89-1319. *TARKA v. FRANKLIN ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 891 F. 2d 102.

No. 89-1323. *ZETTL v. UNITED STATES.* C. A. 4th Cir. Certiorari denied. Reported below: 889 F. 2d 51.

No. 89-1325. *GARDNER v. UNITED STATES.* C. A. 3d Cir. Certiorari denied. Reported below: 891 F. 2d 280.

No. 89-1327. *RAMOS v. BETHLEHEM STEEL CORP.* C. A. 3d Cir. Certiorari denied. Reported below: 888 F. 2d 1382.

No. 89-1328. *GOODRICH v. COUNTY OF LOS ANGELES.* Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 89-1329. *WILLIAMS v. ILLINOIS CENTRAL GULF RAILROAD Co.* Sup. Ct. Ala. Certiorari denied. Reported below: 554 So. 2d 440.

No. 89-1331. *GWIRTZ ET AL. v. OHIO EDUCATION ASSN.* C. A. 6th Cir. Certiorari denied. Reported below: 887 F. 2d 678.

No. 89-1333. *SANDERS v. SOUTH CENTRAL BELL TELEPHONE Co.* C. A. 5th Cir. Certiorari denied. Reported below: 888 F. 2d 1390.

No. 89-1334. *ROSENTHAL v. YOUNG ET AL.* Ct. App. Cal., 2d App. Dist. Certiorari denied. Reported below: 212 Cal. App. 3d 96, 260 Cal. Rptr. 369.

494 U. S.

April 16, 1990

No. 89-1339. ACKLEY, DBA VILLAGE SQUARE CHEVRON, ET AL. *v.* GULF OIL CORP. ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 889 F. 2d 1280.

No. 89-1340. WASHBURN *v.* SHEEDY. Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 89-1341. RAMIREZ *v.* TRANSAMERICAN NATURAL GAS CORP. ET AL. C. A. 5th Cir. Certiorari denied.

No. 89-1348. CLAYTON, A MINOR, BY CLAYTON, HIS NEXT FRIEND, ET AL. *v.* PLACE ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 884 F. 2d 376.

No. 89-1350. FRAGANTE *v.* CITY AND COUNTY OF HONOLULU ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 888 F. 2d 591.

No. 89-1351. CARAMADRE *v.* FULCOMER, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT HUNTINGDON, ET AL. C. A. 3d Cir. Certiorari denied.

No. 89-1352. HASS *v.* OREGON STATE BAR. C. A. 9th Cir. Certiorari denied. Reported below: 883 F. 2d 1453.

No. 89-1354. MAXWELL *v.* GOODWIN ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 885 F. 2d 157.

No. 89-1355. BAUM, INDIVIDUALLY AND AS EXECUTOR OF THE ESTATE OF BAUM, ET AL. *v.* EGAN ET UX. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 184 Ill. App. 3d 1104, 562 N. E. 2d 406.

No. 89-1356. STANKO *v.* GIOVE. C. A. 8th Cir. Certiorari denied. Reported below: 882 F. 2d 1316.

No. 89-1358. KALOA ET AL. *v.* NATIVE VILLAGE OF TYONEK ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 883 F. 2d 1024.

No. 89-1359. HILL RESOURCES, INC. *v.* CUESTA ENERGY CORP. C. A. 10th Cir. Certiorari denied.

No. 89-1362. WASHINGTON MILLS ELECTRO MINERALS CORP. ET AL. *v.* DELONG EQUIPMENT Co. C. A. 11th Cir. Certiorari denied. Reported below: 887 F. 2d 1499.

April 16, 1990

494 U. S.

No. 89-1370. *GACETA ET AL. v. COUNTY OF SANTA CLARA ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 883 F. 2d 1023.

No. 89-1374. *EASON v. DUGGER, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS.* C. A. 11th Cir. Certiorari denied. Reported below: 892 F. 2d 88.

No. 89-1389. *DEMARTINO v. NEW YORK CITY TRANSIT AUTHORITY ET AL.* App. Div., Sup. Ct. N. Y., 2d Jud. Dept. Certiorari denied. Reported below: 149 App. Div. 2d 705, 540 N. Y. S. 2d 499.

No. 89-1390. *LOUISIANA INSURANCE GUARANTY ASSN. v. ABBOTT.* C. A. 5th Cir. Certiorari denied. Reported below: 889 F. 2d 626.

No. 89-1393. *FUGATE v. BORG TEXTILE CORP.* C. A. 4th Cir. Certiorari denied. Reported below: 881 F. 2d 1069.

No. 89-1400. *CITY OF LONGMONT, COLORADO v. OAKLEY.* C. A. 10th Cir. Certiorari denied. Reported below: 890 F. 2d 1128.

No. 89-1403. *VALE v. COOKE ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 885 F. 2d 869.

No. 89-1410. *ZANNINO v. UNITED STATES.* C. A. 1st Cir. Certiorari denied. Reported below: 895 F. 2d 1.

No. 89-1417. *ZELTZER v. SAMUELS, ACTING COMMISSIONER OF PATENTS AND TRADEMARKS.* C. A. Fed. Cir. Certiorari denied. Reported below: 892 F. 2d 1050.

No. 89-1422. *ROST v. FRANK, POSTMASTER GENERAL, UNITED STATES POSTAL SERVICE.* C. A. 9th Cir. Certiorari denied. Reported below: 884 F. 2d 1395.

No. 89-1423. *COOK v. UNITED STATES.* C. A. 10th Cir. Certiorari denied.

No. 89-1429. *GUERRERO v. UNITED STATES.* C. A. 10th Cir. Certiorari denied.

No. 89-1468. *JEFFERS v. VETERANS ADMINISTRATION.* C. A. Fed. Cir. Certiorari denied. Reported below: 892 F. 2d 1050.

494 U. S.

April 16, 1990

No. 89-1478. *SCALISE ET AL. v. THORNBURGH, ATTORNEY GENERAL OF THE UNITED STATES, ET AL.* C. A. 7th Cir. Certiorari denied. Reported below: 891 F. 2d 640.

No. 89-1488. *JOSHUA BASIN PARTNERSHIP ET AL. v. UNITED STATES DEPARTMENT OF THE INTERIOR.* C. A. 10th Cir. Certiorari denied.

No. 89-1492. *COLLIER v. NEW JERSEY.* Super. Ct. N. J., App. Div. Certiorari denied.

No. 89-5981. *LINER v. JONES ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 881 F. 2d 1069.

No. 89-6184. *CALLANAN v. UNITED STATES*; and  
No. 89-6203. *CALLANAN v. UNITED STATES.* C. A. 6th Cir. Certiorari denied. Reported below: 881 F. 2d 229.

No. 89-6311. *GAMBLE v. JONES, SUPERINTENDENT, MISSOURI TRAINING CENTER FOR MEN.* Sup. Ct. Mo. Certiorari denied.

No. 89-6363. *SCROGGINS v. UNITED STATES.* C. A. 11th Cir. Certiorari denied. Reported below: 880 F. 2d 1204.

No. 89-6367. *LEEDS v. DEPARTMENT OF COMMERCE*; and  
*LEEDS v. QUIGG, COMMISSIONER OF PATENTS AND TRADEMARKS.* C. A. Fed. Cir. Certiorari denied. Reported below: 887 F. 2d 1095 (first case) and 1094 (second case).

No. 89-6377. *CRAWFORD v. DAVIS ET AL.* C. A. 6th Cir. Certiorari denied.

No. 89-6386. *ANDERSON v. ROCKWELL INTERNATIONAL, INC., ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 865 F. 2d 263.

No. 89-6417. *JONES v. CELOTEX CORP. ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 887 F. 2d 1084.

No. 89-6421. *ELY v. HAGG ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 884 F. 2d 1388.

No. 89-6434. *VILLASENOR v. UNITED STATES.* C. A. 9th Cir. Certiorari denied. Reported below: 884 F. 2d 1396.

No. 89-6450. *ROSS v. UNITED STATES.* C. A. 9th Cir. Certiorari denied. Reported below: 886 F. 2d 264.

April 16, 1990

494 U. S.

No. 89-6467. *TIGGS v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 886 F. 2d 1321.

No. 89-6476. *CARVER v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 891 F. 2d 292.

No. 89-6493. *SMITH v. DORSEY, WARDEN*. C. A. 10th Cir. Certiorari denied.

No. 89-6499. *WELLS v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 886 F. 2d 1312.

No. 89-6503. *ROMERO-REYNA v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 889 F. 2d 559.

No. 89-6520. *LAROCOCCO v. UNITED STATES*. C. A. 10th Cir. Certiorari denied.

No. 89-6549. *KINNELL v. SAFFELS, JUDGE, UNITED STATES DISTRICT COURT FOR THE DISTRICT OF KANSAS, ET AL.* C. A. 10th Cir. Certiorari denied.

No. 89-6664. *QUIMBY v. McMACKIN, SUPERINTENDENT, MARION CORRECTIONAL INSTITUTION*. C. A. 6th Cir. Certiorari denied. Reported below: 890 F. 2d 416.

No. 89-6665. *RODMAN v. WILSON, DIRECTOR, OHIO DEPARTMENT OF REHABILITATION AND CORRECTION, ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 886 F. 2d 330.

No. 89-6672. *FAUGHN v. CAMPBELL*. C. A. 10th Cir. Certiorari denied.

No. 89-6674. *BROWN v. BI-STATE DEVELOPMENT ET AL.* C. A. 8th Cir. Certiorari denied. Reported below: 890 F. 2d 419.

No. 89-6676. *BYNUM v. ANDERSON, CHIEF JUDGE*. Sup. Ct. Fla. Certiorari denied. Reported below: 557 So. 2d 35.

No. 89-6678. *WILLIAMS v. CALIFORNIA*. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 89-6681. *POWELL v. COLLINS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE*. C. A. 5th Cir. Certiorari denied. Reported below: 889 F. 2d 273.

494 U. S.

April 16, 1990

No. 89-6682. *GRAY v. CITY OF HOUSTON ET AL.* C. A. 5th Cir. Certiorari denied.

No. 89-6684. *NORTHARD v. NAGLE, WARDEN, ET AL.* C. A. 11th Cir. Certiorari denied.

No. 89-6687. *MAZO v. NEWSOME, WARDEN.* C. A. 11th Cir. Certiorari denied.

No. 89-6697. *BUCKLEY v. KLEVENHAGEN ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 889 F. 2d 273.

No. 89-6698. *DELLENBACH v. LETSINGER ET AL.* C. A. 7th Cir. Certiorari denied. Reported below: 889 F. 2d 755.

No. 89-6703. *ROSS v. JEFFES ET AL.* C. A. 3d Cir. Certiorari denied. Reported below: 888 F. 2d 1382.

No. 89-6706. *BERBICK v. PROVIDENT NATIONAL BANK ET AL.* Sup. Ct. Pa. Certiorari denied.

No. 89-6711. *ALLISON v. OHIO DISCIPLINARY COUNSEL.* Sup. Ct. Ohio. Certiorari denied. Reported below: 44 Ohio St. 3d 100, 541 N. E. 2d 70.

No. 89-6712. *THOMAS v. COWLEY, WARDEN, ET AL.* C. A. 10th Cir. Certiorari denied.

No. 89-6713. *BROOKE v. CALIFORNIA* (two cases). Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 89-6714. *WILLIAMS v. OKLAHOMA.* Ct. Crim. App. Okla. Certiorari denied.

No. 89-6720. *FRANCOIS v. UNITED STATES.* C. A. 4th Cir. Certiorari denied. Reported below: 889 F. 2d 1341.

No. 89-6721. *BROWN v. VIRGINIA EMPLOYMENT COMMISSION ET AL.* Ct. App. Va. Certiorari denied.

No. 89-6723. *GALLAGHER v. MORROW COUNTY LAW LIBRARY ASSN. ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 889 F. 2d 1087.

No. 89-6732. *MOROVITZ v. MOROVITZ.* Ct. App. Mo., Eastern Dist. Certiorari denied. Reported below: 778 S. W. 2d 369.

No. 89-6734. *JOHNSON v. KENTUCKY.* Sup. Ct. Ky. Certiorari denied. Reported below: 777 S. W. 2d 876.

April 16, 1990

494 U. S.

No. 89-6738. *LEE v. HUDSON*. C. A. 4th Cir. Certiorari denied. Reported below: 894 F. 2d 402.

No. 89-6742. *NOHEART v. RIVELAND, SECRETARY, WASHINGTON DEPARTMENT OF CORRECTIONS, ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 875 F. 2d 319.

No. 89-6744. *LIGHTSEY v. OKLAHOMA*. Ct. Crim. App. Okla. Certiorari denied.

No. 89-6749. *R. J. v. KAHN*. Ct. App. Mo., Eastern Dist. Certiorari denied. Reported below: 778 S. W. 2d 239.

No. 89-6751. *WILLIAMS v. LECUREUX, WARDEN*. C. A. 6th Cir. Certiorari denied.

No. 89-6752. *BALLARD v. OKLAHOMA*. Ct. Crim. App. Okla. Certiorari denied.

No. 89-6755. *SINDRAM v. AHALT, JUDGE, CIRCUIT COURT OF PRINCE GEORGE'S COUNTY, MARYLAND, ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 892 F. 2d 75.

No. 89-6756. *O. M. v. DISTRICT OF COLUMBIA ET AL.* Ct. App. D. C. Certiorari denied. Reported below: 565 A. 2d 573.

No. 89-6759. *LEONARD v. SCULLY, SUPERINTENDENT, GREEN HAVEN CORRECTIONAL FACILITY, ET AL.* C. A. 2d Cir. Certiorari denied.

No. 89-6761. *SAKOVICH v. ST. MARY'S HOSPITAL ET AL.* App. Ct. Ill., 3d Dist. Certiorari denied. Reported below: 176 Ill. App. 3d 1174, 549 N. E. 2d 361.

No. 89-6763. *CRAIG v. MCCARTHY, DIRECTOR, CALIFORNIA DEPARTMENT OF CORRECTIONS, ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 883 F. 2d 1023.

No. 89-6766. *OUTLAW v. O'LEARY, WARDEN, ET AL.* C. A. 7th Cir. Certiorari denied.

No. 89-6768. *BROWN v. CLANTON ET AL.* C. A. 11th Cir. Certiorari denied. Reported below: 889 F. 2d 274.

No. 89-6770. *ANA LEON T. v. FEDERAL RESERVE BANK OF CHICAGO ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 888 F. 2d 1391.

494 U. S.

April 16, 1990

No. 89-6771. *BROWN v. KENTUCKY*. Sup. Ct. Ky. Certiorari denied. Reported below: 780 S. W. 2d 627.

No. 89-6772. *BRANDON v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 894 F. 2d 402.

No. 89-6773. *GEIGER v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 891 F. 2d 512.

No. 89-6774. *SMITH v. QUARLES, WARDEN*. C. A. 6th Cir. Certiorari denied.

No. 89-6775. *SIVLEY v. A. H. ROBINS CO., INC.* C. A. 4th Cir. Certiorari denied. Reported below: 887 F. 2d 1081.

No. 89-6776. *RAMSEYER v. CODY, WARDEN, ET AL.* C. A. 10th Cir. Certiorari denied.

No. 89-6779. *HERNDON v. COLLINS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION*. C. A. 5th Cir. Certiorari denied. Reported below: 894 F. 2d 404.

No. 89-6784. *HARVEY v. MCHUGH ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 887 F. 2d 1079.

No. 89-6789. *BATTEN v. WATTS CYCLE & MARINE, INC., ET AL.* Sup. Ct. Mont. Certiorari denied. Reported below: 240 Mont. 113, 783 P. 2d 378.

No. 89-6790. *GAINES v. COLLINS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION*. C. A. 5th Cir. Certiorari denied.

No. 89-6791. *LOPEZ v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 891 F. 2d 284.

No. 89-6796. *LODHI v. STATE BOARD OF LAW EXAMINERS ET AL.* Ct. App. N. Y. Certiorari denied.

No. 89-6799. *BENGIOVANNI v. CALIFORNIA*. Ct. App. Cal., 1st App. Dist. Certiorari denied. Reported below: 212 Cal. App. 3d 1099, 261 Cal. Rptr. 45.

No. 89-6800. *BORELLI v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 893 F. 2d 1332.

April 16, 1990

494 U. S.

No. 89-6802. *WESTER v. MARICOPA COUNTY SUPERIOR COURT*. C. A. 9th Cir. Certiorari denied. Reported below: 883 F. 2d 1025.

No. 89-6803. *HEIMBERGER v. REES ET AL.* Sup. Ct. Ohio. Certiorari denied. Reported below: 47 Ohio St. 3d 702, 547 N. E. 2d 986.

No. 89-6806. *HARRELL v. DUGGER, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS*. C. A. 11th Cir. Certiorari denied. Reported below: 889 F. 2d 274.

No. 89-6807. *HOPE v. ILLINOIS*. Sup. Ct. Ill. Certiorari denied.

No. 89-6808. *JAXON v. CIRCLE K CORP. ET AL.* C. A. 10th Cir. Certiorari denied.

No. 89-6809. *KNOX v. BUTLER, WARDEN*. C. A. 5th Cir. Certiorari denied. Reported below: 884 F. 2d 849.

No. 89-6810. *LEWIS v. MOODY, SUPERINTENDENT, WILDWOOD CORRECTIONAL CENTER*. Ct. App. Alaska. Certiorari denied.

No. 89-6816. *MONTGOMERY, INDIVIDUALLY AND AS TRUSTEE OF THE D & R CAVE CREEK TRUST v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 893 F. 2d 343.

No. 89-6817. *MAKER v. UNITED STATES*. C. A. 3d Cir. Certiorari denied.

No. 89-6820. *BUCHANAN v. UNITED STATES*. C. A. 10th Cir. Certiorari denied. Reported below: 891 F. 2d 1436.

No. 89-6821. *COVINGTON v. BARNETT, SUPERINTENDENT, NORTH CAROLINA EASTERN CORRECTIONAL INSTITUTION, ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 887 F. 2d 1078.

No. 89-6829. *WAGNER ET AL. v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 884 F. 2d 1090.

No. 89-6833. *GARCIA v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 889 F. 2d 1454.

No. 89-6835. *WATTS v. FOSTER ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 887 F. 2d 1082.

494 U. S.

April 16, 1990

No. 89-6838. *MCDONALD v. YELLOW CAB METRO, INC.* C. A. 6th Cir. Certiorari denied. Reported below: 891 F. 2d 291.

No. 89-6845. *DREW v. UNITED STATES.* C. A. 8th Cir. Certiorari denied. Reported below: 894 F. 2d 965.

No. 89-6846. *BAILEY v. UNITED STATES.* C. A. 3d Cir. Certiorari denied. Reported below: 893 F. 2d 1332.

No. 89-6847. *MILES v. OHIO.* Ct. App. Ohio, Hamilton County. Certiorari denied.

No. 89-6852. *RIVERS v. UNITED STATES.* C. A. 7th Cir. Certiorari denied. Reported below: 895 F. 2d 424.

No. 89-6856. *WASHINGTON v. UNITED STATES.* C. A. 9th Cir. Certiorari denied. Reported below: 886 F. 2d 1120.

No. 89-6857. *THOMSON v. UNITED STATES.* C. A. 3d Cir. Certiorari denied. Reported below: 888 F. 2d 300.

No. 89-6859. *PEDRONCELLI v. UNITED STATES.* C. A. 10th Cir. Certiorari denied.

No. 89-6867. *BYNUM v. UNITED STATES.* C. A. 11th Cir. Certiorari denied.

No. 89-6869. *JUSTICE v. OHIO ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 889 F. 2d 1087.

No. 89-6878. *BASKIN v. UNITED STATES.* C. A. D. C. Cir. Certiorari denied. Reported below: 280 U. S. App. D. C. 366, 886 F. 2d 383.

No. 89-6885. *STONER v. KENTUCKY.* Ct. App. Ky. Certiorari denied.

No. 89-6888. *GULATI v. UNITED STATES.* C. A. 2d Cir. Certiorari denied. Reported below: 895 F. 2d 1410.

No. 89-6890. *MOORE, AKA KEENER v. BUEGLER ET AL.* C. A. 11th Cir. Certiorari denied. Reported below: 891 F. 2d 905.

No. 89-6891. *RIVERA v. MAKEL, WARDEN.* C. A. 6th Cir. Certiorari denied. Reported below: 894 F. 2d 1337.

No. 89-6900. *DESIRE v. UNITED STATES.* C. A. 4th Cir. Certiorari denied. Reported below: 896 F. 2d 547.

April 16, 1990

494 U. S.

No. 89-6911. *MATOUSEK v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 894 F. 2d 1012.

No. 89-6912. *TAYLOR v. DEPARTMENT OF HEALTH AND HUMAN SERVICES*. C. A. Fed. Cir. Certiorari denied. Reported below: 891 F. 2d 299.

No. 89-6913. *OBREGON v. UNITED STATES*. C. A. 11th Cir. Certiorari denied. Reported below: 893 F. 2d 1307.

No. 89-6918. *WAX v. SULLIVAN, WARDEN*. C. A. 2d Cir. Certiorari denied. Reported below: 895 F. 2d 1411.

No. 89-6941. *GUERRA v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 888 F. 2d 247.

No. 89-6952. *MAMI v. VAN ZANDT, SUPERINTENDENT, HUDSON CORRECTIONAL FACILITY*. C. A. 2d Cir. Certiorari denied.

No. 89-6961. *CONTRERAS-ESPINOSA ET AL. v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 894 F. 2d 410.

No. 89-6973. *CLARK v. UNITED STATES*. C. A. 11th Cir. Certiorari denied. Reported below: 893 F. 2d 1277.

No. 88-7100. *BENNER v. OHIO*. Sup. Ct. Ohio;

No. 89-5167. *TAFFERO v. DUGGER, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS*. C. A. 11th Cir.;

No. 89-5277. *DEMPS v. DUGGER, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS*. C. A. 11th Cir.;

No. 89-5331. *ALVORD v. DUGGER, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS*. Sup. Ct. Fla.;

No. 89-5485. *CHERRY v. FLORIDA*. Sup. Ct. Fla.;

No. 89-5686. *ALLISON v. CALIFORNIA*. Sup. Ct. Cal.;

No. 89-5737. *COLEMAN v. SAFFLE, WARDEN, ET AL.* C. A. 10th Cir.;

No. 89-6144. *PREJEAN v. SMITH, WARDEN, ET AL. (two cases)*. Sup. Ct. La.;

No. 89-6148. *PREJEAN v. SMITH, WARDEN*. C. A. 5th Cir.;

No. 89-6302. *WILLIAMS v. KEMP, WARDEN*. C. A. 11th Cir.;

No. 89-6330. *DICKERSON v. OHIO*. Sup. Ct. Ohio;

No. 89-6694. *GARDNER v. UTAH*. Sup. Ct. Utah;

No. 89-6745. *TARVER v. ALABAMA*. Sup. Ct. Ala.; and

No. 89-7005. *HARRIS v. TEXAS*. Ct. Crim. App. Tex. Certiorari denied. Reported below: No. 88-7100, 40 Ohio St. 3d

494 U. S.

April 16, 1990

301, 533 N. E. 2d 701; No. 89-5167, 873 F. 2d 249; No. 89-5277, 874 F. 2d 1385; No. 89-5331, 541 So. 2d 598; No. 89-5485, 544 So. 2d 184; No. 89-5686, 48 Cal. 3d 879, 771 P. 2d 1294; No. 89-5737, 869 F. 2d 1377; No. 89-6144, 550 So. 2d 639 (first case), 549 So. 2d 1237 (second case); No. 89-6148, 889 F. 2d 1391; No. 89-6302, 846 F. 2d 1276; No. 89-6330, 45 Ohio St. 3d 206, 543 N. E. 2d 1250; No. 89-6694, 789 P. 2d 273; No. 89-6745, 553 So. 2d 633; No. 89-7005, 784 S. W. 2d 5.

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. 89-907. COUNTY OF LOS ANGELES ET AL. *v.* CABRALES. C. A. 9th Cir. Certiorari denied. JUSTICE WHITE and JUSTICE O'CONNOR would grant certiorari. Reported below: 886 F. 2d 235.

No. 89-948. BAILEY ET AL. *v.* ROBINSON, PERSONAL REPRESENTATIVE OF THE ESTATE OF ROBINSON, ET AL. C. A. 6th Cir. Certiorari denied. JUSTICE WHITE would grant certiorari. Reported below: 883 F. 2d 75.

No. 89-1076. CORONA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. JUSTICE WHITE would grant certiorari. Reported below: 885 F. 2d 766.

No. 89-1156. BATH IRON WORKS CORP. ET AL. *v.* DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR. C. A. 1st Cir. Certiorari denied. JUSTICE WHITE would grant certiorari. Reported below: 885 F. 2d 983.

No. 89-1117. FIRST NATIONAL BANK OF BELLAIRE *v.* HUFFMAN INDEPENDENT SCHOOL DISTRICT ET AL. Ct. App. Tex., 14th Dist. Motion of Texas for leave to intervene granted. Certiorari denied. Reported below: 770 S. W. 2d 571.

No. 89-1277. SUPERIOR ROLL FORMING CO. ET AL. *v.* INTERROYAL CORP. C. A. 6th Cir. Motion of petitioners to place

April 16, 1990

494 U. S.

Appendix D under seal granted. Certiorari denied. Reported below: 889 F. 2d 108.

No. 89-1317. NATIONAL SHOPMEN PENSION FUND *v.* MCDANIEL ET AL. C. A. 9th Cir. Motion of National Roofing Industry Pension Fund for leave to file a brief as *amicus curiae* granted. Certiorari denied. JUSTICE WHITE would grant certiorari. Reported below: 889 F. 2d 804.

*Rehearing Denied*

No. D-837. IN RE DISBARMENT OF MARCONE, 493 U. S. 1066;  
No. 88-1353. UNITED STATES *v.* VERDUGO-URQUIDEZ, *ante*,  
p. 259;

No. 88-1480. REVES ET AL. *v.* ERNST & YOUNG, *ante*, p. 56;

No. 88-7299. PRUITT *v.* GEORGIA, 493 U. S. 1093;

No. 89-525. POPAL *v.* UNITED STATES, 493 U. S. 1069;

No. 89-908. AUTOMOBILE CLUB OF MICHIGAN, AKA AAA,  
ET AL. *v.* BULLOCK, 493 U. S. 1072;

No. 89-939. HEALTHAMERICA ET AL. *v.* MENTON, 493 U. S.  
1093;

No. 89-976. SUTTON *v.* DEPARTMENT OF HOUSING AND URBAN  
DEVELOPMENT ET AL., 493 U. S. 1075;

No. 89-1053. CAMOSCIO *v.* BOARD OF REGISTRATION IN PODIA-  
TRY, 493 U. S. 1079;

No. 89-1065. CAMOSCIO *v.* MURPHY ET AL., 493 U. S. 1079;

No. 89-1070. TERRY *v.* VIRGINIA, 493 U. S. 1080;

No. 89-5223. MACK *v.* ILLINOIS, 493 U. S. 1093;

No. 89-5877. BROWN *v.* LABORERS' INTERNATIONAL UNION OF  
NORTH AMERICA ET AL., 493 U. S. 1082;

No. 89-5927. HASSAN *v.* NEW JERSEY ET AL., 493 U. S. 1028;

No. 89-6005. WILKERSON *v.* SMITH, WARDEN, *ante*, p. 1005;

No. 89-6040. MORALES *v.* OFFICE OF PERSONNEL MANAGE-  
MENT, 493 U. S. 1060;

No. 89-6208. EIERLE *v.* LAMBDIN, SUPERINTENDENT, GLADES  
CORRECTIONAL INSTITUTE, ET AL., 493 U. S. 1084;

No. 89-6222. GIBBONS, NKA RACZKOWSKI *v.* L. W. BLAKE  
MEMORIAL HOSPITAL ET AL., 493 U. S. 1085;

No. 89-6240. MCGHEE *v.* CITY OF LOS ANGELES DEPART-  
MENT OF WATER AND POWER ET AL., 493 U. S. 1085;

No. 89-6246. TASBY, AKA AMEN-RA *v.* COLLINS, DIRECTOR,  
TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DI-  
VISION, ET AL., 493 U. S. 1085;

494 U. S.

April 16, 1990

- No. 89-6247. *WOOL v. FEFEL ET AL.*, 493 U. S. 1085;  
No. 89-6267. *CHANDLER v. MOORE ET AL.*, 493 U. S. 1086;  
No. 89-6321. *IN RE KLEINSCHMIDT*, 493 U. S. 1068;  
No. 89-6361. *SPYCHALA v. CAMPOY*, 493 U. S. 1090;  
No. 89-6369. *WARREN v. TEXAS*, 493 U. S. 1090;  
No. 89-6373. *KEYES v. SAN FRANCISCO PROBATION DEPARTMENT*, *ante*, p. 1006;  
No. 89-6378. *KIM v. CALIFORNIA ET AL.*, *ante*, p. 1006;  
No. 89-6391. *AKMANSOY v. KLEVENHAGEN ET AL.*, *ante*, p. 1006;  
No. 89-6418. *MORRIS v. DEPARTMENT OF SOCIAL SERVICES*, *ante*, p. 1018;  
No. 89-6428. *IN RE MADSON*, *ante*, p. 1015; and  
No. 89-6432. *STREET v. JABE, WARDEN*, *ante*, p. 1018. Petitions for rehearing denied.

