

ORDERS FOR APRIL 23 THROUGH
JUNE 3, 1990

APRIL 23, 1990

Certiorari Granted—Vacated and Remanded

No. 89-804. MINNESOTA *v.* HERSHBERGER ET AL. Sup. Ct. Minn. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Employment Div., Oregon Dept. of Human Resources v. Smith*, 494 U. S. 872 (1990). JUSTICE STEVENS and JUSTICE O'CONNOR dissent. Reported below: 444 N. W. 2d 282.

Miscellaneous Orders

No. — — —. IN RE MARTIN. Motion to direct the Clerk to file petition for writ of certiorari denied.

No. — — —. MOORE ET AL. *v.* CARR ET AL. Motion to direct the Clerk to file application for an extension of time and petition for writ of certiorari out of time denied.

No. 65, Orig. TEXAS *v.* NEW MEXICO. Motion of the River Master for approval of fees granted, and the River Master is awarded \$1,215.00 for the period January 1 through March 31, 1990, to be paid equally by the parties. [For earlier decision herein, see, *e. g.*, 494 U. S. 111.]

No. D-857. IN RE DISBARMENT OF KAY. Disbarment entered. [For earlier order herein, see 493 U. S. 1066.]

No. D-859. IN RE DISBARMENT OF DAWES. Kenneth J. Dawes, Jr., of Trenton, N. J., 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-893. IN RE DISBARMENT OF AULVIN. It is ordered that John Lewis Aulvin, of Mount Carmel, 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.

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No. D-894. IN RE DISBARMENT OF OSTROWSKY. It is ordered that Bernard Herbert Ostrowsky, of Skokie, 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-895. IN RE DISBARMENT OF DINEFF. It is ordered that Louis Carl Dineff, of Summit, 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-896. IN RE DISBARMENT OF JOHNSON. It is ordered that Charles B. Johnson, of Pasadena, 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-897. IN RE DISBARMENT OF HERSH. It is ordered that Alan Mark Hersh, of Beverly Hills, 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. 89-839. ARIZONA *v.* FULMINANTE. Sup. Ct. Ariz. [Certiiorari granted, 494 U. S. 1055.] Motion for appointment of counsel granted, and it is ordered that Stephen R. Collins, Esq., of Phoenix, Ariz., be appointed to serve as counsel for respondent in this case.

No. 89-1167. BRUTSCHE *v.* CLEVELAND-PERDUE, SUCCESSOR REPRESENTATIVE AND ADMINISTRATRIX OF THE ESTATE OF JONES. C. A. 7th Cir. The Solicitor General is invited to file a brief in this case expressing the views of the United States.

No. 89-1361. CHURCH OF SCIENTOLOGY OF CALIFORNIA *v.* WOLLERSHEIM. Ct. App. Cal., 2d App. Dist. Motion of National Council of Churches of Christ in the U. S. A. et al. for leave to file a brief as *amici curiae* granted. JUSTICE BRENNAN took no part in the consideration or decision of this motion.

No. 89-1434. UNITED STATES *v.* HAGGERTY ET AL. D. C. W. D. Wash. [Probable jurisdiction noted, 494 U. S. 1063.] Motion of appellee Darius Strong for leave to proceed further herein *in forma pauperis* granted. Motion for appointment of counsel

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granted, and it is ordered that Charles S. Hamilton III, Esq., of Seattle, Wash., be appointed to serve as counsel for appellee Darius Strong in this case for the purpose of filing a brief.

No. 89-6868. *NOWAK v. TREZEVANT*. Ct. App. D. C. Motion of petitioner for leave to proceed *in forma pauperis* denied. Petitioner is allowed until May 14, 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. 89-6840. *IN RE HENDERSON*. Petition for writ of prohibition denied.

Certiorari Granted

No. 87-6796. *FORD v. GEORGIA*. Sup. Ct. Ga. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted limited to Questions 1 and 2 presented by the petition. Reported below: 257 Ga. 661, 362 S. E. 2d 764.

No. 89-1363. *UNITED STATES v. FRANCE*. C. A. 9th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari granted. Reported below: 886 F. 2d 223.

No. 89-1448. *VIRGINIA BANKSHARES, INC., ET AL. v. SANDBERG ET AL.* C. A. 4th Cir. Motions of American Corporate Counsel Association and American Bankers Association et al. for leave to file briefs as *amici curiae* granted. Motion of American Bankers Association et al. for leave to file an amended brief as *amici curiae* granted. Certiorari granted limited to Questions 1 and 2 presented by the petition. Reported below: 891 F. 2d 1112.

No. 89-5916. *DEMAREST v. MANSPEAKER ET AL.* C. A. 10th Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted. Reported below: 884 F. 2d 1343.

No. 89-6332. *MINNICK v. MISSISSIPPI*. Sup. Ct. Miss. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted. Reported below: 551 So. 2d 77.

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Certiorari Denied

No. 89-915. *TENNESSEE v. CAUTHERN*. Sup. Ct. Tenn. Certiorari denied. Reported below: 778 S. W. 2d 39.

No. 89-960. *TIDELAND WELDING SERVICE ET AL. v. SAWYER ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 881 F. 2d 157.

No. 89-1212. *DAVIS v. SULLIVAN, SECRETARY OF HEALTH AND HUMAN SERVICES*. C. A. 8th Cir. Certiorari denied. Reported below: 894 F. 2d 271.

No. 89-1223. *INDEPENDENT U. S. TANKER OWNERS COMMITTEE ET AL. v. SKINNER, SECRETARY OF TRANSPORTATION, ET AL.* C. A. D. C. Cir. Certiorari denied. Reported below: 280 U. S. App. D. C. 148, 884 F. 2d 587.

No. 89-1228. *LOCAL 54, HOTEL EMPLOYEES & RESTAURANT EMPLOYEES INTERNATIONAL UNION, AFL-CIO v. NATIONAL LABOR RELATIONS BOARD*. C. A. 3d Cir. Certiorari denied. Reported below: 887 F. 2d 28.

No. 89-1311. *CARBAUGH, COMMISSIONER, DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES OF VIRGINIA v. TELCO COMMUNICATIONS, INC.* C. A. 4th Cir. Certiorari denied. Reported below: 885 F. 2d 1225.

No. 89-1375. *BP EXPLORATION (ALASKA) INC. ET AL. v. BAILY, ATTORNEY GENERAL OF ALASKA, ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 874 F. 2d 624.

No. 89-1376. *POLYAK v. HULEN ET AL.; POLYAK v. HULEN ET AL.; POLYAK v. HAMILTON; and POLYAK v. BUFORD EVANS & SONS*. C. A. 6th Cir. Certiorari denied. Reported below: 890 F. 2d 416 (first, third, and fourth cases); 891 F. 2d 290 (second case).

No. 89-1379. *ALSTON ET AL. v. GENERAL MOTORS CORP.* C. A. 4th Cir. Certiorari denied. Reported below: 883 F. 2d 287.

No. 89-1381. *ENDRESS v. DUGGER, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS*. C. A. 11th Cir. Certiorari denied. Reported below: 880 F. 2d 1244.

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No. 89-1384. *ROSS ET AL. v. BANK SOUTH, N. A., ET AL.* C. A. 11th Cir. Certiorari denied. Reported below: 885 F. 2d 723.

No. 89-1386. *FISHMAN v. TEXAS.* Ct. App. Tex., 13th Dist. Certiorari denied. Reported below: 771 S. W. 2d 573.

No. 89-1388. *SCOTT v. DREAMLITE HOLDINGS LTD. ET AL.* C. A. Fed. Cir. Certiorari denied. Reported below: 890 F. 2d 1147.

No. 89-1406. *NEISTEIN v. ILLINOIS ATTORNEY REGISTRATION AND DISCIPLINARY COMMISSION.* Sup. Ct. Ill. Certiorari denied. Reported below: 132 Ill. 2d 104, 547 N. E. 2d 198.

No. 89-1407. *DAVIS, BY AND THROUGH HER GUARDIAN, FARMERS BANK & CAPITAL TRUST COMPANY OF FRANKFORT, KENTUCKY v. KENTUCKY FINANCE COMPANIES RETIREMENT PLAN ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 887 F. 2d 689.

No. 89-1424. *CROUCH v. MCINTYRE.* Ct. App. Ore. Certiorari denied. Reported below: 98 Ore. App. 462, 780 P. 2d 239.

No. 89-1449. *HOLMAN ET AL. v. WALLING.* C. A. 2d Cir. Certiorari denied.

No. 89-1457. *LIMONJA ET AL. v. VIRGINIA.* Ct. App. Va. Certiorari denied. Reported below: 8 Va. App. 532, 383 S. E. 2d 476.

No. 89-1465. *KOZAK v. UNITED STATES DEPARTMENT OF AGRICULTURE.* C. A. 2d Cir. Certiorari denied. Reported below: 891 F. 2d 277.

No. 89-1475. *SILVA ET AL. v. MACLAINE ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 888 F. 2d 1392.

No. 89-1509. *WAGNER v. UNITED STATES BANKRUPTCY COURT.* C. A. 3d Cir. Certiorari denied. Reported below: 877 F. 2d 58.

No. 89-1521. *LACKEY v. UNITED STATES.* C. A. 4th Cir. Certiorari denied. Reported below: 894 F. 2d 403.

No. 89-1528. *CRUTCHFIELD v. MARYLAND.* Ct. App. Md. Certiorari denied. Reported below: 318 Md. 200, 567 A. 2d 449.

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No. 89-1537. *SOLOMON v. HILL ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 895 F. 2d 1410.

No. 89-5985. *DIERBECK v. WASHINGTON.* Ct. App. Wash. Certiorari denied. Reported below: 54 Wash. App. 1021.

No. 89-6205. *MORTON v. DUGGER, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL.* C. A. 11th Cir. Certiorari denied. Reported below: 886 F. 2d 1323.

No. 89-6274. *OLSEN v. DRUG ENFORCEMENT ADMINISTRATION.* C. A. D. C. Cir. Certiorari denied. Reported below: 279 U. S. App. D. C. 1, 878 F. 2d 1458.

No. 89-6303. *PAIGE v. UNITED STATES.* C. A. 8th Cir. Certiorari denied. Reported below: 886 F. 2d 998.

No. 89-6313. *CHAPOTEAU ET AL. v. UNITED STATES.* C. A. 2d Cir. Certiorari denied. Reported below: 887 F. 2d 375.

No. 89-6426. *CARTIER v. NEW YORK.* App. Div., Sup. Ct. N. Y., 2d Jud. Dept. Certiorari denied. Reported below: 149 App. Div. 2d 524, 539 N. Y. S. 2d 804.

No. 89-6512. *DUPREY v. UNITED STATES.* C. A. 7th Cir. Certiorari denied. Reported below: 895 F. 2d 303.

No. 89-6523. *EATON v. UNITED STATES.* C. A. 1st Cir. Certiorari denied. Reported below: 890 F. 2d 511.

No. 89-6546. *BUZARD ET AL. v. UNITED STATES.* C. A. 9th Cir. Certiorari denied. Reported below: 884 F. 2d 475.

No. 89-6760. *JAYME v. BOARD OF VETERANS APPEALS ET AL.* C. A. 3d Cir. Certiorari denied. Reported below: 891 F. 2d 281.

No. 89-6777. *BELL v. SMITH, WARDEN.* C. A. 5th Cir. Certiorari denied. Reported below: 894 F. 2d 405.

No. 89-6801. *CRANE v. TENNESSEE.* Sup. Ct. Tenn. Certiorari denied.

No. 89-6804. *SCHAENING v. ROWLAND, DIRECTOR, CALIFORNIA DEPARTMENT OF CORRECTIONS.* C. A. 9th Cir. Certiorari denied.

No. 89-6819. *MENEFIELD v. ROWLAND ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 891 F. 2d 295.

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No. 89-6823. *WILLIAMS v. DEPARTMENT OF THE AIR FORCE*. C. A. Fed. Cir. Certiorari denied. Reported below: 891 F. 2d 299.

No. 89-6824. *TELK v. UNITED STATES POSTAL SERVICE ET AL.* C. A. 10th Cir. Certiorari denied.

No. 89-6825. *VINJE-MORPURGO v. NEW YORK ET AL.* C. A. 2d Cir. Certiorari denied.

No. 89-6826. *SIMON v. BETHLEHEM STEEL CORP. ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 876 F. 2d 890.

No. 89-6828. *ROTMAN v. WORCESTER POLICE DEPARTMENT ET AL.* C. A. 1st Cir. Certiorari denied. Reported below: 893 F. 2d 1325.

No. 89-6831. *FREEMAN ET AL. v. CITY OF LAGRANGE ET AL.* C. A. 11th Cir. Certiorari denied. Reported below: 885 F. 2d 825.

No. 89-6834. *CASSELL v. GINGRICH ET AL.* (two cases). Sup. Ct. Pa. Certiorari denied. Reported below: 523 Pa. 11, 564 A. 2d 1249 (first case); 523 Pa. 12, 564 A. 2d 1250 (second case).

No. 89-6836. *JOHNSON v. BAXLEY, ASSISTANT DEFENDER, ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 885 F. 2d 865.

No. 89-6842. *KUCHER v. MASSACHUSETTS DEPARTMENT OF EMPLOYMENT SECURITY ET AL.* C. A. 1st Cir. Certiorari denied. Reported below: 893 F. 2d 1326.

No. 89-6844. *BRENNAN v. BRENNAN ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 890 F. 2d 416.

No. 89-6850. *LEPISCOPO v. JIMENEZ-MAES ET AL.* Sup. Ct. N. M. Certiorari denied.

No. 89-6853. *DUROSKO v. LEWIS, DIRECTOR, ARIZONA DEPARTMENT OF CORRECTIONS, ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 882 F. 2d 357.

No. 89-6854. *SANFORD v. ALAMEDA-CONTRA COSTA TRANSIT DISTRICT ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 888 F. 2d 1394.

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No. 89-6861. *JONES v. CITY OF HAMTRAMCK ET AL.* C. A. 6th Cir. Certiorari denied.

No. 89-6862. *SAKOVICH v. PANDYA.* App. Ct. Ill., 3d Dist. Certiorari denied. Reported below: 176 Ill. App. 3d 1174, 549 N. E. 2d 360.

No. 89-6863. *BARNETT v. NEVADA.* Sup. Ct. Nev. Certiorari denied. Reported below: 105 Nev. 1022.

No. 89-6873. *CASTRO v. CALIFORNIA.* Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 89-6879. *BARBELLA v. NEW YORK.* App. Div., Sup. Ct. N. Y., 2d Jud. Dept. Certiorari denied. Reported below: 154 App. Div. 2d 687, 546 N. Y. S. 2d 675.

No. 89-6884. *BUSCH v. OWENS, COMMISSIONER, PENNSYLVANIA DEPARTMENT OF CORRECTIONS, ET AL.* Pa. Commw. Ct. Certiorari denied. Reported below: 124 Pa. Commw. 411, 556 A. 2d 500.

No. 89-6894. *JUSTICE v. REDA ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 891 F. 2d 291.

No. 89-6895. *HOLSEY v. CAUFFMAN ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 885 F. 2d 865.

No. 89-6908. *DAVIS v. TANSY, WARDEN.* C. A. 10th Cir. Certiorari denied.

No. 89-6936. *BAKER v. NEW YORK STATE DEPARTMENT OF LABOR ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 895 F. 2d 1410.

No. 89-6940. *BRYANT v. UNITED STATES.* Ct. App. D. C. Certiorari denied.

No. 89-6962. *ZANZUCCHI v. WEINBERG ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 889 F. 2d 1097.

No. 89-6975. *PEOPLES v. UNITED STATES.* C. A. 6th Cir. Certiorari denied. Reported below: 891 F. 2d 293.

No. 89-6977. *AZURE v. UNITED STATES.* C. A. 8th Cir. Certiorari denied. Reported below: 894 F. 2d 1343.

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No. 89-6983. *OBABUEKI v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 875 F. 2d 871.

No. 89-6984. *DIXON v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 894 F. 2d 408.

No. 89-6999. *SHAID v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 890 F. 2d 1163.

No. 89-7001. *DIAZ v. UNITED STATES ET AL.* C. A. 3d Cir. Certiorari denied. Reported below: 897 F. 2d 521.

No. 89-7002. *CARDENAS v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 894 F. 2d 410.

No. 89-7004. *MARTINEZ v. TEXAS*. Ct. App. Tex., 4th Dist. Certiorari denied.

No. 89-7006. *SIERRA v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 897 F. 2d 525.

No. 89-7018. *McMILLION v. ROLLINS, WARDEN*. C. A. 4th Cir. Certiorari denied. Reported below: 891 F. 2d 287.

No. 89-7019. *MUNOZ v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 894 F. 2d 292.

No. 89-7021. *MUHAMMAD v. UNITED STATES*. C. A. 3d Cir. Certiorari denied.

No. 89-7027. *BRADLEY v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 892 F. 2d 634.

No. 89-7034. *COLEMAN v. UNITED STATES*. C. A. D. C. Cir. Certiorari denied. Reported below: 282 U. S. App. D. C. 255, 893 F. 2d 1404.

No. 89-7040. *HERNANDEZ v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 891 F. 2d 521.

No. 89-7041. *MONToya-ROJAS v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 847 F. 2d 839.

No. 89-7042. *JAWORSKI v. YOUNG ET AL.* C. A. 7th Cir. Certiorari denied. Reported below: 886 F. 2d 1318.

No. 89-7050. *THOMAS v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 894 F. 2d 996.

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No. 89-7055. BEIERLE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 894 F. 2d 410.

No. 89-7065. MAINS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 898 F. 2d 155.

No. 89-794. MCCAMBRIDGE *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied. JUSTICE BRENNAN and JUSTICE WHITE would grant certiorari. Reported below: 778 S. W. 2d 70.

No. 89-1079. PPG INDUSTRIES, INC. *v.* UNITED STATES ENVIRONMENTAL PROTECTION AGENCY ET AL. C. A. 5th Cir. Motion of Society of the Plastics Industry, Inc., for leave to file a brief as *amicus curiae* granted. Certiorari denied. Reported below: 870 F. 2d 177 and 885 F. 2d 253.

No. 89-1084. DASILVA ET AL. *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. JUSTICE WHITE and JUSTICE BLACKMUN would grant certiorari. Reported below: 887 F. 2d 375.

No. 89-1164. GENERAL MOTORS CORP. *v.* CARLSON ET AL. C. A. 4th Cir. Motion of Motor Vehicle Manufacturers Association of the United States Inc. for leave to file a brief as *amicus curiae* granted. Certiorari denied. Reported below: 883 F. 2d 287.

No. 89-1197. CITY OF ST. GEORGE, UTAH *v.* FOREMASTER. C. A. 10th Cir. Certiorari denied. JUSTICE WHITE would grant certiorari. Reported below: 882 F. 2d 1485.

No. 89-1336. RUSHEN, DIRECTOR, CALIFORNIA DEPARTMENT OF CORRECTIONS *v.* SPAIN. C. A. 9th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 883 F. 2d 712.

No. 89-1367. WOLLERSHEIM *v.* CHURCH OF SCIENTOLOGY OF CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied. JUSTICE BRENNAN took no part in the consideration or decision of this petition. Reported below: 212 Cal. App. 3d 872, 260 Cal. Rptr. 331.

No. 89-1401. EXXON CORP. *v.* WYOMING STATE BOARD OF EQUALIZATION. Sup. Ct. Wyo. Motions of Committee on State Taxation of the Council of State Chambers of Commerce and Institute of Property Taxation for leave to file briefs as *amici curiae* granted. Certiorari denied. Reported below: 783 P. 2d 685.

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No. 89-5222. *FORTENBERRY v. ALABAMA*. Sup. Ct. Ala.;

No. 89-6431. *MORRISON v. ALABAMA*. Ct. Crim. App. Ala.; and

No. 89-6765. *CARRERA v. CALIFORNIA*. Sup. Ct. Cal. Certiorari denied. Reported below: No. 89-5222, 545 So. 2d 145; No. 89-6431, 551 So. 2d 435; No. 89-6765, 49 Cal. 3d 291, 777 P. 2d 121.

JUSTICE BRENNAN and JUSTICE MARSHALL, dissenting.

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

No. 89-6679. *SWINDLER v. LOCKHART, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION*. C. A. 8th Cir. Certiorari denied. Reported below: 885 F. 2d 1342.

JUSTICE MARSHALL, with whom JUSTICE BRENNAN joins, dissenting.

A defendant's interest in a fundamentally fair trial outweighs the State's interest in trying the defendant in a particular venue. See, e. g., *Lee v. Georgia*, 488 U. S. 879 (1988) (MARSHALL, J., dissenting from denial of certiorari). Accordingly, state laws that restrict a court's ability to protect a defendant from the possibility of juror exposure to prejudicial publicity unconstitutionally infringe on a defendant's right to a fair and impartial jury. Relying in part on its interpretation of Arkansas law, see Ark. Code Ann. § 16-88-207 (1987) ("In no case shall a second removal of the same cause be allowed"), the trial court in this capital case refused to allow petitioner a second change of venue. I would grant the petition for certiorari to provide much needed guidance regarding the minimal due process requirements for state change of venue rules. When, as here, a State frames its venue rule in absolute terms and fails to permit the trial court to consider a particular defendant's right to a jury free from preconceptions regarding his guilt, such a rule violates due process. See *Sheppard v. Maxwell*, 384 U. S. 333, 352 (1966) ("It is true that in most cases involving claims of due process deprivations we require a showing of identifiable prejudice to the accused. Nevertheless, at times a

procedure employed by the State involves such a probability that prejudice will result that it is deemed inherently lacking in due process'"') (quoting *Estes v. Texas*, 381 U. S. 532, 542-543 (1965)). Even if I did not believe that this case merited plenary review, I would grant the petition for writ of certiorari and vacate the death penalty, because I continue to believe that the death penalty is "in all circumstances cruel and unusual punishment prohibited by the Eighth and Fourteenth Amendments, *Gregg v. Georgia*, 428 U. S. 153, 231-241 (1976) (MARSHALL, J., dissenting).

Petitioner was convicted of murdering a police officer and sentenced to death. His conviction was reversed by the Arkansas Supreme Court because of the trial court's failure to grant a change of venue from Sebastian County, where the killing occurred. *Swindler v. State*, 264 Ark. 107, 113, 569 S. W. 2d 120, 123 (1978). Petitioner was thereafter retried in Scott County, a small rural county adjacent to Sebastian. Waldron, the seat of Scott County, is only 45 miles south of Fort Smith, the location of both the crime and the first trial.

During *voir dire*, a majority of the 120 venirepersons indicated that they were aware that petitioner had previously been found guilty of the crime and that he was wanted in another State for allegedly murdering two teenagers. More importantly, an overwhelming majority of the venire—98 out of 120—either tentatively or firmly believed that petitioner was guilty. The strong local feelings regarding petitioner's guilt are reflected in the comments of venireperson Thomas Bricksey:

"Q. [H]ave you discussed this case with anybody?

"A. Oh, yes, sir.

"Q. All right, and have these people expressed an opinion to you about this case?

"A. Yes, sir.

"Q. Could you tell me what those opinions were? Did they think the defendant was guilty?

"A. I am afraid it was almost unanimous.

"Q. Did you ever hear anybody state that they thought he was not guilty?

"A. No sir." Tr. 1299.

Similar prejudicial attitudes surfaced in the *voir dire* of three other jurors whom petitioner challenged for cause but who, unlike

Bricksey, ultimately served on petitioner's jury. Each indicated that he believed petitioner was guilty as a result of exposure to pretrial publicity regarding petitioner's first trial. One of the jurors, Thurman Jones, when asked whether he accepted the principle that a person is innocent until proved guilty, replied, "I do, and I would accept it more if he had not been tried. The only thing I am wondering about now, since he has had a trial, and I know about it, I am wondering if he is not going to have to prove to me that he is innocent." Tr. 1149. Milton Staggs, another juror challenged by petitioner, when asked whether he had an opinion about the first verdict, stated, "Well, sure, based on what came out, I don't know how it could be otherwise, you know." Tr. 1223. Henry Sunderman, asked whether "you feel like because [the first jury] came to that conclusion that the defendant may well be guilty," replied "I would say yes." Tr. 979. The trial court, finding that each of the three challenged jurors was capable of setting aside his opinion regarding petitioner's guilt, denied petitioner's request that they be struck for cause.

During the five days of *voir dire*, petitioner requested a change of venue on several occasions. The trial court denied the motions, relying in part on the Arkansas venue statute, § 16-88-207. Tr. 878-879, 1407-1408, 1560. At other points, the trial judge rejected the venue change in apparent reliance on "the fact that [petitioner] still ha[d] peremptory challenges left," Tr. 1075, although petitioner exhausted his challenges before the entire jury was seated. At the close of jury selection, petitioner moved for a mistrial on the ground that the state statute prohibiting a second change of venue unconstitutionally deprived him of a fair and impartial jury. The trial court conceded that "it is quite obvious that this case has received great amounts of publicity, and [that] it is very difficult to find a juror, not only [in] Sebastian County but apparently throughout this part of even the western part of Arkansas, who have *[sic]* not read, heard or seen a great deal about it." Tr. 1559. The court nonetheless denied the motion on the basis of "the present Arkansas law and the record that was made" during jury selection. Tr. 1560.

Petitioner filed a petition for habeas corpus. The District Court denied relief and the Court of Appeals for the Eighth Circuit affirmed, rejecting petitioner's claim that his constitutional right to a fair and impartial jury was compromised by the trial court's refusal to change venue or to strike for cause jurors Jones,

Staggs, and Sunderman. 885 F. 2d 1342, 1347-1350 (1989). The court afforded a "presumption of correctness" to the state-court findings regarding the ability of jurors to set aside whatever prejudice they harbored against petitioner. *Id.*, at 1347. The court also relied on Eighth Circuit precedent, *Simmons v. Lockhart*, 814 F. 2d 504 (1987), in which the court had stated that "the fact that a venire panel is well informed on reported news is not by itself prejudicial." *Id.*, at 510. Lastly, the court rejected petitioner's constitutional challenge to Arkansas' change of venue rule because "the trial court based its denial of a second change of venue on the fact that Swindler had not established prejudice resulting from pretrial publicity." 885 F. 2d, at 1347.

We have yet to address squarely the constitutionality of state change of venue rules that limit a trial court's ability to protect a defendant from the effects of prejudicial publicity.* Here, the Court of Appeals attempted to avoid the constitutional question by relying on the trial court's finding that the empaneled jury was not unduly prejudiced. But the Court of Appeals failed to consider the extent to which the Arkansas rule affected the trial court's assessment of prejudice. The transcript makes clear that the Arkansas rule was a strong factor in the trial court's decision and that the court had difficulty separating its merits judgment from its fear that a transfer of venue to another county "would cause a serious jurisdictional problem" under Arkansas law. Tr. 1560.

The state court's refusal to transfer venue may have been substantially affected by Arkansas' venue rule. When, on the basis of such rules, a court fails to protect the defendant from a trial that may be "but a hollow formality," *Rideau v. Louisiana*, 373 U. S. 723, 726 (1963), this Court has a special obligation to consider their constitutionality and to specify the due process constraints on their application. I dissent.

*The fact that petitioner's claim in this case arises on a federal petition for habeas corpus does not bar its consideration. Cf. *Teague v. Lane*, 489 U. S. 288 (1989). Assuming that the rule sought by petitioner is "new," it also falls within the category of "procedures without which the likelihood of an accurate conviction is seriously diminished." *Id.*, at 313. The likelihood of an accurate conviction is no doubt diminished when a defendant is tried by a jury that has prejudged his case.

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Rehearing Denied

No. 88-6677. *BUTLER v. MCKELLAR, WARDEN, ET AL.*, 494 U. S. 407;

No. 89-1122. *CHRISTENSEN v. PETTEY ET AL.*, 494 U. S. 1017;

No. 89-1126. *SUEHL ET AL. v. IOWA*, 494 U. S. 1017;

No. 89-6261. *LAWSON v. CALIFORNIA*, 493 U. S. 1086;

No. 89-6458. *MACGUIRE v. MILLER, SHINE & BRYAN ET AL.*, 494 U. S. 1019; and

No. 89-6556. *McCONE v. SAGEBRUSH PROPERTIES, INC., ET AL.*, 494 U. S. 1035. Petitions for rehearing denied.

No. 88-1650. *TAFFLIN ET AL. v. LEVITT ET AL.*, 493 U. S. 455. Second motion for leave to file petition for rehearing denied.

No. 89-1068. *ROSENBAUM v. ROSENBAUM ET AL.*, 494 U. S. 1004. Application to suspend the effect of the order denying certiorari, addressed to JUSTICE O'CONNOR and referred to the Court, denied. Petition for rehearing denied.

APRIL 26, 1990

Miscellaneous Order

No. A-748. *WOOMER v. AIKEN, WARDEN, ET AL.* Application for stay of execution of sentence of death, presented to THE CHIEF JUSTICE, and by him referred to the Court, denied.

JUSTICE BRENNAN and JUSTICE MARSHALL, dissenting.

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

Rehearing Denied

No. 88-6393 (A-749). *WOOMER v. AIKEN, WARDEN, ET AL.*, 489 U. S. 1091 and 490 U. S. 1077. Application for stay of execution of sentence of death, presented to THE CHIEF JUSTICE, and by him referred to the Court, denied. Motion for leave to file second petition for rehearing denied. JUSTICE BRENNAN and JUSTICE MARSHALL would grant the application for stay of execution.

April 27, 30, 1990

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APRIL 27, 1990

Miscellaneous Order

No. A-754 (89-5167). *TAFERO v. DUGGER*, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, 494 U. S. 1090. Application to suspend the effect of the order denying certiorari, presented to JUSTICE KENNEDY, and by him referred to the Court, denied. JUSTICE BRENNAN and JUSTICE MARSHALL would grant the application.

APRIL 30, 1990

Appeal Dismissed

No. 89-6976. *KLEIN v. MASSACHUSETTS*. Appeal from Sup. Jud. Ct. Mass. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied. Reported below: 400 Mass. 309, 509 N. E. 2d 265.

Certiorari Granted—Vacated and Remanded

No. 89-5297. *HILL v. UNITED STATES*. C. A. 6th Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Florida v. Wells*, *ante*, p. 1. Reported below: 878 F. 2d 1436.

No. 89-5446. *KORDOSKY v. UNITED STATES*. C. A. 7th 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 *Florida v. Wells*, *ante*, p. 1. Reported below: 878 F. 2d 991.

No. 89-6903. *SMITH 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*, 494 U. S. 433 (1990), and *Boyd v. California*, 494 U. S. 370 (1990). Reported below: 781 S. W. 2d 761.

Miscellaneous Orders

No. — — —. *BROWN v. UNITED STATES*. Motion for leave to proceed *in forma pauperis* without an affidavit of indigency executed by petitioner denied.

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No. — — —. *MATHIS v. UNITED STATES*. Motion for leave to proceed *in forma pauperis* without an affidavit of indigency executed by petitioner denied.

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

No. A-700. *KULALANI LTD. ET AL. v. COREY*. C. A. 9th Cir. Application for recall and stay of mandate, addressed to JUSTICE STEVENS and referred to the Court, denied.

No. A-747 (89-7307). *CALLINS 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, denied. JUSTICE BLACKMUN and JUSTICE STEVENS would grant the application.

JUSTICE BRENNAN and JUSTICE MARSHALL, dissenting.

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

No. 89-1104. *ALCAN FOIL PRODUCTS DIVISION OF ALCAN ALUMINUM CORP. v. UNITED STATES*. C. A. 6th Cir. Motion of petitioner to strike Brief for United States granted.

No. 89-1322. *OKLAHOMA TAX COMMISSION v. CITIZEN BAND POTAWATOMI INDIAN TRIBE OF OKLAHOMA*. C. A. 10th Cir.; and

No. 89-1435. *AMERICAN RAILWAY & AIRWAY SUPERVISORS ASSN. ET AL. v. SOO LINE RAILROAD CO.* C. A. 8th Cir. The Solicitor General is invited to file briefs in these cases expressing the views of the United States.

No. 89-1433. *UNITED STATES v. EICHMAN ET AL.* D. C. D. C. [Probable jurisdiction noted, 494 U. S. 1063]; and

No. 89-1434. *UNITED STATES v. HAGGERTY ET AL.* D. C. W. D. Wash. [Probable jurisdiction noted, 494 U. S. 1063.] Motion of appellees for divided argument denied. Motion of appellees Eichman, Blalock, Tyler, Haggerty, Garza, and Campbell for leave to proceed further herein *in forma pauperis* granted.

No. 89-7105. *IN RE GREEN*. Petition for writ of habeas corpus denied.

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No. 89-1220. *IN RE VAN SANT*;
No. 89-6731. *IN RE FELDMAN*; and
No. 89-6874. *IN RE FELDMAN*. Petitions for writs of mandamus denied.

Certiorari Granted

No. 89-1149. *GROGAN ET AL. v. GARNER*. C. A. 8th Cir. Certiorari granted. Reported below: 881 F. 2d 579.

*Certiorari Denied. (See also No. 89-6976, *supra*.)*

No. 88-1564. *JUDGE v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 864 F. 2d 1144.

No. 88-7446. *FORD v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 872 F. 2d 1231.

No. 89-1082. *JONES HIRSCH CONNORS & BULL v. UNITED STATES DISTRICT COURT FOR THE DISTRICT OF PUERTO RICO ET AL.* C. A. 1st Cir. Certiorari denied.

No. 89-1172. *GOLDHOFER FAHRZEUGWERK GMBH & Co. v. UNITED STATES*. C. A. Fed. Cir. Certiorari denied. Reported below: 885 F. 2d 858.

No. 89-1201. *TOLLEFSON v. MONTANA*. Sup. Ct. Mont. Certiorari denied. Reported below: 239 Mont. 305, 780 P. 2d 621.

No. 89-1242. *ABORTION RIGHTS MOBILIZATION, INC., ET AL. v. UNITED STATES CATHOLIC CONFERENCE ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 885 F. 2d 1020.

No. 89-1255. *NATIONAL SMALL SHIPMENTS TRAFFIC CONFERENCE, INC., ET AL. v. UNITED STATES ET AL.* C. A. 3d Cir. Certiorari denied. Reported below: 887 F. 2d 443.

No. 89-1265. *CAPOZZI v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 883 F. 2d 608.

No. 89-1275. *O'GRADY ET VIR v. OBERHAND ET AL.* Super. Ct. N. J., App. Div. Certiorari denied.

No. 89-1316. *BEHAGEN v. USA BASKETBALL ET AL.* C. A. 10th Cir. Certiorari denied. Reported below: 884 F. 2d 524.

No. 89-1324. *GANNETT CO., INC. v. DELAWARE ET AL.* Sup. Ct. Del. Certiorari denied. Reported below: 567 A. 2d 420.

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No. 89-1402. *HEIFNER v. CALIFORNIA*. Ct. App. Cal., 3d App. Dist. Certiorari denied.

No. 89-1404. *CAMERON ET UX. v. BEELER, SCHAD & DIAMOND, P. C.* C. A. 7th Cir. Certiorari denied. Reported below: 894 F. 2d 1338.

No. 89-1411. *TINDALL v. FLORIDA BAR*. Sup. Ct. Fla. Certiorari denied. Reported below: 550 So. 2d 449.

No. 89-1414. *HOWELL v. MAUZY ET AL.* Sup. Ct. Tex. Certiorari denied.

No. 89-1418. *ILLINOIS CORPORATE TRAVEL, INC., DBA McTRAVEL TRAVEL SERVICES v. AMERICAN AIRLINES, INC.* C. A. 7th Cir. Certiorari denied. Reported below: 889 F. 2d 751.

No. 89-1431. *MYERS v. SOUTH DAKOTA*. Sup. Ct. S. D. Certiorari denied.

No. 89-1432. *JACKSON v. JOHNSTOWN/CONSOLIDATED REALTY TRUST ET AL.* App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 185 Ill. App. 3d 734, 542 N. E. 2d 30.

No. 89-1437. *SUTHERLAND ET AL. v. HOLCOMBE ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 891 F. 2d 287.

No. 89-1440. *KNOX COUNTY, TENNESSEE, ET AL. v. McWHERTER, GOVERNOR OF TENNESSEE, ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 887 F. 2d 1287.

No. 89-1446. *AHTNA, INC. v. ALASKA ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 891 F. 2d 1401.

No. 89-1447. *IDEKO DIVISION OF DRESSER INDUSTRIES, INC. v. CROCKER NATIONAL BANK ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 889 F. 2d 1452.

No. 89-1466. *RYAN v. PENNSYLVANIA*. Sup. Ct. Pa. Certiorari denied. Reported below: 523 Pa. 547, 568 A. 2d 179.

No. 89-1487. *DUNLAP v. LOCKHART, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION, ET AL.* C. A. 8th Cir. Certiorari denied. Reported below: 894 F. 2d 1340.

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No. 89-1496. *GILLIAM v. NATIONAL COMMISSION ON CERTIFICATION OF PHYSICIAN ASSISTANTS, INC., ET AL.* C. A. 3d Cir. Certiorari denied. Reported below: 898 F. 2d 140.

No. 89-1535. *CASTRO ET AL. v. UNITED STATES ET AL.* C. A. 11th Cir. Certiorari denied. Reported below: 888 F. 2d 1395.

No. 89-1540. *AMES v. SUMMEY ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 892 F. 2d 1041.

No. 89-6500. *BOUDREAU v. COLLINS, SUPERINTENDENT, MOORE CORRECTIONAL INSTITUTION, ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 885 F. 2d 864.

No. 89-6525. *REYNOLDS v. MISSOURI.* Ct. App. Mo., Western Dist. Certiorari denied. Reported below: 778 S. W. 2d 661.

No. 89-6565. *FRY v. NORTH CAROLINA.* Ct. App. N. C. Certiorari denied. Reported below: 94 N. C. App. 390, 381 S. E. 2d 205.

No. 89-6646. *MUNSTER-RAMIREZ v. UNITED STATES.* C. A. 9th Cir. Certiorari denied. Reported below: 888 F. 2d 1267.

No. 89-6719. *BRUNO v. FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION ET AL.* C. A. 10th Cir. Certiorari denied.

No. 89-6783. *HARRISON v. ROLLINS, WARDEN.* C. A. 4th Cir. Certiorari denied. Reported below: 890 F. 2d 676.

No. 89-6839. *IN RE MARTIN.* C. A. 3d Cir. Certiorari denied. Reported below: 897 F. 2d 522.

No. 89-6851. *DEMOS v. UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF WASHINGTON.* C. A. 9th Cir. Certiorari denied.

No. 89-6877. *TAYLOR v. CALIFORNIA.* Sup. Ct. Cal. Certiorari denied.

No. 89-6880. *CONLEY v. WASHINGTON.* Ct. App. Wash. Certiorari denied.

No. 89-6897. *SEVILLA v. ILLINOIS.* Sup. Ct. Ill. Certiorari denied. Reported below: 132 Ill. 2d 113, 547 N. E. 2d 117.

No. 89-6898. *WOODS v. SOLEM, WARDEN, ET AL.* C. A. 8th Cir. Certiorari denied. Reported below: 891 F. 2d 196.

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No. 89-6901. *DOWELL v. LENSSING, WARDEN, ET AL.* C. A. 5th Cir. Certiorari denied.

No. 89-6902. *COLEMAN v. DELAWARE.* C. A. 3d Cir. Certiorari denied. Reported below: 891 F. 2d 279.

No. 89-6904. *CONLEY v. WASHINGTON.* Sup. Ct. Wash. Certiorari denied.

No. 89-6905. *HOLLEY v. EDWARDS, WARDEN, ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 885 F. 2d 865.

No. 89-6907. *GALOWSKI v. MURPHY, SUPERINTENDENT, COLUMBIA CORRECTIONAL INSTITUTION.* C. A. 7th Cir. Certiorari denied. Reported below: 891 F. 2d 629.

No. 89-6909. *CARTER v. VAUGHN, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION (AND DIAGNOSTIC AND CLASSIFICATION CENTER) AT GRATERFORD.* C. A. 3d Cir. Certiorari denied. Reported below: 897 F. 2d 521.

No. 89-6910. *STARKS v. COLLINS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE.* C. A. 5th Cir. Certiorari denied.

No. 89-6914. *MEYERS v. INDIANA.* Sup. Ct. Ind. Certiorari denied. Reported below: 547 N. E. 2d 265.

No. 89-6915. *CAMDEN v. CIRCUIT COURT OF CRAWFORD COUNTY, ILLINOIS, ET AL.* C. A. 7th Cir. Certiorari denied. Reported below: 892 F. 2d 610.

No. 89-6921. *BARCLAY v. MARTINEZ, GOVERNOR OF FLORIDA, ET AL.* Sup. Ct. Fla. Certiorari denied. Reported below: 554 So. 2d 1167.

No. 89-6922. *HUNT ET AL. v. REYNOLDS.* C. A. 6th Cir. Certiorari denied. Reported below: 893 F. 2d 1334.

No. 89-6928. *COOPER v. MOORE, DIRECTOR OF CORRECTIONS, ET AL.* Ct. App. Mo., Western Dist. Certiorari denied. Reported below: 779 S. W. 2d 636.

No. 89-6930. *FRIAS v. INDIANA.* Sup. Ct. Ind. Certiorari denied. Reported below: 547 N. E. 2d 809.

No. 89-6931. *HARRIS v. UNITED STATES.* C. A. 9th Cir. Certiorari denied. Reported below: 892 F. 2d 1047.

No. 89-6938. *WILSON v. UNITED STATES.* C. A. 10th Cir. Certiorari denied.

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No. 89-6947. *FOUNTAIN v. WEST POINT MILITARY ACADEMY ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 892 F. 2d 1043.

No. 89-6955. *CUMBER ET AL. v. UNITED STATES.* C. A. 4th Cir. Certiorari denied. Reported below: 894 F. 2d 402.

No. 89-6974. *DEMOS v. UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF WASHINGTON; DEMOS v. UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF WASHINGTON; and DEMOS v. UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF WASHINGTON.* C. A. 9th Cir. Certiorari denied.

No. 89-6997. *HARRIS v. UNITED STATES.* C. A. 6th Cir. Certiorari denied. Reported below: 891 F. 2d 293.

No. 89-7020. *SWARTZ v. INTERNAL REVENUE SERVICE ET AL.* C. A. 8th Cir. Certiorari denied. Reported below: 884 F. 2d 1128.

No. 89-7028. *FRYHOVER v. UNITED STATES.* C. A. 6th Cir. Certiorari denied. Reported below: 892 F. 2d 1044.

No. 89-7039. *WILLIAMS v. UNITED STATES.* C. A. 4th Cir. Certiorari denied. Reported below: 892 F. 2d 75.

No. 89-7054. *DESPAIGNE v. UNITED STATES.* C. A. 11th Cir. Certiorari denied. Reported below: 896 F. 2d 557.

No. 89-7067. *BARBER v. UNITED STATES.* C. A. 7th Cir. Certiorari denied. Reported below: 881 F. 2d 345.

No. 89-7073. *EVIDENTE v. UNITED STATES.* C. A. 8th Cir. Certiorari denied. Reported below: 894 F. 2d 1000.

No. 89-7078. *FAULKNER v. GRAYSON, WARDEN.* C. A. 6th Cir. Certiorari denied. Reported below: 888 F. 2d 1391.

No. 89-7088. *THOMPSON v. UNITED STATES.* C. A. 4th Cir. Certiorari denied. Reported below: 891 F. 2d 507.

No. 89-7091. *HANLEY, AKA HUNTLY v. UNITED STATES.* C. A. 2d Cir. Certiorari denied. Reported below: 898 F. 2d 137.

No. 89-7093. *HEREAU v. UNITED STATES.* C. A. 8th Cir. Certiorari denied. Reported below: 902 F. 2d 1571.

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No. 89-7098. *MUNIZ-MELCHOR v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 894 F. 2d 1430.

No. 89-7106. *BUENROSTRO v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 868 F. 2d 135.

No. 89-7121. *WILLIAMS v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 896 F. 2d 548.

No. 89-7130. *EVANS v. UNITED STATES*. C. A. 11th Cir. Certiorari denied. Reported below: 894 F. 2d 412.

No. 87-6927. *HAMILTON, AS NATURAL MOTHER AND NEXT FRIEND OF SMITH v. TEXAS*. Ct. Crim. App. Tex.;

No. 89-81. *WILSON ET AL. v. LANE, DIRECTOR, ILLINOIS DEPARTMENT OF CORRECTIONS*. C. A. 7th Cir.;

No. 89-5596. *LAWLS, BY AND THROUGH LAWLS, AS HIS NEXT FRIEND v. DELO, SUPERINTENDENT, POTOSI CORRECTIONAL CENTER*. C. A. 8th Cir.; and

No. 89-6954. *MAGWOOD v. ALABAMA*. Sup. Ct. Ala. Certiorari denied. Reported below: No. 89-81, 870 F. 2d 1250.

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. 89-1067. *GENERAL MOTORS CORP. v. WELLS ET AL.* C. A. 5th Cir. Motion of Equal Employment Advisory Council for leave to file a brief as *amicus curiae* granted. Certiorari denied. Reported below: 881 F. 2d 166.

No. 89-1159. *FERRIS v. KENTUCKY*. Cir. Ct. Ky., Campbell County. Certiorari denied. JUSTICE WHITE and JUSTICE BLACKMUN would grant certiorari.

No. 89-1232 (A-552). *COLORADO v. CLEBURN*. Sup. Ct. Colo. Application for stay, presented to JUSTICE WHITE, and by him referred to the Court, denied. Certiorari denied. Reported below: 782 P. 2d 784.

No. 89-1272. *AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, AFL-CIO, ET AL. v. SKINNER, SECRETARY OF TRANSPORTATION*. C. A. D. C. Cir. Certiorari denied. JUSTICE

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MARSHALL would grant certiorari. Reported below: 280 U. S. App. D. C. 262, 885 F. 2d 884.

No. 89-1419. HALIFAX HOSPITAL MEDICAL CENTER *v.* BOLT ET AL. C. A. 11th Cir. Certiorari denied. JUSTICE WHITE would grant certiorari. Reported below: 891 F. 2d 810.

Rehearing Denied

No. 88-1264. SAFFLE, WARDEN, ET AL. *v.* PARKS, 494 U. S. 484;

No. 88-6613. BOYDE *v.* CALIFORNIA, 494 U. S. 370;

No. 88-7222. TASSIN *v.* LOUISIANA, 493 U. S. 874;

No. 89-1226. 494 U. S. 1056; WALKER *v.* SUBURBAN HOSPITAL ASSN. ET AL.,

No. 89-5998. HAMILTON *v.* CALIFORNIA, 494 U. S. 1039;

No. 89-6395. MCCLAIN *v.* MITCHELL ET AL., 494 U. S. 1006;

No. 89-6455. IN RE WARREN, 494 U. S. 1025;

No. 89-6553. GAUNCE *v.* BURGENER ET AL., 494 U. S. 1035;

No. 89-6594. IN RE MARTIN, 494 U. S. 1025; and

No. 89-6639. KIM *v.* UNITED STATES, 494 U. S. 1037. Petitions for rehearing denied.

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*Miscellaneous Orders**

No. A-760. SHAW *v.* ARMONTROUT, WARDEN. Application for stay of execution of sentence of death, presented to JUSTICE BLACKMUN, and by him referred to the Court, denied. JUSTICE BLACKMUN and JUSTICE STEVENS would grant the application.

JUSTICE BRENNAN, with whom JUSTICE MARSHALL joins, dissenting.

Adhering to my view that the death penalty is in all circumstances cruel and unusual punishment prohibited by the Eighth and Fourteenth Amendments, *Gregg v. Georgia*, 428 U. S. 153, 227 (1976) (BRENNAN, J., dissenting), I would grant the application for a stay. I believe that the procedural posture of this case makes a stay particularly appropriate. The Court of Appeals for the Eighth Circuit affirmed the District Court's denial of Robert

*For the Court's order prescribing amendments to the Federal Rules of Criminal Procedure and abrogating the Rules of Procedure for Trial of Misdemeanors Before United States Magistrates, see *post*, p. 969.

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Shaw's first federal habeas petition on March 28, 1990, and the mandate of the court issued on April 19. The very next day, the Missouri Supreme Court ordered that Shaw be executed on May 2, well before expiration of the time period during which Shaw may file a petition for writ of certiorari in this Court. Shaw then filed with the Eighth Circuit a motion to recall issuance of mandate and application for a stay of execution; the court denied both on April 30, two days prior to his scheduled execution. I believe it inappropriate to deny Shaw's application for a stay before he has a fair opportunity to file a petition for writ of certiorari in this Court.

Certiorari Denied

No. 89-7359 (A-762). *TAFERO v. FLORIDA*. Sup. Ct. Fla. Application for stay of execution of sentence of death, presented to JUSTICE KENNEDY, and by him referred to the Court, denied. Certiorari denied. Reported below: 561 So. 2d 557.

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.

MAY 3, 1990

Miscellaneous Order

No. A-773. *TAFERO v. DUGGER*, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. Application for stay of execution of sentence of death, presented to JUSTICE KENNEDY, and by him referred to the Court, denied.

JUSTICE BRENNAN and JUSTICE MARSHALL, dissenting.

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

May 10, 11, 14, 1990

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MAY 10, 1990

Miscellaneous Order

No. A-785. *STOKES v. ARMONTROUT, WARDEN.* Application for stay of execution of sentence of death, presented to JUSTICE BLACKMUN, and by him referred to the Court, denied.

JUSTICE BRENNAN and JUSTICE MARSHALL, dissenting.

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

MAY 11, 1990

Miscellaneous Order. (See also No. A-795, *ante*, p. 320.)

No. A-798. *STOKES v. DELO, SUPERINTENDENT, POTOSI CORRECTIONAL CENTER.* Application for stay of execution of sentence of death, presented to JUSTICE BLACKMUN, 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.

MAY 14, 1990

Certiorari Granted—Vacated and Remanded

No. 88-7070. *GALLAGHER v. UNITED STATES.* C. A. 3d Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *United States v. Ojeda Rios*, *ante*, p. 257. Reported below: 870 F. 2d 652.

No. 89-479. *BENITEZ ET AL. v. PORT AUTHORITY TRANS-HUDSON CORP.* C. A. 3d Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of

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Port Authority Trans-Hudson Corp. v. Feeney, ante, p. 299. Reported below: 873 F. 2d 45.

Miscellaneous Orders

No. A-752. *HIRSH ET AL. v. CITY OF ATLANTA, GEORGIA*. Super. Ct. Ga., Fulton County. Application for stay, presented to JUSTICE KENNEDY, and by him referred to the Court, denied.

JUSTICE STEVENS, concurring.

It would be irresponsible to attempt to distinguish *National Socialist Party of America v. Skokie*, 432 U. S. 43 (1977), on the basis of any difference in the content of the speech involved in that case and the content of the speech involved in this. It is entirely proper, however, to draw a distinction between injunctive relief imposing time, place, and manner restrictions upon a class of persons who have persistently and repeatedly engaged in unlawful conduct, on the one hand, cf. *National Society of Professional Engineers v. United States*, 435 U. S. 679, 697-698 (1978); *United States v. Paradise*, 480 U. S. 149, 193 (1987) (STEVENS, J., concurring in judgment), and an injunction that constitutes a naked prior restraint against a proposed march by a group that did not have a similar history of illegal conduct in the jurisdiction where the march was scheduled. Cf. *Organization for a Better Austin v. Keefe*, 402 U. S. 415, 419-420 (1971); *Shuttlesworth v. Birmingham*, 394 U. S. 147, 162-163 (1969) (Harlan, J., concurring). I would not extend the holding in the *Skokie* case to this quite different situation. For that reason, I think the Court correctly exercises its discretion to deny the application for extraordinary relief in this case.

JUSTICE KENNEDY, with whom JUSTICE BRENNAN, JUSTICE MARSHALL, and JUSTICE SCALIA join, dissenting.

A Georgia trial court issued an injunction prohibiting at least one of the applicants from engaging in certain means of public protest. The Supreme Court of Georgia refused to stay the injunction pending appeal. *National Socialist Party of America v. Skokie*, 432 U. S. 43 (1977), does not distinguish among speakers based on the content of their speech. Its terms, in my view, require us to treat the stay application as a petition for certiorari, to grant certiorari, and to reverse the denial of a stay by the Supreme Court of Georgia. See *id.*, at 44. I dissent from the denial of the stay.

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No. D-887. *IN RE DISBARMENT OF ARAGON.* Disbarment entered. [For earlier order herein, see 494 U. S. 1064.]

No. 116, Orig. *ALABAMA ET AL. v. W. R. GRACE & CO. ET AL.* Motion of New Jersey for leave to intervene as a party plaintiff denied. Motion for leave to file bill of complaint denied. JUSTICE O'CONNOR took no part in the consideration or decision of these motions.

No. 89-1193. *B & H INDUSTRIES OF SOUTHWEST FLORIDA, INC. v. DIETER ET AL.* C. A. 11th Cir.;

No. 89-1499. *PLAZZO ET AL. v. NATIONWIDE MUTUAL INSURANCE CO. ET AL.* C. A. 6th Cir.; and

No. 89-1508. *COLORADO INTERSTATE GAS CO. v. NATURAL GAS PIPE LINE COMPANY OF AMERICA ET AL.* C. A. 10th Cir. The Solicitor General is invited to file briefs in these cases expressing the views of the United States.

No. 89-1399. *INTERNATIONAL SOCIETY FOR KRISHNA CONSCIOUSNESS OF CALIFORNIA ET AL. v. GEORGE ET AL.* Ct. App. Cal., 4th App. Dist. Motions of World Hindu Assembly of North America et al., National Association of Evangelicals et al., and National Council of Churches of Christ in the United States et al. for leave to file briefs as *amici curiae* granted.

No. 89-1433. *UNITED STATES v. EICHMAN ET AL.* D. C. D. C. [Probable jurisdiction noted, 494 U. S. 1063]; and

No. 89-1434. *UNITED STATES v. HAGGERTY ET AL.* D. C. W. D. Wash. [Probable jurisdiction noted, 494 U. S. 1063.] Motion of Association of Art Museum Directors et al. for leave to file a brief as *amici curiae* out of time granted.

No. 89-5916. *DEMAREST v. MANSPEAKER ET AL.* C. A. 10th Cir. [Certiorari granted, *ante*, p. 903.] Motion for appointment of counsel granted, and it is ordered that James E. Scarboro, Esq., of Denver, Colo., be appointed to serve as counsel for petitioner in this case.

No. 89-6677. *WHITE v. UNITED STATES.* C. A. 8th Cir.;

No. 89-7025. *MOUNT v. GORELICK ET AL.* Ct. App. Cal., 6th App. Dist.; and

No. 89-7077. *NICOLAISEN v. TOEI SHIPPING CO., LTD., ET AL.* C. A. 3d Cir. Motions of petitioners for leave to proceed *in forma pauperis* denied. Petitioners are allowed until June 4,

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1990, within which to pay the docketing fee required by Rule 38(a) and to submit petitions in compliance with Rule 33 of the Rules of this Court.

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

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

No. 89-6992. IN RE JOHN. Petition for writ of mandamus denied.

No. 89-7035. IN RE SKIBO. Petition for writ of prohibition denied.

Certiorari Granted

No. 89-1008. OWEN v. OWEN. C. A. 11th Cir. Certiorari granted. Reported below: 877 F. 2d 44.

Certiorari Denied

No. 89-1111. BALLBE v. IMMIGRATION AND NATURALIZATION SERVICE. C. A. 11th Cir. Certiorari denied. Reported below: 886 F. 2d 306.

No. 89-1179. JEROME MIRZA & ASSOCIATES, LTD. v. UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 882 F. 2d 229.

No. 89-1192. GLINSEY v. ILLINOIS. App. Ct. Ill., 4th Dist. Certiorari denied. Reported below: 182 Ill. App. 3d 1108, 554 N. E. 2d 1126.

No. 89-1240. THOMPSON v. DUKE ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 882 F. 2d 1180.

No. 89-1268. HARRISINGH v. FOWLER. App. Div., Sup. Ct. N. Y., 2d Jud. Dept. Certiorari denied.

No. 89-1281. BOTERO MORENO v. UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 891 F. 2d 905.

No. 89-1307. MR. W FIREWORKS, INC. v. DOLE, SECRETARY OF LABOR. C. A. 5th Cir. Certiorari denied. Reported below: 889 F. 2d 543.

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No. 89-1321. *BORN v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 888 F. 2d 1165.

No. 89-1346. *AUTOMOBILE CLUB OF NEW YORK, INC., ET AL. v. PORT AUTHORITY OF NEW YORK AND NEW JERSEY ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 887 F. 2d 417.

No. 89-1364. *RICHARDSON v. CITY OF CHICAGO ET AL.* C. A. 7th Cir. Certiorari denied.

No. 89-1383. *GRAY v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 876 F. 2d 1411.

No. 89-1398. *GEORGE v. INTERNATIONAL SOCIETY FOR KRISHNA CONSCIOUSNESS OF CALIFORNIA ET AL.* Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 89-1420. *WEINER v. DOUBLEDAY & Co., INC., ET AL.* Ct. App. N. Y. Certiorari denied. Reported below: 74 N. Y. 2d 586, 549 N. E. 2d 453.

No. 89-1438. *MOUNT WASHINGTON CEMETERY ET AL. v. MONUMENT BUILDERS OF GREATER KANSAS CITY, INC.* C. A. 10th Cir. Certiorari denied. Reported below: 891 F. 2d 1473.

No. 89-1441. *INNOTRON DIAGNOSTICS v. ABBOTT LABORATORIES*. C. A. 9th Cir. Certiorari denied. Reported below: 892 F. 2d 1046.

No. 89-1442. *SAVE OUR STREAMS v. FEDERAL ENERGY REGULATORY COMMISSION*. C. A. 9th Cir. Certiorari denied. Reported below: 883 F. 2d 1024.

No. 89-1443. *HAWLEY, INDIVIDUALLY AND AS NEXT FRIEND FOR HAWLEY, A MINOR v. KENDALL ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 892 F. 2d 76.

No. 89-1455. *TRAGER, GLASS & Co. v. NEWMYER ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 888 F. 2d 385.

No. 89-1456. *PLUMBERS' PENSION FUND, LOCAL 130, U. A., ET AL. v. NIEDRICH ET UX.* C. A. 7th Cir. Certiorari denied. Reported below: 891 F. 2d 1297.

No. 89-1460. *LEBBOS v. SAN JOSE MUNICIPAL COURT.* Sup. Ct. Cal. Certiorari denied.

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No. 89-1463. *EVANS ET AL. v. UNITED STATES.* C. A. 8th Cir. Certiorari denied. Reported below: 891 F. 2d 686.

No. 89-1467. *WRIGHT ET AL. v. LAND DEVELOPERS CONSTRUCTION CO., INC.* Sup. Ct. Ala. Certiorari denied. Reported below: 554 So. 2d 1000.

No. 89-1469. *DRY LAND MARINA, INC. v. MICHIGAN.* Ct. App. Mich. Certiorari denied. Reported below: 175 Mich. App. 322, 437 N. W. 2d 391.

No. 89-1470. *JACK v. CITY OF TONGANOXIE.* Ct. App. Kan. Certiorari denied. Reported below: 13 Kan. App. 2d 718, 779 P. 2d 34.

No. 89-1473. *SALMINEN v. CITY OF HIBBING ET AL.* Ct. App. Minn. Certiorari denied.

No. 89-1477. *FIGLIUZZI ET UX. v. CITIBANK, N. A.* C. A. 4th Cir. Certiorari denied. Reported below: 892 F. 2d 1041.

No. 89-1479. *SMITH v. BALTIMORE CITY POLICE DEPARTMENT ET AL.* Ct. Sp. App. Md. Certiorari denied. Reported below: 80 Md. App. 754.

No. 89-1480. *DURAN v. TEXAS ET AL.* Sup. Ct. Tex. Certiorari denied.

No. 89-1481. *SHAT-R-SHIELD, INC. v. TROJAN, INC.* C. A. Fed. Cir. Certiorari denied. Reported below: 889 F. 2d 1101.

No. 89-1482. *LAWRENCE COAL CO. v. PENNSYLVANIA DEPARTMENT OF ENVIRONMENTAL RESOURCES.* Pa. Commw. Ct. Certiorari denied.

No. 89-1485. *CLARK v. SEVENTH JUDICIAL CIRCUIT OF SOUTH DAKOTA.* Sup. Ct. S. D. Certiorari denied.

No. 89-1489. *CENTRAL VERMONT RAILWAY, INC. v. VERMONT ET AL.* Sup. Ct. Vt. Certiorari denied. Reported below: 153 Vt. 337, 571 A. 2d 1128.

No. 89-1490. *MARINO ET AL. v. ORTIZ ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 888 F. 2d 12.

No. 89-1491. *HUGHES v. BUSS.* C. A. 7th Cir. Certiorari denied. Reported below: 880 F. 2d 967.

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No. 89-1495. NORTHWEST ADVANCEMENT, INC., ET AL. *v.* OREGON BUREAU OF LABOR ET AL. Ct. App. Ore. Certiorari denied. Reported below: 96 Ore. App. 133, 772 P. 2d 934.

No. 89-1497. SALTANY, PERSONAL REPRESENTATIVE OF THE ESTATE OF AL-ORAIBI, ET AL. *v.* REAGAN ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 281 U. S. App. D. C. 20, 886 F. 2d 438.

No. 89-1498. NEW ORLEANS STEAMSHIP ASSN. *v.* PLAQUE-MINES PORT, HARBOR & TERMINAL DISTRICT. C. A. 5th Cir. Certiorari denied. Reported below: 874 F. 2d 1018 and 891 F. 2d 1153.

No. 89-1504. NEWMAN *v.* QUIGG, COMMISSIONER OF PATENTS AND TRADEMARKS. C. A. Fed. Cir. Certiorari denied. Reported below: 877 F. 2d 1575.

No. 89-1507. SHELBY COUNTY SHERIFF ET AL. *v.* LEACH. C. A. 6th Cir. Certiorari denied. Reported below: 891 F. 2d 1241.

No. 89-1512. CITY OF WICHITA, KANSAS *v.* PETERSON. C. A. 10th Cir. Certiorari denied. Reported below: 888 F. 2d 1307.

No. 89-1522. PAWNEE PRODUCTION SERVICE, INC., ET AL. *v.* BAZINE STATE BANK. Sup. Ct. Kan. Certiorari denied. Reported below: 245 Kan. 490, 781 P. 2d 1077.

No. 89-1526. SOCIALIST WORKERS PARTY ET AL. *v.* HECHLER, SECRETARY OF STATE OF WEST VIRGINIA, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 890 F. 2d 1303.

No. 89-1533. STICH *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 891 F. 2d 296.

No. 89-1536. HALL, INDIVIDUALLY AND AS NEXT FRIEND OF HALL, MINOR, ET AL. *v.* CNA INSURANCE COS. ET AL. Ct. App. Tex., 14th Dist. Certiorari denied. Reported below: 761 S. W. 2d 54.

No. 89-1545. QUARTERMAN ET UX. *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 11th Cir. Certiorari denied. Reported below: 889 F. 2d 275.

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No. 89-1546. ADMIRAL EQUIPMENT CO. *v.* CHARLES. C. A. 9th Cir. Certiorari denied. Reported below: 889 F. 2d 1094.

No. 89-1548. STAGNER *v.* UNITED STATES PATENT AND TRADEMARK OFFICE ET AL. C. A. Fed. Cir. Certiorari denied. Reported below: 895 F. 2d 1421.

No. 89-1552. CLAUSEN CO. *v.* DYNATRON/BONDO CORP. C. A. 3d Cir. Certiorari denied. Reported below: 889 F. 2d 459.

No. 89-1557. SHUMAN ET AL. *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 891 F. 2d 557.

No. 89-1562. YAMAMOTO *v.* THRIFT GUARANTY CORPORATION OF HAWAII ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 891 F. 2d 297.

No. 89-1565. PALAZZOLO ET AL. *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 887 F. 2d 1141.

No. 89-1571. ALLEN *v.* OFFICE OF PERSONNEL MANAGEMENT. C. A. Fed. Cir. Certiorari denied. Reported below: 891 F. 2d 298.

No. 89-1583. CAMPBELL, TRUSTEE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 889 F. 2d 658.

No. 89-1585. CHERRY *v.* YEUTTER, SECRETARY OF AGRICULTURE, ET AL. C. A. 10th Cir. Certiorari denied.

No. 89-1592. RAMIREZ *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 897 F. 2d 538.

No. 89-1600. LITTLE ET AL. *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 889 F. 2d 1367.

No. 89-1608. MAXEY *v.* KADROVACH ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 890 F. 2d 73.

No. 89-1614. LOMBARD BROTHERS, INC. *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 893 F. 2d 520.

No. 89-1615. HEFTI ET UX. *v.* UNITED STATES ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 894 F. 2d 1340.

No. 89-1616. AMERICAN TECHNOLOGY RESOURCES ET AL. *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 893 F. 2d 651.

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No. 89-1626. CLARK & WILKINS INDUSTRIES, INC. *v.* NATIONAL LABOR RELATIONS BOARD. C. A. D. C. Cir. Certiorari denied. Reported below: 281 U. S. App. D. C. 80, 887 F. 2d 308.

No. 89-6243. LEAL *v.* COLLINS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 885 F. 2d 868.

No. 89-6441. VENO *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 891 F. 2d 287.

No. 89-6446. REYNOSO *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 888 F. 2d 126.

No. 89-6494. ASANTE *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 89-6495. VANOVER *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 888 F. 2d 1117.

No. 89-6513. BAGGULEY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 887 F. 2d 1081.

No. 89-6596. TILLMAN *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 897 F. 2d 525.

No. 89-6622. KIEWER *v.* NEW JERSEY. Super. Ct. N. J., App. Div. Certiorari denied. Reported below: 236 N. J. Super. 243, 565 A. 2d 706.

No. 89-6635. WHIPPLE *v.* ALEXANDER, SUPERINTENDENT, MADISON CORRECTIONAL INSTITUTION. C. A. 6th Cir. Certiorari denied. Reported below: 891 F. 2d 298.

No. 89-6669. SPENCER *v.* SHOWERS. C. A. 7th Cir. Certiorari denied. Reported below: 893 F. 2d 1337.

No. 89-6673. GRANDISON ET AL. *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 885 F. 2d 143.

No. 89-6675. CURTIS *v.* ALLEN, DISTRICT DIRECTOR, UNITED STATES DEPARTMENT OF LABOR. C. A. 5th Cir. Certiorari denied. Reported below: 890 F. 2d 1162.

No. 89-6700. FLICK *v.* BLEVINS, WARDEN. C. A. 7th Cir. Certiorari denied. Reported below: 887 F. 2d 778.

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No. 89-6739. *MCKENZIE v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 892 F. 2d 1042.

No. 89-6743. *KORNEGAY v. UNITED STATES*. C. A. 10th Cir. Certiorari denied. Reported below: 885 F. 2d 713.

No. 89-6753. *GREENE v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 892 F. 2d 453.

No. 89-6764. *SCOTT v. DEPARTMENT OF THE ARMY*. C. A. Fed. Cir. Certiorari denied. Reported below: 892 F. 2d 1050.

No. 89-6769. *SUN v. WELCH ET AL.* Sup. Ct. Ga. Certiorari denied. Reported below: — Ga. —, 386 S. E. 2d 363.

No. 89-6787. *HAWKINS v. CECO CORP.* C. A. 11th Cir. Certiorari denied. Reported below: 883 F. 2d 977.

No. 89-6797. *JONES v. DEPARTMENT OF THE NAVY*. C. A. Fed. Cir. Certiorari denied.

No. 89-6858. *COLLIER v. UNITED STATES POSTAL SERVICE ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 892 F. 2d 1045.

No. 89-6865. *FOUST v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 878 F. 2d 1432.

No. 89-6876. *WHEATLEY v. ILLINOIS*. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 187 Ill. App. 3d 371, 543 N. E. 2d 259.

No. 89-6923. *VALENCIA-ROLDAN v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 893 F. 2d 1080.

No. 89-6934. *WEEKLY v. STORY, WARDEN, ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 894 F. 2d 408.

No. 89-6937. *FRIEDMAN v. MONTANA ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 891 F. 2d 294.

No. 89-6939. *SMALLWOOD v. SPRINGER*. C. A. 4th Cir. Certiorari denied. Reported below: 884 F. 2d 1389.

No. 89-6944. *COOPER v. REMAX WYANDOTTE COUNTY REAL ESTATE, INC., ET AL.* Ct. App. Kan. Certiorari denied. Reported below: 14 Kan. App. 2d xxi, 782 P. 2d 75.

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No. 89-6946. *TERTER v. JONES*, SUPERINTENDENT, MISSOURI TRAINING CENTER FOR MEN. C. A. 8th Cir. Certiorari denied.

No. 89-6948. *GRESHAM v. OHIO*. Ct. App. Ohio, Franklin County. Certiorari denied.

No. 89-6949. *CURRY v. MICHIGAN*. Ct. App. Mich. Certiorari denied.

No. 89-6951. *SANDERS v. BORGERT ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 891 F. 2d 292.

No. 89-6957. *MOORE v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 891 F. 2d 287.

No. 89-6958. *FORTE v. BEERMAN ET AL.* C. A. 1st Cir. Certiorari denied. Reported below: 893 F. 2d 1327.

No. 89-6963. *VAN DAAM v. CHRYSLER FIRST FINANCIAL SERVICES CORP.* Sup. Ct. R. I. Certiorari denied. Reported below: 566 A. 2d 390.

No. 89-6968. *SCIRE v. QUINLAN*. C. A. 5th Cir. Certiorari denied.

No. 89-6969. *RUSSELL v. MARIANI ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 894 F. 2d 1337.

No. 89-6970. *WILLIAMS-BEY v. TRICKEY*, DIRECTOR, DIVISION OF CLASSIFICATION AND TREATMENT, MISSOURI DEPARTMENT OF CORRECTIONS. C. A. 8th Cir. Certiorari denied. Reported below: 894 F. 2d 314.

No. 89-6978. *CRAMER v. MARINE MIDLAND BANK*. C. A. 2d Cir. Certiorari denied. Reported below: 896 F. 2d 543.

No. 89-6979. *FOX v. UNITED STATES DEPARTMENT OF THE INTERIOR*. C. A. 1st Cir. Certiorari denied.

No. 89-6980. *JARALLAH v. PICKETT SUITE HOTEL ET AL.* Ct. App. Ga. Certiorari denied. Reported below: 193 Ga. App. 325, 388 S. E. 2d 333.

No. 89-6981. *ABBOTT v. PARKE, WARDEN*. C. A. 6th Cir. Certiorari denied. Reported below: 893 F. 2d 868.

No. 89-6982. *FULFORD v. SMITH, WARDEN*. C. A. 5th Cir. Certiorari denied. Reported below: 897 F. 2d 526.

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No. 89-6987. *ANDRISANI v. SAUGUS COLONY LTD. ET AL.*
Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 89-6989. *WILLIAMS v. O'LEARY, WARDEN.* C. A. 7th Cir. Certiorari denied. Reported below: 886 F. 2d 1318.

No. 89-6993. *McKESSOR v. KANSAS.* Sup. Ct. Kan. Certiorari denied. Reported below: 246 Kan. 1, 785 P. 2d 1332.

No. 89-6994. *MAYFIELD v. COLLINS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION.* C. A. 5th Cir. Certiorari denied. Reported below: 893 F. 2d 343.

No. 89-6996. *KLACSMANN v. KLACSMANN.* C. A. 11th Cir. Certiorari denied. Reported below: 886 F. 2d 1324.

No. 89-6998. *ARCE v. BERBARY, SUPERINTENDENT, WYOMING CORRECTIONAL FACILITY.* C. A. 2d Cir. Certiorari denied. Reported below: 889 F. 2d 1271.

No. 89-7000. *ROE v. TEXAS.* Ct. App. Tex., 2d Dist. Certiorari denied.

No. 89-7011. *WATSON ET AL. v. OHIO.* Sup. Ct. Ohio. Certiorari denied. Reported below: 47 Ohio St. 3d 86, 548 N. E. 2d 210.

No. 89-7012. *SHERRILLS v. WILSON ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 895 F. 2d 1414.

No. 89-7013. *LAWRENCE v. TEXAS EMPLOYMENT COMMISSION.* Sup. Ct. Tex. Certiorari denied.

No. 89-7017. *CASTILLO v. COLLINS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION.* C. A. 5th Cir. Certiorari denied.

No. 89-7023. *PIZANO v. UNITED STATES POSTAL SERVICE.* C. A. 9th Cir. Certiorari denied. Reported below: 869 F. 2d 1497.

No. 89-7026. *FIXEL v. BRINKMAN, WARDEN.* Sup. Ct. Nev. Certiorari denied. Reported below: 105 Nev. 1030, 810 P. 2d 324.

No. 89-7029. *BILLINI v. UNITED STATES.* C. A. 2d Cir. Certiorari denied. Reported below: 898 F. 2d 137.

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No. 89-7031. LIBERMAN *v.* INTERNAL REVENUE SERVICE. C. A. 2d Cir. Certiorari denied.

No. 89-7045. HINES, AKA MURRAY *v.* SHANNON. C. A. 1st Cir. Certiorari denied. Reported below: 893 F. 2d 1326.

No. 89-7049. GEBREAMLAK *v.* VASQUEZ, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 891 F. 2d 294.

No. 89-7053. STRABLE *v.* SOUTH CAROLINA ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 900 F. 2d 255.

No. 89-7057. FLANAGAN *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied.

No. 89-7058. CROSBY *v.* McMACKIN, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 89-7060. DOBRANSKI *v.* KELLY, SUPERINTENDENT, ATTICA CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 89-7061. HICKS *v.* ILLINOIS. Sup. Ct. Ill. Certiorari denied. Reported below: 132 Ill. 2d 488, 548 N. E. 2d 1042.

No. 89-7076. MCGATHA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 891 F. 2d 1520.

No. 89-7083. RENEER *v.* DUNN ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 898 F. 2d 154.

No. 89-7097. MONTGOMERY *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 897 F. 2d 531.

No. 89-7114. MARANDOLA *v.* NEW JERSEY. Super. Ct. N. J., App. Div. Certiorari denied.

No. 89-7116. SHARIF *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 898 F. 2d 1333.

No. 89-7117. BAASCH *v.* UNITED STATES ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 891 F. 2d 277.

No. 89-7124. WEST *v.* MORGENTHAU, DISTRICT ATTORNEY FOR NEW YORK CITY. C. A. 2d Cir. Certiorari denied.

No. 89-7129. HAWK-BEY *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 887 F. 2d 263.

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No. 89-7133. *HOLLAND v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 889 F. 2d 1085.

No. 89-7144. *SHERROD v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 896 F. 2d 551.

No. 89-7150. *SALSMAN ET UX. v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 894 F. 2d 1340.

No. 89-7152. *POWELL v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 894 F. 2d 895.

No. 89-7158. *URRUTIA v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 897 F. 2d 430.

No. 89-7168. *VARGAS-GONZALES v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 897 F. 2d 527.

No. 89-7169. *HOMA v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 871 F. 2d 1089.

No. 89-7176. *SANCHEZ DEFUNDORA v. UNITED STATES*. C. A. 10th Cir. Certiorari denied. Reported below: 893 F. 2d 1173.

No. 89-7191. *TEEGARDIN v. MEDICAL X-RAY CENTER ET AL.* Cir. Ct. S. D., Minnehaha County. Certiorari denied.

No. 89-7192. *LUNA v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 896 F. 2d 551.

No. 89-7194. *BURTON v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 891 F. 2d 293.

No. 89-7197. *LENEAR v. UNITED STATES*. Ct. App. D. C. Certiorari denied.

No. 89-7198. *MONTEAGUDO v. UNITED STATES*. C. A. 11th Cir. Certiorari denied. Reported below: 897 F. 2d 536.

No. 89-7200. *GARCIA v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 897 F. 2d 527.

No. 89-7204. *CORTES v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 895 F. 2d 1245.

No. 89-7217. *RIVERA v. UNITED STATES*. C. A. 11th Cir. Certiorari denied. Reported below: 889 F. 2d 1029.

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No. 89-7221. *JAMESON v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 891 F. 2d 293.

No. 89-7227. *GARLAND v. DAVIS, WARDEN*. C. A. 6th Cir. Certiorari denied. Reported below: 898 F. 2d 153.

No. 89-7228. *DEBARDELEBEN v. VIRGINIA*. Sup. Ct. Va. Certiorari denied.

No. 89-7231. *VIZCARRA-PORRAS v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 889 F. 2d 1435.

No. 89-7234. *FISHER v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 895 F. 2d 208.

No. 89-7236. *WHIGHAM v. NEW YORK ET AL.* C. A. 2d Cir. Certiorari denied.

No. 89-1309. *THIER v. UNITED STATES*. C. A. 5th Cir. Motion of petitioner to strike portions of the brief in opposition filed by the United States denied. Certiorari denied. Reported below: 889 F. 2d 272.

No. 89-6486. *DAVIS v. TEXAS*. Ct. Crim. App. Tex.;

No. 89-6916. *BALDREE v. TEXAS*. Ct. Crim. App. Tex.;

No. 89-6926. *BOGGS v. BAIR, WARDEN, ET AL.* C. A. 4th Cir.;

No. 89-7037. *THOMPSON v. FLORIDA*. Sup. Ct. Fla.;

No. 89-7059. *BECK v. ZANT, WARDEN*. Sup. Ct. Ga.;

No. 89-7085. *PARKUS v. MISSOURI*. Sup. Ct. Mo.; and

No. 89-7214. *PRUETT v. THOMPSON, WARDEN*. Sup. Ct. Va. Certiorari denied. Reported below: No. 89-6486, 782 S. W. 2d 211; No. 89-6916, 784 S. W. 2d 676; No. 89-6926, 892 F. 2d 1193; No. 89-7037, 553 So. 2d 153; No. 89-7059, 259 Ga. 756, 386 S. E. 2d 349; No. 89-7085, 781 S. W. 2d 545.

JUSTICE BRENNAN and JUSTICE MARSHALL, dissenting.

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

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No. 89-7280. *GOLUB v. IBM CORP.; GOLUB v. ERNST & WHINNEY ET AL.; GOLUB v. WEINER & Co.; and GOLUB v. UNIVERSITY OF CHICAGO*. C. A. 2d Cir. Motion of petitioner to defer consideration of the petition for writ of certiorari denied. Certiorari denied. JUSTICE BLACKMUN and JUSTICE STEVENS took no part in the consideration or decision of this motion and this petition. Reported below: 888 F. 2d 1376 (first case); 891 F. 2d 277 (second case); 896 F. 2d 543 (third case); 876 F. 2d 890 (fourth case).

Rehearing Denied

No. 88-1951. *UNITED STATES v. DALM*, 494 U. S. 596;

No. 88-7555. *ROE v. OHIO*, 494 U. S. 1060;

No. 89-937. *DE KLEINMAN v. RESIDENTIAL BOARD OF MANAGERS OF THE OLYMPIC TOWER CONDOMINIUM ET AL.*, 493 U. S. 1073;

No. 89-942. *ROOKER v. RIMER*, 493 U. S. 1073;

No. 89-1034. *GOLDSTEIN v. DELTA AIR LINES, INC.*, 493 U. S. 1078;

No. 89-1169. *COMORA ET AL. v. RADELL ET AL.*, 494 U. S. 1028;

No. 89-1301. *SAFIR v. UNITED STATES LINES, INC., ET AL.* (two cases), 494 U. S. 1031;

No. 89-5257. *JOHNSON v. CALIFORNIA*, 494 U. S. 1038;

No. 89-5478. *MOORE v. KENTUCKY*, 494 U. S. 1060;

No. 89-6146. *BLACKMON v. ALABAMA*, 494 U. S. 1032;

No. 89-6165. *LUCAS v. BUNNELL, WARDEN, ET AL.*, 494 U. S. 1032;

No. 89-6293. *FERREL v. UNITED STATES*, 494 U. S. 1032;

No. 89-6301. *BOOTH v. K MART CORP. ET AL.*, 493 U. S. 1087;

No. 89-6452. *BURSON v. SCOTT, WARDEN*, 494 U. S. 1033;

No. 89-6519. *MARSH v. UNITED STATES*, 494 U. S. 1034;

No. 89-6537. *LEWIS v. RUSSE ET AL.*, 494 U. S. 1035;

No. 89-6538. *FIERRO v. COLLINS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION*, 494 U. S. 1060;

No. 89-6551. *IN RE MARTIN*, 494 U. S. 1025;

No. 89-6583. *SMITH ET UX. v. SOONER FEDERAL SAVINGS & LOAN ASSN.*, 494 U. S. 1058;

No. 89-6595. *BAKER v. OHIO*, 494 U. S. 1058; and

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No. 89-6680. *RAY v. UNITED STATES SENATE ET AL.*, 494 U. S. 1069. Petitions for rehearing denied.

No. 89-1210. *HARDUVEL ET AL. v. GENERAL DYNAMICS CORP.*, 494 U. S. 1030. Motion of petitioners to defer consideration of the petition for rehearing denied. Petition for rehearing denied.

MAY 16, 1990

Miscellaneous Orders

No. A-805 (89-7503). *ANDERSON v. COLLINS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION*. C. A. 5th Cir. Application for stay of execution of sentence of death, presented to JUSTICE WHITE, and by him referred to the Court, denied. JUSTICE BLACKMUN and JUSTICE STEVENS would grant the application.

JUSTICE BRENNAN with whom JUSTICE MARSHALL joins, dissenting.

I dissent from the denial of the application for stay of execution. I believe that the procedural posture of this case makes a stay particularly appropriate. This is petitioner's first petition for a writ of habeas corpus. The petition raises a substantial and recurring claim based on our decision in *Penry v. Lynaugh*, 492 U. S. 302 (1989), that Texas law precluded the presentation and consideration of mitigating evidence at the sentencing phase of his trial. The petition was pending in the District Court for the Eastern District of Texas for three years before the District Court ultimately rejected petitioner's claims on March 9, 1990. After that ruling, the State immediately sought, and the trial court subsequently granted, an execution date of May 17. Such an early execution date deprived the Court of Appeals for the Fifth Circuit and this Court of the opportunity to review fully the merits of petitioner's claim. This needless burden on federal review of potentially meritorious capital claims should not be sanctioned by this Court. Even the Judicial Conference's recent proposal for streamlined review in capital cases is premised on the view that a prisoner is entitled to "one complete and fair course of collateral review in the state and federal system, *free from the time pressure of impending execution.*" Judicial Conference of the United States, Ad Hoc Committee on Federal Habeas Corpus in Capital Cases, Committee Report and Proposal 6 (Aug. 1989) (emphasis added). Petitioner is entitled to no less today.

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I would in any event grant the application for stay of execution. I adhere to my view that the death penalty is in all circumstances cruel and unusual punishment prohibited by the Eighth and Fourteenth Amendments. See *Gregg v. Georgia*, 428 U. S. 153, 227 (1976) (BRENNAN, J., dissenting).

No. A-810 (89-7519). *ANDERSON v. COLLINS*, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. Ct. Crim. App. Tex. Application for stay of execution of sentence of death, presented to JUSTICE WHITE, 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-811. *ANDERSON v. COLLINS*, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. Application for certificate of probable cause to appeal to the United States Court of Appeals for the Fifth Circuit, presented to JUSTICE WHITE, and by him referred to the Court, denied. JUSTICE BRENNAN and JUSTICE MARSHALL would grant the application.

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Certiorari Denied

No. 89-7522 (A-813). *PREJEAN v. WHITLEY*, WARDEN. Sup. Ct. La. Application for stay of execution of sentence of death, presented to JUSTICE WHITE, and by him referred to the Court, denied. Certiorari denied. Reported below: 560 So. 2d 447.

JUSTICE BRENNAN and JUSTICE MARSHALL, dissenting.

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

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Dismissal Under Rule 46

No. 89-1607. *BLUE CROSS OF CALIFORNIA v. HUGHES*. Ct. App. Cal., 1st App. Dist. Certiorari dismissed under this Court's Rule 46. Reported below: 215 Cal. App. 3d 832, 263 Cal. Rptr. 850.

MAY 21, 1990

Dismissal Under Rule 46

No. 89-1335. *RECAREY v. UNITED STATES*. C. A. 11th Cir. Certiorari dismissed under this Court's Rule 46. Reported below: 892 F. 2d 976.

Miscellaneous Orders

No. ——. *WEBB v. THOMAS, DIRECTOR, HAMILTON COUNTY DEPARTMENT OF HUMAN SERVICES*. Motion to direct the Clerk to file petition for writ of certiorari out of time denied.

No. D-823. *IN RE DISBARMENT OF WINTER*. Disbarment entered. [For earlier order herein, see 493 U. S. 950.]

No. D-838. *IN RE DISBARMENT OF ADELMAN*. Disbarment entered. [For earlier order herein, see 493 U. S. 972.]

No. D-840. *IN RE DISBARMENT OF PEMBERTON*. Disbarment entered. [For earlier order herein, see 493 U. S. 973.]

No. D-853. *IN RE DISBARMENT OF JONES*. Motion to dismiss the disciplinary proceedings granted. The rule to show cause, heretofore issued on January 16, 1990 [493 U. S. 1040], is hereby discharged.

No. D-860. *IN RE DISBARMENT OF HIPP*. Disbarment entered. [For earlier order herein, see 493 U. S. 1067.]

No. D-861. *IN RE DISBARMENT OF EISENBERG*. Disbarment entered. [For earlier order herein, see 493 U. S. 1067.]

No. D-864. *IN RE DISBARMENT OF ROCKER*. Disbarment entered. [For earlier order herein, see 494 U. S. 1001.]

No. D-867. *IN RE DISBARMENT OF DIGGES*. Disbarment entered. [For earlier order herein, see 494 U. S. 1002.]

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No. D-869. IN RE DISBARMENT OF BRACKEN. Disbarment entered. [For earlier order herein, see 494 U. S. 1002.]

No. D-870. IN RE DISBARMENT OF TSCHIRHART. Disbarment entered. [For earlier order herein, see 494 U. S. 1002.]

No. D-873. IN RE DISBARMENT OF SANDBORN. Disbarment entered. [For earlier order herein, see 494 U. S. 1014.]

No. D-898. IN RE DISBARMENT OF KELLY. It is ordered that Frank Allan Kelly, of Kingsport, Tenn., 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-899. IN RE DISBARMENT OF DONNELLY. It is ordered that Michael E. Donnelly, of Boise, Idaho, 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. 89-1048. FMC CORP. *v.* HOLLIDAY. C. A. 3d Cir. [Certiorari granted, 493 U. S. 1068.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 89-1363. UNITED STATES *v.* FRANCE. C. A. 9th Cir. [Certiorari granted, *ante*, p. 903.] Motion for appointment of counsel granted, and it is ordered that Michael R. Levine, Esq., of Honolulu, Haw., be appointed to serve as counsel for respondent in this case.

No. 89-1493. AIR LINE PILOTS ASSN., INTERNATIONAL *v.* O'NEILL ET AL. C. A. 5th Cir. The Solicitor General is invited to file a brief in this case expressing the views of the United States.

No. 89-5867. IRWIN *v.* DEPARTMENT OF VETERANS AFFAIRS ET AL. C. A. 5th Cir. [Certiorari granted, 493 U. S. 1069.] Motion of National Treasury Employees Union for leave to participate in oral argument as *amicus curiae* and for divided argument denied.

No. 89-7069. ETLIN *v.* ETLIN; and IN RE ETLIN. Ct. App. Va. Motion of petitioner for leave to proceed *in forma pauperis* denied. Petitioner is allowed until June 11, 1990, within which to

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

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

No. 89-7189. WEI v. DELAWARE. Sup. Ct. Del. Motion of petitioner for leave to proceed *in forma pauperis* denied. Petitioner is allowed until June 11, 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. 89-7341. IN RE SUN. Petition for writ of habeas corpus denied.

No. 89-7068. IN RE DOUGLASS. Petition for writ of mandamus denied.

Certiorari Denied

No. 88-2009. RICHARDSON ET AL. v. UNITED STEELWORKERS OF AMERICA. C. A. 5th Cir. Certiorari denied. Reported below: 864 F. 2d 1162.

No. 89-999. TERWILLIGER v. GREYHOUND LINES, INC., ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 882 F. 2d 1033.

No. 89-1233. ESTATE OF YAEGER, BY WINTERS, EXECUTOR, ET AL. v. COMMISSIONER OF INTERNAL REVENUE. C. A. 2d Cir. Certiorari denied. Reported below: 889 F. 2d 29.

No. 89-1238. STEAD MOTORS OF WALNUT CREEK v. AUTOMOTIVE MACHINISTS LODGE NO. 1173, INTERNATIONAL ASSOCIATION OF MACHINISTS & AEROSPACE WORKERS. C. A. 9th Cir. Certiorari denied. Reported below: 886 F. 2d 1200.

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No. 89-1263. *FISCHER ET AL. v. NWA, INC., ET AL.* C. A. 8th Cir. Certiorari denied. Reported below: 883 F. 2d 594.

No. 89-1276. *BLOMMAERT v. ILLINOIS.* App. Ct. Ill., 3d Dist. Certiorari denied. Reported below: 184 Ill. App. 3d 1065, 541 N. E. 2d 144.

No. 89-1280. *GUERRA v. UNITED STATES.* C. A. 11th Cir. Certiorari denied. Reported below: 891 F. 2d 906.

No. 89-1344. *ENSERCH EXPLORATION, INC., MANAGING GENERAL PARTNER OF EP OPERATING CO. v. FEDERAL ENERGY REGULATORY COMMISSION.* C. A. 5th Cir. Certiorari denied. Reported below: 887 F. 2d 81.

No. 89-1357. *HILL v. BRITT ET AL.* C. A. 10th Cir. Certiorari denied. Reported below: 884 F. 2d 1318.

No. 89-1368. *GULF STATES UTILITIES CO. v. FEDERAL ENERGY REGULATORY COMMISSION.* C. A. D. C. Cir. Certiorari denied. Reported below: 281 U. S. App. D. C. 24, 886 F. 2d 442.

No. 89-1385. *JONES v. PSIMOS.* C. A. 7th Cir. Certiorari denied. Reported below: 882 F. 2d 1277.

No. 89-1408. *TERRY ET AL. v. NEW YORK STATE NATIONAL ORGANIZATION FOR WOMEN ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 886 F. 2d 1339.

No. 89-1430. *APPERSON ET AL. v. FLEET CARRIER CORP. ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 879 F. 2d 1344.

No. 89-1439. *CENTRAL FLORIDA CLINIC FOR REHABILITATION, INC. v. CITRUS COUNTY HOSPITAL BOARD ET AL.* C. A. 11th Cir. Certiorari denied. Reported below: 888 F. 2d 1396.

No. 89-1451. *LIVENGOOD v. THEDFORD.* C. A. 10th Cir. Certiorari denied.

No. 89-1459. *LANESE v. UNITED STATES.* C. A. 2d Cir. Certiorari denied. Reported below: 890 F. 2d 1284.

No. 89-1494. *ZOLA v. INTERSTATE COMMERCE COMMISSION ET AL.* C. A. 3d Cir. Certiorari denied. Reported below: 889 F. 2d 508.

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No. 89-1513. *MAGNUM TOWING, INC., ET AL. v. DADE COUNTY ET AL.* Dist. Ct. App. Fla., 3d Dist. Certiorari denied. Reported below: 555 So. 2d 864.

No. 89-1514. *POSADA v. DALLAS COUNTY CHILD WELFARE UNIT OF THE TEXAS DEPARTMENT OF HUMAN SERVICES.* Ct. App. Tex., 5th Dist. Certiorari denied.

No. 89-1515. *RUSHEN, DIRECTOR, CALIFORNIA DEPARTMENT OF CORRECTIONS v. SPAIN.* C. A. 9th Cir. Certiorari denied.

No. 89-1519. *WINTERBOURNE v. WORKERS' COMPENSATION APPEALS BOARD ET AL.* C. A. 9th Cir. Certiorari denied.

No. 89-1520. *COOK INLET TRIBAL COUNCIL ET AL. v. CATHOLIC SOCIAL SERVICES, INC., ET AL.* Sup. Ct. Alaska. Certiorari denied. Reported below: 783 P. 2d 1159.

No. 89-1523. *COX-UPHOFF CORP. ET AL. v. MENTOR CORP. ET AL.* C. A. Fed. Cir. Certiorari denied. Reported below: 891 F. 2d 298.

No. 89-1524. *SCHERMERHORN ET AL. v. ILLINOIS DEPARTMENT OF REGISTRATION AND EDUCATION ET AL.* App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 185 Ill. App. 3d 883, 542 N. E. 2d 42.

No. 89-1525. *NOBEL-SYSCO FOODS SERVICES Co. v. TOLEDO.* C. A. 10th Cir. Certiorari denied. Reported below: 892 F. 2d 1481.

No. 89-1534. *TESLA PACKAGING INC. ET AL. v. RUBIN ET AL.* C. A. 3d Cir. Certiorari denied. Reported below: 893 F. 2d 1331.

No. 89-1543. *FISHER v. LYONS ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 888 F. 2d 1071.

No. 89-1544. *REYES v. CALIFORNIA.* Ct. App. Cal., 3d App. Dist. Certiorari denied.

No. 89-1554. *BLACKWELDER ET AL. v. LIFE & HEALTH SERVICES, INC.* Sup. Ct. Ala. Certiorari denied. Reported below: 554 So. 2d 329.

No. 89-1595. *LEWIS v. VISA USA INC. ET AL.* C. A. 8th Cir. Certiorari denied. Reported below: 890 F. 2d 418.

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No. 89-1624. *MOERING ET UX. v. UNITED STATES.* C. A. 9th Cir. Certiorari denied. Reported below: 893 F. 2d 1338.

No. 89-1638. *EWING v. CITYTRUST.* C. A. 2d Cir. Certiorari denied. Reported below: 892 F. 2d 168.

No. 89-6430. *MARIN v. UNITED STATES.* C. A. 3d Cir. Certiorari denied. Reported below: 891 F. 2d 284.

No. 89-6554. *NEUMANN v. UNITED STATES.* C. A. 8th Cir. Certiorari denied. Reported below: 887 F. 2d 880.

No. 89-6586. *NUNEZ v. TEXAS.* Ct. Crim. App. Tex. Certiorari denied.

No. 89-6587. *HINTON, AKA HAQ v. LEONARDO, WARDEN.* C. A. 2d Cir. Certiorari denied. Reported below: 891 F. 2d 277.

No. 89-6655. *BAKER v. STICKRATH, SUPERINTENDENT, ORIENT CORRECTIONAL INSTITUTION.* C. A. 6th Cir. Certiorari denied. Reported below: 894 F. 2d 407.

No. 89-6767. *PLATT v. OHIO.* Ct. App. Ohio, Delaware County. Certiorari denied.

No. 89-6811. *BANKS-EL v. CLARK, WARDEN.* C. A. 4th Cir. Certiorari denied.

No. 89-6855. *WILLIAMS v. GOVERNMENT OF THE VIRGIN ISLANDS.* C. A. 3d Cir. Certiorari denied. Reported below: 892 F. 2d 305.

No. 89-6866. *REED v. UNITED STATES.* C. A. 5th Cir. Certiorari denied. Reported below: 892 F. 2d 76.

No. 89-6871. *DANIEL v. GOVERNMENT OF THE VIRGIN ISLANDS.* C. A. 3d Cir. Certiorari denied. Reported below: 893 F. 2d 1329.

No. 89-6950. *LUFKIN v. CITY OF PADUCAH.* C. A. 6th Cir. Certiorari denied. Reported below: 888 F. 2d 127.

No. 89-6956. *GAMERTSFELDER v. UNITED STATES ET AL.* C. A. 3d Cir. Certiorari denied. Reported below: 897 F. 2d 524.

No. 89-6991. *MIKESELL v. DEPARTMENT OF TRANSPORTATION, NATIONAL TRANSPORTATION SAFETY BOARD, ET AL.*

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C. A. 9th Cir. Certiorari denied. Reported below: 894 F. 2d 409.

No. 89-7014. *JONES v. MICHIGAN DEPARTMENT OF EDUCATION*. C. A. 6th Cir. Certiorari denied. Reported below: 898 F. 2d 154.

No. 89-7015. *HOLLOWAY v. EVANS, WARDEN*. C. A. 10th Cir. Certiorari denied.

No. 89-7016. *LUNDY v. CAMBELL, WARDEN, ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 888 F. 2d 467.

No. 89-7032. *MUJICA v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 898 F. 2d 138.

No. 89-7033. *LIND v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 896 F. 2d 543.

No. 89-7046. *GRISSE v. DEPARTMENT OF HEALTH AND HUMAN SERVICES*. C. A. 8th Cir. Certiorari denied.

No. 89-7052. *TUTTLE v. TUTTLE*. Dist. Ct. App. Fla., 2d Dist. Certiorari denied. Reported below: 535 So. 2d 276.

No. 89-7064. *HAMPEL ET VIR v. AUTORIDAD DE ENERGIA ELECTRICA DE PUERTO RICO ET AL.* C. A. 1st Cir. Certiorari denied.

No. 89-7066. *GULLETT v. ARMONTROUT, WARDEN*. C. A. 8th Cir. Certiorari denied. Reported below: 894 F. 2d 308.

No. 89-7070. *WILLIAMS v. GEORGIA*. C. A. 11th Cir. Certiorari denied.

No. 89-7072. *COOPER v. DUGGER, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL.* C. A. 11th Cir. Certiorari denied. Reported below: 896 F. 2d 558.

No. 89-7074. *SHELTON v. PHILLUPS*. C. A. 2d Cir. Certiorari denied.

No. 89-7075. *SHELTON v. NEW YORK*. C. A. 2d Cir. Certiorari denied.

No. 89-7079. *VENERI v. CASEY, GOVERNOR OF PENNSYLVANIA, ET AL.* C. A. 3d Cir. Certiorari denied.

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No. 89-7082. *GRIZZELL v. MCWHERTER, GOVERNOR OF TENNESSEE, ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 889 F. 2d 1087.

No. 89-7090. *HERNANDEZ v. COLORADO.* Sup. Ct. Colo. Certiorari denied.

No. 89-7092. *MCQUILLION v. MAYNARD, DIRECTOR, OKLAHOMA DEPARTMENT OF CORRECTIONS.* C. A. 10th Cir. Certiorari denied.

No. 89-7101. *CROSBY v. GEORGIA.* Sup. Ct. Ga. Certiorari denied. Reported below: 259 Ga. 822, 389 S. E. 2d 207.

No. 89-7102. *BROOKS v. FIRST BANK NATIONAL ASSN.* Ct. App. Ohio, Cuyahoga County. Certiorari denied.

No. 89-7103. *BREWER v. NORTH CAROLINA.* Sup. Ct. N. C. Certiorari denied. Reported below: 325 N. C. 550, 386 S. E. 2d 569.

No. 89-7113. *IRVIN v. CITY OF CLARKSVILLE ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 894 F. 2d 407.

No. 89-7115. *KOULIZOS v. UNITED STATES.* C. A. Fed. Cir. Certiorari denied. Reported below: 897 F. 2d 539.

No. 89-7131. *ADDLEMAN v. DOLLIVER, CHIEF JUSTICE, SUPREME COURT OF WASHINGTON, ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 892 F. 2d 82.

No. 89-7132. *BROWN v. UNITED STATES.* C. A. 11th Cir. Certiorari denied. Reported below: 896 F. 2d 558.

No. 89-7139. *MILLS v. UNITED STATES.* C. A. 2d Cir. Certiorari denied. Reported below: 895 F. 2d 897.

No. 89-7141. *GOLDEN v. UNITED STATES.* C. A. 4th Cir. Certiorari denied. Reported below: 898 F. 2d 148.

No. 89-7143. *PAZ URIBE v. UNITED STATES.* C. A. 1st Cir. Certiorari denied. Reported below: 891 F. 2d 396.

No. 89-7145. *PARROTT v. UNITED STATES.* C. A. 11th Cir. Certiorari denied. Reported below: 900 F. 2d 265.

No. 89-7161. *WILSON v. DENTON ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 898 F. 2d 155.

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No. 89-7196. *EDGINGTON ET AL. v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 897 F. 2d 527.

No. 89-7242. *LUNDSTROM v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 898 F. 2d 635.

No. 89-7243. *MCLAUGHLIN v. LATESSA*. C. A. 1st Cir. Certiorari denied. Reported below: 893 F. 2d 1326.

No. 89-7244. *MINES v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 894 F. 2d 403.

No. 89-7246. *LOVINGOOD v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 892 F. 2d 75.

No. 89-7247. *JORDAN v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 898 F. 2d 148.

No. 89-7252. *CLARK v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 900 F. 2d 256.

No. 89-7254. *ELMENDORF v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 895 F. 2d 1415.

No. 89-7263. *WHIRTY v. LATESSA, SUPERINTENDENT, MASSACHUSETTS CORRECTIONAL INSTITUTION*. C. A. 1st Cir. Certiorari denied.

No. 89-7269. *RUZZO v. UNITED STATES*. C. A. 11th Cir. Certiorari denied. Reported below: 898 F. 2d 159.

No. 89-7270. *GETER v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 893 F. 2d 1332.

No. 89-7283. *ZUCKERMAN v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 898 F. 2d 143.

No. 89-7303. *CASTILLO v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 896 F. 2d 543.

No. 89-7356. *WILLIAMS v. WALKER, SUPERINTENDENT, AUBURN CORRECTIONAL FACILITY*. C. A. 2d Cir. Certiorari denied. Reported below: 898 F. 2d 137.

No. 89-1343. *DESISTO COLLEGE, INC., ET AL. v. LINE ET AL.* C. A. 11th Cir. Certiorari denied. JUSTICE BRENNAN, JUSTICE WHITE, and JUSTICE MARSHALL would grant certiorari. Reported below: 888 F. 2d 755.

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No. 89-1510. KLEEMANN ET AL. *v.* McDONNELL DOUGLAS CORP. C. A. 4th Cir. Certiorari denied. JUSTICE O'CONNOR took no part in the consideration or decision of this petition. Reported below: 890 F. 2d 698.

No. 89-1529. DOWD, SUPERINTENDENT, FARMINGTON CORRECTIONAL CENTER *v.* CHITWOOD. C. A. 8th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 889 F. 2d 781.

No. 89-1532. FLIGHT ENGINEERS' INTERNATIONAL ASSN., PAA CHAPTER, AFL-CIO *v.* PAN AMERICAN WORLD AIRWAYS, INC., ET AL. C. A. 2d Cir. Certiorari denied. JUSTICE WHITE would grant certiorari. Reported below: 896 F. 2d 672.

No. 89-7216. BROWN *v.* DIXON, WARDEN. C. A. 4th Cir.; and

No. 89-7218. THOMAS *v.* JONES, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: No. 89-7216, 891 F. 2d 490; No. 89-7218, 891 F. 2d 1500.

JUSTICE BRENNAN and JUSTICE MARSHALL, dissenting.

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

Rehearing Denied

No. 88-7459. JONES *v.* SOUTH CAROLINA, 494 U. S. 1060;

No. 89-1222. AHKTAR, DBA CIRCLE MOBIL *v.* BIRD OIL Co., 494 U. S. 1030;

No. 89-1267. ROSENTHAL *v.* STATE BAR OF CALIFORNIA, 494 U. S. 1066;

No. 89-1291. MOSHKELGOSHA ET AL. *v.* PRINCE GEORGE'S COUNTY, MARYLAND, 494 U. S. 1067;

No. 89-5624. SMITH *v.* SOUTH CAROLINA, 494 U. S. 1060;

No. 89-6333. DAVIS *v.* MISSISSIPPI, 494 U. S. 1074; and

No. 89-6633. SPIVEY *v.* KEMP, WARDEN, 494 U. S. 1074. Petitions for rehearing denied.

No. 88-6456. SAYLES *v.* CIRCUIT COURT OF BEDFORD COUNTY, VIRGINIA, 489 U. S. 1087. Motion for leave to file petition for rehearing denied.

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Affirmed on Appeal

No. 89-1564. *POOLE ET AL. v. GRESHAM ET AL.* Affirmed on appeal from D. C. N. D. Ga.

Miscellaneous Orders

No. A-818 (89-7056). *BLACKMON 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 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 remain in effect pending the issuance of the mandate of this Court.

No. A-822. *BILCIK ET AL. v. UNITED STATES ET AL.* Application for stay of an order of the United States District Court for the Southern District of New York, dated June 30, 1989, presented to JUSTICE MARSHALL, and by him referred to the Court, denied.

No. D-819. *IN RE DISBARMENT OF CHANG.* Disbarment entered. [For earlier order herein, see 493 U. S. 949.]

No. D-839. *IN RE DISBARMENT OF HIGGINBOTHAM.* Disbarment entered. [For earlier order herein, see 493 U. S. 973.]

No. D-856. *IN RE DISBARMENT OF SANDS.* Disbarment entered. [For earlier order herein, see 493 U. S. 1066.]

No. D-875. *IN RE DISBARMENT OF STONER.* Disbarment entered. [For earlier order herein, see 494 U. S. 1015.]

No. D-881. *IN RE DISBARMENT OF SHOEMAKER.* Disbarment entered. [For earlier order herein, see 494 U. S. 1053.]

No. D-883. *IN RE DISBARMENT OF SINGER.* Disbarment entered. [For earlier order herein, see 494 U. S. 1053.]

No. D-885. *IN RE DISBARMENT OF SANDERS.* Disbarment entered. [For earlier order herein, see 494 U. S. 1053.]

No. D-900. *IN RE DISBARMENT OF SKEVIN.* It is ordered that John M. Skevin, of Hackensack, N. J., be suspended from the practice of law in this Court and that a rule issue, returnable

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

No. D-901. *IN RE DISBARMENT OF OLSTER.* It is ordered that Bruce A. Olster, of Green Pond, N. J., be suspended from the practice of law in this Court and that a rule issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D-902. *IN RE DISBARMENT OF METZ.* It is ordered that William A. Metz, 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-903. *IN RE DISBARMENT OF HAGMAN.* It is ordered that Gary L. Hagman, of Weatherford, 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. 88-1916. *MINNESOTA v. OLSON*, *ante*, p. 91. Motion of petitioner respecting the mandate and judgment of this Court denied.

No. 89-1563. *WILLIAMS ET AL. v. STONE.* C. A. 2d Cir. Motion of petitioners to defer consideration of the petition for writ of certiorari granted.

No. 89-6702. *CARTER v. NESBY ET AL.* C. A. 2d Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied. Petitioner is allowed until June 19, 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. 89-7211. *IN RE BEAS.* Petition for writ of mandamus denied.

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Certiorari Granted

No. 89-1555. DENNIS *v.* HIGGINS, DIRECTOR, NEBRASKA DEPARTMENT OF MOTOR VEHICLES, ET AL. Sup. Ct. Neb. Certiorari granted. Reported below: 234 Neb. 427, 451 N. W. 2d 676.

No. 89-1391. RUST ET AL. *v.* SULLIVAN, SECRETARY OF HEALTH AND HUMAN SERVICES; and

No. 89-1392. NEW YORK ET AL. *v.* SULLIVAN, SECRETARY OF HEALTH AND HUMAN SERVICES. C. A. 2d Cir. Certiorari granted, cases consolidated, and a total of one hour allotted for oral argument. Reported below: 889 F. 2d 401.

No. 89-7272. HARMELIN *v.* MICHIGAN. Ct. App. Mich. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted limited to Question III presented by the petition. Reported below: 176 Mich. App. 524, 440 N. W. 2d 75.

Certiorari Denied

No. 89-894. CONNOLLY, SECRETARY OF STATE OF MASSACHUSETTS, ET AL. *v.* SECURITIES INDUSTRY ASSN. ET AL. C. A. 1st Cir. Certiorari denied. Reported below: 883 F. 2d 1114.

No. 89-1191. EVANS ET AL. *v.* CITY OF CHICAGO ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 873 F. 2d 1007.

No. 89-1218. DOE, AS NEXT BEST FRIEND OF DOE, A MINOR *v.* BOBBITT ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 881 F. 2d 510.

No. 89-1313. BROSS *v.* DERWINSKI, SECRETARY OF VETERANS AFFAIRS, ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 889 F. 2d 1256.

No. 89-1349. 110-118 RIVERSIDE TENANTS CORP. *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 886 F. 2d 514.

No. 89-1371. DAVID R. WEBB CO., INC. *v.* NATIONAL LABOR RELATIONS BOARD. C. A. 7th Cir. Certiorari denied. Reported below: 888 F. 2d 501.

No. 89-1380. CRIDER *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 885 F. 2d 294.

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No. 89-1395. *BARNHART v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 884 F. 2d 295.

No. 89-1397. *GARZA ET AL. v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 887 F. 2d 55.

No. 89-1412. *KAUFMAN ET AL. v. CITY OF NEW YORK ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 891 F. 2d 446.

No. 89-1458. *MANNHEIM VIDEO, INC. v. COOK COUNTY*. C. A. 7th Cir. Certiorari denied. Reported below: 884 F. 2d 1043.

No. 89-1472. *ACW AIRWALL, INC., ET AL. v. UNITED STATES DISTRICT COURT FOR THE DISTRICT OF PUERTO RICO*. C. A. 1st Cir. Certiorari denied. Reported below: 891 F. 2d 967.

No. 89-1483. *RAMIREZ v. OREGON STATE BAR ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 887 F. 2d 1089.

No. 89-1516. *HARRIS, GOVERNOR OF GEORGIA, ET AL. v. LUCKEY ET AL.* C. A. 11th Cir. Certiorari denied. Reported below: 860 F. 2d 1012.

No. 89-1530. *PEOPLE FOR RESPONSIBLE OMAHA URBAN DEVELOPMENT v. ARMY CORPS OF ENGINEERS ET AL.* C. A. 8th Cir. Certiorari denied. Reported below: 889 F. 2d 1092.

No. 89-1547. *SALMINEN v. TERRY, SPECIAL ADMINISTRATRIX OF THE ESTATE OF STEIN, ET AL.* Ct. App. Minn. Certiorari denied.

No. 89-1551. *POGUE v. WHITE STONE BAPTIST CHURCH ET AL.* Sup. Ct. Ala. Certiorari denied. Reported below: 554 So. 2d 981.

No. 89-1553. *UNDERWOOD v. SERVICEMEN'S GROUP INSURANCE*. C. A. 10th Cir. Certiorari denied. Reported below: 893 F. 2d 242.

No. 89-1558. *STEPHENS ET AL. v. MCKINNEY ET AL.* C. A. 11th Cir. Certiorari denied. Reported below: 890 F. 2d 1166.

No. 89-1561. *CAMPBELL, ADMINISTRATRIX OF THE ESTATE OF CAMPBELL v. CITY OF PHILADELPHIA ET AL.* C. A. 3d Cir. Certiorari denied. Reported below: 897 F. 2d 520.

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No. 89-1579. *GRIFFING v. CHILDREN'S HOME SOCIETY OF FLORIDA, INC.* Dist. Ct. App. Fla., 3d Dist. Certiorari denied. Reported below: 554 So. 2d 1.

No. 89-1639. *APPLEMAN v. UNITED STATES.* C. A. 2d Cir. Certiorari denied. Reported below: 896 F. 2d 543.

No. 89-1649. *ISIBOR v. BOARD OF REGENTS OF THE STATE UNIVERSITY AND COMMUNITY COLLEGE SYSTEM OF TENNESSEE ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 891 F. 2d 290.

No. 89-1663. *FIUMARA v. O'BRIEN, WARDEN.* C. A. 10th Cir. Certiorari denied. Reported below: 889 F. 2d 254.

No. 89-1668. *STANFIELD v. HORN ET AL.* Sup. Ct. Tenn. Certiorari denied.

No. 89-1669. *GRECO v. UNITED STATES.* C. A. 2d Cir. Certiorari denied. Reported below: 887 F. 2d 1141.

No. 89-1673. *POPE v. BOND ET AL.* C. A. D. C. Cir. Certiorari denied.

No. 89-1692. *D'OTTAVIO v. UNITED STATES.* C. A. 2d Cir. Certiorari denied. Reported below: 888 F. 2d 126.

No. 89-1700. *PARKER v. UNITED STATES.* C. A. 2d Cir. Certiorari denied. Reported below: 895 F. 2d 908.

No. 89-5493. *GRiffin ET AL. v. UNITED STATES.* C. A. 2d Cir. Certiorari denied. Reported below: 884 F. 2d 655.

No. 89-5727. *SIMPSON ET AL. v. UNITED STATES.* C. A. 3d Cir. Certiorari denied. Reported below: 885 F. 2d 36.

No. 89-5896. *ROMERO v. UNITED STATES.* C. A. 2d Cir. Certiorari denied. Reported below: 888 F. 2d 126.

No. 89-6072. *CAULK v. UNITED STATES.* C. A. 3d Cir. Certiorari denied. Reported below: 887 F. 2d 263.

No. 89-6134. *ACOSTA v. UNITED STATES.* C. A. 2d Cir. Certiorari denied. Reported below: 888 F. 2d 126.

No. 89-6282. *HERRADA v. UNITED STATES.* C. A. 5th Cir. Certiorari denied. Reported below: 887 F. 2d 524.

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No. 89-6287. *BURKS v. UNITED STATES; CANNON v. UNITED STATES; and PUSKAR v. UNITED STATES.* C. A. 3d Cir. Certiorari denied. Reported below: 888 F. 2d 1379 (first case), 1382 (second case), and 1383 (third case).

No. 89-6414. *GREEN v. UNITED STATES.* C. A. 3d Cir. Certiorari denied. Reported below: 887 F. 2d 261.

No. 89-6429. *NEWMAN v. UNITED STATES.* C. A. 6th Cir. Certiorari denied. Reported below: 889 F. 2d 88.

No. 89-6692. *GRIFFITH v. ROLFS, SUPERINTENDENT, TWIN RIVERS CORRECTIONS CENTER.* C. A. 9th Cir. Certiorari denied. Reported below: 883 F. 2d 1024.

No. 89-6792. *DUNCAN v. UNITED STATES.* C. A. 5th Cir. Certiorari denied. Reported below: 893 F. 2d 343.

No. 89-6794. *GRANCORVITZ v. COOKE, SUPERINTENDENT, KETTLE MORaine CORRECTIONAL INSTITUTION.* C. A. 7th Cir. Certiorari denied. Reported below: 890 F. 2d 34.

No. 89-6837. *NETTLES v. DUGGER, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL.* C. A. 11th Cir. Certiorari denied. Reported below: 892 F. 2d 87.

No. 89-6860. *THOMAS v. ILLINOIS.* App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 186 Ill. App. 3d 782, 542 N. E. 2d 881.

No. 89-6887. *TERRELL v. ILLINOIS.* Sup. Ct. Ill. Certiorari denied. Reported below: 132 Ill. 2d 178, 547 N. E. 2d 145.

No. 89-6899. *SANTOYO v. UNITED STATES.* C. A. 5th Cir. Certiorari denied. Reported below: 890 F. 2d 726.

No. 89-6920. *STULL v. UNITED STATES.* C. A. 6th Cir. Certiorari denied. Reported below: 891 F. 2d 293.

No. 89-6924. *HERNANDEZ v. UNITED STATES.* C. A. 5th Cir. Certiorari denied. Reported below: 894 F. 2d 404.

No. 89-6925. *SAVAGE v. UNITED STATES.* C. A. 7th Cir. Certiorari denied. Reported below: 888 F. 2d 528.

No. 89-6942. *SILVERS v. UNITED STATES.* C. A. 4th Cir. Certiorari denied. Reported below: 891 F. 2d 287.

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No. 89-6945. *PINELLI v. UNITED STATES*. C. A. 10th Cir. Certiorari denied. Reported below: 890 F. 2d 1461.

No. 89-6972. *LAKE v. CALIFORNIA*. Ct. App. Cal., 5th App. Dist. Certiorari denied.

No. 89-7009. *CASTILLO ET AL. v. UNITED STATES*. C. A. 1st Cir. Certiorari denied. Reported below: 900 F. 2d 246.

No. 89-7084. *SHARP v. KEMNA, SUPERINTENDENT, WESTERN MISSOURI CORRECTIONAL CENTER*. C. A. 8th Cir. Certiorari denied.

No. 89-7086. *SMALLEY v. CONROY*. C. A. 3d Cir. Certiorari denied. Reported below: 888 F. 2d 1382.

No. 89-7089. *RENTSCHLER v. MISSOURI*. Sup. Ct. Mo. Certiorari denied.

No. 89-7096. *LYNCH v. PEARCE ET AL.*; and *LYNCH v. MAASS, SUPERINTENDENT, OREGON STATE PENITENTIARY, ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 886 F. 2d 334.

No. 89-7099. *HORNER v. ILLINOIS*. App. Ct. Ill., 2d Dist. Certiorari denied. Reported below: 183 Ill. App. 3d 1113, 556 N. E. 2d 1310.

No. 89-7107. *AUSTIN v. LOCKHART, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION*. C. A. 8th Cir. Certiorari denied.

No. 89-7109. *ALLUSTIARTE ET AL. v. COOPER*. C. A. 9th Cir. Certiorari denied. Reported below: 889 F. 2d 1094.

No. 89-7111. *ALLUSTIARTE ET AL. v. COOPER*. C. A. 9th Cir. Certiorari denied. Reported below: 889 F. 2d 1094.

No. 89-7112. *WALKER v. CADILLAC MOTOR CAR DIVISION ET AL.* Sup. Ct. Ohio. Certiorari denied. Reported below: 46 Ohio St. 3d 703, 545 N. E. 2d 1280.

No. 89-7118. *MARTIN v. SUPREME COURT OF PENNSYLVANIA ET AL.* C. A. 3d Cir. Certiorari denied.

No. 89-7119. *MARTIN v. SUPREME COURT OF PENNSYLVANIA*. Sup. Ct. Pa. Certiorari denied. Reported below: 524 Pa. 609, 569 A. 2d 1368.

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No. 89-7123. *FRIEDMAN v. NEW YORK CITY DEPARTMENT OF HOUSING AND DEVELOPMENT ADMINISTRATION ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 876 F. 2d 890.

No. 89-7125. *R. P. Z. v. NEW JERSEY.* C. A. 3d Cir. Certiorari denied. Reported below: 887 F. 2d 262.

No. 89-7126. *MARTIN v. SHANK ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 896 F. 2d 1367.

No. 89-7127. *LEPISCOPO v. PENITENTIARY HOSPITAL OF NEW MEXICO ET AL.* Sup. Ct. N. M. Certiorari denied. Reported below: 109 N. M. 631, 788 P. 2d 931.

No. 89-7128. *ROBINSON v. DUBINA ET AL.* Sup. Ct. Ohio. Certiorari denied. Reported below: 49 Ohio St. 3d 713, 552 N. E. 2d 950.

No. 89-7135. *BARNHOUSE v. JACKSON, FKA BARNHOUSE.* Ct. App. Colo. Certiorari denied.

No. 89-7137. *LECHIARA v. MILLER ET AL.* Cir. Ct. Monongalia County, W. Va. Certiorari denied.

No. 89-7140. *PUGH v. PUCKETT, SUPERINTENDENT, MISSISSIPPI STATE PENITENTIARY, ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 890 F. 2d 1163.

No. 89-7142. *HOWARD v. PLUCKETT ET AL.* C. A. 11th Cir. Certiorari denied. Reported below: 894 F. 2d 411.

No. 89-7147. *CHISLER v. ALABAMA.* Ct. Crim. App. Ala. Certiorari denied. Reported below: 553 So. 2d 654.

No. 89-7148. *SALMON v. CORPUS CHRISTI INDEPENDENT SCHOOL DISTRICT.* C. A. 5th Cir. Certiorari denied.

No. 89-7151. *RICHARDSON v. COLLINS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE.* C. A. 5th Cir. Certiorari denied.

No. 89-7155. *SMITH v. ALEXANDER, WARDEN.* C. A. 6th Cir. Certiorari denied. Reported below: 888 F. 2d 399.

No. 89-7162. *BARHAM v. POWELL, COMMISSIONER, NEW HAMPSHIRE DEPARTMENT OF CORRECTIONS, ET AL.* C. A. 1st Cir. Certiorari denied. Reported below: 895 F. 2d 19.

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No. 89-7171. *ISMAIL v. OLD KENT BANK & TRUST CO.* C. A. 6th Cir. Certiorari denied. Reported below: 893 F. 2d 1334.

No. 89-7177. *GAFFORD v. ESTELLE, WARDEN.* C. A. 9th Cir. Certiorari denied.

No. 89-7209. *DEMOS v. GARDNER ET AL.* C. A. 9th Cir. Certiorari denied.

No. 89-7256. *GREEN v. UNITED STATES.* C. A. 10th Cir. Certiorari denied.

No. 89-7257. *GREEN v. UNITED STATES.* C. A. 3d Cir. Certiorari denied. Reported below: 898 F. 2d 140.

No. 89-7288. *KEATON v. FREESTONE COUNTY, TEXAS, ET AL.* C. A. 5th Cir. Certiorari denied.

No. 89-7311. *SIMMONS v. HOLSEY TEMPLE CHRISTIAN METHODIST EPISCOPAL CHURCH ET AL.* Ct. App. Ga. Certiorari denied. Reported below: 193 Ga. App. 770, 389 S. E. 2d 1.

No. 89-7316. *CLARK v. UNITED STATES.* C. A. 10th Cir. Certiorari denied.

No. 89-7330. *MACKBEE v. UNITED STATES.* C. A. 9th Cir. Certiorari denied. Reported below: 894 F. 2d 1057.

No. 89-7331. *MIRANDA-HERNANDEZ v. UNITED STATES.* C. A. 10th Cir. Certiorari denied.

No. 89-7346. *TURNER v. UNITED STATES.* C. A. 9th Cir. Certiorari denied. Reported below: 898 F. 2d 705.

No. 89-7351. *TERRELL v. UNITED STATES.* C. A. 9th Cir. Certiorari denied. Reported below: 896 F. 2d 556.

No. 89-7352. *WESLEY v. UNITED STATES.* C. A. 6th Cir. Certiorari denied. Reported below: 895 F. 2d 1415.

No. 89-7363. *MCCABE v. CALLAHAN ET AL.* C. A. 8th Cir. Certiorari denied. Reported below: 894 F. 2d 994.

No. 89-1216. *PORT SHIP SERVICE, INC. v. NORTON LILLY & CO., INC.* C. A. 5th Cir. Certiorari denied. JUSTICE WHITE would grant certiorari. Reported below: 883 F. 2d 23.

No. 89-6264. *WHITE v. TEXAS.* Ct. Crim. App. Tex.;

No. 89-6814. *STEWART v. DUGGER, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS.* C. A. 11th Cir.;

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No. 89-6841. *VALDEZ v. TEXAS*. Ct. Crim. App. Tex.;
No. 89-6875. *BELL v. CALIFORNIA*. Sup. Ct. Cal.;
No. 89-6882. *ROBERTS v. GEORGIA*. Sup. Ct. Ga.; and
No. 89-7048. *CARGILL v. ZANT, WARDEN*. Sup. Ct. Ga.
Certiorari denied. Reported below: No. 89-6264, 779 S. W. 2d 809; No. 89-6814, 877 F. 2d 851; No. 89-6841, 776 S. W. 2d 162; No. 89-6875, 49 Cal. 3d 502, 778 P. 2d 129.

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. 89-6484. *GRANVIEL v. TEXAS*. C. A. 5th Cir. Certiorari denied. Reported below: 881 F. 2d 185.

JUSTICE MARSHALL, with whom JUSTICE BRENNAN joins, dissenting.

This case raises the question whether an indigent criminal defendant's constitutional right to psychiatric assistance in preparing an insanity defense is satisfied by court appointment of a psychiatrist whose examination report is available to both the defense and prosecution. The Fifth Circuit, on habeas review, held that such an appointment is sufficient. *Granviel v. Lynaugh*, 881 F. 2d 185 (1989). This ruling is squarely inconsistent with our decision in *Ake v. Oklahoma*, 470 U. S. 68 (1985), that a State must provide an indigent defendant a psychiatrist to assist in preparing and presenting his defense. *Ake* mandates the provision of a psychiatrist who will be part of the defense team and serve the defendant's interests in the context of our adversarial system. To allow the prosecution to enlist the psychiatrist's efforts to help secure the defendant's conviction would deprive an indigent defendant of the protections that our adversarial process affords all other defendants.

Kenneth Granviel was tried for capital murder in 1983. Prior to trial, Granviel requested that the court appoint a mental health expert to help him prepare an insanity defense. He specifically asked that the expert's report not be made available to the prosecution. The trial court denied petitioner's request for confidential expert assistance; it did, however, appoint a disinterested ex-

pert whose report would go to both the defense and prosecution, as authorized by Tex. Code Crim. Proc. Ann., Art. 46.03(3) (Vernon 1979 and Supp. 1990). That statute provides:

“(a) If notice of intention to raise the insanity defense is filed . . . , the court may, on its own motion or motion by the defendant, his counsel, or the prosecuting attorney, appoint disinterested experts experienced and qualified in mental health and mental retardation to examine the defendant with regard to the insanity defense and to testify thereto at any trial or hearing on this issue.

“(b) The court may order any defendant to submit to examination for the purposes described in this article. . . .

“(c) The court shall advise any expert appointed pursuant to this section of the facts and circumstances of the offense with which the defendant is charged and the elements of the insanity defense.

“(d) A written report of the examination shall be submitted to the court within 30 days of the order of examination, and the court shall furnish copies of the report to the defense counsel and the prosecuting attorney.”

See also Art. 46.02 (providing for court appointment of expert to determine defendant's competency to stand trial). Pursuant to this law, the court also allowed the prosecution, over Granviel's objection, to rebut Granviel's evidence of insanity with the report of a psychiatrist appointed at Granviel's request.

In *Ake*, we held that “when a defendant demonstrates to the trial judge that his sanity at the time of the offense is to be a significant factor at trial, the State must, at a minimum, assure the defendant access to a competent psychiatrist who will conduct an appropriate examination and *assist in evaluation, preparation, and presentation of the defense.*” 470 U. S., at 83 (emphasis added). *Ake* was concerned not with establishing a procedure whereby an independent examiner could determine the validity of a defendant's insanity defense and present his findings to both parties and to the court. Rather, *Ake* was directed at providing a defendant with the tools necessary to present an effective defense within the context of our adversarial system, in which each party marshals evidence favorable to its side and aggressively challenges the evidence presented by the other side. In that adversarial system, “the psychiatrists for each party enable the

[court or] jury to make its most accurate determination of the truth on the issue before them." *Id.*, at 81. Thus, we recognized in *Ake* that a defense psychiatrist is necessary not only to examine a defendant and to present findings to the judge or jury on behalf of the defendant, but also to "assist in preparing the cross-examination of a State's psychiatric witnesses," *id.*, at 82, and in determining "how to interpret their answers," *id.*, at 80. Just as an indigent defendant's right to legal assistance would not be satisfied by a State's provision of a lawyer who, after consulting with the defendant and examining the facts of the case and the applicable law, presented everything he knew about the defendant's guilt to the defendant, the prosecution, and the court, so his right to psychiatric assistance is not satisfied by provision of a psychiatrist who must report to both parties and the court.

Ake's requirement of psychiatric assistance does not mean that a defendant can shop around for a psychiatrist "of his personal liking" or "receive funds" from the State to hire a psychiatrist on his own. *Id.*, at 83. The trial court retains the authority to choose the psychiatrist, as long as that psychiatrist is competent. Nevertheless, the function of the psychiatrist chosen by the court is still to assist the defendant in preparing and presenting his defense. Of course, *Ake* does not guarantee a psychiatrist "who will reach biased or only favorable conclusions." 881 F. 2d, at 192. If the psychiatrist appointed to assist the defendant determines that the defendant was not insane at the time of the offense, he probably will not be able to provide much helpful testimony for the defense on the insanity issue. But the psychiatrist's determination may not be revealed to the prosecution for use as evidence any more than may the results of the investigation and research of the defendant's court-appointed lawyer.

Texas' provision of a "disinterested" expert thus does not satisfy *Ake*. Texas may, of course, provide for appointment of such an expert to aid the factfinder in determining the validity of a defendant's insanity defense. Cf. Fed. Rule Evid. 706. Such an appointment, however, must supplement—not take the place of—appointment of a psychiatrist to assist the defendant in preparing and presenting his defense.

Granviel is entitled to a new trial because he was deprived of the assistance required under *Ake*. Furthermore, as this result is dictated by *Ake*, which we decided before petitioner's conviction became final, Granviel's claim is not barred by this Court's deci-

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sion in *Teague v. Lane*, 489 U. S. 288, 301 (1989). Because the Fifth Circuit's misinterpretation of *Ake* substantially undermines an indigent defendant's ability to present an effective defense, I would grant the petition to reaffirm our holding in *Ake*. Even if Granviel did not have a meritorious *Ake* claim, I would grant the petition and vacate petitioner's death sentence on the ground 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).

No. 89-7120. *WILLARD v. WESTINGHOUSE ELECTRIC CORP.* C. A. 3d Cir. Certiorari before judgment denied.

Rehearing Denied

No. 89-527. *CALLAHAN, SUPERINTENDENT, MCNEIL ISLAND CORRECTION FACILITY v. ROBTOY*; and *DUCHARME, SUPERINTENDENT, WASHINGTON STATE REFORMATORY v. NORMAN*, 494 U. S. 1061;

No. 89-6518. *LINDSEY v. LOUISIANA*, 494 U. S. 1074; and

No. 89-6636. *SHERRILLS v. PERINI*, 494 U. S. 1068. Petitions for rehearing denied.

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Miscellaneous Order. (See No. A-857, *ante*, p. 731.)