

ORDERS FOR JUNE 4 THROUGH  
JUNE 20, 1990

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*Certiorari Granted—Vacated and Remanded*

No. 89-198. NATIONAL TREASURY EMPLOYEES UNION *v.* UNITED STATES NUCLEAR REGULATORY COMMISSION ET AL.; and

No. 89-562. FEDERAL LABOR RELATIONS AUTHORITY *v.* NATIONAL TREASURY EMPLOYEES UNION ET AL. C. A. 4th Cir. Certiorari granted, judgment vacated, and cases remanded for further consideration in light of *Fort Stewart Schools v. FLRA*, 495 U. S. 641 (1990). Reported below: 879 F. 2d 1225.

No. 89-736. FEDERAL LABOR RELATIONS AUTHORITY *v.* FORT KNOX DEPENDENT SCHOOLS ET AL. C. A. 6th Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Fort Stewart Schools v. FLRA*, 495 U. S. 641 (1990). Reported below: 875 F. 2d 1179.

No. 89-1101. UNITED STATES *v.* CUNNINGHAM. C. A. 9th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Taylor v. United States*, 495 U. S. 575 (1990). Reported below: 878 F. 2d 311.

No. 89-1177. 11126 BALTIMORE BLVD., INC., T/A WARWICK BOOKS *v.* PRINCE GEORGE'S COUNTY, MARYLAND. C. A. 4th Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *FW/PBS, Inc. v. Dallas*, 493 U. S. 215 (1990). Reported below: 886 F. 2d 1415.

No. 89-5743. PAYTON *v.* UNITED STATES. C. A. 8th Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Taylor v. United States*, 495 U. S. 575 (1990). Reported below: 878 F. 2d 1089.

No. 89-5938. GARCIA *v.* UNITED STATES. C. A. 5th Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Taylor v. United States*, 495 U. S. 575 (1990). Reported below: 885 F. 2d 868.

June 4, 1990

496 U. S.

No. 89-6995. JORDAN *v.* UNITED STATES. C. A. 8th Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Taylor v. United States*, 495 U. S. 575 (1990). Reported below: 893 F. 2d 182.

*Miscellaneous Orders*

No. — — —. ALLUSTIARTE ET UX. *v.* COOPER; and

No. — — —. BOYLE ET AL. *v.* ROGERS DISTRIBUTING CORP. ET AL. Motions to direct the Clerk to file petitions for writs of certiorari out of time denied.

No. A-720. HISHMEH *v.* NEW JERSEY DIVISION OF MOTOR VEHICLES. Application for stay, addressed to THE CHIEF JUSTICE and referred to the Court, denied.

No. D-833. IN RE DISBARMENT OF LAIRD. Disbarment entered. [For earlier order herein, see 493 U. S. 961.]

No. D-855. IN RE DISBARMENT OF RIVAS. Disbarment entered. [For earlier order herein, see 493 U. S. 1053.]

No. D-874. IN RE DISBARMENT OF PEIPER. Disbarment entered. [For earlier order herein, see 494 U. S. 1015.]

No. D-892. IN RE DISBARMENT OF SHORTER. Disbarment entered. [For earlier order herein, see 494 U. S. 1076.]

No. D-897. IN RE DISBARMENT OF HERSH. Alan Mark Hersh, of Beverly Hills, Cal., having requested to resign as a member of the Bar of this Court, it is ordered that his name be stricken from the roll of attorneys admitted to practice before the Bar of this Court. The rule to show cause, heretofore issued on April 23, 1990 [495 U. S. 902], is hereby discharged.

No. D-904. IN RE DISBARMENT OF ROOT. It is ordered that Thomas Lawrence Root, of Washington, D. C., 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-905. IN RE DISBARMENT OF HANNA. It is ordered that Larry L. Hanna, of Myrtle Beach, S. C., be suspended from the practice of law in this Court and that a rule issue, returnable

496 U. S.

June 4, 1990

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

No. 109, Orig. OKLAHOMA ET AL. *v.* NEW MEXICO. Motion of the Special Master for allowance of compensation and reimbursement of expenses granted, and the Special Master is awarded \$61,292.54 for the period September 1, 1989, through January 31, 1990, one-third to be paid by each party. [For earlier order herein, see, *e. g.*, 493 U. S. 929.]

No. 89-532. PEAT MARWICK MAIN & CO. *v.* HOLLOWAY ET AL., 494 U. S. 1014. Motion of respondents to retax costs denied.

No. 89-839. ARIZONA *v.* FULMINANTE. Sup. Ct. Ariz. [Certiorari granted, 494 U. S. 1055.] Motion of Americans for Effective Law Enforcement, Inc., et al. for leave to file a brief as *amici curiae* granted. Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 89-1145. MCCracken *v.* CITY OF COLLEGE PARK, GEORGIA, ET AL., 494 U. S. 1028. Motion of respondents for attorney's fees denied.

No. 89-1421. POWELL ET AL. *v.* NATIONAL FOOTBALL LEAGUE ET AL. C. A. 8th Cir. The Solicitor General is invited to file a brief in this case expressing the views of the United States.

No. 89-7043. KUDLER *v.* JUDICIAL COUNCIL OF THE SECOND CIRCUIT. C. A. 2d Cir.; and

No. 89-7170. JENGA ET UX. *v.* DEVEAUX. Super. Ct. Ga., Fulton County. Motions of petitioners for leave to proceed *in forma pauperis* denied. Petitioners are allowed until June 25, 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 and JUSTICE MARSHALL, 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. 89-7423. IN RE SEITU; and

No. 89-7452. IN RE WILSON. Petitions for writs of habeas corpus denied.



June 4, 1990

496 U. S.

No. 89-7008. IN RE CARSON; and

No. 89-7350. IN RE SWENTEK. Petitions for writs of mandamus denied.

No. 89-6889. IN RE MCFADDEN. Petition for writ of mandamus and/or prohibition denied.

*Certiorari Granted*

No. 89-1332. McNARY, COMMISSIONER OF IMMIGRATION AND NATURALIZATION, ET AL. v. HAITIAN REFUGEE CENTER, INC., ET AL. C. A. 11th Cir. Certiorari granted. Reported below: 872 F. 2d 1555.

No. 89-1416. AIR COURIER CONFERENCE OF AMERICA v. AMERICAN POSTAL WORKERS UNION, AFL-CIO, ET AL. C. A. D. C. Cir. Certiorari granted. Reported below: 282 U. S. App. D. C. 5, 891 F. 2d 304.

No. 89-1598. EASTERN AIRLINES, INC. v. FLOYD ET AL. C. A. 11th Cir. Certiorari granted. Reported below: 872 F. 2d 1462.

No. 89-1452. MOBIL OIL EXPLORATION & PRODUCING SOUTHEAST, INC., ET AL. v. UNITED DISTRIBUTION COS. ET AL.; and

No. 89-1453. FEDERAL ENERGY REGULATORY COMMISSION v. UNITED DISTRIBUTION COS. ET AL. C. A. 5th Cir. Certiorari granted, cases consolidated, and a total of one hour allotted for oral argument. Reported below: 885 F. 2d 209.

No. 89-7024. McCLESKEY v. ZANT, SUPERINTENDENT, GEORGIA DIAGNOSTIC AND CLASSIFICATION CENTER. C. A. 11th Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted. In addition to the questions presented by the petition, the parties are requested to brief and argue the following question: "Must the State demonstrate that a claim was deliberately abandoned in an earlier petition for a writ of habeas corpus in order to establish that inclusion of that claim in a subsequent habeas petition constitutes abuse of the writ?" Reported below: 890 F. 2d 342.

*Certiorari Denied*

No. 88-1885. LEONARD v. UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 868 F. 2d 1393.

496 U. S.

June 4, 1990

No. 88-7307. *CARTER v. UNITED STATES*. C. A. 11th Cir. Certiorari denied. Reported below: 872 F. 2d 434.

No. 88-7398. *SCHOENBORN v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 881 F. 2d 1079.

No. 88-7509. *LOPEZ QUINTERO v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 872 F. 2d 107.

No. 89-1293. *W. C. GARCIA & ASSOCIATES, INC. v. MICELI, DISTRICT DIRECTOR, INTERNAL REVENUE SERVICE*. C. A. 9th Cir. Certiorari denied. Reported below: 889 F. 2d 1097.

No. 89-1295. *CONNECTICUT v. LONERGAN*. Sup. Ct. Conn. Certiorari denied. Reported below: 213 Conn. 74, 566 A. 2d 677.

No. 89-1415. *LINDSEY ET AL. v. FERRIS FACULTY ASSN. ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 893 F. 2d 111.

No. 89-1426. *LAYKIN v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 886 F. 2d 1534.

No. 89-1444. *SHRINERS HOSPITALS FOR CRIPPLED CHILDREN v. FIRST SECURITY BANK OF UTAH, N. A., PERSONAL REPRESENTATIVE OF THE ESTATE OF JONES, ET AL.* Sup. Ct. Wyo. Certiorari denied. Reported below: 770 P. 2d 1100 and 782 P. 2d 229.

No. 89-1450. *NORTHERN TELECOM, INC. v. TAYLOR, COMMISSIONER OF REVENUE OF TENNESSEE, ET AL.* Sup. Ct. Tenn. Certiorari denied. Reported below: 781 S. W. 2d 837.

No. 89-1539. *NORTH CAROLINA v. DAVIS*. Sup. Ct. N. C. Certiorari denied. Reported below: 325 N. C. 607, 386 S. E. 2d 418.

No. 89-1542. *CARIBBEAN MARINE, INC., AKA BIZCAP, INC. v. OLIVE, DIRECTOR OF VIRGIN ISLANDS BUREAU OF INTERNAL REVENUE, ET AL.* C. A. 3d Cir. Certiorari denied. Reported below: 892 F. 2d 1163.

No. 89-1559. *ESTES v. CITY OF MOORE, OKLAHOMA, ET AL.* C. A. 10th Cir. Certiorari denied.

No. 89-1568. *CHAMBLESS ET UX. v. MASTERS, MATES & PILOTS PENSION PLAN ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 885 F. 2d 1053.

June 4, 1990

496 U. S.

No. 89-1576. *TRAVELERS INDEMNITY CO. v. AVONDALE INDUSTRIES, INC., ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 887 F. 2d 1200.

No. 89-1577. *HOOPER v. GILL ET AL.* Ct. Sp. App. Md. Certiorari denied. Reported below: 79 Md. App. 437, 557 A. 2d 1349.

No. 89-1578. *MOORE v. CITY OF COSTA MESA ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 886 F. 2d 260.

No. 89-1581. *UNITED STATES FIDELITY & GUARANTY CO. v. URETA.* C. A. 5th Cir. Certiorari denied. Reported below: 892 F. 2d 426.

No. 89-1586. *BATES v. ALABAMA.* Ct. Crim. App. Ala. Certiorari denied. Reported below: 553 So. 2d 135.

No. 89-1589. *ALPHA WIRE CORP. ET AL. v. SIEGEL.* C. A. 3d Cir. Certiorari denied. Reported below: 894 F. 2d 50.

No. 89-1594. *LEGG v. NORTH CAROLINA BOARD OF LAW EXAMINERS.* Sup. Ct. N. C. Certiorari denied. Reported below: 325 N. C. 658, 386 S. E. 2d 174.

No. 89-1596. *SUMNER v. ALABAMA.* Ct. Crim. App. Ala. Certiorari denied. Reported below: 553 So. 2d 145.

No. 89-1597. *GENERAL ACCIDENT FIRE & LIFE ASSURANCE CORP. LTD. v. ITT GENERAL CORP. ET AL.* C. A. 3d Cir. Certiorari denied. Reported below: 893 F. 2d 1329.

No. 89-1601. *FULLER, INDIVIDUALLY AND DBA PARTY TIME PRODUCTIONS v. MAYOR AND ALDERMEN OF THE CITY OF SAVANNAH, GEORGIA.* Ct. App. Ga. Certiorari denied. Reported below: 193 Ga. App. 716, 389 S. E. 2d 7.

No. 89-1610. *MORI v. MCCRANE ET AL.* Super. Ct. N. J., App. Div. Certiorari denied.

No. 89-1612. *IRBY ET AL. v. VIRGINIA STATE BOARD OF ELECTIONS ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 889 F. 2d 1352.

No. 89-1613. *BASTIAN ET AL. v. PETREN RESOURCES CORP. ET AL.* C. A. 7th Cir. Certiorari denied. Reported below: 892 F. 2d 680.



496 U. S.

June 4, 1990

No. 89-1621. *McMANAMA v. OREGON*. Ct. App. Ore. Certiorari denied. Reported below: 95 Ore. App. 220, 769 P. 2d 808.

No. 89-1635. *NORTHWEST ADVANCEMENT, INC., ET AL. v. OREGON BUREAU OF LABOR ET AL.* Ct. App. Ore. Certiorari denied. Reported below: 96 Ore. App. 146, 772 P. 2d 943.

No. 89-1636. *MONTENEGRO v. ARIZONA DEPARTMENT OF ECONOMIC SECURITY ET AL.* Ct. App. Ariz. Certiorari denied.

No. 89-1650. *KAPLAN v. COUNTY OF LOS ANGELES*. C. A. 9th Cir. Certiorari denied. Reported below: 894 F. 2d 1076.

No. 89-1666. *J M SMITH CORP., DBA SMITH DATA PROCESSING v. PC I CORP. ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 892 F. 2d 74.

No. 89-1706. *I-POINT AB ET AL. v. ZETA ASSOCIATES ET AL.* C. A. D. C. Cir. Certiorari denied.

No. 89-1709. *PATTERSON v. COMMISSIONER OF INTERNAL REVENUE*. C. A. 2d Cir. Certiorari denied. Reported below: 896 F. 2d 544.

No. 89-1722. *GIBSON v. UNITED STATES*. Ct. Mil. App. Certiorari denied. Reported below: 29 M. J. 379.

No. 89-1732. *SANDERS v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 893 F. 2d 133.

No. 89-1740. *STANKO v. UNITED STATES PAROLE COMMISSION ET AL.* C. A. 8th Cir. Certiorari denied. Reported below: 890 F. 2d 419.

No. 89-1755. *DOBARD v. CITY OF OAKLAND ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 883 F. 2d 1023.

No. 89-5282. *DOMBROWSKI v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 877 F. 2d 520.

No. 89-5807. *SANDERS v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 884 F. 2d 574.

No. 89-5890. *MERRITT v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 882 F. 2d 916.

No. 89-5962. *TAYLOR v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 882 F. 2d 1018.

June 4, 1990

496 U. S.

No. 89-6101. *TWOMEY v. UNITED STATES*. C. A. 1st Cir. Certiorari denied. Reported below: 884 F. 2d 46.

No. 89-6215. *FULLER v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 887 F. 2d 144.

No. 89-6375. *AVILA-ISCOA v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 888 F. 2d 1049.

No. 89-6540. *STARKS v. COLLINS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION*. C. A. 5th Cir. Certiorari denied.

No. 89-6648. *ERIKSON v. CALIFORNIA*. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 89-6693. *YAGER ET AL. v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 892 F. 2d 80.

No. 89-6722. *GALLAGHER v. GOLDHART ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 889 F. 2d 1087.

No. 89-6750. *SILKWOOD v. UNITED STATES*. C. A. 10th Cir. Certiorari denied. Reported below: 893 F. 2d 245.

No. 89-6786. *KEENER v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 892 F. 2d 725.

No. 89-6793. *BROWN v. UNITED STATES*. C. A. 10th Cir. Certiorari denied.

No. 89-6849. *JONES v. ILLINOIS*. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 187 Ill. App. 3d 1123, 569 N. E. 2d 334.

No. 89-6896. *HARRIS v. ILLINOIS*. Sup. Ct. Ill. Certiorari denied. Reported below: 132 Ill. 2d 366, 547 N. E. 2d 1241.

No. 89-6929. *MILLMAN v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 891 F. 2d 278.

No. 89-6966. *ARROYO-PLAUD v. UNITED STATES*. C. A. 1st Cir. Certiorari denied. Reported below: 900 F. 2d 246.

No. 89-6971. *FERENC v. TUGGLE ET AL.* C. A. 11th Cir. Certiorari denied.



496 U. S.

June 4, 1990

No. 89-7095. *McFADDEN v. COMMISSIONER OF INTERNAL REVENUE*. C. A. 8th Cir. Certiorari denied. Reported below: 894 F. 2d 1342.

No. 89-7122. *FANNIEL v. HER MAJESTY QUEEN ELIZABETH II ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 891 F. 2d 277.

No. 89-7154. *SAMUEL v. MORRISON INC., DBA MORRISON FOOD SERVICES*. C. A. 5th Cir. Certiorari denied. Reported below: 893 F. 2d 343.

No. 89-7157. *SIMPSON v. KENTUCKY ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 869 F. 2d 1493.

No. 89-7159. *BUTZIN v. WOOD, WARDEN, ET AL.* C. A. 8th Cir. Certiorari denied. Reported below: 886 F. 2d 1016.

No. 89-7160. *FANSLER v. CORRECTIONS CABINET ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 895 F. 2d 1412.

No. 89-7163. *SOUTHERLAND v. WOFFORD ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 894 F. 2d 408.

No. 89-7164. *BOYD v. LOUISIANA*. Ct. App. La., 2d Cir. Certiorari denied. Reported below: 548 So. 2d 1265.

No. 89-7165. *SAMMONS v. HARRISON ET AL.* C. A. 11th Cir. Certiorari denied.

No. 89-7167. *AWKAKEWAKEYES v. SUTTON ET AL.* C. A. 3d Cir. Certiorari denied. Reported below: 884 F. 2d 1382.

No. 89-7172. *MARTINEZ v. KERBY, WARDEN, ET AL.* C. A. 10th Cir. Certiorari denied.

No. 89-7173. *KELLEY v. INTERNATIONAL TOTAL SERVICES, INC., ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 900 F. 2d 253.

No. 89-7179. *BARNES v. MARTINEZ, GOVERNOR OF FLORIDA, ET AL.* Sup. Ct. Fla. Certiorari denied. Reported below: 558 So. 2d 17.

No. 89-7180. *MINDEK v. PENNSYLVANIA* (two cases). Super. Ct. Pa. Certiorari denied.

June 4, 1990

496 U. S.

No. 89-7181. *MIRANDA v. OFFICE OF PERSONNEL MANAGEMENT*. C. A. Fed. Cir. Certiorari denied. Reported below: 897 F. 2d 539.

No. 89-7184. *LAWSON v. WALLACE ET AL.* C. A. 11th Cir. Certiorari denied.

No. 89-7186. *MARSH v. FORD MOTOR CO. ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 886 F. 2d 1316.

No. 89-7187. *ROBINSON v. MEYER ET AL.* Ct. App. Ohio, Stark County. Certiorari denied.

No. 89-7190. *PARKER v. BOARD OF REVIEW ET AL.* Super. Ct. N. J., App. Div. Certiorari denied.

No. 89-7193. *COADES v. VAUGHN, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION.* C. A. 3d Cir. Certiorari denied.

No. 89-7199. *BROWN v. SULLIVAN, SUPERINTENDENT, WOODBOURNE CORRECTIONAL FACILITY, ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 875 F. 2d 307.

No. 89-7202. *BENOIST v. DEPARTMENT OF DEFENSE.* C. A. Fed. Cir. Certiorari denied. Reported below: 895 F. 2d 1420.

No. 89-7205. *DONALD v. UNITED STATES DEPARTMENT OF EDUCATION.* C. A. 11th Cir. Certiorari denied.

No. 89-7207. *PAREZ v. SAN DIEGO COUNTY SOCIAL SERVICES.* C. A. 9th Cir. Certiorari denied. Reported below: 894 F. 2d 409.

No. 89-7212. *EVERSON v. OTT ET AL.* Ct. App. Ga. Certiorari denied.

No. 89-7213. *FORD ET AL. v. RUTLEDGE ET AL.* C. A. 8th Cir. Certiorari denied.

No. 89-7219. *BOATWRIGHT v. BARTON, SUPERINTENDENT, FLORIDA STATE PRISON.* C. A. 11th Cir. Certiorari denied. Reported below: 896 F. 2d 557.

No. 89-7220. *BROWN v. WAINWRIGHT ET AL.* C. A. 11th Cir. Certiorari denied. Reported below: 897 F. 2d 536.

No. 89-7237. *AGUILAR v. COLLINS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION.*

496 U. S.

June 4, 1990

C. A. 5th Cir. Certiorari denied. Reported below: 896 F. 2d 550.

No. 89-7240. *JOHNSON v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 878 F. 2d 1439.

No. 89-7265. *SCHUBERT v. NEW JERSEY*. Super. Ct. N. J., App. Div. Certiorari denied. Reported below: 235 N. J. Super. 212, 561 A. 2d 1186.

No. 89-7267. *CANTRELL v. KELLEY, WARDEN*. C. A. 4th Cir. Certiorari denied. Reported below: 896 F. 2d 545.

No. 89-7301. *DEWILLIAMS v. UNITED STATES*. C. A. 10th Cir. Certiorari denied.

No. 89-7310. *DUGAN v. WISCONSIN*. Ct. App. Wis. Certiorari denied.

No. 89-7317. *TELK v. NATIONAL LABOR RELATIONS BOARD ET AL.* C. A. 10th Cir. Certiorari denied.

No. 89-7318. *YOUNG v. SMITH ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 896 F. 2d 543.

No. 89-7327. *KINLOCH v. BRADY, SECRETARY OF THE TREASURY*. C. A. 6th Cir. Certiorari denied. Reported below: 895 F. 2d 1413.

No. 89-7369. *COVINGTON v. UNITED STATES*. C. A. 5th Cir. Certiorari denied.

No. 89-7379. *COLBERT v. UNITED STATES*. C. A. 10th Cir. Certiorari denied. Reported below: 894 F. 2d 373.

No. 89-7385. *EGAN v. SOWDERS, WARDEN*. C. A. 6th Cir. Certiorari denied. Reported below: 894 F. 2d 407.

No. 89-7391. *PEOPLES v. GRAYSON, WARDEN, ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 891 F. 2d 292.

No. 89-7396. *LAFRAUGH v. UNITED STATES*. C. A. 11th Cir. Certiorari denied. Reported below: 893 F. 2d 314.

No. 89-7398. *FOSTER v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 896 F. 2d 551.



June 4, 1990

496 U. S.

No. 89-7399. *ACOSTA v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 896 F. 2d 550.

No. 89-7447. *LEE v. LATOURELLE, SUPERINTENDENT, OG-DENSBURG CORRECTIONAL FACILITY, ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 898 F. 2d 137.

No. 88-1031. *CITIBANK, N. A. v. TRINH*. C. A. 6th Cir. Motion of New York Clearing House Association et al. for leave to file a brief as *amici curiae* granted. Certiorari denied. Reported below: 850 F. 2d 1164.

No. 89-1170. *TEXAS v. CHAMBERS*. Ct. Crim. App. Tex. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 784 S. W. 2d 29.

No. 89-1574. *GENERAL MOTORS CORP. ET AL. v. DEPARTMENT OF REVENUE OF ALABAMA*; and

No. 89-1587. *REYNOLDS METALS CO. v. SIZEMORE, COMMISSIONER OF REVENUE OF ALABAMA*. Sup. Ct. Ala. Motions of Committee on State Taxation of the Council of State Chambers of Commerce and Tax Executives Institute, Inc., for leave to file briefs as *amici curiae* granted. Certiorari denied. Reported below: 558 So. 2d 373.

No. 89-1590. *NEW YORK STATE DEPARTMENT OF LABOR ET AL. v. GENERAL ELECTRIC CO.* C. A. 2d Cir. Motions of Building and Construction Trades Department, AFL-CIO, and Joint Industry Board of Electrical Industry for leave to file briefs as *amici curiae* granted. Certiorari denied. Reported below: 891 F. 2d 25.

No. 89-1599. *LANGAN ENGINEERING ASSOCIATES, INC. v. 21ST PHOENIX CORP., FKA HANSON DEVELOPMENT CO.* C. A. 10th Cir. Certiorari denied. JUSTICE WHITE would grant certiorari. Reported below: 893 F. 2d 1155.

No. 89-1664. *NEW MEXICO v. CALLAWAY*; and *NEW MEXICO v. MOLINAR*. Sup. Ct. N. M. Motion of respondents for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 109 N. M. 416, 785 P. 2d 1035 (first case); 109 N. M. 536, 787 P. 2d 455 (second case).

No. 89-6716. *PIERCE v. TEXAS*. Ct. Crim. App. Tex.; and

No. 89-7146. *FREEMAN v. ALABAMA*. Sup. Ct. Ala. Certiorari denied. Reported below: No. 89-6716, 777 S. W. 2d 399; No. 89-7146, 555 So. 2d 215.

496 U. S.

June 4, 8, 1990

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. 87-6927. HAMILTON, AS NATURAL MOTHER AND NEXT FRIEND OF SMITH *v.* TEXAS, 495 U. S. 923;

No. 88-1213. EMPLOYMENT DIVISION, DEPARTMENT OF HUMAN RESOURCES OF OREGON, ET AL. *v.* SMITH ET AL., 494 U. S. 872;

No. 88-5986. OSBORNE *v.* OHIO, 495 U. S. 103;

No. 89-1319. TARKA *v.* FRANKLIN ET AL., 494 U. S. 1080;

No. 89-1334. ROSENTHAL *v.* YOUNG ET AL., 494 U. S. 1080;

No. 89-1341. RAMIREZ *v.* TRANSAMERICAN NATURAL GAS CORP. ET AL., 494 U. S. 1081;

No. 89-1382. IN RE FREED, 494 U. S. 1077;

No. 89-5737. COLEMAN *v.* SAFFLE, WARDEN, ET AL., 494 U. S. 1090;

No. 89-6302. WILLIAMS *v.* KEMP, WARDEN, 494 U. S. 1090;

No. 89-6818. IN RE HICKS, 494 U. S. 1077;

No. 89-6835. WATTS *v.* FOSTER ET AL., 494 U. S. 1088;

No. 89-6869. JUSTICE *v.* OHIO ET AL., 494 U. S. 1089; and

No. 89-6888. GULATI *v.* UNITED STATES, 494 U. S. 1089. Petitions for rehearing denied.

No. 86-1964. WALLACE *v.* ARIZONA, 483 U. S. 1011. Motion of petitioner for leave to proceed further herein *in forma pauperis* granted. Motion for leave to file petition for rehearing denied. JUSTICE O'CONNOR took no part in the consideration or decision of these motions.

No. 89-5629. WALLACE *v.* ARIZONA, 494 U. S. 1047. Petition for rehearing denied. JUSTICE O'CONNOR took no part in the consideration or decision of this petition.

JUNE 8, 1990

*Dismissal Under Rule 46*

No. 89-1743. BELL ET AL. *v.* FEDERAL DEPOSIT INSURANCE CORPORATION. C. A. 10th Cir. Certiorari dismissed under this Court's Rule 46. Reported below: 892 F. 2d 64.



JUNE 11, 1990

*Vacated and Remanded After Certiorari Granted*

No. 89-5900. *RUST v. GUNTER ET AL.* C. A. 8th Cir. [Certiorari granted, 494 U. S. 1055.] Motion of Alvin J. Bronstein, Esq., to withdraw as counsel for petitioner granted. Judgment vacated and case remanded for further consideration in light of the representations made by counsel for petitioner appointed by the Court in his motion to withdraw as counsel filed May 22, 1990, the response to that motion filed by respondent May 30, 1990, and petitioner's motion for appointment of counsel filed June 4, 1990. Motion of petitioner for appointment of new counsel denied as moot.

JUSTICE STEVENS, concurring.

While I join the Court's disposition, I believe it is appropriate also to call the Court of Appeals' attention to our decision in *Neitzke v. Williams*, 490 U. S. 319 (1989)—a case that it apparently overlooked when it entered its earlier judgment.

*Certiorari Granted—Vacated and Remanded*

No. 89-510. *MEACHUM, COMMISSIONER, CONNECTICUT DEPARTMENT OF CORRECTIONS v. ALEXANDER.* C. A. 2d Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Illinois v. Perkins*, ante, p. 292. Reported below: 876 F. 2d 277.

No. 89-641. *GARNETT, BY AND THROUGH HIS NEXT FRIEND, SMITH, ET AL. v. RENTON SCHOOL DISTRICT NO. 403 ET AL.* C. A. 9th Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Westside Community Bd. of Ed. v. Mergens*, ante, p. 226. JUSTICE STEVENS dissents. Reported below: 874 F. 2d 608.

No. 89-1320. *FLORIDA v. BURR.* Sup. Ct. Fla. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Dowling v. United States*, 493 U. S. 342 (1990). JUSTICE BLACKMUN dissents. Reported below: 550 So. 2d 444.

JUSTICE BRENNAN, with whom JUSTICE MARSHALL joins, dissenting.

For the reasons stated by JUSTICE STEVENS, I agree that the judgment of the Florida Supreme Court should not be vacated.



In any event, adhering 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), I would direct that the proceedings on remand be circumscribed such that the State may not impose the death sentence.

JUSTICE STEVENS, dissenting.

Respondent was convicted of first-degree murder and robbery with a firearm. To establish respondent's identity, at the guilt phase of the trial the prosecution relied on "collateral crimes evidence"—three witnesses testified that respondent had committed similar crimes *after* the fatal shooting involved in this case. At the sentencing phase of his trial, the prosecutor offered no additional evidence; the jury recommended that respondent be sentenced to imprisonment for life with no possibility of parole for 25 years.

The trial judge overrode the jury's recommendation and sentenced respondent to death. He unequivocally stated that his decision to impose the death sentence was based on the collateral crimes evidence that had been received for the limited purpose of proving respondent's identity at the guilt phase of the trial.<sup>1</sup>

Respondent was later tried and acquitted of one of the collateral crimes, and the State abandoned its prosecution of a second. Thereafter, in state collateral-review proceedings, respondent sought to set aside his conviction on the ground that the subsequent acquittal of one of the collateral crimes demonstrated that the evidence had been improperly admitted.<sup>2</sup> Over the dissent of Justice Barkett, the Florida Supreme Court rejected that conten-

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<sup>1</sup> See Pet. for Cert. 34-35, quoting Tr. 319-320. He observed "that if the Williams Rules testimony admitted during this trial is found to have been improperly admitted then the sentence I impose today will be academic." The "Williams Rule" refers to the rule announced in *Williams v. State*, 110 So. 2d 654 (Fla.), cert. denied, 361 U. S. 847 (1959), a case holding that evidence of other crimes is admissible in a criminal trial if relevant to prove anything other than the bad character of the defendant or his propensity to commit the crime charged. In a later case, *State v. Perkins*, 349 So. 2d 161 (1977), the Florida Supreme Court held that the Williams rule did not apply to evidence of collateral crimes for which a defendant had been acquitted.

<sup>2</sup> If the acquittal had *preceded* the trial in this case, the evidence would have been inadmissible under Florida law. See *State v. Perkins*, *supra*.

tion; it held that evidence that was properly received at the time it was offered had not been rendered "retroactively inadmissible."<sup>3</sup> In her dissent, Justice Barkett did not directly challenge that conclusion. She contended, however, that the State Supreme Court should have considered the propriety of the trial judge's reliance on that evidence at the penalty phase of the trial even though respondent's counsel had not squarely raised that point. She wrote:

"I believe petitioner is entitled to a new appeal because of the trial court's application of collateral crimes evidence during the *sentencing* phase of the trial. Concededly, the issue has only been raised as it relates to the *guilt* phase, and I disagree with the majority's conclusions in this regard. However, I am deeply troubled by the effect of this evidence on the sentence, find it contrary to Florida and federal law, and cannot see the sense in waiting for a formal petition for writ of habeas corpus to argue a point I believe should have been argued on direct appeal. Thus, I would call for additional briefs and decide the issue at this time.

"The death penalty was imposed in this case because the trial judge found three aggravating factors that, in his mind, rendered the jury's recommendation of life imprisonment unreasonable. Two of these factors were derived from evidence of three collateral crimes (although the defendant was acquitted of one and the state *nolle prossed* another).

"The *Williams* rule was established not to prove propensity but to prove identity. The sole purpose of allowing evidence of collateral crimes is to show that the defendant indeed is the

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<sup>3</sup>"With the exception of the collateral crimes issue, no new information has been made available to this Court which would warrant a revisitation of those issues.

"However, Burr has argued that his subsequent acquittal of one of the crimes to which witnesses testified at his trial, and the *nolle pros* of another renders the evidence of those acts inadmissible. This Court has held that evidence of collateral offenses which have been *nolle prossed* is admissible. *Holland v. State*, 466 So. 2d 207 (Fla. 1985). As to the subsequent acquittal, clearly, at the time the *Williams* rule evidence was admitted, it was not error to do so. This much had been settled on direct appeal. There is no reason to suggest that the subsequent acquittal changes that admissibility subsequent to the trial. This Court will not render evidence retroactively inadmissible." *Burr v. State*, 518 So. 2d 903, 905 (1987) (footnote omitted).



perpetrator of the charged offense. We accept the inherent risk of prejudice that this type of evidence creates by balancing that prejudice against the relevance of proving that the defendant committed the crime.

"In the conventional use of the *Williams* rule, the state is not relieved of its obligation to prove beyond a reasonable doubt the facts and circumstances of the crime charged. To permit aggravating factors to be supported by *Williams* rule evidence not only expands the rule beyond its original purpose, but completely relieves the state of its burden of proving the existence of aggravating factors. Under this novel approach, aggravating factors could be proved merely by showing that they existed in collateral crimes committed by the accused, whether or not they actually existed in the crime charged in the indictment.

"I do not believe this was a conscious holding of this Court on the direct appeal, since it was never argued or addressed. Moreover, I do not believe this is consistent with the requirement of proving aggravating circumstances beyond a reasonable doubt.

"In this case, the judge found the aggravating factors of witness elimination and cold, calculated and premeditated murder based predominantly, if not exclusively, on the *Williams* rule evidence presented during the guilt phase of the trial.

"Moreover, during the penalty phase, the only material facts in issue are the existence of aggravating and mitigating factors provided by law. The aggravating factors are strictly limited by section 921.141, Florida Statutes. Under section 921.141(5), only one aggravating factor exists that in any way concerns collateral criminal activity, and it expressly is limited to prior convictions of felonies involving violence. See §921.141(5)(b). To hold that a judge can consider *unconvicted* criminal conduct in reaching a sentence is to permit the weighing of nonstatutory aggravating factors, contrary to our law. See *Elledge v. State*, 346 So. 2d 998, 1002-03 (Fla. 1977)." *Burr v. State*, 518 So. 2d 903, 907-908 (1987).



While respondent's petition for certiorari was pending in this Court, we decided a case with somewhat similar facts. *Johnson v. Mississippi*, 486 U. S. 578 (1988). In that case a death sentence had been imposed on the basis of three aggravating circumstances, one of which was a prior New York conviction of a violent felony. In state collateral proceedings, Johnson had challenged his death sentence on the ground that the New York Court of Appeals had subsequently held that the prior conviction was invalid. The Mississippi Supreme Court, over the dissent of three justices, rejected that contention holding, in effect, that the subsequent invalidation of the felony conviction had not made the evidence retroactively inadmissible. See *Johnson v. State*, 511 So. 2d 1333 (1987). We reversed, concluding that the death sentence could not stand when "the jury was allowed to consider evidence that has been revealed to be materially inaccurate." 486 U. S., at 590.

Our holding in *Johnson* did not directly resolve the issue presented in Burr's pending petition for certiorari; in *Johnson* the only evidence of the collateral crime that had been received was a certified copy of the invalid conviction, whereas in Burr's trial a witness had testified about the conduct that was later made the basis of an unsuccessful criminal prosecution. This Court nevertheless concluded that there was enough similarity between the cases to justify a remand of the *Burr* case to the Florida Supreme Court to reconsider its judgment in the light of our opinion in *Johnson*. See *Burr v. Florida*, 487 U. S. 1201 (1988).

As the Court itself demonstrates by its action today, an order remanding a case to a lower court does "not amount to a final determination on the merits," *Henry v. City of Rock Hill*, 376 U. S. 776, 777 (1964), but only a conclusion that an intervening decision is sufficiently analogous to make reexamination of the case appropriate. That action was proper after *Johnson* for three important and independent reasons. First, of course, is the paramount importance of reliability in the determination that death is the appropriate punishment in any capital case.<sup>4</sup> In *Johnson*, as

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<sup>4</sup>"The fundamental respect for humanity underlying the Eighth Amendment's prohibition against cruel and unusual punishment gives rise to a special "need for reliability in the determination that death is the appropriate punishment" in any capital case. See *Gardner v. Florida*, 430 U. S. 349, 363-364 (1977) (quoting *Woodson v. North Carolina*, 428 U. S. 280, 305 (1976)) (plurality opinion). Although we have acknowledged that "there can be "no perfect procedure for deciding in which cases governmental authority

914

STEVENS, J., dissenting

in this case, that concern was implicated by a post-trial development that cast doubt on the reliability of evidence that played a critical part in the sentencing decision. *Johnson* made clear, what was apparent before, see *Zant v. Stephens*, 462 U. S. 862, 887-888, n. 23 (1983); *Gardner v. Florida*, 430 U. S. 349, 358-359, 362 (1977) (plurality opinion), that a death sentence cannot stand when it is based on evidence that is materially inaccurate. Second, because the case had not yet reached the stage of federal collateral review, it was obvious that its ultimate disposition would be expedited by giving the Florida Supreme Court the first opportunity to consider the impact of *Johnson*; a different disposition would almost certainly have generated additional collateral proceedings in both state and federal courts. Third, the arguments in Justice Barkett's dissenting opinion, which were based partly on Florida law and partly on federal law, were buttressed by our reasoning in *Johnson* and had not been expressly rejected by the State Supreme Court's opinion which focused on respondent's contention that the collateral crimes evidence was inadmissible at the guilt phase of his trial.

Following our remand in light of *Johnson*, the Florida Supreme Court denied Burr's request for a new trial, but vacated his sentence and remanded the case to the trial court for resentencing.<sup>5</sup> In the portion of its opinion discussing the validity of the conviction, the court stated that the evidence of the collateral act for which Burr received an acquittal "is inadmissible under *Johnson*."<sup>6</sup> In another portion of its opinion, that may have rested exclusively on *Johnson* or may have also been predicated in part on the arguments set forth in Justice Barkett's earlier dissent, the court vacated the death sentence:

"Our review of the record reveals that the state introduced no evidence at the sentencing phase beyond that established

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should be used to impose death," "we have also made it clear that such decisions cannot be predicated on mere 'caprice' or on 'factors that are constitutionally impermissible or totally irrelevant to the sentencing process.' *Zant v. Stephens*, 462 U. S. 862, 884-885, 887, n. 24 (1983). The question in this case is whether allowing petitioner's death sentence to stand although based in part on a reversed conviction violates this principle." *Johnson v. Mississippi*, 486 U. S. 578, 584-585 (1988).

<sup>5</sup> Because the original jury had recommended a life sentence, the State Supreme Court concluded that there was no need to empanel a new jury.

<sup>6</sup> 550 So. 2d 444, 446 (1989).



at the guilt phase. There was no evidence of two of the three aggravating factors other than the collateral crimes evidence. The United States Supreme Court held in *Johnson* that the eighth amendment requires a stringent review of death sentences based in part on improper aggravating circumstances.

"In overriding the jury recommendation of life, the trial judge found as aggravating circumstances that the murder was committed to avoid arrest; that it was committed during the course of a robbery; and, that it was committed in a cold, calculated, and premeditated manner without any pretense of moral or legal justification. The aggravating factors of witness elimination to avoid arrest and cold, calculated, and premeditated were established almost entirely on the collateral crimes evidence. We cannot say, beyond a reasonable doubt, that the consideration of this evidence did not contribute to the sentence, particularly in light of the jury's recommendation of life.

"Nor can we determine whether the one improperly admitted instance of collateral conduct was determinative of the outcome." 550 So. 2d 444, 446 (1989) (footnotes omitted).

The court's holding left the trial judge who had heard all the evidence free to rely on the evidence of two of the three collateral crimes—even though that evidence had not been offered or received for the purpose of proving aggravating circumstances at the penalty hearing. Instead of allowing the new sentencing hearing to go forward, however, the Florida attorney general decided to request this Court to correct the state court's arguably improper application of *Johnson* to this case.<sup>7</sup>

The Court today accedes to that request, remanding the case once again to the Florida Supreme Court, this time in the light of our more recent decision in *Dowling v. United States*, 493 U. S. 342 (1990). Its action is ill advised for several reasons. First,

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<sup>7</sup> The question presented by the State's certiorari petition reads as follows: "ON REMAND FROM THIS COURT IN *BURR v. FLORIDA*, [487 U. S. 1201] (1988), THE FLORIDA SUPREME COURT ERRONEOUSLY APPLIED *JOHNSON v. MISSISSIPPI*, [486 U. S. 578] (1988), IN VACATING THE DEATH SENTENCE AND ORDERING A NEW SENTENCING PROCEEDING." Pet. for Cert. i.



our opinion in *Dowling* sheds absolutely no light on the question whether a post-trial acquittal should render collateral crimes evidence inadmissible at a sentencing hearing in a capital case. *Dowling* merely decided, as a matter of federal law, that a pretrial acquittal did not render relevant collateral crimes evidence inadmissible at the guilt phase of a noncapital case. As a matter of state law, the Supreme Court of Florida several years ago reached a contrary (and in my opinion, a correct) conclusion on that issue. But, in any event, *Dowling* did not decide the admissibility of such evidence at the penalty phase of a capital case. Respect for this Court's legal acumen is not enhanced by asking a state court to reconsider a claim in the light of a patently irrelevant precedent.

Second, even if this Court's real purpose in remanding the case is to suggest that the state court may have extended *Johnson* beyond its precise holding, the action is nevertheless unwarranted because that extension is both completely consistent with the reasoning in *Johnson* and with the reasoning in relevant state-court cases. The state court's statement that evidence of the collateral act was "inadmissible under *Johnson*"—although not strictly accurate—was a reasonable application of that precedent, especially in light of the Florida rule that acquitted conduct is generally excepted from the rule allowing collateral crimes evidence to be used to establish identity. And, with respect to sentence, the state court's reliance on *Johnson* for the proposition that the death sentence could not stand when it was based on evidence that had been rendered unreliable was entirely correct. When a state supreme court, in compliance with our mandate, has applied an intervening decision in a permissible fashion, we should respect its decision even if we might detect a slight flaw in its opinion.

Third, the Court's action today can only prolong the termination of this litigation. I have previously noted the costs in litigation occasioned by the jury override system in those few States in which such a system is used. See *Schiro v. Indiana*, 493 U. S. 910, 914 (1989) (opinion respecting denial of certiorari).<sup>8</sup> That

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<sup>8</sup>See also Mello, Taking *Caldwell v. Mississippi* Seriously: The Unconstitutionality of Capital Statutes That Divide Sentencing Responsibility Between Judge and Jury, 30 Boston College L. Rev. 283, 290 (1989) (noting that between two-thirds and three-fourths of all life overrides reviewed by the Florida Supreme Court have been vacated and remanded for imposition of a life sentence, resentencing, or retrial); Radelet, Rejecting the Jury: The Im-

June 11, 1990

496 U. S.

delay is exacerbated by ill-advised decisions like this one. A prompt new sentencing hearing would have eliminated the basis for substantial attacks on respondent's sentence. That hearing has already been delayed by the attorney general's petition to this Court and, depending on the action the State Supreme Court may take after this second remand, may require further collateral proceedings in both the state and federal systems. The interest in avoiding unnecessary delay would surely be served by a prompt resentencing.

Finally, I must once again express my concern about the Court's unseemly use of its discretionary docket to provide assistance to the prosecution—particularly in capital cases. In this case, a jury that heard all of the evidence recommended against a death sentence, and the trial judge's contrary decision was based in part on testimony about a crime of which Burr was later acquitted. When one considers the fact that the State has not yet come forward with a response to the points made in Justice Barkett's dissent, it is pellucidly clear that the Florida Supreme Court acted wisely in ordering a new sentencing hearing. Of course, the state court may after reconsideration adhere to its decision remanding for resentencing, just as it might have adhered, with additional explanation, to its original decision upholding the sentence after we vacated for reconsideration in light of *Johnson*. There is no good reason, however, for making the state court go through the exercise. I remain firmly convinced that "although this Court now has the power to review decisions defending federal constitutional rights, the claim of these cases on our docket is secondary to the need to scrutinize judgments disparaging those rights." *Delaware v. Van Arsdall*, 475 U. S. 673, 697 (1986) (dissenting opinion). Surely the State's attenuated interest in enforcing a trial judge's decision to override a jury's recommendation against the imposition of the death sentence in a marginal case like this does not justify the summary action the Court has taken today.

I respectfully dissent.

#### *Miscellaneous Orders*

No. D-807. IN RE DISBARMENT OF CALLY. It having been reported to the Court that James J. Cally has died, the rule to

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position of the Death Penalty in Florida, 18 U. C. D. L. Rev. 1409, 1422-1424 (1985).



496 U. S.

June 11, 1990

show cause, heretofore issued on September 25, 1989 [492 U. S. 941], is hereby discharged.

No. D-858. IN RE DISBARMENT OF LOUDEN. Disbarment entered. [For earlier order herein, see 493 U. S. 1066.]

No. D-884. IN RE DISBARMENT OF SANNA. Disbarment entered. [For earlier order herein, see 494 U. S. 1053.]

No. D-886. IN RE DISBARMENT OF MCCANN. Disbarment entered. [For earlier order herein, see 494 U. S. 1064.]

No. D-888. IN RE DISBARMENT OF RABEN. Disbarment entered. [For earlier order herein, see 494 U. S. 1064.]

No. D-906. IN RE DISBARMENT OF ERICKSON. It is ordered that Jonathan Erickson, of Corning, 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-907. IN RE DISBARMENT OF RICHMAN. It is ordered that Irvin F. Richman, of Chicago, Ill., be suspended from the practice of law in this Court and that a rule issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D-908. IN RE DISBARMENT OF NEISTEIN. It is ordered that Bernard S. Neistein, of Chicago, Ill., be suspended from the practice of law in this Court and that a rule issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D-909. IN RE DISBARMENT OF MARTIN. It is ordered that Clyde P. Martin, Jr., of New Orleans, La., be suspended from the practice of law in this Court and that a rule issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D-910. IN RE DISBARMENT OF HENDRICKSON. It is ordered that Fredric Fedje Hendrickson, of Sioux Falls, S. D., 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-911. IN RE DISBARMENT OF BADALIAN. It is ordered that John M. Badalian, of Shaker Heights, Ohio, be suspended from the practice of law in this Court and that a rule issue, return-



June 11, 1990

496 U. S.

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

No. 89-907. COUNTY OF LOS ANGELES ET AL. *v.* CABRALES, 494 U. S. 1091. Motion of respondent for award of attorney's fees denied without prejudice to renewal of the motion in the United States District Court for the Central District of California.

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

No. 89-1028. CSX TRANSPORTATION, INC. *v.* BROTHERHOOD OF RAILWAY CARMEN ET AL. C. A. D. C. Cir. [Certiorari granted, 494 U. S. 1055.] Further consideration of motion of respondents American Train Dispatchers Association et al. to dismiss deferred for 120 days. Further briefing in this case suspended for 120 days.

No. 89-7268. IN RE GREEN; and

No. 89-7313. IN RE GREEN. Petitions for writs of mandamus denied.

*Probable Jurisdiction Noted*

No. 88-1847. FORD MOTOR CREDIT CO., INC. *v.* DEPARTMENT OF REVENUE, STATE OF FLORIDA. Appeal from Dist. Ct. App. Fla., 1st Dist. Probable jurisdiction noted. Reported below: 537 So. 2d 1011.

*Certiorari Granted*

No. 89-680. JAMES B. BEAM DISTILLING CO. *v.* GEORGIA ET AL. Sup. Ct. Ga. Certiorari granted. Reported below: 259 Ga. 363, 382 S. E. 2d 95.

No. 89-1217. LEHNERT ET AL. *v.* FERRIS FACULTY ASSN. ET AL. C. A. 6th Cir. Certiorari granted. Reported below: 881 F. 2d 1388.

No. 89-1436. UNITED STATES *v.* R. ENTERPRISES, INC., ET AL. C. A. 4th Cir. Certiorari granted. Reported below: 884 F. 2d 772.

No. 89-1646. UNITED STATES ET AL. *v.* SMITH ET AL. C. A. 9th Cir. Certiorari granted. Reported below: 885 F. 2d 650.

*Certiorari Denied*

No. 89-1326. CROWDER, INDIVIDUALLY AND AS INDEPENDENT EXECUTRIX OF THE ESTATE OF CROWDER *v.* SINYARD ET

496 U. S.

June 11, 1990

AL. C. A. 5th Cir. Certiorari denied. Reported below: 884 F. 2d 804.

No. 89-1378. KLAVAN *v.* KLAVAN. Sup. Jud. Ct. Mass. Certiorari denied. Reported below: 405 Mass. 1105, 544 N. E. 2d 863.

No. 89-1405. TEMENGIL ET AL. *v.* TRUST TERRITORY OF THE PACIFIC ISLANDS ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 881 F. 2d 647.

No. 89-1461. GILMORE STEEL CORP., DBA OREGON STEEL MILLS, INC. *v.* NATIONAL LABOR RELATIONS BOARD. C. A. 9th Cir. Certiorari denied.

No. 89-1462. HAAS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 891 F. 2d 906.

No. 89-1471. BELL ET AL. *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 892 F. 2d 959.

No. 89-1476. SEATTLE-FIRST NATIONAL BANK *v.* NATIONAL LABOR RELATIONS BOARD ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 892 F. 2d 792.

No. 89-1486. ACKROYD *v.* FEDERAL DEPOSIT INSURANCE CORPORATION, AS RECEIVER FOR INDIAN SPRINGS STATE BANK. C. A. 10th Cir. Certiorari denied.

No. 89-1518. MATHER, TRUSTEE OF THE ESTATE IN BANKRUPTCY OF WATSON, ET AL. *v.* WEAVER ET AL. C. A. 10th Cir. Certiorari denied.

No. 89-1602. INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA, AFL-CIO *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 89-1606. MODEL MAGAZINE DISTRIBUTORS, INC. *v.* UNITED STATES ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 884 F. 2d 772.

No. 89-1618. BUCKLEY BROADCASTING CORPORATION OF CALIFORNIA, DBA STATION KKHI *v.* NATIONAL LABOR RELATIONS BOARD. C. A. 9th Cir. Certiorari denied. Reported below: 891 F. 2d 230.

June 11, 1990

496 U. S.

No. 89-1619. *RAFT, AKA RAFATDJAH v. CALIFORNIA*. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 89-1625. *CITY OF BURLINGTON ET AL. v. KAPLAN ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 891 F. 2d 1024.

No. 89-1628. *SHEFFIELD v. JOHNSON SEED CO., INC.* C. A. 5th Cir. Certiorari denied. Reported below: 892 F. 2d 76.

No. 89-1631. *WRENN v. WALINSKI, JUDGE, UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OHIO*. C. A. 6th Cir. Certiorari denied.

No. 89-1637. *SCHINDELAR v. ZAWADZKI ET AL.* Super. Ct. N. J., App. Div. Certiorari denied.

No. 89-1644. *TAYLOR v. NEW YORK*. App. Div., Sup. Ct. N. Y., 4th Jud. Dept. Certiorari denied. Reported below: 155 App. Div. 2d 980, 549 N. Y. S. 2d 619.

No. 89-1645. *MENDEL ET AL. v. SILVER*. C. A. 3d Cir. Certiorari denied. Reported below: 894 F. 2d 598.

No. 89-1653. *HEMMERLE v. BRAMALEA, INC., FKA BRAMALEA DEVELOPMENT U. S., LTD.* Dist. Ct. App. Fla., 4th Dist. Certiorari denied. Reported below: 547 So. 2d 203.

No. 89-1665. *KIRKLAND v. NORTHSIDE INDEPENDENT SCHOOL DISTRICT*. C. A. 5th Cir. Certiorari denied. Reported below: 890 F. 2d 794.

No. 89-1689. *O'MALLEY ET AL. v. O'NEILL ET AL.* C. A. 11th Cir. Certiorari denied. Reported below: 887 F. 2d 1557.

No. 89-1694. *DURA-CORP. v. STS D'APPOLONIA, LTD.* C. A. 3d Cir. Certiorari denied. Reported below: 898 F. 2d 142.

No. 89-1713. *LINDELL v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 881 F. 2d 1313.

No. 89-1748. *OREGON NATURAL RESOURCES COUNCIL v. MOHLA, SUPERVISOR, MT. HOOD NATIONAL FOREST, ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 895 F. 2d 627.



496 U. S.

June 11, 1990

No. 89-1753. *GARDNER v. COMMISSIONER OF INTERNAL REVENUE*. C. A. 6th Cir. Certiorari denied. Reported below: 895 F. 2d 1413.

No. 89-1767. *WILK ET AL. v. JOINT COMMISSION ON ACCREDITATION OF HOSPITALS ET AL.* C. A. 7th Cir. Certiorari denied. Reported below: 895 F. 2d 352.

No. 89-1785. *LAROCHE ET AL. v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 896 F. 2d 815.

No. 89-6581. *VINCENT v. CALIFORNIA*. Ct. App. Cal., 3d App. Dist. Certiorari denied.

No. 89-6715. *RINGSTAFF v. HOWARD, WARDEN, ET AL.* C. A. 11th Cir. Certiorari denied. Reported below: 885 F. 2d 1542.

No. 89-6757. *BOLES v. MICHIGAN*. Ct. App. Mich. Certiorari denied.

No. 89-6795. *MCCARTER v. CALIFORNIA*. Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 89-6832. *CRAWFORD v. UNITED STATES*. C. A. 10th Cir. Certiorari denied.

No. 89-6872. *DALY v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 883 F. 2d 313.

No. 89-6927. *OWENS-EL v. O'BRIEN ET AL.* C. A. 10th Cir. Certiorari denied.

No. 89-6964. *ARTERBURN v. UNITED STATES*. C. A. 10th Cir. Certiorari denied.

No. 89-6986. *ALEXANDER v. UNITED STATES*. C. A. 11th Cir. Certiorari denied. Reported below: 888 F. 2d 777.

No. 89-6990. *HERRERO ET AL. v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 893 F. 2d 1512.

No. 89-7003. *CLEMMONS v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 892 F. 2d 1153.

No. 89-7087. *PAREZ v. STATE BAR OF CALIFORNIA ET AL.* Sup. Ct. Cal. Certiorari denied.

June 11, 1990

496 U. S.

No. 89-7210. *DEMOS v. UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF WASHINGTON* (two cases). C. A. 9th Cir. Certiorari denied.

No. 89-7222. *CALLIS v. MURRAY, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS*. C. A. 4th Cir. Certiorari denied. Reported below: 898 F. 2d 144.

No. 89-7223. *ANDERSON v. MORRIS, SUPERINTENDENT, SOUTHERN OHIO CORRECTIONAL FACILITY*. C. A. 6th Cir. Certiorari denied.

No. 89-7224. *DOWNES v. COLLINS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION*. C. A. 5th Cir. Certiorari denied.

No. 89-7225. *BROWN v. HUGHES ET AL.* C. A. 11th Cir. Certiorari denied. Reported below: 894 F. 2d 1533.

No. 89-7226. *COOPER v. DUGGER, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS*. C. A. 11th Cir. Certiorari denied. Reported below: 896 F. 2d 558.

No. 89-7229. *QUINTANILLA v. TEXAS*. Ct. Crim. App. Tex. Certiorari denied.

No. 89-7230. *PERVELER v. SAN LUIS OBISPO COUNTY SUPERIOR COURT*. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 89-7232. *RITZIE v. CITY UNIVERSITY OF NEW YORK ET AL.* C. A. 2d Cir. Certiorari denied.

No. 89-7233. *TURNER v. KIRKLAND ET AL.* C. A. 10th Cir. Certiorari denied.

No. 89-7235. *PETERSON v. TANSY, WARDEN, ET AL.* C. A. 10th Cir. Certiorari denied.

No. 89-7239. *AMIRI v. DISTRICT OF COLUMBIA ET AL.* C. A. D. C. Cir. Certiorari denied. Reported below: 282 U. S. App. D. C. 193, 893 F. 2d 400.

No. 89-7250. *WILEY v. MCGRIFF*. Ct. App. Ind. Certiorari denied.

No. 89-7258. *SCOTT v. OFFICE OF PERSONNEL MANAGEMENT*. C. A. Fed. Cir. Certiorari denied. Reported below: 895 F. 2d 1420.

496 U. S.

June 11, 1990

No. 89-7262. *BAGBY v. SOWDERS, WARDEN*. C. A. 6th Cir. Certiorari denied. Reported below: 894 F. 2d 792.

No. 89-7264. *VAN STRATEN v. MILWAUKEE JOURNAL NEWS-PAPER PUBLISHER ET AL.* Ct. App. Wis. Certiorari denied. Reported below: 151 Wis. 2d 905, 447 N. W. 2d 105.

No. 89-7273. *JACKSON ET UX. v. DIXON-BOOKMAN*. Sup. Ct. Tex. Certiorari denied.

No. 89-7285. *COCHRAN v. TURNER, WARDEN*. C. A. 8th Cir. Certiorari denied.

No. 89-7295. *LEECAN v. LOPES, COMMISSIONER OF CORRECTION OF CONNECTICUT*. C. A. 2d Cir. Certiorari denied. Reported below: 893 F. 2d 1434.

No. 89-7297. *CROW v. SMITH ET AL.* Sup. Ct. Tex. Certiorari denied.

No. 89-7312. *COCHRANE v. UNITED STATES*. C. A. 1st Cir. Certiorari denied. Reported below: 896 F. 2d 635.

No. 89-7377. *WEXLER v. DEPARTMENT OF THE INTERIOR*. C. A. Fed. Cir. Certiorari denied. Reported below: 889 F. 2d 1099.

No. 89-7378. *DOZIER v. DEPARTMENT OF EDUCATION*. C. A. 9th Cir. Certiorari denied. Reported below: 892 F. 2d 1045.

No. 89-7386. *WASHINGTON v. COUGHLIN ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 902 F. 2d 1556.

No. 89-7388. *ARCHER v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 896 F. 2d 912.

No. 89-7392. *GRAY v. UNITED STATES*. C. A. 11th Cir. Certiorari denied. Reported below: 897 F. 2d 536.

No. 89-7393. *DELAP v. DUGGER, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS*. C. A. 11th Cir. Certiorari denied. Reported below: 890 F. 2d 285.

No. 89-7397. *JOHNSON v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 898 F. 2d 155.

No. 89-7403. *WARE v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 897 F. 2d 530.



June 11, 1990

496 U. S.

No. 89-7408. *SATURLEY v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 890 F. 2d 420.

No. 89-7409. *WARE v. UNITED STATES*. C. A. 10th Cir. Certiorari denied. Reported below: 897 F. 2d 1538.

No. 89-7412. *ROACHE v. UNITED STATES*. C. A. 10th Cir. Certiorari denied.

No. 89-7421. *GOODALLE v. UNITED STATES*. Ct. App. D. C. Certiorari denied.

No. 89-7433. *DOWDY v. UNITED STATES*. C. A. 11th Cir. Certiorari denied. Reported below: 897 F. 2d 536.

No. 89-7437. *GONZALEZ v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 902 F. 2d 1557.

No. 89-7438. *COLBERT ET AL. v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 898 F. 2d 138.

No. 89-7441. *BARROSO v. UNITED STATES*. C. A. 11th Cir. Certiorari denied. Reported below: 896 F. 2d 557.

No. 89-7448. *MCCOLLIN v. UNITED STATES*. C. A. 11th Cir. Certiorari denied. Reported below: 900 F. 2d 265.

No. 89-7462. *CLARKE v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 898 F. 2d 148.

No. 89-7463. *PADILLA v. UNITED STATES*. C. A. 10th Cir. Certiorari denied.

No. 89-7465. *DANIELS v. UNITED STATES*. C. A. 10th Cir. Certiorari denied. Reported below: 897 F. 2d 1538.

No. 89-7485. *ROBERTS v. UNITED STATES*. C. A. 8th Cir. Certiorari denied.

No. 89-1300. *SMITH v. LOUISIANA*. Ct. App. La., 4th Cir. Certiorari denied. JUSTICE BRENNAN and JUSTICE MARSHALL would grant the petition for writ of certiorari and reverse the judgment of conviction. Reported below: 543 So. 2d 555.

No. 89-1609. *TERRITORY OF GUAM v. IBANEZ*; *TERRITORY OF GUAM v. CASTRO*; *TERRITORY OF GUAM v. DALMAL*; and *TERRITORY OF GUAM v. BOTELHO*. C. A. 9th Cir. Motion of respondent Ibanez for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 880 F. 2d 108 (first case); 883 F. 2d 1024 (second and third cases); 896 F. 2d 555 (fourth case).

496 U. S.

June 11, 1990

No. 89-1623. *GARDNER v. NEWSDAY, INC.* C. A. 2d Cir. Certiorari denied. JUSTICE BRENNAN, JUSTICE WHITE, and JUSTICE BLACKMUN would grant certiorari. Reported below: 895 F. 2d 74.

No. 89-1627. *BATCH v. TOWN OF CHAPEL HILL, NORTH CAROLINA.* Sup. Ct. N. C. Motions of Pacific Legal Foundation and National Association of Home Builders for leave to file briefs as *amici curiae* granted. Certiorari denied. Reported below: 326 N. C. 1, 387 S. E. 2d 655.

No. 89-1651. *EUGENE D., A MINOR, BY AND THROUGH HIS MOTHER AND NEXT FRIEND, OLIVIA D. v. KARMAN ET AL.* C. A. 6th Cir. Certiorari denied. JUSTICE BLACKMUN would grant certiorari. Reported below: 889 F. 2d 701.

No. 89-6223. *BITTAKER v. CALIFORNIA.* Sup. Ct. Cal.;  
No. 89-6886. *RUIZ v. ILLINOIS.* Sup. Ct. Ill.;  
No. 89-7056. *BLACKMON v. TEXAS.* Ct. Crim. App. Tex.;  
No. 89-7201. *COLEMAN v. OKLAHOMA.* Ct. Crim. App. Okla.;  
No. 89-7253. *ELMORE v. SOUTH CAROLINA.* Sup. Ct. S. C.;  
and

No. 89-7275. *MCCOLLUM v. INDIANA.* Sup. Ct. Ind. Certiorari denied. Reported below: No. 89-6223, 48 Cal. 3d 1046, 774 P. 2d 659; No. 89-6886, 132 Ill. 2d 1, 547 N. E. 2d 170; No. 89-7056, 775 S. W. 2d 649; No. 89-7253, 300 S. C. 130, 386 S. E. 2d 769; No. 89-7275, 533 N. E. 2d 1215.

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. 89-7289. *MERRILL v. MINNESOTA.* Sup. Ct. Minn. Motion of Minnesota Civil Liberties Union for leave to file a brief as *amicus curiae* granted. Certiorari denied. Reported below: 450 N. W. 2d 318.

#### *Rehearing Denied*

No. 89-1376. *POLYAK v. HULEN ET AL.*; *POLYAK v. HULEN ET AL.*; *POLYAK v. HAMILTON*; and *POLYAK v. BUFORD EVANS & SONS*, 495 U. S. 904;



June 11, 16, 1990

496 U. S.

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., 495 U. S. 905;

No. 89-5855. RASHE *v.* SCHWARZER, 493 U. S. 1047;

No. 89-6431. MORRISON *v.* ALABAMA, 495 U. S. 911;

No. 89-6500. BOUDREAU *v.* COLLINS, SUPERINTENDENT, MOORE CORRECTIONAL INSTITUTION, ET AL., 495 U. S. 920;

No. 89-6725. JUSTICE *v.* CITY OF COLUMBUS ET AL., 494 U. S. 1069;

No. 89-6745. TARVER *v.* ALABAMA, 494 U. S. 1090;

No. 89-6760. JAYME *v.* BOARD OF VETERANS APPEALS ET AL., 495 U. S. 906;

No. 89-6770. ANA LEON T. *v.* FEDERAL RESERVE BANK OF CHICAGO ET AL., 494 U. S. 1086;

No. 89-6826. SIMON *v.* BETHLEHEM STEEL CORP. ET AL., 495 U. S. 907;

No. 89-6828. ROTMAN *v.* WORCESTER POLICE DEPARTMENT ET AL., 495 U. S. 907;

No. 89-6839. IN RE MARTIN, 495 U. S. 920;

No. 89-6844. BRENNAN *v.* BRENNAN ET AL., 495 U. S. 907;

No. 89-6854. SANFORD *v.* ALAMEDA-CONTRA COSTA TRANSIT DISTRICT ET AL., 495 U. S. 907;

No. 89-6894. JUSTICE *v.* REDA ET AL., 495 U. S. 908;

No. 89-6934. WEEKLY *v.* STORY, WARDEN, ET AL., 495 U. S. 935;

No. 89-7001. DIAZ *v.* UNITED STATES ET AL., 495 U. S. 909; and

No. 89-7013. LAWRENCE *v.* TEXAS EMPLOYMENT COMMISSION, 495 U. S. 937. Petitions for rehearing denied.

No. 89-1252. BASALYGA ET AL. *v.* PENNSYLVANIA ET AL., 494 U. S. 1017. Petition of Vicki Wittenbreder for rehearing denied. Petition of Gene Basalyga for rehearing denied.

JUNE 16, 1990

*Miscellaneous Order*

No. A-901. SWINDLER *v.* LOCKHART, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION. Application for stay of execution of sentence of death, presented to JUSTICE BLACKMUN, and by him referred to the Court, denied.

496 U. S.

June 16, 18, 1990

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.

JUNE 18, 1990

*Certiorari Granted—Vacated and Remanded*

No. 89-1221. MICHIGAN *v.* MOORE. Ct. App. Mich. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Horton v. California*, *ante*, p. 128.

No. 89-1701. MASTERS *v.* DANIEL INTERNATIONAL CORP. C. A. 10th Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *English v. General Electric Co.*, *ante*, p. 72. Reported below: 895 F. 2d 1295.

*Miscellaneous Orders*

No. — — —. POLYAK *v.* STACK ET AL. Motion to direct the Clerk to docket an appeal from the United States District Court for the Middle District of Tennessee denied.

No. — — —. FINNEY *v.* KEMP, WARDEN. Motion for leave to proceed *in forma pauperis* without an affidavit of indigency executed by the petitioner granted.

No. A-875. SEELIG ET AL. *v.* KOEHLER, CORRECTION COMMISSIONER OF THE CITY OF NEW YORK, ET AL. Application for stay of enforcement of random urinalysis drug-testing program, presented to JUSTICE MARSHALL, and by him referred to the Court, denied.

No. D-872. IN RE DISBARMENT OF JOYCE. Disbarment entered. [For earlier order herein, see 494 U. S. 1014.]

No. D-877. IN RE DISBARMENT OF SOLERWITZ. Disbarment entered. [For earlier order herein, see 494 U. S. 1024.]

No. D-880. IN RE DISBARMENT OF JACKSON. Disbarment entered. [For earlier order herein, see 494 U. S. 1052.]

June 18, 1990

496 U. S.

No. D-890. IN RE DISBARMENT OF HANCOCK. Disbarment entered. [For earlier order herein, see 494 U. S. 1076.]

No. D-893. IN RE DISBARMENT OF AULVIN. John Lewis Aulvin, of Mount Carmel, Ill., having requested to resign as a member of the Bar of this Court, it is ordered that his name be stricken from the roll of attorneys admitted to practice before the Bar of this Court. The rule to show cause, heretofore issued on April 23, 1990 [495 U. S. 901], is hereby discharged.

No. D-896. IN RE DISBARMENT OF JOHNSON. Charles B. Johnson, of Pasadena, Cal., having requested to resign as a member of the Bar of this Court, it is ordered that his name be stricken from the roll of attorneys admitted to practice before the Bar of this Court. The rule to show cause, heretofore issued on April 23, 1990 [495 U. S. 902], is hereby discharged.

No. D-912. IN RE DISBARMENT OF BROCKMEIER. It is ordered that Frederick Brockmeier IV, of Southgate, Ky., be suspended from the practice of law in this Court and that a rule issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. 89-1283. ARCADIA, OHIO, ET AL. *v.* OHIO POWER CO. ET AL. C. A. D. C. Cir. [Certiorari granted, 494 U. S. 1055.] Motion of the Acting Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 89-1667. PALMER ET AL. *v.* BRG OF GEORGIA, INC., ET AL. C. A. 11th Cir. The Solicitor General is invited to file a brief in this case expressing the views of the United States.

No. 89-5120. PERRY *v.* LOUISIANA. 19th Jud. Dist. Ct., Crim. Section V, Parish of East Baton Rouge, La. [Certiorari granted, 494 U. S. 1015.] Motion of American Psychiatric Association et al. for leave to participate in oral argument as *amici curiae* and for divided argument denied.

No. 89-7063. LANDES *v.* JOOST. C. A. 3d Cir.; and

No. 89-7300. BRITTON *v.* CENTRAL BANK. Ct. App. La., 2d Cir. Motions of petitioners for leave to proceed *in forma pauperis* denied. Petitioners are allowed until July 9, 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.



496 U. S.

June 18, 1990

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. 89-7498. IN RE DEMOS. Petition for writ of habeas corpus denied.

*Certiorari Granted*

No. 89-1330. INTERNATIONAL ORGANIZATION OF MASTERS, MATES & PILOTS ET AL. *v.* BROWN. C. A. 4th Cir. Certiorari granted. Reported below: 889 F. 2d 58.

No. 89-1671. CITY OF COLUMBIA ET AL. *v.* OMNI OUTDOOR ADVERTISING, INC. C. A. 4th Cir. Certiorari granted. Reported below: 891 F. 2d 1127.

No. 89-1793. UNITED STATES *v.* GAUBERT. C. A. 5th Cir. Certiorari granted. Reported below: 885 F. 2d 1284.

No. 89-1474. McDERMOTT INTERNATIONAL, INC. *v.* WILANDER. C. A. 5th Cir. Certiorari granted limited to Question 1 presented by the petition. Reported below: 887 F. 2d 88.

No. 89-1679. SUMMIT HEALTH, LTD., ET AL. *v.* PINHAS. C. A. 9th Cir. Certiorari granted limited to Question 1 presented by the petition. Reported below: 894 F. 2d 1024.

No. 89-7370. GOZLON-PERETZ *v.* UNITED STATES. C. A. 3d Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted limited to the following question: "Whether the mandatory minimum terms of supervised release required by the Anti-Drug Abuse Act of 1986 became effective for offenses committed on or after the date of enactment, October 27, 1986." Reported below: 894 F. 2d 1402.

*Certiorari Denied*

No. 89-469. JENNINGS, INDIVIDUALLY AND AS NEXT FRIEND OF JENNINGS, A MINOR *v.* JOSHUA INDEPENDENT SCHOOL DISTRICT ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 877 F. 2d 313.

No. 89-682. COLORADO DEPARTMENT OF SOCIAL SERVICES ET AL. *v.* AMISUB (PSL), DBA AMI ST. LUKE'S HOSPITAL, INC., ET

June 18, 1990

496 U. S.

AL. C. A. 10th Cir. Certiorari denied. Reported below: 879 F. 2d 789.

No. 89-1078. CASEY, GOVERNOR OF PENNSYLVANIA, ET AL. *v.* WEST VIRGINIA UNIVERSITY HOSPITALS, INC. C. A. 3d Cir. Certiorari denied. Reported below: 885 F. 2d 11.

No. 89-1104. ALCAN FOIL PRODUCTS DIVISION OF ALCAN ALUMINUM CORP. *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 889 F. 2d 1513.

No. 89-1148. DUTHU ET AL. *v.* SULLIVAN, SECRETARY OF HEALTH AND HUMAN SERVICES. C. A. 5th Cir. Certiorari denied. Reported below: 886 F. 2d 97.

No. 89-1305. HOWELL ET AL. *v.* SUPREME COURT OF TEXAS ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 885 F. 2d 308.

No. 89-1360. DEVORE *v.* KERR ET AL. C. A. 10th Cir. Certiorari denied.

No. 89-1396. SOUTHERN PACIFIC TRANSPORTATION Co. *v.* EVANS. Ct. App. Cal., 2d App. Dist. Certiorari denied. Reported below: 213 Cal. App. 3d 1378, 262 Cal. Rptr. 416.

No. 89-1464. NOBLE *v.* TENNESSEE VALLEY AUTHORITY. C. A. Fed. Cir. Certiorari denied. Reported below: 892 F. 2d 1013.

No. 89-1484. INVESTMENT COMPANY INSTITUTE *v.* SECURITIES AND EXCHANGE COMMISSION;

No. 89-1502. AMERICAN STOCK EXCHANGE, INC., ET AL. *v.* CHICAGO MERCANTILE EXCHANGE ET AL.; and

No. 89-1503. PHILADELPHIA STOCK EXCHANGE, INC. *v.* CHICAGO MERCANTILE EXCHANGE ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 883 F. 2d 537.

No. 89-1501. NATIONAL FEDERATION OF FEDERAL EMPLOYEES ET AL. *v.* CHENEY, SECRETARY OF DEFENSE, ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 280 U. S. App. D. C. 94, 883 F. 2d 1038.

No. 89-1549. LEE ET AL. *v.* FEDERAL DEPOSIT INSURANCE CORPORATION. C. A. 9th Cir. Certiorari denied. Reported below: 884 F. 2d 1304.

496 U. S.

June 18, 1990

No. 89-1550. *PENDERGRASS v. TENNESSEE*. Ct. Crim. App. Tenn. Certiorari denied. Reported below: 795 S. W. 2d 150.

No. 89-1563. *WILLIAMS ET AL. v. STONE*. C. A. 2d Cir. Certiorari denied. Reported below: 891 F. 2d 401.

No. 89-1572. *DENNISON ET AL. v. UNITED STATES*. C. A. 10th Cir. Certiorari denied. Reported below: 891 F. 2d 255.

No. 89-1630. *SOLARO v. CASALINOVA*. Ct. App. Ohio, Summit County. Certiorari denied.

No. 89-1652. *NORTH VALLEY BAPTIST CHURCH v. MCMAHON, DIRECTOR, CALIFORNIA STATE DEPARTMENT OF SOCIAL SERVICES*. C. A. 9th Cir. Certiorari denied. Reported below: 893 F. 2d 1139.

No. 89-1655. *PHILLIPS v. OHIO*. Ct. App. Ohio, Summit County. Certiorari denied.

No. 89-1657. *TILLIMON v. OHIO*. Ct. App. Ohio, Lucas County. Certiorari denied.

No. 89-1658. *DOMBROSKI v. PEABODY ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 892 F. 2d 772.

No. 89-1670. *SOTO v. NEW JERSEY ET AL.* Super. Ct. N. J., App. Div. Certiorari denied. Reported below: 236 N. J. Super. 303, 565 A. 2d 1088.

No. 89-1676. *VON SCHNEIDAU v. LONG ET AL.* Ct. App. La., 1st Cir. Certiorari denied. Reported below: 551 So. 2d 75.

No. 89-1678. *TULLER-PARK AVENUE, LTD. v. CITY OF DETROIT*. Cir. Ct. Mich., Wayne County. Certiorari denied.

No. 89-1680. *TRUSTEES OF BOSTON UNIVERSITY v. BROWN*. C. A. 1st Cir. Certiorari denied. Reported below: 891 F. 2d 337.

No. 89-1682. *STALHEIM v. ALBERT LEA MEDICAL SURGICAL CENTER, LTD., ET AL.* C. A. 8th Cir. Certiorari denied. Reported below: 902 F. 2d 1575.

No. 89-1684. *KRUSO ET AL. v. ITT CORP. ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 872 F. 2d 1416.



June 18, 1990

496 U. S.

No. 89-1685. *MICHIGAN v. GRZEGORCZYK*. Ct. App. Mich. Certiorari denied. Reported below: 178 Mich. App. 1, 443 N. W. 2d 816.

No. 89-1686. *SCHWEGMANN GIANT SUPER MARKETS ET AL. v. ROEMER, GOVERNOR OF LOUISIANA, ET AL.* Ct. App. La., 1st Cir. Certiorari denied. Reported below: 552 So. 2d 1241.

No. 89-1693. *NORTON v. NICHOLSON ET AL.* App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 187 Ill. App. 3d 1046, 543 N. E. 2d 1053.

No. 89-1699. *HAMM ET AL. v. NORRED ET AL.* C. A. 11th Cir. Certiorari denied. Reported below: 874 F. 2d 766 and 893 F. 2d 293.

No. 89-1727. *SAPIA v. CHARTER MARKETING CO. ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 895 F. 2d 1411.

No. 89-1729. *TAPP v. FRANK, POSTMASTER GENERAL.* C. A. 6th Cir. Certiorari denied. Reported below: 893 F. 2d 1335.

No. 89-1745. *EANES v. MARYLAND.* Ct. App. Md. Certiorari denied. Reported below: 318 Md. 436, 569 A. 2d 604.

No. 89-1768. *SHIPLEY ET UX. v. FIRST FEDERAL SAVINGS & LOAN ASSOCIATION OF DELAWARE ET AL.* C. A. 3d Cir. Certiorari denied. Reported below: 877 F. 2d 57.

No. 89-1777. *RAMIREZ v. UNITED STATES.* C. A. 5th Cir. Certiorari denied. Reported below: 897 F. 2d 526.

No. 89-1780. *DEBONIS v. CORBISIERO ET AL.* App. Div., Sup. Ct. N. Y., 1st Jud. Dept. Certiorari denied. Reported below: 155 App. Div. 2d 299, 547 N. Y. S. 2d 274.

No. 89-1801. *AROCENA v. UNITED STATES.* C. A. 2d Cir. Certiorari denied. Reported below: 902 F. 2d 1556.

No. 89-1805. *WILLIAMSON v. UNITED STATES.* C. A. 5th Cir. Certiorari denied. Reported below: 897 F. 2d 527.

No. 89-6444. *QUARLES v. LAPPE ET AL.* C. A. 3d Cir. Certiorari denied.

No. 89-6735. *MEDEIROS v. SHIMODA, ADMINISTRATOR, OAHU COMMUNITY CORRECTIONAL CENTER, ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 889 F. 2d 819.

496 U. S.

June 18, 1990

No. 89-6758. *SMITH v. PENNSYLVANIA*. Super. Ct. Pa. Certiorari denied. Reported below: 389 Pa. Super. 653, 560 A. 2d 830.

No. 89-6780. *BRYANT v. UNITED STATES*. C. A. 10th Cir. Certiorari denied. Reported below: 892 F. 2d 1466.

No. 89-6848. *HERNANDEZ v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 891 F. 2d 296.

No. 89-6906. *MCCARTHY v. WARDEN, CONNECTICUT STATE PRISON*. Sup. Ct. Conn. Certiorari denied. Reported below: 213 Conn. 289, 567 A. 2d 1187.

No. 89-6919. *TIMMONS v. FLORIDA*. Dist. Ct. App. Fla., 2d Dist. Certiorari denied. Reported below: 548 So. 2d 255.

No. 89-6933. *MUMLEY v. VERMONT*. Sup. Ct. Vt. Certiorari denied. Reported below: 153 Vt. 304, 571 A. 2d 44.

No. 89-6965. *SWEENEY v. DOE ET AL.* C. A. 2d Cir. Certiorari denied.

No. 89-7030. *MUSGRAVES v. UNITED STATES*. C. A. 11th Cir. Certiorari denied. Reported below: 896 F. 2d 557.

No. 89-7038. *WILLIAMS v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 892 F. 2d 296.

No. 89-7062. *JACKSON v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 891 F. 2d 1151.

No. 89-7071. *HUDSON v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 884 F. 2d 1016.

No. 89-7108. *BARBARO v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 897 F. 2d 520.

No. 89-7110. *KNAPP v. MASCHNER ET AL.* C. A. 10th Cir. Certiorari denied.

No. 89-7134. *BARRY v. UNITED STATES*. C. A. 10th Cir. Certiorari denied. Reported below: 895 F. 2d 702.

No. 89-7203. *DELUCA v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 889 F. 2d 503.

June 18, 1990

496 U. S.

No. 89-7245. *HERNANDEZ v. MUNICIPAL COURT OF THE LOS ANGELES JUDICIAL DISTRICT*. Sup. Ct. Cal. Certiorari denied. Reported below: 49 Cal. 3d 713, 781 P. 2d 547.

No. 89-7259. *FLUKER v. TOWNSEND*. Sup. Ct. Ga. Certiorari denied.

No. 89-7261. *QUARLES v. BRADLEY, PRESIDENT JUDGE OF THE COMMON PLEAS COURT OF PHILADELPHIA COUNTY*. C. A. 3d Cir. Certiorari denied. Reported below: 897 F. 2d 523.

No. 89-7266. *SINDRAM v. DISTRICT OF COLUMBIA ET AL.* Ct. App. D. C. Certiorari denied.

No. 89-7276. *NORA v. DIRECTOR, LAWYERS BOARD OF PROFESSIONAL RESPONSIBILITY FOR MINNESOTA*. Sup. Ct. Minn. Certiorari denied. Reported below: 450 N. W. 2d 328.

No. 89-7277. *MCCOLPIN v. CITY OF WICHITA ET AL.* C. A. 10th Cir. Certiorari denied.

No. 89-7278. *SNETHEN v. NIX, WARDEN*. C. A. 8th Cir. Certiorari denied. Reported below: 885 F. 2d 456.

No. 89-7286. *BROWN v. OFFICE OF PERSONNEL MANAGEMENT*. C. A. Fed. Cir. Certiorari denied. Reported below: 895 F. 2d 1421.

No. 89-7291. *JONES v. NORTH CAROLINA DEPARTMENT OF TRANSPORTATION, DIVISION OF MOTOR VEHICLES*. C. A. 4th Cir. Certiorari denied. Reported below: 894 F. 2d 402.

No. 89-7293. *KLACSMANN v. GREENBLUM*. C. A. 11th Cir. Certiorari denied.

No. 89-7299. *CHERRY v. IOWA*. Sup. Ct. Iowa. Certiorari denied.

No. 89-7304. *BIRR v. SHILLINGER, WARDEN, ET AL.* C. A. 10th Cir. Certiorari denied. Reported below: 894 F. 2d 1160.

No. 89-7305. *BENNETT v. HUFF ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 899 F. 2d 12.

No. 89-7309. *SOUTHERLAND v. CROCKER*. C. A. 6th Cir. Certiorari denied. Reported below: 887 F. 2d 265.



496 U. S.

June 18, 1990

No. 89-7315. *BROWN v. TAYLOR ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 894 F. 2d 1336.

No. 89-7321. *FAVORS v. ZANATY, CIRCUIT JUDGE, ALABAMA, ET AL.* C. A. 11th Cir. Certiorari denied.

No. 89-7323. *ROSA R., ON HER OWN BEHALF AND AS PARENT AND NEXT FRIEND OF HER MINOR CHILD, EDWARD R. v. CONNELLY ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 889 F. 2d 435.

No. 89-7324. *McFADDEN v. MISSISSIPPI.* Sup. Ct. Miss. Certiorari denied.

No. 89-7325. *McBRIDE v. COLLINS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION, ET AL.* C. A. 5th Cir. Certiorari denied.

No. 89-7326. *HOOKS v. LYNN, SECRETARY, LOUISIANA DEPARTMENT OF CORRECTIONS.* C. A. 5th Cir. Certiorari denied.

No. 89-7329. *KLACSMANN v. PRESLEY.* C. A. 11th Cir. Certiorari denied.

No. 89-7333. *KEMP v. CALIFORNIA.* Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 89-7334. *MARTINEZ v. HENSLEY, JUDGE, NINTH JUDICIAL DISTRICT COURT, ET AL.* C. A. 10th Cir. Certiorari denied.

No. 89-7335. *BRANSON v. GTE COMMUNICATIONS SYSTEMS CORP. ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 891 F. 2d 294.

No. 89-7343. *BESTER v. UNITED STATES.* C. A. 8th Cir. Certiorari denied. Reported below: 894 F. 2d 1340.

No. 89-7360. *HOLE v. PRELESNIK, WARDEN.* C. A. 6th Cir. Certiorari denied. Reported below: 894 F. 2d 1336.

No. 89-7361. *MASON v. UNITED STATES.* C. A. 6th Cir. Certiorari denied. Reported below: 897 F. 2d 530.

No. 89-7367. *WILLIFORD v. UNITED STATES.* C. A. 5th Cir. Certiorari denied. Reported below: 896 F. 2d 550.

June 18, 1990

496 U. S.

No. 89-7382. *DEMELO v. DEPARTMENT OF THE ARMY*. C. A. Fed. Cir. Certiorari denied. Reported below: 892 F. 2d 1051.

No. 89-7390. *BATES v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 896 F. 2d 912.

No. 89-7400. *CHILES v. MCCASKILL ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 894 F. 2d 405.

No. 89-7402. *FASSLER v. UNITED STATES*. C. A. 5th Cir. Certiorari denied.

No. 89-7427. *SOMYK v. ARIZONA*. Ct. App. Ariz. Certiorari denied.

No. 89-7443. *MOELLER v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 896 F. 2d 544.

No. 89-7451. *BARNARD v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 895 F. 2d 1418.

No. 89-7469. *CAMPOS v. UNITED STATES*. C. A. 11th Cir. Certiorari denied. Reported below: 900 F. 2d 265.

No. 89-7475. *CALVO v. SECURITIES AND EXCHANGE COMMISSION*. C. A. 2d Cir. Certiorari denied. Reported below: 891 F. 2d 457.

No. 89-7483. *STEFENEL v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 898 F. 2d 157.

No. 89-7494. *FIGUEROA ET AL. v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 900 F. 2d 1211.

No. 89-7509. *HUNT v. THOMPSON ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 895 F. 2d 1413.

No. 89-7619. *HART v. OHIO*. Ct. App. Ohio, Summit County. Certiorari denied.

No. 89-1445. *COMMISSIONER OF CORRECTIONS OF STATE OF NEW YORK ET AL. v. FULLAN*. C. A. 2d Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 891 F. 2d 1007.

No. 89-1662. *CASTILLE, DISTRICT ATTORNEY OF PHILADELPHIA COUNTY, ET AL. v. CLARK*. C. A. 3d Cir. Motion of

496 U. S.

June 18, 1990

respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 892 F. 2d 1142.

No. 89-1538. WILLIAMS *v.* STONE. Sup. Ct. Ala. Motion of American Council on Education for leave to file a brief as *amicus curiae* granted. Certiorari denied. Reported below: 554 So. 2d 346.

No. 89-1659. SCHNEIDER ET AL. *v.* APPLE COMPUTER, INC., ET AL. C. A. 9th Cir. Motion of National Association of Securities and Commercial Law Attorneys for leave to file a brief as *amicus curiae* granted. Certiorari denied. Reported below: 886 F. 2d 1109.

No. 89-1677. KEATING ET AL. *v.* CINEMA 7, INC., ET AL. Sup. Ct. Cal. Motion of petitioners for leave to intervene in order to file a petition for writ of certiorari denied. Certiorari denied.

No. 89-1718. BANQUE DE PARIS ET DES PAYS-BAS *v.* EXXON CO., U. S. A., A DIVISION OF EXXON CORP. C. A. 5th Cir. Motion of American Bankers Association for leave to file a brief as *amicus curiae* granted. Certiorari denied. Reported below: 889 F. 2d 674.

No. 89-7314. WHISENHANT *v.* ALABAMA. Sup. Ct. Ala. Certiorari denied. Reported below: 555 So. 2d 235.

JUSTICE BRENNAN and JUSTICE MARSHALL, dissenting.

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

*Rehearing Denied*

No. 89-6858. COLLIER *v.* UNITED STATES POSTAL SERVICE ET AL., 495 U. S. 935;

No. 89-6880. CONLEY *v.* WASHINGTON, 495 U. S. 920;

No. 89-6904. CONLEY *v.* WASHINGTON, 495 U. S. 921;

No. 89-7012. SHERRILLS *v.* WILSON ET AL., 495 U. S. 937; and

No. 89-7133. HOLLAND *v.* UNITED STATES, 495 U. S. 939. Petitions for rehearing denied.



June 18, 19, 20, 1990

496 U. S.

No. 89-6665. *RODMAN v. WILSON, DIRECTOR, OHIO DEPARTMENT OF REHABILITATION AND CORRECTION, ET AL.*, 494 U. S. 1084. Motion for leave to file petition for rehearing denied.

JUNE 19, 1990

*Dismissals Under Rule 46*

No. 89-7503. *ANDERSON v. COLLINS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION*. C. A. 5th Cir. Certiorari dismissed under this Court's Rule 46. Reported below: 903 F. 2d 825.

No. 89-7519. *ANDERSON v. COLLINS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION*. Ct. Crim. App. Tex. Certiorari dismissed under this Court's Rule 46.

JUNE 20, 1990

*Dismissal Under Rule 46*

No. 89-579. *CHARTER CO. v. CERTIFIED CLASS IN THE CHARTER SECURITIES LITIGATION ET AL.* C. A. 11th Cir. Certiorari dismissed under this Court's Rule 46. Reported below: 876 F. 2d 866.