

ORDERS FOR JUNE 25 THROUGH
SEPTEMBER 28, 1990

Certiorari Granted—Vacated and Remanded. (See also No. 89-6985, *ante*, p. 543.)

No. 89-761. RICE *v.* OHIO DEPARTMENT OF TRANSPORTATION ET AL. C. A. 6th Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Rutan v. Republican Party of Ill.*, *ante*, p. 62. Reported below: 887 F. 2d 716.

No. 89-936. INF, LTD. *v.* SPECTRO ALLOYS CORP. C. A. 8th Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Maislin Industries, U. S., Inc. v. Primary Steel, Inc.*, *ante*, p. 116. Reported below: 881 F. 2d 546.

No. 89-944. GEORGIA *v.* STEWART ET UX. Ct. App. Ga. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Illinois v. Rodriguez*, *ante*, p. 177. JUSTICE STEVENS dissents. Reported below: 191 Ga. App. 750, 382 S. E. 2d 677.

No. 89-1575. VASTOLA ET AL. *v.* UNITED STATES. C. A. 3d Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *United States v. Ojeda Rios*, 495 U. S. 257 (1990). Reported below: 899 F. 2d 211.

No. 89-5849. MESSER ET AL. *v.* CURCI ET AL. C. A. 6th Cir. Motion of petitioners for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Rutan v. Republican Party of Ill.*, *ante*, p. 62. Reported below: 881 F. 2d 219.

Miscellaneous Orders

No. A-850 (89-1947). GRAHAM *v.* WERNZ. Sup. Ct. Minn. Application for stay, addressed to JUSTICE BRENNAN and referred to the Court, denied.

No. D-868. IN RE DISBARMENT OF MOLONY. Disbarment entered. [For earlier order herein, see 494 U. S. 1002.]

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No. D-871. IN RE DISBARMENT OF PRICE. Disbarment entered. [For earlier order herein, see 494 U. S. 1002.]

No. D-885. IN RE DISBARMENT OF SANDERS. Disbarment order amended. [See 495 U. S. 954.]

No. D-895. IN RE DISBARMENT OF DINEFF. Disbarment entered. [For earlier order herein, see 495 U. S. 902.]

No. D-913. IN RE DISBARMENT OF WILLIAMS. It is ordered that Isaiah White Williams, of St. Petersburg, Fla., be suspended from the practice of law in this Court and that a rule issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D-914. IN RE DISBARMENT OF WATKINS. It is ordered that William W. Watkins, Sr., of Columbia, S. 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. 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, 495 U. S. 956.] Motion of Alan Ernest for leave to represent children unborn and born alive denied. Motion of Legal Defense for Unborn Children for leave to file a brief as *amicus curiae* denied.

No. 89-5900. RUST v. GUNTER ET AL., 496 U. S. 914. Motion of Alvin J. Bronstein for reimbursement of travel expenses granted.

No. 89-7347. IN RE BROOKS. Petition for writ of prohibition denied.

Certiorari Granted

No. 89-1500. BUSINESS GUIDES, INC. v. CHROMATIC COMMUNICATIONS ENTERPRISES, INC., ET AL. C. A. 9th Cir. Certiorari granted. Reported below: 892 F. 2d 802.

No. 89-1541. DOLE, SECRETARY OF LABOR v. OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION ET AL. C. A. 10th Cir. Certiorari granted. Reported below: 891 F. 2d 1495.

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Certiorari Denied

No. 89-56. ALLEVATO, PERSONAL REPRESENTATIVE OF THE ESTATE OF FERRANTINO, ET AL. *v.* COUNTY OF OAKLAND ET AL.;

No. 89-79. CITY OF DETROIT *v.* COUNTY OF OAKLAND ET AL.; and

No. 89-101. YOUNG, MAYOR OF THE CITY OF DETROIT *v.* COUNTY OF OAKLAND ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 866 F. 2d 839.

No. 89-933. CARPENTER ET AL. *v.* THOMAS. C. A. 9th Cir. Certiorari denied. Reported below: 881 F. 2d 828.

No. 89-1287. JACQUIN *v.* STENZIL, WARDEN. C. A. 2d Cir. Certiorari denied. Reported below: 886 F. 2d 506.

No. 89-1296. OKLAHOMA NATURAL GAS CO. *v.* WILLIAMS NATURAL GAS CO. ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 890 F. 2d 255.

No. 89-1377. JOHNSTON *v.* TEXAS. Ct. App. Tex., 14th Dist. Certiorari denied.

No. 89-1413. HERNANDEZ-ESCARSEGA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 886 F. 2d 1560.

No. 89-1511. AMERICAN MINING CONGRESS ET AL. *v.* UNITED STATES ENVIRONMENTAL PROTECTION AGENCY ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 280 U. S. App. D. C. 373, 886 F. 2d 390.

No. 89-1527. RAILWAY LABOR EXECUTIVES' ASSN. ET AL. *v.* CHICAGO & NORTH WESTERN TRANSPORTATION CO. ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 890 F. 2d 1024.

No. 89-1611. REESE *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 389 Pa. Super. 652, 560 A. 2d 829.

No. 89-1617. BERNARD ET AL. *v.* GULF OIL CORP. ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 890 F. 2d 735.

No. 89-1641. NEWS/SUN SENTINEL CO. *v.* NATIONAL LABOR RELATIONS BOARD ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 281 U. S. App. D. C. 313, 890 F. 2d 430.

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No. 89-1660. *CASTIGLIA v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 894 F. 2d 533.

No. 89-1674. *CAROTA v. CELOTEX CORP.* C. A. 1st Cir. Certiorari denied. Reported below: 893 F. 2d 448.

No. 89-1687. *COMMUNICATIONS SATELLITE CORP. v. FEDERAL COMMUNICATIONS COMMISSION ET AL.* C. A. D. C. Cir. Certiorari denied.

No. 89-1688. *GATES v. MICHIGAN*. Sup. Ct. Mich. Certiorari denied. Reported below: 434 Mich. 146, 452 N. W. 2d 627.

No. 89-1695. *LAW ENGINEERING, INC. v. GEORGETOWN STEEL CORP. ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 892 F. 2d 1041.

No. 89-1702. *MENNEN CO. ET AL. v. MARTIN*. C. A. 3d Cir. Certiorari denied. Reported below: 898 F. 2d 141.

No. 89-1703. *SNYDER v. LEWIS, SECRETARY OF THE COMMONWEALTH OF PENNSYLVANIA*. Sup. Ct. Pa. Certiorari denied. Reported below: 524 Pa. 470, 574 A. 2d 57.

No. 89-1704. *ILLINOIS HUMAN RIGHTS COMMISSION ET AL. v. BABCOCK & WILCOX CO.* App. Ct. Ill., 2d Dist. Certiorari denied. Reported below: 189 Ill. App. 3d 827, 545 N. E. 2d 799.

No. 89-1712. *NORTHWEST FOOD PROCESSORS ASSN. ET AL. v. REILLY, ADMINISTRATOR, ENVIRONMENTAL PROTECTION AGENCY*. C. A. 9th Cir. Certiorari denied. Reported below: 886 F. 2d 1075.

No. 89-1730. *FINK v. FINK*. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 89-1739. *U. S. GOLD & SILVER INVESTMENTS, INC. v. UNITED STATES ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 885 F. 2d 620.

No. 89-1749. *PUBLIC SERVICE COMMISSION OF THE STATE OF NEW YORK ET AL. v. NATIONAL FUEL GAS SUPPLY CORP.* C. A. 2d Cir. Certiorari denied. Reported below: 894 F. 2d 571.

No. 89-1764. *MILLER v. PRUDENTIAL BACHE SECURITIES, INC., ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 884 F. 2d 128.

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No. 89-1776. *FONTHAM v. COMMITTEE ON PROFESSIONAL RESPONSIBILITY, LOUISIANA STATE BAR ASSN.* Sup. Ct. La. Certiorari denied.

No. 89-1791. *LAMBORN v. DELAWARE.* Sup. Ct. Del. Certiorari denied. Reported below: 574 A. 2d 263.

No. 89-1796. *HASSO ET AL. v. DUGGAN.* Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 89-1812. *ESPINUEVA v. GARRETT, SECRETARY OF THE NAVY.* C. A. 7th Cir. Certiorari denied. Reported below: 895 F. 2d 1164.

No. 89-1826. *CHURCH BY MAIL, INC. v. UNITED STATES ET AL.* C. A. D. C. Cir. Certiorari denied.

No. 89-1830. *JACKSON ET UX. v. UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF CALIFORNIA (WESTERN FARM CREDIT BANK ET AL., REAL PARTIES IN INTEREST).* C. A. 9th Cir. Certiorari denied. Reported below: 893 F. 2d 1338.

No. 89-1839. *BLUE CROSS & BLUE SHIELD OF KANSAS, INC., ET AL. v. REAZIN ET AL.* C. A. 10th Cir. Certiorari denied. Reported below: 899 F. 2d 951.

No. 89-1841. *NORDSTROM ET AL. v. WASHINGTON ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 895 F. 2d 1418.

No. 89-1851. *DONOFRIO v. UNITED STATES.* C. A. 11th Cir. Certiorari denied. Reported below: 896 F. 2d 1301.

No. 89-1858. *EASTERN AUTO DISTRIBUTORS, INC. v. PEUGEOT MOTORS OF AMERICA, INC.* C. A. 4th Cir. Certiorari denied. Reported below: 892 F. 2d 355.

No. 89-1860. *MAIN v. UNITED STATES.* C. A. 4th Cir. Certiorari denied. Reported below: 900 F. 2d 257.

No. 89-1864. *ARBOLEDA v. UNITED STATES.* C. A. 9th Cir. Certiorari denied. Reported below: 882 F. 2d 417.

No. 89-1870. *UTZ v. UNITED STATES.* C. A. 9th Cir. Certiorari denied. Reported below: 886 F. 2d 1148.

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No. 89-5654. *REDMOND v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 880 F. 2d 1324.

No. 89-6618. *BARNETT v. OKLAHOMA*. Ct. Crim. App. Okla. Certiorari denied.

No. 89-6959. *SHAFFER v. SENKOWSKI, SUPERINTENDENT, CLINTON CORRECTIONAL FACILITY, ET AL.* C. A. 2d Cir. Certiorari denied.

No. 89-7047. *BUCKLEY v. LOCKHART, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION*. C. A. 8th Cir. Certiorari denied. Reported below: 892 F. 2d 715.

No. 89-7081. *WALLACE v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 889 F. 2d 580.

No. 89-7100. *GIFFORD v. UNITED STATES*; and

No. 89-7294. *KELLY v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: No. 89-7100, 892 F. 2d 263; No. 89-7294, 892 F. 2d 255.

No. 89-7153. *WATSON v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 893 F. 2d 970.

No. 89-7166. *PARIS v. YOUNG*. Cir. Ct. Md., Baltimore City. Certiorari denied.

No. 89-7238. *AMIRI v. JOHNSON, JUDGE, UNITED STATES DISTRICT COURT FOR DISTRICT OF COLUMBIA*. C. A. D. C. Cir. Certiorari denied.

No. 89-7255. *SANTIAGO v. UNITED STATES*. C. A. 11th Cir. Certiorari denied. Reported below: 889 F. 2d 1029.

No. 89-7274. *LEE v. McCAGHTRY, SUPERINTENDENT, WAUPUN CORRECTIONAL INSTITUTION*. C. A. 7th Cir. Certiorari denied. Reported below: 892 F. 2d 1318.

No. 89-7337. *GALLION v. ZINN ET AL.* C. A. 8th Cir. Certiorari denied. Reported below: 902 F. 2d 1573.

No. 89-7338. *BELLE v. FREEMAN ET AL.* C. A. 3d Cir. Certiorari denied.

No. 89-7339. *WILLIS v. FIRST BANK NATIONAL ASSN.* Ct. App. Ohio, Cuyahoga County. Certiorari denied.

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No. 89-7340. *WHITAKER v. BAY AREA RAPID TRANSIT*. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 89-7342. *DEMING v. RICHNER ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 892 F. 2d 1045.

No. 89-7344. *FIXEL v. DEEDS, WARDEN, ET AL.* Sup. Ct. Nev. Certiorari denied. Reported below: 106 Nev. 1022, 835 P. 2d 37.

No. 89-7353. *CHRISTOPHERSON ET UX. v. SHAWANO COUNTY*. Ct. App. Wis. Certiorari denied.

No. 89-7358. *THOMAS ET UX. v. SOUTHTRUST BANK OF ALABAMA, AS ASSIGNEE OF SOUTHTRUST MOBILE SERVICES*. C. A. 11th Cir. Certiorari denied. Reported below: 883 F. 2d 991.

No. 89-7365. *SHUMAN v. CELESTE, GOVERNOR OF OHIO, ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 894 F. 2d 1337.

No. 89-7368. *LONG ET AL. v. FAUVER, COMMISSIONER, NEW JERSEY DEPARTMENT OF CORRECTIONS, ET AL.* C. A. 3d Cir. Certiorari denied. Reported below: 898 F. 2d 141.

No. 89-7371. *MOORE v. DISTRICT OF COLUMBIA DEPARTMENT OF PUBLIC WORKS*. Ct. App. D. C. Certiorari denied.

No. 89-7372. *KERNS v. COLLINS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION*. C. A. 5th Cir. Certiorari denied.

No. 89-7373. *KLACSMANN v. CASTELLANO*. C. A. 11th Cir. Certiorari denied.

No. 89-7374. *KLACSMANN v. FEDAK*. C. A. 11th Cir. Certiorari denied.

No. 89-7375. *KURTZ v. EDMISTON, SUPERINTENDENT, SOUTHERN STATE CORRECTIONAL FACILITY, ET AL.* C. A. 3d Cir. Certiorari denied.

No. 89-7381. *BROWN v. TOOMBS ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 898 F. 2d 153.

No. 89-7384. *COSBY v. DOYLE ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 896 F. 2d 545.

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No. 89-7389. *BROWN v. SHERMAN ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 898 F. 2d 153.

No. 89-7404. *POTTER v. UNITED STATES.* C. A. 9th Cir. Certiorari denied. Reported below: 895 F. 2d 1231.

No. 89-7407. *BRYANT v. TATE, SUPERINTENDENT, CHILLICOTHE CORRECTIONAL INSTITUTE.* C. A. 6th Cir. Certiorari denied. Reported below: 889 F. 2d 1086.

No. 89-7415. *SUN v. KESSLER ET AL.* Ct. App. Ga. Certiorari denied.

No. 89-7422. *BELL v. TEXAS.* Ct. App. Tex., 3d Dist. Certiorari denied. Reported below: 774 S. W. 2d 371.

No. 89-7428. *DEMOS v. COURT OF APPEALS OF WASHINGTON.* Sup. Ct. Wash. Certiorari denied.

No. 89-7429. *DEMOS v. SUPREME COURT OF WASHINGTON.* Sup. Ct. Wash. Certiorari denied.

No. 89-7431. *BENSON v. BARRASSO ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 884 F. 2d 1392.

No. 89-7435. *DAVIS ET AL. v. COUNTY OF JEFFERSON, ALABAMA, ET AL.* C. A. 11th Cir. Certiorari denied. Reported below: 894 F. 2d 411.

No. 89-7471. *POORMAN v. KENTUCKY.* Sup. Ct. Ky. Certiorari denied. Reported below: 782 S. W. 2d 603.

No. 89-7497. *DEMOS v. BONAMY, SUPERINTENDENT, SPECIAL OFFENDER CENTER.* Sup. Ct. Wash. Certiorari denied.

No. 89-7499. *DEMOS v. BONAMY, SUPERINTENDENT, SPECIAL OFFENDER CENTER.* Sup. Ct. Wash. Certiorari denied.

No. 89-7501. *DOUGHERTY v. UNITED STATES.* C. A. 10th Cir. Certiorari denied.

No. 89-7506. *HARRIS v. UNITED STATES.* C. A. 4th Cir. Certiorari denied. Reported below: 900 F. 2d 256.

No. 89-7508. *McMILLAN v. UNITED STATES.* C. A. 11th Cir. Certiorari denied. Reported below: 900 F. 2d 265.

No. 89-7514. *HUYNH v. UNITED STATES.* C. A. 2d Cir. Certiorari denied. Reported below: 895 F. 2d 1411.

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No. 89-7515. *BLOCK v. AMERICAN TELEPHONE & TELEGRAPH CO. ET AL.* C. A. 10th Cir. Certiorari denied.

No. 89-7516. *BETANCOURT v. UNITED STATES.* C. A. 11th Cir. Certiorari denied. Reported below: 901 F. 2d 1114.

No. 89-7524. *BECERRA ET AL. v. UNITED STATES.* C. A. 11th Cir. Certiorari denied. Reported below: 896 F. 2d 557.

No. 89-7532. *MATHIS v. UNITED STATES.* Ct. App. D. C. Certiorari denied.

No. 89-7533. *LIBREROS v. UNITED STATES.* C. A. 2d Cir. Certiorari denied. Reported below: 897 F. 2d 26.

No. 89-7544. *REINO v. UNITED STATES.* C. A. 3d Cir. Certiorari denied. Reported below: 899 F. 2d 1220.

No. 89-7545. *RAMOS-BENAVIDEZ v. UNITED STATES.* C. A. 3d Cir. Certiorari denied.

No. 89-7552. *PROCTOR v. JABE, WARDEN.* C. A. 6th Cir. Certiorari denied.

No. 89-7553. *CORPUS v. UNITED STATES.* C. A. 1st Cir. Certiorari denied. Reported below: 882 F. 2d 546.

No. 89-7556. *GAMBLE v. UNITED STATES.* C. A. 4th Cir. Certiorari denied. Reported below: 902 F. 2d 1566.

No. 89-7557. *RODRIGUEZ v. UNITED STATES.* C. A. 5th Cir. Certiorari denied. Reported below: 897 F. 2d 526.

No. 89-7560. *SIERRA v. UNITED STATES.* C. A. 3d Cir. Certiorari denied. Reported below: 897 F. 2d 525.

No. 89-7563. *PULLIAM v. UNITED STATES.* C. A. 10th Cir. Certiorari denied.

No. 89-7566. *BARBER v. UNITED STATES.* C. A. 9th Cir. Certiorari denied. Reported below: 898 F. 2d 157.

No. 89-7567. *BEAULIEU v. UNITED STATES.* C. A. 10th Cir. Certiorari denied. Reported below: 900 F. 2d 1531.

No. 89-7568. *BEAULIEU v. UNITED STATES.* C. A. 10th Cir. Certiorari denied. Reported below: 900 F. 2d 1537.

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No. 89-7573. *FRANK v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 898 F. 2d 143.

No. 89-7575. *SANCHEZ-RODRIGUEZ v. UNITED STATES*. C. A. 11th Cir. Certiorari denied. Reported below: 901 F. 2d 1115.

No. 89-7579. *MUKHTAR v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 896 F. 2d 550.

No. 89-7585. *ROMERO ET AL. v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 897 F. 2d 47.

No. 89-7590. *HOLSEY v. NUTH, WARDEN*. C. A. 4th Cir. Certiorari denied. Reported below: 898 F. 2d 145.

No. 89-7611. *EVANS v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 898 F. 2d 155.

No. 89-7620. *WILLIAMS v. UNITED STATES*. C. A. 11th Cir. Certiorari denied. Reported below: 900 F. 2d 264.

No. 89-7622. *RAMIREZ v. UNITED STATES*. C. A. 11th Cir. Certiorari denied. Reported below: 901 F. 2d 1115.

No. 89-7624. *WHITE v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 890 F. 2d 1012.

No. 88-1958. *SUPREME BEEF PROCESSORS, INC. v. YAZQUINTO, TRUSTEE FOR CARAVAN REFRIGERATED CARGO, INC.* C. A. 5th Cir. Motions of Shippers National Freight Claims Council, Inc., and National Industrial Transportation League et al. for leave to file briefs as *amici curiae* granted. Certiorari denied. Reported below: 864 F. 2d 388.

No. 88-7318. *CAIN v. SOUTH CAROLINA*. Sup. Ct. S. C.;

No. 88-7432. *WEST v. TENNESSEE*. Sup. Ct. Tenn.;

No. 89-516. *EVANS v. THOMPSON, SUPERINTENDENT, MECKLENBURG CORRECTIONAL CENTER*. C. A. 4th Cir.;

No. 89-6062. *MURTISHAW v. CALIFORNIA*. Sup. Ct. Cal.;

No. 89-6091. *RANSOM v. TEXAS*. Ct. Crim. App. Tex.;

No. 89-6324. *MOORE v. ZANT, SUPERINTENDENT, GEORGIA DIAGNOSTIC AND CLASSIFICATION CENTER*. C. A. 11th Cir.;

No. 89-6509. *HOPKINSON v. SHILLINGER, WARDEN, ET AL.* C. A. 10th Cir.;

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No. 89-7007. *BAREFIELD v. TEXAS*. Ct. Crim. App. Tex.;
No. 89-7307. *CALLINS v. TEXAS*. Ct. Crim. App. Tex.;
No. 89-7308. *PICKENS v. ARKANSAS*. Sup. Ct. Ark.;
No. 89-7322. *BARNES v. THOMPSON, WARDEN*. Sup. Ct. Va.;
No. 89-7380. *BARROW v. ILLINOIS*. Sup. Ct. Ill.; and
No. 89-7442. *HUFFMAN v. INDIANA*. Sup. Ct. Ind. Certiorari denied. Reported below: No. 88-7318, 297 S. C. 497, 377 S. E. 2d 556; No. 88-7432, 767 S. W. 2d 387; No. 89-516, 881 F. 2d 117; No. 89-6062, 48 Cal. 3d 1001, 773 P. 2d 172; No. 89-6091, 789 S. W. 2d 572; No. 89-6324, 885 F. 2d 1497; No. 89-6509, 866 F. 2d 1185 and 888 F. 2d 1286; No. 89-7007, 784 S. W. 2d 38; No. 89-7307, 780 S. W. 2d 176; No. 89-7308, 301 Ark. 244, 783 S. W. 2d 341; No. 89-7380, 133 Ill. 2d 226, 549 N. E. 2d 240; No. 89-7442, 543 N. E. 2d 360.

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. 89-1756. *ROYAL CROWN COLA CO. v. COCA-COLA CO. ET AL.* C. A. 11th Cir. Certiorari denied. JUSTICE BLACKMUN took no part in the consideration or decision of this petition. Reported below: 887 F. 2d 1480.

No. 89-1759. *LOCKHART, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION v. HILL*. C. A. 8th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 894 F. 2d 1009.

No. 89-5346. *BRADLEY v. OHIO*. Sup. Ct. Ohio. Certiorari denied. Reported below: 42 Ohio St. 3d 136, 538 N. E. 2d 373.

JUSTICE BRENNAN, dissenting.

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

JUSTICE MARSHALL, dissenting.

In *Miranda v. Arizona*, 384 U. S. 436 (1966), this Court held that "the prosecution may not use statements, whether exculpa-

tory or inculpatory, stemming from custodial interrogation of the defendant unless it demonstrates the use of procedural safeguards effective to secure the privilege against self-incrimination." *Id.*, at 444. Consistent with the need for a bright-line rule, the Court adopted a straightforward definition of "custodial interrogation": "questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way." *Ibid.* In this case, petitioner, a prison inmate, challenged the admission of statements he made in response to direct questioning by prison officials following the murder of a prison employee on the ground that they had not given him the *Miranda* warnings. Notwithstanding *Miranda*'s clear language, the State Court of Appeals held that petitioner was not in custody for purposes of *Miranda*, see No. 1583 (Sept. 22, 1987), App. to Pet. for Cert. A-129-A-130, and the Ohio Supreme Court affirmed this point without discussion, 42 Ohio St. 3d 136, 148, 538 N. E. 2d 373, 385 (1989). Because the Courts of Appeals have approached the issue of what constitutes custody in the prison setting in differing ways,* this Court should grant the petition for certiorari to state clearly when *Miranda* applies in this context.

On February 2, 1984, the supervisor of the Southern Ohio Correctional Facility's sheet metal shop was beaten to death. Immediately after the murder, prison officials closed off the shop area and began to conduct a strip search of the inmates there. During the search, the officials found blood on one inmate's clothing. When he was asked for an explanation, another inmate, petitioner William Bradley, told the officials that the first prisoner "had nothing to do with this." 42 Ohio St. 3d, at 138, 538 N. E. 2d, at 376. The officials then searched petitioner and found blood on his clothing. The state court described the questioning that ensued:

*See *United States v. Cooper*, 800 F. 2d 412, 414-415 (CA4 1986) (holding that prison inmate was not in custody for *Miranda* purposes because his freedom of movement was not restricted more than it would normally be in the prison environment); *Flittie v. Solem*, 751 F. 2d 967, 974 (CA8 1985) ("Incarceration does not ipso facto make a statement involuntary"); *Cervantes v. Walker*, 589 F. 2d 424, 427-429 (CA9 1978) (refusing to apply *Miranda* to questioning of a prison inmate that the court characterized as "on-the-scene questioning" and holding that prison inmate's freedom of movement was not diminished more than usual in the prison context); *United States v. Scalf*, 725 F. 2d 1272, 1276 (CA10 1984) (same).

"Corrections Officer Richard Taylor . . . asked for an explanation. [Petitioner] pointed to where [the] body had been and stated that it was the foreman's blood. Officer Taylor called the spot to the attention of Deputy Superintendent Seth, who repeated the questions to [petitioner] and received the same answers. Officer Taylor then asked [petitioner], '[D]id you do it?' [Petitioner] replied, '[Y]eah, I did it.'"*Ibid.*

Although petitioner was not apprised of his *Miranda* rights before this questioning, the trial court denied his motion to suppress the incriminating responses. Petitioner was convicted of aggravated murder and sentenced to death. On this direct appeal, the State Court of Appeals found that "the detention of [petitioner] and other inmates here was similar to those restrictions imposed with every incident that would take place at the prison, [so] it did not necessarily place an added imposition on his freedom of movement such as to make a reasonable person believe there had been a restriction of his freedom over and above that in his normal prisoner setting." App. to Pet. for Cert. A-130. Thus, although it acknowledged that petitioner had been interrogated, the court found that petitioner had not been in custody, as defined by *Miranda*. The court therefore held that *Miranda* warnings were not required. The Supreme Court affirmed the conviction. 42 Ohio St. 3d, at 148, 538 N. E. 2d, at 385.

To determine whether a person is in custody for purposes of *Miranda*, "the ultimate inquiry is simply whether there is a 'formal arrest or restraint on freedom of movement' of the degree associated with a formal arrest." *California v. Beheler*, 463 U. S. 1121, 1125 (1983) (*per curiam*) (quoting *Oregon v. Mathiason*, 429 U. S. 492, 495 (1977)). This Court recently left open the question whether "[t]he bare fact of custody [would] in every instance require a warning even when the suspect is aware that he is speaking to an official." *Illinois v. Perkins*, 496 U. S. 292, 299 (1990). In my view, *Miranda* and its progeny have already answered that question. In this case, petitioner was clearly in custody because he had been formally arrested. Moreover, his incarceration resulted in a severe restraint on his freedom of movement. That his incarceration was the result of a conviction for a crime unrelated to the murder of the prison employee is irrelevant. See *Mathis v. United States*, 391 U. S. 1, 4-5 (1968) (holding that a person serving a prison sentence for one crime was in custody

when he was interrogated about another, unrelated crime). His familiarity with the prison environment is also irrelevant to the *Miranda* analysis. See *Orozco v. Texas*, 394 U. S. 324, 326-327 (1969) (holding that suspect who had been arrested in his home and questioned in his bedroom was in custody, notwithstanding his familiarity with his surroundings).

The state courts here, like some Courts of Appeals, see note, *supra*, nevertheless maintained that a prison inmate is in custody for purposes of *Miranda* only if some additional restriction on his freedom of movement is imposed. See App. to Pet. for Cert. A-129. Even if this "additional restriction" test were consistent with *Miranda*, petitioner satisfies it: His freedom was curtailed more severely than was usual even in the controlled environment of prison—he was detained in the sheet metal shop, targeted as a suspect in a serious crime, and forcibly strip-searched.

The second requirement for the application of *Miranda*—interrogation—is also present in this case. Prison officials asked petitioner a series of direct questions about a murder in which he was a suspect. Contrary to the State's assertion, Brief in Opposition 10-11, these questions cannot accurately be characterized as "on-the-scene questioning" exempt from the *Miranda* requirements. The *Miranda* Court stated that

"[g]eneral on-the-scene questioning as to facts surrounding a crime or other general questioning of citizens in the fact-finding process is not affected by our holding. It is an act of responsible citizenship for individuals to give whatever information they may have to aid in law enforcement. In such situations the compelling atmosphere inherent in the process of in-custody interrogation is not necessarily present." 384 U. S., at 477-478.

Here, though, prison officials had been summoned by a witness to the incident, had seen both the body and the weapon, and had detained those persons who could be responsible for the murder. The questioning of petitioner, directed at discovering whether he had committed the crime, thus went well beyond "on-the-scene questioning." Indeed, the State Court of Appeals acknowledged that this questioning constituted interrogation. App. to Pet. for Cert. A-128.

Under this Court's recent decision in *Perkins*, *supra*, petitioner may also have to establish that his statements were "coerced."

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496 U. S., at 299. The type of coercive environment described by the Court in *Perkins* was present in this case. First, the questioning occurred in prison, undoubtedly a "police-dominated atmosphere." *Id.*, at 296. And when the guards rounded up the inmates and strip-searched them, the sense of police domination was increased. Second, the prison officials were openly acting as agents of the State, and petitioner knew that they were responsible for determining the extent of his freedom. See *id.*, at 297 ("Questioning by captors, who appear to control the suspect's fate, may create mutually reinforcing pressures that the Court has assumed will weaken the suspect's will"). Given the virtually complete control that prison officials exercise over prisoners' lives, petitioner surely felt compelled to answer questions "by the fear of reprisal for remaining silent or in the hope of more lenient treatment should he confess." *Ibid.*

Thus, petitioner was in custody, was interrogated by prison officials, and was subjected to police coercion. Because the guards did not inform him of his *Miranda* rights before interrogating him, his responses to their direct questioning could not be used against him at trial. This case represents more than an opportunity to correct an erroneous decision, however; it provides the Court a chance to clarify what constitutes "custody" for *Miranda* purposes in the prison setting. I would therefore grant the petition for certiorari. Even if I did not believe that this case otherwise merited review, 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. 89-5934. *CARTWRIGHT v. OKLAHOMA.* Ct. Crim. App. Okla. Certiorari denied. Reported below: 778 P. 2d 479.

JUSTICE BRENNAN, with whom JUSTICE MARSHALL joins, concurring in part and dissenting in part.

I join the Court's decision except insofar as the judgment, which is without prejudice to further sentencing proceedings, does not expressly preclude the reimposition of the death penalty. 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 direct that the resentencing proceed-

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ings be circumscribed such that the State may not reimpose the death sentence.

No. 89-7387. *DOUGHTY ET AL. v. BOARD OF COUNTY COMMISSIONERS FOR THE COUNTY OF WELD ET AL.* C. A. 10th Cir. Certiorari before judgment denied.

Rehearing Denied

No. 89-81. *WILSON ET AL. v. LANE, DIRECTOR, ILLINOIS DEPARTMENT OF CORRECTIONS*, 495 U. S. 923;

No. 89-1465. *KOZAK v. UNITED STATES DEPARTMENT OF AGRICULTURE*, 495 U. S. 905;

No. 89-6914. *MEYERS v. INDIANA*, 495 U. S. 921;

No. 89-6954. *MAGWOOD v. ALABAMA*, 495 U. S. 923; and

No. 89-7028. *FRYHOVER v. UNITED STATES*, 495 U. S. 922. Petitions for rehearing denied.

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Miscellaneous Order

No. A-917 (89-7838). *HAMILTON, AS NATURAL MOTHER AND NEXT FRIEND TO SMITH v. TEXAS*. Ct. Crim. App. Tex.; and

No. A-921 (89-7842). *HAMILTON, AS NATURAL MOTHER AND NEXT FRIEND TO SMITH v. COLLINS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION*. C. A. 5th Cir. Applications for stay of execution of sentence of death, presented to JUSTICE WHITE, and by him referred to the Court, denied. JUSTICE BLACKMUN and JUSTICE STEVENS dissent and would grant the applications.

JUSTICE BRENNAN, with whom JUSTICE MARSHALL joins, dissenting.

Tonight, for the second time within a month, see *Demosthenes v. Baal*, 495 U. S. 731 (1990), this Court permits a State to execute a prisoner who has waived further appeals on his behalf when serious doubts remain concerning his mental competence. I believe that we shirk our responsibility if we do not articulate standards by which the adequacy of procedures in state competency hearings may be judged. I would grant the petitions for certiorari and the corresponding applications for stay of execution. Indeed, four Members of this Court have voted to grant certiorari in this case, but because a stay cannot be entered without five votes,

the execution cannot be halted. For the first time in recent memory, a man will be executed after the Court has decided to hear his claim. Cf. *Watson v. Butler*, 483 U. S. 1037, 1038 (1987) (stay denied although four Justices voted to hold, rather than to grant, petition for certiorari).

I

In *Whitmore v. Arkansas*, 495 U. S. 149 (1990), this Court held that "one necessary condition for 'next friend' standing in federal court is a showing by the proposed 'next friend' that the real party in interest is unable to litigate his own cause due to mental incapacity." *Id.*, at 165. Although the Court noted that this prerequisite is not satisfied "where an evidentiary hearing shows that the defendant has given a knowing, intelligent, and voluntary waiver of his right to proceed," *ibid.*, we did not have occasion in that case to decide the *procedures* that are required when a state court determines that a prisoner is competent to forgo further appeals in his case. We face that issue tonight.

Petitioner, the mother of condemned prisoner James Edward Smith, challenges the decision of the Texas courts, to which the United States District Court for the Southern District of Texas and the United States Court of Appeals for the Fifth Circuit have deferred, that Smith is competent to waive further appeal of his case. The state trial court held a hearing to determine Smith's competency, a hearing which seems to have been little more than a nonadversarial, *ex parte* chat among the trial judge, the prosecutor, and Smith. The hearing was scheduled without notice to Smith's mother and next friend, Ms. Alexzene Hamilton, despite the fact that Ms. Hamilton had appeared as petitioner on Smith's behalf as early as May 7, 1988. Indeed, it was upon her application that we granted a stay of execution in *Hamilton v. Texas*, 485 U. S. 1042 (1988). Smith was unrepresented by counsel; although the trial judge had arranged for an attorney to be present in the event that Smith wished to consult with him, the judge stated: "I'm not going to force a lawyer to represent you." After Smith indicated that he did not wish to speak with the attorney, that was the end of the matter. There was no cross-examination at the hearing. No evidence was received beyond the bare reports of a Harris County psychiatrist and a Harris County psychologist who did not perform psychological tests and who were not given access to several reports of the history of Smith's mental illness, includ-

ing the fact that he had been found not guilty by reason of insanity of a prior Florida robbery.

Whether Smith is competent to waive his right to appeal may be a complex, fact-intensive question.* But we need not face it tonight. Instead, we need judge only the adequacy of the state procedures used to determine his competency. These, I submit, were dubious procedures indeed. In *Ford v. Wainwright*, 477 U. S. 399, 410–418 (1986) (plurality opinion), JUSTICE MARSHALL outlined certain procedures to be used in ascertaining the sanity of a prisoner prior to execution. JUSTICE MARSHALL stressed the importance of an adversarial proceeding, noting that “without any adversarial assistance from the prisoner’s representative—especially when the psychiatric opinion he proffers is based on much more extensive evaluation than that of the state-appointed commission—the factfinder loses the substantial benefit of potentially probative information.” *Id.*, at 414. In addition, JUSTICE MARSHALL observed that “[c]ross-examination of the psychiatrists, or perhaps a less formal equivalent, would contribute markedly to the process of seeking truth in sanity disputes by bringing to light

*There is a great deal of evidence casting Smith’s competence in doubt. Smith has had a long history of mental illness dating from his discharge from the Navy and his hospitalization for psychiatric evaluation in the Great Lakes Naval Hospital in 1972. In 1978, he was found not guilty by reason of insanity in a robbery prosecution by a Florida state court. In 1981, he attempted suicide and was placed under psychiatric care. In 1985, the Texas trial court determined that Smith was *not* competent to handle his appeal and appointed an attorney to prosecute his appeal. Smith has suffered several head injuries in car accidents and falls. Smith’s mother has retained a clinical psychologist—an associate professor at Florida State University—who has sought access to Smith for the purpose of performing neurological tests. Although these tests have not yet been conducted, the psychologist has formed a conclusion on the basis of existing evidence:

“I have formed a professional opinion with a reasonable degree of medical certainty concerning James Edwards Smith’s current mental state. My opinion is that Mr. Smith has a history of schizophrenia that appears to be paranoid in nature, marked by suicidal tendencies and religious delusions. There is also the possibility of organic brain damage, indicated by Mr. Smith’s history of head injuries, drug and alcohol abuse, and symptoms of neurological damage. At this time, based on Mr. Smith’s condition, it is my opinion that he is mentally ill; that this illness prevents Mr. Smith from understanding his actual legal position and the options available to him; and that this illness prevents Mr. Smith from making a rational choice among his options.” Pet. for Cert. in No. 89–7838, p. 17.

the bases for each expert's beliefs, the precise factors underlying those beliefs, any history of error or caprice of the examiner, any personal bias with respect to the issue of capital punishment, the expert's degree of certainty about his or her own conclusions, and the precise meaning of ambiguous words used in the report." *Id.*, at 415. In sum, JUSTICE MARSHALL found that "any procedure that precludes the prisoner or his counsel from presenting material relevant to his sanity or bars consideration of that material by the factfinder is necessarily inadequate" and that "the adversarial presentation of relevant information [must] be as unrestricted as possible." *Id.*, at 414, 417. Although these procedures are not directly applicable in a context in which prisoners seeking to waive their appeals actively resist appointment of counsel on their behalf, they might provide a useful guide. I would grant the petitions for certiorari to examine this important question.

A related issue presented by the instant case results from the failure of the District Court to grant an evidentiary hearing of its own. Both the District Court and the Fifth Circuit accorded the state trial court's findings deference despite the procedural inadequacies of the state-court proceedings. The District Court believed that it was "bound by the state court's findings," Civ. Action No. H-90-2011 (June 24, 1990), p. 7, and the Fifth Circuit maintained that because the findings were "fairly supported by the record," they were "binding" on the Court of Appeals. 905 F. 2d 825, 828 (1990). Regardless of a State's obligation to provide a competency hearing, it is clearly error for a federal court to accord deference to state-court findings when the state hearing is procedurally inadequate. A federal court is obliged to hold its own evidentiary hearing on habeas corpus if, among other factors, "the factfinding procedure employed by the State court was not adequate to afford a full and fair hearing," 28 U. S. C. § 2254(d)(2); or "the material facts were not adequately developed at the State court hearing," § 2254(d)(3); or "the applicant did not receive a full, fair, and adequate hearing in the State court proceeding." § 2254(d)(6). This case presents the important legal question of the procedures required to determine the competence of a prisoner to forgo further appeals, a question which has relevance both for state courts and for federal courts reviewing the state-court findings on habeas corpus.

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II

Even apart from the merits of the instant case, I would grant the applications for stay of execution pending disposition of the petitions for certiorari. 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).

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Reversed and Remanded on Appeal. (See No. 88-421, *ante*, p. 916.)

Certiorari Granted—Reversed and Remanded. (See No. 89-337, *ante*, p. 922.)

Certiorari Granted—Vacated and Remanded

No. 89-628. MOUNTAIN STATES LEGAL FOUNDATION ET AL. *v.* NATIONAL WILDLIFE FEDERATION. C. A. D. C. Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Lujan v. National Wildlife Federation*, *ante*, p. 871. Reported below: 278 U. S. App. D. C. 320, 878 F. 2d 422.

No. 89-1052. THREE BUOYS HOUSEBOAT VACATIONS U. S. A., LTD. *v.* MORTS ET AL. C. A. 8th Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Sisson v. Ruby*, *ante*, p. 358. Reported below: 878 F. 2d 1096.

No. 89-1506. GEDAN ET AL. *v.* PARTINGTON ET AL. C. A. 9th Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Cooter & Gell v. Hartmarx Corp.*, 496 U. S. 384 (1990). Reported below: 880 F. 2d 116.

No. 89-1697. O'RILEY *v.* UNION OIL COMPANY OF CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Tafflin v. Levitt*, 493 U. S. 455 (1990). JUSTICE WHITE, JUSTICE BLACKMUN, and JUSTICE O'CONNOR dissent.

No. 89-1754. TEXACO REFINING & MARKETING INC. ET AL. *v.* ESTATE OF DAU VAN TRAN ET AL. Ct. App. Tex., 9th Dist. Motion of Maritime Law Association of the United States for leave to file a brief as *amicus curiae* granted. Certiorari granted,

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judgment vacated, and case remanded for further consideration in light of *Sisson v. Ruby*, *ante*, p. 358. JUSTICE STEVENS dissents. Reported below: 777 S. W. 2d 783.

No. 89-1760. *IMMUNO, A. G. v. MOOR-JANKOWSKI*. Ct. App. N. Y. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Milkovich v. Lorain Journal Co.*, *ante*, p. 1. Reported below: 74 N. Y. 2d 548, 549 N. E. 2d 129.

No. 89-5396. *BOCKTING v. NEVADA*. Sup. Ct. Nev. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Idaho v. Wright*, *ante*, p. 805. Reported below: 105 Nev. 1023, 810 P. 2d 317.

No. 89-6260. *HUFF v. NORTH CAROLINA*. Sup. Ct. N. C. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *McKoy v. North Carolina*, 494 U. S. 433 (1990). Reported below: 325 N. C. 1, 381 S. E. 2d 635.

No. 89-6289. *SPOTTED WAR BONNET 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 *Idaho v. Wright*, *ante*, p. 805. Reported below: 882 F. 2d 1360.

Miscellaneous Orders

No. — — —. *KANEKO ET AL. v. CITY AND COUNTY OF HONOLULU ET AL.* Motion of Charles K. Kanekoa for leave to proceed *in forma pauperis* granted. Motion for leave to proceed *in forma pauperis* without affidavits of indigency executed by petitioners Warren E. Kanekoa and Damien Melemai denied.

No. A-844. *JAFFER v. GRANET ET AL.* C. A. 7th Cir. Application for stay of lower court proceedings, addressed to JUSTICE MARSHALL and referred to the Court, denied.

No. A-881. *THOMAS ET UX. v. MANUFACTURERS HANOVER MORTGAGE CORP.* C. A. 7th Cir. Application for stay, addressed to JUSTICE MARSHALL and referred to the Court, denied.

No. D-891. *IN RE DISBARMENT OF DAY*. Disbarment entered. [For earlier order herein, see 494 U. S. 1076.]

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JUSTICE MARSHALL, with whom THE CHIEF JUSTICE joins, dissenting.

After respondent pleaded guilty to various felonies, the State Bar of Texas brought a disciplinary action in state court seeking respondent's disbarment. The state trial court enjoined respondent from practicing law in Texas. This Court then issued an order suspending respondent from the practice of law in this Court and requiring respondent to show cause why he should not be disbarred from such practice. Respondent has appealed the trial court's ruling, and that appeal is currently pending.

In view of the pendency of respondent's appeal, I do not believe it is appropriate that this Court should enter a disbarment order. This Court should not provide fewer procedural protections than the States themselves provide for appealing an adverse disciplinary determination. If the State of Texas affords respondent a means of challenging his suspension from practice, this Court should await the result of that challenge before disbarring respondent in this Court. Unless and until respondent's suspension becomes final under state law, then, I cannot join the Court's disposition. We place great weight on state procedures in determining whether to admit attorneys to practice in this Court. I do not believe that we should ignore those procedures when we decide whether discipline here is appropriate.

No. 89-1889. *PINHAS v. SUMMIT HEALTH, LTD., ET AL.* C. A. 9th Cir. Motion of the parties to expedite consideration of the cross-petition for writ of certiorari or, in the alternative, to delay briefing in No. 89-1679, *Summit Health, Ltd., et al. v. Pinhas* [certiorari granted, 496 U. S. 935], denied.

No. 89-1929. *SULLIVAN, SECRETARY OF HEALTH AND HUMAN SERVICES v. MASSACHUSETTS ET AL.* C. A. 1st Cir. Motion of respondent to consolidate this case with No. 89-1391, *Rust et al. v. Sullivan, Secretary of Health and Human Services* [certiorari granted, 495 U. S. 956], and No. 89-1392, *New York et al. v. Sullivan, Secretary of Health and Human Services* [certiorari granted, 495 U. S. 956], denied.

No. 89-7189. *WEI v. DELAWARE.* Sup. Ct. Del. Motion of petitioner for reconsideration of May 21, 1990, order denying leave to proceed *in forma pauperis* [495 U. S. 946] denied.

No. 89-7272. *HARMELIN v. MICHIGAN.* Ct. App. Mich. [Certiorari granted, 495 U. S. 956.] Motion for appointment of

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counsel granted, and it is ordered that Carla J. Johnson, Esq., of Detroit, Mich., be appointed to serve as counsel for petitioner in this case.

No. 89-7401. *CLARKE v. WEST VIRGINIA BOARD OF REGENTS ET AL.* C. A. 4th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied. Petitioner is allowed until July 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, 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. 89-7507. *IN RE MALLOY.* C. A. 11th Cir. Petition for writ of common-law certiorari denied.

No. 89-7581. *IN RE HEGWOOD;* and

No. 89-7664. *IN RE D'AMARIO.* Petitions for writs of mandamus denied.

Certiorari Granted

No. 89-1715. *BURNS v. REED.* C. A. 7th Cir. Certiorari granted. Reported below: 894 F. 2d 949.

No. 89-1784. *INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA ET AL. v. BEN COOPER, INC.* C. A. 2d Cir. Certiorari granted. Reported below: 896 F. 2d 1394.

No. 89-1629. *SALVE REGINA COLLEGE v. RUSSELL.* C. A. 1st Cir. Certiorari granted limited to Question 1 presented by the petition. Reported below: 890 F. 2d 484.

No. 89-5961. *PARKER v. DUGGER, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL.* C. A. 11th Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted. Reported below: 876 F. 2d 1470.

No. 89-7260. *BURNS v. UNITED STATES.* C. A. D. C. Cir. Motion of petitioner for leave to proceed *in forma pauperis*

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granted. Certiorari granted. Reported below: 282 U. S. App. D. C. 194, 893 F. 2d 1343.

Certiorari Denied. (See also No. 89-7507, *supra*.)

No. 89-30. ENDSLEY, EXECUTRIX OF THE ESTATE OF ENDSLEY, ET AL. *v.* YOUNG. C. A. 6th Cir. Certiorari denied. Reported below: 872 F. 2d 176.

No. 89-1345. BEVERLY HILLS SAVINGS & LOAN ASSN. ET AL. *v.* CARTER. C. A. 9th Cir. Certiorari denied. Reported below: 884 F. 2d 1186.

No. 89-1366. BULLOCK *v.* UTAH. Sup. Ct. Utah. Certiorari denied. Reported below: 791 P. 2d 155.

No. 89-1454. HAMILTON *v.* MISSISSIPPI. Sup. Ct. Miss. Certiorari denied. Reported below: 556 So. 2d 685.

No. 89-1567. ASPROMONTI *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 895 F. 2d 1411.

No. 89-1569. SOLID WASTE SERVICES, INC., ET AL. *v.* DOLE, SECRETARY OF LABOR. C. A. 3d Cir. Certiorari denied. Reported below: 897 F. 2d 521.

No. 89-1570. HAJECATE ET UX. *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 889 F. 2d 1466.

No. 89-1593. McAFFEE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 896 F. 2d 1368.

No. 89-1642. UNITED TRANSPORTATION UNION *v.* INTER-STATE COMMERCE COMMISSION ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 282 U. S. App. D. C. 38, 891 F. 2d 908.

No. 89-1643. STRUBE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 888 F. 2d 130.

No. 89-1710. IRON WORKERS MID-SOUTH PENSION FUND ET AL. *v.* BORDEN CHEMICAL. C. A. 5th Cir. Certiorari denied. Reported below: 891 F. 2d 548.

No. 89-1719. PANTOJA ET AL. *v.* TEXAS GAS TRANSMISSION CORP. ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 890 F. 2d 955.

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No. 89-1720. *DOUGLAS v. STONE*, SECRETARY OF THE ARMY. C. A. 9th Cir. Certiorari denied. Reported below: 895 F. 2d 1416.

No. 89-1724. *CELEBRITY WORLD, INC., ET AL. v. CELEBRITY SERVICE INTERNATIONAL, INC.* C. A. 2d Cir. Certiorari denied.

No. 89-1725. *PERRON v. GULF OIL CORP.* C. A. 5th Cir. Certiorari denied. Reported below: 893 F. 2d 344.

No. 89-1733. *FOREMAN v. AETNA CASUALTY & SURETY CO.* Ct. App. Tex., 14th Dist. Certiorari denied.

No. 89-1741. *HAYSE v. BOARD OF TRUSTEES OF THE UNIVERSITY OF KENTUCKY.* Sup. Ct. Ky. Certiorari denied. Reported below: 782 S. W. 2d 609.

No. 89-1742. *CHRISTMAS v. MARSON ET AL.* C. A. 3d Cir. Certiorari denied. Reported below: 897 F. 2d 521.

No. 89-1746. *RELIANCE INSURANCE CO. v. GLADOS, INC.* C. A. 11th Cir. Certiorari denied. Reported below: 888 F. 2d 1309.

No. 89-1747. *CHURCHILL, INFORMAL ADMINISTRATOR OF THE ESTATE OF CHURCHILL, ET AL. v. F/V FJORD ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 892 F. 2d 763.

No. 89-1750. *LOCAL 4501, COMMUNICATIONS WORKERS OF AMERICA v. OHIO STATE UNIVERSITY ET AL.* Sup. Ct. Ohio. Certiorari denied. Reported below: 49 Ohio St. 3d 1, 550 N. E. 2d 164.

No. 89-1751. *EASTERN PUBLISHING & ADVERTISING, INC., T/A ARMED FORCES NEWS v. CHESAPEAKE PUBLISHING & ADVERTISING, INC., T/A THE MILITARY NEWS, ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 895 F. 2d 971.

No. 89-1752. *MASON v. DEPARTMENTAL DISCIPLINARY COMMITTEE, APPELLATE DIVISION OF THE SUPREME COURT OF NEW YORK, FIRST JUDICIAL DEPARTMENT, ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 894 F. 2d 512.

No. 89-1761. *BARNETT ET AL. v. PETRO-TEX CHEMICAL CORP. ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 893 F. 2d 800.

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No. 89-1762. *MYERS ET AL. v. AP PROPANE, INC.* C. A. 6th Cir. Certiorari denied.

No. 89-1763. *CORNWELL v. CRAWFORD ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 896 F. 2d 398.

No. 89-1766. *UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA, UNION NO. 1149, ET AL. v. SEAVIEW INDUSTRIES, INC.* Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 89-1783. *MEYER v. STATE BAR OF TEXAS*; and *MEYER v. LOWRY, DISTRICT JUDGE, 261ST JUDICIAL DISTRICT, TRAVIS COUNTY, TEXAS, ET AL.* Sup. Ct. Tex. Certiorari denied.

No. 89-1792. *POLLACK v. GRUIS ET AL.* Ct. App. D. C. Certiorari denied.

No. 89-1803. *SCHAEFER v. GALLEGOS ET AL.* Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 89-1809. *TOWNSEND ET AL. v. CRAMBLETT ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 892 F. 2d 80.

No. 89-1823. *KOPCHO v. UNITED STATES.* C. A. 3d Cir. Certiorari denied. Reported below: 899 F. 2d 1218.

No. 89-1825. *RAMIREZ v. WOODS, JUDGE, DISTRICT COURT OF TEXAS, WEBB COUNTY, ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 898 F. 2d 151.

No. 89-1844. *MCLENDON v. PETTEY.* Ct. App. Tex., 12th Dist. Certiorari denied.

No. 89-1872. *CITY OF SANSOM PARK, TEXAS, ET AL. v. PEELMAN ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 894 F. 2d 1334.

No. 89-6917. *GALLION v. ZINN.* C. A. 8th Cir. Certiorari denied. Reported below: 894 F. 2d 1340.

No. 89-6988. *CLARK v. ILLINOIS.* App. Ct. Ill., 4th Dist. Certiorari denied. Reported below: 188 Ill. App. 3d 79, 544 N. E. 2d 100.

No. 89-7044. *LLOYD v. CALIFORNIA.* Ct. App. Cal., 2d App. Dist. Certiorari denied. Reported below: 216 Cal. App. 3d 1425, 265 Cal. Rptr. 422.

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No. 89-7051. *LEE v. FLANNIGAN, ADMINISTRATOR, MENARD PSYCHIATRIC CENTER, ET AL.* C. A. 7th Cir. Certiorari denied. Reported below: 884 F. 2d 945.

No. 89-7069. *ETLIN v. ETLIN; and IN RE ETLIN.* Ct. App. Va. Certiorari denied.

No. 89-7104. *NUNN ET AL. v. ILLINOIS.* App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 184 Ill. App. 3d 253, 541 N. E. 2d 182.

No. 89-7182. *MYERS v. UNITED STATES.* C. A. 4th Cir. Certiorari denied. Reported below: 896 F. 2d 1368.

No. 89-7306. *WINSTON v. UNITED STATES.* C. A. D. C. Cir. Certiorari denied. Reported below: 282 U. S. App. D. C. 96, 892 F. 2d 112.

No. 89-7364. *HAUGES v. UNITED STATES POSTAL SERVICE.* C. A. Fed. Cir. Certiorari denied. Reported below: 895 F. 2d 1422.

No. 89-7394. *LEPISCOPO v. ESQUIBEL ET AL.* C. A. 10th Cir. Certiorari denied.

No. 89-7395. *JOHNSON v. LEAPLEY ET AL.* C. A. 8th Cir. Certiorari denied.

No. 89-7410. *TURNER v. ILLINOIS.* App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 193 Ill. App. 3d 1108, 578 N. E. 2d 332.

No. 89-7416. *ACCOLLA v. SULLIVAN, SUPERINTENDENT, SING SING CORRECTIONAL FACILITY, ET AL.* C. A. 2d Cir. Certiorari denied.

No. 89-7417. *WATKINS v. MURRAY ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 900 F. 2d 257.

No. 89-7418. *CURTIS v. AMERICAN BAKERIES CO. ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 898 F. 2d 151.

No. 89-7419. *SANDS v. CRIST, WARDEN, ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 892 F. 2d 1046.

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No. 89-7420. *FRANKLIN v. LOCKHART, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION.* C. A. 8th Cir. Certiorari denied. Reported below: 902 F. 2d 1571.

No. 89-7424. *SPILLERS v. BURNS, WARDEN, ET AL.* C. A. 9th Cir. Certiorari denied.

No. 89-7426. *WOOD ET UX. v. OHIO.* Ct. App. Ohio, Lucas County. Certiorari denied. Reported below: 63 Ohio App. 3d 855, 580 N. E. 2d 484.

No. 89-7434. *DAVIS v. BUSH ET AL.* C. A. 5th Cir. Certiorari denied.

No. 89-7440. *REED v. MURRAY, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS.* C. A. 4th Cir. Certiorari denied. Reported below: 900 F. 2d 254.

No. 89-7445. *LITTLEJOHN v. SOUTH CAROLINA.* C. A. 4th Cir. Certiorari denied. Reported below: 900 F. 2d 253.

No. 89-7446. *MARTIN v. FARNAN.* C. A. 3d Cir. Certiorari denied.

No. 89-7449. *MARTIN v. HUYETT.* C. A. 3d Cir. Certiorari denied.

No. 89-7450. *LEPISCOPO v. SANNICKS.* C. A. 10th Cir. Certiorari denied.

No. 89-7453. *EVANS v. PENNSYLVANIA.* Sup. Ct. Pa. Certiorari denied. Reported below: 522 Pa. 594, 562 A. 2d 319.

No. 89-7454. *WALKER v. JONES, SUPERINTENDENT, GREAT MEADOWS CORRECTIONAL FACILITY, ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 898 F. 2d 137.

No. 89-7457. *HILLIARD v. FULCOMER, SUPERINTENDENT, HUNTINGDON CORRECTIONAL INSTITUTION.* C. A. 3d Cir. Certiorari denied.

No. 89-7458. *KLACSMANN v. JENSEN.* C. A. 11th Cir. Certiorari denied.

No. 89-7459. *LEPISCOPO v. TANSY, WARDEN.* C. A. 10th Cir. Certiorari denied.

No. 89-7460. *MORGAN v. ROWE ET AL.* C. A. 7th Cir. Certiorari denied. Reported below: 897 F. 2d 531.

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No. 89-7461. O'MELIA *v.* SANTA MONICA MUNICIPAL COURT ET AL. C. A. 9th Cir. Certiorari denied.

No. 89-7466. ROGERS *v.* SLANSKY ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 895 F. 2d 1418.

No. 89-7467. RAMSEY *v.* GARRAGHTY ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 891 F. 2d 287.

No. 89-7470. CARTER *v.* KENTUCKY. Sup. Ct. Ky. Certiorari denied. Reported below: 782 S. W. 2d 597.

No. 89-7472. TAYLOR *v.* JONES ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 898 F. 2d 147.

No. 89-7500. WILLIAMS ET UX. *v.* UNITED STATES ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 902 F. 2d 1573.

No. 89-7504. MOERLIEN *v.* GRGURINOVICH ET AL. C. A. 2d Cir. Certiorari denied.

No. 89-7505. HERRERA *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied.

No. 89-7510. LUSSY *v.* TICOR TITLE INSURANCE CO. Sup. Ct. Mont. Certiorari denied.

No. 89-7523. BOREN *v.* N. L. INDUSTRIES, INC., ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 889 F. 2d 1463.

No. 89-7529. KLACSMANN *v.* LOCKHEED SPACE OPERATIONS CO. C. A. 11th Cir. Certiorari denied.

No. 89-7538. MANCHESTER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 900 F. 2d 253.

No. 89-7562. WEY *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 895 F. 2d 429.

No. 89-7580. LEVINE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 894 F. 2d 1245.

No. 89-7601. MARTINEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 915 F. 2d 1567.

No. 89-7608. CONNOR *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 898 F. 2d 942.

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No. 89-7612. *WILSON v. KASSICIEH ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 899 F. 2d 15.

No. 89-7630. *SAahir v. UNITED STATES.* C. A. 10th Cir. Certiorari denied.

No. 89-7635. *HARRIS ET AL. v. UNITED STATES.* C. A. 4th Cir. Certiorari denied. Reported below: 898 F. 2d 148.

No. 89-7636. *KING v. UNITED STATES.* C. A. 9th Cir. Certiorari denied. Reported below: 899 F. 2d 1226.

No. 89-7646. *JOHNSON v. UNITED STATES.* C. A. 6th Cir. Certiorari denied. Reported below: 900 F. 2d 260.

No. 89-7650. *COVINGTON v. UNITED STATES.* C. A. 4th Cir. Certiorari denied. Reported below: 900 F. 2d 256.

No. 89-7651. *FITZ v. UNITED STATES.* C. A. 4th Cir. Certiorari denied. Reported below: 898 F. 2d 148.

No. 89-7660. *SHEFFIELD v. KEANE, SUPERINTENDENT, SING SING CORRECTIONAL FACILITY, ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 904 F. 2d 34.

No. 89-7666. *HINOJOSA-RAMOS v. UNITED STATES.* C. A. 4th Cir. Certiorari denied. Reported below: 898 F. 2d 148.

No. 89-7670. *JACKSON v. UNITED STATES.* C. A. 11th Cir. Certiorari denied. Reported below: 895 F. 2d 722.

No. 89-7673. *LAROQUE v. UNITED STATES ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 902 F. 2d 1565.

No. 89-7677. *SULLIVAN v. UNITED STATES.* C. A. 6th Cir. Certiorari denied. Reported below: 897 F. 2d 530.

No. 89-7680. *SMITH v. UNITED STATES.* C. A. 3d Cir. Certiorari denied. Reported below: 902 F. 2d 1563.

No. 89-7688. *CIALONI v. UNITED STATES.* C. A. 7th Cir. Certiorari denied. Reported below: 898 F. 2d 1218.

No. 89-7690. *GARCIA v. UNITED STATES.* C. A. 8th Cir. Certiorari denied. Reported below: 902 F. 2d 1575.

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No. 89-7693. GOREE *v.* UNITED STATES. Ct. App. D. C. Certiorari denied.

No. 89-7709. HODGDON *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 900 F. 2d 247.

No. 88-1553. LEWIS, DIRECTOR, ARIZONA DEPARTMENT OF CORRECTIONS, ET AL. *v.* ADAMSON. C. A. 9th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. THE CHIEF JUSTICE, JUSTICE WHITE, and JUSTICE SCALIA would grant the petition for writ of certiorari, vacate the judgment, and remand the case for further consideration in light of *Walton v. Arizona*, *ante*, p. 639, *Lewis v. Jeffers*, *ante*, p. 764, and *Alabama v. Smith*, 490 U. S. 794 (1989). JUSTICE O'CONNOR and JUSTICE KENNEDY took no part in the consideration or decision of this motion and this petition. Reported below: 865 F. 2d 1011.

No. 88-6512. SUTTON *v.* TENNESSEE. Sup. Ct. Tenn.;
No. 88-7332. JIMERSON *v.* ILLINOIS. Sup. Ct. Ill.;
No. 88-7444. THOMPSON *v.* TENNESSEE. Sup. Ct. Tenn.;
No. 88-7451. OTEY *v.* GRAMMER, WARDEN. C. A. 8th Cir.;
No. 89-5008. SALAZAR *v.* ILLINOIS. Sup. Ct. Ill.;
No. 89-5016. LIBBERTON *v.* ARIZONA. Sup. Ct. Ariz.;
No. 89-5121. HAMBLEN *v.* DUGGER, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir.;
No. 89-5133. McCALL *v.* ARIZONA. Sup. Ct. Ariz.;
No. 89-5146. ODLE *v.* ILLINOIS. Sup. Ct. Ill.;
No. 89-5219. YOUNG *v.* ILLINOIS. Sup. Ct. Ill.;
No. 89-5232. PHILLIPS *v.* ILLINOIS. Sup. Ct. Ill.;
No. 89-5265. NASH *v.* ARIZONA. Sup. Ct. Ariz.;
No. 89-5435. MAHAFFEY *v.* ILLINOIS. Sup. Ct. Ill.;
No. 89-5443. FLORES *v.* ILLINOIS. Sup. Ct. Ill.;
No. 89-5470. TAYLOR *v.* TENNESSEE. Sup. Ct. Tenn.;
No. 89-5513. HENLEY *v.* TENNESSEE. Sup. Ct. Tenn.;
No. 89-5545. BRACY *v.* ARIZONA. Sup. Ct. Ariz.;
No. 89-5616. MCKINNEY *v.* IDAHO. Sup. Ct. Idaho;
No. 89-5633. HOOPER *v.* ARIZONA. Sup. Ct. Ariz.;
No. 89-5635. MILLER *v.* TENNESSEE. Sup. Ct. Tenn.;
No. 89-5704. ALLEN *v.* ZANT, SUPERINTENDENT, GEORGIA DIAGNOSTIC AND CLASSIFICATION CENTER. Super. Ct. Ga., Butts County;

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No. 89-5848. *FOSTER v. OKLAHOMA*. Ct. Crim. App. Okla.;

No. 89-5990. *KENNEDY v. DUGGER*, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. Sup. Ct. Fla.;

No. 89-6298. *STEWART v. FLORIDA*. Sup. Ct. Fla.;

No. 89-6317. *COLEMAN v. ILLINOIS*. Sup. Ct. Ill.;

No. 89-6459. *OWENS v. ILLINOIS*. Sup. Ct. Ill.;

No. 89-6461. *JACKSON v. DUGGER*, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. Sup. Ct. Fla.;

No. 89-6600. *BUXTON v. COLLINS*, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir.;

No. 89-6626. *LANKFORD v. IDAHO*. Sup. Ct. Idaho;

No. 89-6778. *SIDEBOTTOM v. MISSOURI*. Sup. Ct. Mo.;

No. 89-6870. *HOLMAN v. ILLINOIS*. Sup. Ct. Ill.;

No. 89-6953. *KOKORALEIS v. ILLINOIS*. Sup. Ct. Ill.;

No. 89-7080. *BERTOLOTTI v. DUGGER*, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir.;

No. 89-7178. *COLLINS v. MARYLAND*. Ct. App. Md.;

No. 89-7474. *LUSK v. DUGGER*, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir.;

No. 89-7512. *ISAACS v. GEORGIA*. Sup. Ct. Ga.; and

No. 89-7528. *SIEBERT v. ALABAMA*. Sup. Ct. Ala. Certiorari denied. Reported below: No. 88-6512, 761 S. W. 2d 763; No. 88-7332, 127 Ill. 2d 12, 535 N. E. 2d 889; No. 88-7444, 768 S. W. 2d 239; No. 88-7451, 859 F. 2d 575; No. 89-5008, 126 Ill. 2d 424, 535 N. E. 2d 766; No. 89-5133, 160 Ariz. 119, 770 P. 2d 1165; No. 89-5146, 128 Ill. 2d 111, 538 N. E. 2d 428; No. 89-5219, 128 Ill. 2d 1, 538 N. E. 2d 453 and 461; No. 89-5232, 127 Ill. 2d 499, 538 N. E. 2d 500; No. 89-5435, 128 Ill. 2d 388, 539 N. E. 2d 1172; No. 89-5443, 128 Ill. 2d 66, 538 N. E. 2d 481; No. 89-5470, 771 S. W. 2d 387; No. 89-5513, 774 S. W. 2d 908; No. 89-5616, 115 Idaho 1125, 772 P. 2d 1219; No. 89-5635, 771 S. W. 2d 401; No. 89-5848, 779 P. 2d 591; No. 89-5990, 551 So. 2d 461; No. 89-6298, 549 So. 2d 171; No. 89-6317, 129 Ill. 2d 321, 544 N. E. 2d 330; No. 89-6459, 129 Ill. 2d 303, 544 N. E. 2d 276; No. 89-6461, 554 So. 2d 1168; No. 89-6600, 879 F. 2d 140; No. 89-6626, 116 Idaho 860, 781 P. 2d 197; No. 89-6778, 781 S. W. 2d 791; No. 89-6870, 132 Ill. 2d 128, 547 N. E. 2d 124; No. 89-6953, 132 Ill. 2d 235, 547 N. E. 2d 202; No. 89-7080, 883 F. 2d 1503; No. 89-7178, 318 Md. 269, 568 A. 2d 1; No. 89-7474,

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890 F. 2d 332; No. 89-7512, 259 Ga. 717, 386 S. E. 2d 316; No. 89-7528, 555 So. 2d 780.

JUSTICE BRENNAN and JUSTICE MARSHALL, dissenting.

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

No. 88-7629. VICKERS v. ARIZONA. Sup. Ct. Ariz. Certiorari denied. Reported below: 159 Ariz. 532, 768 P. 2d 1177.

JUSTICE MARSHALL, with whom JUSTICE BRENNAN joins, dissenting.

Adhering to my view that the death penalty is in all circumstances cruel and unusual punishment prohibited by the Eighth and Fourteenth Amendments, *Gregg v. Georgia*, 428 U. S. 153, 231 (1976) (MARSHALL, J., dissenting), I would grant the petition for certiorari and vacate the death penalty in this case. Even if I did not hold this view, I would grant the petition to decide whether the Constitution requires a State to provide an indigent defendant access to diagnostic testing necessary to prepare an effective defense based on his mental condition, when the defendant demonstrates that his sanity at the time of the offense will be a significant issue at trial. I believe that our decision in *Ake v. Oklahoma*, 470 U. S. 68 (1985), compels us to answer that question in the affirmative.

Petitioner Robert Wayne Vickers was convicted of murdering a prison inmate and sentenced to death. His only defense at trial was insanity. Specifically, Vickers claimed that he suffered from temporal lobe epilepsy, a brain disorder that can cause violent behavior and render a person unable to appreciate the nature and wrongfulness of his acts. Vickers' court-appointed psychiatrist, Dr. Paul Bindelglas, determined, after a lengthy interview and an exhaustive review of Vickers' medical records, that Vickers suffered from "definite dissociative reactions" possibly due to temporal lobe epilepsy. App. to Pet. for Cert. B-7. Dr. Bindelglas based his opinion on Vickers' history of cerebral trauma and seizures, neurological deficits reported by a psychologist when Vickers was a child, improvement in Vickers' condition when he was placed on anti-convulsive and psychotropic medications and

reversion when he was taken off the medication, and an abnormal electroencephalogram (EEG) performed four years before the murder. *Ibid.* Dr. Bindelglas further opined that Vickers probably was in a dissociative state at the time of the offense, which made him "incapable of rendering any judgement and . . . unable to know right from wrong." *Id.*, at B-9. Dr. Bindelglas stated that he could not make a definitive diagnosis, however, without certain neuropsychological testing. *Ibid.*

Based on Dr. Bindelglas' recommendation, petitioner requested that the trial court provide access to diagnostic testing. Petitioner included with his request an affidavit from a second psychiatrist, Dr. David Bear, who, after reviewing petitioner's records and examining him for five hours, agreed that there was a "substantial possibility" that Vickers suffered from temporal lobe epilepsy, which may have impaired his ability to "appreciate the quality and nature of the act and its wrongfulness." *Id.*, at C-4, C-9. Dr. Bear also stated that diagnostic testing, including a careful neurological examination and multiple EEG's, was necessary "before professional judgment can be rendered regarding Mr. Vickers' mental state at the time of the subject offense." *Id.*, at C-12. In addition, the State's own expert, Dr. Maier Tuchler, testified at petitioner's competency hearing that diagnostic testing was necessary to determine definitely whether Vickers suffered from temporal lobe epilepsy. Finally, petitioner supplied the court with the affidavits of two other psychiatrists who testified that strong evidence indicated that Vickers suffered from a mental disorder which impaired his capacity to make rational judgments, but that diagnostic testing was necessary before a firm conclusion could be reached. App. to Pet. for Cert. D and E.

Despite the consensus of these medical experts that diagnostic testing was necessary, the court denied petitioner's request. The court relied on a two-paragraph letter from a psychiatrist appointed at the State's request, Dr. William Masland. Dr. Masland concluded, on the basis of a quick review of petitioner's medical records, conversations with prisoners and prison staff, and a brief interview with Vickers, that "there is absolutely nothing to suggest that this man is epileptic" and that "further diagnostic testing . . . would be totally superfluous." *Id.*, at F. The court refused to reconsider its order after receiving additional affidavits from Dr. Bindelglas and Dr. Bear and two neurologists

that vehemently contested Dr. Masland's opinion and reemphasized the need for diagnostic testing.

Because of the lack of diagnostic testing, Dr. Bindelglas could testify at trial only that there was a "definite probability" of temporal lobe epilepsy. 159 Ariz. 532, 536, 768 P. 2d 1177, 1181 (1989). Before sentencing, petitioner again requested diagnostic testing to establish the brain disorder as a mitigating circumstance; again the court denied his motion.

The Arizona Supreme Court rejected petitioner's argument that the State violated due process by denying him an adequate opportunity to prove his insanity defense. *Ibid.* The court reasoned that the requested testing would have been expensive and would have posed a "burdensome security problem." *Id.*, at 537, 768 P. 2d, at 1182. The court also claimed that nothing indicated that testing would have helped petitioner prove his insanity defense. *Ibid.*

In *Ake v. Oklahoma*, *supra*, at 83, this Court held that when an indigent "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." (Emphases added.) The right to a competent psychiatrist necessarily includes the right to have the State provide the psychiatrist with the tools he requires to conduct an adequate examination and evaluation of the defendant. To hold otherwise is analogous to requiring the State to provide an indigent defendant with an attorney, but not requiring it to pay for the attorney's legal research expenses.

This is not to say that an indigent defendant is entitled to every scientific procedure that has only a remote possibility of bolstering his defense. Thus, we recognized in *Ake* that "the Court has not held that a State must purchase for the indigent defendant all the assistance that his wealthier counterpart might buy." 470 U. S., at 77 (citing *Ross v. Moffitt*, 417 U. S. 600 (1974)). But when a defendant demonstrates that his sanity will be a significant issue at trial, and his psychiatrist makes a plausible showing that certain testing is necessary for him to perform his *Ake* function, that testing must be considered one of "the raw materials integral to the building of an effective defense" that the State must provide. 470 U. S., at 77.

Petitioner undoubtedly satisfied the threshold requirements. First, his sanity was a significant factor in his defense. Vickers' "sole defense was that of insanity," *id.*, at 86, and six experts testified that there was a substantial possibility that Vickers suffered from a mental disorder at the time of the offense that might have impaired his capacity to understand the nature of his actions. Indeed, the trial court's appointment of Dr. Bindelglas itself shows that petitioner's sanity was a significant issue. Second, Vickers' court-appointed psychiatrist established that testing was necessary for him to perform his *Ake* role adequately. Dr. Bindelglas stated in the clearest terms that he could not make a definitive diagnosis without specific testing. App. to Pet. for Cert. B-9. Six other medical experts, including the State's expert, Dr. Tuchler, affirmed the need for testing. Pet. for Cert. 7. Without such testing, Dr. Bindelglas could offer only a tentative opinion at trial. Clearly, then, Dr. Bindelglas' ability to contribute to petitioner's defense was impaired unreasonably by the State's refusal to provide access to diagnostic testing.

The trial court's reliance on Dr. Masland's opinion that testing would be superfluous—an opinion not shared by *any* of the other doctors—does not justify its denial of access to testing. *Ake* requires the appointment of a psychiatrist who will assist in the preparation of the defense, not one who will merely give an independent assessment to the judge or jury. 470 U. S., at 83. Although a judge or jury may choose to believe the State's experts rather than the defendant's at trial, a court may not permit the State's experts to determine what resources the defendant's experts may use. To allow such a veto power is akin to permitting a prosecutor to decide on what cases defense counsel may rely on or what witnesses he may call. As long as the defendant makes the threshold showing of the need for testing, the court must provide access to it.

The Arizona Supreme Court affirmed the trial court's decision in part on the assumption that the necessary testing would have to be performed out of state and would last four to six weeks, thus imposing substantial costs on the State and creating a security problem. 159 Ariz., at 537, 768 P. 2d, at 1182. The court based this assumption on Dr. Bindelglas' request that Vickers be tested in a California hospital "if at all possible" because the Arizona State Hospital might have been prejudiced in favor of its previous diagnosis and might not perform the job adequately. App. to

Pet. for Cert. B-9. The trial court, however, never sought a compromise; it refused to provide for testing altogether. Any problem posed by sending Vickers to California is a red herring, then, to the extent that less burdensome testing would have satisfied the State's obligation. If, however, the testing procedure suggested by Dr. Bindelglas was in fact the only adequate means of arriving at a medically sound diagnosis, the burden on the State does not justify denying that testing. As we held in *Ake*, the State's interest in preserving its fisc is not substantial when compared with the compelling interest of both the defendant and the State in the fair and accurate adjudication of a criminal case, particularly one in which the defendant's life is at stake. 470 U. S., at 78-79.

Finally, the Arizona high court maintained that further testing was of "questionable value" to petitioner's insanity defense and that the risk of an erroneous judgment was minimal because three state experts testified that Vickers was not insane at the time of the offense. 159 Ariz., at 537, 768 P. 2d, at 1182. This reasoning wrongly subjects *Ake* claims to harmless-error analysis. In *Ake*, we did not endeavor to determine whether the petitioner's case had been prejudiced by the lack of a psychiatrist. Rather, we determined that, in general, psychiatric assistance is of extreme importance in cases involving an insanity defense, *id.*, at 79-82, and that without that assistance "the risk of an inaccurate resolution of sanity issues is extremely high," *id.*, at 82. Because the petitioner had made the threshold showing that his sanity was a significant issue at trial and the State had failed to offer psychiatric assistance, we reversed and remanded for a new trial. In this case, then, the trial testimony of the State's experts is irrelevant. Vickers' sanity was a significant issue at trial and testing was necessary for his psychiatrist to perform his *Ake* function. Because the trial court nevertheless refused to require the State to provide access to the requisite testing, Vickers is entitled to a new trial.

Our decision in *Ake v. Oklahoma* recognized the right of an indigent defendant to a competent court-appointed psychiatrist when his sanity is seriously in question. To deprive a defendant of diagnostic testing necessary for the psychiatrist to perform adequately his *Ake* function renders that right meaningless. I therefore dissent from the denial of certiorari.

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No. 89-867. F. & H. R. FARMAN-FARMAIAN CONSULTING ENGINEERS FIRM ET AL. *v.* HARZA ENGINEERING CO. C. A. 7th Cir. Certiorari denied. JUSTICE WHITE would grant certiorari. Reported below: 882 F. 2d 281.

No. 89-1556. WHITACRE *v.* DAVEY. C. A. D. C. Cir. Certiorari denied. JUSTICE WHITE would grant certiorari. Reported below: 281 U. S. App. D. C. 363, 890 F. 2d 1168.

No. 89-1372. DELO, SUPERINTENDENT, POTOSI CORRECTIONAL CENTER *v.* NEWLON. C. A. 8th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 885 F. 2d 1328.

No. 89-1757. SCULLY, SUPERINTENDENT, GREENHAVEN CORRECTIONAL FACILITY, ET AL. *v.* PETERSON. C. A. 2d Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 896 F. 2d 661.

No. 89-1425. MARYLAND *v.* FERRELL. Ct. App. Md. Motion of respondent for leave to proceed *in forma pauperis* without an affidavit of indigency executed by respondent granted. Certiorari denied. Reported below: 318 Md. 235, 567 A. 2d 937.

No. 89-1531. PARTINGTON *v.* GEDAN ET AL. C. A. 9th Cir. Motion of petitioner to strike suggestion of mootness denied. Certiorari denied. Reported below: 880 F. 2d 116.

No. 89-1882. FOLEY *v.* WCCO TV, INC., ET AL. Ct. App. Minn. Certiorari denied. JUSTICE BLACKMUN took no part in the consideration or decision of this petition. Reported below: 449 N. W. 2d 497.

No. 89-7175. BEAULIEU *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 893 F. 2d 1177.

JUSTICE WHITE, dissenting.

The issue presented is whether a district judge may rely on testimony from the trial of a defendant's co-conspirators in sentencing the defendant. The Tenth Circuit held that the District Court's reliance on such evidence did not violate any constitutional provision. 900 F. 2d 1531 (1990). The Tenth Circuit expressly rejected the position adopted by the Eleventh Circuit which has concluded that reliance on such testimony violates a defendant's

rights. See *United States v. Castellanos*, 882 F. 2d 474 (CA11 1989). I would grant certiorari to resolve the conflict.

Rule 10 of the Rules of this Court "indicate the character of reasons" that will be considered in granting or denying petitions for certiorari. Among these considerations is whether there is a conflict between two courts of appeals, between a court of appeals and the highest court of a State, or between two state courts of last resort. These considerations frequently lead to granting certiorari. Just this past Monday, we granted certiorari in two cases that, absent conflict between Courts of Appeals, very likely would not have been granted. *Dole v. Occupational Safety and Health Review Comm'n*, ante, p. 1002; *Business Guides, Inc. v. Chromatic Communications Enterprises, Inc.*, ante, p. 1002. This is a weekly occurrence, but it also regularly happens that certiorari is denied in other cases presenting the kind of conflicts singled out by Rule 10. This case is one of them, and there are many others this Term, as there have been in other Terms.

As of June 21, I had noted my dissent from denial of certiorari 67 times during this Term. My notes on these dissents indicate that on 48 occasions I dissented because in my view there were conflicts among Courts of Appeals sufficiently crystallized to warrant certiorari if the federal law is to be maintained in any satisfactory, uniform condition. In seven other cases, there were differences on the same federal issue between Courts of Appeals and state courts; in another case, state courts of last resort differed with each other. Finally, there were 11 cases that did not involve a conflict between courts but in my view presented important issues that should be settled by this Court.

In some of these cases it is perhaps arguable that the alleged conflict was not "real" or "square." In most of these cases, however, it is very difficult to deny the conflict, especially where, as in this case, the court of appeals expressly differs with another court, yet certiorari is denied because the conflict is "tolerable" or "narrow," or because other courts of appeals should have the opportunity to weigh in on one side or another of the unsettled issue, or for some other unstated reason. In any event, denial underlines the fact that the federal law is being administered in different ways in different parts of the country; citizens in some circuits are subject to liabilities or entitlements that citizens in other circuits are not burdened with or entitled to.

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It is surely arguable that we should not grant more cases in one Term than we can decide in one Term. Being current in our docket is a major consideration; and it may not be wise to delay prompt review in every case, even though many of them involve issues of paramount importance, simply to overcrowd our argument docket with many other cases of lesser significance. But I suggest that we should do what we can, and it is plain enough to me that quite a number of the cases involving conflicts have been denied review but could have been granted without presenting any danger of not being current in our docket.

Of course, even if we have taken all of the cases that we could be expected to decide, which is not the fact as I see it, there would remain those unreviewed cases that leave in place the many different interpretations and applications of the federal law as administered in the courts of appeals, an issue that merits the attention of Congress and the legal establishment.

Rehearing Denied

No. 89-333. *CALIFORNIA v. FEDERAL ENERGY REGULATORY COMMISSION ET AL.*, 495 U. S. 490;

No. 89-1574. *GENERAL MOTORS CORP. ET AL. v. DEPARTMENT OF REVENUE OF ALABAMA*, 496 U. S. 912;

No. 89-1587. *REYNOLDS METALS CO. v. SIZEMORE, COMMISSIONER OF REVENUE OF ALABAMA*, 496 U. S. 912;

No. 89-1592. *RAMIREZ v. UNITED STATES*, 495 U. S. 933;

No. 89-6243. *LEAL v. COLLINS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION*, 495 U. S. 934;

No. 89-6494. *ASANTE v. UNITED STATES*, 495 U. S. 934;

No. 89-6706. *BERBICK v. PROVIDENT NATIONAL BANK ET AL.*, 494 U. S. 1085;

No. 89-6764. *SCOTT v. DEPARTMENT OF THE ARMY*, 495 U. S. 935;

No. 89-6912. *TAYLOR v. DEPARTMENT OF HEALTH AND HUMAN SERVICES*, 494 U. S. 1090;

No. 89-6944. *COOPER v. REMAX WYANDOTTE COUNTY REAL ESTATE, INC., ET AL.*, 495 U. S. 935;

No. 89-6972. *LAKE v. CALIFORNIA*, 495 U. S. 960;

No. 89-6976. *KLEIN v. MASSACHUSETTS*, 495 U. S. 916;

No. 89-6979. *FOX v. UNITED STATES DEPARTMENT OF THE INTERIOR*, 495 U. S. 936;

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No. 89-6991. MIKESELL *v.* DEPARTMENT OF TRANSPORTATION, NATIONAL TRANSPORTATION SAFETY BOARD, ET AL., 495 U. S. 949;

No. 89-7000. ROE *v.* TEXAS, 495 U. S. 937;

No. 89-7009. CASTILLO ET AL. *v.* UNITED STATES, 495 U. S. 960;

No. 89-7017. CASTILLO *v.* COLLINS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION, 495 U. S. 937;

No. 89-7057. FLANAGAN *v.* UNITED STATES, 495 U. S. 938;

No. 89-7070. WILLIAMS *v.* GEORGIA, 495 U. S. 950;

No. 89-7111. ALLUSTIARTE ET AL. *v.* COOPER, 495 U. S. 960;

No. 89-7117. BAASCH *v.* UNITED STATES ET AL., 495 U. S. 938;

No. 89-7118. MARTIN *v.* SUPREME COURT OF PENNSYLVANIA ET AL., 495 U. S. 960;

No. 89-7119. MARTIN *v.* SUPREME COURT OF PENNSYLVANIA, 495 U. S. 960;

No. 89-7126. MARTIN *v.* SHANK ET AL., 495 U. S. 961;

No. 89-7129. HAWK-BEY *v.* UNITED STATES, 495 U. S. 938;

No. 89-7173. KELLEY *v.* INTERNATIONAL TOTAL SERVICES, INC., ET AL., 496 U. S. 909;

No. 89-7205. DONALD *v.* UNITED STATES DEPARTMENT OF EDUCATION, 496 U. S. 910;

No. 89-7243. MC LAUGHLIN *v.* LATESSA, 495 U. S. 952;

No. 89-7263. WHIRTY *v.* LATESSA, SUPERINTENDENT, MASSACHUSETTS CORRECTIONAL INSTITUTION, 495 U. S. 952; and

No. 89-7285. COCHRAN *v.* TURNER, WARDEN, 496 U. S. 929. Petitions for rehearing denied.

No. 89-1545. QUARTERMAN ET UX. *v.* COMMISSIONER OF INTERNAL REVENUE, 495 U. S. 932. Motion of petitioners for leave to proceed further herein *in forma pauperis* granted. Petition for rehearing denied.

No. 89-7280. GOLUB *v.* IBM CORP.; GOLUB *v.* ERNST & WHINNEY ET AL.; GOLUB *v.* WEINER & Co.; and GOLUB *v.* UNIVERSITY OF CHICAGO, 495 U. S. 941. Petition for rehearing denied. JUSTICE BLACKMUN and JUSTICE STEVENS took no part in the consideration or decision of this petition.

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JULY 9, 1990

Miscellaneous Order

No. A-929. *KAREM v. PRIEST ET AL.* Application for stay pending appeal to the United States Court of Appeals for the Fifth Circuit, addressed to JUSTICE BRENNAN and referred to the Court, denied. JUSTICE BRENNAN and JUSTICE MARSHALL would grant the application.

JULY 12, 1990

Certiorari Denied

No. 90-5103 (A-35). *THOMAS v. JONES, WARDEN.* C. A. 11th Cir. Application for stay of execution of sentence of death, presented to JUSTICE KENNEDY, and by him referred to the Court, denied. Certiorari denied.

JUSTICE BRENNAN 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.

JULY 16, 1990

Dismissal Under Rule 46

No. 89-7094. *IN RE MARSH.* Petition for writ of mandamus dismissed under this Court's Rule 46.

JULY 17, 1990

Miscellaneous Order

No. A-43. *DERRICK v. COLLINS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION.* Application for stay of execution of sentence of death and certificate of probable cause, 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

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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.

JULY 18, 1990

Miscellaneous Order

No. A-46. DUGGER, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS *v.* HAMBLEN. Application of the Attorney General of Florida for an order to vacate the stay of execution of sentence of death entered by the United States Court of Appeals for the Eleventh Circuit, presented to JUSTICE KENNEDY, and by him referred to the Court, denied.

JULY 19, 1990

Miscellaneous Orders

No. A-48. DUGGER, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS *v.* WHITE. Application of the Attorney General of Florida for an order to vacate the stay of execution of sentence of death entered by the United States Court of Appeals for the Eleventh Circuit, presented to JUSTICE KENNEDY, and by him referred to the Court, denied.

No. A-54 (90-5195). BOGGS *v.* MUNCY, WARDEN. C. A. 4th Cir. 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 and the petition for writ of certiorari and would vacate the death sentence in this case.

JULY 23, 1990

Assignment Order

Pursuant to the provisions of 28 U. S. C. § 42, it is ordered that THE CHIEF JUSTICE be, and he is hereby, assigned to the First

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Circuit and the Third Circuit as Circuit Justice, effective July 20, 1990, pending further order.

JULY 27, 1990

Miscellaneous Order

No. A-77. *BERTOLOTTI 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 MARSHALL, dissenting.

Adhering to my view that the death penalty is in all circumstances cruel and unusual punishment prohibited by the Eighth and Fourteenth Amendments, *Gregg v. Georgia*, 428 U. S. 153, 231 (1976), I 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.

AUGUST 7, 1990

Assignment Order

Pursuant to the provisions of 28 U. S. C. § 42, it is ordered that JUSTICE BLACKMUN be, and he is hereby, assigned to the First Circuit as Circuit Justice, effective August 7, 1990, pending further order.

Pursuant to the provisions of 28 U. S. C. § 42, it is ordered that JUSTICE STEVENS be, and he is hereby, assigned to the Third Circuit as Circuit Justice, effective August 7, 1990, pending further order.

It is further ordered that the order entered July 23, 1990 [*ante*, p. 1043], assigning THE CHIEF JUSTICE to the First Circuit and to the Third Circuit as Circuit Justice is vacated.

AUGUST 13, 1990

Miscellaneous Orders

No. A-677 (89-6967). *BURKE v. BEYER*. C. A. 3d Cir. Application for bail, addressed to JUSTICE WHITE and referred to the Court, denied.

No. D-876. *IN RE DISBARMENT OF TOBIN*. Disbarment entered. [For earlier order herein, see 494 U. S. 1024.]

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No. D-882. IN RE DISBARMENT OF TIERNEY. Disbarment entered. [For earlier order herein, see 494 U. S. 1053.]

No. D-889. IN RE DISBARMENT OF MAZUR. Disbarment entered. [For earlier order herein, see 494 U. S. 1065.]

No. D-898. IN RE DISBARMENT OF KELLY. Disbarment entered. [For earlier order herein, see 495 U. S. 945.]

No. D-903. IN RE DISBARMENT OF HAGMAN. Disbarment entered. [For earlier order herein, see 495 U. S. 955.]

No. D-915. IN RE DISBARMENT OF KOKERNAK. It is ordered that Bruce G. Kokernak, of Sarasota, Fla., be suspended from the practice of law in this Court and that a rule issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D-916. IN RE DISBARMENT OF JOHNSTONE. It is ordered that Robert Bruce Johnstone, of Eagle Creek, Ore., 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-917. IN RE DISBARMENT OF HENDERSON. It is ordered that Barry J. Henderson, of Baltimore, Md., be suspended from the practice of law in this Court and that a rule issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D-918. IN RE DISBARMENT OF LOVELL. It is ordered that Howell Lovell, Jr., of San Francisco, Cal., be suspended from the practice of law in this Court and that a rule issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D-919. IN RE DISBARMENT OF NICHOLS. It is ordered that John A. Nichols, of Parchman, Miss., be suspended from the practice of law in this Court and that a rule issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D-920. IN RE DISBARMENT OF DODGE. It is ordered that James Colvin Dodge, of West Liberty, Ohio, be suspended from the practice of law in this Court and that a rule issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

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No. D-921. *IN RE DISBARMENT OF YINGER.* It is ordered that David Harrison Yinger, Jr., of Frederick, Md., be suspended from the practice of law in this Court and that a rule issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D-922. *IN RE DISBARMENT OF WEISS.* It is ordered that Ralph Weiss, of Baltimore, Md., be suspended from the practice of law in this Court and that a rule issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D-923. *IN RE DISBARMENT OF MORROW.* It is ordered that Charles Stanley Morrow, of Mars, Pa., be suspended from the practice of law in this Court and that a rule issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

Rehearing Denied

No. 88-1943. *OFFICE OF PERSONNEL MANAGEMENT v. RICHMOND*, 496 U. S. 414;

No. 89-1509. *WAGNER v. UNITED STATES BANKRUPTCY COURT*, 495 U. S. 905;

No. 89-1551. *POGUE v. WHITE STONE BAPTIST CHURCH ET AL.*, 495 U. S. 957;

No. 89-1682. *STALHEIM v. ALBERT LEA MEDICAL SURGICAL CENTER, LTD., ET AL.*, 496 U. S. 937;

No. 89-1693. *NORTON v. NICHOLSON ET AL.*, 496 U. S. 938;

No. 89-1767. *WILK ET AL. v. JOINT COMMISSION ON ACCREDITATION OF HOSPITALS ET AL.*, 496 U. S. 927;

No. 89-5962. *TAYLOR v. UNITED STATES*, 496 U. S. 907;

No. 89-6223. *BITTAKER v. CALIFORNIA*, 496 U. S. 931;

No. 89-6778. *SIDEBOTTOM v. MISSOURI*, *ante*, p. 1032;

No. 89-6795. *McCARTER v. CALIFORNIA*, 496 U. S. 927;

No. 89-6882. *ROBERTS v. GEORGIA*, 495 U. S. 963;

No. 89-6889. *IN RE MCFADDEN*, 496 U. S. 904;

No. 89-6920. *STULL v. UNITED STATES*, 495 U. S. 959;

No. 89-7048. *CARGILL v. ZANT, WARDEN*, 495 U. S. 963;

No. 89-7095. *MCFADDEN v. COMMISSIONER OF INTERNAL REVENUE*, 496 U. S. 909;

No. 89-7109. *ALLUSTIARTE ET AL. v. COOPER*, 495 U. S. 960;

No. 89-7146. *FREEMAN v. ALABAMA*, 496 U. S. 912;

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No. 89-7150. *SALSMAN ET UX. v. UNITED STATES*, 495 U. S. 939;

No. 89-7212. *EVERSON v. OTT ET AL.*, 496 U. S. 910;

No. 89-7224. *DOWNS v. COLLINS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION*, 496 U. S. 928;

No. 89-7238. *AMIRI v. JOHNSON, JUDGE, UNITED STATES DISTRICT COURT FOR DISTRICT OF COLUMBIA, ante*, p. 1006;

No. 89-7239. *AMIRI v. DISTRICT OF COLUMBIA ET AL.*, 496 U. S. 928;

No. 89-7253. *ELMORE v. SOUTH CAROLINA*, 496 U. S. 931;

No. 89-7259. *FLUKER v. TOWNSEND*, 496 U. S. 940;

No. 89-7266. *SINDRAM v. DISTRICT OF COLUMBIA ET AL.*, 496 U. S. 940;

No. 89-7273. *JACKSON ET UX. v. DIXON-BOOKMAN*, 496 U. S. 929;

No. 89-7275. *McCOLLUM v. INDIANA*, 496 U. S. 931;

No. 89-7277. *McCOLPIN v. CITY OF WICHITA ET AL.*, 496 U. S. 940;

No. 89-7314. *WHISENHANT v. ALABAMA*, 496 U. S. 943;

No. 89-7347. *IN RE BROOKS, ante*, p. 1002;

No. 89-7377. *WEXLER v. DEPARTMENT OF THE INTERIOR*, 496 U. S. 929;

No. 89-7423. *IN RE SEITU*, 496 U. S. 903;

No. 89-7446. *MARTIN v. FARNAN, ante*, p. 1028;

No. 89-7449. *MARTIN v. HUYETT, ante*, p. 1028; and

No. 89-7474. *LUSK v. DUGGER, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ante*, p. 1032. Petitions for rehearing denied.

No. 89-243. *ELI LILLY & Co. v. MEDTRONIC, INC.*, 496 U. S. 661. Petition for rehearing denied. JUSTICE O'CONNOR took no part in the consideration or decision of this petition.

No. 89-6285. *CHAMBERS v. OFFICE OF FEDERAL CONTRACT COMPLIANCE PROGRAMS ET AL.*, 494 U. S. 1032. Motion for leave to file petition for rehearing denied.

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Dismissal Under Rule 46

No. 89-7730. *FIERRO v. TEXAS*. Ct. Crim. App. Tex. Certiorari dismissed under this Court's Rule 46.

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Certiorari Denied

No. 90-5248 (A-87). *WILLIAMS v. CALIFORNIA*. Sup. Ct. Cal. Application for stay of execution of sentence of death, presented to JUSTICE O'CONNOR, and by her referred to the Court, denied. Certiorari denied.

JUSTICE MARSHALL, dissenting.

Adhering to my view that the death penalty is in all circumstances cruel and unusual punishment prohibited by the Eighth and Fourteenth Amendments, *Gregg v. Georgia*, 428 U. S. 153, 231 (1976), I 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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Miscellaneous Order

No. A-126 (89-6324). *MOORE v. ZANT, SUPERINTENDENT, GEORGIA DIAGNOSTIC AND CLASSIFICATION CENTER*, *ante*, p. 1010. Application for stay of execution of sentence of death, presented to JUSTICE KENNEDY, and by him referred to the Court, granted pending this Court's action on the petition for rehearing. The respondent is invited to file a response to the petition for rehearing within 30 days.

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Miscellaneous Orders

No. A-14 (90-272). *BROOKS ET AL. v. GEORGIA STATE BOARD OF ELECTIONS ET AL.* D. C. S. D. Ga. Application for injunction and stay pending appeal, addressed to JUSTICE WHITE and referred to the Court, denied.

No. A-910 (89-6967). *BURKE v. BEYER*. C. A. 3d Cir. Application for transfer, addressed to JUSTICE O'CONNOR and referred to the Court, denied.

No. 89-1080. *BOARD OF EDUCATION OF OKLAHOMA CITY PUBLIC SCHOOLS, INDEPENDENT SCHOOL DISTRICT NO. 89, OKLAHOMA COUNTY, OKLAHOMA v. DOWELL ET AL.* C. A. 10th Cir. [Certiorari granted, 494 U. S. 1055.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

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No. 89-1149. *GROGAN ET AL. v. GARNER.* C. A. 8th Cir. [Certiorari granted, 495 U. S. 918.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 89-1298. *INGERSOLL-RAND CO. v. MCCLENDON.* Sup. Ct. Tex. [Certiorari granted, 494 U. S. 1078.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 89-1436. *UNITED STATES v. R. ENTERPRISES, INC., ET AL.* C. A. 4th Cir. [Certiorari granted, 496 U. S. 924.] Motion of the Solicitor General to dispense with printing the joint appendix granted. Motion of respondents for divided argument denied.

No. 89-1448. *VIRGINIA BANKSHARES, INC., ET AL. v. SANDBERG ET AL.* C. A. 4th Cir. [Certiorari granted, 495 U. S. 903.] Motions of American Corporate Counsel Association et al. and American Bankers Association et al. for leave to file briefs as *amici curiae* granted. Motion of the Acting Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 89-1646. *UNITED STATES ET AL. v. SMITH ET AL.* C. A. 9th Cir. [Certiorari granted, 496 U. S. 924.] Motion of the Solicitor General to dispense with printing the joint appendix granted.

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 Coalition for the Fundamental Rights and Equality of Ex-Patients for leave to file a brief as *amicus curiae* granted.

No. 89-6332. *MINNICK v. MISSISSIPPI.* Sup. Ct. Miss. [Certiorari granted, 495 U. S. 903.] Motion of Mississippi State Bar for leave to file a brief as *amicus curiae* granted.

Certiorari Denied

No. 90-5581 (A-157). *GILMORE v. DELO, SUPERINTENDENT, POTOSI CORRECTIONAL CENTER.* C. A. 8th Cir. Application for stay of execution of sentence of death, presented to JUSTICE BLACKMUN, and by him referred to the Court, denied. Certiorari denied. JUSTICE SCALIA took no part in the consideration or de-

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cision of this application and this petition. Reported below: 908 F. 2d 385.

JUSTICE MARSHALL, dissenting.

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

Rehearing Denied

No. 88-1872. RUTAN ET AL. *v.* REPUBLICAN PARTY OF ILLINOIS ET AL., *ante*, p. 62;

No. 88-2074. FRECH ET AL. *v.* RUTAN ET AL., *ante*, p. 62;

No. 88-7318. CAIN *v.* SOUTH CAROLINA, *ante*, p. 1010;

No. 88-7332. JIMERSON *v.* ILLINOIS, *ante*, p. 1031;

No. 88-7351. WALTON *v.* ARIZONA, *ante*, p. 639;

No. 88-7629. VICKERS *v.* ARIZONA, *ante*, p. 1033;

No. 89-189. LEWIS, DIRECTOR, ARIZONA DEPARTMENT OF CORRECTIONS, ET AL. *v.* JEFFERS, *ante*, p. 764;

No. 89-453. METRO BROADCASTING, INC. *v.* FEDERAL COMMUNICATIONS COMMISSION ET AL., *ante*, p. 547;

No. 89-1687. COMMUNICATIONS SATELLITE CORP. *v.* FEDERAL COMMUNICATIONS COMMISSION ET AL., *ante*, p. 1004;

No. 89-1703. SNYDER *v.* LEWIS, SECRETARY OF THE COMMONWEALTH OF PENNSYLVANIA, *ante*, p. 1004;

No. 89-1783. MEYER *v.* STATE BAR OF TEXAS; and MEYER *v.* LOWRY, DISTRICT JUDGE, 261ST JUDICIAL DISTRICT, TRAVIS COUNTY, TEXAS, ET AL., *ante*, p. 1026;

No. 89-5008. SALAZAR *v.* ILLINOIS, *ante*, p. 1031;

No. 89-5016. LIBBERTON *v.* ARIZONA, *ante*, p. 1031;

No. 89-5146. ODLE *v.* ILLINOIS, *ante*, p. 1031;

No. 89-5219. YOUNG *v.* ILLINOIS, *ante*, p. 1031;

No. 89-5232. PHILLIPS *v.* ILLINOIS, *ante*, p. 1031;

No. 89-5346. BRADLEY *v.* OHIO, *ante*, p. 1011;

No. 89-5443. FLORES *v.* ILLINOIS, *ante*, p. 1031;

No. 89-5616. MCKINNEY *v.* IDAHO, *ante*, p. 1031;

No. 89-5635. MILLER *v.* TENNESSEE, *ante*, p. 1031;

No. 89-5704. ALLEN *v.* ZANT, SUPERINTENDENT, GEORGIA DIAGNOSTIC AND CLASSIFICATION CENTER, *ante*, p. 1031;

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No. 89-5809. *SAWYER v. SMITH, INTERIM WARDEN*, *ante*, p. 227;

No. 89-5934. *CARTWRIGHT v. OKLAHOMA*, *ante*, p. 1015;

No. 89-6317. *COLEMAN v. ILLINOIS*, *ante*, p. 1032;

No. 89-6459. *OWENS v. ILLINOIS*, *ante*, p. 1032;

No. 89-6626. *LANKFORD v. IDAHO*, *ante*, p. 1032;

No. 89-6870. *HOLMAN v. ILLINOIS*, *ante*, p. 1032;

No. 89-6953. *KOKORALEIS v. ILLINOIS*, *ante*, p. 1032;

No. 89-7110. *KNAPP v. MASCHNER ET AL.*, 496 U. S. 939;

No. 89-7213. *FORD ET AL. v. RUTLEDGE ET AL.*, 496 U. S. 910;

No. 89-7353. *CHRISTOPHERSON ET UX. v. SHAWANO COUNTY*, *ante*, p. 1007;

No. 89-7375. *KURTZ v. EDMISTON, SUPERINTENDENT, SOUTHERN STATE CORRECTIONAL FACILITY, ET AL.*, *ante*, p. 1007;

No. 89-7380. *BARROW v. ILLINOIS*, *ante*, p. 1011;

No. 89-7416. *ACCOLA v. SULLIVAN, SUPERINTENDENT, SING SING CORRECTIONAL FACILITY, ET AL.*, *ante*, p. 1027;

No. 89-7418. *CURTIS v. AMERICAN BAKERIES CO. ET AL.*, *ante*, p. 1027;

No. 89-7512. *ISAACS v. GEORGIA*, *ante*, p. 1032; and

No. 89-7579. *MUKHTAR v. UNITED STATES*, *ante*, p. 1010. Petitions for rehearing denied.

No. 89-1380. *CRIDER v. UNITED STATES*, 495 U. S. 956. Motion of petitioner to defer consideration of petition for rehearing denied. Petition for rehearing denied.

No. 89-1803. *SCHAEFER v. GALLEGOS ET AL.*, *ante*, p. 1026. Motion of petitioner for leave to proceed further herein *in forma pauperis* granted. Petition for rehearing denied.

No. 89-7350. *IN RE SWENTEK*, 496 U. S. 904. Motion for leave to file petition for rehearing denied.

AUGUST 31, 1990

Miscellaneous Order

No. A-169. *GILMORE v. MISSOURI*. Application for stay of execution of sentence of death, presented to JUSTICE BLACKMUN, and by him referred to the Court, denied. JUSTICE SCALIA took no part in the consideration or decision of this application.

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JUSTICE MARSHALL, dissenting.

Adhering to my view that the death penalty is in all circumstances cruel and unusual punishment prohibited by the Eighth and Fourteenth Amendments, *Gregg v. Georgia*, 428 U. S. 153, 231 (1976), I 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.

Certiorari Denied

No. 90-5599 (A-167). *GILMORE v. DELO, SUPERINTENDENT, POTOSI CORRECTIONAL CENTER.* C. A. 8th Cir. Application for stay of execution of sentence of death, presented to JUSTICE BLACKMUN, and by him referred to the Court, denied. Certiorari denied. JUSTICE SCALIA took no part in the consideration or decision of this application and this petition.

JUSTICE MARSHALL, dissenting.

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

SEPTEMBER 5, 1990

Miscellaneous Order

No. A-178. *LOCKHART, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION v. FAIRCHILD.* Application of the Attorney General of Arkansas for an order to vacate the stay of execution of sentence of death entered by the United States Court of Appeals for the Eighth Circuit, presented to JUSTICE BLACKMUN, and by him referred to the Court, denied.

SEPTEMBER 6, 1990

Certiorari Denied

No. 90-5610 (A-175). *FAIRCHILD v. LOCKHART, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION.* C. A. 8th Cir. Application for stay of execution of sentence of death, presented to JUSTICE BLACKMUN, and by him referred to the Court, denied. Certiorari denied. Reported below: 900 F. 2d 1292.

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JUSTICE MARSHALL, dissenting.

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

SEPTEMBER 9, 1990

Miscellaneous Order

No. A-192. COLEMAN v. OKLAHOMA PARDON AND PAROLE BOARD ET AL. Application for stay of execution of sentence of death, presented to JUSTICE WHITE, and by him referred to the Court, denied. JUSTICE BLACKMUN took no part in the consideration or decision of this application.

JUSTICE MARSHALL, dissenting.

Adhering to my view that the death penalty is in all circumstances cruel and unusual punishment prohibited by the Eighth and Fourteenth Amendments, *Gregg v. Georgia*, 428 U. S. 153, 231 (1976), I 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.

Certiorari Denied

No. 90-5669 (A-191). COLEMAN v. SAFFLE, WARDEN. C. A. 10th Cir. Application for stay of execution of sentence of death, presented to JUSTICE WHITE, and by him referred to the Court, denied. Certiorari denied. JUSTICE BLACKMUN took no part in the consideration or decision of this application and this petition. Reported below: 912 F. 2d 1217.

JUSTICE MARSHALL, dissenting.

Adhering to my view that the death penalty is in all circumstances cruel and unusual punishment prohibited by the Eighth and Fourteenth Amendments, *Gregg v. Georgia*, 428 U. S. 153, 231 (1976), I 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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SEPTEMBER 11, 1990

Miscellaneous Order

No. A-193. *SILAGY ET AL. v. THOMPSON, GOVERNOR OF ILLINOIS, ET AL.* Application for temporary injunction, presented to JUSTICE STEVENS, and by him referred to the Court, denied. JUSTICE MARSHALL would grant the application. JUSTICE BLACKMUN took no part in the consideration or decision of this application.

SEPTEMBER 20, 1990

Miscellaneous Order

No. A-223. *HAMBLEN 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 MARSHALL, dissenting.

Adhering to my view that the death penalty is in all circumstances cruel and unusual punishment prohibited by the Eighth and Fourteenth Amendments, *Gregg v. Georgia*, 428 U. S. 153, 231 (1976), I 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.

SEPTEMBER 21, 1990

Miscellaneous Orders

No. A-900 (90-348). *NEW ERA PUBLICATIONS INTERNATIONAL, APS v. CAROL PUBLISHING GROUP.* C. A. 2d Cir. Application for stay, addressed to JUSTICE O'CONNOR and referred to the Court, denied.

No. A-140 (90-5723). *STEELEY v. ALABAMA.* Ct. Crim. App. Ala. Application for stay, addressed to JUSTICE SCALIA and referred to the Court, denied.

No. A-160. *AHMAD v. WIGEN, WARDEN.* C. A. 2d Cir. Application for stay, addressed to JUSTICE STEVENS and referred to the Court, denied.

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No. A-170. *IVEZAJ v. IMMIGRATION AND NATURALIZATION SERVICE ET AL.* Application for stay of deportation, addressed to JUSTICE MARSHALL and referred to the Court, denied.

No. D-854. *IN RE DISBARMENT OF McCALLUM.* Disbarment entered. [For earlier order herein, see 493 U. S. 1053.]

No. D-878. *IN RE DISBARMENT OF SCHWARTZ.* Disbarment entered. [For earlier order herein, see 494 U. S. 1052.]

No. D-894. *IN RE DISBARMENT OF OSTROWSKY.* Disbarment entered. [For earlier order herein, see 495 U. S. 902.]

No. D-900. *IN RE DISBARMENT OF SKEVIN.* Disbarment entered. [For earlier order herein, see 495 U. S. 954.]

No. D-901. *IN RE DISBARMENT OF OLSTER.* Disbarment entered. [For earlier order herein, see 495 U. S. 955.]

No. D-906. *IN RE DISBARMENT OF ERICKSON.* Disbarment entered. [For earlier order herein, see 496 U. S. 923.]

No. D-912. *IN RE DISBARMENT OF BROCKMEIER.* Disbarment entered. [For earlier order herein, see 496 U. S. 934.]

No. D-924. *IN RE DISBARMENT OF PARKER.* It is ordered that Charles Lionel Parker, of Akron, Ohio, be suspended from the practice of law in this Court and that a rule issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D-925. *IN RE DISBARMENT OF MELARO.* It is ordered that H. J. M. Melaro, of Silver Spring, Md., be suspended from the practice of law in this Court and that a rule issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D-926. *IN RE DISBARMENT OF McBRIDE.* It is ordered that Willard Carlos McBride, of Hillcrest Heights, Md., be suspended from the practice of law in this Court and that a rule issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D-927. *IN RE DISBARMENT OF ISAACSON.* It is ordered that Michael Isaacson, of Baltimore, Md., be suspended from the practice of law in this Court and that a rule issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

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No. D-928. IN RE DISBARMENT OF KEADY. It is ordered that Michael Jennings Keady, of Palo Alto, 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-929. IN RE DISBARMENT OF BRIMBERRY. It is ordered that Robert E. Brimberry, of Brea, 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-930. IN RE DISBARMENT OF HOBSON. It is ordered that Donald L. Hobson, of Detroit, Mich., be suspended from the practice of law in this Court and that a rule issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D-931. IN RE DISBARMENT OF RYAN. It is ordered that James P. Ryan, of Fort Lauderdale, Fla., be suspended from the practice of law in this Court and that a rule issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D-932. IN RE DISBARMENT OF BUSSEY. It is ordered that Charles L. Bussey, Jr., of St. Louis, Mo., be suspended from the practice of law in this Court and that a rule issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D-933. IN RE DISBARMENT OF ROSS. It is ordered that Arnold L. Ross, of Agoura 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. D-934. IN RE DISBARMENT OF STANDARD. It is ordered that R. Michael Standard, of Los Angeles, 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-935. IN RE DISBARMENT OF ANTICO. It is ordered that Peter J. Antico, of Jersey City, 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-936. IN RE DISBARMENT OF FELDMAN. It is ordered that David Phillip Feldman, of East Amherst, 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-937. IN RE DISBARMENT OF DEAM. It is ordered that William Alan Deam, of Yankton, 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-938. IN RE DISBARMENT OF IRELAND. It is ordered that Gregory F. Ireland, of Carmel, 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.

Assignment Order

An order of THE CHIEF JUSTICE designating and assigning Justice Powell (retired) to perform judicial duties in the United States Court of Appeals for the Eleventh Circuit during the period of September 19 through September 20, 1990, and for such time as may be required to complete unfinished business, pursuant to 28 U. S. C. § 294(a), is ordered entered on the minutes of this Court, pursuant to 28 U. S. C. § 295.

SEPTEMBER 26, 1990

Dismissal Under Rule 46

No. 90-5464. ROMMANN v. UNITED STATES. C. A. 6th Cir. Certiorari dismissed under this Court's Rule 46. Reported below: 902 F. 2d 1570.

SEPTEMBER 27, 1990

Dismissal Under Rule 46

No. 90-121. PITTSBURGH CORNING CORP. v. SIMPSON, INDIVIDUALLY AND AS EXECUTRIX OF ESTATE OF SIMPSON, DECEASED. C. A. 2d Cir. Certiorari dismissed under this Court's Rule 46. Reported below: 901 F. 2d 277.

SEPTEMBER 28, 1990

Dismissal Under Rule 46

No. 89-1769. REPUBLIC OF CHINA *v.* LIU. C. A. 9th Cir. Certiorari dismissed under this Court's Rule 46. Reported below: 892 F. 2d 1419.