

ORDERS FOR JUNE 6 THROUGH
OCTOBER 4, 1991

JUNE 6, 1991

Certiorari Denied

No. 90-8120 (A-907). OTEY *v.* NEBRASKA. Sup. Ct. Neb. 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: 236 Neb. 915, 464 N. W. 2d 352.

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.

JUNE 10, 1991

Certiorari Granted—Vacated and Remanded

No. 90-134. COONEY ET UX. *v.* WHITE. Sup. Ct. Wyo. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Burns v. Reed*, 500 U. S. 478 (1991). Reported below: 792 P. 2d 1287.

No. 90-240. POLK ET UX. *v.* DIXIE INSURANCE CO. C. A. 5th Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Edmonson v. Leesville Concrete Co.*, 500 U. S. 614 (1991). Reported below: 897 F. 2d 1346.

No. 90-1153. SKY CHEFS, INC. *v.* DIAS. C. A. 9th Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Edmonson v. Leesville Concrete Co.*, 500 U. S. 614 (1991). Reported below: 919 F. 2d 1370.

No. 90-1270. ALABAMA *v.* BROWN. Ct. Crim. App. Ala. Certiorari granted, judgment vacated, and case remanded for fur-

June 10, 1991

501 U. S.

ther consideration in light of *Mu'Min v. Virginia*, 500 U. S. 415 (1991). Reported below: 571 So. 2d 345.

No. 90-5387. *GIDNEY v. CAMDEN COUNTY PROSECUTOR'S OFFICE ET AL.* Super. Ct. N. J., App. Div. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Burns v. Reed*, 500 U. S. 478 (1991).

No. 90-6575. *CHAVOUS, INDIVIDUALLY AND AS GUARDIAN AD LITEM FOR CHAVOUS v. BROWN ET AL.* Sup. Ct. S. 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 *Edmonson v. Leesville Concrete Co.*, 500 U. S. 614 (1991). Reported below: 302 S. C. 308, 396 S. E. 2d 98.

No. 90-6633. *HOPE v. ILLINOIS.* Sup. Ct. Ill. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Hernandez v. New York*, 500 U. S. 352 (1991). Reported below: 137 Ill. 2d 430, 560 N. E. 2d 849.

Miscellaneous Orders

No. — — —. *ALLEN v. ILLINOIS.* Motion for leave to proceed *in forma pauperis* without an affidavit of indigency executed by petitioner granted.

No. — — —. *KELLY v. CALIFORNIA.* Motion for leave to proceed *in forma pauperis* without an affidavit of indigency executed by petitioner granted.

No. — — —. *IN RE DAVISON.* Motion for reconsideration of application for admission to the Bar of this Court denied.

No. A-855. *TAYLOR v. BEASLEY.* Sup. Ct. Ill. Application for stay, addressed to JUSTICE O'CONNOR and referred to the Court, denied.

No. A-870 (90-1771). *CITY OF HENDERSON ET AL. v. UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEVADA (NEVADA ENTERTAINMENT INDUSTRIES, INC., ET AL., REAL PARTIES IN INTEREST).* C. A. 9th Cir. Application for stay, addressed to JUSTICE KENNEDY and referred to the Court, denied.

501 U. S.

June 10, 1991

No. D-955. IN RE DISBARMENT OF BRUCE. Motion to further defer denied. Disbarment entered. [For earlier order herein, see 498 U. S. 1010.]

No. D-990. IN RE DISBARMENT OF MILLER. Disbarment entered. [For earlier order herein, see 499 U. S. 945.]

No. D-997. IN RE DISBARMENT OF ALEXANDER. Due to mistaken identity, the order entered May 20, 1991 [500 U. S. 931], suspending James Richard Alexander, of Dallas, Tex., from the practice of law in this Court is vacated, and the rule to show cause issued on that date is discharged.

No. D-1005. IN RE DISBARMENT OF KELLY. It is ordered that Richard Kelly, of Stevensville, Mont., 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-1006. IN RE DISBARMENT OF SNEED. It is ordered that Thuryo A. Sneed, of Dallas, Tex., be suspended from the practice of law in this Court and that a rule issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D-1007. IN RE DISBARMENT OF RIVERS. It is ordered that Robert Rivers, of New York, N. Y., be suspended from the practice of law in this Court and that a rule issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D-1008. IN RE DISBARMENT OF TOBIAS. It is ordered that Robert P. Tobias, of Dallas, Tex., be suspended from the practice of law in this Court and that a rule issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D-1009. IN RE DISBARMENT OF FRANKLIN. It is ordered that Gary B. Franklin, of Copiague, 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. 89-1629. SALVE REGINA COLLEGE *v.* RUSSELL, 499 U. S. 225. Motion of respondent to retax costs denied.

June 10, 1991

501 U. S.

No. 90-1286. JENKINS, AKA MCGANN *v.* BARNETT BANK OF PENSACOLA ET AL., 499 U. S. 960. Motion of petitioner to waive fee for filing petition for rehearing and to dispense with printing petition for rehearing denied.

No. 90-1604. MORALES, ATTORNEY GENERAL OF TEXAS *v.* TRANS WORLD AIRLINES, INC., ET AL.; and

No. 90-1606. ATTORNEY GENERAL OF CALIFORNIA ET AL. *v.* TRANS WORLD AIRLINES, INC., ET AL. C. A. 5th Cir. The Solicitor General is invited to file a brief in these cases expressing the views of the United States.

No. 90-7282. IN RE LEWIS;

No. 90-7688. IN RE THOMAS;

No. 90-7819. IN RE GEURIN;

No. 90-7828. IN RE GEURIN; and

No. 90-7918. IN RE ROLLINS ET UX. Petitions for writs of mandamus denied.

Certiorari Granted

No. 90-918. FRANKLIN *v.* GWINNETT COUNTY PUBLIC SCHOOLS ET AL. C. A. 11th Cir. Certiorari granted. Reported below: 911 F. 2d 617.

No. 90-7675. R. A. V. *v.* CITY OF ST. PAUL, MINNESOTA. Sup. Ct. Minn. Motion of Minnesota Civil Liberties Union for leave to file a brief as *amicus curiae* granted. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted. Reported below: 464 N. W. 2d 507.

Certiorari Denied

No. 90-1. CITY OF LITTLE ROCK, ARKANSAS, ET AL. *v.* REYNOLDS, ADMINISTRATRIX OF ESTATE OF REEVES, DECEASED, ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 893 F. 2d 1004.

No. 90-590. FOLLETT *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 905 F. 2d 195.

No. 90-616. RICE *v.* AURIEMMA ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 910 F. 2d 1449.

No. 90-660. FERRIN, SPECIAL AGENT, FEDERAL BUREAU OF INVESTIGATION *v.* DE MARTINI. C. A. 9th Cir. Certiorari denied. Reported below: 889 F. 2d 922.

501 U. S.

June 10, 1991

No. 90-929. *MARSHALL v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 908 F. 2d 1312.

No. 90-1066. *SEQUOIA BOOKS, INC. v. ILLINOIS*. App. Ct. Ill., 2d Dist. Certiorari denied. Reported below: 195 Ill. App. 3d 1110, 582 N. E. 2d 327.

No. 90-1201. *LILLEBO ET AL. v. DAVIS, CONTROLLER OF CALIFORNIA, ET AL.* Ct. App. Cal., 3d App. Dist. Certiorari denied. Reported below: 222 Cal. App. 3d 1421, 272 Cal. Rptr. 638.

No. 90-1365. *FRANK'S NURSERY & CRAFTS, INC. v. DUNHAM ET VIR.* C. A. 7th Cir. Certiorari denied. Reported below: 919 F. 2d 1281.

No. 90-1450. *GLK, INC. v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 921 F. 2d 967.

No. 90-1465. *COLUMBUS COUNTRY CLUB v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 915 F. 2d 877.

No. 90-1466. *McKINNEY v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 919 F. 2d 146.

No. 90-1478. *NACCARATO v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 921 F. 2d 282.

No. 90-1514. *LOCKWOOD, SECRETARY OF DEPARTMENT OF ENERGY, MINERALS, AND NATURAL RESOURCES, ET AL. v. KOZAK*. Sup. Ct. N. M. Certiorari denied.

No. 90-1526. *DUYCK v. NEW YORK*. App. Term, Sup. Ct. N. Y., 9th and 10th Jud. Dists. Certiorari denied. Reported below: 146 Misc. 2d 629, 559 N. Y. S. 2d 79.

No. 90-1539. *HERRICK v. FLORIDA BAR*. Sup. Ct. Fla. Certiorari denied. Reported below: 571 So. 2d 1303.

No. 90-1556. *MISSOURI v. ALLEN*. Ct. App. Mo., Western Dist. Certiorari denied. Reported below: 800 S. W. 2d 82.

No. 90-1582. *FROTA OCEANICA BRASILEIRA, S. A. v. PIRES*. App. Div., Sup. Ct. N. Y., 1st Jud. Dept. Certiorari denied. Reported below: 161 App. Div. 2d 129, 554 N. Y. S. 2d 855.

No. 90-1584. *KEMP v. STATE BOARD OF AGRICULTURE ET AL.* Sup. Ct. Colo. Certiorari denied. Reported below: 803 P. 2d 498.

June 10, 1991

501 U. S.

No. 90-1602. *TENNESSEE GAS PIPELINE CO. v. ANDERMAN/SMITH OPERATING CO.* C. A. 5th Cir. Certiorari denied. Reported below: 918 F. 2d 1215.

No. 90-1605. *YOUNG v. SULLIVAN, SECRETARY OF HEALTH AND HUMAN SERVICES.* C. A. D. C. Cir. Certiorari denied. Reported below: 286 U. S. App. D. C. 242, 914 F. 2d 298.

No. 90-1608. *FULANI ET AL. v. HOGSETT, SECRETARY OF STATE OF INDIANA, ET AL.* C. A. 7th Cir. Certiorari denied. Reported below: 917 F. 2d 1028.

No. 90-1609. *GUERINOT, INDIVIDUALLY AND AS REPRESENTATIVE OF THE ESTATE OF GUERINOT v. ROCKWELL INTERNATIONAL CORP. ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 923 F. 2d 862.

No. 90-1661. *CONSTANT v. UNITED STATES.* C. A. Fed. Cir. Certiorari denied. Reported below: 929 F. 2d 654.

No. 90-1703. *PARNAR v. GREEN, NING, LILLY & JONES.* Sup. Ct. Haw. Certiorari denied. Reported below: 72 Haw. 606, 804 P. 2d 1350.

No. 90-1718. *ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT ET AL. v. NATIONAL SOLID WASTES MANAGEMENT ASSN. ET AL.* C. A. 11th Cir. Certiorari denied. Reported below: 910 F. 2d 713 and 924 F. 2d 1001.

No. 90-1731. *MANNINO v. UNITED STATES.* C. A. 3d Cir. Certiorari denied. Reported below: 926 F. 2d 1355.

No. 90-5509. *LARSEN ET AL. v. UNITED STATES.* C. A. 10th Cir. Certiorari denied. Reported below: 904 F. 2d 562.

No. 90-5624. *BOLTON v. UNITED STATES.* C. A. 8th Cir. Certiorari denied. Reported below: 909 F. 2d 510.

No. 90-6233. *MORRIS v. ORMAN ET AL.* C. A. 3d Cir. Certiorari denied. Reported below: 911 F. 2d 719.

No. 90-6394. *DEAN v. UNITED STATES.* C. A. 7th Cir. Certiorari denied. Reported below: 908 F. 2d 215.

No. 90-6967. *BOCCHICCHIO v. FREEMAN ET AL.* C. A. 3d Cir. Certiorari denied.

501 U. S.

June 10, 1991

No. 90-7001. *FERRELL v. WEST VIRGINIA*. Sup. Ct. App. W. Va. Certiorari denied. Reported below: 184 W. Va. 123, 399 S. E. 2d 834.

No. 90-7106. *STAFFORD v. SINGLETARY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL.* C. A. 11th Cir. Certiorari denied.

No. 90-7151. *WHITE v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 919 F. 2d 138.

No. 90-7269. *WILLIAMS v. CALIFORNIA*. Ct. App. Cal., 6th App. Dist. Certiorari denied.

No. 90-7324. *PENA v. UNITED STATES*. C. A. 10th Cir. Certiorari denied. Reported below: 920 F. 2d 1509.

No. 90-7405. *BOWMAN v. YAZZIE ET AL.* C. A. 10th Cir. Certiorari denied.

No. 90-7441. *ALDAZ v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 921 F. 2d 227.

No. 90-7461. *JUVENILE MALE #2 v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 922 F. 2d 837.

No. 90-7463. *GIBSON v. UNITED STATES*. C. A. 11th Cir. Certiorari denied. Reported below: 922 F. 2d 847.

No. 90-7544. *LEACH v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 918 F. 2d 464.

No. 90-7585. *SMITH v. KECK ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 918 F. 2d 958.

No. 90-7634. *MORGAN v. UNITED STATES*. C. A. 10th Cir. Certiorari denied. Reported below: 922 F. 2d 1495.

No. 90-7641. *NABKEY v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 921 F. 2d 276.

No. 90-7674. *STAPLES v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 927 F. 2d 593.

No. 90-7680. *WRIGHT v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 921 F. 2d 42.

No. 90-7684. *COLLINS v. WHITLEY, WARDEN, ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 922 F. 2d 838.

June 10, 1991

501 U. S.

No. 90-7685. *ZATKO v. MARSHALL, WARDEN*. C. A. 9th Cir. Certiorari denied.

No. 90-7690. *BARNES v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 925 F. 2d 420.

No. 90-7694. *PHILLIPS ET UX. v. NORTH CAROLINA*. Sup. Ct. N. C. Certiorari denied. Reported below: 328 N. C. 1, 399 S. E. 2d 293.

No. 90-7697. *WATSON v. PUCKETT, SUPERINTENDENT, MISSISSIPPI STATE PENITENTIARY*. C. A. 5th Cir. Certiorari denied. Reported below: 917 F. 2d 561.

No. 90-7715. *TAYLOR v. CALIFORNIA*. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 90-7716. *PAVLOS v. CHENEY, SECRETARY OF DEFENSE*. C. A. 3d Cir. Certiorari denied. Reported below: 922 F. 2d 833.

No. 90-7723. *CARACCILOLO v. SMITH, JUDGE, ELEVENTH JUDICIAL CIRCUIT OF FLORIDA*. Dist. Ct. App. Fla., 3d Dist. Certiorari denied. Reported below: 573 So. 2d 845.

No. 90-7727. *MARTIN, AKA CHASE v. DAVIES ET AL.* C. A. 7th Cir. Certiorari denied. Reported below: 917 F. 2d 336.

No. 90-7735. *PARKS v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 925 F. 2d 1466.

No. 90-7737. *McKINNON v. LOCKHART, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION*. C. A. 8th Cir. Certiorari denied. Reported below: 921 F. 2d 830.

No. 90-7739. *CODY v. SULLIVAN, SECRETARY OF HEALTH AND HUMAN SERVICES*. C. A. 9th Cir. Certiorari denied.

No. 90-7741. *POWELL v. ROBERTS ET AL.* C. A. 7th Cir. Certiorari denied. Reported below: 921 F. 2d 278.

No. 90-7743. *BRIM v. PETERS, WARDEN, ET AL.* C. A. 7th Cir. Certiorari denied.

No. 90-7744. *MINTON v. SHEET METAL WORKERS LOCAL #54 ET AL.* C. A. 5th Cir. Certiorari denied.

No. 90-7754. *DEMPSEY v. WHITE*. C. A. 1st Cir. Certiorari denied.

501 U. S.

June 10, 1991

No. 90-7764. *GARRETT v. OHIO*. Ct. App. Ohio, Clermont County. Certiorari denied.

No. 90-7766. *JOHNSON v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 927 F. 2d 804.

No. 90-7768. *TIMM ET AL. v. GUNTER ET AL.* C. A. 8th Cir. Certiorari denied. Reported below: 917 F. 2d 1093.

No. 90-7774. *WALTERS v. OREGON*. Sup. Ct. Ore. Certiorari denied. Reported below: 311 Ore. 80, 804 P. 2d 1164.

No. 90-7782. *PARKE v. UNITED STATES POSTAL SERVICE*. C. A. 11th Cir. Certiorari denied. Reported below: 919 F. 2d 743.

No. 90-7796. *HERNANDEZ v. UNITED STATES*. C. A. 10th Cir. Certiorari denied.

No. 90-7809. *CRUZ v. UNITED STATES*. C. A. 11th Cir. Certiorari denied. Reported below: 920 F. 2d 12.

No. 90-7818. *WAGSTAFF-EL v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 925 F. 2d 1458.

No. 90-7826. *RAMIREZ-CARVAJAL v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 921 F. 2d 272.

No. 90-7842. *PASSOS v. UNITED STATES*. C. A. 1st Cir. Certiorari denied. Reported below: 918 F. 2d 979.

No. 90-7844. *GARGAN v. ALASKA*. Ct. App. Alaska. Certiorari denied. Reported below: 805 P. 2d 998.

No. 90-7845. *STEBBINS v. NATIONWIDE MUTUAL INSURANCE CO.* C. A. D. C. Cir. Certiorari denied. Reported below: 286 U. S. App. D. C. 383, 917 F. 2d 1313.

No. 90-7853. *WALLACE v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 927 F. 2d 601.

No. 90-7855. *ENCARNACION v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 925 F. 2d 1457.

No. 90-7858. *D'AMARIO v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 930 F. 2d 911.

June 10, 1991

501 U. S.

No. 90-7863. *AREVALO-NAVARRO v. UNITED STATES*. C. A. 1st Cir. Certiorari denied. Reported below: 918 F. 2d 979.

No. 90-7906. *CREEL v. KEENE, CHAIRMAN, BOARD OF PAR-
DONS AND PAROLES*. C. A. 5th Cir. Certiorari denied. Re-
ported below: 928 F. 2d 707.

No. 90-7909. *HOLZENDORF v. UNITED STATES*. C. A. 11th
Cir. Certiorari denied. Reported below: 925 F. 2d 1474.

No. 90-7914. *GARCIA v. UNITED STATES*. C. A. 9th Cir.
Certiorari denied. Reported below: 924 F. 2d 925.

No. 90-7915. *WOLSKY v. OREGONIAN PUBLISHING CO.* C. A.
9th Cir. Certiorari denied. Reported below: 920 F. 2d 1462.

No. 90-7924. *BOWLING v. RHODE ISLAND*. Sup. Ct. R. I.
Certiorari denied. Reported below: 585 A. 2d 1181.

No. 90-7933. *ADAMITA v. UNITED STATES*. C. A. 2d Cir.
Certiorari denied. Reported below: 923 F. 2d 846.

No. 90-7934. *AISPURO-TORRES v. UNITED STATES*. C. A. 9th
Cir. Certiorari denied. Reported below: 923 F. 2d 863.

No. 90-7935. *ENGLISH v. UNITED STATES*. C. A. 6th Cir.
Certiorari denied. Reported below: 925 F. 2d 154.

No. 90-7936. *GOOD v. UNITED STATES*. C. A. 11th Cir.
Certiorari denied. Reported below: 925 F. 2d 1475.

No. 90-7937. *DETAR v. UNITED STATES*. C. A. 9th Cir.
Certiorari denied.

No. 90-7942. *SOBAMOWO v. UNITED STATES*. C. A. D. C.
Cir. Certiorari denied.

No. 90-7943. *SWINT v. ZIMMERMAN, SUPERINTENDENT, STATE
CORRECTIONAL INSTITUTION AT WAYMART, ET AL.* C. A. 3d Cir.
Certiorari denied.

No. 90-7948. *JORDAN v. UNITED STATES*. C. A. 2d Cir.
Certiorari denied. Reported below: 927 F. 2d 53.

No. 90-7952. *ALLEN v. UNITED STATES*. C. A. 11th Cir.
Certiorari denied. Reported below: 925 F. 2d 1476.

501 U. S.

June 10, 1991

No. 90-7967. RAMIREZ-TALavera *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 922 F. 2d 934.

No. 90-7979. MOSCONY *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 927 F. 2d 742.

No. 90-7980. HENDERSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 922 F. 2d 848.

No. 90-7981. CAPOFERI *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 925 F. 2d 1466.

No. 90-7982. ENGLISH *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 925 F. 2d 154.

No. 90-7991. JONES *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 925 F. 2d 1474.

No. 90-7992. ROGERS *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 921 F. 2d 1089 and 925 F. 2d 1285.

No. 90-7997. LYTTLE *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 931 F. 2d 52.

No. 90-7998. NICHOLSON ET AL. *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 924 F. 2d 1053.

No. 90-8001. ODULOYE *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 924 F. 2d 116.

No. 90-8009. WILKINSON *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 926 F. 2d 22.

No. 90-8014. APPLETON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 928 F. 2d 404.

No. 90-8018. BERNAL-RODRIGUEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 924 F. 2d 1063.

No. 90-8019. FERREIRO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 931 F. 2d 902.

No. 90-549. WHARTON ET AL. *v.* DUBE. C. A. 2d Cir. Certiorari denied. JUSTICE WHITE would grant certiorari. Reported below: 900 F. 2d 587.

June 10, 1991

501 U. S.

No. 90-1189. *TROJAN TECHNOLOGIES, INC., ET AL. v. PENNSYLVANIA ET AL.* C. A. 3d Cir. Certiorari denied. JUSTICE WHITE would grant certiorari. Reported below: 916 F. 2d 903.

No. 90-1283. *DENHOLM v. HOUGHTON MIFFLIN CO. ET AL.* C. A. 9th Cir. Certiorari denied. JUSTICE WHITE would grant certiorari. Reported below: 912 F. 2d 357.

No. 90-1615. *REUBER v. FOOD CHEMICAL NEWS, INC.* C. A. 4th Cir. Certiorari denied. JUSTICE WHITE would grant certiorari. Reported below: 925 F. 2d 703.

No. 90-772. *OHIO DEPARTMENT OF TAXATION ET AL. v. INTERNAL REVENUE SERVICE.* C. A. 6th Cir. Certiorari denied. JUSTICE WHITE and JUSTICE MARSHALL would grant certiorari. Reported below: 911 F. 2d 1168.

No. 90-1510. *STURMAN v. UNITED STATES.* C. A. 9th Cir. Certiorari denied. JUSTICE WHITE and JUSTICE MARSHALL would grant certiorari. Reported below: 919 F. 2d 147.

No. 90-1379. *ARIZONA v. KEMPTON.* Ct. App. Ariz. Certiorari denied. Reported below: 166 Ariz. 392, 803 P. 2d 113.

JUSTICE WHITE, dissenting.

In this case, a reliable informant told police that respondent had cocaine in his truck. Several hours later, the police stopped respondent while he was driving his truck, asked for and received permission from respondent to search the truck, and discovered cocaine. Respondent was subsequently convicted, but the Arizona Court of Appeals reversed the conviction, holding that the search of respondent's truck was illegal because it did not fall within the automobile exception to the warrant requirement and was not conducted pursuant to a valid investigatory stop. 166 Ariz. 392, 803 P. 2d 113 (1990). The Arizona Supreme Court denied discretionary review.

The Arizona Court of Appeals' holding in this case is contrary to relevant decisions of this Court, see, *e. g.*, *United States v. Hensley*, 469 U. S. 221, 226-229, 232 (1985); *Alabama v. White*, 496 U. S. 325 (1990); *California v. Carney*, 471 U. S. 386, 392 (1985); *Michigan v. Thomas*, 458 U. S. 259, 261 (1982), and should be reversed. That the decision below was rendered by an intermediate state appellate court should make no difference. The trend in state supreme courts towards discretionary review has

501 U. S.

June 10, 1991

resulted in the intermediate state appellate courts taking on a large and significant role in the development and application of state and federal law in their respective jurisdictions. This Court should not deny review on the basis of an outdated perception of the role of state intermediate appellate courts.

No. 90-7480. *STERLING v. TEXAS*. Ct. Crim. App. Tex.;

No. 90-7745. *WHITT v. CALIFORNIA*. Sup. Ct. Cal.; and

No. 90-7770. *FRANK v. CALIFORNIA*. Sup. Ct. Cal. Certiorari denied. Reported below: No. 90-7480, 800 S. W. 2d 513; No. 90-7745, 51 Cal. 3d 620, 798 P. 2d 849; No. 90-7770, 51 Cal. 3d 718, 798 P. 2d 1215.

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 certiorari and vacate the death sentences in these cases.

No. 90-7760. *SINDRAM v. TERRY*, ATTORNEY GENERAL OF VIRGINIA, ET AL. C. A. 4th Cir. Certiorari denied. THE CHIEF JUSTICE took no part in the consideration or decision of this petition. Reported below: 925 F. 2d 1457.

No. 90-7761. *SINDRAM v. AHALT ET AL.* C. A. 4th Cir. Certiorari denied. THE CHIEF JUSTICE took no part in the consideration or decision of this petition. Reported below: 923 F. 2d 849.

No. 90-8209 (A-914). *BIRD v. COLLINS*, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Application for stay of execution of sentence of death, presented to JUSTICE SCALIA, and by him referred to the Court, denied. Certiorari denied. Reported below: 924 F. 2d 67.

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.

June 10, 17, 1991

501 U. S.

Rehearing Denied

No. 90-273. COMMISSIONER OF REVENUE OF TENNESSEE *v.* NEWSWEEK, INC.; and COMMISSIONER OF REVENUE OF TENNESSEE *v.* SOUTHERN LIVING, INC., ET AL., 499 U. S. 983;

No. 90-777. HARVEY *v.* UNITED STATES, 498 U. S. 1047;

No. 90-910. WHITCOMBE *v.* WEYERHAEUSER CORP. ET AL., 499 U. S. 959;

No. 90-1215. HEINEMEYER *v.* O'DONNELL, 499 U. S. 975;

No. 90-1383. VERDUGO *v.* CALIFORNIA, 499 U. S. 962;

No. 90-6538. JIMISON *v.* NEVADA, 500 U. S. 906;

No. 90-7093. MOORE *v.* CALIFORNIA, 499 U. S. 982;

No. 90-7385. SLACUM *v.* FRAME, 500 U. S. 909; and

No. 90-7457. WEBSTER *v.* COLLINS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION, 500 U. S. 909. Petitions for rehearing denied.

No. 89-7430. ABU-JAMAL *v.* PENNSYLVANIA, 498 U. S. 881 and 993. Motion of petitioner for leave to file second petition for rehearing denied. JUSTICE SOUTER took no part in the consideration or decision of this motion.

JUNE 17, 1991

Certiorari Granted—Vacated and Remanded

No. 90-1202. MOORE ET AL. *v.* KELLER INDUSTRIES, INC. C. A. 5th Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Edmonson v. Leesville Concrete Co.*, 500 U. S. 614 (1991). Reported below: 917 F. 2d 561.

Miscellaneous Orders

No. — — —. CAMPBELL *v.* SHILLINGER, WARDEN, ET AL. Motion to direct the Clerk to file petition for writ of certiorari out of time denied.

No. A-874. GOLUB *v.* UNIVERSITY OF CHICAGO ET AL. C. A. 2d Cir. Application for stay, addressed to THE CHIEF JUSTICE and referred to the Court, denied. JUSTICE BLACKMUN took no part in the consideration or decision of this application.

No. A-889. ROGGIO *v.* UNITED STATES. Application for bond, addressed to JUSTICE SCALIA and referred to the Court, denied.

501 U. S.

June 17, 1991

No. D-981. IN RE DISBARMENT OF LOVING. Disbarment entered. [For earlier order herein, see 499 U. S. 903.]

No. D-1010. IN RE DISBARMENT OF BOLTON. It is ordered that George J. Bolton, of North Miami Beach, Fla., be suspended from the practice of law in this Court and that a rule issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D-1011. IN RE DISBARMENT OF THOMPSON. It is ordered that Beverly Kay Thompson, of Cherry Hill, N. J., be suspended from the practice of law in this Court and that a rule issue, returnable within 40 days, requiring her to show cause why she should not be disbarred from the practice of law in this Court.

No. D-1012. IN RE DISBARMENT OF LUKAS. It is ordered that Thomas James Lukas, of Long Island City, 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-1013. IN RE DISBARMENT OF MILLER. It is ordered that Michael Albert Miller, of Tualatin, 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. 112, Orig. WYOMING *v.* OKLAHOMA. Motion of Wyoming Mining Association for leave to file a brief as *amicus curiae* granted. Exceptions to Report of the Special Master filed by Wyoming and Brief on the Merits filed by Oklahoma are set for oral argument in due course. [For earlier order herein, see, *e. g.*, 499 U. S. 903.]

No. 90-681. HAFFER *v.* MELO ET AL. C. A. 3d Cir. [Certiorari granted, 498 U. S. 1118.] Motions of American Federation of Labor and Congress of Industrial Organizations and Kenneth W. Fultz for leave to file briefs as *amici curiae* granted.

No. 90-1014. LEE ET AL. *v.* WEISMAN, PERSONALLY AND AS NEXT FRIEND OF WEISMAN. C. A. 1st Cir. [Certiorari granted, 499 U. S. 918.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

June 17, 1991

501 U. S.

No. 90-5844. *FOUCHA v. LOUISIANA*. Sup. Ct. La. [Certiorari granted, 499 U. S. 946.] Motions of American Psychiatric Association and American Orthopsychiatric Association et al. for leave to file briefs as *amici curiae* granted.

No. 90-7740. *NEEDLER v. VALLEY NATIONAL BANK OF ARIZONA ET AL.* C. A. 9th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied. Petitioner is allowed until July 8, 1991, 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 MARSHALL and JUSTICE STEVENS, dissenting.

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

No. 90-7728. *IN RE MOORE*. Petition for writ of mandamus denied.

No. 90-7647. *IN RE SCHMIDT*. Petition for writ of prohibition denied.

Certiorari Granted

No. 90-1629. *UNITED STATES v. NORDIC VILLAGE, INC.* C. A. 6th Cir. Certiorari granted. Reported below: 915 F. 2d 1049.

No. 90-1029. *EASTMAN KODAK CO. v. IMAGE TECHNICAL SERVICES, INC., ET AL.* C. A. 9th Cir. Motion of Computer and Business Equipment Manufacturers Association for leave to file a brief as *amicus curiae* granted. Certiorari granted. Reported below: 903 F. 2d 612.

No. 90-1150. *WILLY v. COASTAL CORP. ET AL.* C. A. 5th Cir. Certiorari granted limited to Question 1 presented by the petition. Reported below: 915 F. 2d 965.

Certiorari Denied

No. 90-834. *HOME STATE BANK v. JOHNSON*. C. A. 10th Cir. Certiorari denied. Reported below: 904 F. 2d 563.

No. 90-984. *KANSAS GAS & ELECTRIC CO. v. KANSAS STATE CORPORATION COMMISSION ET AL.* Ct. App. Kan. Certiorari denied. Reported below: 14 Kan. App. 2d xxx, 794 P. 2d 1177.

501 U. S.

June 17, 1991

No. 90-1311. *SMITH v. CITY OF CHICAGO*. C. A. 7th Cir. Certiorari denied. Reported below: 913 F. 2d 469.

No. 90-1416. *WOLAK v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 923 F. 2d 1193.

No. 90-1441. *PINKNEY v. KEANE, SUPERINTENDENT, SING SING CORRECTIONAL FACILITY*. C. A. 2d Cir. Certiorari denied. Reported below: 920 F. 2d 1090.

No. 90-1445. *IVY ET UX. v. MYERS*. C. A. 9th Cir. Certiorari denied. Reported below: 920 F. 2d 936.

No. 90-1451. *WILSON v. UNITED STATES*; and *GREEN ET AL. v. UNITED STATES*. C. A. Fed. Cir. Certiorari denied. Reported below: 917 F. 2d 529 (first case); 925 F. 2d 1480 (second case).

No. 90-1483. *BARTON ET AL. v. SMITH ET AL.*; and

No. 90-1634. *SMITH ET AL. v. BARTON ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 914 F. 2d 1330.

No. 90-1497. *ASHKENAZY PROPERTY MANAGEMENT CORP., DBA L'ERMITAGE HOTEL, ET AL. v. NATIONAL LABOR RELATIONS BOARD ET AL.* C. A. D. C. Cir. Certiorari denied. Reported below: 286 U. S. App. D. C. 348, 917 F. 2d 62.

No. 90-1509. *VASQUEZ v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 909 F. 2d 235.

No. 90-1518. *HEERDINK v. AMOCO OIL Co.* C. A. 7th Cir. Certiorari denied. Reported below: 919 F. 2d 1256.

No. 90-1521. *COIRO v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 922 F. 2d 1008.

No. 90-1533. *CARDILLI v. UNITED STATES*. C. A. 11th Cir. Certiorari denied. Reported below: 908 F. 2d 728.

No. 90-1622. *FANT v. STEPHENS*. Ct. App. Tex., 12th Dist. Certiorari denied.

No. 90-1632. *MEAIGE v. HARTLEY MARINE CORP.* C. A. 4th Cir. Certiorari denied. Reported below: 925 F. 2d 700.

No. 90-1635. *BHAYA ET AL. v. WESTINGHOUSE ELECTRIC CORP.* C. A. 3d Cir. Certiorari denied. Reported below: 922 F. 2d 184.

June 17, 1991

501 U. S.

No. 90-1636. DULUTH-SUPERIOR ILA MARINE ASSOCIATION RESTATED PENSION PLAN ET AL. *v.* SEAWAY PORT AUTHORITY OF DULUTH. C. A. 8th Cir. Certiorari denied. Reported below: 920 F. 2d 503.

No. 90-1642. BOROUGH OF ROSELLE ET AL. *v.* BROWN, ADMINISTRATRIX AND ADMINISTRATRIX AD PROSEQUENDUM OF THE ESTATE OF EVANS; and

No. 90-1680. BROWN, ADMINISTRATRIX AND ADMINISTRATRIX AD PROSEQUENDUM OF THE ESTATE OF EVANS *v.* GRABOWSKI ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 922 F. 2d 1097.

No. 90-1644. WHEELER *v.* WHEELER. Ct. Civ. App. Ala. Certiorari denied. Reported below: 574 So. 2d 832.

No. 90-1646. CONNELL *v.* BANK OF BOSTON ET AL. C. A. 1st Cir. Certiorari denied. Reported below: 924 F. 2d 1169.

No. 90-1650. DENNISON *v.* COUNTY OF FREDERICK, VIRGINIA, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 921 F. 2d 50.

No. 90-1658. HBA EAST LTD. ET AL. *v.* JEA BOXING CO. ET AL. Ct. App. Tex., 1st Dist. Certiorari denied. Reported below: 796 S. W. 2d 534.

No. 90-1660. SCHAEFER *v.* SUPERIOR COURT OF SAN DIEGO COUNTY (McCANN, REAL PARTY IN INTEREST). Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 90-1664. PHILBROOK *v.* ANSONIA BOARD OF EDUCATION ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 925 F. 2d 47.

No. 90-1665. KIDDER, PEABODY & CO. INC. *v.* MAXUS ENERGY CORP. ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 925 F. 2d 556.

No. 90-1691. ALTON & SOUTHERN RAILWAY CO. *v.* GRIMMING. App. Ct. Ill., 5th Dist. Certiorari denied. Reported below: 204 Ill. App. 3d 961, 562 N. E. 2d 1086.

No. 90-1702. GREGG POTATO SALES, INC. *v.* LANDIS BROTHERS. C. A. 8th Cir. Certiorari denied. Reported below: 938 F. 2d 188.

501 U. S.

June 17, 1991

No. 90-1734. *MALONE v. GILMAN PAPER CO.* C. A. 11th Cir. Certiorari denied. Reported below: 921 F. 2d 285.

No. 90-1756. *WYANDOTTE TRIBE OF OKLAHOMA v. OKLAHOMA EX REL. OKLAHOMA TAX COMMISSION.* C. A. 10th Cir. Certiorari denied. Reported below: 919 F. 2d 1449.

No. 90-1767. *FANNIN v. UNITED STATES.* C. A. 6th Cir. Certiorari denied. Reported below: 928 F. 2d 1133.

No. 90-6767. *FIERER v. ILLINOIS.* App. Ct. Ill., 3d Dist. Certiorari denied. Reported below: 196 Ill. App. 3d 404, 553 N. E. 2d 807.

No. 90-6799. *WAGNER v. SEELY ET AL.* C. A. 7th Cir. Certiorari denied. Reported below: 915 F. 2d 1575.

No. 90-6959. *LAYTON v. ILLINOIS.* App. Ct. Ill., 4th Dist. Certiorari denied. Reported below: 196 Ill. App. 3d 78, 552 N. E. 2d 1280.

No. 90-7218. *PAYNE v. UNITED STATES.* C. A. 8th Cir. Certiorari denied. Reported below: 923 F. 2d 595.

No. 90-7290. *DUNN v. NEW YORK.* Ct. App. N. Y. Certiorari denied. Reported below: 77 N. Y. 2d 19, 564 N. E. 2d 1054.

No. 90-7294. *CIANCIOLA v. UNITED STATES.* C. A. 6th Cir. Certiorari denied. Reported below: 920 F. 2d 1295.

No. 90-7358. *FELLS v. UNITED STATES.* C. A. 4th Cir. Certiorari denied. Reported below: 920 F. 2d 1179.

No. 90-7476. *WASHINGTON v. UNITED STATES.* C. A. 9th Cir. Certiorari denied. Reported below: 899 F. 2d 20.

No. 90-7578. *SANTIAGO-RIVERA v. UNITED STATES.* C. A. 11th Cir. Certiorari denied. Reported below: 925 F. 2d 1473.

No. 90-7596. *ALEXANDER v. CONNECTICUT.* C. A. 2d Cir. Certiorari denied. Reported below: 917 F. 2d 747.

No. 90-7635. *JONES v. UNITED STATES.* C. A. 8th Cir. Certiorari denied. Reported below: 938 F. 2d 184.

No. 90-7762. *SCHMIDT v. JENKINS ET AL.* Dist. Ct. Salt Lake County, Utah. Certiorari denied.

June 17, 1991

501 U. S.

No. 90-7788. *BALLANTYNE v. ILLINOIS*. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 204 Ill. App. 3d 1102, 598 N. E. 2d 502.

No. 90-7791. *MCMNAMARA v. BORG, WARDEN, ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 923 F. 2d 862.

No. 90-7792. *MARTINEZ v. SULLIVAN, WARDEN*. C. A. 10th Cir. Certiorari denied.

No. 90-7794. *LEMRICK v. OREGON COURT SYSTEM ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 921 F. 2d 280.

No. 90-7795. *MUHAMMAD, AKA ELLIOT v. SHABAZZ ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 922 F. 2d 839.

No. 90-7797. *MARTIN v. THOMPSON ET AL.* C. A. 7th Cir. Certiorari denied.

No. 90-7801. *DOUGLAS v. CALIFORNIA*. Ct. App. Cal., 1st App. Dist. Certiorari denied. Reported below: 220 Cal. App. 3d 544, 269 Cal. Rptr. 579.

No. 90-7802. *ZATKO v. UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA*. C. A. 9th Cir. Certiorari denied.

No. 90-7803. *ROSNOW v. RASMUSSEN ET AL.* C. A. 8th Cir. Certiorari denied.

No. 90-7804. *ANDREWS v. OHIO*. Sup. Ct. Ohio. Certiorari denied. Reported below: 57 Ohio St. 3d 86, 565 N. E. 2d 1271.

No. 90-7805. *ZANI v. GLANZ ET AL.* C. A. 10th Cir. Certiorari denied.

No. 90-7811. *MCGREW v. FLORIDA*. C. A. 11th Cir. Certiorari denied.

No. 90-7813. *JONES v. EASTMAN KODAK Co.* C. A. 5th Cir. Certiorari denied.

No. 90-7820. *DAVENPORT v. DUCKWORTH, SUPERINTENDENT, INDIANA STATE REFORMATORY*. C. A. 7th Cir. Certiorari denied.

501 U. S.

June 17, 1991

No. 90-7821. *RODGERS v. UNITED STATES*. C. A. 11th Cir. Certiorari denied. Reported below: 924 F. 2d 219.

No. 90-7823. *SMITH v. UNITED STATES*; *DAVIS v. UNITED STATES*; *SMITH v. UNITED STATES*; *JON v. UNITED STATES*; *COKE v. UNITED STATES*; and *HOWELL v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 922 F. 2d 834 (first, third, and fourth cases) and 833 (second, fifth, and sixth cases).

No. 90-7824. *SMITH v. MCKASKLE ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 927 F. 2d 601.

No. 90-7835. *MCGARRY v. INTERNAL REVENUE SERVICE ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 917 F. 2d 1307.

No. 90-7839. *BUELOW v. BAKER, WARDEN*. C. A. 6th Cir. Certiorari denied. Reported below: 928 F. 2d 404.

No. 90-7840. *DEMOS v. WASHINGTON*. Ct. App. Wash. Certiorari denied.

No. 90-7841. *DEMOS v. WASHINGTON*. Ct. App. Wash. Certiorari denied.

No. 90-7854. *BRADLEY v. MEACHUM, COMMISSIONER, CONNECTICUT DEPARTMENT OF CORRECTIONS*. C. A. 2d Cir. Certiorari denied. Reported below: 918 F. 2d 338.

No. 90-7881. *KUNS v. OHIO*. Ct. App. Ohio, Montgomery County. Certiorari denied.

No. 90-7887. *WILLIAMS v. CITY OF ATLANTA, GEORGIA*. Sup. Ct. Ga. Certiorari denied. Reported below: 261 Ga. 22, 401 S. E. 2d 530.

No. 90-7891. *SCHMIDT v. CUTLER ET AL.* Dist. Ct. Salt Lake County, Utah. Certiorari denied.

No. 90-7927. *SCHMIDT v. UTAH ET AL.* C. A. 3d Cir. Certiorari denied. Reported below: 919 F. 2d 732.

No. 90-7938. *THOMPSON v. WIGGINTON ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 918 F. 2d 958.

No. 90-7944. *PLETTEN v. MARSH, SECRETARY OF THE ARMY, ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 920 F. 2d 933.

June 17, 1991

501 U. S.

No. 90-7945. *GEDSON, AKA KERR v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 923 F. 2d 859.

No. 90-7966. *RAY v. ARKANSAS*. Sup. Ct. Ark. Certiorari denied. Reported below: 304 Ark. 489, 803 S. W. 2d 894.

No. 90-7970. *BRAMBLE v. UNITED STATES*. C. A. 1st Cir. Certiorari denied. Reported below: 925 F. 2d 532.

No. 90-8007. *DAVIE v. MUNCY ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 929 F. 2d 692.

No. 90-8036. *PINOCHET v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 923 F. 2d 846.

No. 90-8038. *THOMAS v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 919 F. 2d 495.

No. 90-8040. *LINCOLN, AKA OMER v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 925 F. 2d 255.

No. 90-8042. *CROSBY v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 928 F. 2d 397.

No. 90-8049. *SNOW v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 927 F. 2d 599.

No. 90-8057. *STURDY v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 927 F. 2d 601.

No. 90-8064. *BOHANAN v. UNITED STATES*. C. A. 2d Cir. Certiorari denied.

No. 90-8065. *DANIELS v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 925 F. 2d 1457.

No. 90-872. *YELLOW BUS LINES, INC. v. DRIVERS, CHAUFFEURS & HELPERS LOCAL UNION 639 ET AL.* C. A. D. C. Cir. Certiorari denied. JUSTICE WHITE would grant certiorari. Reported below: 286 U. S. App. D. C. 182, 913 F. 2d 948.

No. 90-1643. *KEHR PACKAGES, INC., ET AL. v. FIDELCOR, INC., ET AL.* C. A. 3d Cir. Certiorari denied. JUSTICE WHITE would grant certiorari. Reported below: 926 F. 2d 1406.

No. 90-1463. *WARNER CABLE COMMUNICATIONS, INC. v. CITY OF NICEVILLE*. C. A. 11th Cir. Motions of Florida Cable

501 U. S.

June 17, 1991

Television Association et al., National Cable Television Association, Inc., Community Antenna Television Association, and Cablevision Systems Corp. for leave to file briefs as *amici curiae* granted. Certiorari denied. Reported below: 911 F. 2d 634.

No. 90-1544. *HATCHETT v. UNITED STATES*. C. A. 6th Cir. Motion of Federal Criminal Defense Association of Michigan et al. for leave to file a brief as *amici curiae* granted. Certiorari denied. JUSTICE WHITE would grant certiorari. Reported below: 918 F. 2d 631.

No. 90-1627. *COMMISSIONER OF REVENUE SERVICES OF CONNECTICUT v. SFA FOLIO COLLECTIONS, INC.* Sup. Ct. Conn. Certiorari denied. JUSTICE WHITE and JUSTICE BLACKMUN would grant certiorari. Reported below: 217 Conn. 220, 585 A. 2d 666.

No. 90-7483. *D'AMARIO v. BUTLER HOSPITAL ET AL.* C. A. 1st Cir. Motion of petitioner to strike Brief in Opposition and for sanctions denied. Certiorari denied. Reported below: 921 F. 2d 8.

No. 90-7506. *RILEY v. DELAWARE*. Sup. Ct. Del.; and

No. 90-7767. *MCDUGALL v. DIXON, WARDEN*. C. A. 4th Cir. Certiorari denied. Reported below: No. 90-7506, 585 A. 2d 719; No. 90-7767, 921 F. 2d 518.

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 certiorari and vacate the death sentences in these cases.

No. 90-8052. *PEREZ v. UNITED STATES*. C. A. 11th Cir. Motion of petitioner to defer consideration of petition for writ of certiorari denied. Certiorari denied. Reported below: 922 F. 2d 782.

No. 90-8331 (A-945). *BIRD v. TEXAS*. Ct. Crim. App. Tex. Application for stay of execution of sentence of death, presented to JUSTICE SCALIA, and by him referred to the Court, denied. Certiorari denied.

June 17, 1991

501 U. S.

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.

No. 90-8332 (A-946). *BIRD v. COLLINS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION*. C. A. 5th Cir. Application for stay of execution of sentence of death, presented to JUSTICE SCALIA, and by him referred to the Court, denied. Certiorari denied. Reported below: 934 F. 2d 629.

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. 88-6833. *MOON v. GEORGIA*, 499 U. S. 982;

No. 89-7024. *MCCLESKEY v. ZANT, SUPERINTENDENT, GEORGIA DIAGNOSTIC AND CLASSIFICATION CENTER*, 499 U. S. 467;

No. 90-1226. *HOPE v. UNITED STATES*, 499 U. S. 983;

No. 90-1265. *OSHATZ v. UNITED STATES*, 500 U. S. 910;

No. 90-1332. *COHEN v. BERGER*, 499 U. S. 962;

No. 90-1442. *BUSH ET UX. v. WATER POLLUTION CONTROL AUTHORITY FOR THE TOWN OF WATERFORD*, 500 U. S. 906;

No. 90-1519. *CAMOSCIO v. HODDER ET AL.*, 500 U. S. 906;

No. 90-5946. *HINCHEY v. ARIZONA*, 499 U. S. 963;

No. 90-6756. *SCEIFERS v. DUCKWORTH, WARDEN*, 499 U. S. 978;

No. 90-6933. *MATHIS v. WAYNE COUNTY FRIEND OF THE COURT ET AL.*, 499 U. S. 928;

No. 90-7044. *DELBRIDGE ET AL. v. NEW JERSEY DIVISION OF YOUTH AND FAMILY SERVICES*, 499 U. S. 940;

No. 90-7107. *READ ET UX. v. DUCK ET AL.*, 499 U. S. 964;

No. 90-7120. *POPE v. DEPARTMENT OF THE ARMY*, 499 U. S. 978;

501 U. S.

June 17, 18, 19, 20, 1991

No. 90-7192. *WHIGHAM v. FOLTZ, WARDEN*, 499 U. S. 942;

No. 90-7194. *SMITH v. CALGON CARBON CORP. ET AL.*, 499 U. S. 966;

No. 90-7337. *LE BLANC v. UNIVERSITY OF MICHIGAN, AKA BOARD OF REGENTS OF THE UNIVERSITY OF MICHIGAN*, 500 U. S. 908;

No. 90-7509. *MALONE v. MISSOURI*, 500 U. S. 929; and

No. 90-7615. *SMITH v. NEW YORK STATE WORKERS' COMPENSATION BOARD*, 500 U. S. 926. Petitions for rehearing denied.

No. 90-992. *NEVADA ET AL. v. WATKINS, SECRETARY OF ENERGY, ET AL.*, 499 U. S. 906. Motion for leave to file petition for rehearing denied.

JUNE 18, 1991

Dismissal Under Rule 46

No. 90-1780. *H & M CONSTRUCTION CO., INC., ET AL. v. TELL CITY CHAIR CO., INC.* C. A. 6th Cir. Certiorari dismissed under this Court's Rule 46. Reported below: 914 F. 2d 258.

JUNE 19, 1991

Dismissal Under Rule 46

No. 90-949. *WARD v. ATTRIDGE, MAGISTRATE, UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA, ET AL.* C. A. D. C. Cir. Certiorari dismissed under this Court's Rule 46. Reported below: 287 U. S. App. D. C. 246, 921 F. 2d 286.

JUNE 20, 1991

Miscellaneous Order

No. A-953. *FEINSTEIN ET AL. v. UNITED STATES ET AL.* Application for partial stay of an order of the United States District Court for the Southern District of New York, presented to JUSTICE MARSHALL, and by him referred to the Court, denied.

JUNE 24, 1991

Certiorari Granted—Vacated and Remanded

No. 90-1167. BOARD OF PUBLIC EDUCATION AND ORPHANAGE FOR BIBB COUNTY ET AL. *v.* LUCAS ET AL. C. A. 11th Cir. Certiorari granted, judgment vacated, and case remanded to the Court of Appeals for clarification of the jurisdictional issue presented by the Solicitor General in his brief for the United States as *amicus curiae* filed June 4, 1991. Reported below: 908 F. 2d 851.

No. 90-1433. FLORIDA *v.* TRODY. Dist. Ct. App. Fla., 3d Dist. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *McNeil v. Wisconsin, ante*, p. 171. Reported below: 559 So. 2d 641.

No. 90-5849. WILLIAMS *v.* UNITED STATES. C. A. 7th Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Burns v. United States, ante*, p. 129. Reported below: 901 F. 2d 1394.

No. 90-5999. HILL *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 *Burns v. United States, ante*, p. 129. Reported below: 911 F. 2d 129.

Miscellaneous Orders

No. — — —. IN RE KARAPINKA. Motion to direct the Clerk to file petition for writ of mandamus that does not comply with the Rules of this Court denied.

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

No. A-916. MOORE *v.* JARVIS, SHERIFF OF DEKALB COUNTY, GEORGIA. C. A. 11th Cir. Application for recall and stay of mandate, addressed to JUSTICE WHITE and referred to the Court, denied.

No. A-927. ABRAMO *v.* WORCESTER DIVISION OF THE SUPERIOR COURT DEPARTMENT OF THE TRIAL COURT OF MASSACHU-

501 U. S.

June 24, 1991

SETTS. Application for stay of trial proceedings, addressed to JUSTICE MARSHALL and referred to the Court, denied.

No. A-936. UNITED STATES DEPARTMENT OF JUSTICE ET AL. *v.* ROSENFELD. Application for stay, presented to JUSTICE O'CONNOR, and by her referred to the Court, granted, and it is ordered that the order of the United States District Court for the Northern District of California, case Nos. C-85-1709 and C-85-2247, filed March 29, 1991, be and the same is hereby stayed pending final disposition of the appeal of that order by the United States Court of Appeals for the Ninth Circuit following the District Court's action on the Government's motion for reconsideration filed April 16, 1991.

No. A-971. SINGLETARY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS *v.* FRANCIS. Application 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, granted provided that the stay shall remain in effect until 7 a.m. Tuesday, June 25, 1991, in order to allow for further consideration by the Court of Appeals in light of *Coleman v. Thompson*, ante, p. 722. JUSTICE BLACKMUN and JUSTICE STEVENS would deny the 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 deny the application to vacate the stay of execution.

No. D-963. IN RE DISBARMENT OF HENDERSON. Disbarment entered. [For earlier order herein, see 498 U. S. 1044.]

No. D-965. IN RE DISBARMENT OF LACKEY. Disbarment entered. [For earlier order herein, see 498 U. S. 1064.]

No. D-977. IN RE DISBARMENT OF ZAHARIA. Disbarment entered. [For earlier order herein, see 499 U. S. 902.]

No. D-983. IN RE DISBARMENT OF STITT. Disbarment entered. [For earlier order herein, see 499 U. S. 916.]

No. D-993. IN RE DISBARMENT OF BERGER. Disbarment entered. [For earlier order herein, see 499 U. S. 957.]

June 24, 1991

501 U. S.

No. D-996. IN RE DISBARMENT OF BERGMANN. Disbarment entered. [For earlier order herein, see 499 U. S. 973.]

No. D-1014. IN RE DISBARMENT OF BENNETT. It is ordered that R. Jerry Bennett, of Colorado Springs, Colo., be suspended from the practice of law in this Court and that a rule issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D-1015. IN RE DISBARMENT OF BURKE. It is ordered that Robert B. Burke, of Philadelphia, Pa., be suspended from the practice of law in this Court and that a rule issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D-1016. IN RE DISBARMENT OF GAMER. It is ordered that Harold M. Gamer, 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-1017. IN RE DISBARMENT OF CARONNA. It is ordered that Anthony S. Caronna, of Brooklyn, 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-1018. IN RE DISBARMENT OF HAYDEN. It is ordered that John J. Hayden, of Goshen, 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-1019. IN RE DISBARMENT OF TURNER. It is ordered that James Henry Turner, 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. 111, Orig. DELAWARE *v.* NEW YORK. Motion of Georgia and Maine for leave to file a complaint in intervention referred to the Special Master. [For earlier order herein, see, *e. g.*, 498 U. S. 979.]

501 U. S.

June 24, 1991

No. 90-1205. UNITED STATES *v.* MABUS, GOVERNOR OF MISSISSIPPI, ET AL.; and

No. 90-6588. AYERS ET AL. *v.* MABUS, GOVERNOR OF MISSISSIPPI, ET AL. C. A. 5th Cir. [Certiorari granted, 499 U. S. 958.] Motion of National Bar Association et al. for leave to file a brief as *amici curiae* granted.

No. 90-1262. ARKANSAS ET AL. *v.* OKLAHOMA ET AL.; and

No. 90-1266. ENVIRONMENTAL PROTECTION AGENCY *v.* OKLAHOMA ET AL. C. A. 10th Cir. [Certiorari granted, 499 U. S. 946.] Motion of the Solicitor General for divided argument granted.

No. 90-1372. MAIN HURDMAN *v.* FINE ET AL. C. A. 5th Cir. Motion of the parties to further defer consideration of petition for writ of certiorari granted.

No. 90-1676. GADE, DIRECTOR, ILLINOIS ENVIRONMENTAL PROTECTION AGENCY *v.* NATIONAL SOLID WASTES MANAGEMENT ASSN. C. A. 7th Cir.; and

No. 90-1712. NORTH CAROLINA *v.* SMITH. Sup. Ct. N. C. The Solicitor General is invited to file briefs in these cases expressing the views of the United States.

No. 90-1904. INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA, AFL-CIO *v.* UNITED STATES. C. A. 2d Cir. Motion of petitioner to expedite consideration of petition for writ of certiorari denied.

No. 90-6105. EVANS *v.* UNITED STATES. C. A. 11th Cir. [Certiorari granted, 500 U. S. 951.] Motion for appointment of counsel granted, and it is ordered that C. Michael Abbott, Esq., of Atlanta, Ga., be appointed to serve as counsel for petitioner in this case.

No. 90-1647. IN RE LOUISIANA EX REL. GUSTE, ATTORNEY GENERAL;

No. 90-7645. IN RE REIDT; and

No. 90-7899. IN RE GAY. Petitions for writs of mandamus denied.

No. 90-7901. IN RE ELLEDGE. Motions of National Legal Aid and Defender Association and National Association of Criminal

June 24, 1991

501 U. S.

Defense Lawyers for leave to file briefs as *amici curiae* granted. Petition for writ of mandamus denied.

Certiorari Granted

No. 90-1577. UNITED STATES *v.* R. L. C. C. A. 8th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari granted. Reported below: 915 F. 2d 320.

Certiorari Denied

No. 90-1194. MAINE PUBLIC UTILITIES COMMISSION *v.* MAINE YANKEE ATOMIC POWER CO. Sup. Jud. Ct. Me. Certiorari denied. Reported below: 581 A. 2d 799.

No. 90-1423. MASSILLON BOARD OF EDUCATION *v.* FARBER. C. A. 6th Cir. Certiorari denied. Reported below: 917 F. 2d 1391.

No. 90-1460. TARASSOUM *v.* IMMIGRATION AND NATURALIZATION SERVICE. C. A. 10th Cir. Certiorari denied.

No. 90-1506. GLOBUS *v.* SKINNER, SECRETARY OF TRANSPORTATION, ET AL. C. A. D. C. Cir. Certiorari denied.

No. 90-1508. CITY OF EL CENTRO, CALIFORNIA *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 922 F. 2d 816.

No. 90-1541. WASHINGTON STATE DEPARTMENT OF TRANSPORTATION *v.* UNITED STATES ENVIRONMENTAL PROTECTION AGENCY. C. A. D. C. Cir. Certiorari denied. Reported below: 286 U. S. App. D. C. 379, 917 F. 2d 1309.

No. 90-1542. RIVIECCIO *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 919 F. 2d 812.

No. 90-1550. HUDSON ET AL. *v.* CHICAGO TEACHERS UNION, LOCAL 1, ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 922 F. 2d 1306.

No. 90-1563. McEVOY *v.* NEW YORK. App. Term, Sup. Ct. N. Y., 1st and 12th Jud. Dists. Certiorari denied.

No. 90-1593. PARAMOUNT PICTURES CORP. ET AL. *v.* THE MOVIE 1 & 2. C. A. 9th Cir. Certiorari denied. Reported below: 909 F. 2d 1245.

501 U. S.

June 24, 1991

No. 90-1601. *HALL ET AL. v. FEDERAL DEPOSIT INSURANCE CORPORATION ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 920 F. 2d 334.

No. 90-1610. *HWANG JUNG JOO v. IMMIGRATION AND NATURALIZATION SERVICE.* C. A. 9th Cir. Certiorari denied. Reported below: 923 F. 2d 862.

No. 90-1621. *KNIGHT ET AL. v. BOARD OF ADMINISTRATION OF THE PUBLIC EMPLOYEES' RETIREMENT SYSTEM.* Ct. App. Cal., 3d App. Dist. Certiorari denied.

No. 90-1640. *CHURCH v. UNITED STATES.* Ct. Mil. App. Certiorari denied. Reported below: 32 M. J. 70.

No. 90-1652. *DALE v. AMERICAN FEDERATION OF STATE, COUNTY & MUNICIPAL EMPLOYEES, INTERNATIONAL, AFL-CIO.* Sup. Ct. Ohio. Certiorari denied. Reported below: 57 Ohio St. 3d 112, 567 N. E. 2d 253.

No. 90-1653. *NOR-WEST CABLE COMMUNICATIONS PARTNERSHIP v. CITY OF ST. PAUL ET AL.* C. A. 8th Cir. Certiorari denied. Reported below: 924 F. 2d 741.

No. 90-1655. *GORDON v. ILLINOIS.* App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 203 Ill. App. 3d 1103, 597 N. E. 2d 303.

No. 90-1659. *BAUSCH & LOMB INC. v. HEWLETT-PACKARD Co.* C. A. Fed. Cir. Certiorari denied. Reported below: 925 F. 2d 1480.

No. 90-1662. *BAIRSTOW ET AL. v. BAIRSTOW ET AL.* App. Ct. Ill., 2d Dist. Certiorari denied. Reported below: 201 Ill. App. 3d 1102, 589 N. E. 2d 1154.

No. 90-1663. *SACHS v. NEW YORK.* Ct. App. N. Y. Certiorari denied. Reported below: 77 N. Y. 2d 881, 571 N. E. 2d 94.

No. 90-1669. *DIXON v. HUBERT ET AL.* Sup. Ct. Ga. Certiorari denied. Reported below: 260 Ga. XXIX, 400 S. E. 2d 17.

No. 90-1673. *COLUMBIA OLDSMOBILE, INC. v. CITY OF MONTGOMERY, OHIO.* Sup. Ct. Ohio. Certiorari denied. Reported below: 56 Ohio St. 3d 60, 564 N. E. 2d 455.

No. 90-1675. *REICHELT ET AL. v. EMHART CORP. ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 921 F. 2d 425.

June 24, 1991

501 U. S.

No. 90-1679. *KILE v. NORTH PACIFIC CONSTRUCTION CO. ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 919 F. 2d 145.

No. 90-1681. *HODORY v. HAMILTON.* Dist. Ct. App. Fla., 2d Dist. Certiorari denied. Reported below: 574 So. 2d 147.

No. 90-1682. *CATHEY ET UX. v. METROPOLITAN LIFE INSURANCE CO. ET AL.* Sup. Ct. Tex. Certiorari denied. Reported below: 805 S. W. 2d 387.

No. 90-1687. *MIRAMAR HOTEL CORP. v. SANTA MONICA CULINARY WELFARE FUND ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 920 F. 2d 1491.

No. 90-1690. *BOND ET UX. v. OCTAGON PROCESS, INC.* C. A. 11th Cir. Certiorari denied. Reported below: 926 F. 2d 1573.

No. 90-1693. *BROWN v. WONG ET AL.* Sup. Ct. Haw. Certiorari denied. Reported below: 72 Haw. 603, 807 P. 2d 39.

No. 90-1696. *LESTER v. BORGERT, WARDEN.* C. A. 6th Cir. Certiorari denied.

No. 90-1710. *TEXAS v. GRIBBLE.* Ct. Crim. App. Tex. Certiorari denied. Reported below: 808 S. W. 2d 65.

No. 90-1711. *GRIDLEY v. CLEVELAND PNEUMATIC CO. ET AL.* C. A. 3d Cir. Certiorari denied. Reported below: 924 F. 2d 1310.

No. 90-1716. *IOWA DISTRICT COURT FOR WINNESHIEK COUNTY v. IOWA.* Sup. Ct. Iowa. Certiorari denied. Reported below: 464 N. W. 2d 233.

No. 90-1732. *NICOLS v. NICOLS.* Ct. App. Mich. Certiorari denied.

No. 90-1741. *BAYERISCHE HYPOTHEKEN-UND WECHSEL-BANK AG ET AL. v. GORG, AS TRUSTEE IN BANKRUPTCY FOR THE ESTATE OF KAUSSEN, ET AL.* Sup. Ct. Ga. Certiorari denied. Reported below: 260 Ga. XXIX, 400 S. E. 2d 17.

No. 90-1742. *HOOVER v. ALABAMA.* Sup. Ct. Ala. Certiorari denied. Reported below: 585 So. 2d 137.

No. 90-1746. *TROEN v. OREGON.* Ct. App. Ore. Certiorari denied. Reported below: 100 Ore. App. 442, 786 P. 2d 751.

501 U. S.

June 24, 1991

No. 90-1770. *AMERNATIONAL INDUSTRIES, INC. v. ELECTRO-EXPORTIMPORT*. C. A. 6th Cir. Certiorari denied. Reported below: 925 F. 2d 970.

No. 90-1799. *PRUESSMAN v. McDONALD ET AL.* C. A. 11th Cir. Certiorari denied. Reported below: 922 F. 2d 848.

No. 90-1812. *DARBOVEN v. NICKOLOPOULOS ET AL.* C. A. 3d Cir. Certiorari denied. Reported below: 931 F. 2d 49.

No. 90-5586. *JANSSEN v. ILLINOIS*. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 192 Ill. App. 3d 1105, 577 N. E. 2d 201.

No. 90-5706. *HALL v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 905 F. 2d 959.

No. 90-6710. *JACKSON v. ILLINOIS*. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 198 Ill. App. 3d 831, 556 N. E. 2d 619.

No. 90-7185. *PALMER v. COLLINS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION*. C. A. 5th Cir. Certiorari denied.

No. 90-7227. *SEGARRA-PALMER v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 922 F. 2d 934.

No. 90-7246. *MALDONADO-RIVERA v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 922 F. 2d 934.

No. 90-7283. *DEASES v. UNITED STATES*. C. A. 10th Cir. Certiorari denied. Reported below: 918 F. 2d 118.

No. 90-7297. *TURNER v. OKLAHOMA*. Ct. Crim. App. Okla. Certiorari denied. Reported below: 803 P. 2d 1152.

No. 90-7338. *LAFF v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 923 F. 2d 845.

No. 90-7351. *WILLIAMS v. CALIFORNIA*. Ct. App. Cal., 3d App. Dist. Certiorari denied.

No. 90-7370. *WILL v. WILL*. Sup. Ct. Va. Certiorari denied.

No. 90-7371. *WALLACE v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 923 F. 2d 845.

June 24, 1991

501 U. S.

No. 90-7394. *DOUGALL v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 919 F. 2d 932.

No. 90-7470. *DUEÑAS-ZARAGOZA, AKA MENO v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 922 F. 2d 838.

No. 90-7491. *SCOTT v. DELO ET AL.* C. A. 8th Cir. Certiorari denied.

No. 90-7539. *HORTON v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 921 F. 2d 540.

No. 90-7562. *MANNING v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 923 F. 2d 83.

No. 90-7563. *HICKEY v. UNITED STATES*; and
No. 90-7591. *KAVANAGH v. UNITED STATES*. C. A. 1st Cir. Certiorari denied. Reported below: 918 F. 2d 254.

No. 90-7566. *NOVEY v. UNITED STATES*. C. A. 10th Cir. Certiorari denied. Reported below: 922 F. 2d 624.

No. 90-7626. *BIBO-RODRIGUEZ v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 922 F. 2d 1398.

No. 90-7629. *HARDISON v. BRAXTON, COLONEL, UNITED STATES DISCIPLINARY BARRACKS, FORT LEAVENWORTH, KANSAS*. C. A. 10th Cir. Certiorari denied. Reported below: 930 F. 2d 33.

No. 90-7665. *CHAVIRA v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 919 F. 2d 1193.

No. 90-7678. *PRICE v. WILLIS, WARDEN*. C. A. 11th Cir. Certiorari denied. Reported below: 924 F. 2d 1065.

No. 90-7687. *PAITSEL v. MISSISSIPPI ET AL.* Sup. Ct. Miss. Certiorari denied.

No. 90-7717. *SANDERS v. DISTRICT OF COLUMBIA ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 927 F. 2d 596.

No. 90-7726. *HENDRICKS v. DEPARTMENT OF THE TREASURY*. C. A. Fed. Cir. Certiorari denied. Reported below: 928 F. 2d 410.

501 U. S.

June 24, 1991

No. 90-7807. *WILSON v. UNITED STATES*. C. A. 11th Cir. Certiorari denied. Reported below: 901 F. 2d 1000.

No. 90-7849. *THOMAS v. COLLINS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION*. C. A. 5th Cir. Certiorari denied. Reported below: 919 F. 2d 333.

No. 90-7859. *CLEMONS v. ARMONTROUT, WARDEN*. C. A. 8th Cir. Certiorari denied. Reported below: 921 F. 2d 187.

No. 90-7862. *DONATI v. MORRIS ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 927 F. 2d 595.

No. 90-7867. *HENSON-EL v. ROGERS ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 923 F. 2d 51.

No. 90-7868. *MINK v. ILLINOIS*. Sup. Ct. Ill. Certiorari denied. Reported below: 141 Ill. 2d 163, 565 N. E. 2d 975.

No. 90-7872. *MATTHEWS, AKA BROWN v. JOLLY ET AL.* C. A. 11th Cir. Certiorari denied.

No. 90-7874. *HOLBROOK v. HURT, WARDEN*. C. A. 11th Cir. Certiorari denied. Reported below: 929 F. 2d 705.

No. 90-7875. *RAMOS, A MINOR, REPRESENTED BY HER MOTHER, KEECH, ET AL. v. CITY OF YORK, PENNSYLVANIA, ET AL.* C. A. 3d Cir. Certiorari denied. Reported below: 919 F. 2d 730.

No. 90-7876. *BROYLES v. ARMONTROUT, WARDEN*. C. A. 8th Cir. Certiorari denied.

No. 90-7877. *SEGOVIA v. CALIFORNIA*. Ct. App. Cal., 5th App. Dist. Certiorari denied.

No. 90-7878. *BILLINGS v. SECRETARY OF LABOR ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 923 F. 2d 854.

No. 90-7879. *ROBINSON v. STIFTEL ET AL.* C. A. 3d Cir. Certiorari denied. Reported below: 928 F. 2d 396.

No. 90-7883. *LEONARD v. SCULLY, SUPERINTENDENT, GREEN HAVEN CORRECTIONAL FACILITY, ET AL.* C. A. 2d Cir. Certiorari denied.

June 24, 1991

501 U. S.

No. 90-7886. *SHOWS v. NCNB NATIONAL BANK OF NORTH CAROLINA ET AL.* C. A. 11th Cir. Certiorari denied. Reported below: 922 F. 2d 847.

No. 90-7889. *ZATKO v. UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA.* C. A. 9th Cir. Certiorari denied.

No. 90-7890. *CROSS v. GRIFFIN ET AL.* Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 90-7892. *WILSON v. MICHIGAN.* Ct. App. Mich. Certiorari denied.

No. 90-7893. *PERRY v. MICHIGAN ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 914 F. 2d 257.

No. 90-7895. *BAY v. LOUISIANA.* Ct. App. La., 3d Cir. Certiorari denied. Reported below: 567 So. 2d 798.

No. 90-7897. *MARTENY v. MURRAY ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 923 F. 2d 848.

No. 90-7907. *COSNER v. BEATTY, JUDGE, CIRCUIT COURT OF HENRY COUNTY.* Sup. Ct. Ill. Certiorari denied.

No. 90-7917. *WESSON v. KANSAS.* Sup. Ct. Kan. Certiorari denied. Reported below: 247 Kan. 639, 802 P. 2d 574.

No. 90-7919. *VERNON v. HATFIELD ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 924 F. 2d 1060.

No. 90-7921. *MILLER v. TOOMBS ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 925 F. 2d 1464.

No. 90-7925. *RODEN v. HOWELL ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 925 F. 2d 1459.

No. 90-7926. *BOYD v. SOUTH CAROLINA.* Sup. Ct. S. C. Certiorari denied.

No. 90-7946. *MCCABE v. CALIFORNIA.* Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 90-7947. *MERCADO v. BLOCK ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 925 F. 2d 1470.

501 U. S.

June 24, 1991

No. 90-7953. *CRANE v. WASHINGTON*. Sup. Ct. Wash. Certiorari denied. Reported below: 116 Wash. 2d 315, 804 P. 2d 10.

No. 90-7971. *LOCKHART v. COLLINS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION*. C. A. 5th Cir. Certiorari denied.

No. 90-7986. *RUIZ-VALDEZ v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 923 F. 2d 856.

No. 90-7989. *JOHNSON v. COLLINS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION*. C. A. 5th Cir. Certiorari denied.

No. 90-7993. *CAUDLE v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 925 F. 2d 1462.

No. 90-7995. *JOHNSON v. ATTORNEY GENERAL OF ALABAMA ET AL.* C. A. 11th Cir. Certiorari denied. Reported below: 923 F. 2d 865.

No. 90-8005. *DEMOS v. SUPREME COURT OF WASHINGTON*. Sup. Ct. Wash. Certiorari denied.

No. 90-8025. *MURPHY v. UNITED STATES*. C. A. 2d Cir. Certiorari denied.

No. 90-8053. *BOUDREAUX v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 925 F. 2d 112.

No. 90-8058. *CARNEY v. DEPARTMENT OF VETERANS AFFAIRS*. C. A. Fed. Cir. Certiorari denied. Reported below: 930 F. 2d 38.

No. 90-8068. *SMITH v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 928 F. 2d 407.

No. 90-8071. *BEVERLY ET AL. v. UNITED STATES*; and
No. 90-8087. *BROWN v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 921 F. 2d 559.

No. 90-8074. *REUVELTA v. UNITED STATES*. C. A. 11th Cir. Certiorari denied. Reported below: 930 F. 2d 924.

No. 90-8077. *REYES-VASQUEZ v. UNITED STATES*. C. A. 11th Cir. Certiorari denied. Reported below: 905 F. 2d 1497.

June 24, 1991

501 U. S.

No. 90-8089. *SMALLWOOD v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 920 F. 2d 1231.

No. 90-8090. *ROLLINS ET UX. v. KRAMER ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 927 F. 2d 610.

No. 90-8096. *WASHINGTON v. UNITED STATES*. C. A. 11th Cir. Certiorari denied. Reported below: 927 F. 2d 613.

No. 90-8106. *LOMAX v. WOOD, WARDEN*. C. A. 8th Cir. Certiorari denied. Reported below: 938 F. 2d 188.

No. 90-8112. *GONZALES v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 927 F. 2d 600.

No. 90-8115. *THOMAS v. UNITED STATES*. C. A. 11th Cir. Certiorari denied. Reported below: 889 F. 2d 274.

No. 90-8116. *FULLER v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 925 F. 2d 1458.

No. 90-8119. *SCHIFF v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 919 F. 2d 830.

No. 90-8170. *ORTIZ v. LEFEVRE, SUPERINTENDENT, FRANKLIN CORRECTIONAL FACILITY*. C. A. 2d Cir. Certiorari denied. Reported below: 932 F. 2d 956.

No. 90-1520. *AQUA-CHEM, INC. v. NATIONAL LABOR RELATIONS BOARD*. C. A. 7th Cir. Certiorari denied. JUSTICE WHITE would grant certiorari. Reported below: 910 F. 2d 1487.

No. 90-1587. *CAPELETTI BROS., INC., ET AL. v. BROWARD COUNTY, FLORIDA, ET AL.* C. A. 11th Cir. Motion of Washington Legal Foundation et al. for leave to file a brief as *amici curiae* granted. Certiorari denied. Reported below: 931 F. 2d 903.

No. 90-1616. *OHIO v. WILLIAMS*. Sup. Ct. Ohio. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 57 Ohio St. 3d 24, 565 N. E. 2d 563.

No. 90-1678. *COLORADO v. GALIMANIS*. Ct. App. Colo. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 765 P. 2d 644.

No. 90-1684. *BREWER, NATURAL GUARDIAN AND DULY-APPOINTED NEXT FRIEND OF BREWER v. LINCOLN NATIONAL*

501 U. S.

June 24, 1991

LIFE INSURANCE CO. C. A. 8th Cir. Motion of National Depressive and Manic Depressive Association for leave to file a brief as *amicus curiae* granted. Certiorari denied. Reported below: 921 F. 2d 150.

No. 90-5950. SPENCE *v.* TEXAS. Ct. Crim. App. Tex.; and No. 90-8175. WILLIAMS *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied. Reported below: No. 90-5950, 790 S. W. 2d 339; No. 90-8175, 804 S. W. 2d 95.

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 certiorari and vacate the death sentences in these cases.

No. 90-7755. RECTOR *v.* BRYANT, ATTORNEY GENERAL OF ARKANSAS, ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 923 F. 2d 570.

JUSTICE MARSHALL, dissenting.

In *Ford v. Wainwright*, 477 U. S. 399 (1986), this Court recognized that "the Eighth Amendment prohibits a State from carrying out a sentence of death upon a prisoner who is insane." *Id.*, at 409-410. The full Court, however, did not attempt a comprehensive definition of insanity or incompetence in this setting. See *id.*, at 407-408, 409-410; *id.*, at 418 (Powell, J., concurring in part and concurring in the judgment). This petition presents the question whether a prisoner whose mental incapacity renders him unable to recognize or communicate facts that would make his sentence unlawful or unjust is nonetheless competent to be executed. Because *Ford* leaves this question unanswered, and because this is an important and recurring issue in the administration of the death penalty, I would grant the petition.

I

After shooting and killing a police officer sent to investigate petitioner's involvement in another homicide, petitioner attempted to end his own life by shooting himself in the head. The gunshot did not kill petitioner. However, it did sever a three-inch section

of petitioner's brain, resulting in a frontal lobotomy. See 923 F.2d 570, 571, and n. 2 (CA8 1991). The trial court rejected petitioner's claim that he was incompetent to stand trial for murder of the police officer. Petitioner's conviction and sentence of death were affirmed on appeal.

Petitioner thereafter filed a petition for a writ of habeas corpus in federal district court, arguing that his deteriorated mental condition rendered him incompetent to be executed. The District Court ordered a mental evaluation of petitioner to be conducted by the United States Medical Center for Federal Prisoners. The examiners reached two conclusions. First, the examiners determined "that no mental illness or defect prevents [petitioner] from being aware of his impending execution and the reason for it." *Id.*, at 572. Second, applying the competency standard adopted by the American Bar Association in its Criminal Justice Mental Health Standards,¹ the examiners reported that

"[petitioner] would have considerable difficulty due to his organic deficits in being able to work in a collaborative, cooperative effort with an attorney. In our opinions it appears that *he would not be able to recognize or understand facts which might be related to his case which might make his punishment unjust or unlawful.*" *Ibid.* (emphasis added).

The District Court concluded that, for purposes of *Ford v. Wainwright*, *supra*, petitioner's competency to be executed turned solely on his appreciation of the nature of his punishment. Consequently, the court denied the writ. See 727 F. Supp. 1285, 1292 (ED Ark. 1990).

Petitioner appealed this determination to the Court of Appeals for the Eighth Circuit. Like the District Court, the Court of Appeals concluded that petitioner's inability to recognize or communi-

¹ ABA Standard 7-5.6(b) provides:

"A convict is incompetent to be executed if, as a result of mental illness or mental retardation, the convict cannot understand the nature of the pending proceedings, what he or she was tried for, the reason for the punishment, or the nature of the punishment. A convict is also incompetent if, as a result of mental illness or mental retardation, *the convict lacks sufficient capacity to recognize or understand any fact which might exist which would make the punishment unjust or unlawful, or lacks the ability to convey such information to counsel or to the court.*" ABA Criminal Justice Mental Health Standards 7-5.6(b) (1989) (emphasis added).

cate facts that might make his punishment unlawful or unjust was of no legal consequence. See 923 F. 2d, at 572-573. Purporting to draw on the majority opinion in *Ford* and on Justice Powell's concurring opinion, the Court of Appeals concluded that the only considerations relevant to petitioner's competency were "(1) whether petitioner understands *that* he is to be punished by execution; and (2) whether petitioner understands *why* he is being punished." *Id.*, at 572 (emphasis added). Because the medical examiners had determined that petitioner was competent to be executed by these criteria, the Court of Appeals affirmed the District Court's denial of habeas relief.

The lower courts clearly erred in viewing *Ford* as settling the issue whether a prisoner can be deemed competent to be executed notwithstanding his inability to recognize or communicate facts showing his sentence to be unlawful or unjust. Although the Court in *Ford* did emphasize the injustice "of executing a person who has no comprehension of why he has been singled out and stripped of his fundamental right to life," 477 U. S., at 409, the Court stressed that this was just one of many conditions that were treated as rendering a prisoner incompetent (or insane) at common law, see *id.*, at 407-408, 409-410. Indeed, the Court quoted with approval Blackstone's discussion of this topic, which clearly treats as a bar to execution a prisoner's inability to recognize grounds for avoiding the sentence:

"[I]f, after judgment, [a capital prisoner] becomes of nonsane memory, execution shall be stayed: for peradventure, says the humanity of the English law, *had the prisoner been of sound memory, he might have alleged something in stay of judgment or execution.*" *Id.*, at 407 (emphasis added), quoting 4 W. Blackstone, Commentaries *24-*25 (1769).

It is true, as the Court of Appeals noted, that Justice Powell addressed and rejected this definition of incompetence in his concurring opinion. See 477 U. S., at 419-421. But even he recognized that the full Court left the issue open. See *id.*, at 418 (noting that Court does not resolve "the meaning of insanity in this context").

In my view, a strong argument can be made that Justice Powell's answer to this open question is the wrong one. As we have emphasized, the Eighth Amendment prohibits any punishment considered cruel and unusual at common law as well as any pun-

ishment contrary to "the 'evolving standards of decency that mark the progress of a maturing society.'" *Penry v. Lynaugh*, 492 U. S. 302, 330-331 (1989), quoting *Trop v. Dulles*, 356 U. S. 86, 101 (1958) (plurality opinion); accord, *Stanford v. Kentucky*, 492 U. S. 361, 368-369 (1989); *Ford v. Wainwright*, *supra*, at 405-406. The common law's hostility to putting a man to death under such circumstances is documented not only by Blackstone, see 4 W. Blackstone, *supra*, *24-*25, *388-*389, but also by other commentators on English common law, see 1 M. Hale, *Pleas of the Crown* 35 (1736), and by numerous early American decisions, see *State v. Helm*, 69 Ark. 167, 171-173, 61 S. W. 915, 916-917 (1901); *People v. Geary*, 298 Ill. 236, 245, 131 N. E. 652, 655-656 (1921); *Barker v. State*, 75 Neb. 289, 292-293, 106 N. W. 450, 451 (1905); *In re Smith*, 25 N. M. 48, 59-60, 176 Pac. 819, 823 (1918); *Freeman v. People*, 4 Denio (N. Y.) 9, 20, 47 Am. Dec. 216, 219-220 (1847). See generally *Solesbee v. Balkcom*, 339 U. S. 9, 20, n. 3 (1950) (Frankfurter, J., dissenting); 1 J. Chitty, *The Criminal Law* *761 (5th ed. 1847); 1 W. Russell, *Crimes and Misdemeanors* 14 (8th ed. 1857); L. Shelford, *The Law Concerning Lunatics, Idiots and Persons of Unsound Mind* 295 (1833); Annot., 3 A. L. R. 94, 97-99 (1919).² Objective indicia of contemporary mores likewise

²Justice Powell did not dispute the established status of this definition of incompetence at common law. See *Ford v. Wainwright*, 477 U. S. 399, 419 (1986) (concurring in part and concurring in the judgment). Instead, he reasoned that the advent of increased opportunities for direct and collateral review of criminal convictions had so reduced the possibility of undiscovered error as to render this conception obsolete. See *id.*, at 420-421. This view strikes me not only as inconsistent with the established principle "that the Eighth Amendment's ban on cruel and unusual punishment embraces, at a minimum, those modes or acts of punishment that had been considered cruel and unusual at the time that the Bill of Rights was adopted," *id.*, at 405 (emphasis added); accord, *Penry v. Lynaugh*, 492 U. S. 302, 330 (1989), but also as somewhat question begging. For if a prisoner is incapable of recognizing or communicating facts that would facilitate collateral review, there is no reason to assume that collateral review in his case has rooted out all trial errors. In addition, Justice Powell's argument seems to miss at least half the point of the common law conception of incompetence. This definition focuses not only on the prisoner's capacity to recognize and communicate facts showing that his sentence is *unlawful*, but also on his capacity to recognize and communicate facts showing that his sentence is *unjust*. Absent this capacity, the prisoner is unable to participate in efforts to seek executive clemency, see, e. g., Mo. Ann. Stat. § 552.060.1 (Supp. 1991), the appropriateness of which will not necessarily be disclosed in the course of direct or collateral review of the prison-

1239

MARSHALL, J., dissenting

condemn execution of a prisoner afflicted with a "mental disease or defect [depriving him of the] capacity to understand . . . matters in extenuation, arguments for executive clemency or reasons why the sentence should not be carried out." Mo. Ann. Stat. § 552.060.1 (Supp. 1991); accord, Miss. Code Ann. § 99-19-57(2)(b) (Supp. 1990); N. C. Gen. Stat. § 15A-1001 (1990); ABA Criminal Justice Mental Health Standards 7-5.6(b) (1989).

The issue in this case is not only unsettled, but is also recurring and important. The stark realities are that many death row inmates were afflicted with serious mental impairments before they committed their crimes and that many more develop such impairments during the excruciating interval between sentencing and execution. See Lewis, Pincus, Feldman, Jackson & Bard, *Psychiatric, Neurological, and Psychoeducational Characteristics of 15 Death Row Inmates in the United States*, 143 *Am. J. Psychiatry* 838, 840-841 (1986); Johnson, *Under Sentence of Death: The Psychology of Death Row Confinement*, 5 *Law & Psychology Rev.* 141, 176-181 (1979); Gallemore & Panton, *Inmate Responses to Lengthy Death Row Confinement*, 129 *Am. J. Psychiatry* 167, 168, 169 (1972). Unavoidably, then, the question whether such persons can be put to death once the deterioration of their faculties has rendered them unable even to appeal to the law or the compassion of the society that has condemned them is central to the administration of the death penalty in this Nation. I would therefore grant the petition for certiorari in order to resolve *now* the questions left unanswered by our decision in *Ford v. Wainwright*.

II

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 and vacate the death sentence even if I did not view the issue in this case as being independently worthy of this Court's plenary review.

er's conviction. Ultimately, then, the common law conception of incompetence embodies the principle that it is inhumane to put a man to death when he has been rendered incapable of appealing to the mercy of the society that has condemned him.

June 24, 25, 1991

501 U. S.

No. 90-7861. BEN-MOSHE *v.* MARTINEZ, FORMER GOVERNOR OF FLORIDA, ET AL. C. A. 11th Cir. Certiorari before judgment denied.

Rehearing Denied

- No. 90-1340. SIMPSON *v.* SIMPSON ET AL., 500 U. S. 932;
No. 90-1391. HEJL *v.* CITY OF AUSTIN ET AL., 500 U. S. 905;
No. 90-1512. PENN ET UX. *v.* PARKE STATE BANK, 500 U. S. 918;
No. 90-7091. GUERRERO *v.* UNITED STATES, 500 U. S. 920;
No. 90-7104. TETER *v.* JONES, SUPERINTENDENT, MOBERLY CORRECTIONAL CENTER, 500 U. S. 955;
No. 90-7156. VENKATESAN *v.* WHITE ET AL., 499 U. S. 965;
No. 90-7279. DAVIS *v.* BEARD, WARDEN, ET AL., 500 U. S. 907;
No. 90-7306. BURNS *v.* BURNS ET AL., 500 U. S. 907;
No. 90-7320. WATKINS *v.* WEISS, 500 U. S. 907;
No. 90-7407. FLEMING *v.* COLORADO, 500 U. S. 921;
No. 90-7424. KISKILA ET UX. *v.* SUPERIOR COURT OF CALIFORNIA, COUNTY OF RIVERSIDE (BUSINESS EXCHANGE, INC., ET AL., REAL PARTIES IN INTEREST), 500 U. S. 922;
No. 90-7555. RUTHERFORD *v.* UNITED STATES, 500 U. S. 925;
and
No. 90-7597. GERMANO ET UX. *v.* BLEVINS, JUDGE, DISTRICT COURT FOR THE SEVENTH JUDICIAL DISTRICT OF OKLAHOMA, 500 U. S. 925. Petitions for rehearing denied.
No. 89-1217. LEHNERT ET AL. *v.* FERRIS FACULTY ASSN. ET AL., 500 U. S. 507. Petition for limited rehearing and other relief denied.

JUNE 25, 1991

Certiorari Denied

No. 90-8449 (A-976). FRANCIS *v.* SINGLETARY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Application for stay of execution of sentence of death, presented to JUSTICE KENNEDY, and by him referred to the Court, denied. Certiorari denied.

JUSTICE MARSHALL, dissenting.

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

501 U. S.

June 25, 28, 1991

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.

No. 90-8450 (A-977). FRANCIS *v.* SINGLETARY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. Sup. Ct. Fla. Application for stay of execution of sentence of death, presented to JUSTICE KENNEDY, and by him referred to the Court, denied. Certiorari denied. Reported below: 581 So. 2d 583.

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.

JUNE 28, 1991

Dismissal Under Rule 46

No. 90-1603. R. H. MACY & CO., INC., ET AL. *v.* CONTRA COSTA COUNTY, CALIFORNIA. Ct. App. Cal., 1st App. Dist. [Certiorari granted, 500 U. S. 951.] Writ of certiorari dismissed under this Court's Rule 46.

Vacated and Remanded on Appeal

No. 90-1187. HUNTER *v.* MCKEITHEN, SECRETARY OF STATE OF LOUISIANA, ET AL. Appeal from D. C. W. D. La. Judgment vacated and case remanded for further consideration in light of *Houston Lawyers' Assn. v. Attorney General of Tex.*, ante, p. 419, and *Clark v. Roemer*, 500 U. S. 646 (1991). Reported below: 757 F. Supp. 25.

Certiorari Granted—Vacated and Remanded

No. 89-1696. PEABODY COAL CO. ET AL. *v.* MARTIN, PERSONAL REPRESENTATIVE OF THE ESTATE OF TAYLOR, DECEASED, ET AL. C. A. 7th Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Pauley v. BethEnergy Mines, Inc.*, ante, p. 680. JUSTICE KENNEDY took no part in the consideration or decision of this case. Reported below: 892 F. 2d 503.

June 28, 1991

501 U. S.

No. 90-172. DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR *v.* ROBINETTE. C. A. 4th Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Pauley v. BethEnergy Mines, Inc.*, ante, p. 680. Reported below: 902 F. 2d 1566.

No. 90-382. VILLAGE OF MILFORD, MICHIGAN *v.* PROFESSIONAL LAWN CARE ASSN. C. A. 6th Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Wisconsin Public Intervenor v. Mortier*, ante, p. 597. Reported below: 909 F. 2d 929.

No. 90-473. ARIZONA *v.* BARTLETT. Sup. Ct. Ariz. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Harmelin v. Michigan*, ante, p. 957. Reported below: 164 Ariz. 229, 792 P. 2d 692.

No. 90-645. NORWEST BANK DULUTH, N. A. *v.* JAMES, MINNESOTA COMMISSIONER OF REVENUE, ET AL. Sup. Ct. Minn. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *James B. Beam Distilling Co. v. Georgia*, ante, p. 529. Reported below: 457 N. W. 2d 716.

No. 90-673. BASS ET AL. *v.* SOUTH CAROLINA ET AL. Sup. Ct. S. C. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *James B. Beam Distilling Co. v. Georgia*, ante, p. 529. Reported below: 302 S. C. 250, 395 S. E. 2d 171.

No. 90-898. CLARK ET AL. *v.* ROEMER, GOVERNOR OF LOUISIANA, ET AL. C. A. 5th Cir. Certiorari before judgment granted, judgment of the United States District Court for the Middle District of Louisiana vacated, and case remanded to that court for further consideration in light of *Chisom v. Roemer*, ante, p. 380.

No. 90-1137. PARKE, WARDEN *v.* GILLENWATER. C. A. 6th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Ylst v. Nunnemaker*, ante, p. 797. Reported below: 909 F. 2d 1483.

501 U. S.

June 28, 1991

No. 90-1432. CLARKE, WARDEN *v.* ROSS. C. A. 8th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case remanded with directions to dismiss. *United States v. Mun-singwear, Inc.*, 340 U. S. 36 (1950).

No. 90-1569. FLEMING LANDFILL, INC., ET AL. *v.* GARNES ET UX. Sup. Ct. App. W. Va. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Pacific Mut. Life Ins. Co. v. Haslip*, 499 U. S. 1 (1991).

No. 90-1597. NATIONAL PRIVATE TRUCK COUNCIL, INC., ET AL. *v.* OKLAHOMA TAX COMMISSION ET AL. Sup. Ct. Okla. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Dennis v. Higgins*, 498 U. S. 439 (1991). Reported below: 806 P. 2d 598.

No. 90-1625. NORTHWEST SAVINGS BANK, PASA, ET AL. *v.* WELCH ET AL. C. A. 2d Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *James B. Beam Distilling Co. v. Georgia*, ante, p. 529, and *Lampf, Pleva, Lipkind, Prupis & Petigrow v. Gilbertson*, ante, p. 350. Reported below: 923 F. 2d 989.

No. 90-1685. HARPER ET AL. *v.* VIRGINIA DEPARTMENT OF TAXATION; and

No. 90-1772. LEWY ET AL. *v.* VIRGINIA DEPARTMENT OF TAXATION. Sup. Ct. Va. Certiorari granted, judgment vacated, and cases remanded for further consideration in light of *James B. Beam Distilling Co. v. Georgia*, ante, p. 529. Reported below: 241 Va. 232, 401 S. E. 2d 868.

No. 90-7713. GARCIA *v.* UNITED STATES. C. A. 5th Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Braxton v. United States*, 500 U. S. 344 (1991). Reported below: 929 F. 2d 697.

Miscellaneous Orders

No. — — —. COOK ET AL. *v.* CENTEL CABLE TELEVISION COMPANY OF OHIO, INC., ET AL. Motion to direct the Clerk to file petition for writ of certiorari out of time denied.

No. A-968. PUERTO RICAN LEGAL DEFENSE AND EDUCATION FUND, INC., ET AL. *v.* CITY OF NEW YORK ET AL. Application

June 28, 1991

501 U. S.

for injunction, presented to JUSTICE MARSHALL, and by him referred to the Court, denied.

No. D-971. *IN RE DISBARMENT OF CRANE*. Disbarment entered. [For earlier order herein, see 498 U. S. 1118.]

No. D-1020. *IN RE DISBARMENT OF DELLA-DONNA*. It is ordered that Alphonse Della-Donna, 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-1021. *IN RE DISBARMENT OF DUVA*. It is ordered that Anthony William Duva, of Gainesville, 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. 118, Orig. *UNITED STATES v. ALASKA*. It has been suggested that the United States and Alaska are in agreement on the facts relevant to a decision in this action. If this is the case, the parties are invited to file a stipulation of facts in this Court on or before 60 days from the date of this order. If such a stipulation is not timely filed, a Special Master will be appointed and the case will proceed in the usual manner. If such a stipulation is filed, the parties shall then brief the legal issues. The brief of the United States shall be filed no later than 45 days after the filing of the stipulation of facts. Alaska's brief shall be filed within 30 days thereafter, after which the United States may promptly file a reply brief. The case will then be orally argued. [For earlier order herein, see 499 U. S. 946.]

No. 87-1095. *DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR v. BROYLES ET AL.*, 488 U. S. 105. Motion of respondents Charlie Broyles and Lisa Kay Colley for award of attorney's fees and expenses denied without prejudice to refile in the United States Court of Appeals for the Fourth Circuit.

No. 89-7401. *CLARKE v. WEST VIRGINIA BOARD OF REGENTS ET AL.*, 497 U. S. 1023. Motion of petitioner to reinstate case on docket denied.

No. 90-1124. *JACOBSON v. UNITED STATES*. C. A. 8th Cir. [Certiorari granted, 499 U. S. 974.] Motion of Americans for Ef-

501 U. S.

June 28, 1991

fective Law Enforcement, Inc., et al. for leave to file a brief as *amici curiae* granted.

No. 90-1126. NORMAN ET AL. *v.* REED ET AL.; and

No. 90-1435. COOK COUNTY OFFICERS ELECTORAL BOARD ET AL. *v.* REED ET AL. Sup. Ct. Ill. [Certiorari granted, 500 U. S. 931.] Motion of petitioners Cook County Officers Electoral Board et al. to expedite oral argument granted.

No. 90-6113. WHITE *v.* ILLINOIS. App. Ct. Ill., 4th Dist. [Certiorari granted, 500 U. S. 904.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 90-8229. IN RE ROBINSON. Petition for writ of habeas corpus denied.

No. 90-7975. IN RE LEE. Petition for writ of mandamus denied.

Certiorari Granted

No. 90-1596. ROBERTSON, CHIEF, UNITED STATES FOREST SERVICE, ET AL. *v.* SEATTLE AUDUBON SOCIETY ET AL. C. A. 9th Cir. Certiorari granted. Reported below: 914 F. 2d 1311.

No. 90-7477. SMITH *v.* BARRY ET AL. C. A. 4th Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted. Reported below: 919 F. 2d 893.

Certiorari Denied

No. 89-6960. YOUNG *v.* MILLER, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 883 F. 2d 1276.

No. 89-7296. LOPEZ-PENA ET AL. *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 912 F. 2d 1542.

No. 89-7539. MARTINEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 883 F. 2d 750.

No. 90-293. WHEREHOUSE ENTERTAINMENT, INC., ET AL. *v.* MCMAHAN & CO. ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 900 F. 2d 576.

No. 90-341. ROSENBERG ET AL. *v.* CITY OF LORAIN, OHIO. Ct. App. Ohio, Lorain County. Certiorari denied. Reported below: 65 Ohio App. 3d 408, 584 N. E. 2d 744.

June 28, 1991

501 U. S.

No. 90-513. *MUSACCHIA v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 900 F. 2d 493.

No. 90-526. *SHORT v. BELLEVILLE SHOE MANUFACTURING CO. ET AL.* C. A. 7th Cir. Certiorari denied. Reported below: 908 F. 2d 1385.

No. 90-625. *HOY ET AL. v. REED*. C. A. 9th Cir. Certiorari denied. Reported below: 909 F. 2d 324.

No. 90-1122. *GOLOCHOWICZ v. GRAYSON, WARDEN, CHARLES EGELER CORRECTIONAL FACILITY*. C. A. 6th Cir. Certiorari denied. Reported below: 916 F. 2d 712.

No. 90-1247. *CITY OF SPOKANE ET AL. v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 918 F. 2d 84.

No. 90-1281. *GLEICHER ET AL. v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 914 F. 2d 1514.

No. 90-1456. *LEVIN v. FLORIDA BAR*. Sup. Ct. Fla. Certiorari denied. Reported below: 570 So. 2d 917.

No. 90-1457. *LITTLES v. AREA HEALTH DEVELOPMENT BOARD ET AL.* C. A. 11th Cir. Certiorari denied. Reported below: 919 F. 2d 744.

No. 90-1486. *LONG ET AL. v. FLORIDA ET AL.* Sup. Ct. Fla. Certiorari denied. Reported below: 570 So. 2d 257.

No. 90-1502. *PRATHER v. DAYTON POWER & LIGHT CO.* C. A. 6th Cir. Certiorari denied. Reported below: 918 F. 2d 1255.

No. 90-1555. *MAYNARD v. UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 915 F. 2d 1581.

No. 90-1594. *LUNDBLAD v. CELESTE ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 924 F. 2d 627.

No. 90-1595. *MAKAH INDIAN TRIBE v. UNITED STATES ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 913 F. 2d 576.

No. 90-1607. *MANATT v. FEDERAL DEPOSIT INSURANCE CORPORATION*. C. A. 8th Cir. Certiorari denied. Reported below: 922 F. 2d 486.

501 U. S.

June 28, 1991

No. 90-1613. LAKEVIEW DEVELOPMENT CORP. *v.* CITY OF SOUTH LAKE TAHOE ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 915 F. 2d 1290.

No. 90-1619. PINEHURST AREA REALTY, INC. *v.* VILLAGE OF PINEHURST. Ct. App. N. C. Certiorari denied. Reported below: 100 N. C. App. 77, 394 S. E. 2d 251.

No. 90-1683. HARTNESS ET AL. *v.* BUSH, PRESIDENT OF THE UNITED STATES, ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 287 U. S. App. D. C. 61, 919 F. 2d 170.

No. 90-1694. LINGERFELT *v.* COMMERCIAL INSURANCE COMPANY OF NEWARK, NEW JERSEY. C. A. 6th Cir. Certiorari denied. Reported below: 924 F. 2d 1058.

No. 90-1699. CHI-SEN LI *v.* RUIZ, JUDGE, MUNICIPAL COURT OF EAST LOS ANGELES, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 922 F. 2d 844.

No. 90-1700. WRENN *v.* OHIO ET AL. C. A. 6th Cir. Certiorari denied.

No. 90-1701. BIRD, TRUSTEE OF THE FRANK L. BIRD PROFIT SHARING TRUST, ET AL. *v.* SHEARSON LEHMAN/AMERICAN EXPRESS, INC., ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 926 F. 2d 116.

No. 90-1705. MIRZOEFF *v.* NAMDAR. App. Div., Sup. Ct. N. Y., 1st Jud. Dept. Certiorari denied. Reported below: 161 App. Div. 2d 348, 555 N. Y. S. 2d 101.

No. 90-1708. MUSSLEWHITE *v.* STATE BAR OF TEXAS. Ct. App. Tex., 14th Dist. Certiorari denied. Reported below: 786 S. W. 2d 437.

No. 90-1714. REGIONAL AIRLINE PILOT ASSN. ET AL. *v.* WINGS WEST AIRLINES, INC., DBA AMERICAN EAGLE. C. A. 9th Cir. Certiorari denied. Reported below: 915 F. 2d 1399.

No. 90-1717. TAYLOR *v.* CARR, UNITED STATES MAGISTRATE FOR THE NORTHERN DISTRICT OF OHIO. C. A. 6th Cir. Certiorari denied.

No. 90-1719. MATTIA *v.* EMPIRE BLUE CROSS & BLUE SHIELD ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 923 F. 2d 845.

June 28, 1991

501 U. S.

No. 90-1720. *GROSSMONT UNION HIGH SCHOOL DISTRICT v. DAVIES*. C. A. 9th Cir. Certiorari denied. Reported below: 930 F. 2d 1390.

No. 90-1723. *BROWN ET AL. v. ILLINOIS*. Sup. Ct. Ill. Certiorari denied. Reported below: 141 Ill. 2d 180, 565 N. E. 2d 1319.

No. 90-1726. *KUNTZ v. SHAWMUT BANK OF BOSTON ET AL.* App. Div., Sup. Ct. N. Y., 3d Jud. Dept. Certiorari denied. Reported below: 163 App. Div. 2d 697, 559 N. Y. S. 2d 825.

No. 90-1729. *MATUSKA v. ILLINOIS*. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 203 Ill. App. 3d 1103, 597 N. E. 2d 304.

No. 90-1735. *LEVINSON v. BUDD FOODS, INC.* C. A. Fed. Cir. Certiorari denied. Reported below: 928 F. 2d 410.

No. 90-1737. *FULTON COUNTY, GEORGIA v. S. J. GROVES & SONS CO. ET AL.* C. A. 11th Cir. Certiorari denied. Reported below: 920 F. 2d 752.

No. 90-1739. *FUQUA INDUSTRIES, INC., ET AL. v. JANDRUCKO*. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 576 So. 2d 1320.

No. 90-1750. *GUARDSMARK, INC. v. PINKERTON'S, INC.* C. A. 2d Cir. Certiorari denied. Reported below: 923 F. 2d 845.

No. 90-1754. *DEEDS v. JOHNSON ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 925 F. 2d 1460.

No. 90-1758. *BEST BUY WAREHOUSE v. BEST BUY CO., INC.* C. A. 8th Cir. Certiorari denied. Reported below: 920 F. 2d 536.

No. 90-1785. *TA-CHUN WANG v. CHUN WONG ET AL.* App. Div., Sup. Ct. N. Y., 2d Jud. Dept. Certiorari denied. Reported below: 163 App. Div. 2d 300, 557 N. Y. S. 2d 434.

No. 90-1810. *HICKEY v. CONNECTICUT*. App. Ct. Conn. Certiorari denied. Reported below: 23 Conn. App. 712, 584 A. 2d 473.

No. 90-1813. *DUTRIDGE ET AL. v. CITY OF TOLEDO, DIVISION OF BUILDING INSPECTION*. Ct. App. Ohio, Lucas County. Certiorari denied.

501 U. S.

June 28, 1991

No. 90-1820. *SPEAR v. ROCKWELL INTERNATIONAL CORP. ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 925 F. 2d 1470.

No. 90-1823. *WATSON v. UNITED STATES.* C. A. 6th Cir. Certiorari denied. Reported below: 925 F. 2d 1466.

No. 90-1847. *CAMOSCIO v. HODDER ET AL.* C. A. 1st Cir. Certiorari denied. Reported below: 930 F. 2d 906.

No. 90-1867. *CLAY v. EXCHANGE MUTUAL INSURANCE CO.* Ct. App. Tenn. Certiorari denied.

No. 90-5181. *WHITNEY v. MISSISSIPPI.* Sup. Ct. Miss. Certiorari denied. Reported below: 560 So. 2d 170.

No. 90-5426. *SAWYERS v. UNITED STATES.* C. A. 6th Cir. Certiorari denied. Reported below: 902 F. 2d 1217.

No. 90-6221. *BEDONIE v. UNITED STATES.* C. A. 10th Cir. Certiorari denied. Reported below: 913 F. 2d 782.

No. 90-6337. *FLOWERS v. UNITED STATES.* C. A. 4th Cir. Certiorari denied. Reported below: 912 F. 2d 707.

No. 90-6488. *CROSSON v. OHIO.* Ct. App. Ohio, Delaware County. Certiorari denied.

No. 90-6539. *GOODWIN v. COLLINS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION.* C. A. 5th Cir. Certiorari denied. Reported below: 910 F. 2d 185.

No. 90-6607. *PITTS v. LOCKHART, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION.* C. A. 8th Cir. Certiorari denied. Reported below: 911 F. 2d 109.

No. 90-7097. *PAITSEL v. BLACK ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 922 F. 2d 838.

No. 90-7109. *HERNANDEZ v. WOOTEN, WARDEN, ET AL.* C. A. 10th Cir. Certiorari denied.

No. 90-7131. *CASTLE v. DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS.* C. A. 6th Cir. Certiorari denied. Reported below: 917 F. 2d 1304.

No. 90-7204. *ALLEN v. UNITED STATES.* C. A. 6th Cir. Certiorari denied. Reported below: 921 F. 2d 78.

June 28, 1991

501 U. S.

No. 90-7264. *DECANZIO v. QUINLAN, DIRECTOR, BUREAU OF PRISONS, ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 927 F. 2d 594.

No. 90-7304. *MILLER v. FEDERAL BUREAU OF INVESTIGATION.* C. A. 3d Cir. Certiorari denied. Reported below: 919 F. 2d 136.

No. 90-7365. *MURPHY v. MESCHER.* C. A. 8th Cir. Certiorari denied. Reported below: 923 F. 2d 859.

No. 90-7393. *WICKHAM v. BOWERSOX, SUPERINTENDENT, OZARK CORRECTIONAL CENTER.* C. A. 8th Cir. Certiorari denied. Reported below: 914 F. 2d 1111.

No. 90-7397. *GRAYER v. PUCKETT, SUPERINTENDENT, MISSISSIPPI STATE PENITENTIARY.* C. A. 5th Cir. Certiorari denied. Reported below: 917 F. 2d 562.

No. 90-7408. *BOUT v. KENT COUNTY ET AL.* C. A. 6th Cir. Certiorari denied.

No. 90-7485. *ADEFUYE v. CARLSON, WARDEN.* C. A. 8th Cir. Certiorari denied. Reported below: 923 F. 2d 860.

No. 90-7662. *BUMGARNER v. LOCKHART, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION.* C. A. 8th Cir. Certiorari denied. Reported below: 920 F. 2d 510.

No. 90-7664. *D'AGNILLO v. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 923 F. 2d 17.

No. 90-7696. *STEWART v. UNITED STATES.* C. A. 4th Cir. Certiorari denied. Reported below: 923 F. 2d 850.

No. 90-7838. *CHICANO v. CONNECTICUT.* Sup. Ct. Conn. Certiorari denied. Reported below: 216 Conn. 699, 584 A. 2d 425.

No. 90-7869. *HATCH v. UNITED STATES DEPARTMENT OF AGRICULTURE ET AL.* C. A. 8th Cir. Certiorari denied. Reported below: 923 F. 2d 859.

No. 90-7912. *HITE, INDIVIDUALLY AND AS TRUSTEE FOR HITE, AKA HEYDT v. BOARD OF ADJUSTMENTS-ZONING FOR THE*

501 U. S.

June 28, 1991

CITY AND COUNTY OF DENVER ET AL. C. A. 10th Cir. Certiorari denied.

No. 90-7931. SMITH *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 930 F. 2d 30.

No. 90-7932. STEPHENS *v.* SCULLY, SUPERINTENDENT, GREEN HAVEN CORRECTIONAL FACILITY, ET AL. C. A. 2d Cir. Certiorari denied.

No. 90-7939. REED *v.* FT. WORTH INDEPENDENT SCHOOL DISTRICT ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 927 F. 2d 601.

No. 90-7951. MUTH *v.* CARROLL ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 925 F. 2d 418.

No. 90-7954. BAXTER *v.* CLARK, SUPERINTENDENT, INDIANA STATE PRISON. C. A. 7th Cir. Certiorari denied. Reported below: 927 F. 2d 607.

No. 90-7956. PARKER *v.* AMERICAN NATIONAL RED CROSS. C. A. 11th Cir. Certiorari denied. Reported below: 923 F. 2d 865.

No. 90-7957. ZATKO *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 90-7958. SAVAGE *v.* ESTELLE, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 924 F. 2d 1459.

No. 90-7959. ZATKO *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 90-7960. ZATKO *v.* MARSHALL. C. A. 9th Cir. Certiorari denied.

No. 90-7962. VENERI *v.* FULCOMER, DEPUTY COMMISSIONER, WESTERN REGION, PENNSYLVANIA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 3d Cir. Certiorari denied.

No. 90-7964. LABOY *v.* KELLY ET AL. C. A. 7th Cir. Certiorari denied.

No. 90-7968. RICKETTS *v.* LOCKHART, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION. C. A. 8th Cir. Certiorari denied. Reported below: 923 F. 2d 858.

June 28, 1991

501 U. S.

No. 90-7969. *WOLFENBARGER v. KANSAS DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES*. C. A. 10th Cir. Certiorari denied.

No. 90-7974. *KOH v. IMMIGRATION AND NATURALIZATION SERVICE*. C. A. 9th Cir. Certiorari denied. Reported below: 919 F. 2d 145.

No. 90-7978. *OWENS v. JACOBS, CHAIRMAN, PENNSYLVANIA BOARD OF PROBATION AND PAROLE*. C. A. 3d Cir. Certiorari denied. Reported below: 931 F. 2d 51.

No. 90-7984. *WIGHTMAN v. MORALES, ATTORNEY GENERAL OF TEXAS*. C. A. 5th Cir. Certiorari denied.

No. 90-7985. *TWYMAN v. GIDDENS*. Sup. Ct. Ala. Certiorari denied. Reported below: 579 So. 2d 1307.

No. 90-7990. *ANDERSON v. LEHR ET AL.* C. A. 8th Cir. Certiorari denied.

No. 90-8013. *EDGEMON v. LOCKHART, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION*. C. A. 8th Cir. Certiorari denied. Reported below: 924 F. 2d 126.

No. 90-8015. *ZATKO v. CALIFORNIA*. Sup. Ct. Cal. Certiorari denied.

No. 90-8024. *JOST v. OREGON ET AL.* (two cases). C. A. 9th Cir. Certiorari denied. Reported below: 923 F. 2d 862.

No. 90-8029. *PORTER v. LOCKHART, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION*. C. A. 8th Cir. Certiorari denied. Reported below: 925 F. 2d 1107.

No. 90-8030. *JOHNSON v. LONGVIEW INDEPENDENT SCHOOL DISTRICT ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 919 F. 2d 737.

No. 90-8043. *HUMPHREY v. TATE, WARDEN*. C. A. 6th Cir. Certiorari denied. Reported below: 925 F. 2d 1464.

No. 90-8045. *GRAY v. DEANDA, JUDGE, UNITED STATES DISTRICT COURT, ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 931 F. 2d 890.

501 U. S.

June 28, 1991

No. 90-8047. *COOK v. BOARD OF EDUCATION OF THE MEMPHIS CITY SCHOOLS ET AL.* Ct. App. Tenn. Certiorari denied.

No. 90-8048. *FUHRMAN v. CITY OF DAYTON.* Ct. App. Ohio, Montgomery County. Certiorari denied.

No. 90-8056. *SMITH v. UNITED STATES.* C. A. 3d Cir. Certiorari denied. Reported below: 931 F. 2d 52.

No. 90-8062. *ANDERSON v. OHIO.* Sup. Ct. Ohio. Certiorari denied. Reported below: 57 Ohio St. 3d 168, 566 N. E. 2d 1224.

No. 90-8088. *FOSTER v. UNITED STATES.* C. A. 6th Cir. Certiorari denied. Reported below: 925 F. 2d 1466.

No. 90-8097. *ADAMS v. UNITED STATES.* C. A. 4th Cir. Certiorari denied. Reported below: 927 F. 2d 597.

No. 90-8099. *COLEMAN v. PUNG, COMMISSIONER, MINNESOTA DEPARTMENT OF CORRECTIONS, ET AL.* C. A. 8th Cir. Certiorari denied. Reported below: 938 F. 2d 188.

No. 90-8105. *MASON v. UNITED STATES.* C. A. 5th Cir. Certiorari denied. Reported below: 927 F. 2d 601.

No. 90-8131. *WINSTON v. UNITED STATES.* C. A. 9th Cir. Certiorari denied. Reported below: 925 F. 2d 1472.

No. 90-8132. *THOMAS v. UNITED STATES.* C. A. 4th Cir. Certiorari denied. Reported below: 925 F. 2d 1458.

No. 90-8137. *BOZEMAN v. UNITED STATES PAROLE COMMISSION ET AL.* C. A. 11th Cir. Certiorari denied. Reported below: 931 F. 2d 903.

No. 90-8140. *FIGUEROA v. UNITED STATES.* C. A. 9th Cir. Certiorari denied. Reported below: 927 F. 2d 611.

No. 90-8142. *BORROTO v. UNITED STATES.* C. A. 11th Cir. Certiorari denied. Reported below: 929 F. 2d 705.

No. 90-8148. *WHITTEN v. UNITED STATES.* Ct. App. D. C. Certiorari denied.

No. 90-8151. *WILSON v. UNITED STATES.* Ct. App. D. C. Certiorari denied. Reported below: 590 A. 2d 1002.

June 28, 1991

501 U. S.

No. 90-8155. *TERLECKY v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 923 F. 2d 860.

No. 90-8156. *TERPAK v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 925 F. 2d 1472.

No. 90-8159. *PRICE v. UNITED STATES*. C. A. 10th Cir. Certiorari denied. Reported below: 930 F. 2d 35.

No. 90-8162. *BANDALI v. MARYLAND ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 922 F. 2d 835.

No. 90-8167. *LITTLE v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 927 F. 2d 604.

No. 90-8168. *MICOLTA-BRAVO, AKA LOZANO v. UNITED STATES*. C. A. 11th Cir. Certiorari denied. Reported below: 929 F. 2d 705.

No. 90-8172. *JARRETT ET AL. v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 927 F. 2d 597 and 598.

No. 90-8182. *OWENS v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 927 F. 2d 597.

No. 90-8191. *MALBROUGH v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 922 F. 2d 458.

No. 90-8194. *IZQUIERDO v. UNITED STATES*. C. A. 11th Cir. Certiorari denied. Reported below: 929 F. 2d 705.

No. 90-8198. *GRAHAM v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 930 F. 2d 910.

No. 90-8200. *CARDONA-MARTINEZ v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 928 F. 2d 402.

No. 90-8208. *AVILA-CRUZ v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 927 F. 2d 611.

No. 90-8211. *DE LA CRUZ v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 928 F. 2d 1137.

No. 90-8212. *SUTTER v. UNITED STATES*. C. A. 11th Cir. Certiorari denied. Reported below: 929 F. 2d 705.

No. 90-8221. *HUNTER v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 938 F. 2d 187.

501 U. S.

June 28, 1991

No. 90-8225. *NUNEZ v. COSTELLO*, SUPERINTENDENT, MID-STATE CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied. Reported below: 932 F. 2d 955.

No. 90-8227. *LAURELEZ v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 926 F. 2d 649.

No. 90-8230. *SYDER v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 930 F. 2d 916.

No. 90-8231. *SMITH, AKA HOUSE v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 938 F. 2d 188.

No. 90-8233. *BONILLA v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 925 F. 2d 420.

No. 89-7679. *RUSSELL v. COLLINS*, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir.;

No. 90-5512. *HALIBURTON v. FLORIDA*. Sup. Ct. Fla.;

No. 90-5726. *KILLS ON TOP v. MONTANA*. Sup. Ct. Mont.;

No. 90-6029. *FREEMAN v. FLORIDA*. Sup. Ct. Fla.;

No. 90-6758. *LAGRAND v. ARIZONA*. Super. Ct. Ariz., Pima County;

No. 90-6819. *WOODS v. INDIANA*. Sup. Ct. Ind.;

No. 90-6939. *PAZ v. IDAHO*. Sup. Ct. Idaho;

No. 90-7018. *LAGRAND v. ARIZONA*. Super. Ct. Ariz., Pima County;

No. 90-7067. *GRIFFIN v. MISSOURI*. Sup. Ct. Mo.;

No. 90-7449. *FLOYD v. FLORIDA*. Sup. Ct. Fla.;

No. 90-7499. *COLEMAN v. INDIANA*. Sup. Ct. Ind.;

No. 90-7557. *DEBLANC v. TEXAS*. Ct. Crim. App. Tex.;

No. 90-7560. *HAMMOND v. TEXAS*. Ct. Crim. App. Tex.;

No. 90-7570. *GOODWIN v. TEXAS*. Ct. Crim. App. Tex.;

No. 90-7756. *ATKINS v. SOUTH CAROLINA*. Sup. Ct. S. C.;

No. 90-7830. *MILLER v. GEORGIA*. Sup. Ct. Ga.;

No. 90-7871. *NEWSTED v. OKLAHOMA*. Ct. Crim. App. Okla.;

No. 90-7905. *POWELL v. MISSOURI*. Sup. Ct. Mo.;

No. 90-7916. *TENNARD v. TEXAS*. Ct. Crim. App. Tex.;

No. 90-7973. *LEWIS v. FLORIDA*. Sup. Ct. Fla.;

No. 90-8023. *JOHNSON v. TEXAS*. Ct. Crim. App. Tex.;

No. 90-8093. *JAMES v. TEXAS*. Ct. Crim. App. Tex. Certiorari denied. Reported below: No. 89-7679, 892 F. 2d 1205;

June 28, 1991

501 U. S.

No. 90-5512, 561 So. 2d 248; No. 90-5726, 243 Mont. 56, 793 P. 2d 1273; No. 90-6029, 563 So. 2d 73; No. 90-6819, 557 N. E. 2d 1325; No. 90-6939, 118 Idaho 542, 798 P. 2d 1; No. 90-7067, 794 S. W. 2d 659; No. 90-7449, 569 So. 2d 1225; No. 90-7499, 558 N. E. 2d 1059; No. 90-7557, 799 S. W. 2d 701; No. 90-7560, 799 S. W. 2d 741; No. 90-7570, 799 S. W. 2d 719; No. 90-7756, 303 S. C. 214, 399 S. E. 2d 760; No. 90-7830, 259 Ga. 296, 380 S. E. 2d 690; No. 90-7905, 798 S. W. 2d 709; No. 90-7916, 802 S. W. 2d 678; No. 90-7973, 572 So. 2d 908; No. 90-8023, 803 S. W. 2d 272; No. 90-8093, 805 S. W. 2d 415.

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 certiorari and vacate the death sentences in these cases.

No. 90-817. *MICHIGAN v. NASH*. Ct. App. Mich. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied.

No. 90-1370. *ROLFS, SUPERINTENDENT, TWIN RIVERS CORRECTIONS CENTER v. RUSSELL*. C. A. 9th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 893 F. 2d 1033.

No. 90-1730. *SNOW, CHAIRMAN, GEORGIA STATE BOARD OF PARDONS AND PAROLES v. AKINS ET AL.* C. A. 11th Cir. Motion of respondents for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 922 F. 2d 1558.

No. 90-891. *WHITE ET AL. v. DANIEL ET AL.* C. A. 4th Cir. Motion of Lawyers' Committee for Civil Rights Under Law for leave to file a brief as *amicus curiae* granted. Motion of petitioners to defer consideration of petition for writ of certiorari denied. Certiorari denied. Reported below: 909 F. 2d 99.

No. 90-1458. *WILLIAMS COS., INC., ET AL. v. DIRECTOR OF REVENUE OF MISSOURI*. Sup. Ct. Mo. Certiorari denied. JUSTICE WHITE would grant certiorari. Reported below: 799 S. W. 2d 602.

No. 90-1461. *CARTER ET AL. v. SOUTH CENTRAL BELL*. C. A. 5th Cir. Certiorari denied. JUSTICE O'CONNOR took no

501 U. S.

June 28, 1991

part in the consideration or decision of this petition. Reported below: 912 F. 2d 832.

No. 90-1697. *CADA v. BAXTER HEALTHCARE CORP.* C. A. 7th Cir. Certiorari denied. JUSTICE O'CONNOR took no part in the consideration or decision of this petition. Reported below: 920 F. 2d 446.

No. 90-1503. *ORDWAY ET UX. v. UNITED STATES.* C. A. 11th Cir. Certiorari denied. JUSTICE BLACKMUN took no part in the consideration or decision of this petition. Reported below: 908 F. 2d 890.

No. 90-1743. *NATIONAL ADVERTISING CO. v. VILLAGE OF DOWNERS GROVE, ILLINOIS.* App. Ct. Ill., 2d Dist. Certiorari denied. JUSTICE BLACKMUN took no part in the consideration or decision of this petition. Reported below: 204 Ill. App. 3d 499, 561 N. E. 2d 1300.

No. 90-1671. *HULL v. SHUCK ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 926 F. 2d 505.

JUSTICE WHITE, with whom JUSTICE MARSHALL joins, dissenting.

One of the questions presented in this case is whether the "intracorporate conspiracy" rule, which holds that employees of a single entity cannot conspire with each other, applies to claims brought under 42 U. S. C. § 1985(3). We expressly left open that issue in *Great American Fed. Sav. & Loan Assn. v. Novotny*, 442 U. S. 366, 372, n. 11 (1979).

Here, petitioner alleged that several school district officials engaged in a racially motivated conspiracy to deprive her of her constitutional rights, in violation of § 1985(3). In affirming the District Court's grant of summary judgment in favor of the officials, the Court of Appeals applied the intracorporate conspiracy rule, reasoning that "[s]ince all of the defendants are members of the same collective entity, there are not two separate 'people' to form a conspiracy." 926 F. 2d 505, 510 (1991).

As respondents admit, see Brief in Opposition 6, the decision below conflicts with the decisions of at least two other Courts of Appeals. See *Stathos v. Bowden*, 728 F. 2d 15, 20-21 (CA1 1984); *Novotny v. Great American Fed. Sav. & Loan Assn.*, 584 F. 2d 1235, 1259, and n. 125 (CA3 1978) (en banc), vacated on other

June 28, 1991

501 U. S.

grounds, 442 U. S. 366 (1979). I would grant certiorari on question 1 presented in the petition to resolve the conflict.

No. 90-1749. TRAILER MARINE TRANSPORT CORP. *v.* ZAPATA GULF MARINE CORP. C. A. 5th Cir. Motion of petitioner to strike respondent's supplemental brief denied. Certiorari denied. Reported below: 925 F. 2d 812.

No. 90-7928. FELTROP *v.* MISSOURI. Sup. Ct. Mo. Certiorari denied. Reported below: 803 S. W. 2d 1.

JUSTICE MARSHALL, dissenting.

In *Clemons v. Mississippi*, 494 U. S. 738 (1990), this Court held that, once a defendant is sentenced to death by an erroneously instructed jury, a reviewing court can resentence the defendant to death only if it *clearly and expressly* engages in either harmless-error analysis or reweighing of permissible aggravating and mitigating circumstances. See *id.*, at 741, 752, 754. It is conceded that the petitioner in this case was sentenced to death by an erroneously instructed jury. Nonetheless, the Missouri Supreme Court concluded that the trial court's *summary* denial of petitioner's motion to set aside the jury sentence constituted a constitutionally adequate resentencing. Because *Clemons* does not permit us to infer from the trial court's silence that it engaged in the requisite reweighing or harmless-error analysis, I would grant the petition for certiorari.

I

Petitioner was convicted of capital murder. At the conclusion of the penalty phase of his trial, the jury determined that the murder "involved depravity of mind and that as a result thereof it was outrageously or wantonly vile, horrible or inhuman." 803 S. W. 2d 1, 14 (Mo. en banc 1991). On the basis of this single aggravating factor, the jury sentenced petitioner to death. *Id.*, at 6. Petitioner thereafter filed a motion to reduce his sentence, arguing, *inter alia*, that the "depravity of mind" aggravating factor was unconstitutionally vague under this Court's precedents. The trial court denied the motion, stating from the bench that it "has listened attentively to [petitioner's argument] and has recalled the testimony and the evidence in this cause, and the Court will overrule the Motion for Reduction of Sentence." *Id.*, at 16.

The Missouri Supreme Court affirmed. The court acknowledged that the "depravity of mind" aggravating factor was uncon-

stitutionally vague under this Court's decision in *Godfrey v. Georgia*, 446 U. S. 420 (1980). See 803 S. W. 2d, at 14. See generally *Shell v. Mississippi*, 498 U. S. 1 (1990) (*per curiam*); *Clemons v. Mississippi*, 494 U. S. 738 (1990); *Maynard v. Cartwright*, 486 U. S. 356 (1988). It also acknowledged that the trial court had erred in not instructing the jury to apply the limiting construction fashioned by the Missouri Supreme Court in order to save the "depravity of mind" factor from unconstitutionality. See 803 S. W. 2d, at 14, citing *State v. Preston*, 673 S. W. 2d 1, 11 (Mo. en banc), cert. denied, 469 U. S. 893 (1984).^{*} Nonetheless, relying on *Walton v. Arizona*, 497 U. S. 639 (1990), the Missouri Supreme Court concluded that the trial court's summary denial of petitioner's postsentence motion sufficed to cure any error in the jury's sentencing verdict. In *Walton*, this Court held that, where the death sentence is imposed by a trial judge, the trial judge need not expressly state that he has relied upon a constitutionally necessary limiting construction, because "[t]rial judges are presumed to know the law and to apply it in making their decisions." *Id.*, at 653. The Missouri Supreme Court in this case reasoned that it could likewise "presum[e] that the trial judge knew and applied the relevant factors enunciated in *State v. Preston* when he evaluated and ruled on [petitioner's] motion for reduction of sentence." 803 S. W. 2d, at 16.

In my view, the Missouri Supreme Court's reliance on *Walton* was clearly misplaced. As used in *Walton*, the "presumption" that a trial court has followed the law stands only for the proposition that error cannot be inferred where a trial court, acting as the initial sentencer, fails expressly to articulate its reliance on a limiting construction of what would otherwise be an unconstitutional aggravating factor. However, this presumption is clearly rebutted when, as here, the trial court *erroneously* instructs a sentencing jury by omitting any reference to the necessary limiting construction. Under such circumstances, the question is no longer

^{*}Under the Missouri Supreme Court's narrowing construction of the "depravity of mind" aggravating circumstance, the sentencer is to consider the following factors: "mental state of defendant; infliction of physical or psychological torture upon the victim as when victim has a substantial period of time before death to anticipate and reflect upon it; brutality of defendant's conduct; mutilation of the body after death; absence of any substantive motive; absence of defendant's remorse and the nature of the crime." *State v. Preston*, 673 S. W. 2d 1, 11 (Mo. en banc), cert. denied, 469 U. S. 893 (1984).

whether error can be *inferred* from what the trial court has *not* said; error is *manifest* in what the court *has* said to the jury. See *Shell v. Mississippi*, *supra*; *Walton v. Arizona*, *supra*, at 653; *Clemons v. Mississippi*, *supra*, at 741; *Maynard v. Cartwright*, *supra*, at 363-364; *Godfrey v. Georgia*, *supra*, at 427-429 (plural opinion). Thus, the question at that stage is whether a reviewing court has taken the steps necessary to *correct* sentencing error. In holding that the trial court's summary denial of petitioner's postsentence motion sufficed to cure the trial court's erroneous jury instructions in this case, the Missouri Supreme Court established a "presumption" that a reviewing court perceives and corrects all errors when it resentences a defendant to death.

This presumption is completely at odds with this Court's decision in *Clemons v. Mississippi*, *supra*. As in this case, the trial court in *Clemons* erred by failing to instruct the jury on a necessary limiting construction of a facially vague aggravating factor. This Court held that under such circumstances a reviewing court may itself resentence the defendant to death either by engaging in harmless error analysis or by reweighing the properly defined aggravating and mitigating circumstances. See *id.*, at 744-750, 752-753. Nonetheless, because it was "unclear whether [the reviewing court] correctly employed either of these methods," this Court vacated the sentence and remanded. *Id.*, at 741; see *id.*, at 752, 754. In particular, because the reviewing court's opinion was "virtually silent" on whether fresh consideration had been given to the mitigating evidence proffered by the defendant, this Court declined to infer that the reviewing court had correctly perceived the requirements of its resentencing function. *Id.*, at 752.

Under *Clemons*, there can be no question that the trial court's summary denial of petitioner's postsentence motion does *not* constitute a constitutionally adequate resentencing. Nothing in the trial court's brief remarks from the bench even remotely suggested that it had engaged in reweighing or harmless error analysis. The record in this case is not "virtually silent" on whether the reviewing court understood the nature of the original sentencing error; it is *completely* silent. Indeed, because the reviewing court in this case was the very court responsible for injecting the error into the sentencing process, there is every reason to believe that it was completely oblivious to the very necessity for resentencing. To apply a "presumption" that the trial court understood and applied the law under these circumstances is to turn a

501 U. S.

June 28, 1991

defendant's right to error-free resentencing into a meaningless fiction.

The Missouri courts have failed to rectify the clear constitutional defect that has infected petitioner's death sentence. I believe that this Court is likewise remiss in its responsibilities when it permits a life-threatening error of this nature to go uncorrected.

II

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 and vacate petitioner's death sentence even if I did not view the issue in this case as being independently worthy of this Court's plenary review.

Rehearing Denied

No. 90-96. SIEGERT *v.* GILLEY, 500 U. S. 226;

No. 90-1320. CRAIG ET AL. *v.* UNITED STATES, 500 U. S. 917;

No. 90-1496. STEEG ET UX. *v.* CITY OF DEARBORN HEIGHTS, MICHIGAN, ET AL., 500 U. S. 942;

No. 90-7340. NICHOLS *v.* ILLINOIS DEPARTMENT OF PUBLIC HEALTH ET AL., 500 U. S. 908;

No. 90-7344. WILLIAMS *v.* ARIZONA, 500 U. S. 929;

No. 90-7418. DELBRIDGE ET AL. *v.* NEW JERSEY DIVISION OF YOUTH AND FAMILY SERVICES, 500 U. S. 921;

No. 90-7447. IN RE ALSTON, 500 U. S. 941;

No. 90-7490. BRIDGES *v.* SPILLER-BRIDGES, 500 U. S. 923;

No. 90-7525. VINIK *v.* MIDDLESEX COUNTY PROBATION DEPARTMENT ET AL., 500 U. S. 935;

No. 90-7534. IN RE PREUSS, 500 U. S. 914;

No. 90-7565. MCCONE *v.* SAGEBRUSH PROPERTIES, INC., ET AL., 500 U. S. 944;

No. 90-7595. REESE *v.* HILL, WARDEN, 500 U. S. 945;

No. 90-7598. AGHA *v.* SECRETARY OF THE ARMY, 500 U. S. 925;

No. 90-7648. MORRISON *v.* LEE ET AL., 500 U. S. 956;

No. 90-7700. MARTIN *v.* UNITED STATES POSTAL SERVICE, 500 U. S. 936; and

June 28, 30, July 1, 12, 21, 1991

501 U. S.

No. 90-7734. *CURIALE v. ALASKA*, 500 U. S. 945. Petitions for rehearing denied.

No. 90-7503. *SZOKE v. MINNESOTA MINING & MANUFACTURING CO., INC.*, 500 U. S. 929. Petition for rehearing denied. JUSTICE BLACKMUN took no part in the consideration or decision of this petition.

JUNE 30, 1991

Miscellaneous Order

No. A-4. *HOPKINS, WARDEN, ET AL. v. OTEY*. Application for an order to vacate the temporary 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. JUSTICE SCALIA took no part in the consideration or decision of this application.

JULY 1, 1991

Miscellaneous Order

No. A-4. *HOPKINS, WARDEN, ET AL. v. OTEY*. Motion for reconsideration of order of June 30, 1991 [*ante* this page], denied.

JULY 12, 1991

Dismissal Under Rule 46

No. 90-1165. *NATIONAL LABOR RELATIONS BOARD v. NABORS TRAILERS, INC., NKA STEEGO TRANSPORTATION EQUIPMENT CENTERS, INC.* C. A. 5th Cir. [Certiorari granted, 500 U. S. 903.] Writ of certiorari dismissed under this Court's Rule 46.

JULY 21, 1991

Certiorari Denied

No. 91-5193 (A-66). *JONES v. WHITLEY, WARDEN*. Sup. Ct. La. Application for stay of execution of sentence of death, presented to JUSTICE SCALIA, and by him referred to the Court, denied. Certiorari denied. Reported below: 583 So. 2d 487.

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,

501 U. S.

July 21, 24, August 2, 1991

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.

No. 91-5194 (A-67). *JONES v. WHITLEY, WARDEN*. C. A. 5th Cir. Application for stay of execution of sentence of death, presented to JUSTICE SCALIA, and by him referred to the Court, denied. Certiorari denied. JUSTICE BLACKMUN and JUSTICE STEVENS would grant the application. Reported below: 938 F. 2d 536.

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.

JULY 24, 1991

Miscellaneous Order

No. A-957 (90-1913). *YELLOW FREIGHT SYSTEM, INC. v. NATIONAL LABOR RELATIONS BOARD*. C. A. 3d Cir. Application for stay, addressed to THE CHIEF JUSTICE and referred to the Court, denied.

AUGUST 2, 1991

Dismissal Under Rule 46

No. 91-19. *DAVID L. THRELKELD & Co., INC. v. METALLGESELLSCHAFT LTD. (LONDON) ET AL.* C. A. 2d Cir. Certiorari dismissed under this Court's Rule 46. Reported below: 923 F. 2d 245.

Miscellaneous Orders

No. A-68. *SHOREHAM-WADING RIVER CENTRAL SCHOOL DISTRICT ET AL. v. NUCLEAR REGULATORY COMMISSION ET AL.* Application for stay, addressed to JUSTICE STEVENS and referred to the Court, denied.

No. A-86. *SMERDON ET AL. v. SMERDON ET AL.* Sup. Ct. N. J. Application for stay, addressed to JUSTICE SCALIA and referred to the Court, denied.

August 2, 1991

501 U. S.

No. D-982. IN RE DISBARMENT OF PEARSON. Disbarment entered. [For earlier order herein, see 499 U. S. 916.]

No. D-985. IN RE DISBARMENT OF ROGERS. Disbarment entered. [For earlier order herein, see 499 U. S. 934.]

No. D-988. IN RE DISBARMENT OF ANDERSON. Disbarment entered. [For earlier order herein, see 499 U. S. 945.]

No. D-991. IN RE DISBARMENT OF LELouis. Disbarment entered. [For earlier order herein, see 499 U. S. 957.]

No. D-992. IN RE DISBARMENT OF CROWLEY. Disbarment entered. [For earlier order herein, see 499 U. S. 957.]

No. D-998. IN RE DISBARMENT OF SUSSKIND. Disbarment entered. [For earlier order herein, see 500 U. S. 931.]

No. D-999. IN RE DISBARMENT OF COLEMAN. Disbarment entered. [For earlier order herein, see 500 U. S. 931.]

No. D-1000. IN RE DISBARMENT OF YOUMANS. Disbarment entered. [For earlier order herein, see 500 U. S. 931.]

No. D-1002. IN RE DISBARMENT OF BRAZIL. Disbarment entered. [For earlier order herein, see 500 U. S. 950.]

No. D-1003. IN RE DISBARMENT OF CAMPBELL. Disbarment entered. [For earlier order herein, see 500 U. S. 950.]

No. D-1015. IN RE DISBARMENT OF BURKE. Disbarment entered. [For earlier order herein, see *ante*, p. 1228.]

No. D-1022. IN RE DISBARMENT OF GELMAN. It is ordered that Stanley Bernard Gelman, of Jacksonville, 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-1023. IN RE DISBARMENT OF MATNEY. It is ordered that Harold V. Matney, Jr., of Gardner, Kan., 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-1024. IN RE DISBARMENT OF MOORCONES. It is ordered that John Joseph Moorcones, of Sterling, Va., be suspended

501 U. S.

August 2, 1991

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-1025. *IN RE DISBARMENT OF BOXER*. It is ordered that Harry Boxer, of Lomita, 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-1026. *IN RE DISBARMENT OF GALLAGHER*. It is ordered that Dennis William Gallagher, of New Rochelle, 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-1027. *IN RE DISBARMENT OF SAGEN*. It is ordered that Burt H. Sagen, of Parma, 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-1028. *IN RE DISBARMENT OF WEBER*. It is ordered that John Anthony Weber, Jr., of Westwood, Mass., be suspended from the practice of law in this Court and that a rule issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

Rehearing Denied

No. 90-256. *CHAMBERS v. NASCO, INC.*, *ante*, p. 32;

No. 90-1272. *BULLARD v. MADIGAN, SECRETARY OF AGRICULTURE*, 500 U. S. 916;

No. 90-1534. *HOLLINGSWORTH v. TEXAS ET AL.*, 500 U. S. 942;

No. 90-1605. *YOUNG v. SULLIVAN, SECRETARY OF HEALTH AND HUMAN SERVICES*, *ante*, p. 1206;

No. 90-5193. *MU'MIN v. VIRGINIA*, 500 U. S. 415;

No. 90-6633. *HOPE v. ILLINOIS*, *ante*, p. 1202;

No. 90-7259. *SANDERS v. CALIFORNIA*, 500 U. S. 948;

No. 90-7284. *CHAMBERS v. PRUDENTIAL INSURANCE COMPANY OF AMERICA*, 500 U. S. 944;

No. 90-7435. *SPENCER v. GEORGIA*, 500 U. S. 960;

No. 90-7469. *GASKINS v. MCKELLAR, WARDEN, ET AL.*, 500 U. S. 961;

August 2, 20, 1991

501 U. S.

- No. 90-7539. *HORTON v. UNITED STATES*, ante, p. 1234;
No. 90-7558. *THOMAS v. NEBRASKA*, 500 U. S. 944;
No. 90-7609. *BUSCH v. JEFFES ET AL.*, 500 U. S. 936;
No. 90-7612. *FARRELL v. O'BANNON ET AL.*, 500 U. S. 955;
No. 90-7697. *WATSON v. PUCKETT*, SUPERINTENDENT, MISSISSIPPI STATE PENITENTIARY, ante, p. 1208;
No. 90-7726. *HENDRICKS v. DEPARTMENT OF THE TREASURY*, ante, p. 1234;
No. 90-7741. *POWELL v. ROBERTS ET AL.*, ante, p. 1208;
No. 90-7745. *WHITT v. CALIFORNIA*, ante, p. 1213;
No. 90-7754. *DEMPSEY v. WHITE*, ante, p. 1208;
No. 90-7770. *FRANK v. CALIFORNIA*, ante, p. 1213;
No. 90-7783. *AUSTIN ET UX. v. WASHINGTON ET AL.*, 500 U. S. 957;
No. 90-7786. *CASTOR v. CLARK, WARDEN, ET AL.*, 500 U. S. 960;
No. 90-7813. *JONES v. EASTMAN KODAK Co.*, ante, p. 1220;
No. 90-7886. *SHOWS v. NCNB NATIONAL BANK OF NORTH CAROLINA ET AL.*, ante, p. 1236;
No. 90-7956. *PARKER v. AMERICAN NATIONAL RED CROSS*, ante, p. 1255;
No. 90-7979. *MOSCONY v. UNITED STATES*, ante, p. 1211; and
No. 90-8068. *SMITH v. UNITED STATES*, ante, p. 1237. Petitions for rehearing denied.

No. 90-1119. *LEBLANC v. UNITED STATES*, 499 U. S. 921; and
No. 90-7825. *WINDLE v. MARYLAND*, 500 U. S. 946. Motions for leave to file petitions for rehearing denied.

No. 90-5744. *CHAPMAN ET AL. v. UNITED STATES*, 500 U. S. 453. Petition for rehearing denied. Petition of Stanley J. Marshall for rehearing denied.*

AUGUST 20, 1991

Miscellaneous Order

No. A-116. *WATKINS ET AL. v. MABUS*, GOVERNOR OF MISSISSIPPI, ET AL. D. C. S. D. Miss. Application for injunction and

*[REPORTER'S NOTE: Stanley J. Marshall was an appellant in the case below. See *United States v. Marshall*, 908 F. 2d 1312 (CA7 1990). Marshall's petition for certiorari was denied in *Marshall v. United States*, No. 90-929, ante, p. 1205.]

501 U. S.

August 20, 22, September 5, 1991

stay pending appeal, presented to JUSTICE SCALIA, and by him referred to the Court, denied. JUSTICE MARSHALL and JUSTICE BLACKMUN would grant the application.

AUGUST 22, 1991

Miscellaneous Orders

No. A-140. *BYRD v. DELO*, SUPERINTENDENT, POTOSI CORRECTIONAL CENTER. Application for stay of execution of sentence of death, presented to JUSTICE BLACKMUN, and by him referred to the Court, denied.

JUSTICE 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.

No. A-143. *PETERSON v. MURRAY*, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. Application for stay of execution of sentence of death, presented to THE CHIEF JUSTICE, and by him referred to the Court, denied. JUSTICE BLACKMUN and JUSTICE STEVENS would grant the 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.

SEPTEMBER 5, 1991

Certiorari Denied

No. 91-5685 (A-174). *GASKINS v. EVATT*, COMMISSIONER, SOUTH CAROLINA DEPARTMENT OF CORRECTIONS, ET AL. Sup. Ct. S. C. Application for stay of execution of sentence of death, presented to THE CHIEF JUSTICE, and by him referred to the Court, denied. Certiorari denied.

September 5, 10, 13, 1991

501 U. S.

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.

No. 91-5688 (A-176). *GASKINS v. EVATT*, COMMISSIONER, SOUTH CAROLINA DEPARTMENT OF CORRECTIONS. 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. Certiorari denied. Reported below: 943 F. 2d 49.

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 10, 1991

Miscellaneous Order

No. A-165. *UNITED STATES DEPARTMENT OF COMMERCE v. ASSEMBLY OF THE STATE OF CALIFORNIA ET AL.* Application for stay, presented to JUSTICE O'CONNOR, and by her referred to the Court, granted, and it is ordered that the order of the United States District Court for the Eastern District of California, case No. Civ. S-91-0990-WBS, filed August 20, 1991, be and the same is hereby stayed pending final disposition of the appeal of that order by the United States Court of Appeals for the Ninth Circuit. JUSTICE MARSHALL, JUSTICE BLACKMUN, and JUSTICE STEVENS would deny the application.

SEPTEMBER 13, 1991

Miscellaneous Orders

No. A-83. *CLARKE v. TEXAS*. Ct. Crim. App. Tex. Application for stay of mandate, addressed to JUSTICE STEVENS and referred to the Court, denied.

No. A-85. *RICE ET AL. v. UNITED STATES*. D. C. Ariz. Application for stay of mandate, injunction, and restraining order, addressed to JUSTICE SOUTER and referred to the Court, denied.

501 U. S.

September 13, 1991

No. D-989. IN RE DISBARMENT OF MACH. Disbarment entered. [For earlier order herein, see 499 U. S. 945.]

No. D-994. IN RE DISBARMENT OF CROSLEY. Disbarment entered. [For earlier order herein, see 499 U. S. 957.]

No. D-995. IN RE DISBARMENT OF TUCKER. Disbarment entered. [For earlier order herein, see 499 U. S. 973.]

No. D-1001. IN RE DISBARMENT OF TRACY. Disbarment entered. [For earlier order herein, see 500 U. S. 940.]

No. D-1004. IN RE DISBARMENT OF LOONEY. Disbarment entered. [For earlier order herein, see 500 U. S. 950.]

No. D-1007. IN RE DISBARMENT OF RIVERS. Disbarment entered. [For earlier order herein, see *ante*, p. 1203.]

No. D-1008. IN RE DISBARMENT OF TOBIAS. Disbarment entered. [For earlier order herein, see *ante*, p. 1203.]

No. D-1009. IN RE DISBARMENT OF FRANKLIN. Disbarment entered. [For earlier order herein, see *ante*, p. 1203.]

No. D-1011. IN RE DISBARMENT OF THOMPSON. Disbarment entered. [For earlier order herein, see *ante*, p. 1215.]

No. D-1012. IN RE DISBARMENT OF LUKAS. Disbarment entered. [For earlier order herein, see *ante*, p. 1215.]

No. D-1013. IN RE DISBARMENT OF MILLER. Disbarment entered. [For earlier order herein, see *ante*, p. 1215.]

No. D-1014. IN RE DISBARMENT OF BENNETT. Disbarment entered. [For earlier order herein, see *ante*, p. 1228.]

No. D-1016. IN RE DISBARMENT OF GAMER. Disbarment entered. [For earlier order herein, see *ante*, p. 1228.]

No. D-1017. IN RE DISBARMENT OF CARONNA. Disbarment entered. [For earlier order herein, see *ante*, p. 1228.]

No. D-1018. IN RE DISBARMENT OF HAYDEN. Disbarment entered. [For earlier order herein, see *ante*, p. 1228.]

No. D-1021. IN RE DISBARMENT OF DUVA. Disbarment entered. [For earlier order herein, see *ante*, p. 1248.]

September 13, 1991

501 U. S.

No. D-1029. IN RE DISBARMENT OF KESSLER. It is ordered that Melvyn Kessler, of Miami, Fla., be suspended from the practice of law in this Court and that a rule issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D-1030. IN RE DISBARMENT OF GULLER. It is ordered that Jeffrey M. Guller, of Gastonia, N. C., be suspended from the practice of law in this Court and that a rule issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D-1031. IN RE DISBARMENT OF WADE. It is ordered that E. Gene Wade, of Mesa, Ariz., 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-1032. IN RE DISBARMENT OF BRILL. It is ordered that Marvin A. Brill, of Providence, R. I., 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-1033. IN RE DISBARMENT OF ROBBINS. It is ordered that Gerald Rockwood Robbins, of Arlington, Va., be suspended from the practice of law in this Court and that a rule issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D-1034. IN RE DISBARMENT OF OSTROWE. It is ordered that Eugene Ostrowe, of Walled Lake, 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-1035. IN RE DISBARMENT OF MARCUS. It is ordered that Harold V. Marcus, of Brooklyn, 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-1036. IN RE DISBARMENT OF GOERLICH. It is ordered that Harold L. Goerlich, of Jericho, N. Y., be suspended from the

501 U. S.

September 13, 1991

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-1037. *IN RE DISBARMENT OF DELLORFANO*. It is ordered that Fred M. Dellorfano, Jr., of Cohasset, Mass., be suspended from the practice of law in this Court and that a rule issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D-1038. *IN RE DISBARMENT OF NOLAN*. It is ordered that Frank J. Nolan, of Garden City, 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. 118, Orig. *UNITED STATES v. ALASKA*. Motion of Alaska for modification of briefing schedule set by order of Court on June 28, 1991 [*ante*, p. 1248], granted, and it is ordered that briefs in support of cross-motions for summary judgment may be filed within 45 days of September 6, 1991, with reply briefs, if any, to be filed within 30 days of the filing of the opening briefs. [For earlier order herein, see, *e. g.*, *ante*, p. 1248.]

No. 90-408. *COUNTY OF YAKIMA ET AL. v. CONFEDERATED TRIBES AND BANDS OF THE YAKIMA INDIAN NATION*; and

No. 90-577. *CONFEDERATED TRIBES AND BANDS OF THE YAKIMA INDIAN NATION v. COUNTY OF YAKIMA ET AL.* C. A. 9th Cir. [Certiorari granted, 500 U. S. 903.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 90-711. *PRESLEY v. ETOWAH COUNTY COMMISSION ET AL.*; and

No. 90-712. *MACK ET AL. v. RUSSELL COUNTY COMMISSION ET AL.* D. C. M. D. Ala. [Probable jurisdiction noted, 500 U. S. 914.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 90-741. *DEWSNUP v. TIMM ET AL.* C. A. 10th Cir. [Certiorari granted, 498 U. S. 1081.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

September 13, 1991

501 U. S.

No. 90-913. BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM *v.* MCorp FINANCIAL, INC., ET AL.; and

No. 90-914. MCorp ET AL. *v.* BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM. C. A. 5th Cir. [Certiorari granted, 499 U. S. 904.] Motion of respondents and cross-petitioners MCorp et al. for divided argument denied.

No. 90-1126. NORMAN ET AL. *v.* REED ET AL.; and

No. 90-1435. COOK COUNTY OFFICERS ELECTORAL BOARD ET AL. *v.* REED ET AL. Sup. Ct. Ill. [Certiorari granted, 500 U. S. 931.] Motion of petitioners Cook County Officers Electoral Board et al. for divided argument granted to be divided as follows: petitioners Barbara Norman et al., 15 minutes; petitioners Cook County Officers Electoral Board et al., 15 minutes; and respondents Dorothy Reed et al., 30 minutes.

No. 90-1156. NEW ORLEANS PUBLIC SERVICE INC. *v.* COUNCIL OF THE CITY OF NEW ORLEANS ET AL. C. A. 5th Cir. [Certiorari granted, 499 U. S. 974.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted. Motion of respondent Alliance for Affordable Energy, Inc., for divided argument and for additional time for oral argument denied.

No. 90-1205. UNITED STATES *v.* MABUS, GOVERNOR OF MISSISSIPPI, ET AL.; and

No. 90-6588. AYERS ET AL. *v.* MABUS, GOVERNOR OF MISSISSIPPI, ET AL. C. A. 5th Cir. [Certiorari granted, 499 U. S. 958.] Motions of Alcorn State University National Alumni Association, Joseph Califano, Jr., et al., and Jackson State University for leave to file briefs as *amici curiae* granted. Motion of the Solicitor General for divided argument granted. Motion of petitioners Jake Ayers, Jr., et al. for divided argument and for additional time for oral argument denied.

No. 90-1390. GENERAL MOTORS CORP. ET AL. *v.* ROMEIN ET AL. Sup. Ct. Mich. [Certiorari granted, 500 U. S. 915.] Motion of the Attorney General of Michigan for divided argument denied.

No. 90-1577. UNITED STATES *v.* R. L. C. C. A. 8th Cir. [Certiorari granted, *ante*, p. 1230.] Motion of the Solicitor General to dispense with printing the joint appendix granted.

501 U. S.

September 13, 1991

Rehearing Denied

No. 109, Orig. OKLAHOMA ET AL. v. NEW MEXICO, *ante*, p. 221;

No. 89-7662. COLEMAN v. THOMPSON, WARDEN, *ante*, p. 722;

No. 89-7679. RUSSELL v. COLLINS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION, *ante*, p. 1259;

No. 90-333. LAMPF, PLEVA, LIPKIND, PRUPIS & PETIGROW v. GILBERTSON ET AL., *ante*, p. 350;

No. 90-1700. WRENN v. OHIO ET AL., *ante*, p. 1251;

No. 90-5551. SCHAD v. ARIZONA, *ante*, p. 624;

No. 90-5721. PAYNE v. TENNESSEE, *ante*, p. 808;

No. 90-5917. NEWMAN v. UNITED STATES, 498 U. S. 1070;

No. 90-6799. WAGNER v. SEELY ET AL., *ante*, p. 1219;

No. 90-7018. LAGRANDE v. ARIZONA, *ante*, p. 1259;

No. 90-7200. DE LA CERDA v. COLLINS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION, 500 U. S. 955;

No. 90-7304. MILLER v. FEDERAL BUREAU OF INVESTIGATION, *ante*, p. 1254;

No. 90-7452. MORRISON v. BROOKS, SUPERINTENDENT, ROBE-SON CORRECTIONAL CENTER, 500 U. S. 922;

No. 90-7583. ZIEGLER v. CHAMPION, WARDEN, ET AL., 500 U. S. 944;

No. 90-7636. MEEHAN v. METRO NASHVILLE POLICE DEPART-MENT ET AL., 500 U. S. 956;

No. 90-7641. NABKEY v. UNITED STATES, *ante*, p. 1207;

No. 90-7717. SANDERS v. DISTRICT OF COLUMBIA ET AL., *ante*, p. 1234;

No. 90-7927. SCHMIDT v. UTAH ET AL., *ante*, p. 1221; and

No. 90-7969. WOLFENBARGER v. KANSAS DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES, *ante*, p. 1256. Petitions for rehearing denied.

No. 90-1503. ORDWAY ET UX. v. UNITED STATES, *ante*, p. 1261. Motion of petitioners to defer consideration of petition for rehearing denied. Petition for rehearing denied. JUSTICE BLACKMUN took no part in the consideration or decision of this motion and this petition.

September 18, 19, 20, 1991

501 U. S.

SEPTEMBER 18, 1991

Certiorari Denied

No. 91-5845 (A-214). *RUSSELL v. COLLINS*, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Application for stay of execution of sentence of death, presented to JUSTICE SCALIA, and by him referred to the Court, denied. Certiorari denied. Reported below: 944 F. 2d 202.

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 19, 1991

Miscellaneous Order

No. A-184. *CLARK ET AL. v. ROEMER*, GOVERNOR OF LOUISIANA, ET AL. Application to vacate the stay entered by the United States Court of Appeals for the Fifth Circuit, presented to JUSTICE SCALIA, and by him referred to the Court, denied. JUSTICE MARSHALL and JUSTICE BLACKMUN would grant the application.

SEPTEMBER 20, 1991

Miscellaneous Orders

No. A-76. *CRISTINA v. DERAMUS*. C. A. 3d Cir. Application for certificate of probable cause to appeal, addressed to JUSTICE STEVENS and referred to the Court, denied.

No. A-119. *SAUKSTELIS ET AL. v. CITY OF CHICAGO*. C. A. 7th Cir. Application for stay, addressed to JUSTICE BLACKMUN and referred to the Court, denied.

No. A-206. *REPUBLICAN PARTY OF VIRGINIA ET AL. v. WILDER*, GOVERNOR OF VIRGINIA, ET AL. D. C. W. D. Va. Application for injunction, addressed to JUSTICE STEVENS and referred to the Court, denied.

501 U. S.

September 20, 1991

No. D-1039. IN RE DISBARMENT OF TOWNSEND. It is ordered that L. Wayne Townsend, of Richmond, Va., be suspended from the practice of law in this Court and that a rule issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. 90-711. PRESLEY *v.* ETOWAH COUNTY COMMISSION ET AL.; and

No. 90-712. MACK ET AL. *v.* RUSSELL COUNTY COMMISSION ET AL. D. C. M. D. Ala. [Probable jurisdiction noted, 500 U. S. 914.] Motion of NAACP Legal Defense and Educational Fund for leave to file a brief as *amicus curiae* granted. Motion of appellee Etowah County Commission for divided argument denied. Motion of appellee Russell County Commission for divided argument denied.

No. 90-1029. EASTMAN KODAK CO. *v.* IMAGE TECHNICAL SERVICES, INC., ET AL. C. A. 9th Cir. [Certiorari granted, *ante*, p. 1216.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 90-1488. SUTER ET AL. *v.* ARTIST M. ET AL. C. A. 7th Cir. [Certiorari granted, 500 U. S. 915.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 90-6531. HUDSON *v.* McMILLIAN ET AL. C. A. 5th Cir. [Certiorari granted, 499 U. S. 958.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 90-1205. UNITED STATES *v.* MABUS, GOVERNOR OF MISSISSIPPI, ET AL.; and

No. 90-6588. AYERS ET AL. *v.* MABUS, GOVERNOR OF MISSISSIPPI, ET AL. C. A. 5th Cir. [Certiorari granted, 499 U. S. 958.] Motions of National Bar Association et al. and NAACP Legal Defense and Educational Fund et al. for leave to file briefs as *amici curiae* granted.

No. 90-1361. HOLYWELL CORP. ET AL. *v.* SMITH ET AL.; and

No. 90-1484. UNITED STATES *v.* SMITH ET AL. C. A. 11th Cir. [Certiorari granted, 500 U. S. 941.] Motion of petitioners

September 20, 1991

501 U. S.

for divided argument denied. Motion of respondents for divided argument denied.

No. 90-1491. *UNION BANK v. WOLAS, CHAPTER 7 TRUSTEE FOR THE ESTATE OF ZZZZ BEST Co., INC.* C. A. 9th Cir. [Certiorari granted, 500 U. S. 915.] Motion of American Bankers Association for leave to file a brief as *amicus curiae* granted.

Rehearing Denied

No. 90-1479. *GROVER v. ROCHELEAU ET AL.*, 500 U. S. 918;

No. 90-1703. *PARNAR v. GREEN, NING, LILLY & JONES*, *ante*, p. 1206;

No. 90-7109. *HERNANDEZ v. WOOTEN, WARDEN, ET AL.*, *ante*, p. 1253;

No. 90-7210. *FERNANDEZ v. UNITED STATES*, 500 U. S. 948;

No. 90-7442. *ASSA'AD-FALTAS v. ARMSTRONG ET AL.*, 500 U. S. 934;

No. 90-7755. *RECTOR v. BRYANT, ATTORNEY GENERAL OF ARKANSAS, ET AL.*, *ante*, p. 1239;

No. 90-7782. *PARKE v. UNITED STATES POSTAL SERVICE*, *ante*, p. 1209;

No. 90-7811. *MCGREW v. FLORIDA*, *ante*, p. 1220;

No. 90-7824. *SMITH v. MCKASKLE ET AL.*, *ante*, p. 1221;

No. 90-7835. *MCGARRY v. INTERNAL REVENUE SERVICE ET AL.*, *ante*, p. 1221;

No. 90-7872. *MATTHEWS, AKA BROWN v. JOLLY ET AL.*, *ante*, p. 1235;

No. 90-7939. *REED v. FT. WORTH INDEPENDENT SCHOOL DISTRICT ET AL.*, *ante*, p. 1255;

No. 90-7944. *PLETTEN v. MARSH, SECRETARY OF THE ARMY, ET AL.*, *ante*, p. 1221;

No. 90-7962. *VENERI v. FULCOMER, DEPUTY COMMISSIONER, WESTERN REGION, PENNSYLVANIA DEPARTMENT OF CORRECTIONS, ET AL.*, *ante*, p. 1255;

No. 90-7990. *ANDERSON v. LEHR ET AL.*, *ante*, p. 1256;

No. 90-8024. *JOST v. OREGON ET AL.* (two cases), *ante*, p. 1256;

No. 90-8043. *HUMPHREY v. TATE, WARDEN*, *ante*, p. 1256;

No. 90-8058. *CARNEY v. DEPARTMENT OF VETERANS AFFAIRS*, *ante*, p. 1237;

501 U. S.

September 20, 24, 1991

No. 90-8142. *BORROTO v. UNITED STATES*, ante, p. 1257; and No. 90-8225. *NUNEZ v. COSTELLO, SUPERINTENDENT, MID-STATE CORRECTIONAL FACILITY*, ante, p. 1259. Petitions for rehearing denied.

No. 90-8030. *JOHNSON v. LONGVIEW INDEPENDENT SCHOOL DISTRICT ET AL.*, ante, p. 1256. Motion for leave to file petition for rehearing denied.

SEPTEMBER 24, 1991

Miscellaneous Order

No. A-227. *MCCLESKEY v. BOWERS, ATTORNEY GENERAL OF GEORGIA, ET AL.* Application for stay of execution of sentence of death scheduled for September 24, 1991, to allow the filing of a petition for writ of certiorari to the Superior Court of Butts County, Georgia, and/or the United States Court of Appeals for the Eleventh Circuit, presented to JUSTICE KENNEDY, and by him referred to the Court, denied. JUSTICE BLACKMUN and JUSTICE STEVENS would grant the application for stay.

JUSTICE MARSHALL, dissenting.

I

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

II

For the third time, this Court disregards Warren McCleskey's constitutional claims. In 1986, McCleskey, an Afro-American defendant, presented uncontroverted evidence that Georgia murder defendants with white victims were more than four times as likely to receive the death sentence as were defendants with Afro-American victims. Despite such clear and convincing evidence of irrationality in sentencing—irrationality we have consistently condemned in our Eighth Amendment jurisprudence—the Court somehow rejected McCleskey's claim and upheld the constitutionality of Georgia's death penalty. See *McCleskey v. Kemp*, 481 U. S. 279 (1987). Since then, the factual record has continued to

September 24, 25, 1991

501 U. S.

show that the death penalty is not and cannot be administered fairly: white lives are routinely valued more than Afro-American lives.

Last Term, the Court not only discounted Warren McCleskey's constitutional claim but sharply limited the opportunity of criminal defendants, even those on death row, to obtain federal habeas review. See *McCleskey v. Zant*, 499 U. S. 467 (1991). In radically redefining the content of the "abuse of the writ" doctrine, the Court repudiated a long line of judicial decisions and unconscionably denied defendants such as McCleskey the judicial protections the Constitution requires. The Court, in essence, valued finality over justice.

Now, in the final hours of his life, Warren McCleskey alleges that he was denied an impartial clemency hearing because the Attorney General threatened to "wage a full scale campaign to overhaul the pardons and paroles board" if the Board granted relief. McCleskey also alleges that to counteract this assault, the Board's chairman announced, even before the hearing, that there would be "no change" in McCleskey's sentence. In refusing to grant a stay to review fully McCleskey's claims, the Court values expediency over human life.

Repeatedly denying Warren McCleskey his constitutional rights is unacceptable. Executing him is inexcusable.

SEPTEMBER 25, 1991

Certiorari Denied

No. 91-5901 (A-228). *MCCLESKEY v. BOWERS, ATTORNEY GENERAL OF GEORGIA, ET AL.* 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 BLACKMUN would grant the application for stay and the petition for writ of certiorari. JUSTICE STEVENS would grant the application for stay.

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. For a further expression of my views, see *McCleskey v. Bowers*, ante, p. 1281.

501 U. S.

October 1, 4, 1991

OCTOBER 1, 1991

Dismissal Under Rule 46

No. 88-1403. AIR LINE PILOTS ASSN. ET AL. *v.* EASTERN AIR LINES, INC. C. A. D. C. Cir. Certiorari dismissed as to petitioner International Association of Machinists & Aerospace Workers under this Court's Rule 46. Reported below: 274 U. S. App. D. C. 202, 863 F. 2d 891.

Assignment Order

Pursuant to the provisions of 28 U. S. C. § 42, it is ordered that JUSTICE KENNEDY be, and he is hereby, assigned to the Second Circuit as Circuit Justice, effective October 1, 1991, pending further order.

OCTOBER 4, 1991

Dismissal Under Rule 46

No. 90-1862. EDAP, S. A. *v.* RICHARD WOLF GMBH ET AL. C. A. Fed. Cir. Certiorari dismissed under this Court's Rule 46. Reported below: 928 F. 2d 410.

The next page is purposely numbered 1301. The numbers between 1283 and 1301 were intentionally omitted, in order to make it possible to publish in-chambers opinions with *permanent* page numbers, thus making the official citations available upon publication of the preliminary prints of the United States Reports.

Recherches Noves

The next page is the page numbered 1891. The numbers between 1891 and 1901 were intentionally omitted in order to make it possible to publish in subsequent editions with government page numbers, thus making the official editions available upon publication of the preliminary prints of the United States Reports.
