

ORDERS FROM MAY 6 THROUGH JUNE 7, 1968.

MAY 6, 1968.

Miscellaneous Orders.

No. 29, Orig. TEXAS ET AL. *v.* COLORADO. Motion of the United States for leave to intervene as plaintiff granted. Joint motion of Texas, New Mexico, and Colorado for continuance granted. MR. JUSTICE MARSHALL took no part in the consideration or decision of these motions. *Solicitor General Griswold* on the motion for the United States. *Crawford C. Martin*, Attorney General, for the State of Texas, *Boston E. Witt*, Attorney General, for the State of New Mexico, and *Duke W. Dunbar*, Attorney General, for the State of Colorado, on the joint motion. [For earlier orders herein, see, *e. g.*, 390 U. S. 933.]

No. 1281. KAUFMAN *v.* UNITED STATES. C. A. 8th Cir. (Certiorari granted, 390 U. S. 1002.) Motion of petitioner for appointment of counsel granted. It is ordered that *Bruce R. Jacob, Esquire*, of Atlanta, Georgia, a member of the Bar of this Court, be, and he is hereby, appointed to serve as counsel for petitioner in this case. MR. JUSTICE MARSHALL took no part in the consideration or decision of this motion.

No. 1424, Misc. HARRIS *v.* KROPP, WARDEN;

No. 1432, Misc. GRAVES *v.* WAINWRIGHT, CORRECTIONS DIRECTOR;

No. 1467, Misc. HAMPSON *v.* ROBB, CLERK, U. S. DISTRICT COURT, ET AL.; and

No. 1504, Misc. RONAN *v.* STONE ET AL. Motions for leave to file petitions for writs of habeas corpus denied.

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No. 1257. *FOSTER v. CALIFORNIA*. Ct. App. Cal., 5th App. Dist. (Certiorari granted, 390 U. S. 994.) Motion of petitioner for appointment of counsel granted. It is ordered that *Kenneth L. Maddy, Esquire*, of Fresno, California, be, and he is hereby, appointed to serve as counsel for petitioner in this case.

No. 325. *WATTS ET AL. v. SEWARD SCHOOL BOARD ET AL.* Sup. Ct. Alaska. (Certiorari granted, 389 U. S. 818.) Motion of petitioners for leave to file supplemental memorandum, after argument, granted. *George Kaufmann* on the motion.

No. 718, Misc., October Term, 1965. *WILLIAMSON ET AL. v. BLANKENSHIP, JUDGE, ET AL.*, 382 U. S. 923. Motion to recall and amend order denying certiorari denied. MR. JUSTICE MARSHALL took no part in the consideration or decision of this motion.

Certiorari Granted. (See also No. 42, *ante*, p. 53; and No. 44, *ante*, p. 53.)

No. 1172. *GRUNENTHAL v. LONG ISLAND RAIL ROAD CO. ET AL.* C. A. 2d Cir. Certiorari granted. *Milford J. Meyer* and *Irving Younger* for petitioner. *Hugh B. Cox* and *Paul F. McArdle* for respondent Long Island Rail Road Co. Reported below: 388 F. 2d 480.

No. 176, Misc. *GARDNER v. CALIFORNIA*. Super. Ct. Cal., County of San Luis Obispo. Motion for leave to proceed *in forma pauperis* granted. Certiorari granted and case transferred to appellate docket. *Thomas C. Lynch*, Attorney General of California, *William E. James*, Assistant Attorney General, and *Jack K. Weber*, Deputy Attorney General, for respondent.

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No. 772, Misc. *STILES v. UNITED STATES*. C. A. 1st Cir. Motion for leave to proceed *in forma pauperis* granted. Certiorari granted and case transferred to appellate docket. *Solicitor General Griswold* for the United States.

Certiorari Denied.

No. 1227. *STRAUSS v. GRIMES, SHERIFF*. Sup. Ct. Ga. Certiorari denied. *Arthur B. Cunningham, Philip T. Weinstein*, and *Harold Karp* for petitioner. *J. Walter LeCraw, J. Robert Sparks*, and *Lewis R. Slaton* for respondent. Reported below: 223 Ga. 834, 158 S. E. 2d 404.

No. 1228. *THOMPSON v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. *William Klein* for petitioner. *Solicitor General Griswold, Assistant Attorney General Vinson, Beatrice Rosenberg*, and *Mervyn Hamburg* for the United States. Reported below: 389 F. 2d 37.

No. 1233. *BURKE v. CARPENTER ET AL.* C. A. 9th Cir. Certiorari denied. *Solicitor General Griswold* for the United States in opposition. Reported below: 387 F. 2d 259.

No. 1237. *BENSON v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. *G. Edward Friar* for petitioner. *Solicitor General Griswold, Assistant Attorney General Vinson, Beatrice Rosenberg*, and *Robert G. Maysack* for the United States. Reported below: 389 F. 2d 376.

No. 1244. *WILSON v. CALIFORNIA*. Ct. App. Cal., 2d App. Dist. Certiorari denied. *George R. Maury* for petitioner. Reported below: 256 Cal. App. 2d 411, 64 Cal. Rptr. 172.

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No. 1236. *DELONEY ET UX. v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. *Charles B. Evins, R. Eugene Pincham, and Earl E. Strayhorn* for petitioners. *Solicitor General Griswold, Assistant Attorney General Vinson, Beatrice Rosenberg, and Edward Fenig* for the United States. Reported below: 389 F. 2d 324.

No. 1239. *CITIZENS BANK OF HATTIESBURG ET AL. v. CAMP, COMPTROLLER OF THE CURRENCY*. C. A. 5th Cir. Certiorari denied. *M. M. Roberts* for petitioners. *Solicitor General Griswold* for respondent. Reported below: 387 F. 2d 375.

No. 1243. *LOCAL 138, INTERNATIONAL UNION OF OPERATING ENGINEERS, AFL-CIO v. NATIONAL LABOR RELATIONS BOARD*. C. A. 2d Cir. Certiorari denied. *William J. Corcoran* for petitioner. *Solicitor General Griswold, Arnold Ordman, Dominick L. Manoli, Norton J. Come, and Leonard M. Wagman* for respondent. Reported below: 385 F. 2d 874.

No. 1247. *931 EAST BOULEVARD CO. v. CITY OF CLEVELAND ET AL.* Sup. Ct. Ohio. Certiorari denied. *Bernard A. Berkman, Larry S. Gordon, Joshua J. Kancelbaum, and Gerald A. Messerman* for petitioner. *David A. Nelson* for respondents *White Motor Corp. et al.*, and *Edward D. Crocker* for respondent *Eaton Manufacturing Co.*

No. 1254. *ROANOKE IRON & BRIDGE WORKS, INC. v. NATIONAL LABOR RELATIONS BOARD*. C. A. D. C. Cir. Certiorari denied. *R. D. Douglas, Jr., and Bartholomew Diggins* for petitioner. *Solicitor General Griswold, Arnold Ordman, Dominick L. Manoli, and Norton J. Come* for respondent. Reported below: — U. S. App. D. C. —, 390 F. 2d 846.

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No. 1248. HESMER FOODS, INC. *v.* NATIONAL LABOR RELATIONS BOARD. C. A. 7th Cir. Certiorari denied. *Harry P. Dees* for petitioner. *Solicitor General Griswold, Arnold Ordman, Dominick L. Manoli, and Norton J. Come* for respondent.

No. 1251. SWAN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. *Julian Herndon, Jr.*, for petitioner. *Solicitor General Griswold, Assistant Attorney General Vinson, and Beatrice Rosenberg* for the United States.

No. 1256. KOEHRING CO. *v.* HYDE CONSTRUCTION CO., INC. C. A. 10th Cir. Certiorari denied. *Steven E. Keane, Maurice J. McSweeney, and William A. Denny* for petitioner. *Jack N. Hays and Charles Clark* for respondent. Reported below: 388 F. 2d 501.

No. 1258. CONTINENTAL MARKETING CORP. *v.* SECURITIES AND EXCHANGE COMMISSION. C. A. 10th Cir. Certiorari denied. *Lewis B. Kean and H. Byron Mock* for petitioner. *Solicitor General Griswold, Philip A. Loomis, Jr., and David Ferber* for respondent. Reported below: 387 F. 2d 466.

No. 1260. WYETH-SCOTT CO. *v.* SUPERIOR COURT OF CALIFORNIA FOR THE COUNTY OF LOS ANGELES ET AL. (DRIGGERS ET AL., real parties in interest). Ct. App. Cal., 2d App. Dist. Certiorari denied. *Francis L. Young, Jr., and Thomas S. Jackson* for petitioner. *Hillel Chodos* for respondent Driggers, and *William E. Burby, Jr.*, for respondent B & B Supply Co.

No. 1114. ARKEY *v.* OHIO. Sup. Ct. Ohio. Motion to dispense with printing petition granted. Certiorari denied. *Frank Spiegel* for petitioner. *John T. Corrigan* for respondent.

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No. 1265. *FROMBACH v. GILBERT ASSOCIATES, INC.* Sup. Ct. Del. Certiorari denied. *Abraham E. Freedman, Milton M. Borowsky, and Martin J. Vigderman* for petitioner. *Frederick Bernays Wiener* for respondent. Reported below: — Del. —, 236 A. 2d 363.

No. 1288. *AMERICAN OIL CO. v. NATIONAL LABOR RELATIONS BOARD.* C. A. 7th Cir. Certiorari denied. *Karl H. Mueller* for petitioner. *Solicitor General Griswold, Arnold Ordman, Dominick L. Manoli, and Norton J. Come* for respondent. Reported below: 387 F. 2d 786.

No. 1235. *STURMAN v. UNITED STATES.* C. A. 6th Cir. Certiorari denied. MR. JUSTICE BLACK and MR. JUSTICE DOUGLAS are of the opinion that certiorari should be granted. *David Ralph Hertz and Eugene Gressman* for petitioner. *Solicitor General Griswold* for the United States.

No. 914, Misc. *ALLISON v. IOWA.* Sup. Ct. Iowa. Certiorari denied. *Richard C. Turner*, Attorney General of Iowa, and *James C. Sell*, Assistant Attorney General, for respondent. Reported below: 260 Iowa 176, 147 N. W. 2d 910.

No. 1009, Misc. *CONWAY v. PROCUNIER, CORRECTIONS DIRECTOR.* Sup. Ct. Cal. Certiorari denied. *Thomas C. Lynch*, Attorney General of California, and *Edsel W. Haws and Edward A. Hinz, Jr.*, Deputy Attorneys General, for respondent.

No. 1025, Misc. *BRYANS v. BLACKWELL, WARDEN.* C. A. 5th Cir. Certiorari denied. *Solicitor General Griswold* for respondent.

No. 1329, Misc. *JONES v. PROCUNIER, CORRECTIONS DIRECTOR, ET AL.* Sup. Ct. Cal. Certiorari denied.

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No. 1124, Misc. *BRYANS v. BLACKWELL, WARDEN*. C. A. 5th Cir. Certiorari denied. *Solicitor General Griswold* for respondent. Reported below: 387 F. 2d 764.

No. 1166, Misc. *TALMANSON v. UNITED STATES*. C. A. 1st Cir. Certiorari denied. *Solicitor General Griswold, Assistant Attorney General Vinson, Beatrice Rosenberg, and Mervyn Hamburg* for the United States. Reported below: 386 F. 2d 811.

No. 1237, Misc. *LERMA v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. *Solicitor General Griswold, Assistant Attorney General Vinson, Beatrice Rosenberg, and Robert G. Maysack* for the United States. Reported below: 387 F. 2d 187.

No. 1333, Misc. *STURGIS v. WARDEN, MARYLAND PENITENTIARY*. C. A. 4th Cir. Certiorari denied.

No. 1334, Misc. *LEE v. UNITED STATES*. C. A. D. C. Cir. Certiorari denied. *Solicitor General Griswold, Assistant Attorney General Vinson, Beatrice Rosenberg, and Edward Fenig* for the United States.

No. 1338, Misc. *STOVALL v. ILLINOIS*. Sup. Ct. Ill. Certiorari denied.

No. 1339, Misc. *REED v. PATE, WARDEN*. Sup. Ct. Ill. Certiorari denied.

No. 1342, Misc. *WOOD v. CONNEAUT LAKE PARK, INC.* C. A. 3d Cir. Certiorari denied. *Sidney J. Sable* for petitioner. *William C. Walker* for respondent. Reported below: 386 F. 2d 121.

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No. 1348, Misc. HILL *v.* CRAVEN, WARDEN. Sup. Ct. Cal. Certiorari denied.

No. 1349, Misc. CARTER ET AL. *v.* HIGHWAY INSURANCE UNDERWRITERS ET AL. Sup. Ct. La. Certiorari denied.

No. 1352, Misc. PICHE *v.* RHAY, PENITENTIARY SUPERINTENDENT. Sup. Ct. Wash. Certiorari denied.

No. 1355, Misc. HAINES *v.* FRYE, WARDEN. Cir. Ct., Cook County, Ill. Certiorari denied.

No. 1357, Misc. STEELE *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied. Reported below: 254 Cal. App. 2d 758, 62 Cal. Rptr. 452.

No. 1362, Misc. PATTON *v.* VETERANS ADMINISTRATION ET AL. C. A. 4th Cir. Certiorari denied. *Solicitor General Griswold* for respondents.

No. 1365, Misc. DEBARTOLO *v.* NELSON, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 1390, Misc. PRICE *v.* WISCONSIN. Sup. Ct. Wis. Certiorari denied. *Robert Friebert* for petitioner. Reported below: 37 Wis. 2d 117, 154 N. W. 2d 222.

No. 1391, Misc. AGNELLO *v.* WOODS, SHERIFF, ET AL. C. A. 7th Cir. Certiorari denied.

No. 1395, Misc. HARRIS *v.* BETO, CORRECTIONS DIRECTOR. C. A. 5th Cir. Certiorari denied. Reported below: 387 F. 2d 149.

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No. 1477, Misc. *TURNER v. UNITED STATES*. C. A. D. C. Cir. Certiorari denied. *Solicitor General Griswold* for the United States.

Rehearing Denied.

No. 38. PROTECTIVE COMMITTEE FOR INDEPENDENT STOCKHOLDERS OF TMT TRAILER FERRY, INC. *v. ANDERSON*, TRUSTEE IN BANKRUPTCY, ET AL., 390 U. S. 414; and

No. 528. BERGUIGO ET AL. *v. EASTERN AIRLINES, INC.*, 390 U. S. 996. Petitions for rehearing denied. MR. JUSTICE MARSHALL took no part in the consideration or decision of these petitions.

No. 1018. *MASTERSON v. UNITED STATES*, 390 U. S. 954. Motion for leave to file petition for rehearing denied.

No. 709, Misc. *SAAL v. UNITED STATES*, 390 U. S. 1015. Petition for rehearing denied.

MAY 10, 1968.

Dismissal Under Rule 60.

No. 1732, Misc. *MCCAMMON v. UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT*. Motion for leave to file petition for writ of mandamus dismissed pursuant to Rule 60 of the Rules of this Court.

MAY 14, 1968.

Dismissal Under Rule 60.

No. 1779, Misc. *BRYANT v. MARYLAND*. Baltimore City Ct. Petition for writ of certiorari dismissed pursuant to Rule 60 of the Rules of this Court.

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Miscellaneous Orders.

No. —. WINTERS *v.* UNITED STATES ET AL., 390 U. S. 993. Application for reconsideration of application for temporary stay, presented to MR. JUSTICE DOUGLAS, and by him referred to the Court, denied. MR. JUSTICE DOUGLAS dissents. *Moses M. Falk* for applicant. *Solicitor General Griswold* for the United States et al. in opposition.

No. 9, Orig. UNITED STATES *v.* LOUISIANA ET AL. Motions of the State of Louisiana and the United States for entry of Supplemental Decree No. 2 are set down for oral argument during week of October 14, 1968. Main briefs of counsel shall be filed on or before August 15, 1968, and reply briefs on or before September 16, 1968. THE CHIEF JUSTICE and MR. JUSTICE MARSHALL took no part in the consideration or decision of this order. On the motion for the State of Louisiana were *Jack P. F. Gremillion*, Attorney General, *Victor A. Sachse*, *Paul M. Hebert*, *Thomas W. Leigh*, *Robert F. Kennon*, *W. Scott Wilkinson*, *J. B. Miller*, *Oliver P. Stockwell*, *J. J. Davidson*, and *Frederick W. Ellis*, Special Assistant Attorneys General, and *John L. Madden*, Assistant Attorney General. On the motion for the United States were *Solicitor General Griswold*, *Assistant Attorney General Martz*, *Archibald Cox*, Special Assistant to the Attorney General, *Louis F. Claiborne*, *Roger P. Marquis*, and *George S. Swarth*. [See 389 U. S. 155.]

No. 937. COMMONWEALTH COATINGS CORP. *v.* CONTINENTAL CASUALTY CO. ET AL. C. A. 1st Cir. (Certiorari granted, 390 U. S. 979.) Motion of respondents to remove case from summary calendar denied. *Luther P. House, Jr.*, on the motion.

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No. 23. FIRST NATIONAL BANK OF ARIZONA, EXECUTOR *v.* CITIES SERVICE Co., *ante*, p. 253. Motion to substitute the First National Bank of Arizona in place of Patricia Waldron as the petitioner granted. *William E. Kelly, David Orlin, Preben Jensen, and Alan R. Wentzel* on the motion.

No. 1280. MAKAH INDIAN TRIBE *v.* TAX COMMISSION OF WASHINGTON ET AL. Appeal from Sup. Ct. Wash. The Solicitor General is invited to file a brief expressing the views of the United States.

No. 1399. GARDNER *v.* CALIFORNIA. Super. Ct. Cal., County of San Luis Obispo. (Certiorari granted, *ante*, p. 902.) Motion of petitioner for appointment of counsel granted. It is ordered that *Charles E. Rickershauser, Jr., Esquire*, of Los Angeles, California, a member of the Bar of this Court, be, and he is hereby, appointed to serve as counsel for petitioner in this case.

No. 1902, Misc. IN RE DISBARMENT OF ROTHBARD. It is ordered that Sol Rothbard, of Washington, District of Columbia, 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. 1589, Misc. DUCKETT *v.* FIELD, MENS COLONY SUPERINTENDENT; and

No. 1639, Misc. SMITH *v.* REINCKE, WARDEN. Motions for leave to file petitions for writs of habeas corpus denied.

No. 1726, Misc. HOOPER ET AL. *v.* GOODING, JUDGE. Motion for leave to file petition for writ of mandamus denied. *John P. Frank* and *John J. Flynn* for petitioner Hooper.

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Certiorari Granted. (See also No. 227, *ante*, p. 363; No. 415, *ante*, p. 363; No. 373, *ante*, p. 365; No. 380, *ante*, p. 365; No. 385, *ante*, p. 365; No. 503, *ante*, p. 366; and No. 794, Misc., *ante*, p. 346.)

No. 1303. *LEAR, INC. v. ADKINS.* Sup. Ct. Cal. *Certiorari* granted. *C. Russell Hale, Edwin L. Hartz, Thomas G. Corcoran, and Allen E. Throop* for petitioner. *Allen E. Susman* for respondent. Reported below: 67 Cal. 2d 882, 435 P. 2d 321.

No. 1246. *OESTEREICH v. SELECTIVE SERVICE SYSTEM LOCAL BOARD No. 11, CHEYENNE, WYOMING, ET AL.* C. A. 10th Cir. *Certiorari* granted. *Melvin L. Wulf, Alan H. Levine, and Marvin M. Karpatkin* for petitioner. *Solicitor General Griswold* for respondents. Reported below: 390 F. 2d 100.

Certiorari Denied. (See also No. 1217, Misc., *ante*, p. 360; No. 1392, Misc., *ante*, p. 362; No. 1446, Misc., *ante*, p. 361; and No. 1536, Misc., *ante*, p. 362.)

No. 1142. *UNDERHILL v. ILLINOIS.* Sup. Ct. Ill. *Certiorari* denied. *Howard T. Savage* for petitioner. *William G. Clark*, Attorney General of Illinois, and *John J. O'Toole*, Assistant Attorney General, for respondent. Reported below: 38 Ill. 2d 245, 230 N. E. 2d 837.

No. 1272. *FRUGE v. LOUISIANA.* Sup. Ct. La. *Certiorari* denied. *Sam J. D'Amico and Robert L. Kleinpeter* for petitioner. Reported below: 251 La. 283, 204 So. 2d 287.

No. 1242. *BROMBERG ET AL. v. HOLIDAY INNS OF AMERICA ET AL.* C. A. 7th Cir. *Certiorari* denied. *Morris S. Bromberg, Alex Elson, Willard J. Lassers, and Aaron S. Wolfe* for petitioners. *Miles G. Seeley* for respondents. Reported below: 388 F. 2d 639.

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No. 1275. BUTTERMAN ET UX. *v.* WALSTON & Co., INC., ET AL. C. A. 7th Cir. Certiorari denied. *Robert S. O'Shea* for petitioners. Reported below: 387 F. 2d 822.

No. 1230. SOUTHERN PACIFIC Co. *v.* BROTHERHOOD OF LOCOMOTIVE FIREMEN & ENGINEMEN. C. A. D. C. Cir. Certiorari denied. *Francis M. Shea, Richard T. Conway, Ralph J. Moore, Jr., James R. Wolfe, and Tom Martin Davis* for petitioner. *Milton Kramer, Harold C. Heiss, and Russell B. Day* for respondent. Reported below: — U. S. App. D. C. —, 393 F. 2d 345.

No. 1264. INTERNATIONAL LONGSHOREMEN'S ASSN. ET AL. *v.* PHILADELPHIA MARINE TRADE ASSN. C. A. 3d Cir. Certiorari denied. *Abraham E. Freedman* and *Martin J. Vigderman* for petitioners. *Francis A. Scanlan* for respondent. Reported below: 387 F. 2d 431.

No. 1271. GILSTRAP ET AL. *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. *Robert B. Thompson* for petitioners. *Solicitor General Griswold, Assistant Attorney General Vinson, and Beatrice Rosenberg* for the United States. Reported below: 389 F. 2d 6.

No. 1278. PRUITT ET UX. *v.* HELENE CURTIS INDUSTRIES, INC., ET AL. C. A. 5th Cir. Certiorari denied. *Eugene Gressman* for petitioners. *Elmer H. Parish* for respondent Cosmair, Inc. Reported below: 385 F. 2d 841.

No. 1289. COCHRAN ET AL. *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. *Robert B. Thompson* for petitioners. *Solicitor General Griswold, Assistant Attorney General Vinson, Beatrice Rosenberg, and Mervyn Hamburg* for the United States. Reported below: 389 F. 2d 326.

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No. 1279. AUTOMATIC RADIO MFG. CO., INC., ET AL. v. FORD MOTOR CO. C. A. 1st Cir. Certiorari denied. *Worth Rowley* and *Roger P. Stokey* for petitioners. *Claude R. Branch* for respondent. Reported below: 390 F. 2d 113.

No. 1282. BURDEN v. UNITED STATES. C. A. 9th Cir. Certiorari denied. *Virgil V. Becker* for petitioner. *Solicitor General Griswold*, *Assistant Attorney General Vinson*, and *Philip R. Monahan* for the United States. Reported below: 389 F. 2d 768.

No. 1287. ESSO STANDARD OIL S. A. v. THE GASBRAS SUL ET AL. C. A. 2d Cir. Certiorari denied. *Walter P. Hickey* and *Charles N. Fiddler* for petitioner. *Gordon W. Paulsen* for respondents. Reported below: 387 F. 2d 573.

No. 1292. BUILDING & CONSTRUCTION TRADES COUNCIL OF NEW ORLEANS, AFL-CIO v. NATIONAL LABOR RELATIONS BOARD ET AL. C. A. 5th Cir. Certiorari denied. *Louis Sherman* and *Laurence J. Cohen* for petitioner. *Solicitor General Griswold*, *Arnold Ordman*, *Dominick L. Manoli*, and *Norton J. Come* for respondent National Labor Relations Board. *Winthrop A. Johns* for International Union of District 50, United Mine Workers of America, as *amicus curiae*, in opposition. Reported below: 387 F. 2d 79.

No. 1293. CHERRY ET AL. v. POSTMASTER GENERAL ET AL. C. A. 1st Cir. Certiorari denied. *Solicitor General Griswold* for respondents.

No. 1294. D/S A/S SVERRE v. TEXPORTS STEVEDORE CO., INC. C. A. 5th Cir. Certiorari denied. *Edward W. Watson* for petitioner. *E. D. Vickery* for respondent. Reported below: 387 F. 2d 648.

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No. 1298. *CIELEN v. AETNA LIFE INSURANCE CO. ET AL.* App. Ct. Ill., 1st Dist. Certiorari denied. *Peter S. Sarelas* for petitioner. *Thomas J. Johnson, Jr.*, for Aetna Life Insurance Co., and *John M. O'Connor, Jr.*, and *Lawrence Gunnels* for Travelers Insurance Co., respondents. Reported below: 86 Ill. App. 2d 22, 229 N. E. 2d 571.

No. 1300. *STEARNS v. TABOR ET AL.* C. A. 3d Cir. Certiorari denied. *Murray C. Goldman* for petitioner. *Gordon W. Gerber* and *Read Rocap, Jr.*, for respondents. Reported below: 389 F. 2d 645.

No. 1304. *HANDSFORD v. UNITED STATES.* C. A. 5th Cir. Certiorari denied. *Andrew Jackson Whitehurst III* and *Edwin A. Carlisle* for petitioner. *Solicitor General Griswold*, *Assistant Attorney General Vinson*, *Beatrice Rosenberg*, and *Mervyn Hamburg* for the United States. Reported below: 390 F. 2d 373.

No. 1308. *LAMONT v. COMMISSIONER OF MOTOR VEHICLES ET AL.* C. A. 2d Cir. Certiorari denied. *Leonard B. Boudin* and *Victor Rabinowitz* for petitioner. *Louis J. Lefkowitz*, Attorney General of New York, *Samuel A. Hirshowitz*, First Assistant Attorney General, and *Joel Lewittes* and *Mortimer Sattler*, Assistant Attorneys General, for Commissioner of Motor Vehicles, and *Wyllys S. Newcomb* for R. L. Polk & Co., respondents. Reported below: 386 F. 2d 449.

No. 1335. *HOOPER ET AL. v. GOODING, JUDGE, ET AL.* Sup. Ct. Ariz. Certiorari denied. *John P. Frank* and *John J. Flynn* for petitioner Hooper. *Darrell F. Smith*, Attorney General of Arizona, *Norval C. Jespersen*, Assistant Attorney General, and *Mark Wilmer*, Special Assistant Attorney General, for respondents.

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No. 1322. *KAMERMAN & KAMERMAN v. SELIGSON, TRUSTEE IN BANKRUPTCY*. C. A. 2d Cir. Certiorari denied. *Murray H. Paloger* for petitioner. *Charles Seligson*, respondent, *pro se*. Reported below: 390 F. 2d 251.

No. 1306. *SCANLAN v. ANHEUSER-BUSCH, INC., ET AL.* C. A. 9th Cir. Certiorari denied. *J. Albert Hutchinson* for petitioner. *Charles E. Hanger* for respondents. Reported below: 388 F. 2d 918.

No. 82. *TEXACO INC. ET AL. v. FEDERAL POWER COMMISSION ET AL.* C. A. 10th Cir. Certiorari denied. MR. JUSTICE MARSHALL took no part in the consideration or decision of this petition. *William K. Tell, William R. Slye*, and *James D. Annett* for Texaco Inc., *Homer E. McEwen, Jr.*, for Sunray DX Oil Co., *Martin N. Erck* for Humble Oil & Refining Co., *Vernon W. Woods* for Union Producing Co., *Kiel Boone* for Cox, *Richard F. Remmers* for Sohio Petroleum Co., *Warren M. Sparks* for Gulf Oil Corp., and *Robert W. Henderson* and *Thomas G. Crouch* for Hunt, petitioners. *Solicitor General Marshall* and *Richard A. Solomon* for respondent Federal Power Commission, *Edwin F. Russell, Harry G. Hill, Jr.*, and *Barbara M. Suchow* for respondent Brooklyn Union Gas Co., *Samuel Graff Miller* for respondent Philadelphia Electric Co., *Bertram D. Moll* and *Morton L. Simons* for respondent Long Island Lighting Co., and *Kent H. Brown* for respondent Public Service Commission of the State of New York. Reported below: 370 F. 2d 181.

No. 1296. *MOODY v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. MR. JUSTICE MARSHALL took no part in the consideration or decision of this petition. *Lucius E. Burch, Jr.*, for petitioner. *Solicitor General Griswold*, *Assistant Attorney General Rogovin*, and *Joseph M. Howard* for the United States.

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No. 1334. *HOOPER ET AL. v. GOODING, JUDGE, ET AL.* C. A. 9th Cir. Certiorari denied. *John P. Frank* and *John J. Flynn* for petitioner Hooper. *Darrell F. Smith*, Attorney General of Arizona, *Norval C. Jespersen*, Assistant Attorney General, and *Mark Wilmer*, Special Assistant Attorney General, for respondent Gooding. Reported below: 394 F. 2d 146.

No. 504. *AUSTRAL OIL CO. INC. v. FEDERAL POWER COMMISSION.* C. A. 5th Cir. Certiorari denied. MR. JUSTICE MARSHALL took no part in the consideration or decision of this petition. *J. Evans Attwell* and *W. H. Drushel, Jr.*, for petitioner. *Acting Solicitor General Spritzer*, *Richard A. Solomon*, *Peter H. Schiff*, and *Joel Yohalem* for respondent. Reported below: 378 F. 2d 510.

No. 516. *SUPERIOR OIL CO. ET AL. v. FEDERAL POWER COMMISSION ET AL.* C. A. 10th Cir. Certiorari denied. MR. JUSTICE MARSHALL took no part in the consideration or decision of this petition. *Murray Christian* and *H. W. Varner* for Superior Oil Co., and *H. H. Hillyer, Jr.*, for J. Ray McDermott & Co., Inc., petitioners. *Acting Solicitor General Spritzer*, *Richard A. Solomon*, *Peter H. Schiff*, and *Joel Yohalem* for respondent Federal Power Commission. Reported below: 376 F. 2d 161.

No. 1348. *FOLLETTE, WARDEN v. MOLLOY.* C. A. 2d Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. MR. JUSTICE BLACK is of the opinion that certiorari should be granted. *Louis J. Lefkowitz*, Attorney General of New York, *Samuel A. Hirshowitz*, First Assistant Attorney General, and *Brenda Soloff*, Assistant Attorney General, for petitioner. *C. Dickerman Williams* for respondent. Reported below: 391 F. 2d 231.

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No. 520. *BROOKLYN UNION GAS CO. ET AL. v. FEDERAL POWER COMMISSION ET AL.* C. A. 5th Cir. Certiorari denied. MR. JUSTICE MARSHALL took no part in the consideration or decision of this petition. *Edwin F. Russell* and *Barbara M. Suchow* for Brooklyn Union Gas Co., *Bertram D. Moll* and *Morton L. Simons* for Long Island Lighting Co., *Kent H. Brown* for Public Service Commission of the State of New York, and *William T. Coleman, Jr.*, and *Robert W. Maris* for Philadelphia Gas Works Division of United Gas Improvement Co., petitioners. *Acting Solicitor General Spritzer*, *Richard A. Solomon*, *Peter H. Schiff*, and *Joel Yohalem* for respondent Federal Power Commission, *Phillip D. Endom*, *Robert E. May*, and *Francis H. Caskin* for respondent Sun Oil Co., *Martin N. Erck*, *Sherman S. Poland*, and *James D. McKinney* for respondent Humble Oil & Refining Co., *J. P. Hammond*, *Harold H. Young, Jr.*, *William J. Grove*, *Carroll L. Gilliam*, and *Philip R. Ehrenkranz* for respondent Pan American Petroleum Corp., *Warren M. Sparks* and *Donald R. Arnett* for respondent Gulf Oil Corp., *J. Evans Attwell* for respondent Austral Oil Co., Inc., and *William K. Tell, Jr.*, *William R. Slye*, and *James D. Annett* for respondent Texaco Inc. Reported below: 378 F. 2d 510.

No. 628. *TEXACO INC. ET AL. v. FEDERAL POWER COMMISSION ET AL.* C. A. 5th Cir. Certiorari denied. MR. JUSTICE MARSHALL took no part in the consideration or decision of this petition. *William K. Tell, Jr.*, *William R. Slye*, and *James D. Annett* for Texaco Inc., *J. P. Hammond*, *Harold H. Young, Jr.*, *William J. Grove*, *Carroll L. Gilliam*, and *Philip R. Ehrenkranz* for Pan American Petroleum Corp., and *Warren M. Sparks* and *Donald R. Arnett* for Gulf Oil Corp., petitioners. *Acting Solicitor General Spritzer* and *Richard A. Solomon* for respondent Federal Power Commission. Reported below: 378 F. 2d 510.

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No. 526. *BLANCO OIL CO. ET AL. v. FEDERAL POWER COMMISSION*. C. A. 5th Cir. Certiorari denied. MR. JUSTICE MARSHALL took no part in the consideration or decision of this petition. *George B. Mickum III* for petitioners. *Acting Solicitor General Spritzer, Richard A. Solomon, Peter H. Schiff, and Joel Yohalem* for respondent. Reported below: 378 F. 2d 510.

No. 1259. *DENVER & RIO GRANDE WESTERN RAILROAD Co. v. UNITED STATES*. C. A. 10th Cir. Certiorari denied. MR. JUSTICE MARSHALL took no part in the consideration or decision of this petition. *Dennis McCarthy* for petitioner. *Solicitor General Griswold, Assistant Attorney General Weisl, Alan S. Rosenthal, and Norman Knopf* for the United States. *William M. Moloney and Carl V. Lyon* for Association of American Railroads, as *amicus curiae*, in support of the petition. Reported below: 385 F. 2d 161.

No. 1285. *MARTIN ET AL. v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. MR. JUSTICE MARSHALL took no part in the consideration or decision of this petition. *Edward Bennett Williams and Robert L. Weinberg* for Martin, and *Morris A. Shenker* for Dodson, petitioners. *Solicitor General Griswold, Assistant Attorney General Vinson, and Beatrice Rosenberg* for the United States. Reported below: 389 F. 2d 895.

No. 1250. *GENERAL FOODS CORP. v. FEDERAL TRADE COMMISSION*. C. A. 3d Cir. Certiorari denied. MR. JUSTICE HARLAN is of the opinion that certiorari should be granted and the case set down for oral argument. *Roberts B. Owen* for petitioner. *Solicitor General Griswold, Assistant Attorney General Turner, Lawrence G. Wallace, James McI. Henderson, and Thomas F. Howder* for respondent. Reported below: 386 F. 2d 936.

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No. 1130. *PHELAN v. PENNSYLVANIA*. Sup. Ct. Pa. Certiorari denied. MR. JUSTICE DOUGLAS is of the opinion that certiorari should be granted. *Abraham J. Brem Levy* and *John A. Papola* for petitioner. *Arlen Specter* for respondent. Reported below: 427 Pa. 265, 234 A. 2d 540.

No. 1284. *NESSON v. UNITED STATES*. C. A. 1st Cir. Motion to dispense with printing petition granted. Certiorari denied. *Eugene X. Giroux* for petitioner. *Solicitor General Griswold*, *Assistant Attorney General Vinson*, and *Beatrice Rosenberg* for the United States. Reported below: 388 F. 2d 603.

No. 1268. *KOCHER v. FOWLER, SECRETARY OF THE TREASURY, ET AL.* C. A. D. C. Cir. Certiorari denied. MR. JUSTICE FORTAS took no part in the consideration or decision of this petition. *Harold J. Nussbaum*, *Milton M. Jacobs*, and *Robert E. Goostree* for petitioner. *Solicitor General Griswold*, *Assistant Attorney General Weisl*, and *Alan S. Rosenthal* for respondents. Reported below: — U. S. App. D. C. —, 397 F. 2d 641.

No. 1245. *IN RE WHITESIDE*. C. A. 2d Cir. Certiorari denied. MR. JUSTICE DOUGLAS is of the opinion that certiorari should be granted. *Loring J. Whiteside*, petitioner, *pro se*. *Solicitor General Griswold* filed a memorandum in opposition. Reported below: 386 F. 2d 805.

No. 1027, Misc. *SPURLIN v. DUTTON, WARDEN, ET AL.* C. A. 5th Cir. Certiorari denied. *Arthur K. Bolton*, Attorney General of Georgia, *G. Ernest Tidwell*, Executive Assistant Attorney General, *Marion O. Gordon*, Assistant Attorney General, and *William R. Childers, Jr.*, Deputy Assistant Attorney General, for respondent Dutton.

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No. 1331. *BROWN ET AL., TRUSTEES v. PENNSYLVANIA ET AL.* C. A. 3d Cir. Motion of Girard College Alumni for leave to file a brief, as *amicus curiae*, granted. Certiorari denied. MR. JUSTICE MARSHALL took no part in the consideration or decision of this motion and petition. *Arthur Littleton, John Russell, Jr., Ernest R. von Starck, and Richard P. Brown, Jr.*, for petitioners. *Levy Anderson* for City of Philadelphia, and *Charles J. Biddle, William T. Coleman, and Robert W. Maris* for Pennsylvania et al., respondents. *Philip Price* for Girard College Alumni, as *amicus curiae*, in support of the petition. Reported below: 392 F. 2d 120.

No. 899, Misc. *RASMUSSEN v. CALIFORNIA.* Sup. Ct. Cal. Certiorari denied. *Thomas C. Lynch*, Attorney General of California, *Albert W. Harris, Jr.*, Assistant Attorney General, and *Horace Wheatley*, Deputy Attorney General, for respondent.

No. 926, Misc. *FLETCHER v. BETO, CORRECTIONS DIRECTOR.* C. A. 5th Cir. Certiorari denied. *William E. Gray* for petitioner. *Crawford C. Martin*, Attorney General of Texas, and *Howard M. Fender*, Assistant Attorney General, for respondent.

No. 948, Misc. *GONZALES v. CALIFORNIA.* Ct. App. Cal., 4th App. Dist. Certiorari denied. *Thomas C. Lynch*, Attorney General of California, *William E. James*, Assistant Attorney General, and *Robert H. Francis*, Deputy Attorney General, for respondent.

No. 999, Misc. *BRAM v. HEROLD, STATE HOSPITAL DIRECTOR.* C. A. 2d Cir. Certiorari denied. *Louis J. Lefkowitz*, Attorney General of New York, *Samuel A. Hirshowitz*, First Assistant Attorney General, and *John G. Proudfit*, Assistant Attorney General, for respondent.

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No. 1000, Misc. *SPURRIER v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. *Richard L. Brown* for petitioner. *Solicitor General Griswold*, *Assistant Attorney General Vinson*, and *Beatrice Rosenberg* for the United States. Reported below: 389 F. 2d 367.

No. 1073, Misc. *McFADDEN v. CALIFORNIA*. Ct. App. Cal., 1st App. Dist. Certiorari denied. *Thomas C. Lynch*, Attorney General of California, *Albert W. Harris, Jr.*, Assistant Attorney General, and *Robert R. Granucci* and *Jerome C. Utz*, Deputy Attorneys General, for respondent.

No. 1100, Misc. *QUARLES ET AL. v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. *Solicitor General Griswold*, *Assistant Attorney General Vinson*, *Beatrice Rosenberg*, and *Mervyn Hamburg* for the United States. Reported below: 387 F. 2d 551.

No. 1239, Misc. *BICKHAM v. MCSWEENEY ET AL.* Cir. Ct., Will County, Ill. Certiorari denied.

No. 1259, Misc. *JOHNSON v. UNITED STATES*. C. A. D. C. Cir. Certiorari denied. *Solicitor General Griswold*, *Assistant Attorney General Vinson*, *Beatrice Rosenberg*, and *Edward Fenig* for the United States.

No. 1297, Misc. *RYAN v. LOUISIANA*. Sup. Ct. La. Certiorari denied.

No. 1305, Misc. *DAVIS v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. *Solicitor General Griswold*, *Assistant Attorney General Vinson*, *Beatrice Rosenberg*, and *Mervyn Hamburg* for the United States. Reported below: 386 F. 2d 837.

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No. 1294, Misc. *RABIOLO v. WEINSTEIN ET AL.* C. A. 7th Cir. Certiorari denied. *Eugene T. Devitt* for petitioner. *Solicitor General Griswold* for respondents.

No. 1313, Misc. *DAUGHERTY v. HOCKER, WARDEN.* Sup. Ct. Nev. Certiorari denied.

No. 1314, Misc. *WILKINS v. HEROLD, STATE HOSPITAL DIRECTOR.* App. Div., Sup. Ct. N. Y., 3d Jud. Dept. Certiorari denied.

No. 1319, Misc. *HINMAN v. CALIFORNIA.* Ct. App. Cal., 2d App. Dist. Certiorari denied. Reported below: 253 Cal. App. 2d 896, 61 Cal. Rptr. 609.

No. 1326, Misc. *SCHACK v. McRAE, U. S. DISTRICT JUDGE.* C. A. 5th Cir. Certiorari denied. *Solicitor General Griswold, Assistant Attorney General Vinson, Beatrice Rosenberg, and Kirby W. Patterson* for respondent.

No. 1328, Misc. *SHUFORD v. NEW YORK.* App. Div., Sup. Ct. N. Y., 4th Jud. Dept. Certiorari denied.

No. 1343, Misc. *COUSINS v. UNITED STATES.* C. A. 4th Cir. Certiorari denied. *Solicitor General Griswold, Assistant Attorney General Vinson, Beatrice Rosenberg, and Robert G. Maysack* for the United States.

No. 1361, Misc. *MATHIS v. VIRGINIA.* Sup. Ct. App. Va. Certiorari denied.

No. 1375, Misc. *NORMAN v. CALIFORNIA.* Ct. App. Cal., 1st App. Dist. Certiorari denied. Reported below: 252 Cal. App. 2d 381, 60 Cal. Rptr. 609.

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No. 1372, Misc. UPCHURCH *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. *Charles T. Akre* for petitioner. *Solicitor General Griswold*, *Assistant Attorney General Vinson*, and *Beatrice Rosenberg* for the United States.

No. 1377, Misc. THOMPSON *v.* CRAVEN, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 1379, Misc. KRESTEFF *v.* KRESTEFF. Sup. Ct. Ill. Certiorari denied. *Gordon Burroughs* for respondent.

No. 1384, Misc. WOOLSEY *v.* BETO, CORRECTIONS DIRECTOR. C. A. 5th Cir. Certiorari denied. *William E. Gray* for petitioner. Reported below: 387 F. 2d 138.

No. 1385, Misc. OPHEIM *v.* CAMPBELL, SHERIFF. C. A. 10th Cir. Certiorari denied.

No. 1386, Misc. ALLEN *v.* BERRY, SHERIFF. Sup. Ct. Wash. Certiorari denied.

No. 1400, Misc. O'BRIEN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. *Solicitor General Griswold* for the United States.

No. 1402, Misc. ORR *v.* ILLINOIS. Sup. Ct. Ill. Certiorari denied. *Marshall Patner* for petitioner. Reported below: 38 Ill. 2d 417, 231 N. E. 2d 424.

No. 1412, Misc. SINCLAIR *v.* TURNER, WARDEN. Sup. Ct. Utah. Certiorari denied. *Jimi Mitsunaga* for petitioner. Reported below: 20 Utah 2d 126, 434 P. 2d 305.

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No. 1413, Misc. HARE *v.* MINNESOTA. Sup. Ct. Minn. Certiorari denied. Reported below: 278 Minn. 405, 154 N. W. 2d 820.

No. 1387, Misc. MILLER *v.* CALIFORNIA. Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 1404, Misc. KELLY *v.* KANSAS ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 387 F. 2d 140.

No. 1406, Misc. BOGART ET UX. *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 1409, Misc. CLARK *v.* LINN, ACTING SHERIFF, ET AL. Sup. Ct. Ind. Certiorari denied.

No. 1416, Misc. MUTCH *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 1418, Misc. ADAMS *v.* ARIZONA ET AL. Sup. Ct. Ariz. Certiorari denied.

No. 1421, Misc. WISLEY *v.* BETO, CORRECTIONS DIRECTOR. C. A. 5th Cir. Certiorari denied.

No. 1427, Misc. URBANO *v.* CALISSI ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 384 F. 2d 909.

No. 1429, Misc. RILEY *v.* NELSON, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 1480, Misc. MCCOLLAUGH *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. *Solicitor General Griswold, Assistant Attorney General Vinson, and Beatrice Rosenberg* for the United States.

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No. 1431, Misc. *WILCOX v. TURNER, WARDEN*. Sup. Ct. Utah. Certiorari denied.

No. 1434, Misc. *GRAY v. OCCIDENTAL LIFE INSURANCE CO. OF CALIFORNIA*. C. A. 3d Cir. Certiorari denied. Reported below: 387 F. 2d 935.

No. 1473, Misc. *LARK v. RUNDLE, CORRECTIONAL SUPERINTENDENT*. C. A. 3d Cir. Certiorari denied. Reported below: 387 F. 2d 363.

No. 1440, Misc. *OWEN v. ELLINGTON, GOVERNOR OF TENNESSEE, ET AL.* C. A. 6th Cir. Certiorari denied.

No. 1450, Misc. *CHAPPEL v. WARDEN, MARYLAND PENITENTIARY*. Ct. Sp. App. Md. Certiorari denied.

No. 1455, Misc. *COX v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. *James R. Willis* for petitioner. *Solicitor General Griswold, Assistant Attorney General Vinson, Beatrice Rosenberg, and Edward Fenig* for the United States.

No. 1458, Misc. *WILLIAMS v. TEXAS*. Ct. Crim. App. Tex. Certiorari denied. *Emmett Colvin* for petitioner. *Crawford C. Martin, Attorney General of Texas, and Howard M. Fender, Assistant Attorney General*, for respondent. Reported below: 427 S. W. 2d 868.

No. 1470, Misc. *HELPMAN v. CALIFORNIA*. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 1479, Misc. *TAYLOR v. PEYTON, PENITENTIARY SUPERINTENDENT*. C. A. 4th Cir. Certiorari denied.

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No. 1472, Misc. *PAYNE v. HOCKER, WARDEN*. Sup. Ct. Nev. Certiorari denied.

No. 1489, Misc. *CROCE v. SANCHEZ*. Ct. App. Cal., 2d App. Dist. Certiorari denied. Reported below: 256 Cal. App. 2d 680, 64 Cal. Rptr. 448.

No. 1478, Misc. *ATKINS v. SULLIVAN*. C. A. 10th Cir. Certiorari denied.

No. 1491, Misc. *JONES v. CALIFORNIA*. Ct. App. Cal. 2d App. Dist. Certiorari denied. Reported below: 255 Cal. App. 2d 163, 62 Cal. Rptr. 848.

No. 1492, Misc. *STEVENSON v. WARDEN, QUEENS COUNTY HOUSE OF DETENTION FOR MEN*. App. Div., Sup. Ct. N. Y., 2d Jud. Dept. Certiorari denied.

No. 1493, Misc. *OGLESBY v. ILLINOIS*. Sup. Ct. Ill. Certiorari denied.

No. 1508, Misc. *HENDERSON v. HENDERSON, WARDEN*. C. A. 6th Cir. Certiorari denied.

No. 1510, Misc. *NAM SING SHAK v. HAWAII*. Sup. Ct. Hawaii. Certiorari denied.

No. 1513, Misc. *NAM SING SHAK v. HAWAII*. Sup. Ct. Hawaii. Certiorari denied.

No. 1514, Misc. *NAM SING SHAK v. HAWAII*. Sup. Ct. Hawaii. Certiorari denied.

No. 1541, Misc. *AULL ET AL. v. NEW MEXICO*. Sup. Ct. N. M. Certiorari denied. *O. R. Adams* for petitioners. Reported below: 78 N. M. 607, 435 P. 2d 437.

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No. 1517, Misc. *NAM SING SHAK v. HAWAII*. Sup. Ct. Hawaii. Certiorari denied.

No. 1518, Misc. *NAM SING SHAK v. HAWAII*. Sup. Ct. Hawaii. Certiorari denied.

No. 1218, Misc. *HOWARD v. OHIO*. Sup. Ct. Ohio. Certiorari denied. MR. JUSTICE DOUGLAS is of the opinion that certiorari should be granted. *Neil K. Evans* for petitioner. *John T. Corrigan* for respondent.

No. 1615, Misc. *IN RE FRANK*. Sup. Ct. N. J. Certiorari denied. *Robert P. Hanley* for petitioner.

No. 1211, Misc. *JACKSON v. NEW YORK*. Ct. App. N. Y. Certiorari denied. MR. JUSTICE DOUGLAS is of the opinion that certiorari should be granted. MR. JUSTICE MARSHALL took no part in the consideration or decision of this petition. *Daniel G. Collins* for petitioner. Reported below: 20 N. Y. 2d 440, 231 N. E. 2d 722.

No. 1363, Misc. *BECERA-SOTO v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. MR. JUSTICE DOUGLAS is of the opinion that certiorari should be granted. *David S. Cohen* for petitioner. *Solicitor General Griswold*, *Assistant Attorney General Vinson*, and *Beatrice Rosenberg* for the United States. Reported below: 387 F. 2d 792.

No. 1318, Misc. *SCHAWARTZBERG v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. MR. JUSTICE MARSHALL took no part in the consideration or decision of this petition. *Solicitor General Griswold*, *Assistant Attorney General Vinson*, *Beatrice Rosenberg*, and *Mervyn Hamburg* for the United States. Reported below: 382 F. 2d 1012.

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No. 1433, Misc. *GOODWIN v. UNITED STATES*. C. A. D. C. Cir. Certiorari denied. MR. JUSTICE MARSHALL took no part in the consideration or decision of this petition. *Solicitor General Griswold* for the United States.

Rehearing Denied.

No. 445. *AVCO CORP. v. AERO LODGE No. 735, INTERNATIONAL ASSOCIATION OF MACHINISTS & AEROSPACE WORKERS, ET AL.*, 390 U. S. 557;

No. 1140. *CHANEY v. STATE BAR OF CALIFORNIA ET AL.*, 390 U. S. 1011;

No. 1199. *MEAUX ET AL. v. UNITED STATES*, 390 U. S. 1026;

No. 652, Misc. *ANDERSON v. NELSON, WARDEN*, 390 U. S. 523;

No. 854, Misc. *FONTAINE v. CALIFORNIA*, 390 U. S. 593;

No. 1054, Misc. *HENIG ET AL. v. ODORIOSO ET AL.*, 390 U. S. 1016; and

No. 1209, Misc. *ROSS v. CRAVEN, WARDEN*, 390 U. S. 1032. Petitions for rehearing denied.

No. 59. *BANKS v. CHICAGO GRAIN TRIMMERS ASSN., INC., ET AL.*, 390 U. S. 459. Petition for rehearing denied. MR. JUSTICE MARSHALL took no part in the consideration or decision of this petition.

No. 70. *ALITALIA-LINEE AEREE ITALIANE, S. P. A. v. LISI ET AL.*, 390 U. S. 455. Motion of International Air Transport Assn. for leave to file a brief, as *amicus curiae*, granted. Petition for rehearing denied. MR. JUSTICE MARSHALL took no part in the consideration or decision of this motion and petition. *Harold L. Warner, Jr., Carl S. Rowe, and Paul G. Pennoyer, Jr.*, on the motion in support of the petition.

MAY 27, 1968.

Miscellaneous Orders.

No. —. *SHIFFMAN v. SELECTIVE SERVICE LOCAL BOARD No. 5 ET AL.* C. A. 2d Cir. Application for writ of injunction or stay, presented to MR. JUSTICE HARLAN, and by him referred to the Court, denied. (See concurring memorandum of MR. JUSTICE STEWART and dissent of MR. JUSTICE DOUGLAS below.) *Melvin L. Wulf* for applicant. *Solicitor General Griswold* for respondents in opposition.

No. —. *ZIGMOND v. SELECTIVE SERVICE LOCAL BOARD No. 16 ET AL.* C. A. 1st Cir. Application for stay, presented to MR. JUSTICE FORTAS, and by him referred to the Court, denied. *Solicitor General Griswold* for respondents in opposition. Reported below: 396 F. 2d 290.

MR. JUSTICE STEWART, concurring.*

In voting to deny these applications, I intimate no view upon the merits of the applicants' substantive claims, which are not now before us.

MR. JUSTICE DOUGLAS, dissenting.†

In these cases the Courts of Appeals for the First and Second Circuits have held that § 10 (b)(3) of the Universal Military Training and Service Act, as amended by the Military Selective Service Act of 1967, 81 Stat. 104, 50 U. S. C. App. § 460 (b)(3) (1964 ed., Supp. III),¹

*This memorandum applies also to *Shiffman v. Selective Service Local Board No. 5 et al.*, *supra*.

†This opinion applies also to *Shiffman v. Selective Service Local Board No. 5 et al.*, *supra*.

¹ "No judicial review shall be made of the classification or processing of any registrant by local boards, appeal boards, or the President, except as a defense to a criminal prosecution instituted under section 12 of this title, after the registrant has responded either affirmatively or negatively to an order to report for induction . . ."

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precludes pre-induction judicial review of action taken against the two applicants by their local draft boards. They seek stays of induction into the Armed Forces until this Court has acted on certiorari petitions they will file, arguing that § 10 (b) (3) is inapplicable or may not constitutionally be applied to require registrants either to forgo the exercise of First Amendment rights or to vindicate them by defending a criminal prosecution.²

Applicant Shiffman's Local Board declared him delinquent, canceled his II-A occupational deferment and reclassified him I-A after Shiffman had "turned in" his draft classification card to the Government in an anti-war protest. He was then ordered to report for induction. Applicant Zigmond was classified I-A, but, having reached the age of 26, should ordinarily not have been called for induction until younger eligible registrants in the draft pool had been taken (see 32 CFR § 1631.7). Nevertheless, he received a delinquency notice followed by his induction notice soon after "turning in" to the Government both his draft registration and classification certificates as a sign of protest.

² *Oestereich v. Selective Service Local Board No. 11*, certiorari granted, *ante*, p. 912, raises the same issue presented in these cases, *viz.*, whether § 10 (b) (3) may, consistent with the First Amendment, preclude judicial review of petitioner's punitive reclassification and order to report for induction made by his local board after petitioner had returned his Selective Service registration certificate to the Government as a protest against the war in Vietnam. Although the Solicitor General supported that petition on the ground that § 10 (b) (3) should not be construed to preclude judicial review of local board action terminating an express statutory exemption granted by Congress, the writ we issued was unrestricted. The question of the validity of § 10 (b) (3) in cases raising First Amendment defenses to reclassification and induction is now pending before this Court, and these cases clearly come within the rule of *Yasa v. Esperdy*, 80 S. Ct. 1366, and *Keith v. New York*, 79 S. Ct. 938, in which stays were granted because similar or identical issues were before the Court in other cases.

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I would grant the stays³ as I am unable to see any place in our constitutional system for Selective Service delinquency regulations employed to penalize or deter exercise of First Amendment rights.

The First Amendment means that whatever speech or protest a person makes, he may not, I submit, be taken by the neck by the Government and subjected to punishment, penalties, or inconveniences for making it.

³ The factors which we consider in passing upon stay applications include the likelihood that the case will command the vote of four Justices upon petition for certiorari (*Appalachian Power Co. v. American Institute of C. P. A.*, 80 S. Ct. 16 (MR. JUSTICE BRENNAN)); the likelihood of real and irreparable injury to the applicant if stay is denied (*Public Service Board of Vermont v. United States*, 87 S. Ct. 3 (MR. JUSTICE HARLAN)); *Long Beach Federal Savings & Loan Assn. v. Federal Home Loan Bank*, 76 S. Ct. 32 (MR. JUSTICE DOUGLAS)); the existence of an important question not previously passed on by the Court (*McLeod v. General Electric Co.*, 87 S. Ct. 5 (MR. JUSTICE HARLAN)); possible mootness occurring if a stay is denied (*In re Bart*, 82 S. Ct. 675 (MR. CHIEF JUSTICE WARREN)); and pendency of similar or identical issues before the Court in other cases (*Yasa v. Esperdy*, 80 S. Ct. 1366 (MR. JUSTICE HARLAN)); *Keith v. New York*, 79 S. Ct. 938 (MR. JUSTICE HARLAN)). And see *Rosenberg v. United States*, 346 U. S. 273, 289 (separate statement of Mr. Justice Frankfurter).

Although the Selective Training and Service Act of 1940 made no explicit provision for judicial review of the action of local boards, and in fact made their decisions "final," we found that Congress had not intended to deny all judicial review of a local board's action. Rather, we concluded, judicial review was available to the extent of determining in the criminal action whether there was any basis in fact for the classification given the registrant by his local board. *Estep v. United States*, 327 U. S. 114. We noted that we could "assume that where only one judicial remedy is provided, it normally would be deemed exclusive," 327 U. S., at 125. (Emphasis added.) We were not, however, then dealing with the question whether a restrictive review provision might itself offend the Constitution in circumstances where it operates to chill the effective exercise of First Amendment rights. See *Dombrowski v. Pfister*, 380 U. S. 479. That is the question which is presented here with respect to § 10 (b) (3).

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No. 232. UNITED STATES *v.* O'BRIEN; and

No. 233. O'BRIEN *v.* UNITED STATES, *ante*, p. 367. Motion of William Sloane Coffin, Jr., et al. for leave to file a brief, as *amici curiae*, after argument, denied. MR. JUSTICE MARSHALL took no part in the consideration or decision of this motion. *Abraham Goldstein, William P. Homans, Jr., Telford Taylor, and Leonard B. Boudin* on the motion.

No. 801. SPINELLI *v.* UNITED STATES. C. A. 8th Cir. The order of this Court of March 4, 1968, granting petition for certiorari, 390 U. S. 942, is modified so as to limit review in this Court to the question of the constitutional validity of the search and seizure. MR. JUSTICE MARSHALL took no part in the consideration or decision of this order.

No. 1590, Misc. LAUCHLI *v.* UNITED STATES. Motion for leave to file petition for writ of habeas corpus denied.

No. 1532, Misc. FAIR *v.* SUPREME COURT OF FLORIDA ET AL. Motion for leave to file petition for writ of mandamus denied.

Certiorari Granted. (See also No. 791, Misc., *ante*, p. 464; and No. 798, Misc., *ante*, p. 470.)

No. 1266. ZENITH RADIO CORP. *v.* HAZELTINE RESEARCH, INC., ET AL. C. A. 7th Cir. Certiorari granted. *Thomas C. McConnell* and *Francis J. McConnell* for petitioner. *John T. Chadwell, M. Hudson Rathburn, and Laurence B. Dodds* for respondents. Reported below: 388 F. 2d 25.

No. 1339. NATIONAL LABOR RELATIONS BOARD *v.* STRONG, DBA STRONG ROOFING & INSULATING CO. C. A. 9th Cir. Certiorari granted. *Solicitor General Griswold, Arnold Ordman, Dominick L. Manoli, and Norton J.*

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Come for petitioner. *William B. Carman* and *Charles G. Bakaly, Jr.*, for respondent. Reported below: 386 F. 2d 929.

No. 585, Misc. *PALMIERI v. FLORIDA*. Sup. Ct. Fla. Motion for leave to proceed *in forma pauperis* granted. Certiorari granted and case transferred to appellate docket. *Earl Faircloth*, Attorney General of Florida, and *Harold Mendelow*, Assistant Attorney General, for respondent. Reported below: 198 So. 2d 633.

Certiorari Denied.

No. 1249. *SIDARY, AKA SIDNEY v. UNITED STATES*. C. A. 10th Cir. Certiorari denied. *Walter G. Stumbo* and *John E. Stumbo* for petitioner. *Solicitor General Griswold*, *Assistant Attorney General Vinson*, and *Beatrice Rosenberg* for the United States. Reported below: 387 F. 2d 698.

No. 1302. *FITZGERALD v. CATHERWOOD, INDUSTRIAL COMMISSIONER OF NEW YORK*. C. A. 2d Cir. Certiorari denied. *Bernard H. Fitzpatrick* for petitioner. *Louis J. Lefkowitz*, Attorney General of New York, *Samuel A. Hirshowitz*, First Assistant Attorney General, and *Joel Lewittes*, Assistant Attorney General, for respondent. Reported below: 388 F. 2d 400.

No. 1307. *JULES HAIRSTYLISTS OF MARYLAND, INC., ET AL. v. UNITED STATES ET AL.* C. A. 4th Cir. Certiorari denied. *Paul B. Engel* for petitioners. *Solicitor General Griswold*, *Assistant Attorney General Rogovin*, and *Crombie J. D. Garrett* for the United States et al.

No. 1309. *KRESGE FOUNDATION v. LOUIS SCHLESINGER Co.* C. A. 3d Cir. Certiorari denied. *Robert P. Douglass* for petitioner. *William L. Greenbaum* for respondent. Reported below: 388 F. 2d 208.

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No. 1311. *McGANN, ADMINISTRATOR v. DISTRICT OF COLUMBIA*. C. A. D. C. Cir. Certiorari denied. *James P. Burns* for petitioner. *Charles T. Duncan, Hubert B. Pair, Richard W. Barton, and David P. Sutton* for respondent.

No. 1313. *BANK OF THE SOUTHWEST NATIONAL ASSOCIATION, HOUSTON, TRUSTEE v. PHINNEY, DISTRICT DIRECTOR OF INTERNAL REVENUE*. C. A. 5th Cir. Certiorari denied. *Charles W. Hall* for petitioner. *Solicitor General Griswold, Assistant Attorney General Rogovin, and Howard J. Feldman* for respondent. Reported below: 392 F. 2d 680.

No. 1314. *INTERNATIONAL BROTHERHOOD OF BOILERMAKERS, IRON SHIPBUILDERS, BLACKSMITHS, FORGERS & HELPERS v. BRASWELL*. C. A. 5th Cir. Certiorari denied. *Louis Sherman* for petitioner. *Robert E. McDonald, Jr.*, for respondent. Reported below: 388 F. 2d 193.

No. 1315. *DUNCAN v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. *John J. Flynn* for petitioner. *Solicitor General Griswold, Assistant Attorney General Vinson, and Beatrice Rosenberg* for the United States. Reported below: 392 F. 2d 539.

No. 1319. *HAGERTY v. LOUISIANA*. Sup. Ct. La. Certiorari denied. *G. W. Gill, Sr.*, for petitioner. Reported below: 251 La. 477, 205 So. 2d 369.

No. 1323. *BARBEE ET AL. v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. *Hume Cofer and John D. Cofer* for petitioners. *Solicitor General Griswold, Assistant Attorney General Vinson, Beatrice Rosenberg, and Paul C. Summitt* for the United States. Reported below: 392 F. 2d 532.

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No. 1351. *MOGGE ET AL. v. DISTRICT NO. 8, INTERNATIONAL ASSOCIATION OF MACHINISTS, AFL-CIO*. C. A. 7th Cir. Certiorari denied. *Barnabas F. Sears* for petitioners. *Sheldon M. Charone* for respondent. Reported below: 387 F. 2d 880.

No. 1072. *HOLMES v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. *Kenneth S. Jacobs* for petitioner. *Solicitor General Griswold, Assistant Attorney General Vinson, and Beatrice Rosenberg* for the United States. Reported below: 387 F. 2d 781.

Memorandum of MR. JUSTICE STEWART.

This case, like *Hart v. United States*, No. 1044, Misc., *post*, p. 956, involves the power of Congress, when no war has been declared, to enact a law providing for a limited period of compulsory military training and service, with an alternative of compulsory domestic civilian service under certain circumstances. It does not involve the power, in the absence of a declaration of war, to compel military service in armed international conflict overseas. If the latter question were presented, I would join MR. JUSTICE DOUGLAS in voting to grant the writ of certiorari.

MR. JUSTICE DOUGLAS, dissenting.

Petitioner, who describes himself as a Jehovah's Witnesses minister, was classified by his Selective Service Appeal Board in August 1965 as a conscientious objector. See § 6 (j) of the Universal Military Training and Service Act of 1948, 62 Stat. 612 (now the Military Selective Service Act of 1967), as amended, 81 Stat. 104, 50 U. S. C. App. § 456 (j) (1964 ed., Supp. III). Under § 6 (j), as it read during all dates relevant to this case, a conscientious objector who, like petitioner, is also opposed to non-combatant military service, may in lieu of induction "be ordered by his local board . . . to perform . . . such civilian

work contributing to the maintenance of the national health, safety, or interest as the local board may deem appropriate" Beginning in October 1965 petitioner and his Local Board exchanged a series of letters in which the Board explained to petitioner the types of civilian work available and petitioner asserted his religious scruples against serving the United States Government in any capacity, including civilian work programs. Petitioner reiterated this position in a personal meeting with his Local Board.

On February 7, 1966, the Board sent petitioner an order to report on February 21 to an Illinois state hospital for civilian work assignment. However, on the day he was due to report, petitioner notified the Board that he refused to do so for religious reasons.

By indictment, petitioner was charged with willful failure to report as ordered, in violation of § 12 (a) of the Act.¹ At his nonjury trial petitioner moved for judgment of acquittal. That motion was denied, petitioner was convicted and sentenced to three years' imprisonment, and the Court of Appeals affirmed, one judge dissenting. *United States v. Holmes*, 387 F. 2d 781 (C. A. 7th Cir.).

Petitioner asks this Court to decide whether a draft² of men into the Armed Forces in time of peace is con-

¹ Section 12 (a) provides in part: "Any member of the Selective Service System . . . charged as herein provided with the duty of carrying out any of the provisions of this title, or the rules or regulations made or directions given thereunder, who shall knowingly fail or neglect to perform such duty . . . shall, upon conviction in any district court of the United States of competent jurisdiction, be punished by imprisonment for not more than five years or a fine of not more than \$10,000, or by both"

² There is no permissible distinction between men conscripted for armed, combatant service overseas and those drafted for civilian work. Initially, the Government purports to uphold the conscription both of combatants for armed service and conscientious objectors

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stitutionally permissible. In the absence of a declaration of war, he argues, a draft is not authorized and is equivalent to involuntary servitude. The Court of Appeals held that Congress' power to conscript men into the Armed Forces was not so limited, and the Government, opposing certiorari, states that "[e]ven assuming that the present time is one of 'peace,' it has long been settled that the power to raise armies by conscription is not limited to periods of war or national emergency," citing *United States v. Henderson*, 180 F. 2d 711 (C. A. 7th Cir.), cert. denied, 339 U. S. 963, and *Etcheverry v. United States*, 320 F. 2d 873 (C. A. 9th Cir.), cert. denied, 375 U. S. 930.

It is clear from our decisions that conscription is constitutionally permissible when there has been a declaration of war. But we have never decided whether there may be conscription in absence of a declaration of war. Our cases suggest (but do not decide) that there may not be.

In *Hamilton v. Regents of the University of California*, 293 U. S. 245, 265, Mr. Justice Cardozo, concurring (joined by Justices Brandeis and Stone), indicated that "governmental power in the exaction of military service when the nation is at peace" was an open question.

for "civilian work" under the same source of power—Congress' war power and power to raise armies. Moreover, the loss of liberty for a conscientious objector drafted into civilian work is not appreciably less than that suffered by the combatant soldier. Except in unusual cases, the Local Board will not permit the conscientious objector to fulfill his work obligation in his home town (32 CFR § 1660.21 (a)). The conscientious objector may indeed be ordered to do civilian work overseas (32 CFR § 1660.31 (b)). There is nothing in the Act or regulations which precludes assigning the conscientious objector to civilian work in a theater of war, where his personal safety is imperiled. If he does not perform the assigned work "satisfactorily," he faces prosecution (32 CFR § 1660.31 (a)).

At the time Mr. Justice Cardozo wrote (1934) the Selective Draft Act of 1917, 40 Stat. 76, had been tested in this Court and its validity and congressional power to conscript men for military service upheld. This Act, however, was enacted May 18, 1917, *after* Congress had declared war on the German Empire on April 6, 1917. (S. J. Res. No. 1, 65th Cong., 40 Stat. 1.) Thus, the Court had no occasion to reach the problem of drafting men in a technical time of peace, that is, a period not covered by declaration of war. *Selective Draft Law Cases*, 245 U. S. 366. There the Court stated that the basis of congressional power to conscript had to be found in its Art. I, § 8, power to "make rules for the government and regulation of the land and naval forces," to "raise and support armies," and "to declare war." *Id.*, at 377.

None of the decisions prior to the *Selective Draft Law Cases* touches directly on the power to conscript in peacetime, and the reason would appear to be that prior to 1917 the Congress had not enacted a true conscription or draft provision. In 1794 and 1797 Congress enacted measures authorizing the President to require state governors to organize a militia. (1 *Selective Service System, Backgrounds of Selective Service*, Vol. 1, 59-60 (1947).) In 1814 President Madison by his Secretary of War, James Monroe, proposed a form of draft into the federal army which would raise some 80,000 recruits for two years' service. (6 *Brant, James Madison* 337 (1961); 2 *Selective Service System, The Selective Service Act*, Vol. III, App. A, 143 (1954).) A bill along this line passed the Senate, 19 to 12, but was defeated in the House (6 *Brant*, at 349, 359-360),³ and the War of 1812 was completed with use of volunteers and the state militia.

³ The House bill required classification of all free, white males 18 to 45 into groups of 25 men. Each group would have to provide one recruit. Under Monroe's version, if this was not done, the recruit

The Civil War provision, the Enrollment Act of 1863, 12 Stat. 731, was the first enactment resembling what can be called a "draft" provision.⁴ It created, however, a "draft" on paper only. Under § 13 of the Enrollment Act enrollees could procure a substitute to avoid service

would be chosen by draft, but the drafted man could provide a substitute. (2 Selective Service System, *The Selective Service Act*, Vol. III, App. A, 145.) Under the House version failure to provide the recruit resulted in a monetary forfeiture levied on each member of the group. (*Id.*, at 153-154.) Daniel Webster strenuously argued in the House of Representatives that the draft bill was unconstitutional. He noted that the draft power claimed for Congress by Madison and Monroe was not limited to time of war or invasion and would permit a draft of men for any type of military service, at home or abroad, at the discretion of the Government. (Daniel Webster, *Speech Against the Conscription Bill*, House of Representatives, December 9, 1814, in L. Schlissel ed., *Conscience in America* 67 (1968). And see 86 Cong. Rec. App. 5210.) "Who will show me," he argued, "any constitutional injunction, which makes it the duty of the American people to surrender every thing valuable in life, & even life itself, not when the safety of their country & its liberties may demand the sacrifice, but whenever the purposes of an ambitious & mischievous Government may require it? Sir, I almost disdain to go to quotations & references to prove that such an abominable doctrine has no foundation in the Constitution of the country." (*Id.*, at 68.)

⁴ The Act of 1863 provided in § 1, "That all able-bodied male citizens of the United States, and persons of foreign birth who shall have declared on oath their intention to become citizens under and in pursuance of the laws thereof, between the ages of twenty and forty-five years, except as hereinafter excepted, are hereby declared to constitute the national forces, and shall be liable to perform military duty in the service of the United States when called out by the President for that purpose."

The country was divided up into enrollment districts, and enrollment officers made up two types of lists: class No. 1 consisting of all unmarried eligible enrollees plus others 20 to 35; class No. 2 consisting of the others. Men could be called up during a two-year period following the July after their enrollment and would have to serve up to three years. A pecking-order for draft purposes was

or buy their way out for \$300 or less. The result was that "[t]he poor hired themselves to serve for the well-to-do, as the law contemplated; then a flourishing traffic in substitution blossomed out" (Backgrounds of Selective Service, *supra*, at 66.) The Act procured only 6% of the total manpower for the North in the war: 46,000 conscripts and 118,000 substitutes. See J. Randall & D. Donald, *The Civil War and Reconstruction* 315 (2d ed. 1961); and see Brandon, *Where the Action Was in 1863*, *The Progressive*, April 1968, at 19, and J. McCague, *The Second Rebellion* (1968), discussing extensive riots ignited by the 1863 Conscription Act.

The Act of 1863 was never directly attacked in this Court, and thus no opportunity to weigh the significance of the absence of a declaration of war (see the *Prize Cases*, 2 Black 635) arose. Many years later this Court twice suggested in dicta that the Act of 1863 was valid, but the absence of a declaration of war was not considered.⁵ These dicta would have particularly little weight

compiled on a draw or lottery-type system. The President would inform each enrollment district of its conscription quota. Exemptions were given the physically and mentally handicapped and sole surviving sons of widows, widowers with young dependent children, etc.

⁵ In the *Selective Draft Law Cases*, 245 U. S. 366, 388, the Court said: "Cogency, however, if possible, is added to the demonstration by pointing out that in the only case to which we have been referred where the constitutionality of the Act of 1863 was contemporaneously challenged on grounds akin to, if not absolutely identical with, those here urged, the validity of the act was maintained for reasons not different from those which control our judgment. (*Kneedler v. Lane*, 45 Pa. St. 238.)" In *Lichter v. United States*, 334 U. S. 742, 757, n. 4, the Court said: "The draft was put in force both by the Union and by the Confederacy during the Civil War and its validity was sustained by the courts in both North and South. 'The power of coercing the citizen to render military service, is indeed a transcendent power, in the hands of any government; but so far from being inconsistent with liberty, it is essential

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in view of the fact that what the 1863 Act created was not a true "draft" as we understand that term today.

Dicta in three post-Civil War cases indicated in a broad sense that the Court believed the Congress had power to enact a draft. *Tarble's Case*, 13 Wall. 397; *Street v. United States*, 133 U. S. 299; and *In re Grimley*, 137 U. S. 147. But none of these cases factually concerned conscription, and there is no reason to believe that the Court, in indicating that conscription could be valid, had in mind a peacetime draft.

During the Spanish-American War no draft provision was enacted—Congress merely called for a volunteer army. Apart from certain laws reorganizing the national militia, it was not until the Selective Draft Act of 1917 that Congress provided for conscription into the Regular Army.

Accordingly, Mr. Justice Cardozo's statement in *Hamilton* that Congress' power to institute a peacetime draft was an open question is vindicated by the pre-1934 decisions of this Court. Turning to post-1934 decisions of this Court, the same conclusion follows. The Act of 1917 was superseded by the Selective Training and Service Act of 1940, 54 Stat. 885. No decision directly attacking the constitutional basis of congressional power to conscript, as exercised in the 1940 Act, came before this Court. In those decisions involving application of the Act, the attempt to induct the potential soldier had occurred after the declaration of war with Japan on December 8, 1941 (55 Stat. 795), so that the issue of a peacetime draft was not before the Court. Thus, in *Billings v. Truesdell*, 321 U. S. 542, where a 1942 induction was in issue, the Court stated: "We have no doubt of the power of Congress to

to its preservation.'" The *Lichter* case itself did not concern a conscription act, but rather statutes enacted in 1942-1945 providing for recovery of excessive wartime profits, applied in that case to 1942-1943 earnings. Peacetime exercise of the war power was, therefore, not involved in *Lichter*.

enlist the manpower of the nation *for the prosecution of the war* and to subject to military jurisdiction those who are unwilling, as well as those who are eager, to come to the defense of their nation in its hour of peril." *Id.*, at 556. (Emphasis added.)

In 1948 the Act of 1940 was superseded by the Universal Military Training and Service Act, 62 Stat. 604, which in turn forms the basis of the current draft law, the Military Selective Service Act of 1967, 81 Stat. 100, 50 U. S. C. App. § 451 *et seq.* (1964 ed., Supp. III). No direct attack was made in this Court on the power of Congress to conscript, as exercised in the 1948 Act, but application of the Act was before the Court in two Korean War period cases. *Orloff v. Willoughby*, 345 U. S. 83, concerned a petitioner called up under the doctors' draft provisions of the Act who demanded that he either be commissioned an officer and assigned medical duties in the area of his specialty or released. The doctor was inducted on July 26, 1951, before the effective date of termination of our state of war with either Germany (October 19, 1951) or Japan (April 28, 1952). No question of unlawful peacetime draft was raised or alluded to in the case.

United States v. Nugent, 346 U. S. 1, concerned the procedures for administrative appeal of those claiming to be conscientious objectors, one of the petitioners having been called for induction in November 1951 and the other in February 1952. The Court said:

"The Selective Service Act is a comprehensive statute designed to provide an orderly, efficient and fair procedure to marshal the available manpower of the country, to impose a common obligation of military service on all physically fit young men. It is a valid exercise of the *war power*. It is calculated to function—it functions today—in times of peril." *Id.*, at 9, decided June 8, 1953. (Emphasis added.)

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In that case the declaration of war against Japan in 1941 still had effect at the time of petitioners' induction, although there had been no declaration of war accompanying the Korean conflict.⁶

The Court has held that "[w]ar does not cease with a cease-fire order . . ." *Ludecke v. Watkins*, 335 U.S. 160, 167. It "continues for the duration of [the] emergency" (*Woods v. Miller Co.*, 333 U.S. 138, 141), and empowers the Government "to guard against the immediate renewal of the conflict." *Hamilton v. Kentucky Distilleries Co.*, 251 U.S. 146, 161 (quoting from *Stewart v. Kahn*, 11 Wall. 493, 507). In the *Kentucky Distilleries* case the Court indicated that war powers endure for some purposes until the treaty of peace is effective.⁷ If, for the

⁶ Cf. *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 642, where Mr. Justice Jackson, concurring, said:

"[N]o doctrine that the Court could promulgate would seem to me more sinister and alarming than that a President whose conduct of foreign affairs is so largely uncontrolled, and often even is unknown, can vastly enlarge his mastery over the internal affairs of the country by his own commitment of the Nation's armed forces to some foreign venture."

⁷ The Court has used different tests to determine when war has ended depending on the nature of the war power sought to be exercised. In *Lee v. Madigan*, 358 U.S. 228, involving a prohibition of the Articles of War against court-martial trials for rape or murder committed in the United States "in time of peace," and in *Reid v. Covert*, 354 U.S. 1, 33-35 (opinion of BLACK, J.), concerning court-martial jurisdiction of civilians abroad, the war was said to have ended with the cessation of hostilities. In respect to seizure and removal of aliens from this country, *Ludecke v. Watkins*, 335 U.S. 160; summary exclusion of aliens without hearing, *Knauff v. Shaughnessy*, 338 U.S. 537; imposition of housing and rent controls, *Woods v. Miller Co.*, 333 U.S. 138; and conserving manpower by forbidding liquor, *Hamilton v. Kentucky Distilleries Co.*, 251 U.S. 146, the Court has held that "war" extends beyond the cessation of hostilities. In *Knauff* the Court said as recently as 1950 that we were then in a state of war. 338 U.S., at 546. Because no decision of this Court

purposes of the draft, war continues until the treaty is effective, the attempted inductions of the petitioners in the *Nugent* case were manifestly not peacetime inductions.

In World War II Germany surrendered May 8, 1945, and Japan surrendered September 2, 1945. See *Lee v. Madigan*, 358 U. S. 228, 230. On December 31, 1946, the President proclaimed the cessation of hostilities, declaring that a state of war still existed. (12 Fed. Reg. 1.) Congress declared the state of war with Germany terminated on October 19, 1951 (H. J. Res. 289, 65 Stat. 451) and the President proclaimed the same on October 24, 1951 (66 Stat. c3). The effective date of termination of a state of war with Japan was April 28, 1952, when the Japanese Peace Treaty took effect (66 Stat. c31). See *Lee v. Madigan*, 358 U. S. 228, 230.

Mr. Justice Cardozo's question about peacetime draft seems, therefore, to be an open one still. While some decisions suggest that war powers may be exercised in an "emergency" prior to declaration of war, *e. g.*, *Silesian-American Corp. v. Clark*, 332 U. S. 469, 476, there are other decisions directly linking the power of conscription to Congress' power under Art. I, § 8, cl. 11, to "declare war."⁸ For example, in *United States v. Mac-*

has faced the question directly of the need for a declaration of war to uphold conscription, no decision indicates when "war" ends for draft purposes.

⁸ The case against the constitutionality of a peacetime draft is forcefully argued in a lawyers' brief on the subject which Senator Wheeler had printed in the Congressional Record when Congress was debating the bill that became the Selective Service Act of 1940. The argument, praised by Senator Wheeler as a "real contribution" to the debate, reviews the history of conscription in England prior to the American Revolution, concludes that peacetime draft was not tolerated there, and urges that the Framers of the Constitution intended Congress to "raise armies" in the manner by which they were raised in England. 86 Cong. Rec. App. 5206-5210. Jefferson

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intosh, 283 U. S. 605, the Court said: "In express terms Congress is empowered 'to declare war,' which necessarily connotes the plenary power to wage war with all the force necessary to make it effective; and 'to raise . . . armies,' which necessarily connotes the like power to say who shall serve in them and in what way." *Id.*, at 622.

This Court has not reached the merits of the question which I have been discussing since the *Prize Cases*, 2 Black 635, decided in 1863. Even though Lincoln was putting down an insurrection within the country, the Court was divided five-to-four, Mr. Chief Justice Taney

stated in 1777 in a letter to John Adams: "Our people, even under the monarchical government, had learned to consider it [the draft] as the last of all oppressions." *Jeffersonian Cyclopedia* 263 (1900).

Chief Justice Taney said of the congressional power "to raise and support armies": "[T]he words themselves, even if they stood alone, will not, according to their known and established use and meaning in the English language, justify this construction [permitting conscription].

"During the period when the United States were English Colonies, the Army of England,—the standing army,—was always raised by voluntary enlistments,—and the right to coerce all the able bodied subjects of the Crown into the ranks of the Army and subject them to military law, was not claimed or exercised by the English government—and when the power to raise and support armies was delegated to Congress [by the States], the words of the grant necessarily implied that they were to be raised in the usual manner.—And the general government has always heretofore so understood them and has uniformly by its own officers recruited the ranks of its 'land forces' by voluntary enlistments for a specified period." Taney, *Thoughts on the Conscription Law of the U. States—Rough Draft Requiring Revision*, in P. Auchampaugh ed., *A Great Justice on State and Federal Power*, 18 *Tyler's Quarterly Historical & Genealogical Magazine* 72, 81 (1936). See also *Kneedler v. Lane*, 45 Pa. 238, 254–255 (concurring opinion of Woodward, J.); F. Black, *The Selective Draft Cases—A Judicial Milepost on the Road to Absolutism*, 11 B. U. L. Rev. 37 (1931).

and Justices Catron, Clifford, and Nelson ⁹ voting that the President alone had no power to place an embargo under which a British ship was seized while in Hampton Roads.

Putting down an internal insurrection, like defending our shores against an aggressor, is certainly quite different from launching hostilities against a nation or a people overseas.¹⁰ I express no opinion on the merits.

⁹ The dissent by Mr. Justice Nelson, which the other three joined, stated:

"I am compelled to the conclusion that no civil war existed between this Government and the States in insurrection till recognized by the Act of Congress 13th of July, 1861; that the President does not possess the power under the Constitution to declare war or recognize its existence within the meaning of the law of nations, which carries with it belligerent rights, and thus change the country and all its citizens from a state of peace to a state of war; that this power belongs exclusively to the Congress of the United States and, consequently, that the President had no power to set on foot a blockade under the law of nations, and that the capture of the vessel and cargo in this case, and in all cases before us in which the capture occurred before the 13th of July, 1861, for breach of blockade, or as enemies' property, are illegal and void, and that the decrees of condemnation should be reversed and the vessel and cargo restored." 2 Black 698-699.

¹⁰ See *United States v. Smith*, 27 Fed. Cas. 1192 (No. 16,342) (C. C. D. N. Y. 1806). The defendant was charged with helping outfit a military expedition against a foreign nation with which the United States was at peace. (See 1 Stat. 384.) As one defense, he proposed to call witnesses who would prove that the President had consented to the military venture against Spanish holdings in South America. The report of the case contains an extensive, scholarly debate between counsel on the President's power to himself order a foreign invasion.

A two-judge court, speaking through Paterson, J., held that the Constitution, "which measures out the powers and defines the duties of the president, does not vest in him any authority to set on foot a military expedition against a nation with which the United States are at peace." (At 1229-1230.) "Does he possess the power of

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But there is a weighty view that what has transpired respecting Vietnam is unconstitutional, absent a declaration of war; that the Tonkin Gulf Resolution is no constitutional substitute for a declaration of war; that the making of appropriations was not an adequate substitute; and that "executive war-making is illegal." Those are the views of Francis D. Wormuth in *The Vietnam War: The President versus the Constitution* (1968).¹¹ Many share his views.¹² Another professor has recently pointed out the serious deleterious effects in the country stemming from the Court's failure to decide whether the President may constitutionally wage a foreign war in Vietnam without a declaration of war by Congress. Hughes, *Civil Disobedience and the Political Question Doctrine*, 43 N. Y. U. L. Rev. 1 (1968). In these types of cases, he says, "to deny certiorari, to dismiss suits without

making war? That power is exclusively vested in Congress [T]he executive magistrate . . . and commander-in-chief of the forces by sea and land [may] . . . repel an invading foe. But to repel aggressions and invasions is one thing, and to commit them against a friendly power is another. . . . There is a manifest distinction between our going to war with a nation at peace, and a war being made against us by an actual invasion, or a formal declaration. In the former case, it is the exclusive province of congress to change a state of peace into a state of war. A nation, however, may be in such a situation as to render it more prudent to submit to certain acts of a hostile nature, and to trust to negotiations for redress, than to make an immediate appeal to arms. Various considerations may induce to a measure of this kind; such as motives of policy, calculations of interest, the nature of the injury and provocation, the relative resources, means and strength of the two nations, &c. and, therefore, the organ intrusted with the power to declare war, should first decide whether it is expedient to go to war, or to continue in peace" (At 1230-1231.)

¹¹ An Occasional Paper published by the Center for the Study of Democratic Institutions, Santa Barbara, California.

¹² There are of course opposed views; and many *pros* and *cons* of the issue are canvassed in *The Vietnam War and International Law* (Amer. Soc. Int. Law, R. Falk ed.) also published in 1968.

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a reasoned opinion has a tendency to arouse suspicion that the Court is simply shrinking from making pronouncements about the basic norms of the [constitutional] system." *Id.*, at 18. If an executive war is unconstitutional, he says, but the Court refuses to invalidate it, then the President's "conduct strengthens the moral case for disobeying executive orders which stem from his departure from constitutional demands." *Id.*, at 19.

As I said, the question whether there can be conscription when there has not been a declaration of war, has never been decided by this Court. It is an important question. It is a recurring question. It is coming to us in various forms in many cases as a result of the conflict in Vietnam. I think we owe to those who are being marched off to jail for maintaining that a declaration of war is essential for conscription an answer to this important undecided constitutional question.

I would therefore grant certiorari in this case.

No. 1276. *DANILA ET AL. v. DOBREA, EXECUTOR*. Sup. Ct. Ohio. Certiorari denied. *John R. Vintilla* for petitioners. *John J. Sibisan* for respondent.

MR. JUSTICE DOUGLAS, with whom MR. JUSTICE BLACK concurs, dissenting.

Respondent was appointed by an Ohio probate court executor of the estate of John Danila, whose will left over \$40,000 to the seven petitioners, relatives of Danila's residing in Romania. The residue, securities constituting the greater part of the estate, was left to two charities and a friend of the deceased. Respondent notified petitioners by mail of the administration, and they employed Ohio counsel, who communicated with counsel for respondent and filed with the probate court a formal appearance. One month later respondent filed his final

accounting and proposed plan of distribution, which charged to petitioners costs of administration and taxes; and respondent moved to be appointed testamentary trustee over the gifts to petitioners. A hearing date was set, but the only notice thereof was by publication. There was no personal notification to either petitioners or their attorney, although respondent knew how to reach them. The distribution proposed by respondent was then approved by the probate court.

Petitioners moved to set aside the final probate court order on the ground that notice by publication was constitutionally insufficient. In denying that motion, the probate court did not consider the due process question, but merely held that two arguments by which petitioners attacked the plan of distribution on the merits were frivolous. His order denying relief was affirmed.

The constitutional question raised here is whether petitioners, once having been notified by the executor that administration was under way, were entitled to actual notice (see *Mullane v. Central Hanover Tr. Co.*, 339 U. S. 306) of the hearing on final distribution and of the ancillary proceedings to appoint respondent trustee over their property. A similar issue was raised in *Hanner v. DeMarcus*, 390 U. S. 736. As I indicated in my dissent there, the question is a substantial one which should be decided by this Court.

It is said that the probate court in effect reopened the administration by considering at the hearing on motion to reopen certain arguments of petitioners' going to the merits. Nothing in the record, however, suggests that petitioners had a full hearing on the merits at this time, nor even that petitioners had any reason to believe that this hearing, ostensibly on the constitutional adequacy of the notice by publication, was the appropriate time to raise such points. (Compare *In re Ruffalo*, 390 U. S. 544.)

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There seems to be some basis for believing that the case is a relic of the Cold War and that petitioners were discriminated against in the administration of this estate because of their Romanian citizenship (cf. *Zschernig v. Miller*, 389 U. S. 429), since the pretext for naming the trustee was to ascertain the addresses of the Romanian legatees, already known to their counsel who had appeared for them. In any event, there should be a hearing on the merits, to determine *inter alia*, whether this Ohio probate judge was formulating American foreign policy as was the state judge in *Zschernig v. Miller*.

I would grant certiorari.

No. 1305. *LAPENIEKS v. IMMIGRATION AND NATURALIZATION SERVICE*. C. A. 9th Cir. Certiorari denied. MR. JUSTICE DOUGLAS is of the opinion that certiorari should be granted. *Robert D. Hornbaker* for petitioner. *Solicitor General Griswold*, *Assistant Attorney General Vinson*, and *Beatrice Rosenberg* for respondent. Reported below: 389 F. 2d 343.

No. 1327. *FLOERSHEIM ET AL. v. POWERS, DIRECTOR OF THE DEPARTMENT OF PROFESSIONAL AND VOCATIONAL STANDARDS OF CALIFORNIA*. Ct. App. Cal., 2d App. Dist. Certiorari denied. THE CHIEF JUSTICE took no part in the consideration or decision of this petition. *Murray M. Chotiner* for petitioners. *Thomas C. Lynch*, Attorney General of California, and *Warren H. Deering*, Deputy Attorney General, for respondent. Reported below: 256 Cal. App. 2d 223, 63 Cal. Rptr. 913.

No. 1435, Misc. *MEEK v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. *Solicitor General Griswold*, *Assistant Attorney General Vinson*, *Beatrice Rosenberg*, and *Edward Fenig* for the United States. Reported below: 388 F. 2d 936.

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No. 1375. *McMURRAY v. WENDELKEN*. C. A. 5th Cir. Certiorari denied. MR. JUSTICE BLACK is of the opinion that the Court of Appeals denied petitioner the benefit of controlling Mississippi law in reversing the judgment and directing dismissal of the case. *John Joseph Leahy* for petitioner. *David Cottrell, Jr.*, for respondent. Reported below: 388 F. 2d 553.

No. 722, Misc. *HINCKLEY ET AL. v. TUTUSKA, SHERIFF*. Ct. App. N. Y. Certiorari denied. *Michael F. Dillon* for respondent.

No. 868, Misc. *GOTTSCHALK v. CALIFORNIA*. App. Dept., Super. Ct. Cal., County of Orange. Certiorari denied. *David R. Cadwell* for petitioner.

No. 1177, Misc. *BUTLER v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. *Solicitor General Griswold*, *Assistant Attorney General Vinson*, and *Beatrice Rosenberg* for the United States. Reported below: 384 F. 2d 522.

No. 1411, Misc. *HAMLETT v. UNITED STATES*. C. A. D. C. Cir. Certiorari denied. *Solicitor General Griswold*, *Assistant Attorney General Vinson*, *Beatrice Rosenberg*, and *Mervyn Hamburg* for the United States.

No. 1426, Misc. *FINN v. COMSTOCK, CONSERVATION CENTER SUPERINTENDENT*. C. A. 9th Cir. Certiorari denied.

No. 1430, Misc. *COLE v. RUSSELL, WARDEN*. C. A. 6th Cir. Certiorari denied. *Philip M. Carden* for petitioner. *George F. McCanless*, Attorney General of Tennessee, for respondent.

No. 1436, Misc. *RODRIGUEZ v. CALIFORNIA*. Ct. App. Cal., 4th App. Dist. Certiorari denied.

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No. 1441, Misc. FRANKLIN *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 1442, Misc. LESER *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. *Solicitor General Griswold* for the United States. Reported below: 390 F. 2d 634.

No. 1443, Misc. LEAKE *v.* VIRGINIA. Sup. Ct. App. Va. Certiorari denied.

No. 1447, Misc. WATSON *v.* COMMON PLEAS COURT OF PHILADELPHIA ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 385 F. 2d 401.

No. 1452, Misc. DeBERRY *v.* SOUTH CAROLINA. Sup. Ct. S. C. Certiorari denied. *Matthew J. Perry* for petitioner. Reported below: 250 S. C. 314, 157 S. E. 2d 637.

No. 1453, Misc. DAVIS *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. *Solicitor General Griswold* for the United States.

No. 1456, Misc. HARSHAW *v.* CORPORATION COUNSEL FOR THE CITY OF FLINT ET AL. C. A. 6th Cir. Certiorari denied.

No. 1461, Misc. RHODES *v.* NEBRASKA. Sup. Ct. Neb. Certiorari denied.

No. 1481, Misc. COOPER ET AL. *v.* CALIFORNIA. Ct. App. Cal., 1st App. Dist. Certiorari denied. Reported below: 256 Cal. App. 2d 500, 64 Cal. Rptr. 282.

No. 1484, Misc. MOLL *v.* LAVALLEE, WARDEN. Ct. App. N. Y. Certiorari denied. *William Cahn* and *Henry P. DeVine* for respondent. Reported below: 21 N. Y. 2d 706, 234 N. E. 2d 698.

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No. 1482, Misc. SIEGAL *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. *Solicitor General Griswold, Assistant Attorney General Vinson, Beatrice Rosenberg, and Robert G. Maysack* for the United States. Reported below: 390 F. 2d 147.

No. 1494, Misc. PERKINS *v.* UNITED STATES. Ct. Cl. Certiorari denied. *Solicitor General Griswold* for the United States. Reported below: 174 Ct. Cl. 124.

No. 1495, Misc. GARCIA *v.* RHAY, PENITENTIARY SUPERINTENDENT. C. A. 9th Cir. Certiorari denied.

No. 1497, Misc. SAAG *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. *Bruce R. Jacob* for petitioner. *Solicitor General Griswold, Assistant Attorney General Vinson, and Beatrice Rosenberg* for the United States.

No. 1499, Misc. SMITH *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. *Philip Adams* for petitioner. *Solicitor General Griswold, Assistant Attorney General Vinson, and Beatrice Rosenberg* for the United States. Reported below: 389 F. 2d 564.

No. 1500, Misc. JIMINEZ *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied. *J. Evans Attwell* for petitioner. Reported below: 421 S. W. 2d 910.

No. 1502, Misc. LAMBUR *v.* VIRGINIA. Sup. Ct. App. Va. Certiorari denied.

No. 1505, Misc. BENSON *v.* STATE BOARD OF PAROLE AND PROBATION ET AL. C. A. 9th Cir. Certiorari denied. *Howard R. Lonergan* for petitioner. Reported below: 384 F. 2d 238.

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No. 1503, Misc. *DELLA VALLE v. WARDEN, CLINTON PRISON, ET AL.* App. Div., Sup. Ct. N. Y., 3d Jud. Dept. Certiorari denied.

No. 1506, Misc. *COLON v. UNITED STATES.* C. A. 2d Cir. Certiorari denied. *Solicitor General Griswold, Assistant Attorney General Vinson, Beatrice Rosenberg, and Robert G. Maysack* for the United States. Reported below: 388 F. 2d 449.

No. 1509, Misc. *HANSON v. OREGON.* Sup. Ct. Ore. Certiorari denied. *Edwin J. Peterson* for petitioner. *George Van Hoomissen* and *Jacob B. Tanzer* for respondent. Reported below: — Ore. —, 433 P. 2d 828.

No. 1511, Misc. *COPELAND v. FIRST FEDERAL SAVINGS & LOAN ASSOCIATION OF LAKE COUNTY ET AL.* Sup. Ct. Fla. Certiorari denied.

No. 1516, Misc. *FAIRCHILD v. CALIFORNIA.* Ct. App. Cal., 1st App. Dist. Certiorari denied. Reported below: 254 Cal. App. 2d 831, 62 Cal. Rptr. 535.

No. 1519, Misc. *PEMBERTON v. OHIO.* Sup. Ct. Ohio. Certiorari denied. *Lee C. Davies, Robert K. Lewis, Jr., and Louis A. Dirker* for petitioner. *James V. Barbuto* and *Stephan M. Gabalac* for respondent.

No. 1520, Misc. *OPPENHEIMER v. CALIFORNIA.* Ct. App. Cal., 2d App. Dist. Certiorari denied. *Caryl Warner* for petitioner.

No. 1523, Misc. *WEBB, AKA DAVIS v. CLINE ET AL.* C. A. 5th Cir. Certiorari denied. *John A. Nelson* for petitioner. *Julian D. Clarkson* and *Charles M. Roberts* for respondents.

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No. 1526, Misc. *WINKER v. BURKE*, WARDEN. Sup. Ct. Wis. Certiorari denied.

No. 1528, Misc. *BURNS v. NEW YORK*. Ct. App. N. Y. Certiorari denied. *George H. Rosen* for petitioner. *Robert C. Williams* for respondent. Reported below: 20 N. Y. 2d 814 and 941, 231 N. E. 2d 291, 233 N. E. 2d 463.

No. 1533, Misc. *WALTZ v. PORT*, U. S. DISTRICT JUDGE, ET AL. C. A. 2d Cir. Certiorari denied.

No. 1566, Misc. *TAYLOR v. COMSTOCK*, CONSERVATION CENTER SUPERINTENDENT. C. A. 9th Cir. Certiorari denied.

No. 1575, Misc. *CARR v. RUSSELL*, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 385 F. 2d 531.

No. 1702, Misc. *SPEERS ET AL. v. UNITED STATES*. C. A. 10th Cir. Certiorari denied. Reported below: 387 F. 2d 698.

No. 1044, Misc. *HART v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. *Mercer D. Tate* for petitioner. *Solicitor General Griswold*, *Assistant Attorney General Vinson*, and *Beatrice Rosenberg* for the United States. Reported below: 382 F. 2d 1020.

MR. JUSTICE DOUGLAS, dissenting.

In 1962 when petitioner was classified by his Local Board pursuant to the Universal Military Training and Service Act of 1948, 62 Stat. 604 (now the Military Service Act of 1967), as amended, 81 Stat. 100, 50 U. S. C. App. § 451 *et seq.* (1964 ed., Supp. III), he

sought classification both as a minister (see § 6 (g) and § 16 (g) of the Act) and as a conscientious objector (§ 6 (j)). In his classification questionnaire he described himself as an ordained minister of the Jehovah's Witnesses and stated he was opposed to war in any form and conscientiously objected to participation in noncombatant service in the Armed Forces. The Local Board, in February 1962, classified petitioner as a conscientious objector but denied the ministerial exemption. Petitioner did not seek administrative appeal.

Through October 1964 petitioner wrote a series of letters to the Board describing in more detail his activities as a minister and claiming religious objection to participation in civilian work projects which may be required of registrants classified as conscientious objectors.¹ He stated that under his religious beliefs he was no part of the world governed by secular political systems and could not accept work in a civilian program which substituted for military service. However, he did not formally request reopening of his classification.

On March 25, 1965, the Board mailed to petitioner an order to report to the Board on April 5, 1965, for instructions respecting a civilian work assignment at a state hospital. Petitioner failed to obey the order and was charged by indictment with willful failure to report, in

¹Section 6 (j) provides in part that a conscientious objector who is also opposed to noncombatant military service, shall in lieu of induction "be ordered by his local board, subject to such regulations as the President may prescribe, to perform . . . such civilian work contributing to the maintenance of the national health, safety, or interest as the local board may deem appropriate and any such person who knowingly fails or neglects to obey any such order from his local board shall be deemed . . . to have knowingly failed or neglected to perform a duty required of him under this title." This language is carried over with only slight modification into the 1967 Selective Service Act.

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violation of § 12 (a) of the Act.² At his nonjury trial, petitioner presented no evidence but moved for acquittal in part on the ground that civilian work under § 6 (j) of the Act could not constitutionally be required of him. The motion was denied, he was convicted and sentenced to four years' imprisonment, and the judgment was affirmed. *United States v. Hart*, 382 F. 2d 1020 (C. A. 3d Cir.) (*per curiam*).

Petitioner urges that the power of Congress under Art. I, § 8, of the Constitution to "raise and support armies" does not authorize a draft in time of peace. His argument is: "There is no declared war being conducted today by the United States; thus, the justifications usually given for the draft program, as in the *Selective Draft Law Cases*, 245 U. S. 366 (1918) are not applicable." The Government, in response, claims "[i]t has long been settled that the power to raise armies by conscription is not limited to wartime," and cites *United States v. Henderson*, 180 F. 2d 711 (C. A. 7th Cir.), cert. denied, 339 U. S. 963, and *Etcheverry v. United States*, 320 F. 2d 873 (C. A. 9th Cir.), cert. denied, 375 U. S. 930.

Petitioner's other contentions are that there was no basis in fact for the Local Board's denial of a minister's exemption, see *United States v. Seeger*, 380 U. S. 163, *Estep v. United States*, 327 U. S. 114; that his First Amendment rights to freedom of religion have been abridged; and that the congressional power to raise armies does not, as limited by the Necessary and Proper Clause

² Section 12 (a) provides in part: "Any member of the Selective Service System . . . charged as herein provided with the duty of carrying out any of the provisions of this title, or the rules or regulations made or directions given thereunder, who shall knowingly fail or neglect to perform such duty . . . shall, upon conviction in any district court of the United States of competent jurisdiction, be punished by imprisonment for not more than five years or a fine of not more than \$10,000, or by both . . ."

of Art. I, § 8, authorize draft of conscientious objectors for civilian work so long as there are men in the draft pool eligible for combatant service who are not called for induction.

The Government contends that petitioner does not have standing to attack denial of the minister's exemption because he did not take an administrative appeal of his classification by the Local Board. But the Government quite properly does not claim this bars judicial review of the peacetime draft issue; for it is clear that whatever effect the exhaustion of administrative remedies doctrine may have on the classification issues, it is wholly inapplicable to the constitutional question.

In the first place, at the time of petitioner's classification in February 1962 the question of constitutionality of a peacetime draft was not ripe for review. Petitioner had not then been called for induction and for all that was then known might never be called. It was on July 28, 1965, with the announcement of the President that the strength of our armed forces in Viet Nam would be increased from 75,000 to 125,000 men and monthly draft calls enlarged from 17,000 to 35,000 that the Nation as a whole first probably realized that the Southeast Asian conflict would result in an extensive peacetime draft at home. See 1 Weekly Compilation of Presidential Documents 15 (1965). The impact of the announcement was felt by a rise in number of inductions from 103,328 in 1965 to 343,481 in 1966. See Director of Selective Service, 1966 Annual Report 25 (1967). Petitioner himself had already been "drafted" by that time; but nothing in the Universal Military Training and Service Act or in the regulations promulgated pursuant to it makes the Local Board's March 25, 1965, order to petitioner to report for instructions on civilian work appealable.

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Secondly, the Appeal Boards in the Selective Service System do not appear to have jurisdiction to pass on constitutional questions; nor may registrants appeal such questions to them. Under 32 CFR § 1626.2 (a) the registrant may appeal his "classification" and the Appeal Board "shall classify the registrant" (32 CFR § 1626.26 (a)). The Appeal Board's jurisdiction is limited to review of decisions of the Local Boards (32 CFR § 1604.24), and nothing in the Act or Regulations indicates that Local Boards may pass on the constitutionality of a peacetime draft. It would be incongruous indeed to believe that Congress gave the Local Boards this power, since Congress itself specifically provided for a peacetime draft in § 4 (a) of the Act, which states in part: "The President is authorized, from time to time, *whether or not a state of war exists*, to select and induct into the Armed Forces of the United States for training and service . . . such number of persons as may be required to provide and maintain the strength of the Armed Forces." (Emphasis added.)

Thirdly, even if petitioner's Appeal Board could have considered the constitutional question raised here, it seems clear that an appeal on such ground would have been a futile gesture (see *Wolff v. Selective Service Local Board No. 16*, 372 F. 2d 817, 825 (C. A. 2d Cir.)), since it would be equivalent to asking the Selective Service System severely to undercut its own authority and to overrule itself (see *Public Utilities Commission of California v. United States*, 355 U. S. 534, 539; 3 Davis, Administrative Law § 20.04 (1958)). Accordingly, petitioner has standing to attack the peacetime draft.

The constitutional question presented is precisely the one tendered in *Holmes v. United States*, ante, p. 936. I have dissented from a denial of certiorari in that case. This petition should likewise be granted and the case put down for argument along with *Holmes v. United States*.

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No. 1419, Misc. *BEY v. UNITED STATES*. C. A. D. C. Cir. Certiorari denied. MR. JUSTICE MARSHALL took no part in the consideration or decision of this petition. *Solicitor General Griswold, Assistant Attorney General Vinson, and Beatrice Rosenberg* for the United States.

No. 1531, Misc. *TRIGG v. UNITED STATES*. C. A. 7th Cir. Motion for leave to amend petition granted. Certiorari denied. *John J. Cleary* for petitioner. *Solicitor General Griswold, Assistant Attorney General Vinson, Beatrice Rosenberg, and Edward Fenig* for the United States. Reported below: 392 F. 2d 860.

Rehearing Denied.

No. 1111. *JEHOVAH'S WITNESSES IN THE STATE OF WASHINGTON ET AL. v. KING COUNTY HOSPITAL UNIT No. 1 (HARBORVIEW) ET AL.*, 390 U. S. 598;

No. 1199, Misc. *MALDONADO v. BOARD OF VETERANS APPEALS*, 390 U. S. 1032; and

No. 1310, Misc. *SCHLETTE v. CALIFORNIA ADULT AUTHORITY ET AL.*, 390 U. S. 1044. Petitions for rehearing denied.

No. 73. *IN RE RUFFALO*, 390 U. S. 544. Petition for rehearing denied. MR. JUSTICE STEWART took no part in the consideration or decision of this petition.

No. 630. *UNITED STATES ET AL. v. COLEMAN ET AL.*, 390 U. S. 599. Petition for rehearing denied. MR. JUSTICE MARSHALL took no part in the consideration or decision of this petition.

No. 948. *HIGGINSON v. UNITED STATES*, 390 U. S. 947. Motion for leave to file petition for rehearing denied.

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Miscellaneous Orders.

No. 31, Orig. UTAH *v.* UNITED STATES. Joint motion for leave to file stipulation referred to Special Master. MR. JUSTICE MARSHALL took no part in the consideration or decision of this joint motion. *Phil L. Hansen*, Attorney General of Utah, and *Solicitor General Griswold* for the United States on the motion. [For earlier orders herein, see, *e. g.*, 390 U. S. 977.]

No. 1038. PUBLIC UTILITY DISTRICT No. 1 OF PEND OREILLE COUNTY *v.* CITY OF SEATTLE; and

No. 1039. CITY OF SEATTLE *v.* PUBLIC UTILITY DISTRICT No. 1 OF PEND OREILLE COUNTY. C. A. 9th Cir. Joint motion to defer consideration of these petitions for writs of certiorari granted. *Clarence C. Dill*, *William G. Ennis*, and *Bennett Boskey* for Public Utility District No. 1 of Pend Oreille County, and *A. L. Newbould* and *Richard S. White* for the City of Seattle, in both cases. Reported below: 382 F. 2d 666.

No. 1212. UNITED STATES *v.* AUGENBLICK ET AL. Ct. Cl. (Certiorari granted, 390 U. S. 1038.) Motion of respondents to remove case from summary calendar granted. *Joseph H. Sharlitt* for Augenblick, and *Francis J. Steiner, Jr.*, for Juhl, on the motion. *Solicitor General Griswold* for the United States filed a memorandum in support of the motion.

No. 1670, Misc. COLLINS *v.* KLINGER, MENS COLONY SUPERINTENDENT;

No. 1701, Misc. JACKSON *v.* LLOYD, CORRECTIONAL SUPERINTENDENT; and

No. 1749, Misc. HENDERSON *v.* CRAVEN, WARDEN, ET AL. Motions for leave to file petitions for writs of habeas corpus denied.

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No. ——. *GYURO v. CONNECTICUT*. Sup. Ct. Conn. Application for stay or bail presented to MR. JUSTICE BLACK, and by him referred to the Court, denied. *Bernard J. Coven* for applicant. *John D. LaBelle* for respondent in opposition. Reported below: 156 Conn. 391, 242 A. 2d 734.

No. 1034. *TINKER ET AL. v. DES MOINES INDEPENDENT COMMUNITY SCHOOL DISTRICT ET AL.* C. A. 8th Cir. (Certiorari granted, 390 U. S. 942.) Motion of United States National Student Assn. for leave to file a brief, as *amicus curiae*, granted. *Charles Morgan, Jr.*, on the motion.

Probable Jurisdiction Noted.

No. 1359. *HUNTER v. ERICKSON, MAYOR OF AKRON, ET AL.* Appeal from Sup. Ct. Ohio. Probable jurisdiction noted. *Bernard R. Roetzel* and *Robert L. Carter* for appellant. *William R. Baird* and *Alvin C. Vinopal* for appellees. Reported below: 12 Ohio St. 2d 116, 233 N. E. 2d 129.

No. 175, Misc. *MATTIELLO v. CONNECTICUT*. Appeal from App. Div., Cir. Ct. Conn. Motion for leave to proceed *in forma pauperis* granted. Probable jurisdiction noted and case transferred to appellate docket. *Robert N. Grosby* for appellant. Reported below: 4 Conn. Cir. 55, 225 A. 2d 507.

Certiorari Granted. (See also No. 1328, *ante*, p. 593; No. 547, Misc., *ante*, p. 602; No. 731, Misc., *ante*, p. 605; No. 1099, Misc., *ante*, p. 602; and No. 1149, Misc., *ante*, p. 603.)

No. 1210. *SKINNER ET AL. v. LOUISIANA*. Sup. Ct. La. Certiorari granted. *G. W. Gill, Sr.*, and *Robert S. Link, Jr.*, for petitioners. *Jack P. F. Gremillion*, Attorney General of Louisiana, and *Jim Garrison* for respondent. Reported below: 251 La. 300, 204 So. 2d 370.

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No. 1336. GREGORY ET AL. *v.* CITY OF CHICAGO. Sup. Ct. Ill. Certiorari granted. *Marshall Patner* for petitioners. *Raymond F. Simon* and *Marvin E. Aspen* for respondent. Reported below: 39 Ill. 2d 47, 233 N. E. 2d 422.

Certiorari Denied. (See also No. 229, *ante*, p. 600; No. 1352, *ante*, p. 601; and No. 1445, Misc., *ante*, p. 603.)

No. 1316. AYLWARD, TRUSTEE IN BANKRUPTCY *v.* BROADWAY VALENTINE CENTER, INC. C. A. 8th Cir. Certiorari denied. *Phineas Rosenberg* for petitioner. Reported below: 390 F. 2d 556.

No. 1325. ONE 1963 CHEVROLET PICKUP TRUCK ET AL. *v.* VIRGINIA. Sup. Ct. App. Va. Certiorari denied. *William B. Poff* for petitioners. Reported below: 208 Va. 506, 158 S. E. 2d 755.

No. 1332. ZARZOUR *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. *William B. McCollough, Jr.*, for petitioner. *Solicitor General Griswold*, *Assistant Attorney General Vinson*, and *Beatrice Rosenberg* for the United States. Reported below: 382 F. 2d 1015.

No. 1338. AMP INC. *v.* UNITED STATES. Ct. Cl. Certiorari denied. *William J. Keating* for petitioner. *Solicitor General Griswold* for the United States. *Graham W. McGowan* for Electronic Industries Assn., as *amicus curiae*, in support of the petition. Reported below: 182 Ct. Cl. 86, 389 F. 2d 448.

No. 1347. SUHL ET AL. *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. *Harry A. Pines* for petitioners. *Solicitor General Griswold*, *Assistant Attorney General Vinson*, and *Philip R. Monahan* for the United States. Reported below: 390 F. 2d 547.

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No. 1326. *WOLDEN v. CALIFORNIA*. Ct. App. Cal., 1st App. Dist. Certiorari denied. *Eugene Gressman* for petitioner. Reported below: 255 Cal. App. 2d 798, 63 Cal. Rptr. 467.

No. 1337. *CARTER v. ILLINOIS*. Sup. Ct. Ill. Certiorari denied. *Daniel C. Ahern* and *Kevin J. Gillogly* for petitioner. Reported below: 38 Ill. 2d 496, 232 N. E. 2d 692.

No. 1340. *IN RE MARKEL*. Super. Ct. Cal., County of Kern. Certiorari denied. *Thomas R. Davis* for petitioner.

No. 1341. *PEACOCK ET AL. v. NEW YORK*. App. Div., Sup. Ct. N. Y., 4th Jud. Dept. Certiorari denied. *Charles J. McDonough* for petitioner Peacock. *Michael F. Dillon* for respondent.

No. 1343. *O'KELLEY ET AL. v. CALIFORNIA*. Ct. App. Cal., 1st App. Dist. Certiorari denied. *Charles M. Gianola* for petitioners.

No. 1344. *SALEM BUILDING TRADES COUNCIL, AFL-CIO v. NATIONAL LABOR RELATIONS BOARD ET AL.* C. A. 9th Cir. Certiorari denied. *James B. Griswold* for petitioner. *Solicitor General Griswold*, *Arnold Ordman*, *Dominick L. Manoli*, *Norton J. Come*, and *Gary Green* for respondent National Labor Relations Board. Reported below: 388 F. 2d 987.

No. 1299. *BOOKER v. KANSAS*. Sup. Ct. Kan. Certiorari denied. *THE CHIEF JUSTICE* is of the opinion that certiorari should be granted. *Russell Shultz* for petitioner. *Robert C. Londerholm*, Attorney General of Kansas, and *Keith Sanborn* for respondent. Reported below: 200 Kan. 166, 434 P. 2d 801.

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No. 1342. *SUN PROTECTION CO. OF AMERICA v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. *Jacob J. Kilimnik* for petitioner. *Solicitor General Griswold* for the United States. Reported below: 390 F. 2d 7.

No. 1384. *MODERN PLASTIC MACHINERY CORP. v. FRANK W. EGAN & CO. ET AL.*; and

No. 1408. *MODERN PLASTIC MACHINERY CORP. v. FRANK W. EGAN & CO. ET AL.* C. A. 3d Cir. Certiorari denied. *Ernest G. Montague* for petitioner in both cases. *William K. Kerr* and *David W. Plant* for respondents in both cases. Reported below: 387 F. 2d 319.

No. 1385. *LONG ET UX. v. BRUNSWICK CORP.* C. A. 4th Cir. Certiorari denied. *J. C. Long* for petitioners. *Robert L. Stern* and *Augustine T. Smythe* for respondent. Reported below: 392 F. 2d 337.

No. 1415. *MAIER BREWING CO. ET AL. v. FLEISCHMANN DISTILLING CORP. ET AL.* C. A. 9th Cir. Certiorari denied. *J. Albert Hutchinson* for petitioners. *Moses Lasky* for respondents. Reported below: 390 F. 2d 117.

No. 1405. *WALKER v. ASSOCIATED PRESS*. Ct. Civ. App. Tex., 2d Sup. Jud. Dist. Motion to use record in No. 150, October Term, 1966, granted. Certiorari denied. *William Andress, Jr.*, and *Clyde J. Watts* for petitioner. *William P. Rogers*, *Leo P. Larkin, Jr.*, *Stanley Godofsky*, and *J. A. Gooch* for respondent. Reported below: 418 S. W. 2d 379.

No. 1223, Misc. *STONE v. UNITED STATES*. C. A. 10th Cir. Certiorari denied. *Solicitor General Griswold*, *Assistant Attorney General Vinson*, *Beatrice Rosenberg*, and *Robert G. Maysack* for the United States. Reported below: 385 F. 2d 713.

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No. 1333. SOUTHERN ARIZONA BANK & TRUST CO. ET AL. v. UNITED STATES. Ct. Cl. Certiorari denied. MR. JUSTICE DOUGLAS, MR. JUSTICE STEWART, and MR. JUSTICE FORTAS are of the opinion that certiorari should be granted. *Scott P. Crampton* and *Stanley Worth* for petitioners. *Solicitor General Griswold*, *Assistant Attorney General Rogovin*, *Elmer J. Kelsey*, and *Robert I. Waxman* for the United States. Reported below: 181 Ct. Cl. 426, 386 F. 2d 1002.

No. 1345. INTERNATIONAL SALT CO. v. NEW JERSEY ET AL.; and

No. 1346. CAYUGA ROCK SALT CO. ET AL. v. NEW JERSEY ET AL. C. A. 3d Cir. Motions to defer consideration of these petitions and petitions for writs of certiorari denied. MR. JUSTICE BRENNAN took no part in the consideration or decision of these motions and petitions. *Lewis H. Van Dusen, Jr.*, for petitioner in No. 1345, and *Israel Packel* and *Samuel P. Orlando* for petitioner Cayuga Rock Salt Co. *Prospero DeBona* for respondent State of New Jersey in both cases. Reported below: 387 F. 2d 94.

No. 924, Misc. BLYDEN v. UNITED STATES. C. A. 3d Cir. Certiorari denied. *Solicitor General Griswold*, *Assistant Attorney General Vinson*, and *Beatrice Rosenberg* for the United States.

No. 1366, Misc. KEEGAN v. UNITED STATES. C. A. 9th Cir. Certiorari denied. *Solicitor General Griswold* for the United States. Reported below: 385 F. 2d 260.

No. 1368, Misc. MOORE v. UNITED STATES. C. A. 4th Cir. Certiorari denied. *Solicitor General Griswold*, *Assistant Attorney General Vinson*, and *Beatrice Rosenberg* for the United States. Reported below: 389 F. 2d 90.

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No. 1398, Misc. *MAYES v. VINCENT ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 388 F. 2d 727.

No. 1422, Misc. *EVANS v. UNITED STATES.* C. A. 3d Cir. Certiorari denied. *Solicitor General Griswold, Assistant Attorney General Vinson, Beatrice Rosenberg, and Mervyn Hamburg* for the United States. Reported below: 387 F. 2d 160.

No. 1423, Misc. *WHITE v. MASSACHUSETTS.* Sup. Jud. Ct. Mass. Certiorari denied. *John A. McNiff* for petitioner. *John P. S. Burke* for respondent. Reported below: 353 Mass. 409, 232 N. E. 2d 335.

No. 1437, Misc. *STAPLETON v. COHEN.* Sup. Jud. Ct. Mass. Certiorari denied. *John E. Lonergan, Jr.,* for petitioner. *Everett A. Grant* for respondent. Reported below: 353 Mass. 53, 228 N. E. 2d 64.

No. 1459, Misc. *STELLO v. STRAND ET AL.* C. A. 9th Cir. Certiorari denied.

No. 1460, Misc. *DODGE v. TURNER, WARDEN.* C. A. 10th Cir. Certiorari denied.

No. 1464, Misc. *HOLLINGSHEAD v. WAINWRIGHT, WARDEN.* Sup. Ct. Fla. Certiorari denied.

No. 1465, Misc. *BRANCHE v. OHIO.* Sup. Ct. Ohio. Certiorari denied. *John T. Corrigan* and *Harvey R. Monck* for respondent.

No. 1469, Misc. *HOSKINS v. KENTUCKY.* Ct. App. Ky. Certiorari denied. Reported below: 420 S. W. 2d 560.

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No. 1476, Misc. ZARAGOZA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. *Solicitor General Griswold, Assistant Attorney General Vinson, and Beatrice Rosenberg* for the United States. Reported below: 389 F. 2d 468.

No. 1490, Misc. PARSONS *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. *Solicitor General Griswold, Assistant Attorney General Vinson, and Beatrice Rosenberg* for the United States. Reported below: 386 F. 2d 837.

No. 1512, Misc. RODRIGUEZ *v.* MARYLAND. Ct. Sp. App. Md. Certiorari denied.

No. 1521, Misc. REZA *v.* CALIFORNIA. C. A. 9th Cir. Certiorari denied.

No. 1522, Misc. O'CONNELL *v.* ILLINOIS. Sup. Ct. Ill. Certiorari denied.

No. 1525, Misc. HOOPER *v.* WINGO, WARDEN. Ct. App. Ky. Certiorari denied.

No. 1527, Misc. CUMMINGS *v.* IOWA. Sup. Ct. Iowa. Certiorari denied.

No. 1529, Misc. OWENS *v.* SCAFATI, CORRECTIONAL SUPERINTENDENT. C. A. 1st Cir. Certiorari denied.

No. 1534, Misc. COLLOM *v.* UNITED STATES. Ct. Cl. Certiorari denied. *Solicitor General Griswold* for the United States.

No. 1540, Misc. MAHURIN *v.* SWENSON, WARDEN. C. A. 8th Cir. Certiorari denied.

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No. 1538, Misc. *SEVERA v. U. S. CIVIL SERVICE COMMISSION ET AL.* C. A. D. C. Cir. Certiorari denied. *Solicitor General Griswold* for respondents.

No. 1539, Misc. *BAILEY v. UNITED STATES.* C. A. 4th Cir. Certiorari denied. *Solicitor General Griswold, Assistant Attorney General Vinson, and Philip R. Monahan* for the United States.

No. 1544, Misc. *ZELL v. NELSON, WARDEN.* C. A. 9th Cir. Certiorari denied.

No. 1545, Misc. *MURRAY v. DICKSON, WARDEN.* C. A. 9th Cir. Certiorari denied.

No. 1549, Misc. *MEREDITH v. LANE, WARDEN.* C. A. 7th Cir. Certiorari denied.

No. 1550, Misc. *CLARK v. PAYNE.* C. A. 3d Cir. Certiorari denied. Reported below: 390 F. 2d 647.

No. 1560, Misc. *RHODES v. FITZHARRIS, TRAINING FACILITY SUPERINTENDENT.* Sup. Ct. Cal. Certiorari denied.

No. 1562, Misc. *DAVIDSON v. BOLES, WARDEN.* C. A. 4th Cir. Certiorari denied.

No. 1565, Misc. *HICKS v. UNITED STATES.* C. A. 3d Cir. Certiorari denied. *Solicitor General Griswold, Assistant Attorney General Vinson, and Beatrice Rosenberg* for the United States. Reported below: 389 F. 2d 49.

No. 1582, Misc. *VASQUEZ v. CALIFORNIA.* Ct. App. Cal., 1st App. Dist. Certiorari denied. Reported below: 256 Cal. App. 2d 342, 63 Cal. Rptr. 885.

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No. 1571, Misc. McNEILL *v.* GARRITY, WARDEN.
C. A. 4th Cir. Certiorari denied.

No. 1572, Misc. COLLIER *v.* KENTUCKY. Ct. App. Ky.
Certiorari denied.

No. 1593, Misc. BARNES *v.* ALABAMA ET AL. C. A. 5th
Cir. Certiorari denied.

No. 1594, Misc. HARDIN *v.* AETNA CASUALTY &
SURETY Co. C. A. 5th Cir. Certiorari denied. *James E.*
Thompson for respondent. Reported below: 384 F. 2d
718.

No. 1610, Misc. FOURNIER *v.* RIDOLFI. Sup. Ct. N. J.
Certiorari denied.

No. 1212, Misc. STROTHER *v.* UNITED STATES. C. A.
5th Cir. Certiorari denied. MR. JUSTICE DOUGLAS is of
the opinion that certiorari should be granted. *Solicitor*
General Griswold, *Assistant Attorney General Vinson*,
and *Beatrice Rosenberg* for the United States. Reported
below: 387 F. 2d 385.

Rehearing Denied. (See also No. 191, October Term,
1962, *ante*, p. 604.)

No. 47. GINSBERG *v.* NEW YORK, 390 U. S. 629;

No. 699. CAMERON ET AL. *v.* JOHNSON, GOVERNOR OF
MISSISSIPPI, ET AL., 390 U. S. 611;

No. 1162. TIMES MIRROR Co. *v.* UNITED STATES, 390
U. S. 712;

No. 1106, Misc. MILLER *v.* UNITED STATES, 390 U. S.
984; and

No. 1190, Misc. WARE *v.* PRESTON ET AL., 390 U. S.
1032. Petitions for rehearing denied.

JUNE 7, 1968.

Miscellaneous Order.

No. 701. IN RE WHITTINGTON, *ante*, p. 341. Application for bail or release on personal recognizance or other appropriate conditions presented to MR. JUSTICE STEWART, and by him referred to the Court, denied. It is ordered that the mandate of this Court issue forthwith to enable applicant to apply for release on bail or otherwise to the appropriate court of the State of Ohio. *Daniel A. Rezneck* for applicant. *E. Raymond Morehart* filed a memorandum in opposition.