

ORDERS FROM MAY 18 THROUGH
JUNE 19, 1970

MAY 18, 1970*

Affirmed on Appeal

No. 1387. WELLS *v.* ROCKEFELLER, GOVERNOR OF NEW YORK, ET AL. Appeal from D. C. S. D. N. Y. Judgment affirmed. Reported below: 311 F. Supp. 48.

Appeals Dismissed

No. 1145. INZITARI *v.* CONNECTICUT. Appeal from Sup. Ct. Conn. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied.

No. 1338. FRANKLIN *v.* FUKUOKA, JUDGE. Appeal from Sup. Ct. Hawaii dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied.

No. 1343. BLINCOE ET UX. *v.* FORSYTHE. Appeal from Ct. App. Cal., 2d App. Dist. Motion to dispense with printing jurisdictional statement granted. Appeal dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied.

No. 1828, Misc. NIEDER *v.* FULLERTON, TRUSTEE, ET AL. Appeal from Sup. Ct. N. J. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied.

*[REPORTER'S NOTE: As of May 18, 1970, the Court has adopted a change in procedure for summarily disposing of certain unargued appeals by order instead of *per curiam*. Accordingly, two new categories of orders now appear in the United States Reports, *viz.*, *Affirmed on Appeal* and *Appeals Dismissed*. *Per curiam* dispositions will continue to be published with the Court's opinions. Cross references (such as are used in connection with certiorari orders) will not be used for appellate dispositions.]

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Miscellaneous Orders

No. 1302. FINCH, SECRETARY OF HEALTH, EDUCATION, AND WELFARE *v.* PERALES. C. A. 5th Cir. [Certiorari granted, 397 U. S. 1035.] Motion of respondent for the appointment of counsel granted. It is ordered that *Richard Tinsman, Esquire*, of San Antonio, Texas, a member of the Bar of this Court, be, and he is hereby, appointed to serve as counsel for respondent in this case.

No. 1389. MAYBERRY *v.* PENNSYLVANIA. Sup. Ct. Pa. [Certiorari granted, 397 U. S. 1020.] Order of this Court dated April 27, 1970, [see 397 U. S. 1060, Reporter's Note] appointing *Ralph S. Spritzer, Esquire*, as counsel for petitioner in this case is hereby revoked. It is ordered that *Curtis R. Reitz, Esquire*, of Philadelphia, Pennsylvania, a member of the Bar of this Court, be, and he is hereby, appointed to serve as counsel for petitioner in this case.

No. 912, Misc. BROOKE *v.* FOLEY, CHIEF JUDGE, U. S. DISTRICT COURT;

No. 1782, Misc. DANIELS *v.* CHAMBERS, U. S. CIRCUIT JUDGE, ET AL.; and

No. 1869, Misc. SMITH *v.* SUPREME COURT OF OHIO ET AL. Motions for leave to file petitions for writs of mandamus denied.

No. 1905, Misc. O'BRYAN *v.* BATTISTI, U. S. DISTRICT JUDGE. Motion for leave to file petition for writ of prohibition and/or mandamus denied.

Probable Jurisdiction Noted

No. 1370. COATES ET AL. *v.* CITY OF CINCINNATI. Appeal from Sup. Ct. Ohio. Probable jurisdiction noted. Reported below: 21 Ohio St. 2d 66, 255 N. E. 2d 247.

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No. 1083. ATLANTIC CITY ELECTRIC CO. ET AL. *v.* UNITED STATES ET AL. Appeal from D. C. S. D. N. Y.; and

No. 1283. ALABAMA POWER CO. ET AL. *v.* UNITED STATES ET AL. Appeal from D. C. D. C. Probable jurisdiction noted. Cases consolidated and a total of one and one-half hours allotted for oral argument. MR. JUSTICE DOUGLAS took no part in the consideration or decision of this order. Reported below: No. 1083, 306 F. Supp. 338; No. 1283, 316 F. Supp. 337.

Certiorari Denied. (See also Nos. 1145, 1338, 1343, and 1828, Misc., *supra.*)

No. 1282. RODEO COWBOYS ASSN., INC., ET AL. *v.* WEGNER. C. A. 10th Cir. *Certiorari denied.* Reported below: 417 F. 2d 881.

No. 1290. MURRAY ET AL., DBA NASSAU CHINA Co. *v.* HARPER, U. S. DISTRICT JUDGE. C. A. 8th Cir. *Certiorari denied.*

No. 1291. SAYNE *v.* SHIPLEY. C. A. 5th Cir. *Certiorari denied.* Reported below: 418 F. 2d 679.

No. 1297. EMERSON ELECTRIC Co. ET AL. *v.* FULTON ET AL. C. A. 5th Cir. *Certiorari denied.* Reported below: 420 F. 2d 527.

No. 1299. IN RE WEINSTEIN. Sup. Ct. Ore. *Certiorari denied.* Reported below: — Ore. —, 459 P. 2d 548.

No. 1341. PAGE, WARDEN *v.* MARTIN. C. A. 10th Cir. *Certiorari denied.* Reported below: 417 F. 2d 309.

No. 1342. YAKIMA TRIBAL COURT ET AL. *v.* SETTLER ET AL. C. A. 9th Cir. *Certiorari denied.* Reported below: 419 F. 2d 486 and 1311.

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No. 1345. *SULLIVAN v. CHOQUETTE ET AL.* C. A. 1st Cir. Certiorari denied. Reported below: 420 F. 2d 674.

No. 1349. *SIMON v. UNITED STATES.* C. A. 9th Cir. Certiorari denied. Reported below: 421 F. 2d 667.

No. 1350. *MATOSKY v. UNITED STATES.* C. A. 7th Cir. Certiorari denied. Reported below: 421 F. 2d 410.

No. 1355. *WADEMAN v. NEW JERSEY.* Super. Ct. N. J. Certiorari denied.

No. 1357. *LINDSEY v. NEW MEXICO.* Ct. App. N. M. Certiorari denied. Reported below: 81 N. M. 173, 464 P. 2d 903.

No. 1360. *MOODY v. FLYING SAUCERS, INC.* C. A. 5th Cir. Certiorari denied. Reported below: 421 F. 2d 884.

No. 1363. *KIGER v. UNITED STATES.* C. A. 2d Cir. Certiorari denied. Reported below: 421 F. 2d 1396.

No. 1365. *LOOKRETIS v. UNITED STATES.* C. A. 7th Cir. Certiorari denied. Reported below: 422 F. 2d 647.

No. 1368. *KONIGSBERG v. UNITED STATES.* C. A. 3d Cir. Certiorari denied. Reported below: 418 F. 2d 1270.

No. 1372. *LEO FEIST, INC., ET AL. v. APOLLO RECORDS N. Y. CORP. ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 418 F. 2d 1249.

No. 1374. *BEATTY v. ELLINGS ET AL.* Sup. Ct. Minn. Certiorari denied. Reported below: 285 Minn. 293, 173 N. W. 2d 12.

No. 1378. *BISHOP PROCESSING Co. v. UNITED STATES.* C. A. 4th Cir. Certiorari denied. Reported below: 423 F. 2d 469.

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No. 1381. *HENDRICKSON v. INDIANA*. Sup. Ct. Ind. Certiorari denied. Reported below: — Ind. —, 254 N. E. 2d 331.

No. 1382. *DEAN v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 418 F. 2d 1236.

No. 1384. *ROBINSON ET AL. v. TRANSCONTINENTAL GAS PIPELINE CORP.* C. A. 5th Cir. Certiorari denied. Reported below: 421 F. 2d 1397.

No. 1386. *MILLER v. NEW YORK STOCK EXCHANGE ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 425 F. 2d 1074.

No. 1388. *WHEATON GLASS CO. v. SHULTZ, SECRETARY OF LABOR*. C. A. 3d Cir. Certiorari denied. Reported below: 421 F. 2d 259.

No. 1393. *D. H. OVERMYER WAREHOUSE CO., INC. v. KUNIANSKY*. C. A. 5th Cir. Certiorari denied. Reported below: 419 F. 2d 1280.

No. 1402. *PREFERRED RISK MUTUAL INSURANCE CO. v. MARTIN ET AL.* Sup. Ct. Pa. Certiorari denied. Reported below: 436 Pa. 374, 260 A. 2d 804.

No. 1403. *BRUSKE v. ARNOLD*. Sup. Ct. Ill. Certiorari denied. Reported below: 44 Ill. 2d 132, 254 N. E. 2d 453.

No. 1413. *THEODOROPOULOS ET AL. v. THOMPSON-STARRETT CO., INC., ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 418 F. 2d 350.

No. 1433. *ZUSMAN v. OREGON*. Ct. App. Ore. Certiorari denied. Reported below: — Ore. —, 460 P. 2d 872.

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No. 601. WARNER ET AL. *v.* KEWANEE MACHINERY & CONVEYOR Co. C. A. 6th Cir. Certiorari denied. Reported below: 411 F. 2d 1060.

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

This personal injury suit arose out of a farming accident. Petitioner Donald Warner, a 12-year-old boy, was working with other young men on a farm gathering hay. They were using a machine manufactured by the respondent corporation which carried bales of hay up from a wagon into the hayloft at the top of a barn. This machine consisted of a belt with step-like paddles on which the bales were placed. The power for the elevator was supplied by a tractor, and the operating controls were located on the tractor. Donald was at first working at the bottom of the elevator, but when it became necessary for him to change places with another boy at the top of the elevator the power was shut off and Donald proceeded to climb up the elevator, using the paddles as a ladder. As Donald neared the top, but before he had stepped off the machine, another boy, who could not see the top of the elevator, started it up again. Donald had unfortunately caught his foot in the mechanism and when the power was applied his leg was mangled. As a result he lost the lower part of his leg by amputation. Donald and his father brought suit, claiming that the respondent had breached its duty to warn of the potential dangers involved in using the machine as a substitute ladder and the duty to design a safe machine. At trial the Warners introduced testimonial evidence that other hay elevators were designed so that the operator could see the top, and that warnings of possible danger were given with other farm machinery. At the close of this evidence respondent moved for a directed verdict, the motion was denied, and evidence

for the defense was submitted. At the conclusion of all the evidence the jury retired, deliberated fully, and returned with a verdict for \$75,000 in favor of the Warners.

On appeal the Court of Appeals proceeded to consider the sufficiency of the evidence, even though it also held that since the respondent had not renewed its motion for a directed verdict at the close of the evidence the court could not consider sufficiency of the evidence on appeal.¹ The court then concluded that petitioner had failed to produce sufficient evidence to warrant submitting the case to the jury and therefore set the jury's verdict aside.

In my opinion this action was a flagrant disregard of the command of the Seventh Amendment that "[i]n Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise reexamined in any Court of the United States, than according to the rules of the common law." This provision, as I understand it, means that questions of the sufficiency of the evidence are for the jury—not the

¹ The Court of Appeals held, apparently in conformity with the rule in all circuits, "that since the [respondent] did not renew its motion for a directed verdict at the close of the entire testimony, 'the claimed insufficiency of the evidence is not before us.'" 411 F. 2d 1060, 1063 (1969). Nevertheless the court proceeded to consider "whether [petitioners'] evidence considered in the light most favorable to [them] established a prima facie case, or one properly submissible." *Ibid.* Since this test is precisely the one the Court of Appeals should apply when considering whether a motion for a directed verdict was properly denied, see *Continental Co. v. Union Carbide*, 370 U. S. 690, 696 (1962), 5 J. Moore, *Federal Practice* ¶50.02 [1] (1969), I share petitioners' inability to understand by what sleight-of-hand the Court of Appeals could simultaneously announce that it could not consider the sufficiency of the evidence and then proceed to do precisely that. This apparent error is further evidence that the court went out of its way to upset the jury's verdict.

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trial judge or the appellate court—to decide, and that where a jury has found sufficient evidence to support a verdict, that determination should not be set aside on appeal unless there is no evidence to support the verdict. Here there was undoubtedly enough evidence for a jury to conclude that the respondent had either failed to design a sufficiently safe machine or failed to warn potential users of the dangers involved. On this record I cannot understand the Court of Appeals' decision as anything but a substitution of its judgment as to the sufficiency of the evidence for that of the jury. Such action is, in my opinion, forbidden by the Seventh Amendment. Cf. *Galloway v. United States*, 319 U. S. 372, 396-407 (1943) (BLACK, J., dissenting). I would grant certiorari and reverse the judgment below summarily.²

No. 1361. NATIONAL CAPITAL AIRLINES, INC. v. CIVIL AERONAUTICS BOARD ET AL. C. A. D. C. Cir. Certiorari denied. MR. JUSTICE DOUGLAS took no part in the consideration or decision of this petition. Reported below: 136 U. S. App. D. C. 86, 419 F. 2d 668.

²The petition for certiorari was filed within 90 days of the judgment of the Court of Appeals, as required by statute. 28 U. S. C. § 2101 (c). The record, which under our Rules must also be filed within 90 days, Sup. Ct. Rule 21, was not filed until the 93d day after judgment. Since the requirement for filing the record is set forth by our Rules and not by statute, "there is no reason to exempt this case from the general principle that '[i]t is always within the discretion of a court . . . to relax or modify its procedural rules adopted for the orderly transaction of business before it when in a given case the ends of justice require it.'" *American Farm Lines v. Black Ball*, 397 U. S. 532, 539 (1970). Cf. *Taglianetti v. United States*, 394 U. S. 316, n. 1 (1969). Respondent has been requested several times to file a response to the petition and has neglected to do so. In these circumstances there are more than sufficient reasons for waiving the record-filing requirement.

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No. 1304. DARLINGTON COUNTY SCHOOL DISTRICT ET AL. *v.* STANLEY ET AL. C. A. 4th Cir. Motion to dispense with printing petition granted. Certiorari denied. Reported below: 424 F. 2d 195.

No. 1377. HARTMANN ET VIR *v.* UNITED STATES. C. A. 9th Cir. Motion to dispense with printing petition granted. Certiorari denied. Reported below: 419 F. 2d 829.

No. 1331. CALIFORNIA *v.* MCGREW. Sup. Ct. Cal. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 1 Cal. 3d 404, 462 P. 2d 1.

No. 1415. BETO, CORRECTIONS DIRECTOR *v.* WALTON. C. A. 5th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 421 F. 2d 1383.

No. 1351. DEERING MILLIKEN, INC. *v.* KORATRON Co., INC. C. A. 9th Cir. Certiorari denied. MR. JUSTICE DOUGLAS took no part in the consideration or decision of this petition. Reported below: 418 F. 2d 1314.

No. 136, Misc. MEADOWS *v.* NORTH CAROLINA. C. A. 4th Cir. Certiorari denied.

No. 400, Misc. HILLERY *v.* NELSON, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 954, Misc. O'CONNELL *v.* NEW JERSEY. Sup. Ct. N. J. Certiorari denied.

No. 1240, Misc. WILLIAMS *v.* COX, PENITENTIARY SUPERINTENDENT. C. A. 4th Cir. Certiorari denied.

No. 1531, Misc. HILLERY *v.* CALIFORNIA. C. A. 9th Cir. Certiorari denied.

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No. 1573, Misc. *TEDDER v. PAGE, WARDEN*. Ct. Crim. App. Okla. Certiorari denied.

No. 1705, Misc. *KEELEY v. McMANN, WARDEN*. C. A. 2d Cir. Certiorari denied. Reported below: 425 F. 2d 1067.

No. 1772, Misc. *McKNIGHT v. CALIFORNIA*. Ct. App. Cal., 3d App. Dist. Certiorari denied.

No. 1778, Misc. *AUSTIN v. CITY AND COUNTY OF DENVER*. Sup. Ct. Colo. Certiorari denied. Reported below: — Colo. —, 462 P. 2d 600.

No. 1784, Misc. *STORK v. UNITED STATES*. C. A. 10th Cir. Certiorari denied. Reported below: 421 F. 2d 180.

No. 1796, Misc. *GREEN ET AL. v. ALASKA*. Sup. Ct. Alaska. Certiorari denied. Reported below: 462 P. 2d 994.

No. 1798, Misc. *MUSZALSKI v. FIELD, MEN'S COLONY SUPERINTENDENT*. C. A. 9th Cir. Certiorari denied.

No. 1799, Misc. *RICE v. UNITED STATES*. C. A. 5th Cir. Certiorari denied.

No. 1800, Misc. *FAVELA v. UNITED STATES IMMIGRATION AND NATURALIZATION SERVICE*. C. A. 9th Cir. Certiorari denied. Reported below: 420 F. 2d 575.

No. 1802, Misc. *JONES v. RUSSELL, WARDEN*. C. A. 6th Cir. Certiorari denied.

No. 1804, Misc., *CUSHWAY v. STATE BAR OF GEORGIA*. Sup. Ct. Ga. Certiorari denied.

No. 1805, Misc. *FAUSTIN v. UNITED STATES ET AL.* C. A. 2d Cir. Certiorari denied.

No. 1824, Misc. *CLINE v. MISSOURI*. Sup. Ct. Mo. Certiorari denied. Reported below: 447 S. W. 2d 538.

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No. 1816, Misc. *RUTKOWSKI v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 419 F. 2d 836.

No. 1831, Misc. *MILLER v. NELSON, WARDEN*. C. A. 9th Cir. Certiorari denied.

No. 1832, Misc. *STANBRIDGE v. NEW YORK*. Ct. App. N. Y. Certiorari denied. Reported below: 26 N. Y. 2d 1, 256 N. E. 2d 185.

No. 1834, Misc. *URTADO v. BETO, CORRECTIONS DIRECTOR*. C. A. 5th Cir. Certiorari denied.

No. 1837, Misc. *TAHL v. CALIFORNIA*. Sup. Ct. Cal. Certiorari denied. Reported below: 1 Cal. 3d 122 and 403b, 460 P. 2d 449.

No. 1840, Misc. *LANCASTER v. HOCKER, WARDEN*. Sup. Ct. Nev. Certiorari denied.

No. 1842, Misc. *MOORE v. COX, PENITENTIARY SUPERINTENDENT*. C. A. 4th Cir. Certiorari denied.

No. 1847, Misc. *STEVENSON v. MANCUSI, WARDEN*. App. Div., Sup. Ct. N. Y., 4th Jud. Dept. Certiorari denied.

No. 1853, Misc. *STALLINGS v. SOUTH CAROLINA*. Sup. Ct. S. C. Certiorari denied. Reported below: 253 S. C. 451, 171 S. E. 2d 588.

No. 1855, Misc. *BROOKS v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 422 F. 2d 365.

No. 1864, Misc. *PEABODY v. BOLDT, U. S. DISTRICT JUDGE*. C. A. 9th Cir. Certiorari denied.

No. 1866, Misc. *LUTZ v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 420 F. 2d 414.

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No. 1867, Misc. THOMPSON *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied. Reported below: 447 S. W. 2d 175.

No. 1870, Misc. STEVENS, ADMINISTRATRIX, ET AL. *v.* MIDWEST EMERY FREIGHT SYSTEMS, INC. Sup. Ct. Ohio. Certiorari denied.

No. 1871, Misc. GERZIN *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 1872, Misc. WHITE *v.* HEGERHORST ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 418 F. 2d 894.

No. 1877, Misc. PARKS *v.* CALIFORNIA ET AL. Sup. Ct. Cal. Certiorari denied.

No. 1881, Misc. CARNEGIE *v.* MACDOUGALL, CORRECTION COMMISSIONER, ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 422 F. 2d 353.

No. 1884, Misc. DUCKETT *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied.

No. 1885, Misc. STINSON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 422 F. 2d 356.

No. 1887, Misc. BRAICO ET AL. *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 422 F. 2d 543.

No. 1888, Misc. DECESARE *v.* NEW JERSEY ET AL. C. A. 3d Cir. Certiorari denied.

No. 1895, Misc. NUGENT *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 1897, Misc. HARMON *v.* MARYLAND. C. A. 4th Cir. Certiorari denied.

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No. 1890, Misc. *HANKS v. UNITED STATES*. C. A. 10th Cir. Certiorari denied. Reported below: 420 F. 2d 412.

No. 1894, Misc. *HENDRICKSON v. WASHINGTON*. Ct. App. Wash. Certiorari denied. Reported below: 1 Wash. App. 61, 459 P. 2d 55.

No. 1898, Misc. *SCHWARTZ v. MONTANA BOARD OF PARDONS*. Sup. Ct. Mont. Certiorari denied. Reported below: 154 Mont. 505, 463 P. 2d 316.

No. 1899, Misc. *ROBINSON v. CALIFORNIA*. Ct. App. Cal., 5th App. Dist. Certiorari denied. Reported below: 1 Cal. App. 3d 555, 81 Cal. Rptr. 666.

No. 1900, Misc. *PRICE v. COX, PENITENTIARY SUPERINTENDENT*. C. A. 4th Cir. Certiorari denied.

No. 1901, Misc. *WILLARD v. UNITED STATES ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 422 F. 2d 810.

No. 1902, Misc. *MOORE v. MARYLAND*. Ct. Sp. App. Md. Certiorari denied. Reported below: 7 Md. App. 495, 256 A. 2d 337.

No. 1908, Misc. *WASSER v. OHIO*. Sup. Ct. Ohio. Certiorari denied.

No. 1910, Misc. *COWAN v. MANCUSI, WARDEN*. C. A. 2d Cir. Certiorari denied.

No. 1911, Misc. *ROMEO v. McMANN, WARDEN*. C. A. 2d Cir. Certiorari denied. Reported below: 418 F. 2d 860.

No. 1912, Misc. *BACON v. NELSON, WARDEN*. C. A. 9th Cir. Certiorari denied.

No. 1915, Misc. *GEORGE v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 421 F. 2d 128.

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No. 1917, Misc. *RUDERER v. UNITED STATES*. Ct. Cl. Certiorari denied. Reported below: 188 Ct. Cl. 456, 412 F. 2d 1285.

No. 1920, Misc. *CRESPO v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 422 F. 2d 718.

No. 1924, Misc. *OLINDE v. UNITED STATES*; and
No. 1931, Misc. *VASQUEZ v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 422 F. 2d 1314.

No. 1929, Misc. *SHERMAN v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 421 F. 2d 198.

No. 1934, Misc. *OLSON v. CALIFORNIA ADULT AUTHORITY*. C. A. 9th Cir. Certiorari denied.

No. 1936, Misc. *KAUPP v. KENNEDY, WARDEN*. C. A. 2d Cir. Certiorari denied.

No. 1962, Misc. *YOUNG v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 422 F. 2d 302.

No. 1982, Misc. *DALE v. UNITED STATES ET AL.* Ct. Mil. App. Certiorari denied. Reported below: — U. S. C. M. A. —, — C. M. R. —.

No. 52, Misc. *STEINHAEUER v. FLORIDA*. Sup. Ct. Fla. Certiorari denied. MR. JUSTICE DOUGLAS is of the opinion that certiorari should be granted. Reported below: 216 So. 2d 214.

Rehearing Denied

No. 24. *WALLER v. FLORIDA*, 397 U. S. 387; and

No. 131. *DANDRIDGE, CHAIRMAN, MARYLAND BOARD OF PUBLIC WELFARE, ET AL. v. WILLIAMS ET AL.*, 397 U. S. 471. Petitions for rehearing denied.

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- No. 606. *ILLINOIS v. ALLEN*, 397 U. S. 337;
No. 1223. *MEYER v. CITY OF CHICAGO*, 397 U. S. 1024;
No. 528, Misc. *CATANZARO v. MANCUSI, WARDEN*, 397 U. S. 942;
No. 904, Misc. *SHARPE v. UNITED STATES*, 397 U. S. 1026;
No. 1103, Misc. *RANDO v. BETO, CORRECTIONS DIRECTOR*, 397 U. S. 1033;
No. 1309, Misc. *BLACKMAN v. PENNSYLVANIA*, 397 U. S. 1026;
No. 1435, Misc. *URBANO v. NEWS SYNDICATE Co., INC.*, 397 U. S. 1015;
No. 1494, Misc. *VIANDS v. COX, PENITENTIARY SUPERINTENDENT*, 397 U. S. 1028;
No. 1552, Misc. *HEARD v. UNITED STATES*, 397 U. S. 1016; and
No. 1676, Misc. *PREWITT v. ARIZONA EX REL. EYMAN, WARDEN, ET AL.*, 397 U. S. 1054. Petitions for rehearing denied.

- No. 995. *AIR LINE PILOTS ASSOCIATION, INTERNATIONAL v. PIEDMONT AVIATION, INC.*, 397 U. S. 926; and
No. 435, Misc. *POPE v. CITY AND COUNTY OF PHILADELPHIA ET AL.*, 397 U. S. 993. Motions for leave to file petitions for rehearing denied.

- No. 1390, Misc. *HOTEL, MOTEL & CLUB EMPLOYEES UNION LOCAL 6 v. SHULTZ, SECRETARY OF LABOR*, 397 U. S. 970. Motion for leave to file petition for rehearing denied. MR. JUSTICE MARSHALL took no part in the consideration or decision of this motion.

- No. 1443, Misc. *SAFFIOTI v. CATHERWOOD, INDUSTRIAL COMMISSIONER OF NEW YORK*, 397 U. S. 956, 1031. Motion for leave to file second petition for rehearing denied.

May 22, 25, 1970

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MAY 22, 1970

Miscellaneous Order

No. —. BYRNE, DISTRICT ATTORNEY OF SUFFOLK COUNTY *v.* P. B. I. C., INC., ET AL. D. C. Mass. Application for stay denied by an equally divided court. THE CHIEF JUSTICE, MR. JUSTICE BLACK, MR. JUSTICE HARLAN, and MR. JUSTICE STEWART would grant the stay. [For earlier order herein, see 397 U. S. 1082.]

MAY 25, 1970*

Appeals Dismissed

No. 1267. STOTLAND ET AL. *v.* PENNSYLVANIA. Appeal from Super. Ct. Pa. dismissed for want of a substantial federal question. MR. JUSTICE BRENNAN took no part in the consideration or decision of this case. Reported below: 214 Pa. Super. 35, 251 A. 2d 701.

MR. JUSTICE DOUGLAS, dissenting.

In August 1967, the City Council of Philadelphia passed an ordinance authorizing the mayor to declare a state of emergency in the city, "if he finds that the City or any part thereof is suffering or is in imminent danger of suffering civil disturbance, disorder, riot or other occurrence which will seriously and substantially endanger the health, safety and property of the citizens." When a state of emergency is declared, the mayor is authorized to "[p]rohibit or limit the number of persons who may gather or congregate . . . in any outdoor place, except persons who are awaiting transportation, engaging in recreational activities at a usual and customary place, or peaceably entering or leaving buildings." The ordinance provides that the state of emergency shall exist "not in

*Except for No. 1267, No. 1392, and No. 1776, Misc., MR. JUSTICE MARSHALL took no part in the consideration or decision of the orders of this date.

excess of two weeks," but that it may be "extended for additional periods of two weeks." There are no provisions for review of the mayor's decision to declare a state of emergency.

On April 4, 1968, the Reverend Martin Luther King, Jr., was assassinated. On April 5, 1968, at 9 p.m., the mayor proclaimed a limited state of emergency, effective until 6 a.m. on April 10, 1968, "unless further extended," and prohibited groups of 12 or more persons from gathering or congregating in any outdoor place, except in those situations authorized by the ordinance. The proclamation contained no specific factual findings to support the conclusion that a threat of "civil disturbance," "disorder," or "riot" existed. The courts below, however, found that the proclamation was supported by various scattered acts of disorder occurring in the city of Philadelphia between the assassination and the proclamation, such as window breaking, damage to automobiles, false alarms of fire, and jostling of pedestrians, some of which occurred incident to demonstrations. There had been disorders in other cities after the assassination.

Appellants were arrested for peaceful, nonviolent participation in outdoor gatherings of 12 or more persons in violation of the proclamation. Three separate gatherings were involved:

1. Several weeks prior to the issuance of the proclamation, the Philadelphia Committee for Non-Violent Action made plans to protest the recommissioning of a battleship, which was to take place on April 6, 1968. A group of approximately 100 gathered at a park near the site of the recommissioning on April 6, planted a tree, and then sat around the tree holding hands and singing. A permit for this demonstration had been issued by the park commission. There were some speakers, but none of them advocated violence. There was no threat of hostility between the demonstrators and any spectators.

There was no evidence of any type of disorder or interference with the activities of others. About 50 of these demonstrators were arrested for violating the proclamation. Among those arrested was appellant Countryman. At the time of this demonstration, more than 10,000 persons were congregated a few blocks away for the recommissioning ceremony. None of those attending that ceremony were arrested.

2. Prior to issuance of the proclamation, members of an organization called People for Human Rights arranged to go to the homes of three United States Congressmen in the Philadelphia area to petition for passage of the Civil Rights Act of 1968. Members of the organization gathered at the home of one of the Congressmen on April 7, 1968, depositing petitions in his mail slot and distributing petitions to passersby. The size of the group eventually grew to 12 persons, at which time these individuals were arrested for violating the proclamation. Appellant Achtenberg was among those arrested. The demonstration was entirely peaceful; there were no incidents of disorder; the demonstrators violated no law other than the proclamation.

3. On April 8, 1968, a meeting was held by University of Pennsylvania students to discuss the mayor's proclamation. A platform was set up on university property, and approximately 200 to 250 people congregated to hear the various speakers. As part of the meeting, a police officer read the proclamation to the group. After being ordered to disperse, most of the group departed, but about 55 remained and peacefully submitted to arrest. Appellant Stotland was among the group arrested. There was no disruptive or disorderly conduct at this meeting. The speeches were not inflammatory. There was no allegation that the meeting created traffic problems, engendered the hostility of onlookers, or involved any breach of the peace.

In short, none of the three meetings in which the appellants took part were other than peaceful, orderly, and noninflammatory; none of them interfered with traffic or disrupted other activities; and none of them involved any violation of any law, save for the mayor's proclamation. This much was conceded by the courts below and is not disputed by the appellee.

At least since *Hague v. CIO*, 307 U. S. 496, decided in 1939, the use of public property such as streets and parks has been deemed an important adjunct to the rights of free speech and assembly protected by the First Amendment. States, of course, have the right to place reasonable regulations upon the time, place, and manner of the exercise of the rights of speech and assembly. As the Court said in *Cox v. Louisiana*, 379 U. S. 536, 554, one could not, "contrary to traffic regulations, insist upon a street meeting in the middle of Times Square at the rush hour as a form of freedom of speech or assembly." Such regulatory measures, however, must be narrowly drawn to reach only the legitimate objectives of state regulation. Overbreadth is constitutionally fatal, and we carefully scrutinize all such measures for that defect. *Cox v. Louisiana*, 379 U. S. 559, 562-564; *Edwards v. South Carolina*, 372 U. S. 229, 236-238. The ordinance involved in the *Hague* case, for example, gave the director of public safety of Jersey City, New Jersey, the authority to refuse to issue a permit for a public assembly in or upon the public streets, highways, parks, or buildings of the city, "for the purpose of preventing riots, disturbances or disorderly assemblage." This Court held that ordinance constitutionally infirm, Mr. Justice Roberts stating:

"[The ordinance] can thus, as the record discloses, be made the instrument of arbitrary suppression of free expression of views on national affairs, for the

prohibition of all speaking will undoubtedly 'prevent' such eventualities. But uncontrolled official suppression of the privilege cannot be made a substitute for the duty to maintain order in connection with the exercise of the right." 307 U. S., at 516.

The Philadelphia ordinance involved in this case, and the mayor's proclamation issued under its authority, raise serious questions under the First Amendment. First, the prohibition of assembly extended not merely to publicly owned property, but to "any outdoor place," public or private. Second, the proclamation covered all types of assembly, except for three narrow exceptions, regardless of how peaceful, orderly, and otherwise lawful that assembly might be. Third, there was no limitation on the length of the prohibition, for the state of emergency could be extended indefinitely. Appellants claim that as a regulatory measure, the ordinance and proclamation are unconstitutionally overbroad. I do not see how that question can be deemed to be "insubstantial."

Control of civil disorders that may threaten the very existence of the State is certainly within the police power of government. Yet does a particular proclamation violate equal protection?¹ Is it used to circumvent con-

¹ In 1967 the city of Syracuse, New York, imposed a curfew reading as follows: "No person shall enter or remain in any public street, park, square or building in any such part or parts of the city during the hours of the day as may be prescribed by the Mayor."

The City Court granted motions to dismiss informations for violating the curfew, *People v. Kearse*, 56 Misc. 2d 586, 289 N. Y. S. 2d 346, saying:

"A curfew law, like any other which restricts the activities or conduct of individuals, adults or minors, must not exceed the bounds of reasonableness. Three primary tests have often been invoked. (1) Is there an evil? (2) Do the means selected to curb the evil have a real and substantial relation to the result sought? (3) If the answer to the first two inquiries is yes, do the means availed of

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stitutional procedures for clearing the streets of "undesirable" people? Is it used selectively against an unwelcome minority? Does it give fair notice and are its provisions sufficiently precise so as to survive constitutional challenge? Does it transgress one's constitutional right to freedom of movement which of course is essential to the exercise of First Amendment rights?

I do not intimate that Philadelphia's proclamation has a constitutional infirmity. But the questions are so novel and undecided² that we should hear the case.

This Court can serve no higher function than to review serious and substantial questions regarding alleged infringements of the First Amendment rights of speech and assembly, whether they occur in fair weather or in foul.

I would note probable jurisdiction and put the case down for oral argument.

No. 1449. COHEN ET UX. *v.* WILMINGTON HOUSING AUTHORITY. Appeal from Sup. Ct. Del. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied. Reported below: — Del. —, 262 A. 2d 246.

unduly infringe or oppose fundamental rights of those whose activities or conduct is curbed? . . . Section 57 of the ordinance demonstrates the evil to be dealt with. The means selected to curb the evil have a real and substantial relation to the result sought; but the means availed of, the total prohibition of *all* persons without exception from *all* of the streets of the city, unduly infringes upon fundamental rights guaranteed by the New York and United States Constitutions." *Id.*, at 594, 289 N. Y. S. 2d, at 355-356.

For the same reason the County Court dismissed the appeal. *People v. Kearse*, 58 Misc. 2d 277, 295 N. Y. S. 2d 192.

² Comment, Judicial Control of the Riot Curfew, 77 Yale L. J. 1560 (1968); Comment, The Riot Curfew, 57 Calif. L. Rev. 450 (1969); Note, Legislation and Riots—Interaction, 35 Brooklyn L. Rev. 472, 478-481 (1969).

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No. 1776, Misc. TIJERINA ET AL. v. HENRY ET AL. Appeal from D. C. N. M. dismissed. THE CHIEF JUSTICE took no part in the consideration or decision of this case.

MR. JUSTICE DOUGLAS, dissenting.

Appellants brought this suit as a class action, claiming to represent a class "designated as Indo-Hispano, also called Mexican, Mexican-American and Spanish American, [which is] generally characterized by Spanish surnames, mixed Indian and Spanish ancestry and . . . Spanish as a primary or maternal language."¹ The District Court dismissed the complaint as a class action, holding that appellants' definition of the class was "too vague to be meaningful."²

¹ Appellants also sought to represent a class designated as "poor," defined as those who qualify for free legal process under certain New Mexico statutes. The District Court ruled that this was not an adequate definition of a class. Appellants do not press a contention of error with regard to this ruling, and I therefore do not deal with that question.

² The District Court also held that appellants had failed to prove that they would fairly and adequately represent the class. The court did not elaborate on the basis for this holding, nor did it specify what nature of proof it would require to establish adequate representation. Appellants alleged discrimination against a distinct cultural minority group, and were themselves members of that minority group. Adequate representation requires that the interests of the representatives of the class be compatible with and not antagonistic to the interests of those whom they purport to represent. See, e. g., *Clark v. Thompson*, 206 F. Supp. 539, 542, and cases cited. It is difficult to see how the District Court could have concluded that there was any antagonism of interest in preventing discrimination against the class. "Racial discrimination is by definition a class discrimination. If it exists, it applies throughout the class." *Hall v. Werthan Bag Corp.*, 251 F. Supp. 184, 186. The District Court's holding may have been based on its doubt that, as regards the appellants' first cause of action, all members of the class would agree that failure to provide Spanish language

Class actions are controlled by Rule 23 of the Federal Rules of Civil Procedure. That Rule does not in terms define a "class," other than by stating that the class must be "so numerous that joinder of all members is impracticable" and that there must be "questions of law or fact common to the class." Certainly those two prerequisites were satisfied in this case. In addition, however, federal courts have required that "[t]he members of a class must be capable of definite identification as being either in or out of it." *Chaffee v. Johnson*, 229 F. Supp. 445, 448. See also *Dolgow v. Anderson*, 43 F. R. D. 472, 491; *Weisman v. MCA Inc.*, 45 F. R. D. 258, 261; 3B J. Moore, Federal Practice ¶ 23.04 (1969).

In my view, the District Court clearly erred in holding that the members of the class were not sufficiently identifiable. The court relied, for example, on the fact that "the complaint is silent as to whether people with some Spanish or Mexican and Indian ancestors, as well as ancestors who are of some other extraction, *i. e.*, French, English, Danish, etc., would be included as members of the class. These considerations make this characteristic so vague as to be meaningless." One thing is not vague or uncertain, however, and that is that those who dis-

instruction was a discriminatory action. The burden of affirmatively proving agreement with the substantive claim on the part of all or a majority of the members of the class, however, would appear to be a wholly unreasonable and unnecessary requirement. "Necessarily, a different situation is presented where absent class members inform the court of their displeasure with plaintiff's representation, . . . but the representative party cannot be said to have an affirmative duty to demonstrate that the whole or a majority of the class considers his representation adequate. Nor can silence be taken as a sign of disapproval." *Eisen v. Carlisle & Jacquelin*, 391 F. 2d 555, 563. "A class action should not be denied merely because every member of the class might not be enthusiastic about enforcing his rights." Weinstein, Revision of Procedure: Some Problems in Class Actions, 9 Buffalo L. Rev. 433, 460 (1960).

criminate against members of this and other minority groups have little difficulty in isolating the objects of their discrimination. And it is precisely this discrimination, as alleged by appellants in their complaint, that presents the "questions of law or fact common to the class."

This Court responded to a similar contention regarding lack of an identifiable class in a different context in *Hernandez v. Texas*, 347 U. S. 475. There, the petitioner claimed that persons of Mexican descent were systematically excluded from jury service in violation of the Equal Protection Clause of the Fourteenth Amendment. The Court held that "persons of Mexican descent" constituted a distinct class to which the equal protection guarantee was applicable. "Throughout our history differences in race and color have defined easily identifiable groups which have at times required the aid of the courts in securing equal treatment under the laws." *Id.*, at 478. And the Court held that one method by which the petitioner could satisfy his burden of proving that persons of Mexican descent constituted a separate class was by showing the attitude of the community. *Id.*, at 479.

What the Court said in *Hernandez* is, I think, pertinent to the question of establishing the existence of a proper class for a class action under Rule 23. There can be no dispute that in many parts of the Southwestern United States persons of Indian and Mexican or Spanish descent are, as a class, subject to various forms of discrimination. Appellants, as members of that class, brought this action to prevent the continuance of alleged discriminatory actions taken against the class. I do not see how it can be seriously contended that this suit is not a proper class action.³ Indeed, the notes of

³ Maintenance of class actions on behalf of persons of Mexican or Latin descent was allowed in *Mendez v. Westminster School Dist.*, 64 F. Supp. 544, and *Gonzales v. Sheely*, 96 F. Supp. 1004.

the Advisory Committee to the 1966 amendment of Rule 23 state that "[i]llustrative [of class actions properly brought under Rule 23 (b)(2)] are various actions in the civil-rights field where a party is charged with discriminating unlawfully against a class, usually one whose members are incapable of specific enumeration."

The District Court also ruled on the merits of appellants' claims, dismissing their first, third, and fourth causes of action "with prejudice," on the ground that they were based on the Treaty of Guadalupe Hidalgo, and that nothing in that Treaty conferred the rights claimed by appellants.⁴ The third and fourth causes of action, however, specifically relied on the Thirteenth and Fourteenth Amendments to the United States Constitution, so that as to them a dismissal with prejudice seems clearly wrong. The court also noted that there was a lack of specific facts pleaded in appellants' complaint to support the allegations of discrimination in the third and fourth causes of action. With regard to appellants' second cause of action, however, the court held that, because a cause of action would be stated if suit were brought on behalf of a properly defined class alleging specific facts, the dismissal should be without prejudice. That reasoning should also apply to appellants' third and fourth causes of action.

In short, I do not think that the District Court's disposition of appellants' complaint should in any way prejudice appellants from obtaining a ruling, as representatives of the Indo-Hispano class, as to the constitutionality under the Fourteenth Amendment of the dis-

⁴ The fifth cause of action in appellants' complaint, alleging basically the same discrimination as the third and fourth causes of action, was brought only on behalf of the "poor class." I therefore find it unnecessary to discuss the dismissal of this cause of action. See n. 1, *supra*.

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crimination presently claimed in the first,⁵ third, and fourth causes of action of the complaint in this action.

I would note probable jurisdiction and put this case down for oral argument.

Miscellaneous Orders

No. 1472. NATIONWIDE THEATRES INVESTMENT CO. ET AL. *v.* THOMPSON ET AL. C. A. 2d Cir. Application for stay presented to THE CHIEF JUSTICE, and by him referred to the Court, denied.

No. 1058. PHILLIPS *v.* MARTIN MARIETTA CORP. C. A. 5th Cir. [Certiorari granted, 397 U. S. 960.] Motion of American Civil Liberties Union for leave to file a brief as *amicus curiae* granted.

No. 1405. GRIGGS ET AL. *v.* DUKE POWER Co. C. A. 4th Cir. The Solicitor General is invited to file a brief expressing the views of the United States. MR. JUSTICE BRENNAN took no part in the consideration or decision of this order. Reported below: 420 F. 2d 1225.

No. 1979, Misc. PAYNE *v.* HOCKER, WARDEN;

No. 2067, Misc. MCCARTNEY *v.* SUPERIOR COURT, SAN BERNARDINO COUNTY, ET AL.; and

No. 2109, Misc. GARDNER *v.* CALIFORNIA ET AL. Motions for leave to file petitions for writs of habeas corpus denied.

Certiorari Granted

No. 1392. INTERNATIONAL BROTHERHOOD OF BOILERMAKERS, IRON SHIPBUILDERS, BLACKSMITHS, FORGERS & HELPERS, AFL-CIO *v.* HARDEMAN. C. A. 5th Cir. Cer-

⁵I assume that, because appellants' first cause of action rested solely on the Treaty of Guadalupe Hidalgo, the dismissal of that cause of action "with prejudice" would not prevent the bringing of a subsequent action, alleging the same acts of discrimination, based on the Fourteenth Amendment or other constitutional provision.

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tiorari granted limited to Questions 1 and 3 presented by the petition which read as follows:

"1. Whether a federal court in a Section 102 proceeding reviewing an expulsion of a member by a union may apply a standard of review whereby the court substitutes its own factual findings and interpretations of the union's constitution and by-laws for those of the union."

"3. Whether the National Labor Relations Act, as amended, preempts an action brought under Section 102 of the Labor-Management Reporting and Disclosure Act wherein a former union member, claiming wrongful expulsion, does not seek restoration of membership rights but claims damages for an alleged loss of employment due to the union's alleged failure to refer him to employers."

Reported below: 420 F. 2d 485.

Certiorari Denied. (See also No. 1449, *supra.*)

No. 1127. *WEISS ET AL. v. WYOMING EX REL. CARDINE.* Sup. Ct. Wyo. *Certiorari denied.* Reported below: 455 P. 2d 904.

No. 1128. *BELONDON v. CITY OF CASPER.* Sup. Ct. Wyo. *Certiorari denied.* Reported below: 456 P. 2d 238.

No. 1253. *FERRARA v. ILLINOIS.* App. Ct. Ill., 2d Dist. *Certiorari denied.* Reported below: 111 Ill. App. 2d 472, 250 N. E. 2d 530.

No. 1340. *GORDON v. UNITED STATES.* C. A. 5th Cir. *Certiorari denied.* Reported below: 421 F. 2d 1068.

No. 1395. *DETROIT & TOLEDO SHORE LINE RAILROAD Co. v. BROTHERHOOD OF LOCOMOTIVE FIREMEN & ENGINEMEN.* C. A. 6th Cir. *Certiorari denied.* Reported below: 421 F. 2d 660.

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No. 1346. LANRAO, INC. *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 422 F. 2d 481.

No. 1375. TEXAS EASTERN TRANSMISSION CORP. *v.* FEDERAL POWER COMMISSION ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 414 F. 2d 344.

No. 1396. GLAZERMAN *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 421 F. 2d 547.

No. 1397. 677.50 ACRES OF LAND IN MARION COUNTY, KANSAS, ET AL. *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 420 F. 2d 1136.

No. 1398. ALOE CREME LABORATORIES, INC. *v.* MILSAN, INC., ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 423 F. 2d 845.

No. 1399. BROUGH *v.* BOARD OF EDUCATION OF MILLARD COUNTY SCHOOL DISTRICT ET AL. Sup. Ct. Utah. Certiorari denied. Reported below: 23 Utah 2d 353, 463 P. 2d 567.

No. 1401. PINGATORE ET VIR *v.* MONTGOMERY WARD & Co., INC. C. A. 6th Cir. Certiorari denied. Reported below: 419 F. 2d 1138.

No. 1404. TENNESSEE CORP. *v.* SEABOARD COAST LINE RAILROAD Co. C. A. 5th Cir. Certiorari denied. Reported below: 421 F. 2d 970.

No. 1410. MOULTRIE MANUFACTURING Co. ET AL. *v.* TENNESSEE FABRICATING Co., DBA TFC Co. C. A. 5th Cir. Certiorari denied. Reported below: 421 F. 2d 279.

No. 1412. INDIANA GENERAL CORP. *v.* KRYSTINEL CORP.; and

No. 1423. KRYSTINEL CORP. *v.* INDIANA GENERAL CORP. C. A. 2d Cir. Certiorari denied. Reported below: 421 F. 2d 1023.

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No. 1420. *YOUNG v. SCOTT ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 421 F. 2d 143.

No. 1424. *ALOE CREME LABORATORIES, INC. v. AMERICAN ALOE CORP.* C. A. 7th Cir. Certiorari denied. Reported below: 420 F. 2d 1248.

No. 1447. *TERRELL MACHINE CO. v. NATIONAL LABOR RELATIONS BOARD.* C. A. 4th Cir. Certiorari denied. Reported below: 427 F. 2d 1088.

No. 1473. *MONOGRAM MODELS, INC. v. NATIONAL LABOR RELATIONS BOARD.* C. A. 7th Cir. Certiorari denied. Reported below: 420 F. 2d 1263.

No. 1474. *ADAMOWSKI ET AL. v. JAYNE.* App. Ct. Ill., 1st Dist. Certiorari denied.

No. 1400. *COFONE ET AL. v. UNITED STATES.* C. A. 1st Cir. Motion to dispense with printing petition granted. Certiorari denied.

No. 1406. *DACEY ET AL. v. NEW YORK COUNTY LAWYERS' ASSN.* C. A. 2d Cir. Certiorari denied. MR. JUSTICE DOUGLAS took no part in the consideration or decision of this petition. Reported below: 423 F. 2d 188.

No. 1500. *CRAVEN, WARDEN v. TUCKER.* C. A. 9th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 421 F. 2d 139.

No. 31, Misc. *McCLOUD v. RUNDLE, CORRECTIONAL SUPERINTENDENT.* C. A. 3d Cir. Certiorari denied. Reported below: 402 F. 2d 853.

No. 231, Misc. *CANADY v. FOLLETTE, WARDEN.* C. A. 2d Cir. Certiorari denied.

No. 556, Misc. *REED v. FIELD, MEN'S COLONY SUPERINTENDENT.* C. A. 9th Cir. Certiorari denied.

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No. 77, Misc. *ROSEN v. FOLLETTE, WARDEN*. C. A. 2d Cir. Certiorari denied. Reported below: 409 F. 2d 1042.

No. 1306, Misc. *TAYLOR v. COX, PENITENTIARY SUPERINTENDENT*. C. A. 4th Cir. Certiorari denied.

No. 1586, Misc. *LIMBAUGH v. ALABAMA*. Ct. Crim. App. Ala. Certiorari denied. Reported below: 45 Ala. App. 722, 228 So. 2d 837.

No. 1589, Misc. *ROLON v. NEW YORK*. Ct. App. N. Y. Certiorari denied. Reported below: 25 N. Y. 2d 974, 252 N. E. 2d 860.

No. 1654, Misc. *NICHOLSON v. ALABAMA*. Sup. Ct. Ala. Certiorari denied.

No. 1685, Misc. *EVANS v. CITY OF DETROIT ET AL.* C. A. 6th Cir. Certiorari denied.

No. 1695, Misc. *SMITH v. UNITED STATES*. C. A. 9th Cir. Certiorari denied.

No. 1724, Misc. *WILSON v. UNITED STATES*. C. A. D. C. Cir. Certiorari denied.

No. 1728, Misc. *DOWNES v. ALABAMA*. Ct. Crim. App. Ala. Certiorari denied. Reported below: 45 Ala. App. 415, 231 So. 2d 336.

No. 1818, Misc. *McHENRY v. MICHIGAN STATE PAROLE BOARD*. C. A. 6th Cir. Certiorari denied.

No. 1820, Misc. *THOMPSON v. NEW YORK*. App. Div., Sup. Ct. N. Y., 2d Jud. Dept. Certiorari denied.

No. 1839, Misc. *BOLDEN v. MOSELEY, WARDEN*. C. A. 10th Cir. Certiorari denied.

No. 1841, Misc. *McCLENDON v. PARKER*. C. A. 3d Cir. Certiorari denied.

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No. 1821, Misc. *VIANDS v. BROWN*, DIRECTOR, VIRGINIA DEPARTMENT OF WELFARE AND INSTITUTIONS. C. A. 4th Cir. Certiorari denied.

No. 1822, Misc. *PETERSON v. MISSOURI*. Sup. Ct. Mo. Certiorari denied. Reported below: 444 S. W. 2d 673.

No. 1827, Misc. *WILLIAMS v. FOLLETTE*, WARDEN. App. Div., Sup. Ct. N. Y., 2d Jud. Dept. Certiorari denied.

No. 1844, Misc. *TINSLEY v. UNITED STATES*. C. A. D. C. Cir. Certiorari denied.

No. 1849, Misc. *DAVIS v. CRAVEN*, WARDEN. Sup. Ct. Cal. Certiorari denied.

No. 1859, Misc. *CANNON v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 420 F. 2d 1382.

No. 1875, Misc. *FULLEN v. NEW YORK*. App. Div., Sup. Ct. N. Y., 4th Jud. Dept. Certiorari denied.

No. 1876, Misc. *ROSENBERG v. MANCUSI*, WARDEN. C. A. 2d Cir. Certiorari denied.

No. 1878, Misc. *KOEBRICH v. CRAVEN*, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 1914, Misc. *O'CONNOR v. CLEMENT*, SHERIFF. C. A. 4th Cir. Certiorari denied.

No. 1927, Misc. *LASALANDRA v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 421 F. 2d 1261.

No. 1935, Misc. *GOFF v. PFAU*, TRUSTEE IN BANKRUPTCY. C. A. 8th Cir. Certiorari denied. Reported below: 418 F. 2d 649.

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No. 1943, Misc. *BUIE v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 420 F. 2d 1207.

No. 1950, Misc. *CANTRELL v. CALIFORNIA ADULT AUTHORITY*. Sup. Ct. Cal. Certiorari denied.

No. 1973, Misc. *COOK v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 426 F. 2d 1358.

No. 1975, Misc. *LLOYD v. NEVADA*. Sup. Ct. Nev. Certiorari denied.

No. 1990, Misc. *GRIMES v. UNITED STATES*. C. A. D. C. Cir. Certiorari denied. Reported below: 137 U. S. App. D. C. 184, 421 F. 2d 1119.

No. 2033, Misc. *PENNEY ET AL. v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 416 F. 2d 850.

Rehearing Denied

No. 1436, Misc. *JULIANO v. CARDWELL, WARDEN*, 397 U. S. 1046;

No. 1615, Misc. *KERNER ET UX. v. CIBA CORP.*, 397 U. S. 1050;

No. 1738, Misc. *GORDON v. BRIGHT ET AL.*, 397 U. S. 1057; and

No. 1823, Misc. *MIDDLETON v. UNITED STATES*, 397 U. S. 1071. Petitions for rehearing denied.

Assignment Orders

An order of THE CHIEF JUSTICE designating and assigning Mr. Justice Clark (retired) to perform judicial duties in the United States Court of Appeals for the Seventh Circuit beginning May 26, 1970, and ending May 28, 1970, and for such further time as may be required to complete unfinished business, pursuant to 28 U. S. C. § 294 (a), is ordered entered on the minutes of this Court, pursuant to 28 U. S. C. § 295.

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May 25, 26, 28, June 1, 1970

An order of THE CHIEF JUSTICE designating and assigning Mr. Justice Clark (retired) to perform judicial duties in the United States Court of Appeals for the Second Circuit beginning October 13, 1970, and ending October 16, 1970, and for such further time as may be required to complete unfinished business, pursuant to 28 U. S. C. § 294 (a), is ordered entered on the minutes of this Court, pursuant to 28 U. S. C. § 295.

MAY 26, 1970

Dismissal Under Rule 60

No. 1054, Misc. MINK *v.* MICHIGAN. Sup. Ct. Mich. Petition for writ of certiorari dismissed pursuant to Rule 60 of the Rules of this Court.

MAY 28, 1970

Miscellaneous Order

No. 2263, Misc. ADDONIZIO *v.* BARLOW, U. S. DISTRICT JUDGE. D. C. N. J. Application for stay presented to MR. JUSTICE BRENNAN, and by him referred to the Court, denied. MR. JUSTICE BLACK and MR. JUSTICE MARSHALL took no part in the consideration or decision of this application.

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Appeals Dismissed

No. 1409, Misc. HARRIS *v.* CITY OF HOUSTON ET AL. Appeal from Dist. Ct. of Harris County, Tex., dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for a writ of certiorari, certiorari denied.

*MR. JUSTICE MARSHALL took no part in the consideration or decision of the orders of this date.

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No. 1267, Misc. THOMAS ET AL. *v.* BURSON, DIRECTOR, DEPARTMENT OF FAMILY AND CHILDREN SERVICES. Appeal from D. C. M. D. Ga. dismissed for want of jurisdiction.

Miscellaneous Orders

No. 36, Orig. TEXAS *v.* LOUISIANA. Motion for the appointment of a Special Master granted. It is ordered that the Honorable Robert Van Pelt, Senior Judge of the United States District Court for the District of Nebraska, be, and he is hereby, appointed Special Master in this case with authority to fix the time and conditions for filing of additional pleadings and to direct subsequent proceedings, and with authority to summon witnesses, issue subpoenas, and take such evidence as may be introduced and such as he may deem it necessary to call for. The Master is directed to submit such reports as he may deem appropriate.

The Master shall be allowed his actual expenses. The allowances to him, the compensation paid to his technical, stenographic, and clerical assistants, the cost of printing his report, and all other proper expenses shall be charged against and be borne by the parties in such proportion as the Court hereafter may direct.

It is further ordered that if the position of Special Master in this case becomes vacant during a recess of Court, THE CHIEF JUSTICE shall have authority to make a new designation which shall have the same effect as if originally made by the Court herein. [For earlier order herein, see 397 U. S. 931.]

No. —. CALIFORNIA EX REL. SMITH *v.* UNITED STATES ET AL. Motion for leave to file an original action denied.

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No. 179. *ROGERS, SECRETARY OF STATE v. BELLEI*. Appeal from D. C. D. C. [Probable jurisdiction noted, 396 U. S. 811; restored to calendar, 397 U. S. 1060.] Motion of appellee to remove case from summary calendar granted and a total of one and one-half hours allotted for oral argument.

No. 977. *WYMAN, COMMISSIONER OF SOCIAL SERVICES OF NEW YORK v. JAMES ET AL.* Appeal from D. C. S. D. N. Y. [Probable jurisdiction noted, 397 U. S. 904.] Application to remove seal from record or permit reference in briefs to sealed material granted.

No. 1058. *PHILLIPS v. MARTIN MARIETTA CORP.* C. A. 5th Cir. [Certiorari granted, 397 U. S. 960.] Motion of Air Line Stewards & Stewardesses Association, Local 550, Transport Workers Union of America, AFL-CIO, for leave to file a brief as *amicus curiae* granted.

No. 2031, Misc. *TIME, INC. v. FIRESTONE*. C. A. 5th Cir. and D. C. S. D. Fla. Motion for leave to file petition for writs of certiorari denied. MR. JUSTICE BLACK and MR. JUSTICE DOUGLAS are of the opinion that certiorari should be granted.

No. 2007, Misc. *MEYER v. FIELD, MEN'S COLONY SUPERINTENDENT*; and

No. 2174, Misc. *WOOD v. KOLOSKI, WARDEN*. Motions for leave to file petitions for writs of habeas corpus denied.

No. 1896, Misc. *MILLAN-DIAZ v. AUGELLI, U. S. DISTRICT JUDGE*; and

No. 1956, Misc. *MONTAGUE v. HUNTER, CHIEF JUSTICE, SUPREME COURT OF WASHINGTON*. Motions for leave to file petitions for writs of mandamus denied.

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Certiorari Granted. (See also No. 1347, *ante*, p. 278; No. 1394, *ante*, p. 279; and No. 1183, Misc., *ante*, p. 279.)

No. 486, Misc. MCGAUTHA *v.* CALIFORNIA. Sup. Ct. Cal. Motion for leave to proceed *in forma pauperis* granted. *Certiorari* granted limited to Question 1 presented by the petition which reads as follows:

"1. Does California's practice of allowing capital trial juries absolute discretion, uncontrolled by standards or directions of any kind, to impose the death penalty upon a defendant convicted of the crime of murder violate the Due Process Clause of the Fourteenth Amendment?"

Case transferred to appellate docket. Reported below: 70 Cal. 2d 770, 452 P. 2d 650.

No. 709, Misc. CRAMPTON *v.* OHIO. Sup. Ct. Ohio. Motion for leave to proceed *in forma pauperis* granted. *Certiorari* granted limited to Questions 2 and 3 presented by the petition which read as follows:

"2. Whether the Ohio statute which provides that the trier of fact shall determine both guilt and punishment in a single verdict in cases of murder in the first degree violates Petitioner's right to be free from self-incrimination.

"3. Whether the Ohio statute which provides that the trier of fact may grant or withhold a recommendation of mercy in cases of murder in the first degree, and which provides no standards or criteria to assist the trier of fact in making such determination, violates Petitioner's right to due process and equal protection of the law."

Case transferred to appellate docket. Reported below: 18 Ohio St. 2d 182, 248 N. E. 2d 614.

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No. 780, Misc. BRUNO *v.* PENNSYLVANIA. Sup. Ct. Pa. Motion for leave to proceed *in forma pauperis* granted. Certiorari granted and case transferred to appellate docket. Reported below: 435 Pa. 200, 255 A. 2d 519 and 257 A. 2d 47.

No. 1022, Misc. HARRIS *v.* NEW YORK. Ct. App. N. Y. Motion for leave to proceed *in forma pauperis* granted. Certiorari granted and case transferred to appellate docket. Reported below: 25 N. Y. 2d 175, 250 N. E. 2d 349.

Certiorari Denied. (See also No. 1409, Misc., *supra.*)

No. 1274. KAHL *v.* BREEN ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 419 F. 2d 1034.

No. 1301. WILLIAMS *v.* IOWA. Sup. Ct. Iowa. Certiorari denied. Reported below: 171 N. W. 2d 521.

No. 1330. SIBLEY ET AL. *v.* RURAL ELECTRIFICATION ADMINISTRATION ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 419 F. 2d 384.

No. 1348. PACIFIC NATIONAL INSURANCE Co. *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 422 F. 2d 26.

No. 1409. BELL *v.* GOVERNMENT OF THE VIRGIN ISLANDS. C. A. 3d Cir. Certiorari denied. Reported below: 423 F. 2d 692.

No. 1411. TURNER *v.* THOMPSON ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 421 F. 2d 771.

No. 1416. IN RE BEDFORD AVIATION, INC. C. A. 1st Cir. Certiorari denied.

No. 1417. TERRY *v.* MARTIN. Sup. Ct. Ore. Certiorari denied.

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No. 1418. *VASQUEZ v. CALIFORNIA*. Ct. App. Cal., 2d App. Dist. Certiorari denied. Reported below: 1 Cal. App. 3d 769, 82 Cal. Rptr. 131.

No. 1419. *O'BRIEN, CORRECTIONAL SUPERINTENDENT v. SAVILLE*. C. A. 1st Cir. Certiorari denied. Reported below: 420 F. 2d 347.

No. 1421. *IOWA v. CULLISON, JUDGE*. Sup. Ct. Iowa. Certiorari denied. Reported below: 173 N. W. 2d 533.

No. 1422. *WELTRONIC Co. v. NATIONAL LABOR RELATIONS BOARD ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 419 F. 2d 1120.

No. 1425. *BROADRIVER, INC. v. CITY OF STAMFORD ET AL.* Sup. Ct. Conn. Certiorari denied. Reported below: 158 Conn. 522, 264 A. 2d 75.

No. 1428. *PUCHALSKI v. NEW JERSEY STATE PAROLE BOARD*. Sup. Ct. N. J. Certiorari denied. Reported below: 55 N. J. 113, 259 A. 2d 713.

No. 1431. *CORWIN v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 423 F. 2d 33.

No. 1436. *CARTER-WALLACE, INC. v. FINCH, SECRETARY OF HEALTH, EDUCATION, AND WELFARE, ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 417 F. 2d 1086.

No. 1437. *MUCIE v. MISSOURI*. Sup. Ct. Mo. Certiorari denied. Reported below: 448 S. W. 2d 879.

No. 1438. *CROWN CENTRAL PETROLEUM CORP. v. TREXLER, ADMINISTRATRIX, ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 419 F. 2d 536.

No. 1443. *COSTA v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 425 F. 2d 950.

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No. 1439. *CENTRAL GULF STEAMSHIP CORP. v. GRACE LINE, INC.* C. A. 5th Cir. Certiorari denied. Reported below: 416 F. 2d 977.

No. 1442. *DEAN FOODS CO., INC. v. NATIONAL LABOR RELATIONS BOARD.* C. A. 6th Cir. Certiorari denied. Reported below: 421 F. 2d 664.

No. 1445. *INSURANCE COMPANY OF NORTH AMERICA v. FIRST NATIONAL BANK OF DECATUR, FORMERLY NATIONAL BANK OF DECATUR.* C. A. 7th Cir. Certiorari denied. Reported below: 424 F. 2d 312.

No. 1450. *A/S J. LUDWIG MOWINCKELS REDERI v. DOW CHEMICAL CO. ET AL.* Ct. App. N. Y. Certiorari denied. Reported below: 25 N. Y. 2d 576, 255 N. E. 2d 774.

No. 1457. *NORTHERN ACCEPTANCE TRUST 1065 ET AL. v. GRAY, U. S. DISTRICT JUDGE, ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 423 F. 2d 653.

No. 1476. *WRIGHT v. CALIFORNIA.* App. Dept., Super. Ct. Cal., County of Los Angeles. Certiorari denied.

No. 1495. *CIMINI v. UNITED STATES.* C. A. 6th Cir. Certiorari denied.

No. 1380. *HORELICK ET AL. v. NEW YORK.* C. A. 2d Cir. Motion to dispense with printing petition granted. Certiorari denied. MR. JUSTICE DOUGLAS is of the opinion that certiorari should be granted. Reported below: 424 F. 2d 697.

No. 1391. *LASH, WARDEN v. EVANS.* C. A. 7th Cir. Motion to dispense with printing petition granted. Certiorari denied. Reported below: 419 F. 2d 1337.

No. 229, Misc. *GRAY v. FIELD, MEN'S COLONY SUPERINTENDENT.* C. A. 9th Cir. Certiorari denied.

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No. 1430. *GEORGE v. LOUISIANA*. Sup. Ct. La. Certiorari denied. MR. JUSTICE BLACK is of the opinion that certiorari should be granted. Reported below: 255 La. 104, 229 So. 2d 715.

No. 1469. *TIME, INC. v. WASSERMAN*. C. A. D. C. Cir. Certiorari denied. MR. JUSTICE BLACK and MR. JUSTICE DOUGLAS are of the opinion that certiorari should be granted. Reported below: — U. S. App. D. C. —, 424 F. 2d 921.

No. 1490. *TIME, INC. v. FIRESTONE*. C. A. 5th Cir. Certiorari denied. MR. JUSTICE BLACK and MR. JUSTICE DOUGLAS are of the opinion that certiorari should be granted.

No. 383, Misc. *TYLER v. MARYLAND*. Ct. Sp. App. Md. Certiorari denied. Reported below: 5 Md. App. 158, 245 A. 2d 592.

No. 582, Misc. *WINTON v. FIELD, MEN'S COLONY SUPERINTENDENT*. Sup. Ct. Cal. Certiorari denied.

No. 827, Misc. *WYANT v. BREWER, WARDEN*. Sup. Ct. Iowa. Certiorari denied.

No. 881, Misc. *KILLEAN v. NELSON, WARDEN*; and
No. 937, Misc. *LEAHY v. CRAVEN, WARDEN*. Sup. Ct. Cal. Certiorari denied.

No. 1133, Misc. *HUNDLEY v. PINTO, PRISON FARM SUPERINTENDENT*. C. A. 3d Cir. Certiorari denied. Reported below: 413 F. 2d 727.

No. 1258, Misc. *DURHAM v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 409 F. 2d 1170.

No. 1579, Misc. *ABBOTT v. ILLINOIS*. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 110 Ill. App. 2d 462, 249 N. E. 2d 675.

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No. 1344, Misc. ZITZER *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 1460, Misc. BYNES *v.* NEW JERSEY. Super. Ct. N. J. Certiorari denied.

No. 1801, Misc. JONES *v.* UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF TENNESSEE. C. A. 6th Cir. Certiorari denied.

No. 1846, Misc. DEBLASIO *v.* DEEGAN, WARDEN. C. A. 2d Cir. Certiorari denied.

No. 1919, Misc. WELDON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 422 F. 2d 800.

No. 1921, Misc. POTTS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 420 F. 2d 964.

No. 1923, Misc. BROWN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 421 F. 2d 1283.

No. 1926, Misc. CORDOVA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 421 F. 2d 471.

No. 1932, Misc. DEDMON *v.* CRAVEN, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 1937, Misc. HAYES *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 419 F. 2d 1364.

No. 1940, Misc. ADAMS *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied. Reported below: 1 Cal. App. 3d 29, 81 Cal. Rptr. 378.

No. 1951, Misc. LEVENTHAL *v.* GAVIN, CORRECTION COMMISSIONER. C. A. 1st Cir. Certiorari denied. Reported below: 421 F. 2d 270.

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No. 1942, Misc. *BECKMAN v. UNITED STATES*. C. A. 10th Cir. Certiorari denied.

No. 1952, Misc. *WILLIAMS v. RUSSELL, WARDEN*. C. A. 6th Cir. Certiorari denied. Reported below: 419 F. 2d 1092.

No. 1954, Misc. *BIANCOFIORI v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 422 F. 2d 584.

No. 1959, Misc. *HARRIS v. WAINWRIGHT, CORRECTIONS DIRECTOR*. C. A. 5th Cir. Certiorari denied.

No. 1961, Misc. *MAGGIO v. UNITED STATES*. C. A. 2d Cir. Certiorari denied.

No. 1963, Misc. *HUFFMAN v. NORTH CAROLINA*. Sup. Ct. N. C. Certiorari denied.

No. 1970, Misc. *GRAHAM v. FITZHARRIS, WARDEN*. Sup. Ct. Cal. Certiorari denied.

No. 1972, Misc. *ROBINSON v. BLACKWELL, WARDEN*. C. A. 5th Cir. Certiorari denied.

No. 1977, Misc. *DEMETER v. YEAGER, PRINCIPAL KEEPER*. C. A. 3d Cir. Certiorari denied. Reported below: 418 F. 2d 612.

No. 1983, Misc. *BELLINGER v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 422 F. 2d 723.

No. 1988, Misc. *LOPEZ v. NEW MEXICO*. Ct. App. N. M. Certiorari denied. Reported below: 80 N. M. 599, 458 P. 2d 851.

No. 1994, Misc. *CARSON v. ELROD, SUPERINTENDENT, DEPARTMENT OF PUBLIC WELFARE*. C. A. 4th Cir. Certiorari denied.

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No. 1976, Misc. *HALL v. UNITED STATES*. C. A. 6th Cir. Certiorari denied.

No. 1997, Misc. *BERTONE v. FLORIDA*. Dist. Ct. App. Fla., 3d Dist. Certiorari denied. Reported below: 224 So. 2d 400.

No. 1999, Misc. *BENSON v. UNITED STATES ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 421 F. 2d 515.

No. 2008, Misc. *BREVIK v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 422 F. 2d 449.

No. 2011, Misc. *HOLT v. UNITED STATES*. C. A. 6th Cir. Certiorari denied.

No. 2014, Misc. *BENSON v. EYMAN, WARDEN*. C. A. 9th Cir. Certiorari denied.

No. 2022, Misc. *VITORATOS v. MORRIS, JUDGE*. Sup. Ct. Ohio. Certiorari denied. Reported below: 22 Ohio St. 2d 3, 257 N. E. 2d 398.

No. 2024, Misc. *FLAGLER v. WAINWRIGHT, CORRECTIONS DIRECTOR*. C. A. 5th Cir. Certiorari denied. Reported below: 423 F. 2d 1359.

No. 2025, Misc. *STEMLEY v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 422 F. 2d 373.

No. 2058, Misc. *BOWMAN v. ARIZONA*. Sup. Ct. Ariz. Certiorari denied. Reported below: 105 Ariz. 307, 464 P. 2d 330.

No. 431, Misc. *WILLIAMS v. WAINWRIGHT, CORRECTIONS DIRECTOR*. C. A. 5th Cir. Certiorari denied. MR. JUSTICE DOUGLAS is of the opinion that certiorari should be granted. Reported below: 410 F. 2d 144.

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No. 2028, Misc. HURD *v.* HURD ET AL. C. A. 1st Cir. Certiorari denied.

No. 1635, Misc. HUDSON *v.* NEW YORK. Ct. App. N. Y. Certiorari denied. MR. JUSTICE DOUGLAS is of the opinion that certiorari should be granted.

No. 1957, Misc. EVANS *v.* LASH, WARDEN. C. A. 7th Cir. Certiorari denied. MR. JUSTICE DOUGLAS is of the opinion that certiorari should be granted. Reported below: 419 F. 2d 1337.

Rehearing Denied

No. 502, Misc., October Term, 1967. EPTON *v.* NEW YORK, 390 U. S. 29, 976; and

No. 771, Misc., October Term, 1967. EPTON *v.* NEW YORK, *ibid.* Motion for leave to file second petition for rehearing denied. THE CHIEF JUSTICE took no part in the consideration or decision of this motion.

No. 445. STANDARD INDUSTRIES, INC. *v.* TIGRETT INDUSTRIES, INC., ET AL., 397 U. S. 586;

No. 1146. AMERICAN ART INDUSTRIES, INC. *v.* NATIONAL LABOR RELATIONS BOARD, 397 U. S. 990;

No. 1256. CINCINNATI WINDOW CLEANING CO. ET AL. *v.* WALKER, TRUSTEE IN BANKRUPTCY, 397 U. S. 1038;

No. 1276. BIRNBAUM *v.* UNITED STATES, 397 U. S. 1044;

No. 1279. McGRATH *v.* KIRWAN, 397 U. S. 1041;

No. 1303. GRIPKEY *v.* GERTY ET AL., 397 U. S. 1063;

No. 1320. GRIPKEY *v.* SISTERS OF CHARITY OF THE BLESSED VIRGIN MARY, 397 U. S. 1042;

No. 1335. EUGENE SAND & GRAVEL, INC. *v.* LOWE ET AL., 397 U. S. 591; and

No. 1336. EUGENE SAND & GRAVEL, INC. *v.* LOWE ET AL., 397 U. S. 1042. Petitions for rehearing denied.

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No. 1112, Misc. LAMPTON ET AL. *v.* BONIN ET AL., 397 U. S. 663;

No. 1200, Misc. MARINO *v.* PENNSYLVANIA, 397 U. S. 1077;

No. 1244, Misc. SMITH *v.* FLORIDA, 397 U. S. 1077;

No. 1248, Misc. FRAZIER *v.* UNITED STATES, 397 U. S. 1013;

No. 1639, Misc. CUMMINGS *v.* COX, PENITENTIARY SUPERINTENDENT, 397 U. S. 1051;

No. 1666, Misc. MIXON *v.* PENN STEVEDORES, INC., 397 U. S. 1052;

No. 1706, Misc. MOORE *v.* UNITED STATES ET AL., 397 U. S. 1055;

No. 1710, Misc. HOPKINS *v.* CALIFORNIA, 397 U. S. 1055;

No. 1726, Misc. COX *v.* UNITED STATES, 397 U. S. 1056;

No. 1747, Misc. MARTINEZ *v.* CALIFORNIA, 397 U. S. 1069;

No. 1762, Misc. KEANE *v.* CUCURELLO, 397 U. S. 1070; and

No. 1815, Misc. BELTOWSKI *v.* YOUNG, WARDEN, 397 U. S. 1079. Petitions for rehearing denied.

No. 41. CHOCTAW NATION ET AL. *v.* OKLAHOMA ET AL.; and

No. 59. CHEROKEE NATION OR TRIBE OF INDIANS IN OKLAHOMA *v.* OKLAHOMA ET AL., 397 U. S. 620. Petition for rehearing denied. MR. JUSTICE HARLAN took no part in the consideration or decision of this petition.

No. 1620, Misc. LEWIS *v.* UNITED STATES, 397 U. S. 1034. Petition for rehearing denied. THE CHIEF JUSTICE took no part in the consideration or decision of this petition.

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No. 1239. *GIAGNOCAVO v. BUCKS COUNTY COMMISSIONERS*, 397 U. S. 590. Motion to dispense with printing petition granted. Petition for rehearing denied.

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Dismissal Under Rule 60

No. 1577. *MCCARTHY v. UNITED STATES*. C. A. 2d Cir. Petition for writ of certiorari dismissed pursuant to Rule 60 of the Rules of this Court. Reported below: 422 F. 2d 160.

JUNE 8, 1970*

Order Appointing Clerk

It is ordered that E. Robert Seaver be appointed Clerk of this Court to succeed John F. Davis effective at the commencement of business June 22, 1970, and that he take the oath of office and give bond as required by statute and the order of this Court entered November 22, 1948.

Order Appointing Director of Administrative Office of U. S. Courts

It is ordered that Rowland Falconer Kirks be appointed Director of the Administrative Office of the United States Courts, effective at the commencement of business July 1, 1970, pursuant to the provisions of § 601 of Title 28 of the United States Code.

Appeal Dismissed

No. 1463. *NATIONAL ADVERTISING Co. v. COUNTY OF MONTEREY ET AL.* Appeal from Sup. Ct. Cal. Motion to dismiss granted. Appeal dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied. Reported below: 1 Cal. 3d 875, 464 P. 2d 33.

*MR. JUSTICE MARSHALL took no part in the consideration or decision of the orders of this date.

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Miscellaneous Orders

No. 35, Orig. UNITED STATES *v.* MAINE ET AL. Motions for the appointment of a Special Master granted. It is ordered that Honorable Albert B. Maris, Senior Judge of the United States Court of Appeals for the Third Circuit, be, and he is hereby, appointed Special Master in this case with authority to fix the time and conditions for the filing of additional pleadings and to direct subsequent proceedings, and with authority to summon witnesses, issue subpoenas, and take such evidence as may be introduced and such as he may deem it necessary to call for. The Master is directed to submit such reports as he may deem appropriate.

The Master shall be allowed his actual expenses. The allowances to him, the compensation paid to his technical, stenographic, and clerical assistants, the cost of printing his report, and all other proper expenses shall be charged against and be borne by the parties in such proportion as the Court hereafter may direct.

It is further ordered that if the position of Special Master in this case becomes vacant during a recess of Court, THE CHIEF JUSTICE shall have authority to make a new designation which shall have the same effect as if originally made by the Court herein.

MR. JUSTICE DOUGLAS took no part in the consideration or decision of these motions.

[For earlier order herein, see 395 U. S. 955.]

No. 900. UNITED STATES *v.* FANCHER. Appeal from D. C. S. D. [Probable jurisdiction noted, 397 U. S. 985.] Motion of appellee for leave to proceed *in forma pauperis* granted. Motion of appellee for appointment of counsel granted. It is ordered that *Donald R. Shultz, Esquire*, of Rapid City, South Dakota, be, and he is hereby, appointed to serve as counsel for appellee in this case.

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No. 1192. *ZICARELLI v. NEW JERSEY STATE COMMISSION OF INVESTIGATION*. Application for bail denied. MR. JUSTICE DOUGLAS is of the opinion that the application should be granted. MR. JUSTICE BRENNAN took no part in the consideration or decision of this application. [See 397 U. S. 932.]

No. 1289. *PALMER ET AL. v. THOMPSON, MAYOR OF THE CITY OF JACKSON, ET AL.* C. A. 5th Cir. [Certiorari granted, 397 U. S. 1035.] Motion of petitioners to remove case from summary calendar denied. However, 15 additional minutes allotted to each side.

No. 1922, Misc. *IN RE DISBARMENT OF ALLISON*. It having been reported to the Court that Earl W. Allison of Columbus, Ohio, has been indefinitely suspended from the practice of law by the Supreme Court of the State of Ohio, and this Court by order of March 30, 1970 [397 U. S. 1005], having suspended the said Earl W. Allison from the practice of law in this Court and directed that a rule issue requiring him to show cause why he should not be disbarred;

And it appearing that the said rule was duly issued and served upon the respondent, and that the time within which to file a return to the rule has expired;

IT IS ORDERED that the said Earl W. Allison be, and he is hereby, disbarred from the practice of law in this Court and that his name be stricken from the roll of attorneys admitted to practice before the Bar of this Court.

No. 1463, Misc. *MAY v. DONA ANA COUNTY, NEW MEXICO*. Motion for leave to file petition for writ of mandamus denied without prejudice to the right of petitioner to apply to appropriate state court for the relief sought. *Smith v. Hooey, Judge*, 393 U. S. 374, and *Dickey v. Florida, ante*, p. 30.

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No. 2038, Misc. *WHITE v. YOUNG*, U. S. DISTRICT JUDGE. Motion for leave to file petition for writ of mandamus denied.

Probable Jurisdiction Noted

No. 1113. *CONNELL v. HIGGINBOTHAM ET AL.* Appeal from D. C. M. D. Fla. Probable jurisdiction noted. Reported below: 305 F. Supp. 445.

No. 1557. *JAMES ET AL. v. VALTIERRA ET AL.* Appeal from D. C. N. D. Cal. Probable jurisdiction noted. MR. JUSTICE DOUGLAS took no part in the consideration or decision of this matter. Reported below: 313 F. Supp. 1.

*Certiorari Granted**

Certiorari Denied. (See also No. 1463, *supra.*)

No. 1364. *TROPIANO v. CONNECTICUT.* Sup. Ct. Conn. Certiorari denied. Reported below: 158 Conn. 412, 262 A. 2d 147.

No. 1408. *JONES ET AL. v. UNITED STATES.* C. A. 8th Cir. Certiorari denied. Reported below: 419 F. 2d 515.

No. 1429. *JOHNSON ET AL. v. SUPERIOR COURT OF CALIFORNIA, COUNTY OF SANTA BARBARA.* Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 1432. *OKINO, JUDGE, ET AL. v. HAWAII NATIONAL BANK, HONOLULU.* Sup. Ct. Hawaii. Certiorari denied. Reported below: 51 Haw. 367, 461 P. 2d 136.

No. 1448. *FARRELL, TRUSTEE v. MANUFACTURERS HANOVER TRUST Co., TRUSTEE.* C. A. 3d Cir. Certiorari denied. Reported below: 421 F. 2d 604.

*[REPORTER'S NOTE: The order dated June 8, 1970, granting motion for leave to proceed *in forma pauperis* and petition for writ of certiorari in No. 1195, Misc., *infra*, was revoked on the same date.]

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No. 1451. *WASCHER v. LUNDEEN ET AL.* App. Ct. Ill., 4th Dist. Certiorari denied. Reported below: 111 Ill. App. 2d 452, 250 N. E. 2d 318.

No. 1452. *FIRST NATIONAL BANK IN DALLAS, EXECUTOR, ET AL. v. UNITED STATES.* Ct. Cl. Certiorari denied. Reported below: 190 Ct. Cl. 400, 420 F. 2d 725.

No. 1453. *MOBIL OIL CORP. v. HUGHES ET VIR.* C. A. 5th Cir. Certiorari denied. Reported below: 421 F. 2d 1248.

No. 1454. *JOHNSON ET AL. v. UNITED STATES.* C. A. 9th Cir. Certiorari denied. Reported below: 420 F. 2d 955.

No. 1458. *ABRAMSON v. LEVINSON.* App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 112 Ill. App. 2d 42, 250 N. E. 2d 796.

No. 1459. *RUEHLMANN, EXECUTOR v. COMMISSIONER OF INTERNAL REVENUE.* C. A. 6th Cir. Certiorari denied. Reported below: 418 F. 2d 1302.

No. 1460. *HENAULT MINING CO. v. ZAILICZ, DIRECTOR OF BUREAU OF LAND MANAGEMENT OF MONTANA, ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 419 F. 2d 766.

No. 1462. *DRYDEN ET AL. v. UNITED STATES.* C. A. 5th Cir. Certiorari denied. Reported below: 423 F. 2d 1175.

No. 1477. *GLEN ALDEN CORP. ET AL. v. KAHAN.* C. A. 3d Cir. Certiorari denied. Reported below: 424 F. 2d 161.

No. 1480. *KEEFE v. CITY OF CHICAGO.* App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 116 Ill. App. 2d 39, 253 N. E. 2d 496.

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No. 1482. *STRATMORE ET UX. v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 420 F. 2d 461.

No. 1492. *S. T. G. CONSTRUCTION CO., INC. v. STATEN ISLAND RAPID TRANSIT RAILWAY CO.* C. A. 2d Cir. Certiorari denied. Reported below: 421 F. 2d 53.

No. 1498. *TUNICA COUNTY SCHOOL DISTRICT ET AL. v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 421 F. 2d 1236.

No. 1501. *MALONEY, DBA APALACHICOLA TIMES v. GIBSON ET AL.* Sup. Ct. Fla. Certiorari denied. Reported below: 231 So. 2d 823.

No. 1502. *McGEE v. UNITED STATES*. C. A. 6th Cir. Certiorari denied.

No. 1506. *WHITCOMB ET UX. v. SANITARY COMMISSION OF ANNE ARUNDEL COUNTY ET AL.* C. A. 4th Cir. Certiorari denied.

No. 1519. *EYEN v. NEBRASKA EX REL. MEYER, ATTORNEY GENERAL OF NEBRASKA*. Sup. Ct. Neb. Certiorari denied. Reported below: 184 Neb. 848, 172 N. W. 2d 617.

No. 1464. *GARLAND KNITTING MILLS OF BEAUFORT, SOUTH CAROLINA, INC. v. NATIONAL LABOR RELATIONS BOARD ET AL.* C. A. D. C. Cir. Certiorari denied. THE CHIEF JUSTICE is of the opinion that certiorari should be granted. Reported below: See 134 U. S. App. D. C. 318, 414 F. 2d 1214.

No. 1508. *POWELL v. COMMITTEE ON ADMISSIONS AND GRIEVANCES ET AL.* C. A. D. C. Cir. Certiorari denied. THE CHIEF JUSTICE took no part in the consideration or decision of this petition.

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No. 1528. *B & L SALES ASSOCIATES v. H. DAROFF & SONS, INC.* C. A. 2d Cir. Certiorari denied. Reported below: 421 F. 2d 352.

No. 1541. *AJAMIAN v. TOWNSHIP OF NORTH BERGEN ET AL.* Sup. Ct. N. J. Certiorari denied.

No. 1195, Misc. *LEWIS v. KROPP, WARDEN.* C. A. 6th Cir. Certiorari denied.

No. 1577, Misc. *NELSON v. ILLINOIS.* App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 109 Ill. App. 2d 396, 248 N. E. 2d 740.

No. 1612, Misc. *VAN VOLTENBURG v. BREWER, WARDEN.* Sup. Ct. Iowa. Certiorari denied.

No. 1678, Misc. *ABBATIELLO v. FOLLETTE, WARDEN.* C. A. 2d Cir. Certiorari denied.

No. 1848, Misc. *ECKELS v. UNITED STATES DISTRICT COURT FOR THE DISTRICT OF OREGON.* C. A. 9th Cir. Certiorari denied.

No. 1903, Misc. *BAUGHMAN v. BAKER, WARDEN.* C. A. 10th Cir. Certiorari denied.

No. 1904, Misc. *JACKSON v. CRAVEN, WARDEN.* C. A. 9th Cir. Certiorari denied.

No. 1906, Misc. *HOCKING v. CALIFORNIA ADULT AUTHORITY ET AL.* Sup. Ct. Cal. Certiorari denied.

No. 1907, Misc. *JOHNSON v. CALIFORNIA.* Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 1916, Misc. *WILLIAMS v. COX, PENITENTIARY SUPERINTENDENT.* C. A. 4th Cir. Certiorari denied.

No. 1938, Misc. *LONG v. PATE, WARDEN.* C. A. 7th Cir. Certiorari denied. Reported below: 418 F. 2d 1028.

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No. 1941, Misc. *DOMER v. UNITED STATES*. C. A. 6th Cir. Certiorari denied.

No. 1945, Misc. *LUCAS v. NEW JERSEY*. Sup. Ct. N. J. Certiorari denied.

No. 1946, Misc. *KALEC v. LASH, WARDEN*. C. A. 7th Cir. Certiorari denied.

No. 1948, Misc. *PETE v. NELSON, WARDEN*. Sup. Ct. Cal. Certiorari denied.

No. 1949, Misc. *PELLETIER v. UNITED STATES*. C. A. 9th Cir. Certiorari denied.

No. 1989, Misc. *HAYNES v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 422 F. 2d 332.

No. 1992, Misc. *WHEELER v. MUMMERT, SHERIFF*. C. A. 9th Cir. Certiorari denied.

No. 1993, Misc. *HILL v. WARDEN, MARYLAND HOUSE OF CORRECTION*. C. A. 4th Cir. Certiorari denied.

No. 2000, Misc. *SMULEK v. RUNDLE, CORRECTIONAL SUPERINTENDENT*. C. A. 3d Cir. Certiorari denied.

No. 2001, Misc. *BERRIEL v. WAINWRIGHT, CORRECTIONS DIRECTOR*. C. A. 5th Cir. Certiorari denied.

No. 2002, Misc. *ZIMMERMAN v. WELLS ET AL.* C. A. 4th Cir. Certiorari denied.

No. 2004, Misc. *GILLES v. MINNESOTA ET AL.* Sup. Ct. Minn. Certiorari denied. Reported below: — Minn. —, 176 N. W. 2d 123.

No. 2005, Misc. *SCHUTZ v. TEXAS*. Ct. Crim. App. Tex. Certiorari denied. Reported below: 448 S. W. 2d 486.

No. 2037, Misc. *CARRIGAN v. ERICH P. KARLSSON BUILDERS, INC.* C. A. D. C. Cir. Certiorari denied.

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No. 2006, Misc. *NANCE v. MARYLAND*. Ct. Sp. App. Md. Certiorari denied. Reported below: 7 Md. App. 433, 256 A. 2d 377.

No. 2018, Misc. *NILSSON v. ILLINOIS*. Sup. Ct. Ill. Certiorari denied. Reported below: 44 Ill. 2d 244, 255 N. E. 2d 432.

No. 2019, Misc. *KELLEY v. ILLINOIS*. Sup. Ct. Ill. Certiorari denied. Reported below: 44 Ill. 2d 315, 255 N. E. 2d 390.

No. 2032, Misc. *CONNORS v. SOUTH DAKOTA ET AL.* C. A. 8th Cir. Certiorari denied. Reported below: 422 F. 2d 122.

No. 2044, Misc. *LEVY v. LAVALLEE, WARDEN*. C. A. 2d Cir. Certiorari denied.

No. 2061, Misc. *BOLIN v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 423 F. 2d 834.

Rehearing Denied

No. 1254. *E. B. & A. C. WHITING CO. v. SHAW ET AL.*, 397 U. S. 1076;

No. 1531, Misc. *HILLERY v. CALIFORNIA*, *ante*, p. 909; and

No. 1696, Misc. *LENTO v. DELAWARE, LACKAWANNA & WESTERN RAILROAD CO.*, 397 U. S. 1054. Petitions for rehearing denied.

No. 875. *DAPPER v. CALIFORNIA*, 397 U. S. 905. Motion for leave to file petition for rehearing denied.

JUNE 10, 1970

Dismissal Under Rule 60

No. 900. *UNITED STATES v. FANCHER*. Appeal from D. C. S. D. [Probable jurisdiction noted, 397 U. S. 985.] Appeal dismissed pursuant to Rule 60 of the Rules of this Court.

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Affirmed on Appeal

No. 1598. GIBSON ET AL. *v.* KUGLER ET AL. Appeal from D. C. N. J. Motions to dispense with printing jurisdictional statement and to dispense with printing motion to dismiss or affirm granted. Motion to advance granted. Judgment affirmed. MR. JUSTICE MARSHALL took no part in the consideration or decision of these matters. Reported below: 315 F. Supp. 1003.

JUNE 15, 1970*

Affirmed on Appeal

No. 1359. POWELL, SECRETARY OF STATE OF ILLINOIS, ET AL. *v.* MANN ET AL.; and

No. 1444. MANN ET AL. *v.* POWELL, SECRETARY OF STATE OF ILLINOIS, ET AL. Appeals from D. C. N. D. Ill. Judgment affirmed. Reported below: 314 F. Supp. 677.

No. 1456. BEELINE EXPRESS, INC. *v.* UNITED STATES ET AL. Appeal from D. C. Colo. Judgment affirmed. Reported below: 308 F. Supp. 721.

No. 1489. WATERMEIER ET AL. *v.* LOUISIANA STADIUM AND EXPOSITION DISTRICT ET AL. Appeal from D. C. E. D. La. Judgment affirmed. Reported below: 308 F. Supp. 273.

Appeals Dismissed

No. 1503. BERGERMAN ET AL. *v.* LINDSAY, MAYOR OF THE CITY OF NEW YORK, ET AL. Appeal from Ct. App. N. Y. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied. Reported below: 25 N. Y. 2d 405, 255 N. E. 2d 142.

*MR. JUSTICE MARSHALL took no part in the consideration or decision of the orders of this date.

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No. 1358. *CANNON ET AL. v. GREEN ET AL.* Appeal from D. C. D. C. dismissed for want of jurisdiction. Reported below: 309 F. Supp. 1127.

No. 90. *BIRNBAUM v. ILLINOIS.* Appeal from Sup. Ct. Ill. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied. MR. JUSTICE DOUGLAS is of the opinion that probable jurisdiction should be noted. Reported below: 41 Ill. 2d 426, 243 N. E. 2d 244.

No. 1471. *E. S. G. v. TEXAS.* Appeal from Ct. Civ. App. Tex., 4th Sup. Jud. Dist. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied. MR. JUSTICE DOUGLAS is of the opinion that probable jurisdiction should be noted. Reported below: 447 S. W. 2d 225.

Miscellaneous Orders

No. 40, Orig. *PENNSYLVANIA v. NEW YORK ET AL.* Motion for leave to file bill of complaint granted and defendants allowed 60 days to answer.

No. 730. *HILL v. CALIFORNIA.* Sup. Ct. Cal. Case restored to calendar for reargument and to be argued with cases No. 1125 [certiorari granted, 397 U. S. 986] and No. 1142 [*Elkanich v. United States*, certiorari granted, 396 U. S. 1057]. Reported below: 69 Cal. 2d 550, 446 P. 2d 521.

No. 1420. *YOUNG v. SCOTT ET AL.*, ante, p. 929. Motion of respondent Scott for allowance of attorney's fee denied without prejudice to submission of a motion for such relief to the United States District Court for the Eastern District of Virginia. *Newman v. Piggie Park Enterprises, Inc.*, 390 U. S. 400.

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No. 67. *HOSKINS v. UNITED STATES*. C. A. 7th Cir. Application for bail presented to THE CHIEF JUSTICE, and by him referred to the Court, denied. Reported below: 406 F. 2d 72.

No. 2148, Misc. *SEYMOUR v. PATE, WARDEN*. Motion for leave to file petition for writ of mandamus and/or prohibition denied.

Probable Jurisdiction Noted

No. 250. *GROPPY v. WISCONSIN*. Appeal from Sup. Ct. Wis. Probable jurisdiction noted. Reported below: 41 Wis. 2d 312, 164 N. W. 2d 266.

No. 1493. *UNITED STATES ET AL. v. CHICAGO & EASTERN ILLINOIS RAILROAD Co.*; and

No. 1494. *ILLINOIS COMMERCE COMMISSION ET AL. v. CHICAGO & EASTERN ILLINOIS RAILROAD Co.* Appeals from D. C. N. D. Ill. Probable jurisdiction noted. Cases consolidated and a total of one hour allotted for oral argument. Reported below: 308 F. Supp. 645.

Certiorari Granted. (See also No. 701, *ante*, p. 436; and No. 1658, Misc., *ante*, p. 435.)

No. 284. *U. S. BULK CARRIERS, INC. v. ARGUELLES*. C. A. 4th Cir. *Certiorari* granted. Reported below: 408 F. 2d 1065.

Certiorari Denied. (See also Nos. 90, 1471, and 1503, *supra*.)

No. 83. *SCHWARTZ ET AL. v. PENNSYLVANIA*. Sup. Ct. Pa. *Certiorari* denied. Reported below: 432 Pa. 522, 248 A. 2d 506.

No. 383. *MOUTON, COLLECTOR OF REVENUE OF LOUISIANA v. SINCLAIR OIL & GAS Co.* C. A. 5th Cir. *Certiorari* denied. Reported below: 410 F. 2d 717.

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No. 124. FUHRMAN, ADMINISTRATRIX, ET AL. *v.* UNITED STATES STEEL CORP.;

No. 172. LAMP, ADMINISTRATRIX, ET AL. *v.* UNITED STATES STEEL CORP.;

No. 201. COOK, ADMINISTRATRIX *v.* UNITED STATES STEEL CORP.; and

No. 210. RADTKE, ADMINISTRATRIX, ET AL. *v.* UNITED STATES STEEL CORP. C. A. 6th Cir. Certiorari denied. Reported below: 407 F. 2d 1143.

No. 389. UNITED STATES *v.* URBAN PLUMBING & HEATING Co. Ct. Cl. Certiorari denied. Reported below: 187 Ct. Cl. 15, 408 F. 2d 382.

No. 401. UNITED STATES *v.* WOODCREST CONSTRUCTION Co., INC., ET AL. Ct. Cl. Certiorari denied. Reported below: 187 Ct. Cl. 249, 408 F. 2d 406.

No. 498. UNITED STATES *v.* WALLENIUS BREMEN, G. M. B. H. C. A. 4th Cir. Certiorari denied. Reported below: 409 F. 2d 994.

No. 1467. WALL STREET TRANSCRIPT CORP. *v.* SECURITIES AND EXCHANGE COMMISSION. C. A. 2d Cir. Certiorari denied. Reported below: 422 F. 2d 1371.

No. 1468. VAVOLIZZA *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 1472. NATIONWIDE THEATRES INVESTMENT Co. ET AL. *v.* THOMPSON ET AL. C. A. 2d Cir. Certiorari denied.

No. 1485. DEMAIO *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 422 F. 2d 543.

No. 1487. ARMSTRONG, JONES & Co. ET AL. *v.* SECURITIES AND EXCHANGE COMMISSION. C. A. 6th Cir. Certiorari denied. Reported below: 421 F. 2d 359.

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No. 1488. *MARCELLO v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 423 F. 2d 993.

No. 1496. *DISTRICT 30, UNITED MINE WORKERS OF AMERICA, ET AL. v. NATIONAL LABOR RELATIONS BOARD*. C. A. 6th Cir. Certiorari denied. Reported below: 422 F. 2d 115.

No. 1497. *SCHMIDT ET AL. v. ARCHER IRON WORKS, INC.* Sup. Ct. Ill. Certiorari denied. Reported below: 44 Ill. 2d 401, 256 N. E. 2d 6.

No. 1504. *COWDEN MANUFACTURING Co. v. KORATRON Co., INC., ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 422 F. 2d 371.

No. 1505. *OCEAN FREIGHTING & BROKERAGE CORP. v. STATES MARINE LINES, INC.* C. A. 3d Cir. Certiorari denied. Reported below: 421 F. 2d 851.

No. 1509. *ESKOW v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 422 F. 2d 1060.

No. 1514. *SABINO v. SUPERIOR COURT OF LOS ANGELES COUNTY ET AL.* Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 1515. *CITY OF WARREN ET AL. v. METRO HOMES, INC., ET AL.* Ct. App. Mich. Certiorari denied. Reported below: 19 Mich. App. 664, 173 N. W. 2d 230.

No. 1520. *HORTON v. NORTH CAROLINA*. Sup. Ct. N. C. Certiorari denied. Reported below: 275 N. C. 651, 170 S. E. 2d 466.

No. 1524. *WILLIAMS v. WILLIAMS*. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 1525. *HENRY I. SIEGEL Co., INC. v. NATIONAL LABOR RELATIONS BOARD ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 417 F. 2d 1206.

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No. 1529. BROTHERHOOD OF LOCOMOTIVE FIREMEN & ENGINEMEN ET AL. *v.* HANSEN ET AL. Sup. Ct. Utah. Certiorari denied. Reported below: 24 Utah 2d 30, 465 P. 2d 351.

No. 1535. ERICKSON ET AL., DBA "PHOENIX TAPES" *v.* CAPITOL RECORDS, INC. Ct. App. Cal., 2d App. Dist. Certiorari denied. Reported below: 2 Cal. App. 3d 526, 82 Cal. Rptr. 798.

No. 1539. ZMUDA *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 423 F. 2d 757.

No. 1576. UNITED MINE WORKERS OF AMERICA *v.* DEAN COAL CO. ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 421 F. 2d 1380.

No. 173. AMERICAN BOILER MANUFACTURERS ASSN. *v.* NATIONAL LABOR RELATIONS BOARD ET AL. C. A. 8th Cir. Certiorari denied. MR. JUSTICE BLACKMUN took no part in the consideration or decision of this petition. Reported below: 404 F. 2d 547.

No. 621. WISEMAN ET AL. *v.* MASSACHUSETTS ET AL. Sup. Jud. Ct. Mass. Certiorari denied. Reported below: 356 Mass. 251, 249 N. E. 2d 610.

MR. JUSTICE HARLAN, with whom MR. JUSTICE DOUGLAS and MR. JUSTICE BRENNAN join, dissenting.

Petitioners seek review in this Court of a decision of the Massachusetts Supreme Judicial Court enjoining the commercial distribution to general audiences of the film "Titticut Follies." Petitioners' film is a "documentary" of life in Bridgewater State Hospital for the criminally insane. Its stark portrayal of patient-routine and treatment of the inmates is at once a scathing indictment of the inhumane conditions that prevailed at the time of the film and an undeniable infringement of the

privacy of the inmates filmed, who are shown nude and engaged in acts that would unquestionably embarrass an individual of normal sensitivity. The Massachusetts court concluded that the State had standing on behalf of the inmates to bring an injunctive action to protect their right of privacy and that the balance to be struck between the First and Fourteenth Amendments' "commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open," *New York Times Co. v. Sullivan*, 376 U. S. 254, 270 (1964), and the individual's interest in privacy and dignity was such that the dissemination of the film should be restricted to audiences of professionals, *e. g.*, lawyers and psychiatrists, with a special interest. 356 Mass. 251, 249 N. E. 2d 610 (1969).

The balance between these two interests, that of the individual's privacy and the public's right to know about conditions in public institutions, is not one that is easily struck, particularly in a case like that before us where the importance of the issue is matched by the extent of the invasion of privacy. As one Federal District Court stated in a case seeking to enjoin distribution of this same movie in New York:

"The conditions in public institutions . . . are matters which are of great interest to the public generally. Such public interest is both legitimate and healthy. Quite aside from the fact that substantial sums of taxpayers' money are spent annually on such institutions, there is the necessity for keeping the public informed as a means of developing responsible suggestions for improvement and of avoiding abuse of inmates who for the most part are unable intelligently to voice any effective suggestions or protests." *Cullen v. Grove Press, Inc.*, 276

F. Supp. 727, 728-729 (D. C. S. D. N. Y. 1967, Mansfield, J.).

This principle underlay this Court's decision in *Barr v. Mateo*, 360 U. S. 564, 577 (1959), where it was said:

"The effective functioning of a free government like ours depends largely on the force of an informed public opinion. This calls for the widest possible understanding of the quality of government service rendered by all elective or appointed public officials or employees."

A further consideration is the fact that these inmates are not only the wards of the Commonwealth of Massachusetts but are also the charges of society as a whole. It is important that conditions in public institutions should not be cloaked in secrecy, lest citizens may disclaim responsibility for the treatment that their representative government affords those in its care. At the same time it must be recognized that the individual's concern with privacy is the key to the dignity which is the promise of civilized society. See my dissenting opinion in *Poe v. Ullman*, 367 U. S. 497, 522.

The subtlety and importance of the question presented by this case was, by no means, lost on the Massachusetts Supreme Judicial Court:

"That injunctive relief may be granted against showing the film to the general public on a commercial basis does not mean that all showings of the film must be prevented. As already indicated . . . the film gives a striking picture of life at Bridgewater and of the problems affecting treatment at that or any similar institution. It is a film which would be instructive to legislators, judges, lawyers, sociologists, social workers, doctors, psychiatrists, students in these or related fields, and organizations dealing with the social problems of

custodial care and mental infirmity. The public interest in having such persons informed about Bridgewater . . . outweighs any countervailing interests of the inmates and of the Commonwealth (as *parens patriae*) in anonymity and privacy." 356 Mass. 251, 262, 249 N. E. 2d 610, 618.

These conclusions represent a measured and thoughtful attempt to grapple with a difficult and important problem. Yet they demonstrate the importance of review by this Court for they sharply focus the dimension of the question presented by this case. The question at this juncture is not whether the Supreme Judicial Court was correct or incorrect in striking the constitutional balance, but merely whether this Court should grant certiorari. I fail to see how, on a complex and important issue like this, it can be concluded that this Court should withhold plenary review. The case for review is strengthened by the fact that a distinguished federal judge refused to enjoin in New York the showing of this very same film. This is not of course the traditional conflict that requires this Court to step in, but it underscores the difficulty and importance of the issues that are apparent both from reading the decision of the Massachusetts court and a viewing of the film.

I am at a loss to understand how questions of such importance can be deemed not "certworthy." To the extent that the Commonwealth suggests that certiorari be denied because petitioners failed to comply with reasonable contract conditions imposed by the Commonwealth, that question in itself is one of significant constitutional dimension, for it is an open question as to how far a government may go in cutting off access of the media to its institutions when such access will not hinder them in performing their functions. Cf. *Estes v. Texas*, 381 U. S. 532 (1965); *Pickering v. Board of Education*,

391 U. S. 563 (1968). In the case before us, however, the only asserted interest is the State's concern for the privacy of the inmates in its care, and the basis for the decision below was the predominance of that interest over that of the general public in seeing the film.

The Commonwealth does not urge, nor could it do so given the opinion of the court below, that the injunction against showing this film was a mere remedy for a breach of contract, assuming the Commonwealth was free to impose whatever restrictions it chose on press access to Bridgewater. The statement in the opinion below that the violation of privacy "taken with the failure of Mr. Wiseman [the producer of the film] to comply with the contractual condition that he obtain valid releases . . . amply justify granting injunctive relief," 356 Mass. 251, 259, 249 N. E. 2d 610, 616, leaves no room for doubt that the invasion of privacy underpins the Massachusetts court's action and that the failure to obtain releases served only to underscore that invasion. The later statement restricting the holding to the mere fact that petitioner Wiseman "violated the permission given to him, reasonably interpreted, and did not comply with valid conditions," 356 Mass. 251, 261, 249 N. E. 2d 610, 617, is not a finding that the relief below is warranted as an award to redress the State for a breach of contract but reiterates merely the fact, already stated, that the invasion of privacy is compounded by the breach of understanding. I see no way to sift out an independent state ground based on contract principles. Moreover, even if the injunction could, in the absence of any discussion of principles of contract law, be viewed as a remedy for a breach of contract, a question of First Amendment dimension is presented when that remedy is to enjoin the dissemination of information of such importance. Cf. *International News Service v. Associated Press*, 248 U. S. 215, 248 (1918) (Brandeis, J.,

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dissenting); *Pearson v. Dodd*, 133 U. S. App. D. C. 279, 410 F. 2d 701 (1969); *New York Times Co. v. Sullivan*, *supra*.

I would grant certiorari and set the case for plenary consideration.

No. 1026. *ESTEBAN ET AL. v. CENTRAL MISSOURI STATE COLLEGE ET AL.* C. A. 8th Cir. Certiorari denied. MR. JUSTICE DOUGLAS is of the opinion that certiorari should be granted. MR. JUSTICE BLACKMUN took no part in the consideration or decision of this petition. Reported below: 415 F. 2d 1077.

No. 1481. *TERMINAL FREIGHT COOPERATIVE ASSN. ET AL. v. SAMOFF, REGIONAL DIRECTOR, NATIONAL LABOR RELATIONS BOARD, ET AL.* C. A. 3d Cir. Motion to defer consideration denied. Certiorari denied. Reported below: 420 F. 2d 952.

No. 1513. *BURGUENO v. UNITED STATES.* C. A. 9th Cir. Certiorari denied. MR. JUSTICE DOUGLAS is of the opinion that certiorari should be granted. Reported below: 423 F. 2d 599.

No. 1533. *EPSTEIN v. RESOR, SECRETARY OF THE ARMY, ET AL.* C. A. 9th Cir. Certiorari denied. MR. JUSTICE DOUGLAS is of the opinion that certiorari should be granted. Reported below: 421 F. 2d 930.

No. 1559. *STOCKHAM VALVES & FITTINGS, INC. v. ARTHUR J. SCHMITT FOUNDATION ET AL.* C. A. 5th Cir. Certiorari denied. MR. JUSTICE DOUGLAS is of the opinion that certiorari should be granted. Reported below: 404 F. 2d 13.

No. 1213, Misc. *ANDERSON v. FOLLETTE, WARDEN.* C. A. 2d Cir. Certiorari denied.

No. 1793, Misc. *WHITLEY v. OHIO.* Sup. Ct. Ohio. Certiorari denied.

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No. 1891, Misc. *JELKS v. ARIZONA*. Sup. Ct. Ariz. Certiorari denied. Reported below: 105 Ariz. 175, 461 P. 2d 473.

No. 1909, Misc. *KENNEDY v. UNITED STATES*. C. A. 8th Cir. Certiorari denied.

No. 1913, Misc. *BUCHANON v. CULLMAN CITY BOARD OF EDUCATION*. Ct. Civ. App. Ala. Certiorari denied.

No. 1967, Misc. *LANDRY v. UNITED STATES*. C. A. D. C. Cir. Certiorari denied.

No. 1980, Misc. *ROOK v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 424 F. 2d 403.

No. 1995, Misc. *MOORE v. FOLLETTE, WARDEN*. C. A. 2d Cir. Certiorari denied. Reported below: 425 F. 2d 925.

No. 2013, Misc. *HATT v. NEW JERSEY*. Super. Ct. N. J. Certiorari denied. Reported below: See 55 N. J. 312, 261 A. 2d 356.

No. 2034, Misc. *REED v. FOLLETTE, WARDEN*. C. A. 2d Cir. Certiorari denied.

No. 2035, Misc. *STEAD v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 422 F. 2d 183.

No. 2036, Misc. *SMELSER v. UTAH*. Sup. Ct. Utah. Certiorari denied. Reported below: 23 Utah 347, 463 P. 2d 562.

No. 2039, Misc. *CURL v. BURKE, WARDEN*. C. A. 7th Cir. Certiorari denied.

No. 2045, Misc. *PARKER v. SOUTH DAKOTA ET AL.* C. A. 8th Cir. Certiorari denied. Reported below: 423 F. 2d 1021.

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No. 2048, Misc. ALFORD *v.* COX, PENITENTIARY SUPERINTENDENT. C. A. 4th Cir. Certiorari denied.

No. 2052, Misc. HELFEND *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied. Reported below: 1 Cal. App. 3d 873, 82 Cal. Rptr. 295.

No. 2053, Misc. BOWMAN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 409 F. 2d 225.

No. 2054, Misc. STEVENSON *v.* MANCUSI, WARDEN. C. A. 2d Cir. Certiorari denied.

No. 2057, Misc. TURNER *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 423 F. 2d 481.

No. 2060, Misc. McNEILL *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 2064, Misc. JACKSON *v.* COX, PENITENTIARY SUPERINTENDENT. C. A. 4th Cir. Certiorari denied.

No. 2088, Misc. BIBBS *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 115 Ill. App. 2d 200, 253 N. E. 2d 179.

No. 2091, Misc. RAY *v.* CRAVEN, WARDEN. Sup. Ct. Cal. Certiorari denied.

No. 2094, Misc. PRIDGEON *v.* WAINWRIGHT, CORRECTIONS DIRECTOR. C. A. 5th Cir. Certiorari denied.

No. 2096, Misc. WEST *v.* CALIFORNIA. Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 2100, Misc. FLETCHER *v.* WAYCHOFF, DISTRICT ATTORNEY OF GREENE COUNTY, PENNSYLVANIA, ET AL. C. A. 3d Cir. Certiorari denied.

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No. 2108, Misc. SCHMIDT *v.* OSWALD, CHAIRMAN, PAROLE BOARD OF NEW YORK, ET AL. C. A. 2d Cir. Certiorari denied.

No. 2110, Misc. HAYES *v.* MARYLAND. C. A. 4th Cir. Certiorari denied.

No. 375, Misc. MATTHEWS ET AL. *v.* UNITED STATES; and

No. 531, Misc. COOK *v.* UNITED STATES. C. A. 5th Cir. Motion for leave to amend petition in No. 375, Misc., granted. Application for bail and other relief in No. 531, Misc., presented to MR. JUSTICE DOUGLAS, and by him referred to the Court, denied. Petitions for writs of certiorari denied. MR. JUSTICE HARLAN would grant the petitions for certiorari, vacate the judgment of the Court of Appeals, and remand the cases to that court for further consideration in light of *Leary v. United States*, 395 U. S. 6 (1969). See *Street v. New York*, 394 U. S. 576, 586 (1969); *Stromberg v. California*, 283 U. S. 359 (1931); and *Desist v. United States*, 394 U. S. 244, 256 (1969) (dissenting opinion of HARLAN, J.). Reported below: 407 F. 2d 1371.

No. 2055, Misc. CLEMAS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. MR. JUSTICE BLACKMUN took no part in the consideration or decision of this petition. Reported below: 423 F. 2d 461.

No. 2059, Misc. PATCH *v.* ILLINOIS. Sup. Ct. Ill. Certiorari and other relief denied. Reported below: 44 Ill. 2d 447, 255 N. E. 2d 423.

Rehearing Denied

No. 513. IN RE SPENCER, 397 U. S. 817; and

No. 1010, Misc. THOMPSON *v.* NEW JERSEY, 397 U. S. 1012. Petitions for rehearing denied. MR. JUSTICE BLACKMUN took no part in the consideration or decision of these petitions.

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No. 1817, Misc. VAUGHN *v.* MISSOURI, 397 U. S. 1079. Petition for rehearing denied. MR. JUSTICE BLACKMUN took no part in the consideration or decision of this petition.

JUNE 19, 1970

Dismissal Under Rule 60

No. 2120, Misc. MINK *v.* JOHNSON, PRISONS DIRECTOR. C. A. 6th Cir. Petition for writ of certiorari dismissed pursuant to Rule 60 of the Rules of this Court.

