

ORDERS FROM JUNE 22 THROUGH
JUNE 29, 1970

JUNE 22, 1970

Affirmed on Appeal

No. 1522. ADAMS ET AL. *v.* CITY OF COLORADO SPRINGS ET AL. Appeal from D. C. Colo. Judgment affirmed.

Appeals Dismissed

No. 1356. GORUN ET AL. *v.* MONTANA. Appeal from Sup. Ct. Mont. dismissed for want of a substantial federal question. Reported below: — Mont. —, 466 P. 2d 83.

No. 1537. SOUTHERN RAILWAY CO. *v.* CITY OF HARRODSBURG. Appeal from Ct. App. Ky. dismissed for want of a substantial federal question. MR. JUSTICE DOUGLAS took no part in the consideration or decision of this case.

No. 1588. BURNETT *v.* CAMDEN, ADMINISTRATRIX. Appeal from Sup. Ct. Ind. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied. Reported below: — Ind. — and —; 254 N. E. 2d 199 and 255 N. E. 2d 650.

No. 1379, Misc. KHABIRI *v.* COLEMAN, JUDGE. Appeal from Sup. Ct. App. Va. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied.

No. 1730, Misc. TAYLOR *v.* CALIFORNIA. Appeal from Ct. App. Cal., 4th App. Dist., dismissed for want of jurisdiction and petition for certiorari denied.

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No. 1465, Misc. *LEVY v. ORR ET AL.* Appeal from Sup. Ct. Fla. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied.

No. 1467, Misc. *WOOD v. CALIFORNIA.* Appeal from App. Dept., Super. Ct. Cal., County of Orange, dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied.

No. 1587, Misc. *NETTLES 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.

No. 1590, Misc. *MURRAY v. MURRAY.* Appeal from Sup. Ct. Ohio dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied.

No. 1612. *HARDER, COMMISSIONER OF WELFARE OF CONNECTICUT v. DOE ET AL.* Appeal from D. C. Conn. Motion of appellees for leave to proceed *in forma pauperis* granted. Appeal dismissed for want of jurisdiction.

Miscellaneous Orders

No. —. *PITCHER v. LAIRD, SECRETARY OF DEFENSE, ET AL.* C. A. 5th Cir. Application for stay of deployment, granted by MR. JUSTICE BLACK until action by the full Court, denied as moot.

No. —. *CLAY, AKA ALI v. UNITED STATES.* C. A. 5th Cir. Application for modification of bail order presented to MR. JUSTICE DOUGLAS, and by him referred to the Court, denied. MR. JUSTICE MARSHALL took no part in the consideration or decision of this application.

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No. —. VALE *v.* HENDERSON, WARDEN. C. A. 5th Cir. Renewed application for bail presented to MR. JUSTICE BLACK, and by him referred to the Court, denied. MR. JUSTICE MARSHALL took no part in the consideration or decision of this application.

No. 153, Misc., October Term, 1968. McCrory *v.* MISSISSIPPI, 393 U. S. 532. Motion to implement judgment denied. THE CHIEF JUSTICE and MR. JUSTICE BLACKMUN took no part in the consideration or decision of this motion.

No. 905. GROVE PRESS, INC., ET AL. *v.* MARYLAND STATE BOARD OF CENSORS. Appeal from Ct. App. Md. [Probable jurisdiction noted, 397 U. S. 984.] Motion of appellants to remove case from summary calendar denied. MR. JUSTICE DOUGLAS took no part in the consideration or decision of this motion.

No. 1189. LEMON ET AL. *v.* KURTZMAN, SUPERINTENDENT OF PUBLIC INSTRUCTION OF PENNSYLVANIA, ET AL. Appeal from D. C. E. D. Pa. [Probable jurisdiction noted, 397 U. S. 1034.] Motion of United Americans for Public Schools for leave to file a brief as *amicus curiae* granted. MR. JUSTICE MARSHALL took no part in the consideration or decision of this motion.

No. 1337. DECKER, U. S. DISTRICT JUDGE, ET AL. *v.* HARPER & ROW PUBLISHERS, INC., ET AL. C. A. 7th Cir. [Certiorari granted, 397 U. S. 1073.] Further consideration of motion of petitioners for leave to supplement record and motion of respondents to strike portions of petitioners' designation of record postponed to hearing of case on the merits. Material submitted with petitioners' motion may be lodged with the Clerk.

No. 1960, Misc. VAN CLEAVE *v.* NELSON, WARDEN. Motion for leave to file petition for writ of habeas corpus denied.

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No. 553. HACKNEY, COMMISSIONER OF PUBLIC WELFARE OF TEXAS, ET AL. *v.* MACHADO ET AL., 397 U. S. 593. Motion of appellees to retax costs denied. MR. JUSTICE BLACKMUN took no part in the consideration or decision of this motion.

No. 2245, Misc. WILLARD *v.* HATCHER, CLERK, U. S. DISTRICT COURT, ET AL. Motion for leave to file petition for writ of mandamus denied.

Probable Jurisdiction Noted or Postponed

No. 1555. TILTON ET AL. *v.* FINCH, SECRETARY OF HEALTH, EDUCATION, AND WELFARE, ET AL. Appeal from D. C. Conn. Probable jurisdiction noted and case set for oral argument following No. 1189 [probable jurisdiction noted, 397 U. S. 1034]. Reported below: 312 F. Supp. 1191.

No. 1809, Misc. COHEN *v.* CALIFORNIA. Appeal from Ct. App. Cal., 2d App. Dist. Motion for leave to proceed *in forma pauperis* granted. Further consideration of question of jurisdiction postponed to hearing of case on the merits and case transferred to appellate docket. Reported below: 1 Cal. App. 3d 94, 81 Cal. Rptr. 503.

Certiorari Granted. (See also No. 727, *ante*, p. 30.)

No. 1484. ORGANIZATION FOR A BETTER AUSTIN ET AL. *v.* KEEFE. App. Ct. Ill., 1st Dist. Certiorari granted. Reported below: 115 Ill. App. 2d 236, 253 N. E. 2d 76.

No. 33, Misc. ODOM *v.* UNITED STATES. C. A. 5th Cir. Motion for leave to proceed *in forma pauperis* granted. Certiorari granted, limited to retroactivity of *North Carolina v. Pearce*, 395 U. S. 711, and case transferred to appellate docket. MR. JUSTICE MARSHALL took no part in the consideration or decision of this motion and petition. Reported below: 403 F. 2d 45.

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No. 240, Misc. BIVENS *v.* SIX UNKNOWN NAMED AGENTS OF FEDERAL BUREAU OF NARCOTICS. C. A. 2d Cir. Motion for leave to proceed *in forma pauperis* and certiorari granted. Case transferred to appellate docket. Reported below: 409 F. 2d 718.

Certiorari Denied. (See also No. 1588, and Misc. Nos. 1379, 1465, 1467, 1587, 1590, and 1730, *supra.*)

No. 1247. UNION PACIFIC RAILROAD CO. *v.* HALL LUMBER SALES, INC. C. A. 7th Cir. Certiorari denied. Reported below: 419 F. 2d 1009.

No. 1317. GAMBINO *v.* IMMIGRATION AND NATURALIZATION SERVICE. C. A. 2d Cir. Certiorari denied. Reported below: 419 F. 2d 1355.

No. 1353. AUERBACH ET AL. *v.* UNITED STATES; and
No. 1478. RANDELL *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 420 F. 2d 921 and 423 F. 2d 676.

No. 1483. VANDERBOOM ET AL. *v.* CITY NATIONAL BANK OF FORT SMITH, ARKANSAS. C. A. 8th Cir. Certiorari denied. Reported below: 422 F. 2d 221.

No. 1518. HUIE *v.* BOARD OF COMMISSIONERS OF THE ALABAMA STATE BAR. Sup. Ct. Ala. Certiorari denied. Reported below: 285 Ala. 185, 230 So. 2d 514.

No. 1527. FISHMAN *v.* CITY OF STAMFORD ET AL. Sup. Ct. Conn. Certiorari denied. Reported below: 159 Conn. 116, 267 A. 2d 443.

No. 1534. LOCAL UNION No. 167, PROGRESSIVE MINE WORKERS OF AMERICA *v.* NATIONAL LABOR RELATIONS BOARD. C. A. 7th Cir. Certiorari denied. Reported below: 422 F. 2d 538.

No. 1540. WILLIAMS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 424 F. 2d 1056.

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No. 1011. *NORTON ET AL. v. DISCIPLINE COMMITTEE OF EAST TENNESSEE STATE UNIVERSITY ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 419 F. 2d 195.

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

Petitioners were suspended as students at East Tennessee State University for distributing leaflets critical of the university administration. They brought an action in federal district court under 42 U. S. C. § 1983 seeking reinstatement and expungement of the records of their suspension, claiming that their rights to freedom of speech and procedural due process had been violated. The District Court denied the requested relief after holding a full evidentiary hearing, and the Court of Appeals affirmed, Judge Celebrezze dissenting. 419 F. 2d 195 (C. A. 6th Cir. 1969). I would grant certiorari.

The pamphlets involved in this case were published and distributed by students angered by what they regarded as the backward policies of the university administration and the apathy of their fellow students toward these policies. They criticize, often in a crude and sarcastic tone, the positions of the administration on such matters as dress, social regulations, ROTC, campus police behavior, and censorship of the college newspaper. They go on to draw unfavorable comparisons between the response of students at East Tennessee and the response of other students in Czechoslovakia, France, and elsewhere in this country, and call upon students to "stand up and fight" for their "constitutional right to protest, demonstrate, and demand their rights."*

*The pamphlets are reproduced in full as an appendix to the opinion of the Court of Appeals, 419 F. 2d, at 201.

No charges were brought against these students that the time, place, or manner of distribution was in any way improper. The sole charge was based squarely on the content of the pamphlets—namely, that they were “of a false, seditious and inflammatory nature.” There is no evidence that the pamphlets created any disturbance on campus, nor is there any concrete evidence from which one could infer any substantial danger that they would. Rather there is only the conclusory testimony of university officials that the pamphlets “could conceivably” have caused an eruption, and reference to “fears that we might have serious consequences.” *Id.*, at 197. The only support given to these assertions is the description of an incident in which some 25 students visited the dean after the pamphlets were circulated and stated that they “wanted to get rid of this group of agitators.” *Id.*, at 199.

It seems to me altogether too late in the constitutional history of this country to argue that individuals can properly be punished for pamphleteering in these circumstances. These pamphlets are similar in some ways to the broadsides circulated by popular writers in England and the Colonies, official suppression of which helped lead to adoption of the First Amendment; to the writings of Republican polemicists, against which the Sedition Act prosecutions were aimed—prosecutions this Court has said violated the First Amendment, *New York Times Co. v. Sullivan*, 376 U. S. 254, 273–276 (1964); and to leaflets distributed by protesters during the First World War and the 1920’s, which evoked the classic opinions of Holmes and Brandeis, since vindicated by history, upon which so much of our law of free speech and the press is based. *Abrams v. United States*, 250 U. S. 616, 624 (1919) (Holmes, J., dissenting); *Gitlow v. New York*, 268 U. S. 652, 672 (1925) (Holmes, J., dis-

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senting); cf. *Whitney v. California*, 274 U. S. 357, 372 (1927) (Brandeis, J., concurring).

Indeed many of these older examples of the pamphleteering art were far cruder in tone and more inflammatory in content than the rather mild invocations of student protest before us here. Where such writings are suppressed, they are normally called "seditious" and "inflammatory," and legal action against them is justified—as it was here—on the ground that they constitute an "incitement" to crime or other disturbance that the offended officials have a right or duty to prevent. But to accept that formula without close examination of the facts would be to submerge the First Amendment altogether, for as Mr. Justice Holmes said, in words that are often quoted but at least as often disregarded, "[e]very idea is an incitement." *Gitlow v. New York*, *supra*, at 673. On this record, there was nothing approaching incitement of the kind that could constitutionally be punished as extending beyond the realm of speech into that of action. In their own testimony, the university officials demonstrated no more than the sort of "undifferentiated fear or apprehension of disturbance," which, as we held in *Tinker v. Des Moines School District*, 393 U. S. 503, 508 (1969), "is not enough to overcome the right to freedom of expression" even in the context of a classroom and as applied to high school rather than college students.

I cannot believe that this Court would hesitate one moment before striking down a criminal conviction based upon these pamphlets, or for that matter a civil judgment, or a prior restraint by injunction or administrative order against their distribution. This case differs in that the distribution took place upon a campus, the authors were college students, and the sanction was suspension from the university. As to the last point, it seems clear that suspension is punishment, and that punishment for

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speech is "abridgment" in the constitutional sense. *Tinker v. Des Moines School District*, *supra*. As to the former two points, they do not change the case. "The first amendment applies with full vigor on the campus of a public university." Wright, *The Constitution on the Campus*, 22 Vand. L. Rev. 1027, 1037 (1969). Officials of public universities wield the powers of the State, and in my view they are no more free than policemen or prosecutors to punish speech because it is rude or disrespectful, or because it causes in them vague apprehensions, or because for any other reason they do not like its content.

Student protesters are unpopular today, and the activities of some of them fall far outside any plausible construction of the constitutional guarantees of free expression. There is a tendency to lump together the burning of buildings and the peaceful but often unpleasantly sharp expression of discontent. It seems to me most important that the courts should distinguish between the two with particular care in these days, when officials under the pressure of events and public opinion are tempted to blur the distinction. Our system promises to college students as to everyone else that they may have their say, and when it breaks that promise it gives aid and comfort to those who say that it is a sham.

No. 1538. *BARTH v. CITY OF LOUISVILLE ET AL.* Ct. App. Ky. Certiorari denied. Reported below: 449 S. W. 2d 24.

No. 1542. *CANTOR ET UX. v. ZONING BOARD OF ADJUSTMENT OF THE TOWNSHIP OF MADISON ET AL.* Super. Ct. N. J. Certiorari denied.

No. 1543. *IROQUOIS INDUSTRIES, INC. v. SYRACUSE CHINA CORP. ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 417 F. 2d 963.

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No. 1545. PATE, WARDEN *v.* PERRY, U. S. DISTRICT JUDGE. C. A. 7th Cir. Certiorari denied.

No. 1546. MIRIANI *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 422 F. 2d 150.

No. 1548. MAIORANI *v.* KAWASAKI KISEN K. K., KOBE, ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 425 F. 2d 1162.

No. 1554. DAPPER *v.* MUNICIPAL COURT, SAN DIEGO JUDICIAL DISTRICT. Ct. App. Cal., 4th App. Dist. Certiorari denied. Reported below: 276 Cal. App. 2d 982, 81 Cal. Rptr. 340.

No. 1561. FRIDENA *v.* ARIZONA OSTEOPATHIC MEDICAL ASSN. ET AL. Sup. Ct. Ariz. Certiorari denied. Reported below: 105 Ariz. 291, 463 P. 2d 825.

No. 1570. BALLY CASE & COOLER, INC.; OF DELAWARE *v.* NATIONAL LABOR RELATIONS BOARD ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 416 F. 2d 902.

No. 1584. INTRA BANK, S. A. *v.* WILLE, SUPERINTENDENT OF BANKS OF NEW YORK, ET AL.; and

No. 1595. AMERICAN INTERNATIONAL UNDERWRITERS CORP. ET AL. *v.* WILLE, SUPERINTENDENT OF BANKS OF NEW YORK, ET AL. Ct. App. N. Y. Certiorari denied.

No. 1075. PHILLIPS, REFORMATORY SUPERINTENDENT *v.* BOOKER. C. A. 10th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 418 F. 2d 424.

No. 1646. COPINGER, WARDEN *v.* BLACKBURN. C. A. 4th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 421 F. 2d 602.

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No. 1654. *BENDIX CORP. ET AL. v. BALAX, INC., ET AL.* C. A. 7th Cir. Certiorari denied. Reported below: 421 F. 2d 809.

No. 1523. *MOSCA v. UNITED STATES.* Ct. Cl. Motion to dispense with printing petition granted. Certiorari denied. Reported below: 189 Ct. Cl. 283, 417 F. 2d 1382.

No. 1558. *ZIMMERMAN v. UNITED STATES ET AL.* C. A. 3d Cir. Motion to dispense with printing petition granted. Certiorari denied. Reported below: 422 F. 2d 326.

No. 1560. *SOMMER ET AL. v. UNITED STATES.* C. A. 7th Cir. Motion to dispense with printing petition granted. Certiorari denied. Reported below: 422 F. 2d 110.

No. 288, Misc. *REYES v. CALIFORNIA.* Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 567, Misc. *CLAYTON v. UNITED STATES.* C. A. 9th Cir. Certiorari denied. Reported below: 413 F. 2d 297.

No. 705, Misc. *WHITTED v. UNITED STATES.* C. A. 9th Cir. Certiorari denied. Reported below: 411 F. 2d 107.

No. 788, Misc. *BRADFORD v. CALIFORNIA.* Sup. Ct. Cal. Certiorari denied. Reported below: 70 Cal. 2d 333, 450 P. 2d 46.

No. 909, Misc. *McCLAIN v. LOUISIANA.* Sup. Ct. La. Certiorari denied. Reported below: 254 La. 56, 222 So. 2d 855.

No. 1053, Misc. *TERRY v. CALIFORNIA.* Sup. Ct. Cal. Certiorari denied. Reported below: 70 Cal. 2d 410, 454 P. 2d 36.

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No. 1214, Misc. *MONTGOMERY v. BRIERLEY*, CORRECTIONAL SUPERINTENDENT. C. A. 3d Cir. Certiorari denied. Reported below: 414 F. 2d 552.

No. 1279, Misc. *VALDES v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 417 F. 2d 335.

No. 1295, Misc. *GIBSON ET AL. v. WASHINGTON*. Sup. Ct. Wash. Certiorari denied. Reported below: 76 Wash. 2d 814, 459 P. 2d 22.

No. 1336, Misc. *DEJONG v. UNITED STATES*. C. A. 5th Cir. Certiorari denied.

No. 1385, Misc. *AGNEW v. NEBRASKA*. Sup. Ct. Neb. Certiorari denied. Reported below: 184 Neb. 700, 171 N. W. 2d 542.

No. 1397, Misc. *RHODES v. MARYLAND*. Ct. Sp. App. Md. Certiorari denied.

No. 1496, Misc. *WILLIAMS v. REINCKE*, WARDEN. C. A. 2d Cir. Certiorari denied.

No. 1514, Misc. *JONES v. RUSSELL*, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 1563, Misc. *PIGMAN v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 414 F. 2d 767.

No. 1752, Misc. *FRANKLIN v. MARYLAND*. Ct. Sp. App. Md. Certiorari denied. Reported below: 6 Md. App. 572, 252 A. 2d 487.

No. 1775, Misc. *BLACKWELL v. BAKER*, WARDEN. C. A. 10th Cir. Certiorari denied.

No. 1830, Misc. *WALLEN v. NEBRASKA*. Sup. Ct. Neb. Certiorari denied. Reported below: 185 Neb. 44, 173 N. W. 2d 372.

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No. 1819, Misc. CLINTON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 1892, Misc. ROBINSON *v.* BOARD OF SUPERVISORS OF PIMA COUNTY ET AL. Sup. Ct. Ariz. Certiorari denied. Reported below: 105 Ariz. 280, 463 P. 2d 536.

No. 1918, Misc. WILLIAMS *v.* OBERHAUSER, INSTITUTION SUPERINTENDENT. Sup. Ct. Cal. Certiorari denied.

No. 1965, Misc. SCHLETTE *v.* ROSENSTOCK. C. A. 9th Cir. Certiorari denied.

No. 1974, Misc. NIPP *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 422 F. 2d 509.

No. 1984, Misc. KENDALL *v.* FOLLETTE, WARDEN. C. A. 2d Cir. Certiorari denied.

No. 1986, Misc. ADAMS, AKA OWENS, ET AL. *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 422 F. 2d 515.

No. 1987, Misc. GRACE *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 2047, Misc. GOODMAN *v.* COX, PENITENTIARY SUPERINTENDENT. C. A. 4th Cir. Certiorari denied.

No. 2051, Misc. GLENNERSTER *v.* UNITED STATES; and

No. 2075, Misc. BENANTI *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 2062, Misc. DEVERS *v.* CALIFORNIA ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 422 F. 2d 1263.

No. 2068, Misc. SEHNLEIN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 423 F. 2d 1051.

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No. 2063, Misc. *SCOTT v. NEW YORK*. App. Div., Sup. Ct. N. Y., 4th Jud. Dept. Certiorari denied.

No. 2070, Misc. *DOUGHERTY v. CALIFORNIA*. Sup. Ct. Cal. Certiorari denied.

No. 2083, Misc. *MARSHALL v. UNITED STATES*. C. A. 6th Cir. Certiorari denied.

No. 2084, Misc. *OSTERBURG v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 423 F. 2d 704.

No. 2087, Misc. *ALLEN v. UNITED STATES*. C. A. 6th Cir. Certiorari denied.

No. 2089, Misc. *WILLIAMS v. ILLINOIS*. Sup. Ct. Ill. Certiorari denied. Reported below: 44 Ill. 2d 334, 255 N. E. 2d 385.

No. 2098, Misc. *PUPLAMPU v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 422 F. 2d 870.

No. 2101, Misc. *MOSBY v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 422 F. 2d 72.

No. 2112, Misc. *PICKLER v. SMITH, WARDEN*. Sup. Ct. Ga. Certiorari denied. Reported below: 226 Ga. 109, 172 S. E. 2d 696.

No. 2116, Misc. *WILLARD v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 421 F. 2d 59.

No. 2119, Misc. *THAXTON v. UNITED STATES*. C. A. D. C. Cir. Certiorari denied. Reported below: — U. S. App. D. C. —, 424 F. 2d 942.

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No. 2117, Misc. *MILLS v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 423 F. 2d 688.

No. 2128, Misc. *UNGER v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 416 F. 2d 558.

No. 2132, Misc. *SEWELL v. WARDEN, MARYLAND PENITENTIARY*. C. A. 4th Cir. Certiorari denied.

No. 2135, Misc. *VERSE v. UNITED STATES*. C. A. 6th Cir. Certiorari denied.

No. 2137, Misc. *WALKER v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 422 F. 2d 374.

No. 2138, Misc. *O'SHEA v. UNITED STATES*. C. A. 1st Cir. Certiorari denied.

No. 2140, Misc. *WEBSTER v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 422 F. 2d 290.

No. 2143, Misc. *MCPARLIN v. RHODE ISLAND*. C. A. 1st Cir. Certiorari denied. Reported below: 419 F. 2d 7.

No. 2147, Misc. *STEWART v. BETO, CORRECTIONS DIRECTOR*. C. A. 5th Cir. Certiorari denied.

No. 2150, Misc. *ROLLINS v. MISSOURI*. Sup. Ct. Mo. Certiorari denied. Reported below: 449 S. W. 2d 585.

No. 2151, Misc. *HOUSE v. UNITED STATES*. C. A. D. C. Cir. Certiorari denied. Reported below: 134 U. S. App. D. C. 10, 411 F. 2d 725.

No. 2213, Misc. *YOUNG v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 423 F. 2d 677.

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No. 2228, Misc. *McDORMAN ET AL. v. TURNER, WARDEN*. C. A. 10th Cir. Certiorari denied. Reported below: 422 F. 2d 214.

No. 2171, Misc. *TEPLITSKY v. ASSOCIATED PRESS ET AL.* C. A. 2d Cir. Certiorari denied.

No. 583, Misc. *HENDERSON v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. MR. JUSTICE DOUGLAS is of the opinion that certiorari should be granted. Reported below: 411 F. 2d 224.

No. 955, Misc. *WRIGHT v. CALIFORNIA DEPARTMENT OF CORRECTIONS ET AL.* C. A. 9th Cir. Certiorari denied. MR. JUSTICE DOUGLAS is of the opinion that certiorari should be granted.

No. 1209, Misc. *STEVENS v. CALIFORNIA*. Ct. App. Cal., 1st App. Dist. Certiorari denied. MR. JUSTICE DOUGLAS is of the opinion that certiorari should be granted.

No. 1406, Misc. *BEASLEY v. NEBRASKA*. Sup. Ct. Neb. Certiorari denied. MR. JUSTICE DOUGLAS is of the opinion that certiorari should be granted. Reported below: 184 Neb. 649, 171 N. W. 2d 177.

No. 1688, Misc. *BOYDEN v. FEDERAL PRISON INDUSTRIES, INC.* C. A. 9th Cir. Certiorari denied. MR. JUSTICE DOUGLAS is of the opinion that certiorari should be granted.

No. 1788, Misc. *WILLIAMS v. FLORIDA*. Dist. Ct. App. Fla., 3d Dist. Certiorari denied. MR. JUSTICE BLACK is of the opinion that certiorari should be granted. MR. JUSTICE BLACKMUN took no part in the consideration or decision of this petition.

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Rehearing Denied

No. 834. *GRAYSON v. UNITED STATES*, 396 U. S. 1059, 397 U. S. 1003. Motion for leave to file second petition for rehearing denied. MR. JUSTICE BLACKMUN took no part in the consideration or decision of this motion.

No. 156, Misc., October Term, 1968. *ELLENBOGEN v. UNITED STATES*, 393 U. S. 918. Petition for rehearing denied. MR. JUSTICE DOUGLAS is of the opinion that the petition should be granted. THE CHIEF JUSTICE, MR. JUSTICE MARSHALL, and MR. JUSTICE BLACKMUN took no part in the consideration or decision of this petition.

No. 476. *SEARS, ROEBUCK & Co. v. CARPET, LINOLEUM, SOFT TILE, & RESILIENT FLOOR COVERING LAYERS, LOCAL UNION No. 419, AFL-CIO, ET AL.*, 397 U. S. 655. Motion for leave to supplement petition for rehearing granted. Motion to defer consideration of petition for rehearing and petition for rehearing denied. MR. JUSTICE BLACKMUN took no part in the consideration or decision of these motions and petition.

No. 1374. *BEATTY v. ELLINGS ET AL.*, 398 U. S. 904;

No. 1935, Misc. *GOFF v. PFAU, TRUSTEE IN BANKRUPTCY*, 398 U. S. 931; and

No. 2033, Misc. *PENNEY ET AL. v. UNITED STATES*, 398 U. S. 932. Petitions for rehearing denied. MR. JUSTICE MARSHALL and MR. JUSTICE BLACKMUN took no part in the consideration or decision of these petitions.

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 Ninth Circuit beginning June 18, 1970, and ending October 31, 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.

June 22, 23, 26, 27, 1970

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An order of THE CHIEF JUSTICE designating and assigning Mr. Justice Clark (retired) to perform judicial duties in the United States District Court for the Northern District of California beginning June 18, 1970, and ending October 31, 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.

JUNE 23, 1970

Certiorari Granted. (See Nos. 1507 and 1556, *ante*, p. 222.)

JUNE 26, 1970

Dismissal Under Rule 60

No. 2344, Misc. TRABUCCO *v.* UNITED STATES. C. A. 5th Cir. Petition for writ of certiorari dismissed pursuant to Rule 60 of the Rules of this Court. Reported below: 424 F. 2d 1311.

Miscellaneous Order

No. —. BERK *v.* LAIRD, SECRETARY OF DEFENSE, ET AL. D. C. E. D. N. Y. Application for stay of deployment presented to MR. JUSTICE WHITE, and by him referred to the Court, denied. MR. JUSTICE DOUGLAS and MR. JUSTICE MARSHALL took no part in the consideration or decision of this application.

JUNE 27, 1970

Miscellaneous Order

No. —. ROBINSON, COMMISSIONER OF EDUCATION OF RHODE ISLAND, ET AL. *v.* DiCENSO ET AL. D. C. R. I. Application for stay of order of the United States District Court for the District of Rhode Island entered in Civil Action No. 4239 on June 17, 1970, which application was presented to MR. JUSTICE BRENNAN, and by him referred

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to the Court, granted, and the said order is hereby stayed pending timely filing of appeal in this Court. Should appeal be so timely filed, the stay will remain in effect pending its disposition. In the event the appeal is dismissed, the stay is to terminate automatically. Should jurisdiction be noted or postponed in the case, the stay is to remain in effect pending issuance of judgment of this Court. MR. JUSTICE DOUGLAS dissents from the grant of stay. MR. JUSTICE WHITE and MR. JUSTICE MARSHALL took no part in the consideration or decision of this application. Reported below: 316 F. Supp. 112.

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Appeals Dismissed

No. 1371. READER'S DIGEST ASSN., INC. *v.* MAHIN, DIRECTOR OF REVENUE OF 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: 44 Ill. 2d 354, 255 N. E. 2d 458.

No. 1670, Misc. MEARS *v.* HOCKER, WARDEN, ET AL. Appeal from C. A. 9th Cir. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied.

No. 1310, Misc. LEE *v.* FAULKNER, SHERIFF. Appeal from Ct. Crim. App. Okla. dismissed for want of substantial federal question.

No. 1889, Misc. BETTENCOURT *v.* CALIFORNIA. Appeal from Ct. App. Cal., 3d App. Dist., dismissed for want of substantial federal question.

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No. 1925, Misc. *DOBER v. ELKO ET AL.* Appeal from Sup. Ct. Pa. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied. Reported below: 436 Pa. 243, 259 A. 2d 419.

No. 1525, Misc. *SMITH v. SCOTLAND URBAN ENTERPRISES, INC.* Appeal from Sup. Ct. La. dismissed for want of properly presented federal question. MR. JUSTICE DOUGLAS is of the opinion that probable jurisdiction should be noted.

*Vacated and Remanded on Appeal**

No. 1568. *CARLOUGH v. RICHARDSON, SECRETARY OF HEALTH, EDUCATION, AND WELFARE.* Appeal from D. C. S. D. Fla. Judgment of United States District Court for the Southern District of Florida vacated and case remanded to that court so that it may enter a fresh judgment from which a timely appeal may be taken to the Court of Appeals.

Miscellaneous Orders

No. —. *UNITED STATES v. TEN REELS OF A MOTION PICTURE, ENTITLED "QUIET DAYS IN CLICHY" (GROVE PRESS, CLAIMANT).* D. C. C. D. Cal. Application to vacate stay heretofore issued by MR. JUSTICE BLACK denied, with leave to renew, however, if a trial on the obscenity *vel non* of this film has not commenced by August 3, 1970, unless any delay of the trial beyond that date has been occasioned by appellee Grove Press. MR. JUSTICE BLACK and MR. JUSTICE STEWART would vacate the stay. MR. JUSTICE DOUGLAS took no part in the consideration or decision of this application.

*[REPORTER'S NOTE: This is a new category for summary dispositions on appeal. Cf. Reporter's Note, 398 U. S. 901.]

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No. —. FLORIDA EX REL. FAIRCLOTH, ATTORNEY GENERAL OF FLORIDA, ET AL. *v.* M & W THEATRES, INC., ET AL.; and

No. —. FLORIDA EX REL. FAIRCLOTH, ATTORNEY GENERAL OF FLORIDA, ET AL. *v.* NEWTON ET AL. Applications for stays of preliminary injunction issued by the United States District Court for the Northern District of Florida presented to MR. JUSTICE BLACK, and by him referred to the Court, granted pending timely filing and disposition of appeals. Should such appeals not be filed, these stays are to expire automatically. Should such appeals be timely docketed, these stays are to continue pending this Court's action on the jurisdictional aspect of the cases. In the event the appeals are dismissed or judgments below summarily affirmed, these stays are to expire automatically. Should the Court note probable jurisdiction of the appeals or postpone further consideration of the questions of jurisdiction to hearings on the merits, these stays to remain in effect pending issuance of the judgments of this Court. MR. JUSTICE DOUGLAS, MR. JUSTICE WHITE, and MR. JUSTICE MARSHALL took no part in the consideration or decision of these applications.

No. 2242, Misc. AUSTIN *v.* UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF FLORIDA ET AL. Application for stay order or writ of injunction presented to MR. JUSTICE BLACK, and by him referred to the Court, granted. MR. JUSTICE DOUGLAS took no part in the consideration or decision of this application.

No. 730. HILL *v.* CALIFORNIA. Sup. Ct. Cal. [Certiorari granted, 396 U. S. 818.] Motion of *Keith C. Monroe* for leave to participate in oral argument as *amicus curiae* on behalf of the Orange County Criminal Courts Bar Assn. denied.

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No. 4. YOUNGER, DISTRICT ATTORNEY OF LOS ANGELES COUNTY *v.* HARRIS ET AL. Appeal from D. C. C. D. Cal. [Probable jurisdiction noted, 393 U. S. 1013; restored to calendar, 395 U. S. 955];

No. 6. BOYLE, JUDGE, ET AL. *v.* LANDRY ET AL. Appeal from D. C. N. D. Ill. [Probable jurisdiction noted, 393 U. S. 974; restored to calendar, 395 U. S. 955];

No. 11. SAMUELS ET AL. *v.* MACKELL, DISTRICT ATTORNEY OF QUEENS COUNTY, ET AL. Appeal from D. C. S. D. N. Y. [Probable jurisdiction noted, 393 U. S. 975; restored to calendar, 395 U. S. 957];

No. 20. FERNANDEZ *v.* MACKELL, DISTRICT ATTORNEY OF QUEENS COUNTY, ET AL. Appeal from D. C. S. D. N. Y. [Probable jurisdiction noted, 393 U. S. 975; restored to calendar, 395 U. S. 957];

No. 265. BODDIE ET AL. *v.* CONNECTICUT ET AL. Appeal from D. C. Conn. [Probable jurisdiction noted, 395 U. S. 974];

No. 266. SANKS ET AL. *v.* GEORGIA ET AL. Appeal from Sup. Ct. Ga. [Probable jurisdiction noted, 395 U. S. 974];

No. 565. DYSON ET AL. *v.* STEIN. Appeal from D. C. N. D. Tex. [Probable jurisdiction noted *sub nom.* *Batchelor v. Stein*, 396 U. S. 954]; and

No. 1149. BYRNE, DISTRICT ATTORNEY OF SUFFOLK COUNTY, ET AL. *v.* KARALEXIS ET AL. Appeal from D. C. Mass. [Probable jurisdiction noted, 397 U. S. 985.] Cases restored to calendar for reargument.

No. 2130, Misc. HARDIE *v.* NEVILLE, U. S. DISTRICT JUDGE. Motion for leave to file petition for writ of mandamus denied.

No. 2217, Misc. McCLENDON *v.* SMITH, WARDEN. Motion for leave to file petition for writ of habeas corpus denied.

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No. 1198. *WHITCOMB, GOVERNOR OF INDIANA v. CHAVIS ET AL.* Appeal from D. C. S. D. Ind. [Probable jurisdiction noted, 397 U. S. 984.] Motion of ACLU Foundation, Inc., et al. for leave to file a brief as *amici curiae* granted.

No. 1155. *UNITED STATES v. VUITCH.* Appeal from D. C. D. C. [Probable jurisdiction postponed, 397 U. S. 1061.] In addition to the issues presented on the merits of this case, the parties are requested to brief and argue the following three questions:

1. Does this Court have jurisdiction under 18 U. S. C. § 3731 to entertain a direct appeal from a decision of the United States District Court for the District of Columbia dismissing an indictment on the ground of the invalidity of the statute on which the indictment is founded, where the statute, although an act of Congress, applies only in the District of Columbia?

2. Could the District Court's decision in this case have been appealed to the Court of Appeals for the District of Columbia Circuit pursuant to D. C. Code § 23-105?

3. If the decision could have been appealed to the District of Columbia Circuit, should this Court, as a matter of sound judicial administration, abstain from accepting jurisdiction pursuant to 18 U. S. C. § 3731 because the case involves the validity of a statute the application of which is confined to the District of Columbia?

No. 1189. *LEMON ET AL. v. KURTZMAN, SUPERINTENDENT OF PUBLIC INSTRUCTION OF PENNSYLVANIA, ET AL.* Appeal from D. C. E. D. Pa. [Probable jurisdiction noted, 397 U. S. 1034.] Motion of Americans United for Separation of Church and State for leave to participate in oral argument as *amicus curiae* denied. MR. JUSTICE MARSHALL took no part in the consideration or decision of this motion.

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No. 21. *DUTTON, WARDEN v. EVANS*. Appeal from C. A. 5th Cir. [Probable jurisdiction noted, 393 U. S. 1076; restored to calendar for reargument, 397 U. S. 1060];

No. 1632. *MCGAUTHA v. CALIFORNIA*. Sup. Ct. Cal. [Certiorari granted, 398 U. S. 936]; and

No. 1633. *CRAMPTON v. OHIO*. Sup. Ct. Ohio. [Certiorari granted, 398 U. S. 936.] The Solicitor General is invited to file a brief in these cases expressing the views of the United States and to participate in the oral argument. Motion of petitioner for appointment of counsel in No. 1633 granted. It is ordered that *John J. Callahan, Esquire*, of Toledo, Ohio, a member of the Bar of this Court, be, and he is hereby, appointed to serve as counsel for petitioner in this case.

Probable Jurisdiction Noted or Postponed

No. 837. *PEREZ ET AL. v. LEDESMA ET AL.* Appeal from D. C. E. D. La. Further consideration of question of jurisdiction in this case postponed to hearing of case on the merits. Case set to be argued with No. 4, *Younger v. Harris*, No. 6, *Boyle v. Landry*, No. 11, *Samuels v. Mackell*, No. 20, *Fernandez v. Mackell*, No. 565, *Dyson v. Stein*, and No. 1149, *Byrne v. Karalexis*. [Restored to calendar for reargument, *supra*.] In addition to questions presented in jurisdictional statement, parties requested to brief and argue the following questions:

(1) Was it an appropriate exercise of discretion for the three-judge court to grant the relief in paragraphs 1 and 2 of the judgment of August 14, 1969, in view of the pendency of the state prosecution charging violation of Louisiana Revised Statutes § 14:106?

(2) Was it an appropriate exercise of discretion for the three-judge court in paragraph 4 of said judgment to

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declare the St. Bernard Parish Ordinance No. 21-60 unconstitutional?

Reported below: 304 F. Supp. 662.

No. 1658. *SHAFFER v. VALTIERRA ET AL.* Appeal from D. C. N. D. Cal. Probable jurisdiction noted and case set for oral argument with No. 1557 [probable jurisdiction noted, 398 U. S. 949]. MR. JUSTICE DOUGLAS took no part in the consideration or decision of this matter. Reported below: 313 F. Supp. 1.

No. 2300, Misc. *McKEIVER ET AL. v. PENNSYLVANIA.* Appeal from Sup. Ct. Pa. Motion of appellants for leave to proceed *in forma pauperis* granted. Probable jurisdiction noted. Case transferred to appellate docket and set for oral argument with No. 1441 [*In re Burrus*, certiorari granted, 397 U. S. 1036]. Reported below: 438 Pa. 339, 265 A. 2d 350.

Certiorari Granted. (See also No. 241, *ante*, p. 519; No. 672, *ante*, p. 526; No. 801, *ante*, p. 519; No. 936, *ante*, p. 520; No. 1195, *ante*, p. 521; No. 1532, *ante*, p. 522; No. 1544, *ante*, p. 524; No. 35, Misc., *ante*, p. 526; No. 88, Misc., *ante*, p. 526; No. 738, Misc., *ante*, p. 526; No. 1232, Misc., *ante*, p. 525; No. 1886, Misc., *ante*, p. 523; and No. 1969, Misc., *ante*, p. 523.)

No. 1170. *GILLETTE v. UNITED STATES.* C. A. 2d Cir. Certiorari granted. Reported below: 420 F. 2d 298.

No. 1873, Misc. *TATE v. SHORT.* Ct. Crim. App. Tex. Motion for leave to proceed *in forma pauperis* granted. Certiorari granted and case transferred to appellate docket. Reported below: 445 S. W. 2d 210.

No. 1669, Misc. *NEGRE v. LARSEN ET AL.* C. A. 9th Cir. Motion for leave to proceed *in forma pauperis* and certiorari granted. Case transferred to appellate docket and set for oral argument immediately following No. 1170, *supra*. Reported below: 418 F. 2d 908.

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No. 1405. GRIGGS ET AL. *v.* DUKE POWER Co. C. A. 4th Cir. Motion of United Steelworkers of America, AFL-CIO, for leave to file a brief as *amicus curiae* granted. Certiorari granted. MR. JUSTICE BRENNAN took no part in the consideration or decision of this motion and petition.

No. 1713. SWANN ET AL. *v.* CHARLOTTE-MECKLENBURG BOARD OF EDUCATION ET AL. C. A. 4th Cir. Motion of National Education Association for leave to file a brief as *amicus curiae* granted. Motion of United Negro College Fund, Inc., et al. for leave to file a brief as *amici curiae* granted. Petition for writ of certiorari granted, provided the judgment of the Court of Appeals is left undisturbed insofar as it remands the case to the District Court for further proceedings, which further proceedings are authorized, and the District Court's judgment is reinstated and shall remain in effect pending those proceedings. Decision on motions to expedite deferred. MR. JUSTICE BLACK dissents from the Court's order which reinstates the District Court's judgment. He would grant motion to expedite action in this Court and set case for hearing at earliest possible date. Reported below: 431 F. 2d 138.

No. 1318, Misc. COOLIDGE *v.* NEW HAMPSHIRE. Sup. Ct. N. H. Motion for leave to proceed *in forma pauperis* granted. Certiorari granted and case transferred to appellate docket. Reported below: 109 N. H. 403, 260 A. 2d 547.

Certiorari Denied. (See also No. 1371, and Misc. Nos. 1670 and 1925, *supra*.)

No. 1115. WISNIESKI *v.* OHIO EX REL. KENDZIA ET AL. Sup. Ct. Ohio. Certiorari denied. Reported below: 20 Ohio St. 2d 37, 252 N. E. 2d 639.

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No. 516. *MESSINGER v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 413 F. 2d 927.

No. 1414. *TILTON ET AL. v. COWLES PUBLISHING Co.* Sup. Ct. Wash. Certiorari denied. Reported below: 76 Wash. 2d 707, 459 P. 2d 8.

No. 1427. *GARRETT ET AL. v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 418 F. 2d 1250.

No. 1440. *OPIE v. MEACHAM, WARDEN*. C. A. 10th Cir. Certiorari denied. Reported below: 419 F. 2d 465.

No. 1461. *BERGMAN v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 420 F. 2d 681.

No. 1536. *IN RE GANTT*. Sup. Ct. Ala. Certiorari denied. Reported below: 285 Ala. 753, 230 So. 2d 525.

No. 1551. *LANIER v. UNITED STATES*. C. A. 4th Cir. Certiorari denied.

No. 1552. *BANKERS MORTGAGE Co. v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 423 F. 2d 73.

No. 1562. *LONGO ET AL. v. CALIFORNIA*. Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 1563. *COPPOLINO v. FLORIDA*. Dist. Ct. App. Fla., 2d Dist. Certiorari denied. Reported below: 223 So. 2d 68.

No. 1566. *MONROE AUTO EQUIPMENT Co., HARTWELL DIVISION v. NATIONAL LABOR RELATIONS BOARD*. C. A. 5th Cir. Certiorari denied. Reported below: 420 F. 2d 861.

No. 1567. *WAINWRIGHT, CORRECTIONS DIRECTOR v. BAKER*. C. A. 5th Cir. Certiorari denied. Reported below: 422 F. 2d 145.

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No. 1571. *ANDERSON FEDERATION OF TEACHERS, LOCAL 519 v. SCHOOL CITY OF ANDERSON ET AL.* Sup. Ct. Ind. Certiorari denied. Reported below: — Ind. — and —, 251 N. E. 2d 15 and 254 N. E. 2d 329.

No. 1573. *METROPOLITAN LIFE INSURANCE Co. v. EDWARDS ET AL.* Super. Ct. Pa. Certiorari denied. Reported below: 215 Pa. Super. 390, 259 A. 2d 183.

No. 1585. *IZZI v. UNITED STATES.* C. A. 2d Cir. Certiorari denied. Reported below: 427 F. 2d 293.

No. 1592. *WOODSON, TRUSTEE IN BANKRUPTCY v. GILMER.* C. A. 4th Cir. Certiorari denied. Reported below: 420 F. 2d 378.

No. 1601. *RILEY ET UX. v. STATE FARM MUTUAL AUTOMOBILE INSURANCE Co.* C. A. 6th Cir. Certiorari denied. Reported below: 420 F. 2d 1372.

No. 1606. *HARSH INVESTMENT CORP. v. DANNING, RECEIVER.* C. A. 9th Cir. Certiorari denied.

No. 1638. *COPPOLA v. UNITED STATES.* C. A. 2d Cir. Certiorari denied. Reported below: 424 F. 2d 991.

No. 18. *McLAURIN v. BURNLEY.* C. A. 5th Cir. Certiorari denied. MR. JUSTICE DOUGLAS is of the opinion that certiorari should be granted. Reported below: 401 F. 2d 773.

No. 1619. *VASILJ v. UNITED STATES.* C. A. 9th Cir. Certiorari denied. MR. JUSTICE DOUGLAS is of the opinion that certiorari should be granted. Reported below: 425 F. 2d 1134.

No. 1618. *CURRAN ET AL. v. MORRISSEY ET AL.* C. A. 2d Cir. Motion to defer consideration of petition for certiorari denied. Certiorari denied. MR. JUSTICE WHITE is of the opinion that certiorari should be granted. Reported below: 423 F. 2d 393.

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No. 508. *HANNA v. ILLINOIS*. Sup. Ct. Ill. Certiorari denied. MR. JUSTICE HARLAN would grant the petition for certiorari, vacate the judgment below, and remand case for the reasons stated in his separate opinion in *Chambers v. Maroney*, ante, p. 55. Reported below: 42 Ill. 2d 323, 247 N. E. 2d 610.

No. 683. *ICHORD ET AL. v. STAMLER ET AL.* C. A. 7th Cir. Certiorari denied. MR. JUSTICE MARSHALL took no part in the consideration or decision of this petition. Reported below: 415 F. 2d 1365.

No. 1600. *MARSTON ET AL. v. ANN ARBOR PROPERTY MANAGERS ET AL.* C. A. 6th Cir. Motion to dispense with printing petition granted. Certiorari denied. Reported below: 422 F. 2d 836.

No. 1753. *SCHOOL BOARD OF THE CITY OF NORFOLK, VIRGINIA, ET AL. v. BREWER ET AL.* C. A. 4th Cir. Motion to dispense with printing petition granted. Motion to advance granted. Certiorari denied. MR. JUSTICE BLACK is of the opinion that certiorari should be granted and the case set for oral argument at earliest possible date.

No. 13, Misc. *OLIVEROS v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 398 F. 2d 349.

No. 373, Misc. *PITTS v. OHIO*. Sup. Ct. Ohio. Certiorari denied.

No. 389, Misc. *GELHAAR v. WISCONSIN*. Sup. Ct. Wis. Certiorari denied. Reported below: 41 Wis. 2d 230, 163 N. W. 2d 609.

No. 907, Misc. *HEARNS v. FLORIDA*. Sup. Ct. Fla. Certiorari denied. Reported below: 223 So. 2d 738.

No. 1304, Misc. *MORGAN v. CALIFORNIA ADULT AUTHORITY*. Sup. Ct. Cal. Certiorari denied.

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No. 1545, Misc. *GUTIERREZ v. CALIFORNIA*. App. Dept., Super. Ct. Cal., County of Ventura. Certiorari denied.

No. 1567, Misc. *HOCK v. NEW JERSEY*. Sup. Ct. N. J. Certiorari denied. Reported below: 54 N. J. 526, 257 A. 2d 699.

No. 1572, Misc. *STACK v. NEW YORK*. App. Div., Sup. Ct. N. Y., 2d Jud. Dept. Certiorari denied.

No. 1592, Misc. *WILSON v. CALIFORNIA*. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 1693, Misc. *BAKER v. BRIERLEY, CORRECTIONAL SUPERINTENDENT*. C. A. 3d Cir. Certiorari denied.

No. 1829, Misc. *STOUT v. OHIO*. Sup. Ct. Ohio. Certiorari denied.

No. 1955, Misc. *BELL v. UNITED STATES*. C. A. 10th Cir. Certiorari denied.

No. 1971, Misc. *CALDERA ET AL. v. MITCHELL, ATTORNEY GENERAL, ET AL.* C. A. 9th Cir. Certiorari denied.

No. 1981, Misc. *SZIJARTO v. NELSON, WARDEN*. C. A. 9th Cir. Certiorari denied.

No. 2010, Misc. *RICHBURG v. SOUTH CAROLINA*. Sup. Ct. S. C. Certiorari denied. Reported below: 253 S. C. 458, 171 S. E. 2d 592.

No. 2015, Misc. *JOHNSON v. BETO, CORRECTIONS DIRECTOR*. C. A. 5th Cir. Certiorari denied.

No. 2016, Misc. *COX v. WINGO*. C. A. 6th Cir. Certiorari denied.

No. 2020, Misc. *CRAGG v. CALIFORNIA*. Sup. Ct. Cal. Certiorari denied.

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No. 2017, Misc. *WALKER v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 421 F. 2d 1298.

No. 2021, Misc. *CLAYTON v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 418 F. 2d 1274.

No. 2029, Misc. *JACKSON v. IOWA*. Sup. Ct. Iowa. Certiorari denied. Reported below: — Iowa —, 173 N. W. 2d 567.

No. 2030, Misc. *ADAMS v. NEW YORK*. Ct. App. N. Y. Certiorari denied. Reported below: 26 N. Y. 2d 129, 257 N. E. 2d 610.

No. 2040, Misc. *McGETTRICK v. UNITED STATES*. C. A. 2d Cir. Certiorari denied.

No. 2041, Misc. *HOLLOM v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 420 F. 2d 377.

No. 2042, Misc. *O'FIELDS v. RADER, INSTITUTIONS DIRECTOR, ET AL.* C. A. 10th Cir. Certiorari denied.

No. 2043, Misc. *LORENZANA v. DELGADO, WARDEN*. Sup. Ct. P. R. Certiorari denied.

No. 2049, Misc. *WANSLEY v. VIRGINIA*. Sup. Ct. App. Va. Certiorari denied. Reported below: 210 Va. 462, 171 S. E. 2d 678.

No. 2066, Misc. *TAYLOR v. SUPERIOR COURT, COUNTY OF RIVERSIDE*. Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 2072, Misc. *WILLIAMS v. FOLLETTE, WARDEN*. C. A. 2d Cir. Certiorari denied.

No. 2079, Misc. *SHARPE v. CALIFORNIA*. Ct. App. Cal., 4th App. Dist. Certiorari denied.

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No. 2080, Misc. *CULLY v. RUNDLE*, CORRECTIONAL SUPERINTENDENT. C. A. 3d Cir. Certiorari denied.

No. 2090, Misc. *KRUSE v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 422 F. 2d 849.

No. 2092, Misc. *HEADLEY ET AL. v. MANCUSI*, WARDEN. C. A. 2d Cir. Certiorari denied. Reported below: 415 F. 2d 277.

No. 2095, Misc. *BASS v. UNITED STATES*. C. A. 4th Cir. Certiorari denied.

No. 2099, Misc. *HORTON v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 423 F. 2d 474.

No. 2102, Misc. *MAPYS v. UNITED STATES*. C. A. 10th Cir. Certiorari denied. Reported below: 409 F. 2d 964.

No. 2104, Misc. *MOFFETT v. UNITED STATES*. C. A. 9th Cir. Certiorari denied.

No. 2111, Misc. *LOPEZ v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 422 F. 2d 395.

No. 2115, Misc. *HYLECK v. MINNESOTA*. Sup. Ct. Minn. Certiorari denied. Reported below: 286 Minn. 126, 175 N. W. 2d 163.

No. 2122, Misc. *CLARKE v. UNITED STATES BOARD OF PAROLE ET AL.* C. A. D. C. Cir. Certiorari denied.

No. 2123, Misc. *YANT v. UNITED STATES*. C. A. 6th Cir. Certiorari denied.

No. 2127, Misc. *GROVES v. PATE*, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 2133, Misc. *LOTT v. UNITED STATES*. C. A. 5th Cir. Certiorari denied.

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No. 2129, Misc. *BROWN v. GEORGIA*. Sup. Ct. Ga. Certiorari denied. Reported below: 226 Ga. 114, 172 S. E. 2d 666.

No. 2131, Misc. *MANUEL-BACA v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 421 F. 2d 781.

No. 2141, Misc. *WOOTEN v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 420 F. 2d 376.

No. 2146, Misc. *COHEN v. WAINWRIGHT, CORRECTIONS DIRECTOR*. C. A. 5th Cir. Certiorari denied. Reported below: 418 F. 2d 565.

No. 2157, Misc. *BRIONES v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 423 F. 2d 742.

No. 2163, Misc. *HYNES, AKA BURNS v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 424 F. 2d 754.

No. 2175, Misc. *NELSON v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 425 F. 2d 189.

No. 212, Misc. *GILLIAM v. RESOR, SECRETARY OF THE ARMY*. C. A. 5th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant the petition, vacate the judgment, and remand the case for reconsideration in light of *Welsh v. United States*, 398 U. S. 333 (1970). Reported below: 407 F. 2d 281.

No. 908, Misc. *MORGAN v. FLORIDA*. Dist. Ct. App. Fla., 3d Dist. Certiorari denied. MR. JUSTICE MARSHALL would grant certiorari and reverse the judgment below for the reasons stated in his separate opinion in *Williams v. Florida*, ante, p. 116. Reported below: 223 So. 2d 801.

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No. 105, Misc. JACKSON *v.* GEORGIA. Sup. Ct. Ga.;
No. 219, Misc. TURLEY *v.* MISSOURI. Sup. Ct. Mo.;
and

No. 509, Misc. WETZEL *v.* NORTH CAROLINA. C. A. 4th Cir. Motion of Emory Community Legal Services Center for leave to file a brief as *amicus curiae* in No. 105, Misc., granted. Petitions for writs of certiorari denied. MR. JUSTICE BLACK and MR. JUSTICE DOUGLAS, being of the view that *Coleman v. Alabama*, ante, p. 1, should be retroactive in all cases (see *Desist v. United States*, 394 U. S. 244, 255 (DOUGLAS, J., dissenting)) would grant the petitions, vacate the judgments, and remand the cases for reconsideration in light of *Coleman*. MR. JUSTICE HARLAN would grant the petitions for writs of certiorari, vacate judgments of the courts below, and remand cases to those courts for further consideration in light of his concurring opinion in *Coleman v. Alabama*, ante, p. 19. See *Desist v. United States*, 394 U. S. 244, 256 (1969) (HARLAN, J., dissenting). Reported below: No. 105, Misc., 225 Ga. 39, 165 S. E. 2d 711; and No. 219, Misc., 442 S. W. 2d 75.

No. 603, Misc. SATTERFIELD *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. MR. JUSTICE DOUGLAS is of the opinion that certiorari should be granted. Reported below: 410 F. 2d 1351.

No. 878, Misc. GREGG *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. MR. JUSTICE DOUGLAS is of the opinion that certiorari should be granted. Reported below: 414 F. 2d 943.

No. 1342, Misc. SARABIA *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied. MR. JUSTICE DOUGLAS is of the opinion that certiorari should be granted. Reported below: 455 S. W. 2d 231.

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No. 1201, Misc. *COLLIER v. WINGO, WARDEN*. C. A. 6th Cir. Certiorari denied. MR. JUSTICE HARLAN would grant certiorari, vacate the judgment below, and remand for the reasons stated in his separate opinion in *Chambers v. Maroney*, ante, p. 55. MR. JUSTICE MARSHALL would grant certiorari, vacate the judgment, and remand for further consideration in the light of *Chambers v. Maroney*, ante, p. 42.

No. 1399, Misc. *CARTER ET AL. v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari on the question whether a witness before a grand jury has standing in light of *Blair v. United States*, 250 U. S. 273, to challenge the constitutionality of a statute concerning violations of which he is compelled to testify. Reported below: 417 F. 2d 384.

No. 1668, Misc. *FERGUSON ET AL. v. NEW YORK*. Ct. App. N. Y. Certiorari denied. MR. JUSTICE DOUGLAS and MR. JUSTICE MARSHALL took no part in the consideration or decision of this petition.

No. 1964, Misc. *SATERY v. TEXAS*. Ct. Crim. App. Tex. Motion to dissolve stay granted. Certiorari denied.

No. 2113, Misc. *NEWMAN v. SIGLER, WARDEN*. C. A. 8th Cir. Certiorari denied. MR. JUSTICE BLACKMUN took no part in the consideration or decision of this petition. Reported below: 421 F. 2d 1377.

No. 2114, Misc. *WHITNEY 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: 425 F. 2d 169.

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No. 1978, Misc. *RUSSELL v. CATHERWOOD*, INDUSTRIAL COMMISSIONER OF NEW YORK. App. Div., Sup. Ct. N. Y., 3d Jud. Dept. Certiorari denied. Reported below: 33 App. Div. 2d 592, 304 N. Y. S. 2d 415.

MR. CHIEF JUSTICE BURGER, with whom MR. JUSTICE DOUGLAS joins, dissenting.

The Appellate Division of the New York Supreme Court has interpreted § 593 of the New York Labor Law as requiring an applicant for unemployment benefits, as a condition to receiving those benefits, to stand ready to accept suitable employment when tendered, even though acceptance of the employment would compel him to join a union as to which he has "conscientious objections." The decision of the New York courts places a burden on the petitioner's freedom of association—a freedom we have placed on a high, if indeed not a "preferred" plane. See *NAACP v. Alabama*, 357 U. S. 449 (1958). Consequently, this case may well present important issues that ought to be decided, particularly if the result of the New York holding is that a worker must decide between a deeply felt belief that falls in the First Amendment area, and crucial unemployment benefits.

The Industrial Commissioner, if we are to place any weight on his response here, has shown that he considers the petitioner bound to accept a job tender even when his acceptance requires union membership that is repugnant to him. It may be that on plenary consideration we would conclude that the Constitution requires the respondent to provide employment that does not conflict with the worker's freedom of association, as might be indicated under *Sherbert v. Verner*, 374 U. S. 398 (1963). In that case we held unemployment benefits could not be denied because of refusal to accept employment that required a member of the Seventh

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Day Adventists to work on her Sabbath. See also *NAACP v. Button*, 371 U. S. 415, 438 (1963).

I would grant the writ because I believe that the petitioner has presented a substantial question and possibly one of important constitutional dimensions that warrants plenary—not summary—consideration.

No. 2384, Misc. *McLUCAS ET AL. v. PALMER*, JUDGE. C. A. 2d Cir. Motion to expedite consideration of petition granted. Certiorari denied. Reported below: 427 F. 2d 239.

Rehearing Denied

No. 776, October Term, 1968. *UTAH PUBLIC SERVICE COMMISSION v. EL PASO NATURAL GAS CO. ET AL.*, 395 U. S. 464. All petitions for rehearing, motions, and other petitions filed in this case denied. MR. JUSTICE HARLAN and MR. JUSTICE STEWART would call for responses to petitions for rehearing and to other motions and petitions referred to in this Court's order. MR. JUSTICE BRENNAN, MR. JUSTICE WHITE, and MR. JUSTICE MARSHALL took no part in the consideration or decision of this order.

No. 1409. *BELL v. GOVERNMENT OF THE VIRGIN ISLANDS*, 398 U. S. 937;

No. 1442. *DEAN FOODS CO., INC. v. NATIONAL LABOR RELATIONS BOARD*, 398 U. S. 939;

No. 2, Misc. *CHANDLER*, U. S. DISTRICT JUDGE *v. JUDICIAL COUNCIL OF THE TENTH CIRCUIT*, 398 U. S. 74;

No. 1665, Misc. *EVANS v. UNITED STATES*, 397 U. S. 1058;

No. 1822, Misc. *PETERSON v. MISSOURI*, 398 U. S. 931; and

No. 2037, Misc. *CARRIGAN v. ERICH P. KARLSSON BUILDERS, INC.*, 398 U. S. 953. Petitions for rehearing denied. MR. JUSTICE MARSHALL and MR. JUSTICE BLACKMUN took no part in the consideration or decision of these petitions.

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No. 1345. SULLIVAN *v.* CHOQUETTE ET AL., 398 U. S. 904; and

No. 1804, Misc. CUSHWAY *v.* STATE BAR OF GEORGIA, 398 U. S. 910. Petitions for rehearing denied. MR. JUSTICE BLACKMUN took no part in the consideration or decision of these petitions.

No. 1488. MARCELLO *v.* UNITED STATES, 398 U. S. 959. Petition for rehearing denied. MR. JUSTICE MARSHALL took no part in the consideration or decision of this petition.

No. 1622, Misc. OLIVER *v.* RUNDLE, CORRECTIONAL SUPERINTENDENT, 397 U. S. 1050. Motion for leave to file petition for rehearing denied. MR. JUSTICE BLACKMUN took no part in the consideration or decision of this motion.

STATEMENT SHOWING THE NUMBER OF CASES FILED, DISPOSED OF, AND
REMAINING ON DOCKETS AT CONCLUSION OF OCTOBER TERMS—1967, 1968, AND 1969

	ORIGINAL			APPELLATE			MISCELLANEOUS			TOTALS		
	1967	1968	1969	1967	1968	1969	1967	1968	1969	1967	1968	1969
Terms-----												
Number of cases on dockets-----	10	9	15	1,540	1,559	1,758	2,036	2,350	2,429	3,586	3,918	4,202
Number disposed of during terms--	2	0	5	1,338	1,288	1,433	1,633	1,863	1,971	2,973	3,151	3,409
Number remaining on dockets----	8	9	10	202	271	325	403	487	458	613	767	793

	TERMS				TERMS		
	1967	1968	1969		1967	1968	1969
Distribution of cases disposed of during terms:							
Original cases-----	2	0	5	Distribution of cases remaining on dockets:	8	9	10
Appellate cases on merits-----	359	305	312	Original cases-----			
Petitions for certiorari-----	979	983	1,121	Appellate cases awaiting argument-----	65	72	94
Miscellaneous docket applications-----	1,633	1,863	1,971	Appellate cases pending-----	137	199	231
				Miscellaneous docket applications-----	403	487	458

JULY 1, 1970

