

ORDERS FROM END OF OCTOBER TERM, 1969,
THROUGH FEBRUARY 3, 1971

CASES DISMISSED IN VACATION

No. 5075. *CAMPBELL v. FLORIDA*. Sup. Ct. Fla. Petition for writ of certiorari dismissed July 15, 1970, pursuant to Rule 60 of the Rules of this Court. Reported below: 227 So. 2d 873.

No. 5452. *GARDNER v. CALIFORNIA ET AL.* Motion for leave to file petition for writ of habeas corpus dismissed August 3, 1970, pursuant to Rule 60 of the Rules of this Court.

No. 5604. *BALL v. UNITED STATES*. C. A. 6th Cir. Petition for writ of certiorari dismissed August 28, 1970, pursuant to Rule 60 of the Rules of this Court. Reported below: 428 F. 2d 26.

No. 101. *BLOUNT, POSTMASTER GENERAL v. NATIONAL ASSOCIATION OF LETTER CARRIERS*. Appeal from D. C. D. C. dismissed September 1, 1970, pursuant to Rule 60 of the Rules of this Court. Reported below: 305 F. Supp. 546. [Probable jurisdiction noted, 397 U. S. 1062.]

No. 187. *CITIES SERVICE GAS Co. v. FEDERAL POWER COMMISSION ET AL.* C. A. 10th Cir. Petition for writ of certiorari dismissed September 22, 1970, pursuant to Rule 60 of the Rules of this Court. Reported below: 424 F. 2d 411.

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Order Appointing Deputy Clerk

It is ordered that William M. Allison be, and he hereby is, appointed a Deputy Clerk of this Court.

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Miscellaneous Orders

No. 43, Orig. OREGON *v.* MITCHELL, ATTORNEY GENERAL. Motion for leave to file bill of complaint granted. Motion of New York City Board of Elections for leave to intervene in this case and in No. 44, Orig. [*infra*], denied. Motion of Youth Franchise Coalition et al. for leave to participate in oral argument as *amici curiae* in this case and in No. 46, Orig. [*infra*], denied.

No. 44, Orig. TEXAS *v.* MITCHELL, ATTORNEY GENERAL. Motion for leave to file bill of complaint granted. Motion of the State of Indiana for leave to participate in oral argument as *amicus curiae* denied. Motion of the State of Indiana for leave to join the State of Arkansas et al. in *amicus curiae* brief of State of Indiana granted.

No. 46, Orig. UNITED STATES *v.* ARIZONA. Motion for leave to file bill of complaint granted. Motion of defendant for permission for two attorneys for leave to participate in oral argument granted.

No. 47, Orig. UNITED STATES *v.* IDAHO. Motion for leave to file bill of complaint granted. Motion of the Commonwealth of Virginia for leave to participate in oral argument as *amicus curiae* denied.

No. 281. SWANN ET AL. *v.* CHARLOTTE-MECKLENBURG BOARD OF EDUCATION ET AL. C. A. 4th Cir. [Certiorari granted, 399 U. S. 926.] Motion of the Solicitor General for leave to participate in oral argument in this case and in No. 349 [certiorari granted, *infra*] as *amicus curiae* granted and 30 minutes allotted for that purpose. An additional 15 minutes allotted to each side in these cases and the cases are consolidated with a total of three hours for oral argument. Motions of the National Edu-

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cation Association, William C. Cramer, and the Governor of Florida for leave to participate in oral argument as *amici curiae* denied. Motion of Classroom Teachers Assn. of the Charlotte-Mecklenburg School System, Inc., for leave to participate in oral argument as *amicus curiae* in this case and in No. 349 denied. Motions of the Commonwealth of Virginia and the Attorney General of Florida for leave to participate in oral argument as *amici curiae* also denied; THE CHIEF JUSTICE, MR. JUSTICE BLACK, MR. JUSTICE HARLAN, and MR. JUSTICE MARSHALL dissent from denial of the latter motions. Motion of Newton Collier Estes for leave to file a brief as *amicus curiae* granted, but motion for leave to participate in oral argument as *amicus curiae* denied. Motion of Albert W. Watson et al. for leave to join in *amicus curiae* brief of William C. Cramer granted. Motion of the Charlotte-Mecklenburg Board of Education for an ancillary writ of certiorari in this case and in No. 349 pertaining to proceedings subsequent to granting of certiorari in No. 281 granted; and treating the motion as a petition for a writ of certiorari, certiorari granted.

Probable Jurisdiction Noted or Postponed

No. 444. MOORE ET AL. v. CHARLOTTE-MECKLENBURG BOARD OF EDUCATION ET AL. Appeal from D. C. W. D. N. C. Further consideration of question of jurisdiction in this case postponed to hearing of case on the merits. Case consolidated with No. 498 [*infra*] for oral argument. One hour allotted for oral argument for appellees in No. 498 and a similar amount of time allotted to all other parties in both cases. Cases set for oral argument immediately following No. 349 [certiorari granted, *infra*]. Motion of appellants as to scheduling oral argument and apportionment of time denied. Reported below: 312 F. Supp. 503.

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No. 498. NORTH CAROLINA STATE BOARD OF EDUCATION ET AL. *v.* SWANN ET AL. Appeal from D. C. W. D. N. C. Probable jurisdiction noted. Motion of Charlotte-Mecklenburg Board of Education to join in the appeal granted. Reported below: 312 F. Supp. 503.

Certiorari Granted. (See also No. 281, *supra.*)

No. 420. MCDANIEL, SUPERINTENDENT OF SCHOOLS OF CLARKE COUNTY ET AL. *v.* BARRESI ET AL. Sup. Ct. Ga. *Certiorari* granted and case set for oral argument immediately following No. 498 [probable jurisdiction noted, *supra*]. Motion of the State of Georgia for leave to participate in oral argument as *amicus curiae* denied. THE CHIEF JUSTICE, MR. JUSTICE BLACK, MR. JUSTICE HARLAN, and MR. JUSTICE MARSHALL dissent from the denial of the motion. Reported below: 226 Ga. 456, 175 S. E. 2d 649.

No. 436. DAVIS ET AL. *v.* BOARD OF SCHOOL COMMISSIONERS OF MOBILE COUNTY, ALABAMA, ET AL. C. A. 5th Cir. Motion for leave to supplement petition for *certiorari* granted. *Certiorari* granted and case set for oral argument immediately following No. 420 [*supra*]. Motion of the Solicitor General for additional time for oral argument granted and 30 minutes allotted for that purpose. An additional 15 minutes allotted to each side. Motion of the State of Mississippi for leave to participate in oral argument as *amicus curiae* denied. THE CHIEF JUSTICE, MR. JUSTICE BLACK, MR. JUSTICE HARLAN, and MR. JUSTICE MARSHALL dissent from the denial of this motion. Motion of respondents Mobile County Council Parents-Teachers Assn. et al. for additional time for oral argument denied, except as indicated above; and permission granted for two attorneys to participate in oral argument for respondents. Reported below: 430 F. 2d 883 and 889.

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No. 349. CHARLOTTE-MECKLENBURG BOARD OF EDUCATION ET AL. *v.* SWANN ET AL. C. A. 4th Cir. Certiorari granted. Reported below: 431 F. 2d 138.

Assignment Order

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 Sixth Circuit for the week beginning November 30, 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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Miscellaneous Orders

No. 281. SWANN ET AL. *v.* CHARLOTTE-MECKLENBURG BOARD OF EDUCATION ET AL. C. A. 4th Cir. Motion of Charles E. Bennett for leave to file a brief as *amicus curiae* granted. Motion of Mr. Bennett for leave to participate in oral argument as *amicus curiae* denied. [For earlier orders herein, see, *e. g.*, *ante*, p. 802.]

No. —. PRATT ET AL. *v.* BEGLEY, SECRETARY OF STATE OF KENTUCKY, ET AL. D. C. E. D. Ky. Application for injunction pending appeal presented to MR. JUSTICE STEWART, and by him referred to the Court, denied.

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Dismissal Under Rule 60

No. 255. E. B. ELLIOTT ADVERTISING CO. ET AL. *v.* METROPOLITAN DADE COUNTY. C. A. 5th Cir. Petition for writ of certiorari dismissed pursuant to Rule 60 of the Rules of this Court. Reported below: 425 F. 2d 1141.

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Affirmed on Appeal

No. 357. *PATE ET AL. v. EL PASO COUNTY, TEXAS, ET AL.* Affirmed on appeal from D. C. W. D. Tex. Reported below: 324 F. Supp. 935.

No. 482. *ROCKEFELLER, GOVERNOR OF NEW YORK, ET AL. v. SOCIALIST WORKERS PARTY ET AL.* Affirmed on appeal from D. C. S. D. N. Y. Stay order of Mr. JUSTICE HARLAN vacated. THE CHIEF JUSTICE, MR. JUSTICE HARLAN, and MR. JUSTICE STEWART dissent from the affirmance of the judgment and are of the opinion that probable jurisdiction should be noted and the case set for oral argument. Reported below: 314 F. Supp. 984.

Appeals Dismissed

No. 114. *KELLER v. DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL OF CALIFORNIA.* Appeal from Ct. App. Cal., 2d App. Dist., dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied.

No. 170. *WEINER, DBA LOUIS WEINER REAL ESTATE CO., ET AL. v. STATE REAL ESTATE COMMISSION OF NEBRASKA.* Appeal from Sup. Ct. Neb. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied. Reported below: 184 Neb. 752, 171 N. W. 2d 783.

No. 218. *BELKER v. BOARD OF EDUCATIONAL LANDS AND FUNDS ET AL.* Appeal from Sup. Ct. Neb. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied. Reported below: 184 Neb. 621 and 185 Neb. 270; 171 N. W. 2d 156 and 175 N. W. 2d 63.

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No. 220. *JACOBS, TREASURER OF SUFFOLK COUNTY, ET AL. v. ROGERS ET AL.*; and

No. 221. *PACT REALTY CORP. v. ROGERS ET UX.* Appeals from Ct. App. N. Y. dismissed for want of jurisdiction. Treating the papers whereon the appeals were taken as petitions for writs of certiorari, certiorari denied.

No. 234. *GOETZ ET AL. v. BOARD OF REGENTS, STATE SENIOR COLLEGES, ET AL.* Appeal from Sup. Ct. Tex. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied. Reported below: 453 S. W. 2d 290.

No. 311. *TYGART v. ARKANSAS.* Appeal from Sup. Ct. Ark. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied. Reported below: 248 Ark. 125, 451 S. W. 2d 225.

No. 348. *WELCH v. MISSISSIPPI.* Appeal from Sup. Ct. Miss. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied. Reported below: 233 So. 2d 219.

No. 405. *CONNELLY FOUNDATION v. SCHOOL DISTRICT OF HAVERFORD TOWNSHIP.* 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: 437 Pa. 536, 264 A. 2d 679.

No. 486. *WHEELRIGHT ET AL. v. COUNTY OF MARIN ET AL.* Appeal from Sup. Ct. Cal. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied. Reported below: 2 Cal. 3d 448, 467 P. 2d 537.

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No. 5149. *BORRAS v. FLORIDA*. 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. Reported below: 229 So. 2d 244.

No. 5296. *MELTON v. McCALL, GOVERNOR OF OREGON, ET AL.* Appeal from Sup. Ct. Ore. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied.

No. 119. *McKINNON v. BROWN*. Appeal from App. Dept., Super. Ct. Cal., County of Riverside, 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 further consideration of question of jurisdiction should be postponed to a hearing of the case on the merits.

No. 159. *RIOS v. TEXAS*. Appeal from Ct. Civ. App. Tex., 4th Sup. Jud. Dist., dismissed. MR. JUSTICE BLACK is of the opinion that probable jurisdiction should be noted. Reported below: 448 S. W. 2d 187.

No. 418. *H. H. ROBERTSON CO. ET AL. v. NEWBERRY, GUARDIAN*. Appeal from Sup. Ct. Mich. dismissed for want of substantial federal question.

No. 256. *FIRST MERCANTILE CONSUMER DISCOUNT Co. v. STEFANELLI ET AL.*; and

No. 257. *OXFORD CONSUMER DISCOUNT COMPANY OF NORTH PHILADELPHIA v. STEFANELLI ET AL.* Appeals from Sup. Ct. N. J. dismissed. MR. JUSTICE BLACK and MR. JUSTICE STEWART are of the opinion that probable jurisdiction should be noted. Reported below: 55 N. J. 489, 262 A. 2d 874.

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No. 223. *SOUTHLAND RACING CORP. v. RODGERS ET AL.* Appeal from Sup. Ct. Ark. dismissed for want of substantial federal question. Reported below: 247 Ark. 1115, 450 S. W. 2d 3.

No. 5425. *JONES v. CALIFORNIA.* Appeal from App. Dept., Super. Ct. Cal., County of Los Angeles, dismissed for want of substantial federal question. MR. JUSTICE DOUGLAS is of the opinion that probable jurisdiction should be noted.

*Miscellaneous Orders**

No. 853. *IN RE DISBARMENT OF WOLDEN.* It is ordered that Russell L. Wolden, of San Francisco, California, be suspended from the practice of law in this Court and that a rule issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. —. *RIVERA v. RESOR, SECRETARY OF THE ARMY, ET AL.;* and

No. —. *PACHL v. LAIRD, SECRETARY OF DEFENSE, ET AL.* D. C. N. D. Cal. Applications for stays previously granted by MR. JUSTICE DOUGLAS, and by him referred to the Court, denied. MR. JUSTICE DOUGLAS is of the opinion that the stays should be continued.

No. —. *SIRAK v. BROWN, SECRETARY OF STATE OF OHIO, ET AL.* C. A. 6th Cir. Application for stay and temporary injunction presented to MR. JUSTICE STEWART, and by him referred to the Court, denied.

No. —. *CHRISTOPHER ET AL. v. MITCHELL, ATTORNEY GENERAL, ET AL.* D. C. D. C. Motion to dispense with printing, to dispense with jurisdictional statement, to expedite, and for other relief denied. Reported below: 318 F. Supp. 994.

*For order amending the Court's Rules, see *post*, p. 1027.

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No. —. ENGELMAN, DIRECTOR, DIVISION OF PUBLIC WELFARE, DEPARTMENT OF INSTITUTIONS AND AGENCIES OF NEW JERSEY, ET AL. *v.* AMOS ET AL. D. C. N. J. Application for stay presented to MR. JUSTICE BRENNAN, and by him referred to the Court, granted. MR. JUSTICE DOUGLAS took no part in the consideration or decision of this application.

No. 43, Orig. OREGON *v.* MITCHELL, ATTORNEY GENERAL;

No. 44, Orig. TEXAS *v.* MITCHELL, ATTORNEY GENERAL;

No. 46, Orig. UNITED STATES *v.* ARIZONA; and

No. 47, Orig. UNITED STATES *v.* IDAHO. [Motions to file bills of complaint granted, *ante*, p. 802.] Motion of the Solicitor General to consolidate these cases for oral argument granted. Motion of Frederick J. Christopher, Jr., et al. for leave to intervene and participate in oral argument in No. 46, Orig., denied.

No. 41, Orig. OHIO *v.* WYANDOTTE CHEMICALS CORP. ET AL. Case set for oral argument on motion for leave to file bill of complaint and responses thereto. The Solicitor General is invited to file a brief expressing the views of the United States and to participate in oral argument as *amicus curiae*.

No. 29. U. S. BULK CARRIERS, INC. *v.* ARGUELLES. [Certiorari granted, 398 U. S. 957.] C. A. 4th Cir. Treating motion of respondent for leave to proceed further herein *in forma pauperis* as a motion to dispense with printing respondent's brief, motion granted.

No. 51. HILL *v.* CALIFORNIA. Sup. Ct. Cal. Motion of International Association of Chiefs of Police, Inc., et al. for leave to file a brief as *amici curiae* granted. [For earlier orders herein see, *e. g.*, 398 U. S. 956.]

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No. 40, Orig. PENNSYLVANIA *v.* NEW YORK ET AL. [Motion to file bill of complaint granted, 398 U. S. 956.] Motion of the State of Connecticut for leave to intervene as a party plaintiff granted.

IT IS ORDERED that John F. Davis, Esquire, of Washington, D. C., 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 compensation of the Special Master, 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 the authority to make a new designation which shall have the same effect as if originally made by the Court herein.

No. 107. 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 James Moore et al. for leave to file a brief as *amici curiae* granted.

No. 108. RICHARDSON, SECRETARY OF HEALTH, EDUCATION, AND WELFARE *v.* PERALES. C. A. 5th Cir. [Certiorari granted, *sub nom. Finch v. Perales*, 397 U. S. 1035.] Motion of American Bar Assn. for leave to file a brief as *amicus curiae* granted.

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No. 59. NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC. *v.* SECURITIES AND EXCHANGE COMMISSION ET AL. C. A. D. C. Cir. [Certiorari granted, 397 U. S. 986.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* granted and an additional 15 minutes allotted for argument. An additional 15 minutes allotted to counsel for petitioner. THE CHIEF JUSTICE took no part in the consideration or decision of this motion.

No. 61. INVESTMENT COMPANY INSTITUTE ET AL. *v.* CAMP, COMPTROLLER OF THE CURRENCY, ET AL. C. A. D. C. Cir. [Certiorari granted, 397 U. S. 986.] Motion of the Solicitor General for additional time for oral argument granted and 15 minutes allotted for that purpose. An additional 15 minutes allotted to counsel for petitioner. THE CHIEF JUSTICE took no part in the consideration or decision of this motion.

No. 63. GROVE PRESS, INC., ET AL. *v.* MARYLAND BOARD OF CENSORS. Appeal from Ct. App. Md. [Probable jurisdiction noted, 397 U. S. 984.] Motions of Adult Film Association of America, Inc., Motion Picture Association of America, Inc., and National Association of Theater Owners, Inc., for leave to file briefs as *amici curiae* granted. MR. JUSTICE DOUGLAS took no part in the consideration or decision of these motions.

No. 113. DECKER, U. S. DISTRICT JUDGE, ET AL. *v.* HARPER & ROW PUBLISHERS, INC., ET AL. C. A. 7th Cir. [Certiorari granted, 397 U. S. 1073.] Motion of American Bar Assn. for leave to file a brief as *amicus curiae* granted. Motions of Illinois State Bar Assn., Ohio State Bar Assn., and Minnesota Bar Assn. for leave to join in *amicus curiae* brief of American Bar Assn. granted. Motions of Association of the Bar of the City of New York et al. and Edward S. Irons et al. for leave to file briefs as *amici curiae* granted.

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No. 75. CALIFORNIA *v.* BYERS. Sup. Ct. Cal. [Certiorari granted, 397 U. S. 1035.] Motion of respondent for appointment of counsel granted. It is ordered that John W. Poulos, Esquire, of Davis, California, be, and he is hereby, appointed to serve as counsel for respondent in this case.

No. 84. UNITED STATES *v.* VUITCH. Appeal from D. C. D. C. [Probable jurisdiction postponed, 397 U. S. 1061.] Motions of Robert L. Sassone and the National Legal Program on Health Problems of the Poor for leave to file briefs as *amici curiae* granted. Motion of Dr. Bart Heffernan for leave to participate in oral argument as *amicus curiae* denied.

No. 115. JIMENEZ ET AL. *v.* NAFF, YAKIMA COUNTY AUDITOR, ET AL. Appeal from D. C. E. D. Wash. [Probable jurisdiction noted, 397 U. S. 1005.] Motion of appellants to consolidate with No. 46, Orig. [*supra*], for oral argument denied.

No. 123. INTERNATIONAL BROTHERHOOD OF BOILERMAKERS, IRON SHIPBUILDERS, BLACKSMITHS, FORGERS & HELPERS, AFL-CIO *v.* HARDEMAN. C. A. 5th Cir. [Certiorari granted, 398 U. S. 926.] Motion of American Federation of Labor & Congress of Industrial Organizations for leave to file a brief as *amicus curiae* granted.

No. 124. GRIGGS ET AL. *v.* DUKE POWER Co. C. A. 4th Cir. [Certiorari granted, 399 U. S. 926.] Motion of United Steelworkers of America, AFL-CIO, for leave to file a brief as *amicus curiae* granted. MR. JUSTICE BRENNAN took no part in the consideration or decision of this motion.

No. 128. IN RE BURRUS ET AL. Sup. Ct. N. C. [Certiorari granted, 397 U. S. 1036.] Motion of Commonwealth of Massachusetts for leave to participate in oral argument as *amicus curiae* denied.

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No. 203. *MCGAUTHA v. CALIFORNIA*. Sup. Ct. Cal. [Certiorari granted, 398 U. S. 936]; and

No. 204. *CRAMPTON v. OHIO*. Sup. Ct. Ohio. [Certiorari granted, 398 U. S. 936.] Motions of NAACP Legal Defense and Educational Fund, Inc., et al. for leave to file a brief as *amici curiae* in both cases granted. Motion to participate in oral argument as *amici curiae* denied. MR. JUSTICE MARSHALL took no part in the consideration or decision of these motions. Motions of American Friends Service Committee et al. and American Civil Liberties Union, Illinois Division, et al. for leave to file briefs as *amici curiae* in No. 204, granted. Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* granted and 30 minutes allotted for that purpose. An additional 15 minutes allotted to counsel in each of these cases.

No. 299. *COHEN v. CALIFORNIA*. Appeal from Ct. App. Cal., 2d App. Dist. [Probable jurisdiction postponed, 399 U. S. 904.] Motion of American Civil Liberties Union of Northern California for leave to file a brief as *amicus curiae* granted.

No. 323. *COOLIDGE v. NEW HAMPSHIRE*. Sup. Ct. N. H. [Certiorari granted, 399 U. S. 926.] Motion of petitioner for appointment of counsel granted. It is ordered that Archibald Cox, Esquire, of Cambridge, Massachusetts, a member of the Bar of this Court, be, and he is hereby, appointed to serve as counsel for petitioner in this case.

No. 324. *TATE v. SHORT*. Ct. Crim. App. Tex. [Certiorari granted, 399 U. S. 925.] Motion of National Legal Aid & Defender Assn. for leave to file a brief as *amicus curiae* granted. THE CHIEF JUSTICE took no part in the consideration or decision of this motion.

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No. 242. SAMADJOPOULOS *v.* NATIONAL WESTERN LIFE INSURANCE CO. C. A. 1st Cir. The Solicitor General is invited to file a brief expressing the views of the United States. Reported below: 423 F. 2d 236.

No. 326. CROSSLIN ET VIR *v.* MOUNTAIN STATES TELEPHONE & TELEGRAPH CO. C. A. 9th Cir. The Solicitor General is invited to file a brief expressing the views of the United States. Reported below: 422 F. 2d 1028.

No. 463. SEA PAK, A DIVISION OF W. R. GRACE & Co. *v.* INDUSTRIAL, TECHNICAL & PROFESSIONAL EMPLOYEES, A DIVISION OF NATIONAL MARITIME UNION, AFL-CIO. Appeal from C. A. 5th Cir. The Solicitor General is invited to file a brief expressing the views of the United States. Reported below: 423 F. 2d 1229.

No. 281. SWANN ET AL. *v.* CHARLOTTE-MECKLENBURG BOARD OF EDUCATION ET AL. C. A. 4th Cir. [For earlier orders herein, see, *e. g.*, *ante*, p. 805]; and

No. 436. DAVIS ET AL. *v.* BOARD OF SCHOOL COMMISSIONERS OF MOBILE COUNTY, ALABAMA, ET AL. C. A. 5th Cir. [Certiorari granted, *ante*, p. 804.] Motion of United Negro College Fund, Inc., et al. for leave to file a brief as *amici curiae* in both cases granted. Motions of Commonwealth of Virginia and William C. Cramer for reconsideration of denials of motions for leave to participate in oral argument as *amici curiae* in No. 281 denied.

No. 286. ALASKA ET AL. *v.* UNITED STATES ET AL. C. A. 9th Cir. The parties are requested to file further memoranda on the following questions:

(1) Must Congress authorize or ratify the withdrawal of territorial lands by the President?;

(2) If so, did Executive Order No. 8979 have the necessary authorization or ratification?; and

(3) Was this matter adequately raised below?

Reported below: 423 F. 2d 764.

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No. 409. BOARD OF EDUCATION OF LITTLE ROCK SCHOOL DISTRICT ET AL. *v.* CLARK ET AL. C. A. 8th Cir. Motion to advance denied. MR. JUSTICE BLACKMUN took no part in the consideration or decision of this motion. Reported below: 426 F. 2d 1035.

No. 420. MCDANIEL, SUPERINTENDENT OF SCHOOLS OF CLARKE COUNTY, ET AL. *v.* BARRESI ET AL. Sup. Ct. Ga. [Certiorari granted, *ante*, p. 804.] Motion to dispense with printing respondents' brief granted.

No. 430. REED *v.* REED, ADMINISTRATOR. Appeal from Sup. Ct. Idaho. The Attorney General of Idaho is invited to file a brief expressing the views of the State of Idaho. Parties requested to file supplemental briefs on question of residence of each of the litigants at time of instigation of this litigation. Reported below: 93 Idaho 511, 465 P. 2d 635.

No. 679. FRIEDMAN *v.* O'ROURKE ET AL. Appeal from Ct. App. N. Y. Application for injunctive and affirmative relief presented to MR. JUSTICE HARLAN, and by him referred to the Court, denied. Reported below: 27 N. Y. 2d 645, 261 N. E. 2d 904.

No. 704. WOOD ET AL. *v.* PUTTERMAN ET AL. Appeal from D. C. Md. Application for interim injunctive relief presented to THE CHIEF JUSTICE, and by him referred to the Court, denied. MR. JUSTICE DOUGLAS took no part in the consideration or decision of this application. Reported below: 316 F. Supp. 646.

No. 769. ELLINGTON, GOVERNOR OF TENNESSEE, ET AL. *v.* BLUMSTEIN. Appeal from D. C. M. D. Tenn. Application for stay presented to MR. JUSTICE STEWART, and by him referred to the Court, denied. THE CHIEF JUSTICE and MR. JUSTICE WHITE are of the opinion that the stay should be granted. Motion to advance denied. Reported below: — F. Supp. —.

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No. 5167. LEWIS *v.* LICAVOLI. App. Dept., Super. Ct. Cal., County of San Francisco. Motion to defer consideration of the petition for certiorari granted.

No. 5317. MCCONNEY *v.* UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT ET AL.; and

No. 5494. KAMSLER *v.* HOFFMAN, U. S. DISTRICT JUDGE. Motions for leave to file petitions for writs of mandamus denied.

No. 5295. ADDONIZIO *v.* BARLOW, U. S. DISTRICT JUDGE. Motion for leave to file petition for writ of mandamus and/or prohibition denied.

Probable Jurisdiction Noted

No. 133. UNITED STATES *v.* THIRTY-SEVEN (37) PHOTOGRAPHS (LUROS, CLAIMANT). Appeal from D. C. C. D. Cal. Probable jurisdiction noted. Reported below: 309 F. Supp. 36.

No. 160. UNITED STATES *v.* MARYLAND SAVINGS-SHARE INSURANCE CORP. Appeal from D. C. Md. Probable jurisdiction noted. Reported below: 308 F. Supp. 761.

No. 534. UNITED STATES *v.* REIDEL. Appeal from D. C. C. D. Cal. Probable jurisdiction noted and case set for oral argument with No. 133, *supra*.

No. 5257. LABINE, TUTRIX *v.* VINCENT, ADMINISTRATOR. Appeal from Sup. Ct. La. Motion for leave to proceed *in forma pauperis* granted. Probable jurisdiction noted. Reported below: 255 La. 480, 231 So. 2d 395.

Certiorari Granted. (See also No. 350, *ante*, p. 3; No. 5156, *ante*, p. 2; and No. 5191, *ante*, p. 2.)

No. 125. UNITED STATES *v.* RANDALL, TRUSTEE IN BANKRUPTCY. C. A. 7th Cir. Certiorari granted. Reported below: 419 F. 2d 1068.

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No. 189. CHICAGO & NORTH WESTERN RAILWAY Co. v. UNITED TRANSPORTATION UNION. C. A. 7th Cir. Certiorari granted. Reported below: 422 F. 2d 979.

No. 370. MAGNESIUM CASTING Co. v. NATIONAL LABOR RELATIONS BOARD. C. A. 1st Cir. Certiorari granted. Reported below: 427 F. 2d 114.

No. 434. UNITED TRANSPORTATION UNION (AS SUCCESSOR TO BROTHERHOOD OF RAILROAD TRAINMEN) v. STATE BAR OF MICHIGAN. Sup. Ct. Mich. Certiorari granted. Reported below: 383 Mich. 201, 174 N. W. 2d 811.

No. 5175. PEREZ ET UX. v. CAMPBELL ET AL. C. A. 9th Cir. Motion for leave to proceed *in forma pauperis* granted. Certiorari granted. Reported below: 421 F. 2d 619.

No. 5342. REWIS ET AL. v. UNITED STATES. C. A. 5th Cir. Motion for leave to proceed *in forma pauperis* granted. Certiorari granted. Reported below: 418 F. 2d 1218.

Certiorari Denied. (See also Nos. 114, 119, 170, 218, 220, 221, 234, 311, 348, 405, 486, 5149, and 5296, *supra*.)

No. 139. KILBY v. NOYCE. C. C. P. A. Certiorari denied. Reported below: 57 C. C. P. A. (Pat.) 1156, 416 F. 2d 1391.

No. 140. BIGHAM v. UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 421 F. 2d 1344.

No. 155. TRANSPORTATION-COMMUNICATION DIVISION, BROTHERHOOD OF RAILWAY, AIRLINE & STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS & STATION EMPLOYEES, ET AL. v. ST. LOUIS-SAN FRANCISCO RAILWAY Co. C. A. 8th Cir. Certiorari denied. Reported below: 419 F. 2d 933.

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No. 150. CALIFORNIA STATE BOARD OF EQUALIZATION *v.* CARLSON. C. A. 9th Cir. Certiorari denied. Reported below: 423 F. 2d 714.

No. 161. ROSS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 424 F. 2d 1016.

No. 163. CLEVELAND TRUST CO. ET AL., EXECUTORS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 421 F. 2d 475.

No. 164. CONTINENTAL CAN CO., INC. *v.* UNITED STATES. Ct. Cl. Certiorari denied. Reported below: 190 Ct. Cl. 811, 422 F. 2d 405.

No. 165. STAMP ET AL. *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied. Reported below: 2 Cal. App. 3d 203, 82 Cal. Rptr. 598.

No. 166. MOYER *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 420 F. 2d 375.

No. 167. EXTON DRIVE-IN, INC. *v.* HOME INDEMNITY Co. ET AL. Sup. Ct. Pa. Certiorari denied. Reported below: 436 Pa. 480, 261 A. 2d 319.

No. 168. AMERICAN NATIONAL BANK OF AUSTIN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 421 F. 2d 442.

No. 171. FREDERICK SNARE CORP. *v.* VIGO STEAMSHIP CORP. ET AL. Ct. App. N. Y. Certiorari denied. Reported below: 26 N. Y. 2d 157, 257 N. E. 2d 624.

No. 172. NOLAN ET AL. *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 420 F. 2d 552.

No. 174. GILA RIVER PIMA-MARICOPA INDIAN COMMUNITY ET AL. *v.* UNITED STATES. Ct. Cl. Certiorari denied. Reported below: 190 Ct. Cl. 790, 427 F. 2d 1194.

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No. 176. *SHAKESPEARE Co. v. UNITED STATES*. Ct. Cl. Certiorari denied. Reported below: 189 Ct. Cl. 411, 419 F. 2d 839.

No. 177. *FELICE v. LONG ISLAND RAILROAD Co.* C. A. 2d Cir. Certiorari denied. Reported below: 426 F. 2d 192.

No. 178. *DEVERS v. DISTRICT OF COLUMBIA NATIONAL BANK*. Sup. Ct. App. Va. Certiorari denied.

No. 180. *ZEMLER v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 424 F. 2d 503.

No. 181. *LADZINSKI v. SPERLING STEAMSHIP & TRADING CORP.* C. A. 2d Cir. Certiorari denied.

No. 182. *MCGUIRE v. BAKER ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 421 F. 2d 895.

No. 183. *AMERICAN ALOE CORP. v. ALOE CREME LABORATORIES, INC.* C. A. 7th Cir. Certiorari denied. Reported below: 420 F. 2d 1248.

No. 184. *HOOD v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 422 F. 2d 737.

No. 185. *DEANE HILL COUNTRY CLUB, INC. v. SHULTZ, SECRETARY OF LABOR*. C. A. 6th Cir. Certiorari denied.

No. 188. *GUGLIELMINI v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 425 F. 2d 439.

No. 192. *CLARK v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 425 F. 2d 827.

No. 193. *FRYD CONSTRUCTION CORP. ET AL. v. T/N PLUMBING & HEATING Co.; and*

No. 382. *UNITED STATES FOR THE USE AND BENEFIT OF T/N PLUMBING & HEATING Co. v. AMERICAN FIRE & CASUALTY Co. ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 423 F. 2d 980.

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No. 194. *MONDAY ET AL. v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 421 F. 2d 1210.

No. 195. *DAVIS, DBA DAVIS MFG. CO. v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 424 F. 2d 1241.

No. 197. *ECKERD ET AL. v. SOUTH DAKOTA*. Sup. Ct. S. D. Certiorari denied. Reported below: 84 S. D. 511, 173 N. W. 2d 287.

No. 198. *DALLI v. UNITED STATES*; and

No. 5303. *PYTEL v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 424 F. 2d 45.

No. 199. *URBANA v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 412 F. 2d 1081.

No. 201. *McCONNAY v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 421 F. 2d 248.

No. 202. *PEREZ v. FLORIDA*. Dist. Ct. App. Fla., 3d Dist. Certiorari denied. Reported below: 229 So. 2d 601.

No. 208. *UNIVERSAL BUILDERS, INC., ET AL. v. CLARK ET AL.*;

No. 213. *ACTION REALTY CO. ET AL. v. BAKER ET AL.*; and

No. 222. *BAKER ET AL. v. F & F INVESTMENT ET AL.* C. A. 7th Cir. Certiorari denied. Reported below: 420 F. 2d 1191.

No. 210. *DAVIDA v. UNITED STATES*. C. A. 10th Cir. Certiorari denied. Reported below: 422 F. 2d 528.

No. 211. *DETROIT VITAL FOODS, INC., ET AL. v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: See 407 F. 2d 570.

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No. 212. CRANE Co. *v.* WESTINGHOUSE AIR BRAKE Co. ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 419 F. 2d 787.

No. 216. B. F. GOODRICH Co. *v.* NORTHWEST INDUSTRIES, INC., ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 424 F. 2d 1349.

No. 219. UNITED MINE WORKERS OF AMERICA *v.* TENNESSEE PRODUCTS & CHEMICAL CORP. ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 423 F. 2d 169.

No. 224. VLCEK ET UX. *v.* ILLINOIS. App. Ct. Ill., 2d Dist. Certiorari denied. Reported below: 114 Ill. App. 2d 74, 252 N. E. 2d 377.

No. 225. ARRUDA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 227. RUSSO *v.* NEW JERSEY. Super. Ct. N. J. Certiorari denied.

No. 230. VITELLO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 425 F. 2d 416.

No. 231. COUNTY OF ORANGE ET AL. *v.* STERLING LIQUOR DISTRIBUTORS, INC. Ct. App. Cal., 4th App. Dist. Certiorari denied. Reported below: 3 Cal. App. 3d 510, 83 Cal. Rptr. 571.

No. 232. MATTOX ET AL. *v.* CARSON, SHERIFF. C. A. 5th Cir. Certiorari denied. Reported below: 424 F. 2d 202.

No. 235. STANLEY, INC. *v.* SCHUSTER, DISTRICT DIRECTOR OF INTERNAL REVENUE. C. A. 6th Cir. Certiorari denied. Reported below: 421 F. 2d 1360.

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No. 237. *BEREND v. J. F. PRITCHARD & Co.* C. A. 5th Cir. Certiorari denied. Reported below: 422 F. 2d 1247.

No. 239. *FELICIANO ET AL. v. UNITED STATES ET AL.* C. A. 1st Cir. Certiorari denied. Reported below: 422 F. 2d 943.

No. 240. *JONES v. UNITED STATES.* C. A. 9th Cir. Certiorari denied. Reported below: 425 F. 2d 1048.

No. 241. *UNITED STATES v. MCGUGIN, TRUSTEE IN BANKRUPTCY.* C. A. 9th Cir. Certiorari denied. Reported below: 423 F. 2d 718.

No. 243. *NOSSEN ET AL. v. UNITED STATES.* Ct. Cl. Certiorari denied. Reported below: 189 Ct. Cl. 1, 416 F. 2d 1362.

No. 245. *JACKSON v. UNITED STATES.* C. A. 9th Cir. Certiorari denied. Reported below: 423 F. 2d 506.

No. 247. *ST. MICHAEL & ARCHANGEL RUSSIAN ORTHODOX GREEK CATHOLIC CHURCH ET AL. v. UHNIAT ET AL.* Sup. Ct. Pa. Certiorari denied. Reported below: 436 Pa. 222, 259 A. 2d 862.

No. 249. *SCHMERLER FORD, INC., ET AL. v. NATIONAL LABOR RELATIONS BOARD; and*

No. 250. *BOREK MOTOR SALES, INC. v. NATIONAL LABOR RELATIONS BOARD.* C. A. 7th Cir. Certiorari denied. Reported below: No. 249, 424 F. 2d 1335; No. 250, 425 F. 2d 677.

No. 252. *WILSON v. MASSACHUSETTS.* Sup. Jud. Ct. Mass. Certiorari denied. Reported below: 357 Mass. 49, 255 N. E. 2d 744.

No. 258. *SHANKLIN v. AMERICAN NATIONAL TRUST ET AL.* C. A. 7th Cir. Certiorari denied. Reported below: 420 F. 2d 1117.

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No. 259. *KENNEDY BOOK STORE, INC. v. DEPARTMENT OF REVENUE ET AL.* Ct. App. Ky. Certiorari denied. Reported below: 450 S. W. 2d 524.

No. 260. *GRANGER v. RICHARDSON, SECRETARY OF HEALTH, EDUCATION, AND WELFARE.* C. A. 7th Cir. Certiorari denied. Reported below: 425 F. 2d 206.

No. 263. *BRISTOL-MYERS CO. v. FEDERAL TRADE COMMISSION ET AL.* C. A. D. C. Cir. Certiorari denied. Reported below: 138 U. S. App. D. C. 22, 424 F. 2d 935.

No. 264. *BERKAW ET AL. v. MAYFLOWER CONGREGATIONAL CHURCH.* Ct. App. Mich. Certiorari denied. Reported below: 18 Mich. App. 245, 170 N. W. 2d 905.

No. 266. *S. S. SILBERBLATT, INC., ET AL. v. RENEGOTIATION BOARD.* C. A. 2d Cir. Certiorari denied. Reported below: 426 F. 2d 290.

No. 271. *WILLIAMS v. INTERNATIONAL TYPOGRAPHICAL UNION, AFL-CIO, ET AL.* C. A. 10th Cir. Certiorari denied. Reported below: 423 F. 2d 1295.

No. 272. *CALARCO v. UNITED STATES.* C. A. 2d Cir. Certiorari denied. Reported below: 424 F. 2d 657.

No. 273. *PORTH v. UNITED STATES.* C. A. 10th Cir. Certiorari denied. Reported below: 426 F. 2d 519.

No. 274. *PARROTT ET AL. v. UNITED STATES.* C. A. 2d Cir. Certiorari denied. Reported below: 425 F. 2d 972.

No. 278. *SINGLETON PACKING CORP. v. NATIONAL LABOR RELATIONS BOARD.* C. A. 5th Cir. Certiorari denied. Reported below: 418 F. 2d 275.

No. 279. *UNITED TRANSPORTATION UNION v. CLINCHFIELD RAILROAD CO.* C. A. 6th Cir. Certiorari denied. Reported below: 427 F. 2d 161.

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No. 280. *CONBOY ET AL. v. CITY OF NAPLES ET AL.* Dist. Ct. App. Fla., 2d Dist. Certiorari denied. Reported below: 230 So. 2d 476.

No. 282. *HICKS-PONDER CO. v. NATIONAL LABOR RELATIONS BOARD.* C. A. 5th Cir. Certiorari denied. Reported below: 424 F. 2d 538.

No. 283. *PERKINS v. CALIFORNIA.* Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 287. *ARTIM TRANSPORTATION SYSTEM, INC. v. NATIONAL LABOR RELATIONS BOARD.* C. A. 7th Cir. Certiorari denied. Reported below: 422 F. 2d 853.

No. 294. *GRIECO v. ILLINOIS.* Sup. Ct. Ill. Certiorari denied. Reported below: 44 Ill. 2d 407, 255 N. E. 2d 897.

No. 295. *ELMORE v. UNITED STATES.* C. A. 4th Cir. Certiorari denied. Reported below: 423 F. 2d 775.

No. 298. *ALBERT v. PENNSYLVANIA.* Sup. Ct. Pa. Certiorari denied. Reported below: 437 Pa. 195, 262 A. 2d 855.

No. 305. *SKEGA AKTIEBOLAG, FORMERLY SKELLEFTEA GUMMIFABRIKS A.-B., ET AL. v. B. F. GOODRICH CO.* C. A. 6th Cir. Certiorari denied. Reported below: 420 F. 2d 1358.

No. 306. *ARROW LINES, INC. v. BRAMMER ET VIR.* C. A. 4th Cir. Certiorari denied. Reported below: 422 F. 2d 398.

No. 308. *DIOGUARDI, AKA DIO v. UNITED STATES;* and
No. 315. *PLUMERI ET AL. v. UNITED STATES.* C. A. 2d Cir. Certiorari denied. Reported below: 428 F. 2d 1033.

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No. 309. *TULLOCH v. VON UTTER*. C. A. 1st Cir. Certiorari denied. Reported below: 426 F. 2d 1.

No. 310. *HARRIS ET AL. v. HARRIS ET AL.* C. A. D. C. Cir. Certiorari denied. Reported below: 137 U. S. App. D. C. 318, 424 F. 2d 806.

No. 312. *MATERIAL HANDLING INSTITUTE, INC. v. McLAREN, ASSISTANT ATTORNEY GENERAL*. C. A. 3d Cir. Certiorari denied. Reported below: 426 F. 2d 90.

No. 314. *NEVILLE CHEMICAL CO. v. UNION CARBIDE CORP.* C. A. 3d Cir. Certiorari denied. Reported below: 422 F. 2d 1205.

No. 317. *McMAHAN v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 424 F. 2d 1216.

No. 319. *MOGULNICKI v. CONNECTICUT*. App. Div., Cir. Ct. Conn. Certiorari denied.

No. 320. *SCHY v. SUSQUEHANNA CORP. ET AL.* C. A. 7th Cir. Certiorari denied. Reported below: 419 F. 2d 1112.

No. 321. *BOARD OF EDUCATION OF JOLIET TOWNSHIP HIGH SCHOOL DISTRICT 204, COUNTY OF WILL, ET AL. v. SCOVILLE ET AL.* C. A. 7th Cir. Certiorari denied. Reported below: 425 F. 2d 10.

No. 327. *BAIRD v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 427 F. 2d 521.

No. 328. *SEGAL ET AL. v. MORRISSEY ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 423 F. 2d 393.

No. 329. *ZARRA v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 423 F. 2d 1227.

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No. 330. SIMON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 424 F. 2d 1049.

No. 331. UNION PLANTERS NATIONAL BANK OF MEMPHIS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 426 F. 2d 115.

No. 333. BENNETT ET AL. *v.* CITY OF CLEVELAND ET AL. C. A. 6th Cir. Certiorari denied.

No. 334. BRASWELL MOTOR FREIGHT LINES, INC. *v.* LOCAL FREIGHT DRIVERS, LOCAL No. 208, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 422 F. 2d 109.

No. 335. NEADERLAND *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 2d Cir. Certiorari denied. Reported below: 424 F. 2d 639.

No. 341. LAKEWOOD MANUFACTURING Co. *v.* HOME INSURANCE Co. OF NEW YORK ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 422 F. 2d 796.

No. 344. KILARJIAN ET AL. *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: See 424 F. 2d 281.

No. 347. KELEMEN ET AL. *v.* SERBIAN ORTHODOX CHURCH CONGREGATION OF ST. DEMETRIUS OF AKRON. Sup. Ct. Ohio. Certiorari denied. Reported below: 21 Ohio St. 2d 154, 256 N. E. 2d 212.

No. 352. CONNELLY *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 424 F. 2d 991.

No. 353. PETLEY *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 427 F. 2d 1101.

No. 359. CANTONE *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 426 F. 2d 902.

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No. 361. *YOUNG v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 426 F. 2d 93.

No. 363. *BRICKEY v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 426 F. 2d 680.

No. 366. *STATE BANK & TRUST Co. v. MARYLAND CASUALTY Co.* C. A. 5th Cir. Certiorari denied. Reported below: 425 F. 2d 979.

No. 371. *RODEO MUSIC CORP., DBA BELAIR ENTERPRISES v. UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA ET AL.* C. A. 9th Cir. Certiorari denied.

No. 373. *MASTERTON, RECEIVER v. VALLEY NATIONAL BANK OF LONG ISLAND*. C. A. 3d Cir. Certiorari denied. Reported below: 424 F. 2d 296.

No. 374. *MILLER-DAVIS Co. v. PREMIER ELECTRICAL CONSTRUCTION Co.* C. A. 7th Cir. Certiorari denied. Reported below: 422 F. 2d 1132.

No. 375. *MARQUEZ ET AL. v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 424 F. 2d 236.

No. 376. *RAMAPO BANK ET AL. v. COMPTROLLER OF THE CURRENCY ET AL.*; and

No. 406. *BRADY, COMMISSIONER OF DEPARTMENT OF BANKING OF NEW JERSEY v. CAMP, COMPTROLLER OF THE CURRENCY, ET AL.* C. A. 3d Cir. Certiorari denied. Reported below: 425 F. 2d 333.

No. 378. *LEONE v. NEW YORK*. App. Div., Sup. Ct. N. Y., 2d Jud. Dept. Certiorari denied.

No. 379. *ALL-STATE INDUSTRIES OF NORTH CAROLINA, INC., ET AL. v. FEDERAL TRADE COMMISSION*. C. A. 4th Cir. Certiorari denied. Reported below: 423 F. 2d 423.

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No. 380. *THE KLAUS OLDENDORFF ET AL. v. POTASH IMPORT & CHEMICAL Co.* C. A. 4th Cir. Certiorari denied. Reported below: 422 F. 2d 818.

No. 384. *LONG ISLAND RAILROAD Co. v. PARKER.* C. A. 2d Cir. Certiorari denied. Reported below: 425 F. 2d 1013.

No. 389. *TREMONT v. UNITED STATES*; and

No. 5638. *LEACH v. UNITED STATES.* C. A. 1st Cir. Certiorari denied. Reported below: 427 F. 2d 1107.

No. 390. *BONAGURO v. UNITED STATES.* C. A. 2d Cir. Certiorari denied. Reported below: 428 F. 2d 204.

No. 393. *WAGONER TRANSPORTATION Co. ET AL. v. BAIRD ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 425 F. 2d 407.

No. 394. *MINK-DAYTON, INC. v. NATIONAL LABOR RELATIONS BOARD.* C. A. 6th Cir. Certiorari denied. Reported below: 426 F. 2d 255.

No. 397. *WILSHIRE OIL Co. OF TEXAS v. UNITED STATES.* C. A. 10th Cir. Certiorari denied. Reported below: 427 F. 2d 969.

No. 398. *ADDABBO ET AL. v. CURTISS-WRIGHT CORP.* C. A. 2d Cir. Certiorari denied. Reported below: 411 F. 2d 451 and 424 F. 2d 427.

No. 402. *JENKINS ET AL., EXECUTORS v. UNITED STATES.* C. A. 5th Cir. Certiorari denied. Reported below: 428 F. 2d 538.

No. 403. *SAGERS, TRAINING SCHOOL DIRECTOR, ET AL. v. BRIGGS ET AL.* C. A. 10th Cir. Certiorari denied. Reported below: 424 F. 2d 130.

No. 404. *DEL TORO v. UNITED STATES.* C. A. 5th Cir. Certiorari denied. Reported below: 426 F. 2d 181.

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No. 408. *CHAPLIN v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 427 F. 2d 14.

No. 413. *AJEM LABORATORIES, INC., ET AL. v. C. M. LADD Co., INC., ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 424 F. 2d 1124.

No. 414. *DUNN v. NEWSPAPERS, INC.* Ct. Civ. App. Tex., 10th Sup. Jud. Dist. Certiorari denied. Reported below: 446 S. W. 2d 101.

No. 426. *AETNA CASUALTY & SURETY Co. v. PACIFIC EMPLOYERS INSURANCE Co.* C. A. 6th Cir. Certiorari denied.

No. 427. *DAWSON v. RICHARDSON, SECRETARY OF HEALTH, EDUCATION, AND WELFARE.* C. A. 5th Cir. Certiorari denied. Reported below: 425 F. 2d 1192.

No. 431. *KURFESS v. UNITED STATES.* C. A. 7th Cir. Certiorari denied. Reported below: 426 F. 2d 1017.

No. 433. *BROTHERHOOD OF LOCOMOTIVE FIREMEN & ENGINEMEN ET AL. v. UNION PACIFIC RAILROAD Co. ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 423 F. 2d 673.

No. 435. *JOHNSON v. KENTUCKY.* Ct. App. Ky. Certiorari denied. Reported below: 446 S. W. 2d 570.

No. 437. *SELLERS ET AL. v. TIME, INC.* C. A. 3d Cir. Certiorari denied. Reported below: 423 F. 2d 887.

No. 438. *SCRIVEN v. UNITED STATES.* C. A. 2d Cir. Certiorari denied.

No. 439. *TESTA v. UNITED STATES*; and

No. 447. *RIGGIO v. UNITED STATES.* C. A. 2d Cir. Certiorari denied. Reported below: 429 F. 2d 378.

No. 440. *EASTER v. AETNA INSURANCE Co.* C. A. 4th Cir. Certiorari denied. Reported below: 420 F. 2d 698.

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No. 441. *ISBELL v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 429 F. 2d 557.

No. 442. *ORSINGER v. UNITED STATES*. C. A. D. C. Cir. Certiorari denied. Reported below: 138 U. S. App. D. C. 403, 428 F. 2d 1105.

No. 443. *BUCKS COUNTY CABLE TV, INC. v. UNITED STATES ET AL.* C. A. 3d Cir. Certiorari denied. Reported below: 427 F. 2d 438.

No. 446. *TRIPOLI Co., INC. v. WELLA CORP.* C. A. 3d Cir. Certiorari denied. Reported below: 425 F. 2d 932.

No. 449. *TAGLIA v. LAIRD, SECRETARY OF DEFENSE*. C. A. D. C. Cir. Certiorari denied.

No. 450. *SMITH v. TENNESSEE*. Sup. Ct. Tenn. Certiorari denied.

No. 452. *S. E. NICHOLS-DOVER, INC., ET AL. v. NATIONAL LABOR RELATIONS BOARD*. C. A. 3d Cir. Certiorari denied. Reported below: 414 F. 2d 561.

No. 453. *PRUDDEN v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 424 F. 2d 1021.

No. 456. *GULF STEVEDORE CORP. ET AL. v. HOLLIS, DEPUTY COMMISSIONER, BUREAU OF EMPLOYEES' COMPENSATION, U. S. DEPARTMENT OF LABOR, ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 427 F. 2d 160.

No. 459. *WESTINGHOUSE ELECTRIC CORP. v. NATIONAL LABOR RELATIONS BOARD*. C. A. 7th Cir. Certiorari denied. Reported below: 424 F. 2d 1151.

No. 460. *POLLACK v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 427 F. 2d 1168.

No. 461. *TREMONT v. UNITED STATES*. C. A. 1st Cir. Certiorari denied. Reported below: 429 F. 2d 1166.

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No. 466. GUSTIN-BACON DIVISION, CERTAIN-TEED PRODUCTS CORP. *v.* UNITED STATES ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 426 F. 2d 539.

No. 468. DREYFUS, TRUSTEE, ET AL. *v.* FIRST NATIONAL BANK OF CHICAGO, TRUSTEE, ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 424 F. 2d 1171.

No. 471. MONOSSON ET AL. *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 428 F. 2d 211.

No. 473. SHERWOOD, ADMINISTRATOR *v.* PEARL RIVER VALLEY WATER SUPPLY DISTRICT. C. A. 5th Cir. Certiorari denied. Reported below: 427 F. 2d 717.

No. 474. ABRAMS *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 427 F. 2d 86.

No. 475. LIBEN ET AL., DBA M. LIBEN TIRE Co. *v.* CITY OF NEW YORK ET AL. C. A. 2d Cir. Certiorari denied.

No. 476. PERLMAN *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 430 F. 2d 22.

No. 478. ROMANO ET AL. *v.* UNITED STATES;

No. 5504. SHERBICKI *v.* UNITED STATES; and

No. 5591. GUANTI *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 421 F. 2d 792.

No. 479. OCEAN DRILLING & EXPLORATION Co. *v.* SIGNAL OIL & GAS Co. ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 424 F. 2d 684.

No. 480. HOWZE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 423 F. 2d 1290.

No. 487. STEVENSON *v.* DIEBOLD, INC. C. A. 9th Cir. Certiorari denied. Reported below: 422 F. 2d 1228.

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No. 481. *BUSH v. ALLSTATE INSURANCE Co.* C. A. 5th Cir. Certiorari denied. Reported below: 425 F. 2d 393.

No. 488. *PITCHFORD ET UX. v. KUZEMCHAK ET UX.* Sup. Ct. N. M. Certiorari denied. Reported below: 81 N. M. 438, 468 P. 2d 409.

No. 489. *MOHAN ET AL. v. KERR.* C. A. 7th Cir. Certiorari denied. Reported below: 424 F. 2d 1134.

No. 490. *OGILVIE, GOVERNOR OF ILLINOIS v. JACKSON ET AL.* C. A. 7th Cir. Certiorari denied. Reported below: 426 F. 2d 1333.

No. 491. *DIFCO LABORATORIES, INC. v. NATIONAL LABOR RELATIONS BOARD.* C. A. 6th Cir. Certiorari denied. Reported below: 427 F. 2d 170.

No. 497. *A & S ELECTRONIC DIE CORP. ET AL. v. NATIONAL LABOR RELATIONS BOARD.* C. A. 2d Cir. Certiorari denied. Reported below: 423 F. 2d 218.

No. 504. *IMBURGIA v. UNITED STATES.* C. A. 2d Cir. Certiorari denied.

No. 514. *WINKLER v. WINKLER.* Ct. App. N. Y. Certiorari denied.

No. 518. *TIMMONS v. SOUTH CAROLINA TRICENTEN-
NIAL COMMISSION ET AL.* C. A. 4th Cir. Certiorari
denied.

No. 547. *M. P. HOWLETT, INC. v. THE MICHAEL
MORAN ET AL.* C. A. 2d Cir. Certiorari denied. Re-
ported below: 425 F. 2d 619.

No. 549. *ARMSTRONG v. COMMERCE TANKERS CORP.
ET AL.* C. A. 2d Cir. Certiorari denied. Reported be-
low: 423 F. 2d 957.

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No. 5107. *PACHECO v. NEW JERSEY*. Sup. Ct. N. J. Certiorari denied. Reported below: 54 N. J. 579, 258 A. 2d 368.

No. 5109. *JEFFERSON v. BRANTLEY, WARDEN*. Sup. Ct. Ill. Certiorari denied. Reported below: 44 Ill. 2d 31, 253 N. E. 2d 378.

No. 5119. *HUGULEY v. GEORGIA*. Ct. App. Ga. Certiorari denied. Reported below: 120 Ga. App. 332, 170 S. E. 2d 450.

No. 5124. *HASKINS v. POINT TOWING CO. ET AL.* C. A. 3d Cir. Certiorari denied. Reported below: 421 F. 2d 532.

No. 5128. *RIDGLEY v. CALIFORNIA*. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 5131. *HOSKINS v. WINGO, WARDEN*. C. A. 6th Cir. Certiorari denied.

No. 5132. *CURLEY ET AL. v. SOUTH CAROLINA*; and

No. 5150. *PEARSON v. SOUTH CAROLINA*. Sup. Ct. S. C. Certiorari denied. Reported below: 253 S. C. 513, 171 S. E. 2d 699.

No. 5138. *CAMPAGNE v. FOLLETTE, WARDEN*. C. A. 2d Cir. Certiorari denied. Reported below: 419 F. 2d 833.

No. 5140. *SCHOELLER v. DUNBAR, CORRECTIONS DIRECTOR, ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 423 F. 2d 1183.

No. 5144. *RAVICH v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 421 F. 2d 1196.

No. 5146. *BABCHAK v. NEW YORK*. Ct. App. N. Y. Certiorari denied.

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No. 5151. *BASS v. NORTH CAROLINA*. Ct. App. N. C. Certiorari denied.

No. 5152. *RASNICK v. MARYLAND*. Ct. Sp. App. Md. Certiorari denied. Reported below: 7 Md. App. 564, 256 A. 2d 543.

No. 5158. *MEAD v. UNITED STATES*. C. A. 9th Cir. Certiorari denied.

No. 5163. *MARNIN v. NEW JERSEY*. Sup. Ct. N. J. Certiorari denied.

No. 5169. *HICKS v. WARDEN, NEW YORK CITY PENITENTIARY, ET AL.* C. A. 2d Cir. Certiorari denied.

No. 5173. *AMATO v. UNITED STATES BOARD OF PAROLE*. C. A. 2d Cir. Certiorari denied.

No. 5174. *SILVA-PALACIOS v. ATTORNEY GENERAL OF THE UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 423 F. 2d 725.

No. 5176. *BURRIS v. ILLINOIS*. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 116 Ill. App. 2d 79, 253 N. E. 2d 628.

No. 5177. *JACKSON v. OFFICIAL REPRESENTATIVES AND EMPLOYEES OF THE LOS ANGELES POLICE DEPARTMENT ET AL.* C. A. 9th Cir. Certiorari denied.

No. 5179. *CHAMBERS v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 422 F. 2d 379.

No. 5181. *ARRINGTON v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 425 F. 2d 244.

No. 5182. *VANSANT v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 423 F. 2d 620.

No. 5184. *SWARTZ v. LAIRD, SECRETARY OF DEFENSE, ET AL.* C. A. 6th Cir. Certiorari denied.

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No. 5189. *RHODES v. CRAVEN, WARDEN*. C. A. 9th Cir. Certiorari denied. Reported below: 425 F. 2d 265.

No. 5192. *DAVIS v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 424 F. 2d 1061.

No. 5193. *BEARDEN v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 423 F. 2d 805.

No. 5194. *HAYES v. COX, PENITENTIARY SUPERINTENDENT*. C. A. 4th Cir. Certiorari denied.

No. 5196. *FULLER v. CALIFORNIA*. Ct. App. Cal., 4th App. Dist. Certiorari denied. Reported below: 1 Cal. App. 3d 664, 82 Cal. Rptr. 78.

No. 5200. *RICE v. SCHMIDT, WARDEN*. C. A. 7th Cir. Certiorari denied. Reported below: 424 F. 2d 12.

No. 5201. *PAYNE v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 423 F. 2d 1125.

No. 5202. *JONES v. SALISBURY, CORRECTIONAL SUPERINTENDENT*. C. A. 6th Cir. Certiorari denied. Reported below: 422 F. 2d 1326.

No. 5203. *ALLEN v. NEW YORK*. Ct. App. N. Y. Certiorari denied.

No. 5204. *DAVIS v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 423 F. 2d 974.

No. 5206. *MONTIJO v. UNITED STATES*. C. A. 1st Cir. Certiorari denied. Reported below: 424 F. 2d 207.

No. 5209. *WHITE v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 423 F. 2d 1226.

No. 5212. *NIX v. ILLINOIS*. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 114 Ill. App. 2d 297, 252 N. E. 2d 677.

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No. 5213. *LAMBRIGHT v. CRAVEN, WARDEN.* C. A. 9th Cir. Certiorari denied.

No. 5214. *STEGEMAN ET UX. v. UNITED STATES.* C. A. 9th Cir. Certiorari denied. Reported below: 425 F. 2d 984.

No. 5215. *STARR v. COX, PENITENTIARY SUPERINTENDENT.* Sup. Ct. App. Va. Certiorari denied.

No. 5216. *GIBSON v. MASSACHUSETTS.* Sup. Jud. Ct. Mass. Certiorari denied. Reported below: 357 Mass. 45, 255 N. E. 2d 742.

No. 5219. *SHAH v. IMMIGRATION AND NATURALIZATION SERVICE.* C. A. 7th Cir. Certiorari denied.

No. 5220. *GILMORE v. GORDON ET AL., MEMBERS OF CALIFORNIA ADULT AUTHORITY.* C. A. 9th Cir. Certiorari denied. Reported below: 422 F. 2d 860.

No. 5221. *ALEXANDER v. LYNCH, ATTORNEY GENERAL OF CALIFORNIA, ET AL.* C. A. 9th Cir. Certiorari denied.

No. 5222. *TROCHE v. NEW YORK.* Ct. App. N. Y. Certiorari denied.

No. 5223. *LARES v. BETO, CORRECTIONS DIRECTOR.* C. A. 5th Cir. Certiorari denied.

No. 5225. *NEWSOME v. MAXWELL, WARDEN.* C. A. 6th Cir. Certiorari denied.

No. 5227. *SHARPE v. CALIFORNIA.* Sup. Ct. Cal. Certiorari denied.

No. 5228. *CORTES ET AL. v. PUERTO RICO ET AL.* C. A. 1st Cir. Certiorari denied. Reported below: 422 F. 2d 1308.

No. 5229. *GIBSON v. UNITED STATES.* C. A. 5th Cir. Certiorari denied. Reported below: 421 F. 2d 662.

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No. 5230. *BLANKNER v. CITY OF CHICAGO*. Sup. Ct. Ill. Certiorari denied.

No. 5231. *GUERIN v. SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES*. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 5232. *SUNIGA v. CRAVEN, WARDEN*. Sup. Ct. Cal. Certiorari denied.

No. 5233. *BOLICK v. RICHARDSON, SECRETARY OF HEALTH, EDUCATION, AND WELFARE*. C. A. 4th Cir. Certiorari denied. Reported below: 423 F. 2d 723.

No. 5234. *NORRIS v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 423 F. 2d 695.

No. 5235. *HILL v. CALIFORNIA*. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 5236. *WASHINGTON v. WAINWRIGHT, CORRECTIONS DIRECTOR*. C. A. 5th Cir. Certiorari denied. Reported below: 423 F. 2d 34.

No. 5237. *LA BRASCA v. MISTERLY, SHERIFF*. C. A. 9th Cir. Certiorari denied. Reported below: 423 F. 2d 708.

No. 5238. *JOHNSON v. OKLAHOMA*. Ct. Crim. App. Okla. Certiorari denied. Reported below: 465 P. 2d 481.

No. 5239. *AGUECCI v. UNITED STATES*. C. A. 2d Cir. Certiorari denied.

No. 5240. *WORKMAN v. PATE, WARDEN*. C. A. 7th Cir. Certiorari denied.

No. 5241. *BARTLETT v. BAYNES, JUDGE, ET AL.* Sup. Ct. Ohio. Certiorari denied. Reported below: 20 Ohio St. 2d 129, 253 N. E. 2d 748.

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No. 5242. *GRUVER v. UNITED STATES*. Ct. Cl. Certiorari denied.

No. 5243. *CISNEROS v. BETO, CORRECTIONS DIRECTOR*. C. A. 5th Cir. Certiorari denied. Reported below: 423 F. 2d 201.

No. 5244. *ALERS v. MUNICIPALITY OF SAN JUAN ET AL.* C. A. 1st Cir. Certiorari denied.

No. 5248. *MOHLAND v. NATIONAL LABOR RELATIONS BOARD*. C. A. 9th Cir. Certiorari denied. Reported below: 422 F. 2d 1258.

No. 5252. *TYLER ET AL. v. UNITED STATES*. C. A. 10th Cir. Certiorari denied. Reported below: 424 F. 2d 510.

No. 5253. *CASEY v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 428 F. 2d 229.

No. 5255. *SHOLE v. O'FERRALL, ASSISTANT ATTORNEY GENERAL OF MARYLAND, ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 423 F. 2d 1229.

No. 5262. *YOUNG v. SWENSON, WARDEN*. C. A. 8th Cir. Certiorari denied.

No. 5263. *JARRELS v. WARDEN, QUEENS HOUSE OF DETENTION FOR MEN*. C. A. 2d Cir. Certiorari denied.

No. 5264. *MANCUSO v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 423 F. 2d 23.

No. 5266. *JONES v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 423 F. 2d 252.

No. 5267. *WALKER v. FIELD, MEN'S COLONY SUPERINTENDENT*. C. A. 9th Cir. Certiorari denied.

No. 5268. *SANDERS v. NORTH CAROLINA*. C. A. 4th Cir. Certiorari denied.

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No. 5273. *CALLAHAN v. FOLLETTE, WARDEN*. C. A. 2d Cir. Certiorari denied. Reported below: 418 F. 2d 903.

No. 5277. *FRESHWATER, AKA MORRISON v. TENNESSEE*. Ct. Crim. App. Tenn. Certiorari denied. Reported below: — Tenn. App. —, 453 S. W. 2d 446.

No. 5278. *FOSTER v. NEW YORK*. App. Div., Sup. Ct. N. Y., 3d Jud. Dept. Certiorari denied. Reported below: 33 App. Div. 2d 813, 305 N. Y. S. 2d 399.

No. 5279. *IAROSSI v. UNITED STATES*. C. A. 2d Cir. Certiorari denied.

No. 5281. *BLACK v. UNITED STATES*. C. A. 9th Cir. Certiorari denied.

No. 5282. *DVORSKY v. UNITED STATES*. Ct. Cl. Certiorari denied.

No. 5283. *BOOTH v. MARYLAND*. Ct. Sp. App. Md. Certiorari denied.

No. 5284. *NOBLE v. MISSOURI*. Sup. Ct. Mo. Certiorari denied.

No. 5285. *KEINE v. UNITED STATES*; and

No. 5328. *KREGAS v. UNITED STATES*. C. A. 10th Cir. Certiorari denied. Reported below: 424 F. 2d 39.

No. 5286. *DINNEEN v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 421 F. 2d 834.

No. 5287. *TAYLOR v. UNITED STATES*. C. A. D. C. Cir. Certiorari denied.

No. 5292. *NIPP v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 416 F. 2d 1044 and 424 F. 2d 554.

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No. 5289. *CARRIER v. BOLING*. C. A. 5th Cir. Certiorari denied.

No. 5293. *HUNT v. NEW JERSEY*. Sup. Ct. N. J. Certiorari denied.

No. 5294. *MALONEY v. ARIZONA*. Sup. Ct. Ariz. Certiorari denied. Reported below: 105 Ariz. 348, 464 P. 2d 793.

No. 5297. *EISEN v. EASTMAN*. C. A. 2d Cir. Certiorari denied. Reported below: 421 F. 2d 560.

No. 5298. *MATALON v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 425 F. 2d 70.

No. 5299. *CRAWFORD v. COX, PENITENTIARY SUPERINTENDENT*. C. A. 4th Cir. Certiorari denied.

No. 5300. *MORENO-VALLEJO v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 414 F. 2d 901 and 422 F. 2d 872.

No. 5301. *APPLEGATE v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 424 F. 2d 1042.

No. 5302. *INSANA v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 423 F. 2d 1165.

No. 5304. *RODRIGUEZ v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 424 F. 2d 205.

No. 5306. *REED v. KIRK, GOVERNOR OF FLORIDA, ET AL.* C. A. 5th Cir. Certiorari denied.

No. 5307. *PEREZ v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 426 F. 2d 799.

No. 5308. *MATTHEWS v. MARYLAND*. Ct. Sp. App. Md. Certiorari denied.

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No. 5310. *HARPER v. KROPP, WARDEN*. C. A. 6th Cir. Certiorari denied. Reported below: 426 F. 2d 108.

No. 5313. *FITTS v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 406 F. 2d 518.

No. 5314. *KELLEY v. JOHNSON, WARDEN*. C. A. 6th Cir. Certiorari denied. Reported below: 424 F. 2d 518.

No. 5315. *DESIMONE v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 423 F. 2d 576.

No. 5316. *COLEMAN v. MANCUSI, WARDEN*. C. A. 2d Cir. Certiorari denied. Reported below: 423 F. 2d 985.

No. 5318. *MORALES v. NEW MEXICO*. Ct. App. N. M. Certiorari denied. Reported below: 81 N. M. 333, 466 P. 2d 899.

No. 5319. *MCGEE v. TENNESSEE*. Sup. Ct. Tenn. Certiorari denied.

No. 5320. *SCOTT v. LAVALLEE, WARDEN*. C. A. 2d Cir. Certiorari denied.

No. 5323. *FONTANA v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 425 F. 2d 886.

No. 5324. *AUSTIN v. NORTH CAROLINA*. Sup. Ct. N. C. Certiorari denied. Reported below: 276 N. C. 391, 172 S. E. 2d 507.

No. 5329. *PRICE v. FOLLETTE, WARDEN*. App. Div., Sup. Ct. N. Y., 2d Jud. Dept. Certiorari denied.

No. 5330. *AYERS v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 426 F. 2d 524.

No. 5335. *JOHNSON v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 426 F. 2d 1112.

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No. 5333. *RAMBEAU v. RUNDLE*, CORRECTIONAL SUPERINTENDENT. C. A. 3d Cir. Certiorari denied.

No. 5336. *PHILLIPS v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 426 F. 2d 1069.

No. 5337. *FORD v. PATE, WARDEN*. C. A. 7th Cir. Certiorari denied. Reported below: 425 F. 2d 178.

No. 5340. *HURST v. UNITED STATES*. C. A. 9th Cir. Certiorari denied.

No. 5343. *OBSTEIN v. NEW JERSEY*. Sup. Ct. N. J. Certiorari denied.

No. 5347. *GLAZEWSKI v. NEW JERSEY ET AL.* C. A. 3d Cir. Certiorari denied.

No. 5348. *BROBERG v. MINNESOTA*. Sup. Ct. Minn. Certiorari denied. Reported below: 287 Minn. 66, 176 N. W. 2d 904.

No. 5350. *RAYBORN v. UNITED STATES*. C. A. 6th Cir. Certiorari denied.

No. 5352. *CARTER v. TENNESSEE*. Ct. Crim. App. Tenn. Certiorari denied. Reported below: — Tenn. App. —, — S. W. 2d —.

No. 5355. *DIXON v. NELSON, WARDEN*. C. A. 9th Cir. Certiorari denied.

No. 5356. *SAVAGE v. WAINWRIGHT, CORRECTIONS DIRECTOR*. C. A. 5th Cir. Certiorari denied.

No. 5359. *CONNOLLY v. MASSACHUSETTS*; and

No. 5436. *COTE v. MASSACHUSETTS*. Sup. Jud. Ct. Mass. Certiorari denied. Reported below: 356 Mass. 617, 255 N. E. 2d 191.

No. 5362. *DANCY v. UNITED STATES*. C. A. D. C. Cir. Certiorari denied.

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No. 5363. *WIGGINS v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 424 F. 2d 476.

No. 5364. *MASTON, AKA MASSEY v. CRAVEN, WARDEN*. C. A. 9th Cir. Certiorari denied.

No. 5367. *RANDALL v. JORDAN, SECRETARY OF STATE OF CALIFORNIA, ET AL.* Sup. Ct. Cal. Certiorari denied.

No. 5368. *PATTEN v. TENNESSEE*. Ct. Crim. App. Tenn. Certiorari denied. Reported below: — Tenn. App. —, 452 S. W. 2d 664.

No. 5369. *DOCKERY v. CALIFORNIA*. C. A. 9th Cir. Certiorari denied.

No. 5371. *DENSON v. UNITED STATES*. C. A. 10th Cir. Certiorari denied. Reported below: 424 F. 2d 329.

No. 5372. *STEBBINS v. BLUE CROSS-BLUE SHIELD ET AL.* C. A. D. C. Cir. Certiorari denied.

No. 5375. *CHURCHWELL v. NEIL, WARDEN*. C. A. 6th Cir. Certiorari denied.

No. 5376. *SEARS v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 425 F. 2d 231.

No. 5378. *HEMSTREET v. LEAVEY ET AL.* Ct. App. Cal., 3d App. Dist. Certiorari denied.

No. 5379. *WILLIAMSON v. CALIFORNIA*. C. A. 9th Cir. Certiorari denied.

No. 5381. *GERBERDING v. MINNESOTA*. C. A. 8th Cir. Certiorari denied. Reported below: 426 F. 2d 247.

No. 5384. *BEAN v. NEVADA*. Sup. Ct. Nev. Certiorari denied. Reported below: 86 Nev. 80, 465 P. 2d 133.

No. 5386. *OWENS v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 424 F. 2d 266.

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No. 5389. *PRESTON v. WINGO, WARDEN*. C. A. 6th Cir. Certiorari denied.

No. 5390. *GILMORE v. ILLINOIS*. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 118 Ill. App. 2d 100, 254 N. E. 2d 590.

No. 5391. *HICKS v. ILLINOIS*. Sup. Ct. Ill. Certiorari denied. Reported below: 44 Ill. 2d 550, 256 N. E. 2d 823.

No. 5392. *CROSBY v. BRIERLEY, CORRECTIONAL SUPERINTENDENT*. C. A. 3d Cir. Certiorari denied.

No. 5393. *RICHARDS v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 425 F. 2d 432.

No. 5395. *REED v. WAINWRIGHT, CORRECTIONS DIRECTOR*. C. A. 5th Cir. Certiorari denied.

No. 5400. *WAPNICK v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 423 F. 2d 1361.

No. 5401. *ELMER v. WYOMING*. Sup. Ct. Wyo. Certiorari denied. Reported below: 463 P. 2d 14 and 466 P. 2d 375.

No. 5402. *MINOR v. FOLLETTE, WARDEN*. C. A. 2d Cir. Certiorari denied.

No. 5404. *GRANT ET UX. v. CALIFORNIA*. Ct. App. Cal., 1st App. Dist. Certiorari denied. Reported below: 1 Cal. App. 3d 563, 81 Cal. Rptr. 812.

No. 5405. *FERRELL v. UNITED STATES*. C. A. D. C. Cir. Certiorari denied.

No. 5407. *COLEMAN v. ILLINOIS*. Sup. Ct. Ill. Certiorari denied. Reported below: 45 Ill. 2d 466, 259 N. E. 2d 269.

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No. 5408. *MONETT v. UNITED STATES*. Ct. Cl. Certiorari denied. Reported below: 190 Ct. Cl. 1, 419 F. 2d 434.

No. 5410. *HOWELL v. ILLINOIS*. Sup. Ct. Ill. Certiorari denied. Reported below: 44 Ill. 2d 264, 255 N. E. 2d 435.

No. 5414. *MOORE v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 425 F. 2d 1290.

No. 5415. *MARTINEZ v. UNITED STATES*. C. A. 10th Cir. Certiorari denied. Reported below: 423 F. 2d 479.

No. 5416. *ROGERS v. WARDEN, NEVADA STATE PRISON*. Sup. Ct. Nev. Certiorari denied. Reported below: 86 Nev. 359, 468 P. 2d 993.

No. 5420. *WALTON v. CALIFORNIA ADULT AUTHORITY*. C. A. 9th Cir. Certiorari denied.

No. 5421. *REED v. UNITED STATES*. C. A. 7th Cir. Certiorari denied.

No. 5422. *McMATH v. ILLINOIS*. Sup. Ct. Ill. Certiorari denied. Reported below: 45 Ill. 2d 33, 256 N. E. 2d 835.

No. 5423. *ONICK v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 425 F. 2d 1292.

No. 5424. *PARHMS v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 424 F. 2d 152.

No. 5430. *KAUFFMAN v. MOSS, DISTRICT ATTORNEY OF MONTGOMERY COUNTY, PENNSYLVANIA, ET AL.* C. A. 3d Cir. Certiorari denied. Reported below: 420 F. 2d 1270.

No. 5434. *LAMB v. BETO, CORRECTIONS DIRECTOR*. C. A. 5th Cir. Certiorari denied. Reported below: 423 F. 2d 85.

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No. 5431. *TAYLOR v. MANCUSI, WARDEN.* C. A. 2d Cir. Certiorari denied.

No. 5440. *MARKEE v. UNITED STATES.* C. A. 9th Cir. Certiorari denied. Reported below: 425 F. 2d 1043.

No. 5441. *WHITE v. UNITED STATES;*

No. 5445. *CARLSON v. UNITED STATES;*

No. 5446. *HENDERSON v. UNITED STATES;*

No. 5451. *DIX v. UNITED STATES;* and

No. 5639. *DIEMERT v. UNITED STATES.* C. A. 9th Cir. Certiorari denied. Reported below: 423 F. 2d 431.

No. 5442. *CARUSIELLO v. WAINWRIGHT, CORRECTIONS DIRECTOR.* C. A. 5th Cir. Certiorari denied. Reported below: 426 F. 2d 868.

No. 5444. *GILPIN v. UTAH.* Sup. Ct. Utah. Certiorari denied. Reported below: 24 Utah 2d 107, 466 P. 2d 834.

No. 5450. *GODFREY v. RUNDLE, CORRECTIONAL SUPERINTENDENT.* C. A. 3d Cir. Certiorari denied.

No. 5453. *OVERMAN v. UNITED STATES.* C. A. 6th Cir. Certiorari denied.

No. 5495. *WOODMANSEE v. VERMONT.* Sup. Ct. Vt. Certiorari denied. Reported below: — Vt. —, 264 A. 2d 802.

No. 5496. *JORDAN v. GEORGIA.* Ct. App. Ga. Certiorari denied. Reported below: 121 Ga. App. 303, 173 S. E. 2d 462.

No. 5498. *BROWN v. SCHNECKLOTH, CONSERVATION CENTER SUPERINTENDENT.* C. A. 9th Cir. Certiorari denied. Reported below: 421 F. 2d 1402.

No. 5505. *JACKSON v. ARIZONA.* C. A. 9th Cir. Certiorari denied.

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No. 131. *HARGRAVES v. VIRGINIA*. Sup. Ct. App. Va. Motion of respondent to dispense with printing response to petition for certiorari granted. Certiorari denied.

No. 157. *HOLLYWOOD BASEBALL ASSN. v. COMMISSIONER OF INTERNAL REVENUE*. C. A. 9th Cir. Certiorari denied. MR. JUSTICE MARSHALL took no part in the consideration or decision of this petition. Reported below: 423 F. 2d 494.

No. 268. *NOLAN v. UNITED STATES*. C. A. 10th Cir. Certiorari denied. MR. JUSTICE MARSHALL took no part in the consideration or decision of this petition. Reported below: 423 F. 2d 1031.

No. 467. *GORDON ET UX. v. COMMISSIONER OF INTERNAL REVENUE*. C. A. 2d Cir. Certiorari denied. MR. JUSTICE MARSHALL took no part in the consideration or decision of this petition. Reported below: 424 F. 2d 378.

No. 5403. *BOYDEN v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. MR. JUSTICE MARSHALL took no part in the consideration or decision of this petition. Reported below: 427 F. 2d 895.

No. 162. *HATCHER v. UNITED STATES*. C. A. 5th Cir. Motion to dispense with printing petition granted. Certiorari denied. Reported below: 423 F. 2d 1086.

No. 229. *BLACKWELL v. MISSISSIPPI*. Sup. Ct. Miss. Motion to dispense with printing petition granted. Certiorari denied. Reported below: 231 So. 2d 790.

No. 307. *NEPSTEAD ET AL. v. UNITED STATES*. C. A. 9th Cir. Motion to dispense with printing petition granted. Certiorari denied. Reported below: 424 F. 2d 269.

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No. 391. *SANTORO v. UNITED STATES*. C. A. 9th Cir. Motion to dispense with printing petition granted. Certiorari denied. Reported below: 402 F. 2d 920.

No. 392. *GALLAGHER v. UNITED STATES*. Ct. Cl. Motion to dispense with printing petition granted. Certiorari denied. Reported below: 191 Ct. Cl. 546, 423 F. 2d 1371.

No. 196. *FRUCHTMAN v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. MR. JUSTICE DOUGLAS took no part in the consideration or decision of this petition. Reported below: 421 F. 2d 1019.

No. 200. *JACKMAN ET AL. v. BODINE ET AL.* Sup Ct. N. J. Certiorari denied. MR. JUSTICE DOUGLAS is of the opinion that certiorari should be granted. Reported below: 55 N. J. 371, 262 A. 2d 389.

No. 207. *FEBRE v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. MR. JUSTICE DOUGLAS is of the opinion that certiorari should be granted. Reported below: 425 F. 2d 107.

No. 214. *WESTERN LAUNDRY & LINEN RENTAL Co. ET AL. v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. MR. JUSTICE DOUGLAS is of the opinion that certiorari should be granted. Reported below: 424 F. 2d 441.

No. 244. *CZEPIL v. TARR ET AL.* C. A. 7th Cir. Certiorari denied. MR. JUSTICE DOUGLAS is of the opinion that certiorari should be granted. Reported below: 425 F. 2d 251.

No. 293. *GARCIA v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. MR. JUSTICE DOUGLAS is of the opinion that certiorari should be granted. Reported below: 427 F. 2d 658.

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No. 303. *STEVENSON v. CARPENTER ET AL.* Sup. Ct. Ill. Certiorari denied. MR. JUSTICE DOUGLAS is of the opinion that certiorari should be granted. Reported below: 44 Ill. 2d 525, 256 N. E. 2d 766.

No. 318. *STATE CINEMA OF PITTSFIELD, INC. v. RYAN ET AL.* C. A. 1st Cir. Certiorari denied. MR. JUSTICE DOUGLAS is of the opinion that certiorari should be granted. Reported below: 422 F. 2d 1400.

No. 337. *TIERNEY v. UNITED STATES.* C. A. 9th Cir. Certiorari denied. MR. JUSTICE DOUGLAS is of the opinion that certiorari should be granted. Reported below: 424 F. 2d 643.

No. 351. *PADDOCK POOL BUILDERS, INC., ET AL. v. GEORGE R. WHITTEN, JR., INC., DBA WHITTEN CORP.* C. A. 1st Cir. Certiorari denied. MR. JUSTICE DOUGLAS is of the opinion that certiorari should be granted. Reported below: 424 F. 2d 25.

No. 355. *JACKSON ET AL. v. DORRIER ET AL.* C. A. 6th Cir. Certiorari denied. MR. JUSTICE DOUGLAS is of the opinion that certiorari should be granted. Reported below: 424 F. 2d 213.

No. 388. *SAFIR ET AL. v. GIBSON, MARITIME ADMINISTRATOR, ET AL.* C. A. 2d Cir. Certiorari denied. MR. JUSTICE DOUGLAS is of the opinion that certiorari should be granted. Reported below: 417 F. 2d 972.

No. 5126. *ALLISON v. NEW JERSEY.* C. A. 3d Cir. Certiorari denied. MR. JUSTICE DOUGLAS is of the opinion that certiorari should be granted. Reported below: 418 F. 2d 332.

No. 5137. *WARDEN v. HOCKER, WARDEN.* Sup. Ct. Nev. Certiorari denied. MR. JUSTICE DOUGLAS is of the opinion that certiorari should be granted.

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No. 5141. *PATTERSON v. DISTRICT COURT OF OKLAHOMA ET AL.* Sup. Ct. Okla. Certiorari denied. MR. JUSTICE DOUGLAS is of the opinion that certiorari should be granted.

No. 5143. *LANGFORD v. ALABAMA.* C. A. 5th Cir. Certiorari denied. MR. JUSTICE DOUGLAS is of the opinion that certiorari should be granted. Reported below: 422 F. 2d 760.

No. 5170. *MARTINEZ v. CRAVEN, WARDEN.* Sup. Ct. Cal. Certiorari denied. MR. JUSTICE DOUGLAS is of the opinion that certiorari should be granted. Reported below: 1 Cal. 3d 641, 463 P. 2d 734.

No. 5183. *RODGERS v. TEXAS.* Ct. Crim. App. Tex. Certiorari denied. MR. JUSTICE DOUGLAS is of the opinion that certiorari should be granted. Reported below: 448 S. W. 2d 465.

No. 5254. *YUKL v. NEW YORK.* Ct. App. N. Y. Certiorari denied. MR. JUSTICE DOUGLAS is of the opinion that certiorari should be granted. Reported below: 25 N. Y. 2d 585, 256 N. E. 2d 172.

No. 5259. *MUNROE v. UNITED STATES.* C. A. 5th Cir. Certiorari denied. MR. JUSTICE DOUGLAS is of the opinion that certiorari should be granted. Reported below: 421 F. 2d 644.

No. 5291. *POWELL v. UNITED STATES.* C. A. 4th Cir. Certiorari denied. MR. JUSTICE DOUGLAS is of the opinion that certiorari should be granted.

No. 5322. *GILL v. UNITED STATES.* C. A. 5th Cir. Certiorari denied. MR. JUSTICE DOUGLAS is of the opinion that certiorari should be granted. Reported below: 421 F. 2d 1353.

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No. 5396. WILLIAMS *v.* SMITH, WARDEN. C. A. 5th Cir. Certiorari denied. MR. JUSTICE DOUGLAS is of the opinion that certiorari should be granted.

No. 5426. CHAUDRON *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. MR. JUSTICE DOUGLAS is of the opinion that certiorari should be granted. Reported below: 425 F. 2d 605.

No. 253. WINGO, WARDEN *v.* BENOIT. C. A. 6th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 423 F. 2d 880.

No. 277. TURNER, WARDEN *v.* LASSITER. C. A. 4th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 423 F. 2d 897.

No. 342. MUSICK *v.* MACDONALD. C. A. 9th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 425 F. 2d 373.

No. 267. SCHNECKLOTH, CONSERVATION CENTER SUPERINTENDENT, ET AL. *v.* HILL. C. A. 9th Cir. Certiorari denied. MR. JUSTICE STEWART and MR. JUSTICE BLACKMUN are of the opinion that certiorari should be granted.

No. 270. VANDERBOOM ET AL. *v.* SEXTON ET AL. C. A. 8th Cir. Certiorari denied. MR. JUSTICE BLACKMUN took no part in the consideration or decision of this petition. Reported below: 422 F. 2d 1233.

No. 292. GRAIN HANDLING Co., INC. *v.* HARTNETT ET AL. C. A. 2d Cir. Certiorari denied. MR. JUSTICE BLACKMUN took no part in the consideration or decision of this petition. Reported below: 421 F. 2d 1011.

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No. 502. SHEEHAN ET AL. *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: 428 F. 2d 67.

No. 5325. MITCHELL *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 1353.

No. 5380. McLEAN *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: 424 F. 2d 513.

No. 5417. MEYER *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: 424 F. 2d 1181.

No. 340. KIRK ET UX. *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. D. C. 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: 138 U. S. App. D. C. 61, 425 F. 2d 492.

No. 343. NEW YORK CITY HOUSING AUTHORITY ET AL. *v.* ESCALERA ET AL. C. A. 2d Cir. Motions of respondents Escalera et al. for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 425 F. 2d 853.

No. 367. LYKES BROS. STEAMSHIP Co., INC. *v.* HESS SHIPPING CORP. ET AL. C. A. 5th Cir. Certiorari denied. MR. JUSTICE DOUGLAS and MR. JUSTICE STEWART are of the opinion that certiorari should be granted. Reported below: 417 F. 2d 346 and 424 F. 2d 633.

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No. 5195. *CHURDER v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. MR. JUSTICE BLACKMUN took no part in the consideration or decision of this petition.

No. 401. *ROBERTSON v. THE SANYO MARU ET AL.* C. A. 5th Cir. Certiorari denied. MR. JUSTICE BLACK is of the opinion that certiorari should be granted. Reported below: 424 F. 2d 520.

No. 477. *RKO GENERAL, INC. v. NEWMARK*. C. A. 2d Cir. Certiorari denied. MR. JUSTICE WHITE is of the opinion that certiorari should be granted. Reported below: 425 F. 2d 348.

No. 5095. *REAMS v. WINGO, WARDEN*. C. A. 6th Cir. Upon representations of the Attorney General of Kentucky that petitioner now has available an appropriate remedy, certiorari denied.

No. 5171. *PIERRE v. ILLINOIS*. App. Ct. Ill., 1st Dist. Certiorari denied. MR. JUSTICE MARSHALL is of the opinion that certiorari should be granted. Reported below: 114 Ill. App. 2d 283, 252 N. E. 2d 706.

No. 5188. *LAVOIE v. IMMIGRATION AND NATURALIZATION SERVICE*. C. A. 9th Cir. Certiorari denied. MR. JUSTICE DOUGLAS is of the opinion that certiorari should be granted. MR. JUSTICE MARSHALL took no part in the consideration or decision of this petition. Reported below: 418 F. 2d 732.

No. 5211. *LUSTER v. COOKSEY*. C. A. 7th Cir. Certiorari denied. MR. JUSTICE DOUGLAS and MR. JUSTICE MARSHALL would grant petition for certiorari, vacate judgment below, and remand for reconsideration in light of *Mulloy v. United States*, 398 U. S. 410. Reported below: 422 F. 2d 562.

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No. 5346. JACKSON *v.* HARTFORD ACCIDENT & INDEMNITY Co. 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: 422 F. 2d 1272.

Rehearing Denied

No. 1522, October Term, 1969. ADAMS ET AL. *v.* CITY OF COLORADO SPRINGS ET AL., 399 U. S. 901;

No. 1523, October Term, 1969. MOSCA *v.* UNITED STATES, 399 U. S. 911;

No. 1548, October Term, 1969. MAIORANI *v.* KAWASAKI KISEN K. K., KOBE, ET AL., 399 U. S. 910;

No. 1554, October Term, 1969. DAPPER *v.* MUNICIPAL COURT, SAN DIEGO JUDICIAL DISTRICT, 399 U. S. 910;

No. 1558, October Term, 1969. ZIMMERMAN *v.* UNITED STATES ET AL., 399 U. S. 911;

No. 1560, October Term, 1969. SOMMER ET AL. *v.* UNITED STATES, 399 U. S. 911;

No. 1568, October Term, 1969. CARLOUGH *v.* RICHARDSON, SECRETARY OF HEALTH, EDUCATION, AND WELFARE, 399 U. S. 920;

No. 1619, October Term, 1969. VASILJ *v.* UNITED STATES, 399 U. S. 928;

No. 1399, Misc., October Term, 1969. CARTER ET AL. *v.* UNITED STATES, 399 U. S. 935;

No. 2066, Misc., October Term, 1969. TAYLOR *v.* SUPERIOR COURT, COUNTY OF RIVERSIDE, 399 U. S. 931;

No. 2111, Misc., October Term, 1969. LOPEZ *v.* UNITED STATES, 399 U. S. 932; and

No. 2130, Misc., October Term, 1969. HARDIE *v.* NEVILLE, U. S. DISTRICT JUDGE, 399 U. S. 922. Petitions for rehearing denied.

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No. 81, October Term, 1969. *SIMMONS ET UX. v. WEST HAVEN HOUSING AUTHORITY*, 399 U. S. 510;

No. 661, October Term, 1969. *HELLENIC LINES LTD. ET AL. v. RHODITIS*, 398 U. S. 306;

No. 830, October Term, 1969. *CHAMBERS v. MARONEY, CORRECTIONAL SUPERINTENDENT*, 399 U. S. 42;

No. 1310, Misc., October Term, 1969. *LEE v. FAULKNER, SHERIFF*, 399 U. S. 919;

No. 1590, Misc., October Term, 1969. *MURRAY v. MURRAY*, 399 U. S. 902; and

No. 1730, Misc., October Term, 1969. *TAYLOR v. CALIFORNIA*, 399 U. S. 901. Petitions for rehearing denied. MR. JUSTICE BLACKMUN took no part in the consideration or decision of these petitions.

No. 1398, October Term, 1969. *ALOE CREME LABORATORIES, INC. v. MILSAN, INC., ET AL.*, 398 U. S. 928;

No. 1424, October Term, 1969. *ALOE CREME LABORATORIES, INC. v. AMERICAN ALOE CORP.*, 398 U. S. 929;

No. 1459, October Term, 1969. *RUEHLMANN, EXECUTOR v. COMMISSIONER OF INTERNAL REVENUE*, 398 U. S. 950;

No. 1495, October Term, 1969. *CIMINI v. UNITED STATES*, 398 U. S. 939;

No. 1502, October Term, 1969. *McGEE v. UNITED STATES*, 398 U. S. 951;

No. 1183, Misc., October Term, 1969. *HIGGINS v. UNITED STATES*, 398 U. S. 279;

No. 1195, Misc., October Term, 1969. *LEWIS v. KROPP, WARDEN*, 398 U. S. 952; and

No. 1923, Misc., October Term, 1969. *BROWN v. UNITED STATES*, 398 U. S. 941. 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. 1932, Misc., October Term, 1969. *DEDMON v. CRAVEN, WARDEN*, 398 U. S. 941;

No. 1941, Misc., October Term, 1969. *DOMER v. UNITED STATES*, 398 U. S. 953;

No. 1946, Misc., October Term, 1969. *KALEC v. LASH, WARDEN*, 398 U. S. 953;

No. 1994, Misc., October Term, 1969. *CARSON v. ELROD, SUPERINTENDENT, DEPARTMENT OF PUBLIC WELFARE*, 398 U. S. 942; and

No. 1999, Misc., October Term, 1969. *BENSON v. UNITED STATES ET AL.*, 398 U. S. 943. Petitions for rehearing denied. MR. JUSTICE MARSHALL and MR. JUSTICE BLACKMUN took no part in the consideration or decision of these petitions.

No. 1508, October Term, 1969. *POWELL v. COMMITTEE ON ADMISSIONS AND GRIEVANCES ET AL.*, 398 U. S. 951. Petition for rehearing denied. THE CHIEF JUSTICE, MR. JUSTICE MARSHALL, and MR. JUSTICE BLACKMUN took no part in the consideration or decision of this petition.

No. 1514, October Term, 1969. *SABINO v. SUPERIOR COURT OF LOS ANGELES COUNTY ET AL.*, 398 U. S. 959;

No. 1520, October Term, 1969. *HORTON v. NORTH CAROLINA*, 398 U. S. 959;

No. 1524, October Term, 1969. *WILLIAMS v. WILLIAMS*, 398 U. S. 959;

No. 531, Misc., October Term, 1969. *COOK v. UNITED STATES*, 398 U. S. 968;

No. 2039, Misc., October Term, 1969. *CURL v. BURKE, WARDEN*, 398 U. S. 966; and

No. 2100, Misc., October Term, 1969. *FLETCHER v. WAYCHOFF, DISTRICT ATTORNEY OF GREENE COUNTY, PENNSYLVANIA, ET AL.*, 398 U. S. 967. Petitions for rehearing denied. MR. JUSTICE MARSHALL took no part in the consideration or decision of these petitions.

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No. 1340, October Term, 1969. *GORDON v. UNITED STATES*, 398 U. S. 927. Motion for leave to file petition for rehearing and remand denied. MR. JUSTICE MARSHALL and MR. JUSTICE BLACKMUN took no part in the consideration or decision of this motion.

No. 1053, Misc., October Term, 1969. *TERRY v. CALIFORNIA*, 399 U. S. 911. Motion for leave to file petition for rehearing denied.

No. 1670, Misc., October Term, 1969. *MEARS v. HOCKER, WARDEN, ET AL.*, 399 U. S. 919. Motion for leave to file petition for rehearing denied. MR. JUSTICE BLACKMUN took no part in the consideration or decision of this motion.

No. 2038, Misc., October Term, 1969. *WHITE v. YOUNG, U. S. DISTRICT JUDGE*, 398 U. S. 949. Motion for leave to file petition for rehearing denied. MR. JUSTICE MARSHALL and MR. JUSTICE BLACKMUN took no part in the consideration or decision of this motion.

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Miscellaneous Orders

No. —. *MARCELLO v. UNITED STATES*. C. A. 5th Cir. Application for bail presented to MR. JUSTICE BLACK, and by him referred to the Court, denied.

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

*[REPORTER'S NOTE: The text of this dissenting opinion is the same as MR. JUSTICE BLACK's in-chambers opinion as reported, *post*, p. 1208, except that the following sentence at the end of the dissenting opinion appears in lieu of the last three sentences of the in-chambers opinion: "I have no doubt that the Government's conduct in this case raises questions worthy of review, and I therefore dissent from the Court's denial of bail."]

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No. —. GERARDO ET AL. *v.* NEW JERSEY; and

No. —. BOIARDO *v.* NEW JERSEY. Sup. Ct. N. J. Applications for bail presented to MR. JUSTICE BRENNAN, and by him referred to the Court, denied. MR. JUSTICE BLACK and MR. JUSTICE DOUGLAS are of the opinion that the applications should be granted. MR. JUSTICE BRENNAN took no part in the consideration or decision of these applications.

No. 420. MCDANIEL, SUPERINTENDENT OF SCHOOLS OF CLARKE COUNTY, ET AL. *v.* BARRESI ET AL. Sup. Ct. Ga. [Certiorari granted, *ante*, p. 804.] Motion of State of Georgia for reconsideration of denial of motion for leave to participate in oral argument as *amicus curiae* [*ante*, p. 804] denied.

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Affirmed on Appeal

No. 704. WOOD ET AL. *v.* PUTTERMAN ET AL. Affirmed on appeal from D. C. Md. MR. JUSTICE BRENNAN and MR. JUSTICE STEWART are of the opinion that probable jurisdiction should be noted. MR. JUSTICE DOUGLAS took no part in the consideration or decision of this appeal. Reported below: 316 F. Supp. 646. [For earlier order herein, see *ante*, p. 816.]

Appeals Dismissed

No. 451. JOHNSON *v.* STATE BAR OF CALIFORNIA ET AL. Appeal from Ct. App. Cal., 2d App. Dist., dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied.

No. 588. POPPENHEIMER ET AL. *v.* TENNESSEE ET AL. Appeal from D. C. W. D. Tenn. dismissed. *Schackman v. Arnebergh*, 387 U. S. 427.

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No. 5354. *RUDERER v. JOHNSON ET AL.* Appeal from C. A. 8th Cir. dismissed for want of jurisdiction. Motion of appellant to strike scandalous matter denied. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied. MR. JUSTICE BLACKMUN took no part in the consideration or decision of this appeal and motion.

No. 5480. *ANDERSON v. KNOTT HOTELS CORP. ET AL.* Appeal from C. A. 2d Cir. dismissed for want of jurisdiction. Motion to postpone case denied. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied.

Miscellaneous Orders

No. 621, October Term, 1969. *WISEMAN ET AL. v. MASSACHUSETTS ET AL.*, 398 U. S. 960. Respondents requested to file within 30 days a response to petition for rehearing.

No. 1385, October Term, 1969. *HUTCHERSON ET AL. v. LEHTIN ET AL.*, 399 U. S. 522. Appellees requested to file within 30 days a response to petition for rehearing.

No. 43, Orig. *OREGON v. MITCHELL, ATTORNEY GENERAL*;

No. 44, Orig. *TEXAS v. MITCHELL, ATTORNEY GENERAL*;

No. 46, Orig. *UNITED STATES v. ARIZONA*; and

No. 47, Orig. *UNITED STATES v. IDAHO*. Motion of State of Mississippi for leave to participate in oral argument as *amicus curiae* denied. [For earlier orders herein, see, *e. g.*, *ante*, p. 810.]

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No. 73. PHILLIPS *v.* MARTIN MARIETTA CORP. C. A. 5th Cir. [Certiorari granted, 397 U. S. 960.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* in support of petitioner granted and 20 minutes allotted for that purpose. Respondent allotted 20 additional minutes for oral argument.

No. 77. UNITED STATES *v.* WELLER. Appeal from D. C. N. D. Cal. [Probable jurisdiction postponed, 397 U. S. 985.] Motion of the Solicitor General for additional time for oral argument granted and 15 additional minutes allotted for that purpose. Appellee allotted 15 additional minutes for oral argument.

No. 78. ATLANTIC CITY ELECTRIC CO. ET AL. *v.* UNITED STATES ET AL. Appeal from D. C. S. D. N. Y.; and

No. 106. ALABAMA POWER CO. ET AL. *v.* UNITED STATES ET AL. Appeal from D. C. D. C. [Probable jurisdiction noted, 398 U. S. 903.] Motion of the Solicitor General for additional time for oral argument granted and 20 additional minutes allotted for argument on behalf of the United States. MR. JUSTICE DOUGLAS took no part in the consideration or decision of this motion.

No. 88. RAMSEY ET AL., DBA LEON NUNLEY COAL CO., ET AL. *v.* UNITED MINE WORKERS OF AMERICA. C. A. 6th Cir. [Certiorari granted, 397 U. S. 1006.] Motion of respondent for enlargement of time for oral argument denied.

No. 124. GRIGGS ET AL. *v.* DUKE POWER Co. C. A. 4th Cir. [Certiorari granted, 399 U. S. 926.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* on behalf of petitioners denied. MR. JUSTICE BRENNAN took no part in the consideration or decision of this motion.

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No. 99. PORT OF BOSTON MARINE TERMINAL ASSN. ET AL. *v.* REDERIAKTIEBOLAGET TRANSATLANTIC. C. A. 1st Cir. [Certiorari granted, 397 U. S. 1035.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* in support of petitioner granted and 20 minutes allotted for that purpose. Respondent granted 20 additional minutes for oral argument.

No. 113. DECKER, U. S. DISTRICT JUDGE, ET AL. *v.* HARPER & ROW PUBLISHERS, INC., ET AL. C. A. 7th Cir. [Certiorari granted, 397 U. S. 1073.] Motion of petitioners to advance denied. Motion of State Bar of Texas for leave to join in *amicus curiae* brief of American Bar Assn. granted. MR. JUSTICE DOUGLAS took no part in the consideration or decision of these motions.

No. 144. GRIFFIN ET AL. *v.* BRECKENRIDGE ET AL. C. A. 5th Cir. [Certiorari granted, 397 U. S. 1074.] Motion of respondents for leave to proceed *in forma pauperis* granted. Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* in support of petitioners granted and 30 minutes allotted for that purpose. Respondents allotted 30 additional minutes for oral argument.

No. 281. SWANN ET AL. *v.* CHARLOTTE-MECKLENBURG BOARD OF EDUCATION ET AL. [Certiorari granted, 399 U. S. 926]; and

No. 349. CHARLOTTE-MECKLENBURG BOARD OF EDUCATION ET AL. *v.* SWANN ET AL. [Certiorari granted, *ante*, p. 805.] C. A. 4th Cir. Motion to supplement record granted. Motions of Congress of Racial Equality and Jackson Chamber of Commerce, Inc., et al. for leave to file briefs as *amici curiae* in No. 281 granted.

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No. 153. *TILTON ET AL. v. RICHARDSON, SECRETARY OF HEALTH, EDUCATION, AND WELFARE, ET AL.* Appeal from D. C. Conn. [Probable jurisdiction noted, *sub nom. Tilton v. Finch*, 399 U. S. 904.] Motion of the Solicitor General for additional time for oral argument on behalf of appellees granted and 30 additional minutes allotted for that purpose. Appellants allotted 30 additional minutes for oral argument.

No. 154. *JAMES ET AL. v. VALTIERRA ET AL.* [Probable jurisdiction noted, 398 U. S. 949]; and

No. 226. *SHAFFER v. VALTIERRA ET AL.* [Probable jurisdiction noted, 399 U. S. 925.] Appeals from D. C. N. D. Cal. Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* in support of appellees denied. MR. JUSTICE DOUGLAS and MR. JUSTICE MARSHALL took no part in the consideration or decision of this motion.

No. 301. *BIVENS v. SIX UNKNOWN NAMED AGENTS OF FEDERAL BUREAU OF NARCOTICS.* C. A. 2d Cir. [Certiorari granted, 399 U. S. 905.] Motion of petitioner for additional time for oral argument denied.

No. 728. *HODGSON ET AL. v. RANDALL ET AL.* Appeal from D. C. Minn. Application for a partial stay presented to MR. JUSTICE BLACKMUN, and by him referred to the Court, denied. MR. JUSTICE DOUGLAS is of the opinion that the application should be granted. Reported below: 314 F. Supp. 32.

No. 5497. *BROWN v. UNITED STATES.* C. A. 3d Cir. Motion to defer consideration granted. Reported below: 423 F. 2d 751.

No. 5466. *STURM v. UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA.* Motion for leave to file petition for writ of mandamus denied.

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No. 5448. *WELLS v. CRAVEN, WARDEN*. Motion for leave to file petition for writ of habeas corpus denied.

No. 5489. *JACOBS v. HILL, U. S. DISTRICT JUDGE*. Motion for leave to file petition for writ of mandamus and/or prohibition denied.

Probable Jurisdiction Noted

No. 345. *UNITED STATES v. FREED ET AL.* Appeal from D. C. C. D. Cal. Probable jurisdiction noted.

No. 169. *RADICH v. NEW YORK*. Appeal from Ct. App. N. Y. Probable jurisdiction noted. MR. JUSTICE DOUGLAS took no part in the consideration or decision of this case. Reported below: 26 N. Y. 2d 114, 257 N. E. 2d 30.

Certiorari Granted. (See also No. 175, *ante*, p. 16.)

No. 156. *ROSENBERG, DISTRICT DIRECTOR, IMMIGRATION AND NATURALIZATION SERVICE v. YEE CHIEN WOO*. C. A. 9th Cir. Certiorari granted. Reported below: 419 F. 2d 252.

No. 362. *McGEE v. UNITED STATES*. C. A. 2d Cir. Certiorari granted. Reported below: 426 F. 2d 691.

No. 338. *BLONDER-TONGUE LABORATORIES, INC. v. UNIVERSITY OF ILLINOIS FOUNDATION ET AL.* C. A. 7th Cir. Motion of Finney Co. for leave to file a brief as *amicus curiae* granted. Certiorari granted. Reported below: 422 F. 2d 769.

No. 5247. *JOHNSON v. UNITED STATES*. C. A. D. C. Cir. Motion for leave to proceed *in forma pauperis* granted. Certiorari granted. THE CHIEF JUSTICE took no part in the consideration or decision of this motion and petition. Reported below: 138 U. S. App. D. C. 174, 426 F. 2d 651.

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No. 5481. *SCHLANGER v. SEAMANS, SECRETARY OF THE AIR FORCE, ET AL.* C. A. 9th Cir. Motion for leave to proceed *in forma pauperis* granted. Certiorari granted.

Certiorari Denied. (See also Nos. 451, 5354, and 5480, *supra.*)

No. 146. *ABEX CORP. v. FEDERAL TRADE COMMISSION.* C. A. 6th Cir. Certiorari denied. Reported below: 420 F. 2d 928.

No. 191. *SAMS v. GEORGIA.* Ct. App. Ga. Certiorari denied. Reported below: 121 Ga. App. 46, 172 S. E. 2d 473.

No. 251. *CALIFORNIA ET AL. v. IMBLER.* C. A. 9th Cir. Certiorari denied. Reported below: 424 F. 2d 631.

No. 354. *RAMOS v. THE DETROIT ET AL.* C. A. 1st Cir. Certiorari denied. Reported below: 423 F. 2d 916.

No. 372. *WILSON ET AL. v. BLOUNT, POSTMASTER GENERAL, ET AL.* C. A. 10th Cir. Certiorari denied. Reported below: 422 F. 2d 866.

No. 381. *JENKINS v. FLORIDA BAR.* Sup. Ct. Fla. Certiorari denied.

No. 399. *LYKES-YOUNGSTOWN CORP. ET AL. v. UNITED STATES.* Ct. Cl. Certiorari denied. Reported below: 190 Ct. Cl. 348, 420 F. 2d 735.

No. 400. *ZELECHOWER ET AL. v. YOUNGER, DISTRICT ATTORNEY OF LOS ANGELES COUNTY, ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 424 F. 2d 1256.

No. 407. *DECCA LIMITED v. UNITED STATES.* Ct. Cl. Certiorari denied. Reported below: 190 Ct. Cl. 454, 420 F. 2d 1010.

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No. 428. *AMERICAN SURETY CO. OF NEW YORK v. BARRIENTOS ET AL.* Sup. Ct. P. R. Certiorari denied. Reported below: — P. R. R. —.

No. 445. *COOGAN v. CINCINNATI BAR ASSN.* Sup. Ct. Ohio. Certiorari denied. Reported below: 21 Ohio St. 2d 147, 256 N. E. 2d 218.

No. 458. *FIFTH DISTRICT REPUBLICAN COMMITTEE v. MICHIGAN EMPLOYMENT SECURITY COMMISSION.* Ct. App. Mich. Certiorari denied. Reported below: 19 Mich. App. 449, 172 N. W. 2d 825.

No. 509. *SEEBURG CORP. v. FEDERAL TRADE COMMISSION.* C. A. 6th Cir. Certiorari denied. Reported below: 425 F. 2d 124.

No. 5168. *MESSER v. GEORGIA.* Ct. App. Ga. Certiorari denied. Reported below: 120 Ga. App. 747, 172 S. E. 2d 194.

No. 5419. *CUNNINGHAM v. BRIERLEY, CORRECTIONAL SUPERINTENDENT.* C. A. 3d Cir. Certiorari denied.

No. 5433. *McGROGAN v. BRIERLEY, CORRECTIONAL SUPERINTENDENT.* C. A. 3d Cir. Certiorari denied.

No. 5438. *STARKEY v. UNITED STATES.* C. A. 4th Cir. Certiorari denied. Reported below: 422 F. 2d 1331.

No. 5449. *CALVILLO v. NELSON, WARDEN.* C. A. 9th Cir. Certiorari denied.

No. 5455. *BANE v. SPENCER ET AL.* C. A. 1st Cir. Certiorari denied.

No. 5456. *PERKINS v. UNITED STATES.* C. A. D. C. Cir. Certiorari denied. Reported below: 139 U. S. App. D. C. 179, 432 F. 2d 612.

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No. 5461. *HINES v. NEW JERSEY*. Sup. Ct. N. J. Certiorari denied.

No. 5463. *HOLNAGEL v. KROPP, WARDEN*. C. A. 6th Cir. Certiorari denied. Reported below: 426 F. 2d 777.

No. 5464. *BARBER v. UNITED STATES*. C. A. 10th Cir. Certiorari denied. Reported below: 427 F. 2d 70.

No. 5465. *PHILLIPS v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 427 F. 2d 1035.

No. 5468. *BATTLE v. ILLINOIS*. Sup. Ct. Ill. Certiorari denied.

No. 5469. *BRIGHT v. PATE, WARDEN*. C. A. 7th Cir. Certiorari denied.

No. 5472. *MITCHELL v. UNITED STATES*. C. A. D. C. Cir. Certiorari denied. Reported below: — U. S. App. D. C. —, 434 F. 2d 483.

No. 5473. *NORRIS v. UNITED STATES*. C. A. D. C. Cir. Certiorari denied.

No. 5474. *MILANI v. PATE, WARDEN*. C. A. 7th Cir. Certiorari denied. Reported below: 425 F. 2d 6.

No. 5475. *GAY v. UNITED STATES*. C. A. D. C. Cir. Certiorari denied.

No. 5479. *CLEVELAND v. NEW JERSEY*. C. A. 3d Cir. Certiorari denied.

No. 5486. *FLOYD v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 427 F. 2d 63.

No. 5488. *ROBERTSON v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 425 F. 2d 1386.

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No. 5487. PRUNEDA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 425 F. 2d 1289.

No. 5493. SMITH *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 426 F. 2d 275.

No. 5502. PLASCENCIA-PLASCENCIA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 423 F. 2d 803.

No. 5503. COOPER *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 5508. MCKINNON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 426 F. 2d 845.

No. 5509. LAUCHLI *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 427 F. 2d 258.

No. 158. ELLIS ET AL., TRUSTEES *v.* MDG SUPPLY, INC. Sup. Ct. Hawaii. Motion to dispense with printing petition granted. Certiorari denied. Reported below: 51 Haw. 375, 463 P. 2d 525.

No. 215. GREYHOUND LINES, INC. *v.* SUPERIOR COURT OF CALIFORNIA, COUNTY OF SHASTA (CHISEFSKI ET AL., REAL PARTIES IN INTEREST). Ct. App. Cal., 3d App. Dist. Motion of National Association of Motor Bus Owners for leave to file a brief as *amicus curiae* granted. Certiorari denied. Reported below: 3 Cal. App. 3d 356, 83 Cal. Rptr. 343.

No. 265. NATIONAL LABOR RELATIONS BOARD *v.* CLARK'S GAMBLE CORP., DBA CLARK'S DISCOUNT DEPARTMENT STORE, ET AL. C. A. 6th Cir. Motion to use record in No. 439, October Term, 1969, granted. Certiorari denied. MR. JUSTICE BLACK, MR. JUSTICE WHITE, and MR. JUSTICE BLACKMUN are of the opinion that certiorari should be granted. Reported below: 422 F. 2d 845.

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No. 365. *McINTOSH v. UNITED STATES*; and
No. 368. *PERSICO v. UNITED STATES*. C. A. 2d Cir.
Certiorari denied. MR. JUSTICE MARSHALL took no part
in the consideration or decision of these petitions. Re-
ported below: 425 F. 2d 1375.

No. 395. *LAZARUS v. UNITED STATES*. C. A. 9th Cir.
Certiorari denied. MR. JUSTICE MARSHALL took no part
in the consideration or decision of this petition. Re-
ported below: 425 F. 2d 638.

No. 415. *UNITED STATES v. WATERMAN, LARGEN &
Co., INC.* Ct. Cl. Certiorari denied. MR. JUSTICE
HARLAN, MR. JUSTICE STEWART, and MR. JUSTICE BLACK-
MUN are of the opinion that certiorari should be granted.
Reported below: 189 Ct. Cl. 364, 419 F. 2d 845.

No. 416. *COMMISSIONER OF INTERNAL REVENUE v.
STEADMAN ET UX.* C. A. 6th Cir. Certiorari denied.
MR. JUSTICE HARLAN, MR. JUSTICE STEWART, and
MR. JUSTICE BLACKMUN are of the opinion that certiorari
should be granted. Reported below: 424 F. 2d 1.

No. 425. *SCHIEFFELIN & Co. ET AL. v. UNITED STATES.*
C. C. P. A. Certiorari denied. MR. JUSTICE DOUGLAS
and MR. JUSTICE STEWART are of the opinion that
certiorari should be granted. Reported below: 57
C. C. P. A. (Cust.) 66, 424 F. 2d 1396.

No. 5121. *DONALDSON v. O'CONNOR ET AL.* Sup. Ct.
Fla. Motions of Medical Committee for Human Rights,
Connecticut Psychologists for Social Action, American
Civil Liberties Union, and New York Lawyers' Com-
mittee for Civil Rights Under Law for leave to file briefs
as *amici curiae* granted. Certiorari denied without prej-
udice to petitioner's right to apply to appropriate United
States District Court for relief. Reported below: 234
So. 2d 114.

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No. 5122. CHAMBERS *v.* COX, PENITENTIARY SUPER-INTENDENT. C. A. 4th Cir. Certiorari denied.

MR. JUSTICE BRENNAN, dissenting.

I dissent. I think we should take this case and decide the important question it presents of the *res judicata* effect of a federal habeas court's determination that evidence used to obtain a state court conviction was improperly admitted because it was the fruit of an unconstitutional search and seizure.

Petitioner was convicted in a Virginia state court of unlawful possession of narcotics seized from his person after his arrest when he entered the apartment of another during a lawful police search of the apartment for narcotics. After exhausting state remedies, he sought federal habeas relief, contending that his mere entry into the apartment provided no probable cause for his arrest and the subsequent search of his person. The parties declined the District Court's offer of a hearing to augment the trial record and stipulated that it contained all the "necessary" facts. The District Court determined on the state record that the police did not have probable cause for petitioner's arrest, and therefore that the narcotics seized from his person had been improperly admitted in evidence. The court ordered petitioner discharged if not retried by the State within 30 days.

Virginia took no appeal from this judgment. Instead, it proceeded to retry petitioner. Over petitioner's objection, the State was allowed to repair the deficiency in its probable-cause case by introducing other evidence available to it but not offered at the first state trial. With the State's case thus buttressed, the Virginia trial court once again found probable cause for petitioner's arrest, and admitted the seized narcotics in evidence.

When the Supreme Court of Appeals of Virginia declined to hear his appeal, petitioner filed the present ap-

plication for federal habeas corpus, contending that the earlier federal habeas judgment was *res judicata* on the issue of probable cause. The District Court, however, viewed the sole question before it as "whether the retrial . . . produced additional evidence weighing on probable cause to lend propriety to the arrest and the subsequent search." Answering that question in the affirmative, the District Court denied the application in an unreported opinion and the Court of Appeals affirmed.

"The doctrine of *res judicata* reflects the refusal of law to tolerate needless litigation. Litigation is needless if, by fair process, a controversy has once gone through the courts to conclusion. . . . And it has gone through, if issues that were or could have been dealt with in an earlier litigation are raised anew between the same parties." *Angel v. Bullington*, 330 U. S. 183, 192-193 (1947). Although this Court has decided the question of the application of this principle in cases of the denial of habeas relief, see *Sanders v. United States*, 373 U. S. 1 (1963), the *res judicata* effect of a habeas judgment granting the writ remains a debatable question here. The common law recognized that the reasons which precluded the application of *res judicata* to a denial of the writ, were not relevant when a court granted the writ: a habeas judgment granting the application constituted *res judicata* as to the illegality of the custody and of all issues of law and fact necessarily involved in that result. See, e. g., *McConologue's Case*, 107 Mass. 154, 170-171 (1871). At least one opinion in this Court seems to adopt the same rule: in *Collins v. Loisel*, 262 U. S. 426, 430 (1923), Mr. Justice Brandeis, writing for a unanimous Court in a habeas proceeding instituted by a person being held for extradition, said,

"a judgment in *habeas corpus* proceedings discharging a prisoner held for preliminary examination may

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operate as *res judicata*. But the judgment is *res judicata* only that he was at the time illegally in custody, *and of the issues of law and fact necessarily involved in that result.*" (Italics supplied in part.)

However, federal and state courts have given varying scope to this pronouncement. Thus, considerable confusion (as evidenced by the present case), has developed over the appropriate scope of the principle of *res judicata* in cases in which the prisoner obtains habeas relief, and over the issues to which it ought properly to apply if it is applicable. Too wide an interpretation of the habeas judgment's scope might deter a State from retrying a prisoner who should properly be brought to account for his actions. On the other hand, failure to give *res judicata* effect to habeas judgments determining as in the present case specific factual issues, may seriously undermine the writ: a State would have no incentive fully to litigate a question in the habeas proceeding if it could always relitigate the question on retrial. Moreover, in the present case, the State offered no reason for its failure to adduce at the first proceeding evidence concededly available at that time. No policy is served—and overburdened judicial resources are wasted—by needless relitigation of issues already fairly decided.

This case thus presents an issue of substantial importance in the administration of federal habeas corpus jurisdiction. It is an issue that will not go away, and we should take this case and decide it now.

No. 5471. *BROOKS 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 1149.

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No. 5148. BRASWELL v. FLORIDA. Dist. Ct. App. Fla., 3d Dist. Certiorari denied. Reported below: 230 So. 2d 192.

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

I would grant certiorari in this case to hold that Florida cannot enforce a mere procedural rule by denying a criminal defendant his constitutional right to present witnesses on his own behalf. In this assault trial, the defendant asked the judge to invoke the "Witness Rule," directing prospective witnesses "not [to] permit anyone to discuss [the case] in your presence." The judge invoked the rule but instructed only those witnesses who were then present. A defense witness who arrived late missed the instruction, and, unknown to the defendant or his counsel, heard some of the prosecution's evidence. When the defense later attempted to call this witness to support the defendant's testimony that the alleged assault was an act of self-defense, the prosecutor objected to the competency of the witness because he had violated the "Witness Rule." Over the defendant's objection that the witness would give material testimony in the defendant's favor, the judge refused to permit the witness to testify.

While the "Witness Rule" has a valid purpose and can contribute to the search for truth, a breach of the rule cannot be used to deny a criminal defendant his constitutional right to obtain and present witnesses in his favor. U. S. Const., Amdt. VI; cf. *Washington v. Texas*, 388 U. S. 14 (1967). A simple rule of courtroom "fairness" has been misused to destroy a sacred constitutional right.

I would grant certiorari in this case and reverse the conviction below so that the defendant might have the right to present his side of the story.

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No. 457. LASH, WARDEN *v.* SMITH. C. A. 7th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied.

Rehearing Denied

No. 1187, October Term, 1968. PERSICO ET AL. *v.* UNITED STATES, 395 U. S. 911. Joint motion for leave to file petition for rehearing denied. MR. JUSTICE MARSHALL and MR. JUSTICE BLACKMUN took no part in the consideration or decision of this motion.

No. 1518, October Term, 1969. HUIE *v.* BOARD OF COMMISSIONERS OF THE ALABAMA STATE BAR, 399 U. S. 905. Motions for THE CHIEF JUSTICE and MR. JUSTICE BLACK to recuse themselves denied. Petition for rehearing denied.

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Dismissals Under Rule 60

No. 505. UNITED STATES *v.* FIX. Appeal from D. C. N. D. Cal. dismissed pursuant to Rule 60 of the Rules of this Court.

No. 5374. CASHAW *v.* WOODS, SHERIFF, ET AL. C. A. 7th Cir. Petition for writ of certiorari dismissed pursuant to Rule 60 of the Rules of this Court.

No. 5526. STEPHENS *v.* UNITED STATES. C. A. 10th Cir. Petition for writ of certiorari dismissed pursuant to Rule 60 of the Rules of this Court. Reported below: 425 F. 2d 247.

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Miscellaneous Orders

No. —. MECK *v.* COMMANDING OFFICER, VALLEY FORGE GENERAL HOSPITAL, ET AL. C. A. 3d Cir. Application for stay of deployment and injunction pending appeal presented to MR. JUSTICE BRENNAN, and by him referred to the Court, granted.

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No. —. BAKER ET AL., TRUSTEES OF PROPERTY OF PENN CENTRAL TRANSPORTATION Co. v. PENNSYLVANIA ET AL. D. C. W. D. Pa. Application for stay of interlocutory injunction pending appeal presented to MR. JUSTICE BRENNAN, and by him referred to the Court, denied.

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Appeal Dismissed

No. 5811. ANDERSON v. AMERICAN BROADCASTING Co. ET AL. Appeal from D. C. S. D. N. Y. Application for stay presented to MR. JUSTICE HARLAN, and by him referred to the Court, denied. Appeal dismissed for want of jurisdiction.

Miscellaneous Orders

No. 1109, October Term, 1968. WEED v. BILBREY ET AL., 394 U. S. 1018, 395 U. S. 971, 397 U. S. 930. Respondents requested to file response within 30 days to motion for leave to file third petition for rehearing. THE CHIEF JUSTICE and MR. JUSTICE BLACKMUN took no part in the consideration or decision of this matter.

No. 31, Orig. UTAH v. UNITED STATES. Report of Special Master received and ordered filed. Exceptions, if any, with supporting briefs, shall be filed within 60 days. [For previous actions, see, *e. g.*, 393 U. S. 921 and 394 U. S. 89.]

No. 121. MAYBERRY v. PENNSYLVANIA. Sup. Ct. Pa. [Certiorari granted, 397 U. S. 1020.] Motion of Carol Mary Los for leave to participate in oral argument, *pro hac vice*, granted.

No. 420. McDANIEL, SUPERINTENDENT OF SCHOOLS, ET AL. v. BARRESI ET AL. [Certiorari granted, *ante*, p. 804.] Motion of respondents for leave to file a brief after argument granted.

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No. 712. TRIANGLE IMPROVEMENT COUNCIL ET AL. *v.* RITCHIE, COMMISSIONER, STATE ROAD COMMISSION OF WEST VIRGINIA, ET AL. C. A. 4th Cir. Application for injunction pending disposition of petition for writ of certiorari presented to THE CHIEF JUSTICE, and by him referred to the Court, denied. MR. JUSTICE DOUGLAS is of the opinion that the application should be granted. Reported below: 429 F. 2d 423.

No. 799. COCANOWER *v.* MARSTON, RECORDER FOR MARICOPA COUNTY, ET AL. Appeal from D. C. Ariz. Motion to advance and expedite hearing denied. Reported below: 318 F. Supp. 402.

No. 825. NEW YORK *v.* COOPER, U. S. DISTRICT JUDGE. C. A. 2d Cir. Motion to expedite consideration of petition for certiorari denied.

No. 882. HADNOTT ET AL. *v.* AMOS, SECRETARY OF STATE OF ALABAMA, ET AL. Appeal from D. C. M. D. Ala. Application for continuance of stay presented to MR. JUSTICE DOUGLAS, and by him referred to the Court, denied. MR. JUSTICE DOUGLAS is of the opinion that the application should be granted. MR. JUSTICE MARSHALL took no part in the consideration or decision of this application. Reported below: 320 F. Supp. 107.

No. 5875. ANDERSON *v.* ROCKEFELLER, GOVERNOR OF NEW YORK, ET AL. Appeal from D. C. S. D. N. Y. Motion to advance denied. Application for stay presented to MR. JUSTICE HARLAN, and by him referred to the Court, denied.

No. 465. SAYLES *v.* WIEGAND ET AL. Motion to dispense with printing motion for leave to file petition for writ of mandamus granted. Motion for leave to file petition for writ of mandamus denied.

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No. 5520. JOHNSON *v.* MICHIGAN ET AL. Motion for leave to file petition for writ of certiorari denied.

Probable Jurisdiction Noted

No. 507. CALIFORNIA DEPARTMENT OF HUMAN RESOURCES DEVELOPMENT ET AL. *v.* JAVA ET AL. Appeal from D. C. N. D. Cal. Probable jurisdiction noted. Reported below: 317 F. Supp. 875.

No. 5714. JENNESS ET AL. *v.* FORTSON, SECRETARY OF STATE OF GEORGIA. Appeal from D. C. N. D. Ga. Motion to advance denied. Motion for leave to proceed *in forma pauperis* granted. Probable jurisdiction noted. Reported below: 315 F. Supp. 1035.

Certiorari Granted. (See also No. 5272, *ante*, p. 17.)

No. 464. GAINESVILLE UTILITIES DEPARTMENT ET AL. *v.* FLORIDA POWER CORP.; and

No. 469. FEDERAL POWER COMMISSION *v.* FLORIDA POWER CORP. C. A. 5th Cir. Motion of American Public Power Assn. for leave to file a brief as *amicus curiae* in No. 464 granted. Certiorari granted. Reported below: 425 F. 2d 1196.

Certiorari Denied

No. 248. INDIANA REVENUE BOARD ET AL. *v.* INDIANA EX REL. CITY OF INDIANAPOLIS ET AL.; and

No. 610. INDIANA REVENUE BOARD ET AL. *v.* INDIANA EX REL. CITY OF INDIANAPOLIS ET AL. App. Ct. Ind. Certiorari denied. Reported below: No. 248, — Ind. App. —, 253 N. E. 2d 725; No. 610, — Ind. App. —, 255 N. E. 2d 833.

No. 385. PUERTO RICO TELEPHONE CO. *v.* FIGUEROA DE ARROYO ET AL.; and

No. 522. FIGUEROA DE ARROYO ET AL. *v.* PUERTO RICO TELEPHONE CO. ET AL. C. A. 1st Cir. Certiorari denied. Reported below: 425 F. 2d 281.

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No. 421. *TREFINA, A. G. v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 427 F. 2d 1118.

No. 462. *BARR RUBBER PRODUCTS CO. v. SUN RUBBER CO.* C. A. 2d Cir. Certiorari denied. Reported below: 425 F. 2d 1114.

No. 483. *ALMSTEAD v. NEW YORK*. App. Div., Sup. Ct. N. Y., 2d Jud. Dept. Certiorari denied.

No. 485. *HAWTHORNE v. ILLINOIS*. Sup. Ct. Ill. Certiorari denied. Reported below: 45 Ill. 2d 176, 258 N. E. 2d 319.

No. 492. *GALLAGHER ET UX. v. WILBOUR ET AL.* Sup. Ct. Wash. Certiorari denied. Reported below: 77 Wash. 2d 306, 462 P. 2d 232.

No. 494. *KASTENBAUM v. FLORIDA BAR*. Sup. Ct. Fla. Certiorari denied.

No. 499. *GRINNELL CORP. ET AL. v. RUSS TOGS, INC., ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 426 F. 2d 850.

No. 501. *TAYLOR v. UNITED STATES*. C. A. 6th Cir. Certiorari denied.

No. 503. *HUDSON OIL COMPANY OF MOBILE, INC. v. MCLEOD ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 424 F. 2d 1269.

No. 506. *DALY v. DALY*. Sup. Ct. App. Va. Certiorari denied.

No. 510. *MULLER ET AL. v. NEW YORK*. App. Div., Sup. Ct. N. Y., 1st Jud. Dept. Certiorari denied.

No. 511. *ALFRED M. LEWIS, INC. v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 431 F. 2d 303.

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No. 512. *HY-VEE FOOD STORES, INC. v. NATIONAL LABOR RELATIONS BOARD*. C. A. 8th Cir. Certiorari denied. Reported below: 426 F. 2d 763.

No. 516. *WEBER ET AL. v. HIATT*. C. A. 9th Cir. Certiorari denied. Reported below: 424 F. 2d 1366.

No. 519. *ST. LOUIS SOUTHWESTERN RAILWAY Co. v. NIVENS*. C. A. 5th Cir. Certiorari denied. Reported below: 425 F. 2d 114.

No. 5500. *LEYVAS v. UNITED STATES*; and

No. 5645. *SENDEJAS v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 428 F. 2d 1040.

No. 5510. *MACDONALD v. CALIFORNIA*. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 5511. *MARTINEZ v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 427 F. 2d 1358.

No. 5512. *PRINCIPE v. KELLER, DISTRICT ATTORNEY OF SAN DIEGO COUNTY, ET AL.* C. A. 9th Cir. Certiorari denied.

No. 5517. *ORME v. FIELD, MEN'S COLONY SUPERINTENDENT, ET AL.* Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 5521. *FAIRLEY v. NEW YORK*. Ct. App. N. Y. Certiorari denied.

No. 5523. *LI v. ROSENBERG, DISTRICT DIRECTOR OF IMMIGRATION AND NATURALIZATION SERVICE*. C. A. 9th Cir. Certiorari denied.

No. 5524. *PURSLEY v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 431 F. 2d 961.

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No. 5525. *MILLER v. PLEASURE ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 425 F. 2d 1205.

No. 5527. *STEBBINS v. GEORGE WASHINGTON UNIVERSITY.* C. A. D. C. Cir. Certiorari denied.

No. 5528. *SMITH v. UNITED STATES.* C. A. 9th Cir. Certiorari denied. Reported below: 427 F. 2d 1164.

No. 5530. *FORTMAN v. CALIFORNIA.* Ct. App. Cal., 2d App. Dist. Certiorari denied. Reported below: 4 Cal. App. 3d 495, 84 Cal. Rptr. 458.

No. 5534. *BENNETT v. UNITED STATES.* C. A. 4th Cir. Certiorari denied. Reported below: 426 F. 2d 793.

No. 5535. *MOORE v. NEW YORK.* App. Div., Sup. Ct. N. Y., 2d Jud. Dept. Certiorari denied.

No. 5536. *McKNIGHT v. UNITED STATES.* C. A. 7th Cir. Certiorari denied. Reported below: 427 F. 2d 75.

No. 5538. *LOCKHART v. PENNSYLVANIA.* Sup. Ct. Pa. Certiorari denied.

No. 5541. *TILLERY v. EYMAN, WARDEN.* C. A. 9th Cir. Certiorari denied.

No. 5542. *HALL v. ILLINOIS.* Sup. Ct. Ill. Certiorari denied. Reported below: 45 Ill. 2d 540, 259 N. E. 2d 799.

No. 5544. *JUNGER v. HERTZ, NEUMARK & WARNER.* C. A. 2d Cir. Certiorari denied. Reported below: 426 F. 2d 805.

No. 5545. *PENNINGTON v. CATHERWOOD, INDUSTRIAL COMMISSIONER OF NEW YORK.* Ct. App. N. Y. Certiorari denied. Reported below: 27 N. Y. 2d 615, 261 N. E. 2d 415.

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No. 5546. *TAYLOR ET AL. v. RICHARDSON, SECRETARY OF HEALTH, EDUCATION, AND WELFARE.* C. A. 8th Cir. Certiorari denied. Reported below: 423 F. 2d 1277.

No. 5548. *RIOS v. UNITED STATES.* C. A. 9th Cir. Certiorari denied.

No. 5550. *MARTINEZ v. UNITED STATES.* C. A. 6th Cir. Certiorari denied. Reported below: 428 F. 2d 86.

No. 5552. *WILLIAMS v. UNITED STATES.* C. A. 9th Cir. Certiorari denied. Reported below: 426 F. 2d 253.

No. 5556. *CAMPBELL v. UNITED STATES.* C. A. 6th Cir. Certiorari denied.

No. 5557. *LIMA v. CHRYSLER CORP.* App. Div., Sup. Ct. N. Y., 1st Jud. Dept. Certiorari denied.

No. 5558. *ROMEO v. NEW JERSEY.* Super. Ct. N. J. Certiorari denied. Reported below: See 56 N. J. 249, 265 A. 2d 704.

No. 5563. *SHARLOW v. WISCONSIN.* Sup. Ct. Wis. Certiorari denied. Reported below: 47 Wis. 2d 259, 177 N. W. 2d 88.

No. 5564. *SAVAGE v. UNITED STATES.* C. A. 6th Cir. Certiorari denied.

No. 5568. *MEEKS v. UNITED STATES.* C. A. 9th Cir. Certiorari denied. Reported below: 427 F. 2d 881.

No. 5569. *BENNETT v. MARYLAND ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 425 F. 2d 181.

No. 5572. *HUCKABAY v. WOODMANSEE, JUDGE, ET AL.* C. A. 9th Cir. Certiorari denied.

No. 5573. *COX v. UNITED STATES.* C. A. 7th Cir. Certiorari denied. Reported below: 428 F. 2d 683.

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No. 5575. *GELB v. UNITED STATES*. Ct. Cl. Certiorari denied. Reported below: 190 Ct. Cl. 937.

No. 5576. *HOULE v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 428 F. 2d 816.

No. 5579. *SULLIVAN v. PENNSYLVANIA*. Sup. Ct. Pa. Certiorari denied.

No. 5585. *WARD v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 426 F. 2d 244.

No. 296. *MITCHELL ET AL. v. ILLINOIS*. Sup. Ct. Ill. Certiorari denied. MR. JUSTICE BRENNAN and MR. JUSTICE WHITE are of the opinion that certiorari should be granted. Reported below: 45 Ill. 2d 148, 258 N. E. 2d 345.

No. 304. *BAK ET AL. v. ILLINOIS*. Sup. Ct. Ill. Certiorari denied. MR. JUSTICE BRENNAN and MR. JUSTICE WHITE are of the opinion that certiorari should be granted. Reported below: 45 Ill. 2d 140, 258 N. E. 2d 341.

No. 419. *MCDUGALD v. NORTH CAROLINA*. Gen. Ct. Justice, Super. Ct. Div., Cumberland County. Certiorari denied. MR. JUSTICE DOUGLAS, MR. JUSTICE HARLAN, and MR. JUSTICE MARSHALL are of the opinion that certiorari should be granted.

No. 472. *ELLIOTT v. UNITED STATES*. C. A. 5th Cir. Motion to dispense with printing petition granted. Certiorari denied. Reported below: 426 F. 2d 775.

No. 513. *BEAUMONT v. AUSSENHEIMER ET AL.* C. A. 1st Cir. Certiorari denied. MR. JUSTICE DOUGLAS is of the opinion that certiorari should be granted. Reported below: 427 F. 2d 667.

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Rehearing Denied

No. 1348, October Term, 1969. PACIFIC NATIONAL INSURANCE CO. *v.* UNITED STATES, 398 U. S. 937. Motion for leave to file petition for rehearing denied. MR. JUSTICE BLACKMUN took no part in the consideration or decision of this motion.

No. 1380, October Term, 1969. HORELICK ET AL. *v.* NEW YORK, 398 U. S. 939. Petition for rehearing denied. MR. JUSTICE BLACKMUN took no part in the consideration or decision of this petition.

Assignment Order

An order of THE CHIEF JUSTICE designating and assigning Mr. Justice Reed (retired) to perform judicial duties in the United States Court of Claims beginning October 5, 1970, and ending June 30, 1971, 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.

OCTOBER 31, 1970

Miscellaneous Order

No. —. BEYTAGH ET AL. *v.* NOBLE ET AL. D. C. N. D. Ind. Application for temporary and conditional injunctive relief presented to MR. JUSTICE MARSHALL, and by him referred to the Court, denied.

NOVEMBER 3, 1970

Dismissals Under Rule 60

No. 752. STANDARD INDUSTRIES, INC. *v.* TIGRETT INDUSTRIES, INC., ET AL. C. A. 6th Cir. Petition for writ of certiorari dismissed pursuant to Rule 60 of the Rules of this Court.

November 3, 6, 9, 1970

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No. 5382. *JONES v. PROCUNIER*, CORRECTIONS DIRECTOR. C. A. 9th Cir. Petition for writ of certiorari dismissed pursuant to Rule 60 of the Rules of this Court.

NOVEMBER 6, 1970

Miscellaneous Order

No. 729. *HODGSON v. MINNESOTA*. Appeal from Sup. Ct. Minn. Application for stay presented to MR. JUSTICE BLACKMUN, and by him referred to the Court, denied.

NOVEMBER 9, 1970

Affirmed on Appeal

No. 254. *PARISH SCHOOL BOARD OF PARISH OF ST. CHARLES ET AL. v. STEWART ET AL.* Affirmed on appeal from D. C. E. D. La., *City of Phoenix v. Kolodziejski*, 399 U. S. 204. MR. JUSTICE HARLAN is of the opinion that probable jurisdiction should be noted and case set for oral argument. Reported below: 310 F. Supp. 1172.

No. 540. *BOWER, STATE HOSPITAL SUPERINTENDENT v. VAUGHAN ET AL.* Affirmed on appeal from D. C. Ariz. Motion of appellees for leave to proceed *in forma pauperis* granted. MR. JUSTICE BLACK, MR. JUSTICE HARLAN, and MR. JUSTICE WHITE are of the opinion that probable jurisdiction should be noted and case set for oral argument. Reported below: 313 F. Supp. 37.

Appeals Dismissed

No. 679. *FRIEDMAN v. O'ROURKE ET AL.* Appeal from Ct. App. N. Y. dismissed for want of substantial federal question. [For earlier order herein, see *ante*, p. 816.]

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No. 5387. *SMITH v. IOWA LIQUOR CONTROL COMMISSION*. Appeal from Sup. Ct. Iowa 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 and case set for oral argument. Reported below: 169 N. W. 2d 803.

No. 5531. *RUDERER v. GERKEN ET AL.* Appeal from C. A. 8th Cir. dismissed for want of jurisdiction. Motion of appellant to strike scandalous matter denied. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied. MR. JUSTICE BLACKMUN took no part in the consideration or decision of this motion and appeal.

No. 5652. *LEHMAN v. CALIFORNIA*. Appeal from D. C. S. D. Cal. dismissed for want of jurisdiction.

Miscellaneous Orders

No. —. *ANNUNZIATA v. UNITED STATES*. C. A. 3d Cir. Application for bail presented to MR. JUSTICE BRENNAN, and by him referred to the Court, denied. MR. JUSTICE BRENNAN took no part in the consideration or decision of this application.

No. 71. *ABATE ET AL. v. MUNDT ET AL.* Ct. App. N. Y. [Certiorari granted, 397 U. S. 904.] Motion of petitioners for leave for three attorneys to participate in oral agreement granted.

No. 203. *McGAUTHA v. CALIFORNIA*. Sup. Ct. Cal. [Certiorari granted, 398 U. S. 936.] Motion for appointment of counsel to represent petitioner granted. Motion of Luke McKissack for leave to file a brief as *amicus curiae* granted.

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No. 42, Orig. MASSACHUSETTS *v.* LAIRD, SECRETARY OF DEFENSE. Motion of Constitutional Lawyers' Committee on Undeclared War for leave to file supplemental brief as *amicus curiae* granted. Motion of John M. Wells et al. for leave to file a brief as *amici curiae*, to participate in oral argument, or alternative motion to be named as parties plaintiff, denied. Motion for leave to file bill of complaint denied. MR. JUSTICE HARLAN and MR. JUSTICE STEWART dissent. They would set the latter motion for argument on questions of standing and justiciability.

MR. JUSTICE DOUGLAS, dissenting.

This motion was filed by the Commonwealth of Massachusetts against the Secretary of Defense, a citizen of another State. It is brought pursuant to a mandate contained in an act of the Massachusetts Legislature. 1970 Laws, c. 174. Massachusetts seeks to obtain an adjudication of the constitutionality of the United States' participation in the Indochina war. It requests that the United States' participation be declared "unconstitutional in that it was not initially authorized or subsequently ratified by Congressional declaration"; it asks that the Secretary of Defense be enjoined "from carrying out, issuing or causing to be issued any further orders which would increase the present level of United States troops in Indochina"; and it asks that, if appropriate congressional action is not forthcoming within 90 days of this Court's decree, the Secretary of Defense be enjoined "from carrying out, issuing, or causing to be issued any further orders directing any inhabitant of the Commonwealth of Massachusetts to Indochina for the purpose of participating in combat or supporting combat troops in the Vietnam war." Today this Court denies leave to file the complaint. I dissent.

The threshold issues for granting leave to file a complaint in this case are standing and justiciability. I believe that Massachusetts has standing and the controversy is justiciable. At the very least, however, it is apparent that the issues are not so clearly foreclosed as to justify a summary denial of leave to file.

STANDING

In *Massachusetts v. Mellon*, 262 U. S. 447 (hereafter *Mellon*), the Court held that a State lacked standing to challenge, as *parens patriae*, a federal grant-in-aid program under which the Federal Government was allegedly usurping powers reserved to the States. It was said in *Mellon*:

“[T]he citizens of Massachusetts are also citizens of the United States. It cannot be conceded that a State, as *parens patriae*, may institute judicial proceedings to protect citizens of the United States from the operation of the statutes thereof. While the State, under some circumstances, may sue in that capacity for the protection of its citizens (*Missouri v. Illinois*, 180 U. S. 208, 241), it is no part of its duty or power to enforce their rights in respect of their relations with the Federal Government. In that field it is the United States, and not the State, which represents them as *parens patriae*, when such representation becomes appropriate; and to the former, and not to the latter, they must look for such protective measures as flow from that status.” *Id.*, at 485-486.

The Solicitor General argues that *Mellon* stands as a bar to this suit.

Yet the ruling of the Court in that case is not dispositive of this one. The opinion states: “We need not go so far as to say that a State may never intervene by

suit to protect its citizens against any form of enforcement of unconstitutional acts of Congress; but we are clear that the right to do so does not arise here." *Id.*, at 485. Thus the case did not announce a *per se* rule to bar all suits against the Federal Government as *parens patriae*, and a closer look at the bases of the opinion is necessary to determine the limits on its applicability.

Mellon relates to an Act of Congress signed by the Executive, a distinction noted in other original actions. In *Georgia v. Pennsylvania R. Co.*, 324 U. S. 439, we stated, "[t]his is not a suit like those in *Massachusetts v. Mellon*, and *Florida v. Mellon*, *supra*, [273 U. S. 12] where a State sought to protect her citizens from the operation of federal statutes." *Id.*, at 446-447.

Massachusetts attacks no federal statute. In fact, the basis of Massachusetts' complaint is the absence of congressional action.

It is said that the Federal Government "represents" the citizens. Here the complaint is that only one representative of the people, the Executive, has acted and the other representatives of the citizens have not acted, although, it is argued, the Constitution provides that they must act before an overseas "war" can be conducted.

There was a companion case to *Mellon* in which the Court held that a taxpayer lacked standing to challenge the same federal spending statute. *Frothingham v. Mellon*, 262 U. S. 447 (hereafter *Frothingham*). Two years ago we reconsidered *Frothingham* and found at least part of the ruling could not stand the test of time. Concurring in the result, I stated:

"*Frothingham*, decided in 1923, was in the heyday of substantive due process, when courts were sitting in judgment on the wisdom or reasonableness of legislation. The claim in *Frothingham* was that a

federal regulatory Act dealing with maternity deprived the plaintiff of property without due process of law. When the Court used substantive due process to determine the wisdom or reasonableness of legislation, it was indeed transforming itself into the Council of Revision which was rejected by the Constitutional Convention. It was that judicial attitude, not the theory of standing to sue rejected in *Frothingham*, that involved 'important hazards for the continued effectiveness of the federal judiciary,' to borrow a phrase from my Brother HARLAN. A contrary result in *Frothingham* in that setting might well have accentuated an ominous trend to judicial supremacy." *Flast v. Cohen*, 392 U. S. 83, 107.

In *Flast* we held that a taxpayer had standing to challenge a federal spending program, if he showed that Congress breached a specific limitation on its taxing and spending power. As MR. JUSTICE STEWART stated in his concurring opinion, "[t]he present case is thus readily distinguishable from *Frothingham v. Mellon*, 262 U. S. 447, where the taxpayer did not rely on an explicit constitutional prohibition but instead questioned the scope of the powers delegated to the national legislature by Article I of the Constitution." 392 U. S., at 114.

The erosion of *Frothingham* does not, of course, necessarily mean that the authority of *Mellon* has been affected. But if the current debate over *Frothingham* "suggests that we should undertake a fresh examination of the limitations upon standing to sue," 392 U. S., at 94, then surely the erosion of *Frothingham* suggests it is time to re-examine its companion case.

Mellon, too, has been eroded by time. In the spring of 1963 the Governor of Alabama moved for leave to file

a complaint to prevent the President from using troops in Birmingham during civil rights marches there. Under the Solicitor General's reading of *Mellon* Alabama would have lacked standing to challenge such an exercise of presidential authority. The Court denied Alabama relief, not because of *Mellon*, but because:

"In essence the papers show no more than that the President has made ready to exercise the authority conferred upon him by 10 U. S. C. § 333 by alerting and stationing military personnel in the Birmingham area. Such purely preparatory measures and their alleged adverse general effects upon the plaintiffs afford no basis for the granting of any relief." *Alabama v. United States*, 373 U. S. 545.

In *South Carolina v. Katzenbach*, 383 U. S. 301, *Mellon* was further weakened. In that case we denied standing to South Carolina to assert claims under the Bill of Attainder Clause of Art. I and the principle of separation of powers which were regarded "only as protections for individual persons and private groups, those who are peculiarly vulnerable to nonjudicial determinations of guilt." 383 U. S., at 324. Yet we went on to allow South Carolina to challenge the Voting Rights Act of 1965 as beyond congressional power under the Fifteenth Amendment.

The main interest of South Carolina was in the continuing operation of its election laws. Massachusetts' claim to standing in this case is certainly as strong as South Carolina's was in the *Katzenbach* case.

Massachusetts complains, as *parens patriae*, that its citizens are drafted and sent to fight in an unconstitutional overseas war. Their lives are in jeopardy. Their liberty is impaired.

Furthermore, the basis on which *Flast* distinguished *Frothingham* is also present here. The allegation in

both *Mellon* and *Frothingham* was that Congress had exceeded the general powers delegated to it by Art. I, § 8, and invaded the reserved powers of the States under the Tenth Amendment. The claim was not specific; but, as *Flast* held, if a taxpayer can allege spending violates a *specific constitutional limitation*, then he has standing. Here Massachusetts points to a specific provision of the Constitution. Congress by Art. I, § 8, has the power "To declare War." Does not that make this case comparable to *Flast*?

It has been settled, at least since 1901, that "if the health and comfort of the inhabitants of a State are threatened, the State is the proper party to represent and defend them," *Missouri v. Illinois*, 180 U. S. 208, 241, in an original action in this Court. And see *Georgia v. Tennessee Copper Co.*, 206 U. S. 230, 237-238; *Pennsylvania v. West Virginia*, 262 U. S. 553, 591-592; *North Dakota v. Minnesota*, 263 U. S. 365, 372-376; *Georgia v. Pennsylvania R. Co.*, 324 U. S. 439, 450-451. Those cases involved injury to inhabitants of one State by water or air pollution of another State, by interference with navigation, by economic losses caused by an out-of-state agency, and the like. The harm to citizens of Massachusetts suffered by being drafted for a war are certainly of no less a magnitude. Massachusetts would clearly seem to have standing as *parens patriae* to represent, as alleged in its complaint, its male citizens being drafted for overseas combat in Indochina.

JUSTICIABILITY

A question that is "political" is opposed to one that is "justiciable." In reviewing the dimensions of the "political" question we said in *Baker v. Carr*, 369 U. S. 186, 217:

"Prominent on the surface of any case held to involve a political question is found a textually

demonstrable constitutional commitment of the issue to a coordinate political department; or a lack of judicially discoverable and manageable standards for resolving it; or the impossibility of deciding without an initial policy determination of a kind clearly for nonjudicial discretion; or the impossibility of a court's undertaking independent resolution without expressing lack of the respect due coordinate branches of government; or an unusual need for unquestioning adherence to a political decision already made; or the potentiality of embarrassment from multifarious pronouncements by various departments on one question."

1. *A textually demonstrable constitutional commitment of the issue to a coordinate political department.* At issue here is the phrase in Art. I, § 8, cl. 11: "To declare War." Congress definitely has that power. The Solicitor General argues that only Congress can determine whether it has declared war. He states, "'To declare War' includes a power to determine, free of judicial interference, the form which its authorization of hostilities will take." This may be correct. But, as we stated in *Powell v. McCormack*, 395 U. S. 486, the question of a textually demonstrable commitment and "what is the *scope* of such commitment are questions [this Court] must resolve for the first time in this case." *Id.*, at 521 (emphasis added). It may well be that it is for Congress, and Congress alone, to determine the form of its authorization, but if that is the case we should make that determination only after full briefs on the merits and oral argument.

2. *A lack of judicially discoverable and manageable standards for resolving the issue.* The standards that are applicable are not elusive. The case is not one where

the Executive is repelling a sudden attack.¹ The present Indochina "war" has gone on for six years. The question is whether the Gulf of Tonkin Resolution was a declaration of war or whether other Acts of Congress were its equivalent.

3. *The impossibility of deciding without an initial policy determination of a kind clearly for nonjudicial discretion.* In *Ex parte Milligan*, 4 Wall. 2, 139 (concurring opinion), it was stated that "neither can the President, in war more than in peace, intrude upon the proper authority of Congress . . ." ² The issue in this case is not whether we ought to fight a war in Indochina, but whether the Executive can authorize it without congressional authorization. This is not a case where we would have to determine the wisdom of any policy.

4. *The impossibility of a court's undertaking independent resolution without expressing lack of respect due coordinate branches of government.* The Solicitor General argues that it would show disrespect of the Executive to go behind his statements and determine his au-

¹ An early draft of the Constitution vested in Congress the power to "make" war rather than the power to "declare" war. The change from "make" to "declare" was intended to authorize the President the power to repel sudden attacks and to manage, as Commander in Chief, any war declared by Congress. The change was not intended to give the President power to initiate hostilities and commit troops in war at his own will. The Framers were afraid of unlimited executive power and "resolved to so frame the Constitution that no one man should hold the power of bringing this oppression upon us." A. Lincoln as quoted in E. Corwin, *The President: Office & Powers, 1787-1957*, p. 451 (4th ed. 1957). See generally Note, *Congress, the President, and the Power to Commit Forces to Combat*, 81 Harv. L. Rev. 1771 (1968).

² The majority in *Milligan* stated: "The Constitution of the United States is a law for rulers and people, equally in war and in peace, and covers with the shield of its protection all classes of men, at all times, and under all circumstances." 4 Wall., at 120-121.

thority to act in these circumstances. Both *Powell* and the *Steel Seizure Case* (*Youngstown Sheet & Tube v. Sawyer*, 343 U. S. 579), however, demonstrate that the duty of this Court is to interpret the Constitution, and in the latter case we did go behind an executive order to determine his authority. As Mr. Justice Frankfurter stated in the *Steel Seizure Case*:

"To deny inquiry into the President's power in a case like this, because of the damage to the public interest to be feared from upsetting its exercise by him, would in effect always preclude inquiry into challenged power, which presumably only avowed great public interest brings into action. And so, with the utmost unwillingness, with every desire to avoid judicial inquiry into the powers and duties of the other two branches of the government, I cannot escape consideration of the legality of Executive Order No. 10340.

"Marshall's admonition that 'it is a constitution we are expounding' [*McCulloch v. Maryland*, 4 Wheat. 316, 407] is especially relevant when the Court is required to give legal sanctions to an underlying principle of the Constitution—that of separation of powers." 343 U. S., at 596–597 (concurring opinion).

It is far more important to be respectful to the Constitution than to a coordinate branch of government.³

5. *An unusual need for unquestioning adherence to a political decision already made.* This test is essentially

³ "When all is said and done, one is inclined to think that a rigid constitutional frame is on the whole preferable even if it serves no better purpose than to embarrass an overactive Executive." G. Hausner, *Individual Rights in the Courts of Israel*, *International Lawyers' Convention in Israel* 201, 228 (1958).

a reference to a commitment of a problem and its solution to a coordinate branch of government⁴—a matter not involved here.

⁴ The classic political questions case is *Luther v. Borden*, 7 How. 1, growing out of the Dorr Rebellion in Rhode Island. That State had been unaffected by the constitutional changes during the Revolutionary War and when Connecticut acquired a new constitution in 1818, Rhode Island was the only State which retained its original colonial charter as fundamental law. The charter government was malapportioned and required ownership of \$134 of real property for voting purposes.

From the early 1820's on there was agitation for a new constitution in Rhode Island. Finally one constitution put to the "voters" was passed. A "people's" convention on November 18, 1841, put forth a new constitution with a Bill of Rights, better apportionment, and white manhood suffrage. Under the voting requirements established by that constitution, all white adult males were allowed to vote for or against the "people's" constitution. A majority of the voters ratified the constitution. Following the ratification, elections were held. Rhode Island then had two governments, one under the "people's" constitution, the other under the original charter. The "people's" government had a quick legislative session and did not attempt to change either the judiciary or the administrative officers of the State. On June 26, 1842, the charter governor finally proclaimed martial law to establish his authority. *Luther v. Borden* arose out of Borden's attempt pursuant to instructions to arrest Luther. Luther brought action in the federal courts for trespass and Borden defended his actions as taken under martial law, lawfully proclaimed. Judge Story refused to give Luther's requested jury instructions, that the "people's" constitution was in full force in June 1842 because "a majority of the free white male citizens of Rhode Island, of twenty-one years and upwards, had a right to reassume the powers of government and establish a written constitution; and that, having so exercised such right, the pre-existing charter government became null and void." The case then went to the Supreme Court and, faced with the question of which of the two governments was the lawful one, the Court held that determination was a political question, not for judicial determination—that the political question was for Rhode Island

6. *The potentiality of embarrassment from multifarious pronouncements by various departments of government on one question.* Once again this relates back to whether the problem and its solution are committed to a given branch of government.

We have never ruled, I believe, that when the Federal Government takes a person by the neck and submits him to punishment, imprisonment, taxation, or to some ordeal, the complaining person may not be heard in court. The rationale in cases such as the present is that government cannot take life, liberty, or property of the individual and escape adjudication by the courts of the legality of its action.

That is the heart of this case. It does not concern the wisdom of fighting in Southeast Asia. Likewise no question of whether the conflict is either just or necessary is present. We are asked instead whether the Executive has power, absent a congressional declaration of war, to commit Massachusetts citizens to armed hostilities on foreign soil. Another way of putting the question is whether under our Constitution presidential wars are permissible. Should that question be answered in the negative we would then have to determine whether Congress has declared war. That question which Massachusetts presents is in my view justiciable.

to resolve or for Congress under Art. IV, § 4, of the Constitution, 7 How., at 38-43.

Dorr, who had been the governor under the "people's" constitution, was tried and convicted of treason against the State in early 1844. In January he was offered a legislative pardon if he would take an oath affirming support for the government in power. He refused since he believed the "people's" constitution was still binding. In June 1845, he was unconditionally pardoned under a new governor. Finally, in February 1854, the legislature reversed and annulled Dorr's conviction. For a history of the Dorr Rebellion, see A. Mowry, *The Dorr War* (1970).

It is said that "the notion has persisted, despite the results in *Baker v. Carr* and *Powell v. McCormack*, [395 U. S. 486] . . . that there is a means for the Court to avoid deciding any case or issue upon the basis of a broad, highly general, and almost entirely discretionary principle of nondecision." Tigar, *Judicial Power, The "Political Question Doctrine," and Foreign Relations*, 17 U. C. L. A. L. Rev. 1135, 1163 (1970). Yet no such discretionary principle, if germane to our problem, is applicable here.

"The war power of the United States, like its other powers . . . is subject to applicable constitutional limitations." *Hamilton v. Kentucky Distilleries & Warehouse Co.*, 251 U. S. 146, 156. No less than the war power—the greatest leveler of them all—is the power of the Commander in Chief subject to constitutional limitations. That was the crux of the *Steel Seizure Case*. Concurring in the judgment in that case, Mr. Justice Clark stated: "I conclude that where Congress has laid down specific procedures to deal with the type of crisis confronting the President, he must follow those procedures in meeting the crisis I cannot sustain the seizure in question because . . . Congress had [*sic*] prescribed methods to be followed by the President" 343 U. S., at 662. If the President must follow procedures prescribed by Congress, it follows *a fortiori* that he must follow procedures prescribed by the Constitution.

This Court has previously faced issues of presidential war making. The legality of Lincoln's blockade was considered in the *Prize Cases*, 2 Black 635, and although the Court narrowly split in supporting the President's position, the split was on the merits, not on whether the claim was justiciable. And even though that war was the Civil War and not one involving an overseas expedition, the decision was 5 to 4.

In the *Steel Seizure Case* members of this Court wrote seven opinions and each reached the merits of the Executive's seizure. In that case, as here, the issue related to the President's powers as Commander in Chief and the fact that all nine Justices decided the case on the merits and construed the powers of a coordinate branch at a time of extreme emergency should be instructive. In that case we said:

"It is clear that if the President had authority to issue the order he did, it must be found in some provision of the Constitution. And it is not claimed that express constitutional language grants this power to the President. The contention is that presidential power should be implied from the aggregate of his powers under the Constitution. Particular reliance is placed on provisions in Article II which say that 'The executive Power shall be vested in a President . . .'; that 'he shall take Care that the Laws be faithfully executed'; and that he 'shall be Commander in Chief of the Army and Navy of the United States.'

"The order cannot properly be sustained as an exercise of the President's military power as Commander in Chief of the Armed Forces. The Government attempts to do so by citing a number of cases upholding broad powers in military commanders engaged in day-to-day fighting in a theater of war. Such cases need not concern us here. Even though 'theater of war' be an expanding concept, we cannot with faithfulness to our constitutional system hold that the Commander in Chief of the Armed Forces has the ultimate power as such to take possession of private property in order to keep labor disputes from stopping production. This is a job for the Nation's lawmakers, not for its military authorities." 343 U. S., at 587.

If we determine that the Indochina conflict is unconstitutional because it lacks a congressional declaration of war, the Chief Executive is free to seek one, as was President Truman free to seek congressional approval after our *Steel Seizure* decision.

There is, of course, a difference between this case and the *Prize Cases* and the *Steel Seizure Case*. In those cases a private party was asserting a wrong to him: his *property* was being taken and he demanded a determination of the legality of the taking. Here the *lives* and *liberties* of Massachusetts citizens are in jeopardy. Certainly the Constitution gives no greater protection to *property* than to *life* and *liberty*. It might be argued that the authority in the *Steel Seizure Case* was not textually apparent in the Constitution, while the power of the Commander in Chief to commit troops is obvious and therefore a different determination on justiciability is needed. The *Prize Cases*, however, involved Lincoln's exercise of power in ordering a blockade by virtue of his powers as the Commander in Chief.

Since private parties—represented by Massachusetts as *parens patriae*—are involved in this case, the teaching of the *Prize Cases* and the *Steel Seizure Case* is that their claims are justiciable.

The Solicitor General urges that no effective remedy can be formulated. He correctly points out enforcing or supervising injunctive relief would involve immense complexities and difficulties. But there is no requirement that we issue an injunction. Massachusetts seeks declaratory relief as well as injunctive relief. In *Baker v. Carr* we stated that we must determine whether “the duty asserted can be judicially identified and its breach judicially determined, and whether protection for the right asserted can be judicially molded.” 369 U. S., at 198. The Declaratory Judgment Act, 28 U. S. C. § 2201, provides that “any court of the United States . . .

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may declare the rights . . . of any interested party . . . whether or not further relief is or could be sought." It may well be that even declaratory relief would be inappropriate respecting many of the numerous issues involved if the Court held that the war were unconstitutional. I restrict this opinion to the question of the propriety of a declaratory judgment that no Massachusetts man can be taken against his will and made to serve in the war. *Powell* involved just one man while this case involves large numbers of men. But that goes only to the mechanical task of making any remedy granted available to all members of a large class.

Today we deny a hearing to a State which attempts to determine whether it is constitutional to require its citizens to fight in a foreign war absent a congressional declaration of war. Three years ago we refused to hear a case involving draftees who sought to prevent their shipment overseas. *Mora v. McNamara*, 128 U. S. App. D. C. 297, 387 F. 2d 862, cert. denied, 389 U. S. 934 (1967). The question of an unconstitutional war is neither academic nor "political." This case has raised the question in an adversary setting. It should be settled here and now.

I would set the motion for leave to file down for argument and decide the merits only after full argument.

Probable Jurisdiction Noted

No. 573. *KIRK, GOVERNOR OF FLORIDA, ET AL. v. HARGRAVE ET AL.* Appeal from D. C. M. D. Fla. Probable jurisdiction noted. Reported below: 313 F. Supp. 944.

No. 5161. *JOHNSON v. LOUISIANA.* Appeal from Sup. Ct. La. Motion of appellant for leave to proceed *in forma pauperis* granted. Probable jurisdiction noted. Reported below: 255 La. 314, 230 So. 2d 825.

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No. 569. EARLEY *v.* DICENSO ET AL.; and

No. 570. ROBINSON, COMMISSIONER OF EDUCATION OF RHODE ISLAND, ET AL. *v.* DICENSO ET AL. Appeals from D. C. R. I. Probable jurisdiction noted. Cases consolidated and a total of 1½ hours allotted for oral argument. Cases set for oral argument immediately following No. 89 [*Lemon v. Kurtzman*, probable jurisdiction noted, 397 U. S. 1034] and No. 153 [*Tilton v. Finch*, probable jurisdiction noted, 399 U. S. 904]. Reported below: 316 F. Supp. 112.

Certiorari Granted. (See also No. 412, *ante*, p. 18.)

No. 544. COMMISSIONER OF INTERNAL REVENUE *v.* LINCOLN SAVINGS & LOAN ASSN. C. A. 9th Cir. *Certiorari* granted. Reported below: 422 F. 2d 90.

No. 336. NELSON, WARDEN *v.* O'NEIL. C. A. 9th Cir. Motion of respondent for leave to proceed *in forma pauperis* and *certiorari* granted. Reported below: 422 F. 2d 319.

No. 5029. ROMONTIO *v.* UNITED STATES. C. A. 10th Cir. Motion for leave to proceed *in forma pauperis* and *certiorari* granted. Reported below: 400 F. 2d 618.

No. 5338. APODACA ET AL. *v.* OREGON. Ct. App. Ore. Motion for leave to proceed *in forma pauperis* and *certiorari* granted. Reported below: — Ore. —, 462 P. 2d 691.

Certiorari Denied. (See also No. 300, *ante*, p. 23; and Nos. 5387 and 5531, *supra*.)

No. 339. SLAKMAN *v.* FLORIDA. Dist. Ct. App. Fla., 2d Dist. *Certiorari* denied. Reported below: 222 So. 2d 221.

No. 525. CABBLER ET AL. *v.* UNITED STATES. C. A. 4th Cir. *Certiorari* denied. Reported below: 429 F. 2d 577.

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No. 527. SMITH ET AL. *v.* HUMBLE OIL & REFINING Co., INC. C. A. 5th Cir. Certiorari denied. Reported below: 425 F. 2d 1287.

No. 528. SOUTHWEST FOREST INDUSTRIES, INC. *v.* WESTINGHOUSE ELECTRIC CORP. C. A. 9th Cir. Certiorari denied. Reported below: 422 F. 2d 1013.

No. 529. W. M. WEBB, INC., ET AL. *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 424 F. 2d 1070.

No. 530. MARTIN ET UX. *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 9th Cir. Certiorari denied. Reported below: 424 F. 2d 1368.

No. 531. CHAUFFEURS, TEAMSTERS & HELPERS LOCAL UNION No. 171 *v.* NATIONAL LABOR RELATIONS BOARD ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 425 F. 2d 157.

No. 532. MORGAN *v.* METRO-GOLDWYN-MAYER, INC. Ct. App. Ariz. Certiorari denied. Reported below: 11 Ariz. App. 223, 463 P. 2d 118.

No. 533. SOUTHERN STEVEDORING & CONTRACTING Co. *v.* D/S OVE SKOU. C. A. 5th Cir. Certiorari denied. Reported below: 365 F. 2d 341.

No. 535. WALLACE *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 539. LOUISIANA TRAILER SALES, INC. *v.* HODGSON, SECRETARY OF LABOR. C. A. 5th Cir. Certiorari denied. Reported below: 428 F. 2d 61.

No. 546. WONG PAK YAN ET AL. *v.* RINALDI, DISTRICT DIRECTOR OF IMMIGRATION AND NATURALIZATION SERVICE. C. A. 3d Cir. Certiorari denied. Reported below: 429 F. 2d 151.

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No. 537. *SNYDER v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 428 F. 2d 520.

No. 550. *SOUTHERN PACIFIC TRANSPORT Co. v. SHANNON*. C. A. 5th Cir. Certiorari denied. Reported below: 427 F. 2d 545.

No. 551. *AVEY ET AL. v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 428 F. 2d 1159.

No. 552. *STANDARD FORGE & AXLE Co., INC. v. NATIONAL LABOR RELATIONS BOARD*. C. A. 5th Cir. Certiorari denied. Reported below: 420 F. 2d 508 and 427 F. 2d 344.

No. 554. *THE ORIENTAL INVENTOR v. DILLON*. C. A. 5th Cir. Certiorari denied. Reported below: 426 F. 2d 977.

No. 556. *SACCO, AKA ROSSELLI v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 428 F. 2d 264.

No. 558. *CLOSE v. LEDERLE ET AL.* C. A. 1st Cir. Certiorari denied. Reported below: 424 F. 2d 988.

No. 559. *CALLAHAN MINING CORP. ET AL. v. COMMISSIONER OF INTERNAL REVENUE*; and

No. 731. *COMMISSIONER OF INTERNAL REVENUE v. CALLAHAN MINING CORP. ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 428 F. 2d 721.

No. 560. *CITY OF CHATTANOOGA ET AL. v. LOUISVILLE & NASHVILLE RAILROAD Co.* C. A. 6th Cir. Certiorari denied. Reported below: 427 F. 2d 1154.

No. 562. *BAILLES, TRUSTEE IN BANKRUPTCY v. FIRST NATIONAL BANK OF MOBILE*. C. A. 5th Cir. Certiorari denied. Reported below: 426 F. 2d 160.

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No. 563. *UNIVERSAL CIGAR CORP. v. NATIONAL LABOR RELATIONS BOARD*. C. A. 5th Cir. Certiorari denied. Reported below: 425 F. 2d 867.

No. 564. *GREATER LAFOURCHE PORT COMMISSION v. TENNECO, INC.* C. A. 5th Cir. Certiorari denied. Reported below: 427 F. 2d 1061.

No. 566. *MORISON v. GENERAL MOTORS CORP.* C. A. 5th Cir. Certiorari denied. Reported below: 428 F. 2d 952.

No. 568. *HOFFMAN v. ILLINOIS*. Sup. Ct. Ill. Certiorari denied. Reported below: 45 Ill. 2d 221, 258 N. E. 2d 326.

No. 571. *JACKSONVILLE TERMINAL Co. v. HODGE, ADMINISTRATRIX*. Sup. Ct. Fla. Certiorari denied. Reported below: 234 So. 2d 645.

No. 572. *COUSINS v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 429 F. 2d 1271.

No. 575. *HAYNEY ET AL. v. NEW JERSEY*. Super. Ct. N. J. Certiorari denied.

No. 580. *MAKEKAU ET AL. v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 429 F. 2d 1403.

No. 581. *PANAGIOTOPOULOS v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 430 F. 2d 148.

No. 585. *COOPER AGENCY v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 422 F. 2d 1331.

No. 5154. *BELLOMY ET AL. v. UNION CONCRETE PIPE Co.* C. A. 4th Cir. Certiorari denied. Reported below: 420 F. 2d 1382.

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No. 5134. *CAMPBELL v. CALIFORNIA DEPARTMENT OF CORRECTIONS ET AL.* Sup. Ct. Cal. Certiorari denied.

No. 5165. *MOSLEY v. CALIFORNIA.* Sup. Ct. Cal. Certiorari denied. Reported below: 1 Cal. 3d 913, 464 P. 2d 473.

No. 5198. *LUCAS v. KENTUCKY.* Ct. App. Ky. Certiorari denied.

No. 5261. *HIGGINS v. WAINWRIGHT, CORRECTIONS DIRECTOR.* C. A. 5th Cir. Certiorari denied. Reported below: 424 F. 2d 177.

No. 5270. *MARTINEZ v. CRAVEN, WARDEN.* C. A. 9th Cir. Certiorari denied.

No. 5345. *WOODS v. KROPP, WARDEN.* C. A. 6th Cir. Certiorari denied.

No. 5351. *LEWIS v. UNITED STATES.* C. A. 8th Cir. Certiorari denied. Reported below: 423 F. 2d 457.

No. 5383. *GRESHAM v. SMITH, WARDEN.* Sup. Ct. Ga. Certiorari denied. Reported below: 226 Ga. 290, 174 S. E. 2d 420.

No. 5454. *WILLIAMS v. PERINI, CORRECTIONAL SUPERINTENDENT.* C. A. 6th Cir. Certiorari denied. Reported below: 426 F. 2d 241.

No. 5458. *CHIPLEY v. ROBERTS ET AL.* Sup. Ct. S. C. Certiorari denied.

No. 5467. *ANDERSON v. UNITED STATES.* C. A. 6th Cir. Certiorari denied. Reported below: 427 F. 2d 165.

No. 5513. *BRIDGES v. UNITED STATES.* C. A. 9th Cir. Certiorari denied. Reported below: 427 F. 2d 544.

No. 5547. *HOLMES v. CALIFORNIA.* Ct. App. Cal., 3d App. Dist. Certiorari denied.

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No. 5549. ALLEN *v.* PERINI, CORRECTIONAL SUPERINTENDENT. C. A. 6th Cir. Certiorari denied. Reported below: 424 F. 2d 134.

No. 5551. CORTEZ *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 425 F. 2d 453.

No. 5554. BUNKER *v.* NELSON, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 5566. YOUNG *v.* ZELKER, WARDEN. C. A. 2d Cir. Certiorari denied.

No. 5567. JONES *v.* MARYLAND. Ct. Sp. App. Md. Certiorari denied. Reported below: 9 Md. App. 455, 265 A. 2d 271.

No. 5571. CAPITOLI *v.* WAINWRIGHT, CORRECTIONS DIRECTOR. C. A. 5th Cir. Certiorari denied. Reported below: 426 F. 2d 868.

No. 5578. DANIEL *v.* RICHARDSON, SECRETARY OF HEALTH, EDUCATION, AND WELFARE. C. A. 4th Cir. Certiorari denied. Reported below: 427 F. 2d 896.

No. 5581. PEPITONE *v.* CALIFORNIA ET AL. C. A. 9th Cir. Certiorari denied.

No. 5582. SPOSATO *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 5583. HAROLD *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 425 F. 2d 721.

No. 5584. MARSHALL *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 428 F. 2d 464.

No. 5588. FALANGE *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 426 F. 2d 930.

No. 5590. CAMPBELL *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

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No. 5592. *ZUCKER v. FIELD, MEN'S COLONY SUPERINTENDENT*. C. A. 9th Cir. Certiorari denied.

No. 5593. *WILLIAMS v. UNITED STATES*. C. A. 9th Cir. Certiorari denied.

No. 5595. *SMITH v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 428 F. 2d 1183.

No. 5596. *ROBINSON v. CALIFORNIA*. Ct. App. Cal., 5th App. Dist. Certiorari denied. Reported below: 6 Cal. App. 3d 448, 86 Cal. Rptr. 56.

No. 5597. *HARTLEY ET AL. v. HARTLEY, EXECUTRIX*. App. Div., Sup. Ct. N. Y., 1st Jud. Dept. Certiorari denied.

No. 5598. *WHITE v. PERINI, CORRECTIONAL SUPERINTENDENT*. C. A. 6th Cir. Certiorari denied.

No. 5599. *FRANCIS v. CALIFORNIA*. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 5601. *OVERMAN v. NORTH CAROLINA*. C. A. 4th Cir. Certiorari denied.

No. 5603. *SEARLES v. MINNESOTA*. C. A. 8th Cir. Certiorari denied. Reported below: 428 F. 2d 1188.

No. 5605. *LAMIA v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 429 F. 2d 373.

No. 5606. *LEVIN v. PROBATION DEPARTMENT OF THE CITY OF NEW YORK*. C. A. 2d Cir. Certiorari denied.

No. 5607. *SMITH v. RICHARDSON, SECRETARY OF HEALTH, EDUCATION, AND WELFARE*. C. A. 4th Cir. Certiorari denied. Reported below: 426 F. 2d 814.

No. 5608. *KREPEL v. CALIFORNIA*. Sup. Ct. Cal. Certiorari denied.

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No. 5609. *ALEXANDER v. ATTORNEY GENERAL OF CALIFORNIA ET AL.* C. A. 9th Cir. Certiorari denied.

No. 5612. *CARSON v. RICHARDSON, SECRETARY OF HEALTH, EDUCATION, AND WELFARE.* C. A. 4th Cir. Certiorari denied. Reported below: 424 F. 2d 554.

No. 5613. *PHIPPS v. FOLLETTE, WARDEN.* C. A. 2d Cir. Certiorari denied. Reported below: 428 F. 2d 912.

No. 5614. *FEELEY v. CRAVEN, WARDEN.* C. A. 9th Cir. Certiorari denied.

No. 5619. *HAMMOND v. MARYLAND.* Ct. Sp. App. Md. Certiorari denied.

No. 5620. *ADAMS v. MICHIGAN.* Sup. Ct. Mich. Certiorari denied.

No. 5621. *PARK v. CALIFORNIA ADULT AUTHORITY ET AL.* C. A. 9th Cir. Certiorari denied.

No. 5622. *FELDER v. UNITED STATES.* C. A. 2d Cir. Certiorari denied. Reported below: 429 F. 2d 534.

No. 5623. *PILAPIL v. IMMIGRATION AND NATURALIZATION SERVICE.* C. A. 10th Cir. Certiorari denied. Reported below: 424 F. 2d 6.

No. 5624. *ROLLINS v. CALIFORNIA.* Ct. App. Cal., 1st App. Dist. Certiorari denied. Reported below: 6 Cal. App. 3d 428, 85 Cal. Rptr. 908.

No. 5625. *CHAFAs v. MOSELEY, WARDEN.* C. A. 8th Cir. Certiorari denied.

No. 5626. *CHUTE v. CALIFORNIA.* Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 5628. *HAMM v. MASSACHUSETTS.* Sup. Jud. Ct. Mass. Certiorari denied. Reported below: — Mass. —, 258 N. E. 2d 311.

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No. 5629. *RUCKER v. NEIL, WARDEN*. C. A. 6th Cir. Certiorari denied.

No. 5631. *STEBBINS v. ALLSTATE INSURANCE COMPANIES ET AL.* C. A. D. C. Cir. Certiorari denied.

No. 5632. *FLETCHER v. MAXWELL ET AL.* C. A. 3d Cir. Certiorari denied.

No. 5635. *COLLIS ET AL. v. UNITED STATES*. C. A. 9th Cir. Certiorari denied.

No. 5636. *MARSHALL v. UNITED STATES*. C. A. D. C. Cir. Certiorari denied. Reported below: — U. S. App. D. C. —, 440 F. 2d 195.

No. 5637. *RUELAZ v. NELSON, WARDEN*. C. A. 9th Cir. Certiorari denied.

No. 5640. *WILLIAMS v. UNITED STATES*. C. A. 7th Cir. Certiorari denied.

No. 5641. *CHRISTIAN v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 427 F. 2d 1299.

No. 5642. *WILSON v. BRAYER*. C. A. 4th Cir. Certiorari denied.

No. 5643. *HICKS v. COX, PENITENTIARY SUPERINTENDENT*. C. A. 4th Cir. Certiorari denied.

No. 5644. *SANTIAGO v. CHARGE ACCOUNT CREDIT CORP.* App. Div., Sup. Ct. N. Y., 1st Jud. Dept. Certiorari denied.

No. 5646. *JONES v. UNITED STATES*. C. A. 6th Cir. Certiorari denied.

No. 5650. *WILLIAMS v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 427 F. 2d 1031.

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No. 5649. *DAVIDSON v. UNITED STATES*. C. A. 1st Cir. Certiorari denied. Reported below: 428 F. 2d 461.

No. 5653. *DOCKERY v. CALIFORNIA*. Sup. Ct. Cal. Certiorari denied.

No. 5654. *PITTS v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 428 F. 2d 534.

No. 5655. *KREAGER v. INDUSTRIAL COMMISSIONER OF NEW YORK*. App. Div., Sup. Ct. N. Y., 3d Jud. Dept. Certiorari denied.

No. 5656. *WATKINS v. UNITED STATES ET AL.* C. A. 8th Cir. Certiorari denied. Reported below: 429 F. 2d 5.

No. 5657. *BEEDLE v. CALIFORNIA*. Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 5658. *THOGMARTIN v. UNITED STATES*. C. A. 10th Cir. Certiorari denied. Reported below: 430 F. 2d 1178.

No. 5659. *McCLOUD v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 427 F. 2d 242.

No. 5660. *PARKER v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 428 F. 2d 488.

No. 332. *WILHITE v. CITY OF MONROE*. Sup. Ct. La. Certiorari denied. MR. JUSTICE DOUGLAS is of the opinion that certiorari should be granted. Reported below: 255 La. 838, 233 So. 2d 535.

No. 555. *BIGMAN v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. MR. JUSTICE DOUGLAS is of the opinion that certiorari should be granted. Reported below: 429 F. 2d 13.

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No. 5251. *JACKSON v. INTERNATIONAL HARVESTER CO.* C. A. 7th Cir. Certiorari denied. MR. JUSTICE DOUGLAS is of the opinion that certiorari should be granted. Reported below: 424 F. 2d 1220.

No. 5258. *ROSS v. NEW YORK.* App. Div., Sup. Ct. N. Y., 4th Jud. Dept. Certiorari denied. MR. JUSTICE DOUGLAS is of the opinion that certiorari should be granted.

No. 5580. *THURMAN 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 988.

No. 5627. *UPTGRAFT ET AL. v. CALIFORNIA.* App. Dept., Super. Ct. Cal., County of Los Angeles. Certiorari denied. MR. JUSTICE DOUGLAS is of the opinion that certiorari should be granted. Reported below: 8 Cal. App. 3d Supp. 1, 87 Cal. Rptr. 459.

No. 432. *UNITED ORDER OF AMERICAN BRICKLAYERS & STONE MASONS, LOCAL 21 v. WATERS ET AL.*; and

No. 454. *INTERNATIONAL HARVESTER CO. v. WATERS ET AL.* C. A. 7th Cir. Motion to dispense with printing respondents' brief granted. Certiorari denied. Reported below: 427 F. 2d 476.

No. 520. *CIMINI v. UNITED STATES*; and

No. 521. *O'MALLEY v. UNITED STATES.* C. A. 6th Cir. Certiorari denied. MR. JUSTICE BRENNAN and MR. JUSTICE WHITE are of the opinion that certiorari should be granted. Reported below: 427 F. 2d 129.

No. 553. *MARTIN, DBA SILKO NEW IMPROVED PRODUCTS Co. v. CROWN ZELLERBACH CORP.* C. C. P. A. Motion for leave to supplement petition granted. Certiorari denied. Reported below: 57 C. C. P. A. (Pat.) 968, 422 F. 2d 918.

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No. 346. *BETO, CORRECTIONS DIRECTOR v. GALLOWAY*. C. A. 5th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 421 F. 2d 284.

No. 5321. *HOWARD v. SIGLER, WARDEN*. C. A. 8th Cir. Certiorari denied. MR. JUSTICE BLACKMUN took no part in the consideration or decision of this petition.

No. 5377. *KAMSLER v. BELLOWS, BELLOWS & MAGIDSON*. C. A. 7th Cir. Motion to strike brief for respondent and certiorari denied.

No. 5610. *HILL v. UNITED STATES*. C. A. D. C. Cir. Certiorari denied. MR. JUSTICE DOUGLAS took no part in the consideration or decision of this petition.

Rehearing Denied

No. 2053, Misc., October Term, 1969. *BOWMAN v. UNITED STATES*, 398 U. S. 967. Motion for leave to file petition for rehearing denied. MR. JUSTICE MARSHALL took no part in the consideration or decision of this motion.

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Miscellaneous Orders

No. 87. *UNITED STATES v. DISTRICT COURT IN AND FOR THE COUNTY OF EAGLE ET AL.*; and

No. 812. *UNITED STATES v. DISTRICT COURT IN AND FOR WATER DIVISION No. 5 ET AL.* Sup. Ct. Colo. Application of the Solicitor General, consented to by all parties concerned, for stay of Colorado state court proceedings before the District Court in and for Water Division No. 5, presented to MR. JUSTICE WHITE, and by him referred to the Court, granted insofar as such proceedings involve an adjudication of the rights of the United States, pending decision of this Court in No. 87 [certiorari granted, 397 U. S. 1005] and in No. 812 presently pending on petition for writ of certiorari.

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No. —. FERRELL *v.* SELECTIVE SERVICE LOCAL BOARD No. 38 OF WALNUT RIDGE, ARKANSAS, ET AL. C. A. 2d Cir. Application for stay of induction and recall of mandate of the Court of Appeals for the Second Circuit, presented to MR. JUSTICE DOUGLAS, and by him referred to the Court, denied. Reported below: 434 F. 2d 686.

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Affirmed on Appeal

No. 5676. MACIAS ET AL. *v.* RICHARDSON, SECRETARY OF HEALTH, EDUCATION, AND WELFARE, ET AL. Affirmed on appeal from D. C. N. D. Cal. Reported below: 324 F. Supp. 1252.

Appeals Dismissed

No. 584. PYE *v.* STATE HIGHWAY DEPARTMENT OF GEORGIA ET AL. Appeal from Sup. Ct. Ga. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied. Reported below: 226 Ga. 389, 175 S. E. 2d 510.

No. 592. MONTGOMERY WARD & Co., INC. *v.* FRANCHISE TAX BOARD OF CALIFORNIA. Appeal from Ct. App. Cal., 1st App. Dist., dismissed for want of substantial federal question. Reported below: 6 Cal. App. 3d 149, 85 Cal. Rptr. 890.

Miscellaneous Orders

No. 336. NELSON, WARDEN *v.* O'NEIL. C. A. 9th Cir. [Certiorari granted, *ante*, p. 901.] Application of respondent for release on personal recognizance and separate petition for writ of habeas corpus presented to MR. JUSTICE DOUGLAS, and by him referred to the Court, denied.

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No. 35, Orig. UNITED STATES *v.* MAINE ET AL. Motion of State of Florida for severance referred to Special Master. MR. JUSTICE DOUGLAS took no part in the consideration or decision of this motion. [For earlier orders herein, see, *e. g.*, 398 U. S. 947.]

No. 28. SANKS ET AL. *v.* GEORGIA ET AL. Appeal from Sup. Ct. Ga. [Probable jurisdiction noted, 395 U. S. 974; restored to calendar, 399 U. S. 922.] Further consideration of appellees' suggestion of mootness postponed to hearing of case on the merits.

No. 89. 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]; and

No. 153. TILTON ET AL. *v.* RICHARDSON, SECRETARY OF HEALTH, EDUCATION, AND WELFARE, ET AL. Appeal from D. C. Conn. [Probable jurisdiction noted, *sub nom.* *Tilton v. Finch*, 399 U. S. 904.] Motion of National Jewish Commission on Law & Public Affairs et al. for leave to file a brief as *amici curiae* granted.

No. 128. IN RE BURRUS ET AL. Sup. Ct. N. C. [Certiorari granted, 397 U. S. 1036.] Motion for leave for two attorneys to participate in oral argument on behalf of respondent, State of North Carolina, granted.

No. 154. JAMES ET AL. *v.* VALTIERRA ET AL.; and

No. 226. SHAFFER *v.* VALTIERRA ET AL. Appeals from D. C. N. D. Cal. [Probable jurisdiction noted, No. 154, 398 U. S. 949, No. 226, 399 U. S. 925.] Motions of American Jewish Congress et al., NAACP Legal Defense & Educational Fund, Inc., et al., and National Urban Coalition et al. for leave to file briefs as *amici curiae* denied. MR. JUSTICE BLACK and MR. JUSTICE BRENNAN are of the opinion that the motions should be granted. MR. JUSTICE DOUGLAS took no part in the consideration or decision of these motions.

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No. 360. GROVE PRESS, INC., ET AL. *v.* FLASK ET AL. Appeal from D. C. N. D. Ohio. Motion of Eve Productions, Inc., for leave to file a brief as *amicus curiae* granted. MR. JUSTICE DOUGLAS took no part in the consideration or decision of this motion.

No. 5394. GRIZZELL *v.* WAINWRIGHT, CORRECTIONS DIRECTOR. Motion for leave to file petition for writ of habeas corpus denied. MR. JUSTICE DOUGLAS is of the opinion that the motion should be granted.

No. 590. MUNCASTER *v.* DEMENT, U. S. ATTORNEY, ET AL.;

No. 5271. FLETCHER *v.* ROSENBERG, U. S. DISTRICT JUDGE;

No. 5506. WILEY *v.* BROWN, CHIEF JUDGE, U. S. COURT OF APPEALS; and

No. 5647. KAMSLER *v.* KERNER, U. S. DISTRICT JUDGE, ET AL. Motions for leave to file petitions for writs of mandamus denied.

Certiorari Granted

No. 515. UNITED STATES *v.* SOUTHERN UTE TRIBE OR BAND OF INDIANS. Ct. Cl. Certiorari granted. Reported below: 191 Ct. Cl. 1, 423 F. 2d 346.

No. 600. PEREZ *v.* UNITED STATES. C. A. 2d Cir. Certiorari granted. Reported below: 426 F. 2d 1073.

Certiorari Denied. (See also No. 584, *supra.*)

No. 587. LUTTRELL *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 423 F. 2d 1197.

No. 591. LEPRINO CHEESE CO., DBA LEPRINO CHEESE MANUFACTURING CO. *v.* NATIONAL LABOR RELATIONS BOARD. C. A. 10th Cir. Certiorari denied. Reported below: 424 F. 2d 184.

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No. 589. *PORT CONSTRUCTION CO. v. VIRGIN ISLANDS HOUSING AUTHORITY*. C. A. 3d Cir. Certiorari denied. Reported below: 426 F. 2d 271.

No. 594. *RASTELLI v. NEW YORK*. App. Div., Sup. Ct. N. Y., 2d Jud. Dept. Certiorari denied.

No. 595. *GRIMALDI v. NEW YORK*. App. Div., Sup. Ct. N. Y., 2d Jud. Dept. Certiorari denied.

No. 597. *BADA CO. v. MONTGOMERY WARD & CO., INC., ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 426 F. 2d 8.

No. 598. *SEXTON v. JACKSON READY-MIX CONCRETE*. Sup. Ct. Miss. Certiorari denied. Reported below: 235 So. 2d 267.

No. 599. *LUCKENBACH OVERSEAS CORP. v. COMPTON*. C. A. 2d Cir. Certiorari denied. Reported below: 425 F. 2d 1130.

No. 605. *GREEN v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 429 F. 2d 557.

No. 607. *DAVIS v. MARYLAND*. Ct. Sp. App. Md. Certiorari denied.

No. 608. *BAUM v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 427 F. 2d 215.

No. 613. *SEVER-WILLIAMS CO., INC., ET AL. v. BOARD OF EDUCATION OF CHILLICOTHE CITY SCHOOL DISTRICT*. Sup. Ct. Ohio. Certiorari denied. Reported below: 22 Ohio St. 2d 107, 258 N. E. 2d 605.

No. 616. *STEINBRECHER v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 427 F. 2d 530.

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No. 879. *BEAUCHAMP ET AL. v. CITY OF OKLAHOMA CITY ET AL.* Sup. Ct. Okla. Certiorari denied. Reported below: 477 P. 2d 51.

No. 5162. *COCKRELL v. FLORIDA.* Sup. Ct. Fla. Certiorari denied. Reported below: 229 So. 2d 587.

No. 5166. *WILLIAMS v. MARYLAND.* C. A. 4th Cir. Certiorari denied.

No. 5190. *FOX ET UX. v. LENNON.* App. Dept., Super. Ct. Cal., County of Los Angeles. Certiorari denied.

No. 5224. *DENMARK v. LAVALLEE, WARDEN.* C. A. 2d Cir. Certiorari denied. Reported below: 426 F. 2d 232.

No. 5246. *RITCHIE v. WISCONSIN.* Sup. Ct. Wis. Certiorari denied. Reported below: 46 Wis. 2d 47, 174 N. W. 2d 504.

No. 5290. *SMITH v. ANDERSON ET AL.* C. A. 3d Cir. Certiorari denied.

No. 5305. *HENRY v. PERINI, CORRECTIONAL SUPERINTENDENT.* C. A. 6th Cir. Certiorari denied.

No. 5361. *LEDENT v. NEBRASKA.* Sup. Ct. Neb. Certiorari denied. Reported below: 185 Neb. 380, 176 N. W. 2d 21.

No. 5373. *DIDDLEMEYER v. MISSISSIPPI.* Sup. Ct. Miss. Certiorari denied. Reported below: 234 So. 2d 292.

No. 5385. *WARD v. PAGE, WARDEN.* C. A. 10th Cir. Certiorari denied. Reported below: 424 F. 2d 491.

No. 5399. *CROOKS v. INDIANA.* Sup. Ct. Ind. Certiorari denied.

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No. 5501. *BLAKE v. NEW YORK*. Ct. App. N. Y. Certiorari denied.

No. 5630. *ARZONICA v. CASSIDY ET AL.* C. A. 3d Cir. Certiorari denied.

No. 5661. *MARTIN v. WAINWRIGHT, CORRECTIONS DIRECTOR*. C. A. 5th Cir. Certiorari denied. Reported below: 428 F. 2d 356.

No. 5662. *HENDRICKS v. OHIO*. Sup. Ct. Ohio. Certiorari denied.

No. 5668. *WINBUSH v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 428 F. 2d 357.

No. 5670. *THOMPSON v. UNITED STATES*. Ct. Cl. Certiorari denied. Reported below: 186 Ct. Cl. 615, 405 F. 2d 1239.

No. 5672. *CARR v. SIMPSON, WARDEN*. C. A. 5th Cir. Certiorari denied. Reported below: 429 F. 2d 37.

No. 5673. *LOUIE v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 426 F. 2d 1398.

No. 5677. *YEE v. CALIFORNIA*. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 5679. *NEARIS, TRUSTEE v. CITY OF GLOUCESTER ET AL.* Sup. Jud. Ct. Mass. Certiorari denied.

No. 5680. *GILHART v. UNITED STATES*. Ct. Cl. Certiorari denied.

No. 5683. *SMITH v. MICHIGAN*. Sup. Ct. Mich. Certiorari denied.

No. 5684. *BAITY v. TEXAS*. Ct. Crim. App. Tex. Certiorari denied. Reported below: 455 S. W. 2d 305.

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No. 5685. *BATTAGLIA v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 428 F. 2d 957.

No. 5686. *HURD v. HURD*. Sup. Jud. Ct. Mass. Certiorari denied.

No. 5688. *KING v. NEW JERSEY*. Super. Ct. N. J. Certiorari denied.

No. 5689. *WASHINGTON v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 429 F. 2d 409.

No. 5690. *KIRBY v. BETO, CORRECTIONS DIRECTOR*. C. A. 5th Cir. Certiorari denied. Reported below: 426 F. 2d 258.

No. 5691. *JACKSON v. PERINI, CORRECTIONAL SUPERINTENDENT*. C. A. 6th Cir. Certiorari denied.

No. 262. *CRICHTON v. MCGEHEE ET AL.* Ct. App. La., 2d Cir. Certiorari denied. MR. JUSTICE DOUGLAS is of the opinion that certiorari should be granted. Reported below: 232 So. 2d 109.

No. 493. *COLLINS v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. MR. JUSTICE DOUGLAS is of the opinion that certiorari should be granted. Reported below: 426 F. 2d 765.

No. 5499. *STRADER v. NORTH CAROLINA*. Ct. App. N. C. Certiorari denied. MR. JUSTICE DOUGLAS is of the opinion that certiorari should be granted.

No. 586. *PENNSYLVANIA v. WHITING*. Sup. Ct. Pa. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 439 Pa. 205, 266 A. 2d 738.

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No. 596. *FELDSTEIN v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. MR. JUSTICE BLACK and MR. JUSTICE HARLAN are of the opinion that certiorari should be granted. Reported below: 429 F. 2d 1092.

No. 5633. *DARGAN v. NEW YORK*. Ct. App. N. Y. Certiorari denied. MR. JUSTICE BLACK and MR. JUSTICE DOUGLAS are of the opinion that certiorari should be granted. Reported below: 27 N. Y. 2d 100, 261 N. E. 2d 633.

No. 5663. *NAZARIO v. NEW YORK*. App. Term, Sup. Ct. N. Y., 1st Jud. Dept. Certiorari denied. MR. JUSTICE BLACK and MR. JUSTICE DOUGLAS are of the opinion that certiorari should be granted.

No. 5671. *CANTRELL v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. MR. JUSTICE BLACKMUN took no part in the consideration or decision of this petition.

Rehearing Denied

No. 319. *MOGULNICKI v. CONNECTICUT*, *ante*, p. 826;
No. 477. *RKO GENERAL, INC. v. NEWMARK*, *ante*,
p. 854;

No. 5148. *BRASWELL v. FLORIDA*, *ante*, p. 873;

No. 5213. *LAMBRIGHT v. CRAVEN, WARDEN*, *ante*,
p. 837;

No. 5244. *ALERS v. MUNICIPALITY OF SAN JUAN
ET AL.*, *ante*, p. 839;

No. 5282. *DVORSKY v. UNITED STATES*, *ante*, p. 840;

No. 5322. *GILL v. UNITED STATES*, *ante*, p. 851; and

No. 5494. *KAMSLER v. HOFFMAN*, U. S. DISTRICT
JUDGE, *ante*, p. 817. Petitions for rehearing denied.

No. 5354. *RUDERER v. JOHNSON ET AL.*, *ante*, p. 860.
Petition for rehearing denied. MR. JUSTICE BLACKMUN
took no part in the consideration or decision of this
petition.

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Assignment Order

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 Eighth Circuit during the week of January 18, 1971, 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.

NOVEMBER 19, 1970

Dismissal Under Rule 60

No. 890. ADKINS *v.* UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA ET AL. C. A. 9th Cir. Petition for writ of certiorari dismissed pursuant to Rule 60 of the Rules of this Court. Reported below: 431 F. 2d 859.

NOVEMBER 20, 1970

Miscellaneous Order

No. —. CITIZENS TO PRESERVE OVERTON PARK, INC., ET AL. *v.* VOLPE, SECRETARY, DEPARTMENT OF TRANSPORTATION, ET AL. C. A. 6th Cir. Application for stay presented to MR. JUSTICE STEWART, and by him referred to the Court, set for argument on Monday, December 7. Typewritten briefs shall be filed by Thursday, December 3.

NOVEMBER 23, 1970

Affirmed on Appeal

No. 631. SOUTHERN PACIFIC TRANSPORTATION Co. *v.* UNITED STATES ET AL. Affirmed on appeal from D. C. Colo. Reported below: 312 F. Supp. 329.

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No. 626. *STERRETT, ADMINISTRATOR, DEPARTMENT OF PUBLIC WELFARE OF INDIANA, ET AL. v. GRUBB ET AL.* Motion of appellee Grubb for leave to proceed *in forma pauperis* granted. Affirmed on appeal from D. C. N. D. Ind. MR. JUSTICE BLACK and MR. JUSTICE HARLAN dissent. They are of the opinion that probable jurisdiction should be noted and the case set for oral argument. Reported below: 315 F. Supp. 990.

Appeals Dismissed

No. 5697. *HERRING v. R. L. MATHIS CERTIFIED DAIRY Co. ET AL.* Appeal from Sup. Ct. Ga. dismissed for want of a substantial federal question.

No. 5724. *PORTER ET AL. v. NEW YORK.* Appeal from App. Term, Sup. Ct. N. Y., 1st Jud. Dept., dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied.

Reversed or Vacated, and Remanded on Appeal. (See Nos. 541 and 543, *ante*, p. 41; and No. 1385, October Term, 1969, *infra*.)

*Certiorari Granted—Affirmed**

No. 508. *CALIFORNIA v. PINKUS.* C. A. 9th Cir. Certiorari granted and judgment affirmed by an equally divided Court. MR. JUSTICE DOUGLAS took no part in the consideration or decision of this petition. Reported below: 429 F. 2d 416.

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

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*Certiorari Granted—Reversed or Vacated, and Remanded.** (See also No. 602, *ante*, p. 45.)

No. 5398. *HEMPHILL v. MOYNAHAN*. C. A. 6th Cir. Motion for leave to proceed *in forma pauperis* and certiorari granted. Judgment vacated and case remanded to United States Court of Appeals for the Sixth Circuit for further consideration in light of *Price v. Georgia*, 398 U. S. 323.

*Other Summary Disposition**

No. 1385, October Term, 1969. *HUTCHERSON ET AL. v. LEHTIN ET AL.*, 399 U. S. 522. Petition for rehearing granted and order of June 29, 1970, vacated. Judgment recalled and a new judgment entered vacating the judgment of the United States District Court for the Northern District of California and case remanded to that court so that it may enter a fresh order dismissing the complaint, thus affording appellants an opportunity to take a timely appeal to the United States Court of Appeals for the Ninth Circuit.

Miscellaneous Orders

No. 256. *FIRST MERCANTILE CONSUMER DISCOUNT CO. v. STEFANELLI ET AL.* Treating the petition for rehearing as a motion to amend the order of this Court dated October 12, 1970 [*ante*, p. 808], motion granted. Order amended to read, "The appeal is dismissed for want of a final judgment."

No. 30. *UNITED STATES v. HARRIS*. C. A. 6th Cir. [Certiorari granted, 397 U. S. 905.] Motion of Americans for Effective Law Enforcement, Inc., for leave to file a brief as *amicus curiae* granted.

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

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No. 40, Orig. PENNSYLVANIA *v.* NEW YORK ET AL. [Motion to file complaint granted, 398 U. S. 956.] Motion of State of California for leave to intervene as a party plaintiff referred to Special Master for his recommendation.

No. 43. FAIRCLOTH, ATTORNEY GENERAL OF FLORIDA, ET AL. *v.* LAZARUS. Appeal from D. C. S. D. Fla. Motion of Stephen Hillardt and Timothy Green for leave to proceed *in forma pauperis* granted and motions for leave to intervene as parties appellee and to expedite appeal denied. Reported below: 301 F. Supp. 266.

No. 59. NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC. *v.* SECURITIES AND EXCHANGE COMMISSION ET AL. C. A. D. C. Cir. [Certiorari granted, 397 U. S. 986]; and

No. 61. INVESTMENT COMPANY INSTITUTE ET AL. *v.* CAMP, COMPTROLLER OF THE CURRENCY, ET AL. C. A. D. C. Cir. [Certiorari granted, 397 U. S. 986.] Motion to reverse sequence of oral argument or alternative request that cases be consolidated denied. THE CHIEF JUSTICE took no part in the consideration or decision of this motion.

No. 83. BYRNE, DISTRICT ATTORNEY OF SUFFOLK COUNTY, ET AL. *v.* KARALEXIS ET AL. Appeal from D. C. Mass. [Restored to calendar, 399 U. S. 922.] Motion of appellees for leave to file supplemental memorandum, after argument, granted. MR. JUSTICE DOUGLAS took no part in the consideration or decision of this motion.

No. 206. HARRIS *v.* NEW YORK. Ct. App. N. Y. [Certiorari granted, 398 U. S. 937.] Motion of Frank S. Hogan for leave to participate in oral argument as *amicus curiae* granted; counsel for respondent will cede 15 minutes of his time for that purpose.

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No. 507. CALIFORNIA DEPARTMENT OF HUMAN RESOURCES DEVELOPMENT ET AL. *v.* JAVA ET AL. Appeal from D. C. N. D. Cal. [Probable jurisdiction noted, *ante*, p. 877.] Motion of Southern California Edison Co. et al. for leave to intervene as parties appellant denied without prejudice to filing of brief as *amici curiae* with consents of the parties, or a motion for leave to file a brief as *amici curiae* if consents are not granted.

Certiorari Granted. (See Nos. 541 and 543, *ante*, p. 41; No. 602, *ante*, p. 45; and Nos. 508 and 5398, *supra*.)

Certiorari Denied. (See also No. 5724, *supra*.)

No. 246. MUIR *v.* FLORIDA. Dist. Ct. App. Fla., 1st Dist. *Certiorari* denied. Reported below: 232 So. 2d 225.

No. 377. PERATI *v.* SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA. Ct. App. Cal., 1st App. Dist. *Certiorari* denied.

No. 567. GARBER *v.* UNITED STATES;

No. 574. FLOREA *v.* UNITED STATES;

No. 576. KAUFMAN *v.* UNITED STATES; and

No. 719. BURNS *v.* UNITED STATES. C. A. 2d Cir. *Certiorari* denied. Reported below: 429 F. 2d 240.

No. 578. FIRST NATIONAL REALTY CORP. *v.* JAVINS ET AL. C. A. D. C. Cir. *Certiorari* denied. Reported below: 138 U. S. App. D. C. 369, 428 F. 2d 1071.

No. 617. CHEMITHON CORP. *v.* PROCTER & GAMBLE Co. ET AL. C. A. 4th Cir. *Certiorari* denied. Reported below: See 287 F. Supp. 291.

No. 619. CONSUMERS POWER Co. *v.* UNITED STATES. C. A. 6th Cir. *Certiorari* denied. Reported below: 427 F. 2d 78.

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No. 618. INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 450, AFL-CIO *v.* CONSTRUCTION EMPLOYERS' ASSOCIATION OF TEXAS ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 427 F. 2d 230.

No. 622. LYNCH, AS ATTORNEY GENERAL OF CALIFORNIA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 425 F. 2d 358.

No. 623. TEXACO INC. *v.* BEALMER ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 427 F. 2d 885.

No. 625. BIRMELIN *v.* BOYMER ET UX. Dist. Ct. App. Fla., 3d Dist. Certiorari denied. Reported below: 227 So. 2d 358.

No. 627. THRIFTIMART, INC., DBA SMART & FINAL IRIS Co., ET AL. *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 429 F. 2d 1006.

No. 628. KAZUBOWSKI *v.* KAZUBOWSKI. Sup. Ct. Ill. Certiorari denied. Reported below: 45 Ill. 2d 405, 259 N. E. 2d 282.

No. 629. GILDAY *v.* SCAFATI, CORRECTIONAL SUPERINTENDENT. C. A. 1st Cir. Certiorari denied. Reported below: 428 F. 2d 1027.

No. 634. REYNOLDS *v.* GALBREATH ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 427 F. 2d 719.

No. 635. P. F. COLLIER & SON CORP. ET AL. *v.* FEDERAL TRADE COMMISSION. C. A. 6th Cir. Certiorari denied. Reported below: 427 F. 2d 261.

No. 637. PROBST *v.* UTE INDIAN TRIBE OF THE UINTAH AND OURAY RESERVATION ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 428 F. 2d 491.

No. 642. MENGARELLI *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 426 F. 2d 985.

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No. 636. *McCREA, EXECUTRIX, ET AL. v. HARRIS COUNTY HOUSTON SHIP CHANNEL NAVIGATION DISTRICT ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 423 F. 2d 605.

No. 638. *MOOSMAN, ADMINISTRATRIX v. UTE INDIAN TRIBE OF THE UINTAH AND OURAY RESERVATION ET AL.* C. A. 10th Cir. Certiorari denied. Reported below: 428 F. 2d 491.

No. 5205. *CARPENTER v. MISSOURI.* Sup. Ct. Mo. Certiorari denied. Reported below: 449 S. W. 2d 584.

No. 5207. *BAUER v. CALIFORNIA.* Sup. Ct. Cal. Certiorari denied. Reported below: 1 Cal. 3d 368, 461 P. 2d 637.

No. 5312. *RHODES v. TEXAS.* Ct. Crim. App. Tex. Certiorari denied. Reported below: 450 S. W. 2d 329.

No. 5334. *CARTER v. ALABAMA.* Ct. App. Ala. Certiorari denied.

No. 5360. *WALKER v. LAXALT, GOVERNOR OF NEVADA.* C. A. 9th Cir. Certiorari denied.

No. 5397. *SHELHART v. YOUNG, U. S. DISTRICT JUDGE.* C. A. 6th Cir. Certiorari denied.

No. 5429. *CURTIN v. ILLINOIS.* Sup. Ct. Ill. Certiorari denied. Reported below: 44 Ill. 2d 507, 255 N. E. 2d 916.

No. 5696. *EVANS v. CRAVEN, WARDEN.* C. A. 9th Cir. Certiorari denied.

No. 5698. *TURNER v. UNITED STATES.* C. A. D. C. Cir. Certiorari denied.

No. 5699. *PHILLIPS v. MARYLAND.* Ct. Sp. App. Md. Certiorari denied.

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No. 5700. *PORTER v. UNITED STATES*. C. A. 9th Cir. Certiorari denied.

No. 5701. *IVY v. RICHARDSON, SECRETARY OF HEALTH, EDUCATION, AND WELFARE*. C. A. 6th Cir. Certiorari denied.

No. 5702. *KIZERE v. NEW YORK*. App. Term, Sup. Ct. N. Y., 1st Jud. Dept. Certiorari denied.

No. 5705. *ADAMS v. MARYLAND*. Ct. Sp. App. Md. Certiorari denied. Reported below: 8 Md. App. 684, 262 A. 2d 69.

No. 5706. *BASKERVILLE v. DEEGAN, WARDEN*. C. A. 2d Cir. Certiorari denied. Reported below: 428 F. 2d 714.

No. 5709. *BOWLES v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 428 F. 2d 592.

No. 5710. *SHOLE v. HOWARD ET AL., JUDGES*. C. A. 4th Cir. Certiorari denied.

No. 5715. *SWAN v. YOUNG, WARDEN*. Sup. Ct. Minn. Certiorari denied.

No. 5718. *MILLER v. YEAGER, PRINCIPAL KEEPER*. C. A. 3d Cir. Certiorari denied.

No. 5719. *DANIEL v. ZELKER, WARDEN*. C. A. 2d Cir. Certiorari denied.

No. 5720. *RAPP v. SIGLER, WARDEN*. C. A. 8th Cir. Certiorari denied.

No. 5726. *GONZALES v. BETO, CORRECTIONS DIRECTOR*. C. A. 5th Cir. Certiorari denied. Reported below: 425 F. 2d 963.

No. 5723. *CREIGHTON, AKA EVANS v. MARYLAND*. Ct. Sp. App. Md. Certiorari denied.

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No. 5728. *TURNER v. UNITED STATES*. C. A. 6th Cir. Certiorari denied.

No. 5729. *PALMER v. FOLLETTE, WARDEN*. C. A. 2d Cir. Certiorari denied.

No. 5730. *THOMPSON ET AL. v. UNITED STATES*. C. A. D. C. Cir. Certiorari denied.

No. 5733. *JEWELL v. CITY OF COVINGTON ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 425 F. 2d 459.

No. 5734. *KALDENBERG v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 429 F. 2d 161.

No. 601. *KERIAKOS ET AL. v. HUNT ET AL.* C. A. 1st Cir. Certiorari denied. THE CHIEF JUSTICE, MR. JUSTICE HARLAN, and MR. JUSTICE BLACKMUN, for the reasons expressed in their separate opinions in *Cain v. Kentucky*, 397 U. S. 319 (1970), *Walker v. Ohio*, 398 U. S. 434 (1970) (THE CHIEF JUSTICE); *Roth v. United States*, 354 U. S. 476, 496 (1957), *Jacobellis v. Ohio*, 378 U. S. 184, 203 (1964), *Memoirs v. Massachusetts*, 383 U. S. 413, 455 (1966) (MR. JUSTICE HARLAN); and *Hoyt v. Minnesota*, 399 U. S. 524 (1970) (MR. JUSTICE BLACKMUN), would grant certiorari and reverse the judgment below, and remand the case to the Court of Appeals for consideration of the other issues tendered by petitioners. MR. JUSTICE DOUGLAS took no part in the consideration or decision of this petition. Reported below: 428 F. 2d 606.

No. 620. *HOOPER v. UNITED STATES*;

No. 639. *GROOMS v. UNITED STATES*;

No. 640. *HOOPER v. UNITED STATES*; and

No. 5790. *WHITLOCK v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. MR. JUSTICE DOUGLAS is of the opinion that certiorari should be granted.

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No. 612. SCAGGS *v.* LARSEN ET AL. C. A. 9th Cir. Certiorari denied. MR. JUSTICE DOUGLAS is of the opinion that certiorari should be granted. Reported below: 423 F. 2d 1224.

No. 621. INDIANAPOLIS NEWSPAPERS, INC. *v.* FIELDS. Sup. Ct. Ind. Certiorari denied. MR. JUSTICE BLACK and MR. JUSTICE DOUGLAS are of the opinion that certiorari should be granted. Reported below: — Ind. —, 259 N. E. 2d 651.

No. 5365. SHAK *v.* HAWAII. Sup. Ct. Hawaii. Certiorari denied. MR. JUSTICE BLACK and MR. JUSTICE DOUGLAS are of the opinion that certiorari should be granted. Reported below: 51 Haw. 612, 466 P. 2d 422.

No. 5366. SHAK *v.* HAWAII. Sup. Ct. Hawaii. Certiorari denied. MR. JUSTICE BLACK and MR. JUSTICE DOUGLAS are of the opinion that certiorari should be granted. Reported below: 51 Haw. 626, 466 P. 2d 420.

No. 624. CLIFFORD *v.* BETO, CORRECTIONS DIRECTOR. C. A. 5th Cir. Motion to dispense with printing petition granted. Certiorari denied.

No. 5727. WARNER *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: 428 F. 2d 730.

Rehearing Granted. (See No. 1385, October Term, 1969, *supra.*)

Rehearing Denied

No. 247. ST. MICHAEL & ARCHANGEL RUSSIAN ORTHODOX GREEK CATHOLIC CHURCH ET AL. *v.* UHNIAT ET AL., *ante*, p. 823; and

No. 305. SKEGA AKTIEBOLAG, FORMERLY SKELLEFTEA GUMMIFABRIKS A.-B., ET AL. *v.* B. F. GOODRICH Co., *ante*, p. 825. Petitions for rehearing denied.

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No. 341. LAKEWOOD MANUFACTURING CO. *v.* HOME INSURANCE CO. OF NEW YORK ET AL., *ante*, p. 827;

No. 344. KILARJIAN ET AL. *v.* UNITED STATES, *ante*, p. 827;

No. 367. LYKES BROS. STEAMSHIP CO., INC. *v.* HESS SHIPPING CORP. ET AL., *ante*, p. 853;

No. 5200. RICE *v.* SCHMIDT, WARDEN, *ante*, p. 836;

No. 5202. JONES *v.* SALISBURY, CORRECTIONAL SUPERINTENDENT, *ante*, p. 836;

No. 5211. LUSTER *v.* COOKSEY, *ante*, p. 854; and

No. 5379. WILLIAMSON *v.* CALIFORNIA, *ante*, p. 844.
Petitions for rehearing denied.

DECEMBER 3, 1970

Miscellaneous Orders

No. —. CITIZENS TO PRESERVE OVERTON PARK, INC., ET AL. *v.* VOLPE, SECRETARY OF TRANSPORTATION, ET AL. C. A. 6th Cir. Motion of the Solicitor General for leave to Wm. Bradford Reynolds to present oral argument, *pro hac vice*, granted.

No. —. CONSOLIDATION COAL CO. *v.* SOUTH-EAST COAL Co. Motion to postpone oral argument in No. 88, *Ramsey v. United Mine Workers of America* [certiorari granted, 397 U. S. 1006], denied.

DECEMBER 7, 1970

Dismissals Under Rule 60

No. 897. ROCKEFELLER, GOVERNOR OF NEW YORK, ET AL. *v.* CATHOLIC MEDICAL CENTER OF BROOKLYN & QUEENS, INC., DIVISION OF ST. MARY'S HOSPITAL, ET AL. Appeal from C. A. 2d Cir. dismissed pursuant to Rule 60 of the Rules of this Court. Reported below: 430 F. 2d 1297.

December 7, 1970

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No. 5540. TAYLOR v. ILLINOIS. Sup. Ct. Ill. Petition for certiorari dismissed pursuant to Rule 60 of the Rules of this Court.

Affirmed on Appeal

No. 593. CINCINNATI, NEW ORLEANS & TEXAS PACIFIC RAILWAY CO. ET AL. v. UNITED STATES ET AL. Affirmed on appeal from D. C. S. D. Ohio. MR. JUSTICE DOUGLAS took no part in the consideration or decision of this case.

MR. JUSTICE WHITE, dissenting.

The Court today affirms the District Court in a case involving the relationship of various factors in determining a "just and reasonable" charge under § 15 (7) of the Interstate Commerce Act.¹ Because I think the court below was clearly in error, I would reverse and remand the case to the Interstate Commerce Commission for further consideration.

The appellants, various railroads operating in the southern United States, submitted to the ICC in 1967 a tariff proposing a \$22-per-car transit charge for cotton and molasses.² The Commission, on protests from shippers, ordered appellants to refrain from imposing

¹ "At any hearing involving a change in a . . . charge, . . . the burden of proof shall be upon the carrier to show that the proposed changed . . . charge . . . is just and reasonable . . ." 49 U. S. C. § 15 (7).

² "Transit" consists of stopping a freight car en route to its ultimate destination for processing of its contents. There is no separate charge for transiting cotton at most points in the South, or for transiting molasses at Jacksonville, Florida, and in the instant proceedings the appellants sought to impose the separate charge on such commodities at these points. The original proposal included grain and grain products, but the appellants did not contest the Examiner's decision regarding charges on those items before the full Commission.

the new charge pending a hearing under § 15 (7) to determine if the new charge was "just and reasonable."

A hearing was held in 1968, and after receiving testimony from appellants and the protesting shippers, the Examiner concluded that (a) the appellants had the burden of proving the charge was just and reasonable by "clear and convincing" evidence, (b) the \$22 charge was not shown to approximate the actual costs involved in transiting a freight car, (c) the existing line-haul rates returned more than out-of-pocket costs for all services performed, including transit, and made a contribution to overhead as well, (d) the likely effect of the charge would be to divert traffic to motor carriers and thus reduce the railroads' overall revenue. "All things considered," the Examiner concluded, appellants had failed to show that the charge was just and reasonable. The Commission adopted the findings and conclusions of the Examiner without change. *Transit Charges, Southern Territory*, 332 I. C. C. 664 (1969).

On review, the three-judge District Court³ found that the Examiner and thus the Commission had misstated the law in holding that the carriers had the burden of showing the charge was just and reasonable by "clear and convincing evidence." Had the court stopped there and simply remanded the proceedings to the Commission with directions to apply what the court deemed to be the proper standard of proof, there would be no need to review this case. However, the court went on to discuss the Commission's findings on the merits. It concluded that the Commission had not justified its conclusions that (a) the \$22 charge was not shown to approximate transit costs and (b) the line-haul rates were sufficient to cover the costs involved. The court then found that the Commission's conclusion that the new charge would

³ Convened pursuant to 28 U. S. C. § 1336.

have diverted traffic to motor carriers was based on substantial evidence. On the basis of the last finding, the court upheld the ICC's action and entered an order denying relief to appellants.

It has been settled law since the first *Chenery* case that "an administrative order cannot be upheld unless the grounds upon which the agency acted in exercising its powers were those upon which its action can be sustained." *SEC v. Chenery Corp.*, 318 U. S. 80, 95 (1943). Thus, when the reviewing court here determined that the agency applied an erroneous standard of proof in its determination, it was barred from going on to consider whether the agency's action was supported by substantial evidence. The court compounded the error by upsetting two of the agency's findings as to reasonableness and upholding the agency solely on the basis of the third finding. The Examiner's report, adopted by the Commission, explicitly states that the conclusion was based on "[a]ll things considered," not merely the finding of diversion. Finally, the applicable statute provides:

*"In the exercise of its power to prescribe just and reasonable rates the Commission shall give due consideration, among other factors, to the effect of rates on the movement of traffic by the carrier or carriers for which the rates are prescribed"*⁴

It is apparent from a reading of the statute that the likelihood of diversion cannot be an independent ground if the court determines, as it took upon itself to determine here, that the other factors involved do not support the Commission's conclusion as to reasonableness. Thus, the court was in error not only in reviewing the evidence after it determined the standard to be erroneous, but also

⁴ 49 U. S. C. § 15a (2) (emphasis added).

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was in error in two respects when it did evaluate the evidence.

It may well be that, had the Commission acted in light of the District Court's findings as to the standard of proof, it would have found that the proposed charge was just and reasonable. We cannot assume, any more than the District Court could properly assume, that the finding of an unreasonable charge would have the support of substantial evidence. As the Court said in *Chenery, supra*,

"The Commission's action cannot be upheld merely because findings might have been made and considerations disclosed which would justify its order as an appropriate safeguard for the interests protected by the Act. There must be such a responsible finding. There is no such finding here." 318 U. S., at 94 (citation omitted).

By affirming the District Court, this Court gives its tacit approval to a procedure that is not in accord with accepted procedures of judicial review of agency actions. I would reverse the judgment of the District Court and remand the proceedings to the ICC.

Appeals Dismissed

No. 778. VARIOUS ARTICLES OF "OBSCENE" MERCHANDISE (CHERRY, CLAIMANT) *v.* UNITED STATES ET AL. Appeal from D. C. S. D. N. Y. dismissed. Reported below: 315 F. Supp. 191.

No. 5753. WADLINGTON *v.* MINDES ET AL. Appeal from Sup. Ct. Ill. dismissed for want of substantial federal question. MR. JUSTICE DOUGLAS, MR. JUSTICE WHITE, and MR. JUSTICE BRENNAN are of the opinion that probable jurisdiction should be noted. Reported below: 45 Ill. 2d 447, 259 N. E. 2d 257.

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Other Summary Disposition

No. 524. STANLEY ET AL. *v.* UNITED STATES. C. A. 9th Cir. Petition for writ of certiorari granted, insofar as it seeks review of affirmance by the Court of Appeals of count 5 (possession count) of convictions of petitioners Stanley, Thomas, and Massey. Judgment as to these three individuals vacated insofar as that count is concerned and case remanded to the Court of Appeals so that it may consider suggestions contained in the memorandum the Solicitor General filed here. By this remand this Court intimates no view as to merits of the Solicitor General's position. In all other respects the petition for writ of certiorari is denied. MR. JUSTICE WHITE and MR. JUSTICE BLACKMUN dissent and would deny certiorari. Reported below: 427 F. 2d 1066.

MR. JUSTICE DOUGLAS, dissenting.

The statute at the time of conviction made manufacture a crime, 21 U. S. C. § 360a (a) (1964 ed., Supp. I). It also made "possession" a crime in the following words—"No person . . . shall possess* any depressant or stimulant drug otherwise than (1) for the personal use of himself or of a member of his household, or (2) for administration to an animal owned by him or a member of his household." 21 U. S. C. § 360a (c) (1964 ed., Supp. I).

As stated by the Court of Appeals, the law, which was enacted in 1965, did not make possession for personal use a crime but it did make possession for sale an offense; and here the evidence is clear that possession was for sale.

*Amendments in 1968 made all possession criminal—possession for sale and "otherwise," 82 Stat. 1361. While petitioners were tried after the enactment of the 1968 amendments, their offenses were committed earlier. The 1968 amendments apply "only with respect to violations . . . committed after the date of the enactment of this Act."

Beginning in November 1966 government agents commenced an investigation into suspected illegal drug activities in the San Francisco Bay area. Petitioners and others were placed under extensive surveillance. During the period of surveillance one Krusko, a government undercover agent, became acquainted with petitioner Spires, twice purchased LSD from him (once for \$3,400), and had frequent conversations with him. These conversations revealed that petitioner Stanley was engaged in manufacturing and distributing various drugs including LSD. A frequent topic of these conversations pertained to the purchase of LSD.

On November 15, 1967, during a conversation, Spires informed Krusko that "some of the boys" were going to set up a laboratory and had found a location "way out in the sticks." Spires also informed him that of the 100 grams of LSD which Stanley had previously possessed, 10 had been distributed in the form of tablets. Spires said that Stanley normally sold large quantities for \$2,500 per gram.

On December 19 Spires stated he was going to the laboratory and would attempt to get some LSD for Krusko, saying that Stanley intended to produce 25 grams of LSD before Christmas.

The officers thereupon obtained a search warrant of the premises which was executed on December 21. They found a small factory for the manufacture of LSD. All occupants of the house were arrested and the officers made a room-by-room search of the house. In all, 125 or 126 pieces of evidence were taken from the house.

A large brown bottle was found on a table in one room. On analysis its 472 grams of white powder were found to be 5.3% LSD. On a shelf in a closet across from the bathroom was a plastic bottle containing 42 grams of 95% pure LSD. The 42 grams of 95% pure LSD at the

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price quoted by Spires would bring in \$105,000 and if sold in lesser quantities would bring in more.

The Government charged each petitioner with manufacture of LSD, *possession* of LSD, and conspiracy to manufacture, compound, process, sell, and deliver LSD. Petitioner Spires was also charged with two counts of selling LSD. All petitioners were found guilty on each count charged against them. The District Judge did not make a specific finding that the *possession* of LSD was for the purposes of sale, but the Court of Appeals concluded that the evidence was overwhelming that *the possession was for purposes of sale*. 427 F. 2d 1066, 1071.

We distort the record when we treat the case as "possession" of a drug for purposes of manufacture. We deal with a drug after it was manufactured and held for sale. The charge of "possession" made in the indictment was therefore "possession" as defined in the 1965 Act. The power to pardon is reserved for the Executive. Accordingly, I would deny certiorari and I dissent from a remand of the case.

Certiorari Granted—Vacated and Remanded. (See also No. 524, *supra*.)

No. 656. *LICATA v. UNITED STATES*. C. A. 9th Cir. Upon consideration of suggestion of mootness and examination of entire record, petition for writ of certiorari granted, judgment vacated, and case remanded to the United States District Court for the Central District of California with directions to dismiss case as moot. MR. JUSTICE BLACK is of the opinion that certiorari should be granted and case set for oral argument. Reported below: 429 F. 2d 1177.

Miscellaneous Orders

No. 485. *HAWTHORNE v. ILLINOIS*, *ante*, p. 878. Application to stay effectiveness of order denying certiorari denied.

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No. 1066. CITIZENS TO PRESERVE OVERTON PARK, INC., ET AL. *v.* VOLPE, SECRETARY OF TRANSPORTATION, ET AL. C. A. 6th Cir. Application for stay presented to MR. JUSTICE STEWART, and by him referred to the Court, granted pending issuance of judgment of this Court. Treating the application for stay and briefs in opposition as a petition for writ of certiorari and opposition thereto, certiorari granted and case set for oral argument on Monday, January 11, 1971. Briefs for petitioners shall be filed by December 21, 1970, and briefs for respondents shall be filed by January 4, 1971. Briefs may be typewritten if counsel are unable to file printed briefs by these dates. Motions of Committee of 100 on the Federal City, Inc., and City of Memphis et al. for leave to file briefs as *amici curiae* granted. MR. JUSTICE DOUGLAS took no part in the consideration or decision of these matters. Reported below: 432 F. 2d 1307.

No. —. SAN ANTONIO CONSERVATION SOCIETY ET AL. *v.* TEXAS HIGHWAY DEPARTMENT ET AL. C. A. 5th Cir. Application for stay presented to MR. JUSTICE BLACK, and by him referred to the Court, granted provided petition for writ of certiorari, before judgment, is filed in this Court by December 14, 1970. Briefs opposing such petition shall be filed by December 17, 1970. Both the petition for writ of certiorari and briefs in opposition may be submitted in typewritten form.

No. 89. 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.] Motions of appellees schools and Pennsylvania Association of Independent Schools for additional time for oral argument denied.

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No. 5247. JOHNSON *v.* UNITED STATES. C. A. D. C. Cir. [Certiorari granted, *ante*, p. 864.] Motion of petitioner for appointment of counsel granted. It is ordered that William J. Lippman, Esquire, of Washington, D. C., a member of the Bar of this Court, be, and he is hereby, appointed to serve as counsel for petitioner in this case. THE CHIEF JUSTICE took no part in the consideration or decision of this motion.

No. 673. LEE NATIONAL CORP. *v.* ATLANTIC RICHFIELD Co. ET AL. C. A. 3d Cir. Motion for leave to file petition for writ of certiorari denied.

No. 5774. SULLIVAN *v.* MICHIGAN;

No. 5803. COPELAND *v.* WAINWRIGHT, CORRECTIONS DIRECTOR, ET AL.; and

No. 5810. FLETCHER *v.* SPEAKER, ATTORNEY GENERAL OF PENNSYLVANIA. Motions for leave to file petitions for writs of habeas corpus denied.

Certiorari Granted. (See also No. 656, *supra*.)

No. 655. HODGSON, SECRETARY OF LABOR *v.* LOCAL UNION 6799, UNITED STEELWORKERS OF AMERICA, AFL-CIO, ET AL. C. A. 9th Cir. Certiorari granted. Reported below: 426 F. 2d 969.

No. 812. UNITED STATES *v.* DISTRICT COURT IN AND FOR WATER DIVISION No. 5 ET AL. Sup. Ct. Colo. Certiorari granted and case set for oral argument immediately following No. 87 [*United States v. District Court in and for the County of Eagle et al.*, certiorari granted, 397 U. S. 1005].

Certiorari Denied. (See also No. 524, *supra*.)

No. 233. MOHLAND *v.* MONTANA STATE BOARD OF EQUALIZATION ET AL. Sup. Ct. Mont. Certiorari denied. Reported below: 155 Mont. 49, 466 P. 2d 582.

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No. 288. *JOINER v. DECKARD*. Sup. Ct. Ill. Certiorari denied. Reported below: 44 Ill. 2d 412, 255 N. E. 2d 900.

No. 291. *McVEAN v. FLORIDA*. Dist. Ct. App. Fla., 2d Dist. Certiorari denied. Reported below: 227 So. 2d 535.

No. 302. *FRENCH ET AL. v. BASHFUL ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 425 F. 2d 182.

No. 470. *GIANATASIO v. WHYTE ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 426 F. 2d 908.

No. 643. *ALEXANDER v. UNITED STATES*. Ct. Cl. Certiorari denied.

No. 644. *LANSING BROADCASTING Co. v. COMMISSIONER OF INTERNAL REVENUE*. C. A. 6th Cir. Certiorari denied. Reported below: 427 F. 2d 1014.

No. 645. *STRICKLAND, EXECUTRIX v. E. W. SCRIPPS Co. ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 421 F. 2d 555.

No. 646. *ALLIED THEATRE OWNERS OF INDIANA, INC., DBA THEATRE OWNERS OF INDIANA, ET AL. v. VOLPE, SECRETARY OF TRANSPORTATION*. C. A. 7th Cir. Certiorari denied. Reported below: 426 F. 2d 1002.

No. 647. *LARSEN FORD, INC. v. GASPERINO, ADMINISTRATRIX, ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 426 F. 2d 1151.

No. 649. *BROWN v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 428 F. 2d 1191.

No. 653. *LEWES DAIRY, INC., ET AL. v. HARDIN, SECRETARY OF AGRICULTURE*. C. A. 3d Cir. Certiorari denied.

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No. 650. HAYNES *v.* JAMES H. CARR, INC. C. A. 4th Cir. Certiorari denied. Reported below: 427 F. 2d 700.

No. 657. HUNT *v.* MISSOURI. Sup. Ct. Mo. Certiorari denied. Reported below: 454 S. W. 2d 555.

No. 659. COMCET, INC. *v.* COMMUNICATIONS SATEL-LITE CORP. C. A. 4th Cir. Certiorari denied. Reported below: 429 F. 2d 1245.

No. 662. C. H. GUENTHER & SON, INC., DBA PIONEER FLOUR MILLS *v.* NATIONAL LABOR RELATIONS BOARD. C. A. 5th Cir. Certiorari denied. Reported below: 427 F. 2d 983.

No. 663. INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 480, AFL-CIO *v.* GULF COAST BUILDING & SUPPLY Co., INC. C. A. 5th Cir. Certiorari denied. Reported below: 428 F. 2d 121.

No. 664. CORNWELL ET AL. *v.* STATE BOARD OF EDUCATION OF MARYLAND ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 428 F. 2d 471.

No. 665. SCHOLDER ET AL. *v.* UNITED STATES ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 428 F. 2d 1123.

No. 666. ROCKET FREIGHT LINES Co. *v.* NATIONAL LABOR RELATIONS BOARD ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 427 F. 2d 202.

No. 667. BOWATERS SOUTHERN PAPER CORP. *v.* EQUAL EMPLOYMENT OPPORTUNITY COMMISSION. C. A. 6th Cir. Certiorari denied. Reported below: 428 F. 2d 799.

No. 668. FARINELLA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 429 F. 2d 513.

No. 670. AMERICAN EXPORT ISBRANDTSEN LINES, INC., ET AL. *v.* SAFIR ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 432 F. 2d 137.

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No. 672. *TONAHILL v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 430 F. 2d 1042.

No. 675. *COMMERCIAL SOLVENTS CORP. v. UNITED STATES*. Ct. Cl. Certiorari denied. Reported below: 192 Ct. Cl. 339, 427 F. 2d 749.

No. 687. *COHEN v. NEAGLE ET AL.* C. A. 7th Cir. Certiorari denied.

No. 689. *FAIRBANK, DBA ARNOLD FAIRBANK CATTLE CO., ET AL. v. HARDIN, SECRETARY OF AGRICULTURE, ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 429 F. 2d 264.

No. 690. *THOMPSON v. VIRGINIA*. Sup. Ct. App. Va. Certiorari denied.

No. 693. *BRANIFF AIRWAYS, INC., ET AL. v. TEXAS AERONAUTICS COMMISSION ET AL.* Sup. Ct. Tex. Certiorari denied. Reported below: 454 S. W. 2d 199.

No. 694. *CLAY v. KENTUCKY*. Ct. App. Ky. Certiorari denied. Reported below: 454 S. W. 2d 109.

No. 696. *KUHNS BROTHERS CO. ET AL. v. DURIRON CO., INC., ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 428 F. 2d 387.

No. 697. *UNIFLOW MANUFACTURING CO. ET AL. v. KING-SEELEY THERMOS CO.* C. A. 6th Cir. Certiorari denied. Reported below: 428 F. 2d 335.

No. 698. *INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL No. 38, ET AL. v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 428 F. 2d 144.

No. 699. *MAJURI ET AL. v. UNITED STATES ET AL.* C. A. 3d Cir. Certiorari denied. Reported below: 431 F. 2d 469.

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No. 700. *ESCAMBIA CHEMICAL CORP. v. STAMICARBON*, N. V. C. A. 5th Cir. Certiorari denied. Reported below: 430 F. 2d 920.

No. 702. *MURPHY v. OREGON*. Ct. App. Ore. Certiorari denied. Reported below: — Ore. —, 465 P. 2d 900.

No. 5218. *ORTEGA v. FLORIDA*. Dist. Ct. App. Fla., 4th Dist. Certiorari denied. Reported below: 230 So. 2d 177.

No. 5226. *JONES v. PROCUNIER, CORRECTIONS DIRECTOR*. C. A. 9th Cir. Certiorari denied.

No. 5309. *ORTEGA v. CALIFORNIA*. Ct. App. Cal., 3d App. Dist. Certiorari denied.

No. 5326. *WASHINGTON v. NEW YORK*. App. Div., Sup. Ct. N. Y., 4th Jud. Dept. Certiorari denied. Reported below: 33 App. Div. 2d 651, 306 N. Y. S. 2d 661.

No. 5344. *COOK v. BETO, CORRECTIONS DIRECTOR*. C. A. 5th Cir. Certiorari denied. Reported below: 425 F. 2d 1066.

No. 5349. *GENTILE v. NEW YORK ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 426 F. 2d 238.

No. 5406. *HILL v. BURKE, WARDEN*. C. A. 7th Cir. Certiorari denied. Reported below: 422 F. 2d 1195.

No. 5409. *JACKSON v. ILLINOIS*. Sup. Ct. Ill. Certiorari denied.

No. 5432. *ALI v. DEEGAN, WARDEN*. C. A. 2d Cir. Certiorari denied.

No. 5439. *MENEWEATHER v. FITZHARRIS, TRAINING FACILITY SUPERINTENDENT*. C. A. 9th Cir. Certiorari denied.

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No. 5435. *RYBAR v. NELSON, WARDEN, ET AL.* Sup. Ct. Cal. Certiorari denied.

No. 5447. *BAUMGART v. NEW YORK.* App. Div., Sup. Ct. N. Y., 4th Jud. Dept. Certiorari denied.

No. 5457. *PRINCIPE v. CALIFORNIA ET AL.* Sup. Ct. Cal. Certiorari denied.

No. 5459. *JONES v. NEW YORK.* App. Div., Sup. Ct. N. Y., 4th Jud. Dept. Certiorari denied. Reported below: 33 App. Div. 2d 1104, 309 N. Y. S. 2d 573.

No. 5476. *HARVEY v. ERICKSON, WARDEN.* Sup. Ct. S. D. Certiorari denied.

No. 5477. *PAM v. WASHINGTON.* Ct. App. Wash. Certiorari denied. Reported below: 1 Wash. App. 723, 463 P. 2d 200.

No. 5491. *MARNIN v. NEW JERSEY.* C. A. 3d Cir. Certiorari denied.

No. 5731. *JOHNSON v. FIELD, MEN'S COLONY SUPERINTENDENT.* C. A. 9th Cir. Certiorari denied.

No. 5735. *ALEXANDER v. SUPERIOR COURT OF CALIFORNIA.* C. A. 9th Cir. Certiorari denied.

No. 5737. *WILBUR v. UNITED STATES.* C. A. 9th Cir. Certiorari denied. Reported below: 427 F. 2d 947.

No. 5738. *MURATORE v. UNITED STATES.* C. A. 6th Cir. Certiorari denied.

No. 5739. *MOREHEAD v. ILLINOIS.* Sup. Ct. Ill. Certiorari denied. Reported below: 45 Ill. 2d 326, 259 N. E. 2d 8.

No. 5740. *GARCIA ET UX. v. UNITED STATES.* C. A. 5th Cir. Certiorari denied. Reported below: 421 F. 2d 1231.

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No. 5743. *GOMORI v. PENNSYLVANIA*. Sup. Ct. Pa. Certiorari denied.

No. 5744. *OZUNA v. CALIFORNIA*. Ct. App. Cal., 5th App. Dist. Certiorari denied.

No. 5747. *FELDMAN v. WHIPKEY'S DRUG SHOP ET AL.* Ct. App. Ga. Certiorari denied. Reported below: 121 Ga. App. 580, 174 S. E. 2d 474.

No. 5748. *CRISWELL v. NEVADA*. Sup. Ct. Nev. Certiorari denied. Reported below: — Nev. —, 472 P. 2d 342.

No. 5751. *MCLEOD v. SILLS, ATTORNEY GENERAL OF NEW JERSEY, ET AL.* C. A. 3d Cir. Certiorari denied.

No. 5752. *HAVELOCK v. UNITED STATES*. C. A. 10th Cir. Certiorari denied. Reported below: 427 F. 2d 987.

No. 5754. *DAWSON ET UX. v. SHENANDOAH RETREAT LAND CORP. ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 422 F. 2d 402.

No. 5755. *JORDAN v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 428 F. 2d 7.

No. 5757. *BLACKWELL v. NORTH CAROLINA*. Sup. Ct. N. C. Certiorari denied. Reported below: 276 N. C. 714, 174 S. E. 2d 534.

No. 5759. *OHMER v. OHIO*. Sup. Ct. Ohio. Certiorari denied.

No. 5760. *PANCZKO v. UNITED STATES*. C. A. 7th Cir. Certiorari denied.

No. 5762. *BROWN v. UNITED STATES*. C. A. 5th Cir. Certiorari denied.

No. 5764. *MCCLEARY v. UNITED STATES*. C. A. D. C. Cir. Certiorari denied.

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No. 5766. *CORKRAN v. MARYLAND*. Ct. Sp. App. Md. Certiorari denied.

No. 5767. *WIMBERLY v. CRAVEN, WARDEN, ET AL.* C. A. 9th Cir. Certiorari denied.

No. 5771. *STEPHENS v. CALIFORNIA*. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 5772. *BADGER v. LAVALLEE, WARDEN*. App. Div., Sup. Ct. N. Y., 2d Jud. Dept. Certiorari denied.

No. 5773. *SPANN v. MICHIGAN*. C. A. 6th Cir. Certiorari denied.

No. 5775. *CURTIS v. PATE, WARDEN, ET AL.* C. A. 7th Cir. Certiorari denied.

No. 5776. *ROSENBERG v. NEW YORK ET AL.* C. A. 2d Cir. Certiorari denied.

No. 5777. *DEJARNETTE v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 429 F. 2d 571.

No. 5779. *ANGELICO v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 427 F. 2d 288.

No. 5780. *WILLIAMS v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 429 F. 2d 158.

No. 5782. *FOUR STAR v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 428 F. 2d 1406.

No. 5783. *SWINICK v. NEW YORK*. App. Term, Sup. Ct. N. Y., 1st Jud. Dept. Certiorari denied.

No. 5967. *SWINICK v. CITY OF NEW YORK DEPARTMENT OF SOCIAL SERVICES ET AL.* App. Div., Sup. Ct. N. Y., 1st Jud. Dept. Certiorari denied.

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No. 5784. *LEPISCOPO v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 429 F. 2d 258.

No. 5785. *SHAKUR ET AL. v. MURTAGH, JUDGE*. App. Div., Sup. Ct. N. Y., 1st Jud. Dept. Certiorari denied. Reported below: 33 App. Div. 2d 901, 307 N. Y. S. 2d 817.

No. 5786. *HOWARD v. SWENSON, WARDEN*. C. A. 8th Cir. Certiorari denied. Reported below: 426 F. 2d 277.

No. 5789. *VEACH v. TENNESSEE*. Sup. Ct. Tenn. Certiorari denied. Reported below: — Tenn. —, 456 S. W. 2d 650.

No. 5792. *SMITH v. LASH, WARDEN*. C. A. 7th Cir. Certiorari denied.

No. 5793. *HYDE v. CALIFORNIA*. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 5799. *GARDNER v. SUPERIOR COURT OF NEW JERSEY*. C. A. 3d Cir. Certiorari denied.

No. 5801. *FARESE v. UNITED STATES*. C. A. D. C. Cir. Certiorari denied.

No. 5804. *ESSER v. LION MATCH CORPORATION OF AMERICA*. C. A. 3d Cir. Certiorari denied.

No. 5806. *ROLLINS v. FITZBERGER, WARDEN*. C. A. 4th Cir. Certiorari denied.

No. 5807. *LEWIS v. FITZHARRIS, TRAINING FACILITY SUPERINTENDENT*. C. A. 9th Cir. Certiorari denied.

No. 5809. *REMALEY v. NEW YORK*. Ct. App. N. Y. Certiorari denied. Reported below: 26 N. Y. 2d 427, 259 N. E. 2d 901.

No. 5812. *O'NEAL v. CROUSE, WARDEN*. C. A. 10th Cir. Certiorari denied.

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No. 5813. *HAUSHALTER v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 427 F. 2d 1366.

No. 5814. *JOHNSON v. UNITED STATES*. C. A. D. C. Cir. Certiorari denied. Reported below: 139 U. S. App. D. C. 193, 432 F. 2d 626.

No. 5815. *TYLER v. PETERSON ET AL.* C. A. 8th Cir. Certiorari denied.

No. 5816. *ADAMS v. FOLLETTE, WARDEN*. C. A. 2d Cir. Certiorari denied.

No. 5818. *ORANGIO v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 430 F. 2d 613.

No. 5819. *BARTON ET UX. v. COMMISSIONER OF INTERNAL REVENUE*. C. A. 7th Cir. Certiorari denied. Reported below: 424 F. 2d 1295.

No. 5821. *JONES v. NEW YORK*. App. Div., Sup. Ct. N. Y., 1st Jud. Dept. Certiorari denied.

No. 5824. *JOHNSON v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 427 F. 2d 32.

No. 269. *SMITH v. NEW JERSEY*. Sup. Ct. N. J. Certiorari denied. MR. JUSTICE BRENNAN took no part in the consideration or decision of this petition. Reported below: 55 N. J. 476, 262 A. 2d 868.

No. 614. *PARKER, COMMISSIONER OF DEPARTMENT OF TRANSPORTATION OF NEW YORK v. CITIZENS COMMITTEE FOR THE HUDSON VALLEY ET AL.*; and

No. 615. *VOLPE, SECRETARY OF TRANSPORTATION, ET AL. v. CITIZENS COMMITTEE FOR THE HUDSON VALLEY ET AL.* C. A. 2d Cir. Certiorari denied. MR. JUSTICE HARLAN, MR. JUSTICE WHITE, and MR. JUSTICE BLACKMUN are of the opinion that certiorari should be granted. Reported below: 425 F. 2d 97.

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No. 654. *TIIDEE PRODUCTS, INC. v. INTERNATIONAL UNION OF ELECTRICAL, RADIO & MACHINE WORKERS, AFL-CIO*. C. A. D. C. Cir. Certiorari denied. MR. JUSTICE STEWART is of the opinion that certiorari should be granted. Reported below: 138 U. S. App. D. C. 249, 426 F. 2d 1243.

No. 658. *BAREFOOT ET AL. v. INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA ET AL.* C. A. 10th Cir. Certiorari denied. THE CHIEF JUSTICE and MR. JUSTICE BRENNAN are of the opinion that certiorari should be granted. Reported below: 424 F. 2d 1001.

No. 669. *MUNICIPAL DISTRIBUTOR GROUP v. FEDERAL POWER COMMISSION ET AL.*;

No. 680. *CONTINENTAL OIL CO. ET AL. v. FEDERAL POWER COMMISSION*;

No. 681. *TEXACO INC. ET AL. v. FEDERAL POWER COMMISSION*;

No. 682. *CALIFORNIA CO., A DIVISION OF CHEVRON OIL CO. v. FEDERAL POWER COMMISSION*;

No. 683. *BRADCO PROPERTIES, INC., ET AL. v. FEDERAL POWER COMMISSION*;

No. 684. *COCKRELL v. FEDERAL POWER COMMISSION*;

No. 685. *SUPERIOR OIL CO. v. FEDERAL POWER COMMISSION*;

No. 691. *ASSOCIATED GAS DISTRIBUTORS v. AUSTRAL OIL CO. ET AL.*; and

No. 692. *PUBLIC SERVICE COMMISSION OF NEW YORK v. AMERADA HESS CORP. ET AL.* C. A. 5th Cir. Motion of United Distribution Companies for leave to file a brief as *amicus curiae* in these cases, except No. 681, granted. Certiorari denied. Reported below: 428 F. 2d 407 and — F. 2d —.

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No. 660. SMITH, TRUSTEE IN BANKRUPTCY *v.* MERRITT, REFEREE IN BANKRUPTCY. C. A. 5th Cir. Motion to dispense with printing petition granted. Certiorari denied.

No. 678. HOHENSEE *v.* SCIENTIFIC LIVING, INC. C. A. 4th Cir. Motion to dispense with printing petition granted. Certiorari denied.

No. 671. CONOCO PLASTICS, INC. *v.* CARR ET AL. C. A. 5th Cir. Motion to dispense with printing respondents' brief granted. Certiorari denied. Reported below: 423 F. 2d 57.

No. 674. UNITED STATES *v.* GARRETT CORP. Ct. Cl. Certiorari denied. MR. JUSTICE BLACK, MR. JUSTICE DOUGLAS, and MR. JUSTICE BLACKMUN are of the opinion that certiorari should be granted. Reported below: 190 Ct. Cl. 858, 422 F. 2d 874.

No. 677. UNITED STATES *v.* PALMER ET AL. Ct. Cl. Certiorari denied. MR. JUSTICE BLACK, MR. JUSTICE DOUGLAS, and MR. JUSTICE BLACKMUN are of the opinion that certiorari should be granted. Reported below: 191 Ct. Cl. 346, 423 F. 2d 316.

No. 676. DUDLEY *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. MR. JUSTICE DOUGLAS is of the opinion that certiorari should be granted. Reported below: 428 F. 2d 970.

No. 5185. SANDERS *v.* SOUTH CAROLINA ET AL. C. A. 4th Cir. Certiorari denied. MR. JUSTICE DOUGLAS is of the opinion that certiorari should be granted.

No. 5388. HOOKER ET AL. *v.* BROOKHAVEN HOUSING AUTHORITY. Sup. Ct. Miss. Certiorari denied. MR. JUSTICE DOUGLAS is of the opinion that certiorari should be granted. Reported below: 231 So. 2d 774.

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No. 5736. *HAIRSTON v. CALIFORNIA*. App. Dept., Super. Ct. Cal., County of Los Angeles. Certiorari denied. MR. JUSTICE DOUGLAS is of the opinion that certiorari should be granted. Reported below: 8 Cal. App. 3d Supp. 19, 87 Cal. Rptr. 470.

No. 686. *MOLKENBUR 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: 430 F. 2d 563.

No. 701. *STIMPEL v. STATE PERSONNEL BOARD OF CALIFORNIA*. Ct. App. Cal., 2d App. Dist. Motion of National Jewish Commission on Law & Public Affairs for leave to file a brief as *amicus curiae* granted. Certiorari denied. MR. JUSTICE DOUGLAS is of the opinion that certiorari should be granted. Reported below: 6 Cal. App. 3d 206, 85 Cal. Rptr. 797.

No. 5749. *ROZENFELD v. NEW YORK*. App. Term, Sup. Ct. N. Y., 1st Jud. Dept. Certiorari denied. MR. JUSTICE BLACK is of the opinion that certiorari should be granted.

No. 5756. *TORRES v. MANCUSI, WARDEN*. C. A. 2d Cir. Certiorari denied. MR. JUSTICE BLACK and MR. JUSTICE DOUGLAS are of the opinion that certiorari should be granted. Reported below: 427 F. 2d 168.

No. 5768. *CALVERT v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. MR. JUSTICE WHITE is of the opinion that certiorari should be granted.

No. 5787. *WARK v. MAINE ET AL.* Sup. Jud. Ct. Me. Certiorari denied. MR. JUSTICE HARLAN, MR. JUSTICE STEWART, and MR. JUSTICE BLACKMUN are of the opinion that certiorari should be granted. Reported below: 266 A. 2d 62.

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No. 5797. GRISHAM *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. MR. JUSTICE MARSHALL took no part in the consideration or decision of this petition. Reported below: 427 F. 2d 157.

Rehearing Denied

No. 178. DEVERS *v.* DISTRICT OF COLUMBIA NATIONAL BANK, *ante*, p. 820;

No. 385. PUERTO RICO TELEPHONE CO. *v.* FIGUEROA DE ARROYO ET AL., *ante*, p. 877;

No. 386. UNITED STATES ET AL. *v.* CITY OF CHICAGO ET AL., *ante*, p. 8;

No. 387. UNITED STATES ET AL. *v.* TENNESSEE PUBLIC SERVICE COMMISSION ET AL., *ante*, p. 8;

No. 396. LOUISVILLE & NASHVILLE RAILROAD CO. *v.* TENNESSEE PUBLIC SERVICE COMMISSION ET AL., *ante*, p. 8;

No. 410. CHICAGO & EASTERN ILLINOIS RAILROAD ET AL. *v.* CITY OF CHICAGO ET AL., *ante*, p. 8;

No. 427. DAWSON *v.* RICHARDSON, SECRETARY OF HEALTH, EDUCATION, AND WELFARE, *ante*, p. 830;

No. 449. TAGLIA *v.* LAIRD, SECRETARY OF DEFENSE, *ante*, p. 831;

No. 451. JOHNSON *v.* STATE BAR OF CALIFORNIA ET AL., *ante*, p. 859;

No. 5466. STURM *v.* UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA, *ante*, p. 863;

No. 5475. GAY *v.* UNITED STATES, *ante*, p. 867; and

No. 5517. ORME *v.* FIELD, MEN'S COLONY SUPERINTENDENT, ET AL., *ante*, p. 879. Petitions for rehearing denied.

No. 450. SMITH *v.* TENNESSEE, *ante*, p. 831. Motion to dispense with printing petition for rehearing granted. Petition for rehearing denied.

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No. 621, October Term, 1969. *WISEMAN ET AL. v. MASSACHUSETTS ET AL.*, 398 U. S. 960. Motion of National Educational Television for leave to file a brief as *amicus curiae* in support of petition for rehearing granted. Petition for rehearing denied. MR. JUSTICE HARLAN, MR. JUSTICE BRENNAN, and MR. JUSTICE BLACKMUN are of the opinion that the petition should be granted. MR. JUSTICE DOUGLAS took no part in the consideration or decision of this motion and petition.

No. 395. *LAZARUS v. UNITED STATES*, *ante*, p. 869. Petition for rehearing denied. MR. JUSTICE MARSHALL took no part in the consideration or decision of this petition.

No. 5220. *GILMORE v. GORDON ET AL., MEMBERS OF CALIFORNIA ADULT AUTHORITY*, *ante*, p. 837. Motion for leave to file petition for rehearing denied.

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Affirmed on Appeal

No. 733. *RAFFERTY ET AL. v. MACKAY ET AL.* Affirmed on appeal from D. C. N. D. Cal. *Baggett v. Bullitt*, 377 U. S. 360. MR. JUSTICE HARLAN is of the opinion that probable jurisdiction should be noted and the case set for oral argument.

Appeals Dismissed

No. 732. *ALABAMA ET AL. v. UNITED STATES ET AL.* Appeal from D. C. S. D. Ala. dismissed for want of jurisdiction. Reported below: 314 F. Supp. 1319.

No. 5854. *CHAMPS v. TEXAS*. Appeal from Ct. Civ. App. Tex., 14th Sup. Jud. Dist., dismissed for want of substantial federal question. MR. JUSTICE BLACK and MR. JUSTICE MARSHALL are of the opinion that probable jurisdiction should be noted and the case set for oral argument. Reported below: 452 S. W. 2d 55.

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Miscellaneous Orders

No. 41, Orig. OHIO *v.* WYANDOTTE CHEMICALS CORP. ET AL. Motion of the Solicitor General for allotment of time for oral argument granted and 20 minutes allotted for that purpose. Defendant allotted 20 additional minutes for oral argument. [For earlier order herein, see *ante*, p. 810.]

No. 30. UNITED STATES *v.* HARRIS. C. A. 6th Cir. [Certiorari granted, 397 U. S. 905.] Motion of respondent for appointment of counsel granted. It is ordered that Steven M. Umin, Esquire, of Washington, D. C., a member of the Bar of this Court, be, and he is hereby, appointed to serve as counsel for respondent in this case.

No. 85. GILLETTE *v.* UNITED STATES. C. A. 2d Cir. [Certiorari granted, 399 U. S. 925]; and

No. 325. NEGRE *v.* LARSEN ET AL. C. A. 9th Cir. [Certiorari granted, 399 U. S. 925.] Motion of George T. Altman for leave to file a brief as *amicus curiae* granted.

No. 113. DECKER, U. S. DISTRICT JUDGE, ET AL. *v.* HARPER & ROW PUBLISHERS, INC., ET AL. C. A. 7th Cir. [Certiorari granted, 397 U. S. 1073.] Motion of Northampton County, Pennsylvania, Bar Assn. for leave to join brief of American Bar Assn. as *amicus curiae* granted. MR. JUSTICE DOUGLAS took no part in the consideration or decision of this motion.

No. 336. NELSON, WARDEN *v.* O'NEIL. C. A. 9th Cir. [Certiorari granted, *ante*, p. 901.] Motion of respondent for appointment of counsel granted. It is ordered that James S. Campbell, Esquire, of Washington, D. C., a member of the Bar of this Court, be, and he is hereby, appointed to serve as counsel for respondent in this case.

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No. 281. SWANN ET AL. *v.* CHARLOTTE-MECKLENBURG BOARD OF EDUCATION ET AL. C. A. 4th Cir. [Certiorari granted, 399 U. S. 926.] Motion of Jackson Urban League for leave to strike its name from *amici curiae* brief granted.

No. 5858. DAUGHERTY *v.* CRAVEN, WARDEN. Motion for leave to file petition for writ of habeas corpus denied.

Probable Jurisdiction Noted

No. 609. GRAHAM, COMMISSIONER, DEPARTMENT OF PUBLIC WELFARE OF ARIZONA *v.* RICHARDSON ET AL. Appeal from D. C. Ariz. Motion of appellee for leave to proceed *in forma pauperis* granted. Probable jurisdiction noted. Reported below: 313 F. Supp. 34.

No. 727. SAILER ET AL. *v.* LEGER ET AL. Appeal from D. C. E. D. Pa. Motion of appellees for leave to proceed *in forma pauperis* granted. Probable jurisdiction noted. Reported below: 321 F. Supp. 250.

Certiorari Denied

No. 209. KAY *v.* FLORIDA BAR. Sup. Ct. Fla. Certiorari denied. Reported below: 232 So. 2d 378.

No. 705. CHEMTRONICS, INC., ET AL. *v.* BECKMAN INSTRUMENTS, INC., ET AL.; and

No. 711. BECKMAN INSTRUMENTS, INC., ET AL. *v.* CHEMTRONICS, INC., ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 439 F. 2d 1369.

No. 708. TOWNSEND *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: See 430 F. 2d 1222, 1224 n. 5.

No. 709. LONG ISLAND VIETNAM MORATORIUM COMMITTEE ET AL. *v.* CAHN, DISTRICT ATTORNEY OF NASSAU COUNTY, ET AL. C. A. 2d Cir. Certiorari denied.

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No. 713. *PAYTON ET UX. v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 425 F. 2d 1324.

No. 714. *ZEZOFF v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 428 F. 2d 580.

No. 716. *ELLINGSON TIMBER CO. v. GREAT NORTHERN RAILWAY CO. ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 424 F. 2d 497.

No. 717. *DERBY FOODS, INC. v. FOOD AND DRUG ADMINISTRATION, U. S. DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE*. C. A. 3d Cir. Certiorari denied. Reported below: 427 F. 2d 511.

No. 718. *DELAWARE VALLEY ARMAMENTS, INC. v. NATIONAL LABOR RELATIONS BOARD*. C. A. 3d Cir. Certiorari denied. Reported below: 431 F. 2d 494.

No. 723. *BAKER ET AL. v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 429 F. 2d 1278.

No. 725. *STEVENSON ET AL. v. BOARD OF EDUCATION OF WHEELER COUNTY, GEORGIA, ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 426 F. 2d 1154.

No. 726. *RISSE ET UX. v. PENNSYLVANIA*. Sup. Ct. Pa. Certiorari denied. Reported below: 438 Pa. 544, 264 A. 2d 407.

No. 735. *BUSINESS DEVELOPMENT CORPORATION OF NORTH CAROLINA v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 428 F. 2d 451.

No. 736. *KELLERMAN v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 431 F. 2d 319.

No. 737. *NATIONAL LABOR RELATIONS BOARD v. AMERICAN CABLE SYSTEMS, INC.* C. A. 5th Cir. Certiorari denied. Reported below: 427 F. 2d 446.

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No. 5249. *BUTLER v. CADY, WARDEN*. Sup. Ct. Wis. Certiorari denied.

No. 5353. *JUAREZ v. CALIFORNIA*. Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 5411. *JOHNSON v. ILLINOIS*. Sup. Ct. Ill. Certiorari denied. Reported below: 44 Ill. 2d 463, 256 N. E. 2d 343.

No. 5482. *RUARK v. COLORADO*. Sup. Ct. Colo. Certiorari denied.

No. 5490. *SMITH v. ILLINOIS*. Sup. Ct. Ill. Certiorari denied.

No. 5514. *STROZIER v. SMITH, WARDEN*. Sup. Ct. Ga. Certiorari denied. Reported below: 226 Ga. 283, 174 S. E. 2d 417.

No. 5565. *HAMPTON v. JOHNSON, WARDEN*. C. A. 6th Cir. Certiorari denied.

No. 5675. *PETERSON v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 424 F. 2d 1357.

No. 5694. *FURTAk v. NEW YORK*. App. Div., Sup. Ct. N. Y., 4th Jud. Dept. Certiorari denied.

No. 5746. *PEGRAM v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 423 F. 2d 904.

No. 5761. *SANDERS v. UNITED STATES*. C. A. 5th Cir. Certiorari denied.

No. 5770. *FRYE v. PATTEN*. C. A. 2d Cir. Certiorari denied.

No. 5825. *GRANTHAM v. CALIFORNIA ET AL.* C. A. 9th Cir. Certiorari denied.

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No. 5826. *WASHINGTON v. CALIFORNIA*. Sup. Ct. Cal. Certiorari denied.

No. 5827. *BAIN v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 428 F. 2d 508.

No. 5829. *WADDELL v. BOUNDS ET AL.* C. A. 4th Cir. Certiorari denied.

No. 5832. *HALL v. CASSCLES, WARDEN*. C. A. 2d Cir. Certiorari denied.

No. 5833. *RANCIGLIO v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 429 F. 2d 228.

No. 5836. *DIXON v. CALIFORNIA*. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 5840. *PRICE v. IDAHO*. Sup. Ct. Idaho. Certiorari denied. Reported below: 93 Idaho 615, 469 P. 2d 544.

No. 5841. *OLBROT v. ILLINOIS*. App. Ct. Ill., 1st Dist. Certiorari denied.

No. 5842. *McCLAIN v. NEW YORK*. App. Div., Sup. Ct. N. Y., 2d Jud. Dept. Certiorari denied.

No. 5845. *LEWIS v. OHIO*. Sup. Ct. Ohio. Certiorari denied. Reported below: 22 Ohio St. 2d 125, 258 N. E. 2d 445.

No. 5846. *LEWIS v. ROBINSON, U. S. DISTRICT JUDGE, ET AL.* C. A. D. C. Cir. Certiorari denied.

No. 5847. *DAVIS v. FOLLETTE, WARDEN*. C. A. 2d Cir. Certiorari denied.

No. 5851. *POINTER v. ARKANSAS*. Sup. Ct. Ark. Certiorari denied. Reported below: 248 Ark. 710, 454 S. W. 2d 91.

No. 5857. *McLAUGHLIN v. DIRECTOR, PATUXENT INSTITUTION*. Ct. Sp. App. Md. Certiorari denied.

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No. 5852. CHAPMAN, AKA CRONIN *v.* CALIFORNIA. C. A. 9th Cir. Certiorari denied. Reported below: 423 F. 2d 682.

No. 5859. SCHELTER *v.* PERINI, CORRECTIONAL SUPERINTENDENT. C. A. 6th Cir. Certiorari denied.

No. 5860. GRAVES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 428 F. 2d 196.

No. 5861. PORTER *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 431 F. 2d 7.

No. 5862. BROWN *v.* VIRGINIA. Sup. Ct. App. Va. Certiorari denied.

No. 5863. GRAY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 429 F. 2d 1323.

No. 5864. MARTIN *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 428 F. 2d 1140.

No. 536. BETO, CORRECTIONS DIRECTOR *v.* GRAVES. C. A. 5th Cir. Certiorari denied. MR. JUSTICE DOUGLAS is of the opinion that certiorari should be granted. Reported below: 424 F. 2d 524.

No. 579. GOLDSMITH *v.* SUTHERLAND. C. A. 6th Cir. Certiorari denied. MR. JUSTICE DOUGLAS is of the opinion that certiorari should be granted. Reported below: 426 F. 2d 1395.

No. 5543. MACK *v.* NEW YORK. Ct. App. N. Y. Certiorari denied. MR. JUSTICE BRENNAN is of the opinion that certiorari should be granted. Reported below: 26 N. Y. 2d 311, 258 N. E. 2d 703.

Rehearing Denied

No. 180. ZEMLER *v.* UNITED STATES, *ante*, p. 820; and

No. 5556. CAMPBELL *v.* UNITED STATES, *ante*, p. 881. Motions for leave to file petitions for rehearing denied.

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No. 201. *McCONNAY v. UNITED STATES*, *ante*, p. 821;
No. 5317. *McCONNAY v. UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT ET AL.*, *ante*, p. 817;
No. 465. *SAYLES v. WIEGAND ET AL.*, *ante*, p. 876;
No. 485. *HAWTHORNE v. ILLINOIS*, *ante*, p. 878; and
No. 5811. *ANDERSON v. AMERICAN BROADCASTING Co. ET AL.*, *ante*, p. 875. Petitions for rehearing denied.

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Miscellaneous Order

No. 1101. *NAMED INDIVIDUAL MEMBERS OF THE SAN ANTONIO CONSERVATION SOCIETY v. TEXAS HIGHWAY DEPARTMENT ET AL.* C. A. 5th Cir. Stay heretofore granted by the Court on December 7, 1970 [*ante*, p. 939], vacated. MR. JUSTICE BLACK, MR. JUSTICE DOUGLAS, MR. JUSTICE BRENNAN, and MR. JUSTICE MARSHALL dissent from the entry of this order.

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Appeals Dismissed

No. 741. *CHASE BRASS & COPPER Co. v. FRANCHISE TAX BOARD OF CALIFORNIA.* Appeal from Ct. App. Cal., 1st App. Dist. Motions of Tax Executives Institute, Inc., Financial Executives Institute, and National Association of Manufacturers of the United States et al. for leave to file briefs as *amici curiae* 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: 10 Cal. App. 3d 496, 95 Cal. Rptr. 805.

No. 5874. *SNODDY v. McNAIR, GOVERNOR OF SOUTH CAROLINA, ET AL.* Appeal from D. C. S. C. dismissed for want of jurisdiction. MR. JUSTICE STEWART is of the opinion that the judgment should be affirmed.

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No. 744. *YOUNG v. FLORIDA*. Appeal from Sup. Ct. Fla. dismissed for want of substantial federal question. Reported below: 238 So. 2d 589.

No. 754. *8200 REALTY CORP. ET AL. v. LINDSAY, MAYOR OF THE CITY OF NEW YORK, ET AL.* Appeal from Ct. App. N. Y. dismissed for want of substantial federal question. Reported below: 27 N. Y. 2d 124, 261 N. E. 2d 647.

No. 762. *JOHNSON v. GOODYEAR TIRE & RUBBER CO. ET AL.* Appeal from Ct. App. Cal., 2d App. 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 BLACKMUN took no part in the consideration or decision of this case. Reported below: 9 Cal. App. 3d 304, 88 Cal. Rptr. 221.

No. 5875. *ANDERSON v. ROCKEFELLER, GOVERNOR OF NEW YORK, ET AL.* Appeal from D. C. S. D. N. Y. dismissed for want of jurisdiction.

Miscellaneous Orders

No. 31, Orig. *UTAH v. UNITED STATES*. Motion of the Solicitor General for an extension of time to file exceptions and brief on Report of Special Master granted, and time extended to and including January 8, 1971. MR. JUSTICE MARSHALL took no part in the consideration or decision of this motion. [For previous actions herein, see, *e. g.*, *ante*, p. 875.]

No. 338. *BLONDER-TONGUE LABORATORIES, INC. v. UNIVERSITY OF ILLINOIS FOUNDATION ET AL.* C. A. 7th Cir. [Certiorari granted, *ante*, p. 864.] Motion of Finney Co. for leave to file a brief as *amicus curiae* granted, and motion for leave to participate in oral argument as *amicus curiae* denied. Motion of respondent University of Illinois Foundation to allow additional time for oral argument denied.

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No. 41, Orig. OHIO *v.* WYANDOTTE CHEMICALS CORP. ET AL. Motion to permit three attorneys to participate in oral argument on behalf of defendants granted. [For earlier order herein, see *ante*, p. 810.]

No. 5175. PEREZ ET UX. *v.* CAMPBELL ET AL. C. A. 9th Cir. [Certiorari granted, *ante*, p. 818.] Motion of Women's Center Legal Program et al. for leave to file a brief as *amici curiae* granted.

No. 5257. LABINE, TUTRIX *v.* VINCENT, ADMINISTRATOR. Appeal from Sup. Ct. La. [Probable jurisdiction noted, *ante*, p. 817.] Motion of American Civil Liberties Union for leave to file a brief as *amicus curiae* granted.

No. 5483. WALKER *v.* PATE, WARDEN, ET AL.;

No. 5865. SZIJARTO *v.* NELSON, WARDEN;

No. 5883. STAMPER *v.* HASKINS, CORRECTIONAL SUPERINTENDENT; and

No. 5975. HAWLEY *v.* CALIFORNIA. Motions for leave to file petitions for writs of habeas corpus denied.

Probable Jurisdiction Noted

No. 548. ELY *v.* KLAHR ET AL. Appeal from D. C. Ariz. Probable jurisdiction noted. Reported below: 313 F. Supp. 148.

Certiorari Granted

No. 712. TRIANGLE IMPROVEMENT COUNCIL ET AL. *v.* RITCHIE, COMMISSIONER, STATE ROAD COMMISSION OF WEST VIRGINIA, ET AL. C. A. 4th Cir. Certiorari granted. [For earlier order herein, see, *ante*, p. 876.]

No. 5586. BELL *v.* BURSON, DIRECTOR, DEPARTMENT OF PUBLIC SAFETY OF GEORGIA. Ct. App. Ga. Motion for leave to proceed *in forma pauperis* granted. Certiorari granted. Reported below: 121 Ga. App. 418, 174 S. E. 2d 235.

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Certiorari Denied. (See also Nos. 741 and 762, *supra.*)

No. 242. SAMADJOPOULOS *v.* NATIONAL WESTERN LIFE INSURANCE Co. C. A. 1st Cir. Certiorari denied. [For earlier order herein, see, *ante*, p. 815.]

No. 276. PARIS *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 216 Pa. Super. 803, 264 A. 2d 170.

No. 738. CRAIG ET AL. *v.* OLIN MATHIESON CHEMICAL CORP. C. A. 7th Cir. Certiorari denied. Reported below: 427 F. 2d 962.

No. 739. B'NAI B'RITH, INC. *v.* JOFTES. C. A. D. C. Cir. Certiorari denied.

No. 742. TRANSAMERICAN FREIGHT LINES, INC. *v.* LOCUST CARTAGE Co., INC. C. A. 1st Cir. Certiorari denied. Reported below: 430 F. 2d 334.

No. 743. STEWART, TRUSTEE IN BANKRUPTCY *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 428 F. 2d 319.

No. 746. LITTLE *v.* GREEN. C. A. 5th Cir. Certiorari denied. Reported below: 428 F. 2d 1061.

No. 747. MARSHALL, ADMINISTRATOR *v.* HOLLYWOOD, INC., ET AL. Sup. Ct. Fla. Certiorari denied. Reported below: 236 So. 2d 114.

No. 748. BAKEWELL *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 430 F. 2d 721.

No. 750. BONANNO ET AL. *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 430 F. 2d 1060.

No. 753. KRISEL *v.* PHILLIPS PETROLEUM Co. C. A. 2d Cir. Certiorari denied. Reported below: 424 F. 2d 1367.

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No. 751. MARJORIE WEBSTER JUNIOR COLLEGE, INC. *v.* MIDDLE STATES ASSOCIATION OF COLLEGES & SECONDARY SCHOOLS, INC. C. A. D. C. Cir. Certiorari denied. Reported below: 139 U. S. App. D. C. 217, 432 F. 2d 650.

No. 755. MOORE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 427 F. 2d 38.

No. 757. BAKER *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 139 U. S. App. D. C. 126, 430 F. 2d 499.

No. 5518. HARDIN *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied. Reported below: 453 S. W. 2d 156.

No. 5522. GUZIEC, AKA HAILE *v.* CREDIT BUREAU OF SANTA MONICA BAY DISTRICT, INC. App. Dept., Super. Ct. Cal., County of Los Angeles. Certiorari denied.

No. 5529. LYONS *v.* CALIFORNIA. App. Dept., Super. Ct. Cal., County of San Francisco. Certiorari denied.

No. 5553. BOYD *v.* NEW YORK. App. Div., Sup. Ct. N. Y., 1st Jud. Dept. Certiorari denied.

No. 5574. CONKLIN *v.* WAINWRIGHT, CORRECTIONS DIRECTOR. C. A. 5th Cir. Certiorari denied. Reported below: 424 F. 2d 516.

No. 5587. MOORE *v.* FOLLETTE, WARDEN. C. A. 2d Cir. Certiorari denied.

No. 5796. GREENE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 423 F. 2d 1068.

No. 5830. QUINTANAR-MUNOZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 432 F. 2d 425.

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No. 5869. *DORSEY v. NEW JERSEY*. C. A. 3d Cir. Certiorari denied.

No. 5870. *BROWN v. ARKANSAS*. C. A. 8th Cir. Certiorari denied. Reported below: 426 F. 2d 677.

No. 5871. *CRUZ v. CALIFORNIA*. Ct. App. Cal., 2d App. Dist. Certiorari denied. Reported below: 6 Cal. App. 3d 384, 85 Cal. Rptr. 918.

No. 5876. *CASSIDY v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 428 F. 2d 383.

No. 5878. *VITORATOS v. YACOBUCCI*. Sup. Ct. Ohio. Certiorari denied. Reported below: 22 Ohio St. 2d 206, 259 N. E. 2d 120.

No. 5882. *WILLIAMS v. NEIL, WARDEN*. C. A. 6th Cir. Certiorari denied.

No. 5885. *BRISCOE v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 428 F. 2d 954.

No. 5886. *TWITTY v. UNITED STATES*. C. A. 8th Cir. Certiorari denied.

No. 5889. *HART v. BRIERLEY, CORRECTIONAL SUPERINTENDENT*. C. A. 3d Cir. Certiorari denied.

No. 5890. *MYLES v. PROCUNIER, CORRECTIONS DIRECTOR, ET AL.* Sup. Ct. Cal. Certiorari denied.

No. 5891. *STRATER v. UNITED STATES*. C. A. D. C. Cir. Certiorari denied.

No. 5893. *HARRIS v. UNITED STATES*. C. A. 6th Cir. Certiorari denied.

No. 5894. *TRIGG v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 430 F. 2d 372.

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No. 5896. *BENDELOW v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 418 F. 2d 42.

No. 5898. *MCCRAY v. UNITED STATES*. C. A. 4th Cir. Certiorari denied.

No. 5901. *FRANKLIN v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 429 F. 2d 274.

No. 5903. *WILLIAMS v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 422 F. 2d 1043.

No. 5904. *HARTMAN v. UNITED STATES*. C. A. 6th Cir. Certiorari denied.

No. 5909. *SKOLNICK v. WILL, U. S. DISTRICT JUDGE*. C. A. 7th Cir. Certiorari denied.

No. 5974. *WASHINGTON v. SUPERIOR COURT OF LOS ANGELES COUNTY ET AL.* Sup. Ct. Cal. Certiorari denied.

No. 5976. *WELLS v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 431 F. 2d 432.

No. 286. *ALASKA ET AL. v. UNITED STATES ET AL.* C. A. 9th Cir. Certiorari denied. MR. JUSTICE DOUGLAS is of the opinion that certiorari should be granted. Reported below: 423 F. 2d 764. [For earlier order herein, see, *ante*, p. 815.]

No. 721. *TRANSIT HOMES, INC. v. MASTROPOLE ET UX.* Sup. Ct. S. C. Certiorari denied. THE CHIEF JUSTICE and MR. JUSTICE BLACKMUN are of the opinion that certiorari should be granted and the judgment of the Supreme Court of South Carolina reversed. Reported below: 254 S. C. 332, 175 S. E. 2d 465.

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NO. 1101. NAMED INDIVIDUAL MEMBERS OF THE SAN ANTONIO CONSERVATION SOCIETY *v.* TEXAS HIGHWAY DEPARTMENT ET AL. Petition for certiorari before judgment to C. A. 5th Cir. Certiorari denied.

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

This case disturbs me greatly. On December 7, 1970, this Court stayed the construction of two federally funded highways in order to save two public parks, *ante*, p. 939. One park serves the people of Memphis, Tennessee.¹ The park in this case is for the rest and recreation of the people of San Antonio, Texas. Both cases involve important and timely problems of interpretation of § 18 (a) of the Federal-Aid Highway Act of 1968, 23 U. S. C. § 138 (1964 ed., Supp. V), passed by Congress to stem the destruction of our Nation's parks by highway builders. These cases give this Court an opportunity to insure that lower courts and certain federal agencies administer this vital environment-saving legislation in the way that Congress intended. The Tennessee case is still scheduled for oral argument at the earliest possible date—January 11, 1971. Yet, the Court now dissolves the stay previously entered in the San Antonio case by denying certiorari. I respectfully dissent from such action.

The San Antonio park has two golf courses, a zoo, a sunken garden, an open-air theater and many acres of open space, covered with trees, flowers, and running brooks. It is a lovely place for people to retreat from the frantic pace of bustling urban life to enjoy the simple pleasures of open space, quiet solitude, and clean air. It is a refuge for young and old alike—the kind of a park where a family man can take his wife and children or lovers can while away a sunny Sunday afternoon to—

¹ See No. 1066, *Citizens to Preserve Overton Park, Inc. v. Volpe*.

gether. After today's decision, the people of San Antonio and the birds and animals that make their home in the park will share their quiet retreat with an ugly, smelly stream of traffic pouring down a super six-lane "North Expressway." Trees, shrubs, and flowers will be mown down. The cars will spew forth air and noise pollution contaminating those acres not buried under concrete. Mothers will grow anxious and desert the park lest their children be crushed beneath the massive wheels of interstate trucks.

The San Antonio Conservation Society and its individual members filed suit to block federal approval and funding of this expressway. The United States District Court held that the Secretary of Transportation and state officials were free to proceed with federal funding and construction of two segments of the road coming into the park from north and south. It retained jurisdiction to review any later decision on the design and routing of the connecting middle section, which had not been formally approved by the Secretary.

In addition to substantial questions under the Federal-Aid Highway Act, this case involves the newly enacted National Environmental Policy Act of 1969, Pub. L. 91-190, 83 Stat. 852. The latter requires a detailed study of the probable effects before approval of "major Federal actions significantly affecting the quality of the human environment." 42 U. S. C. § 4332 (C) (1964 ed., Supp. V). Even respondent Secretary of Transportation appears to concede that the decision to fund this expressway is a "major federal action" requiring careful study because he has promised that a study will be made before the middle section is approved. However, the approval of the two end segments took place in August 1970, eight months *after* the effective date of the Act. It is undisputed that no environmental study has been made with respect to these two segments,

which themselves desecrate parklands and which make the destruction of further parkland inevitable.

Section 18 (a) of the Federal-Aid Highway Act provides:

“It is hereby declared to be the national policy that special effort should be made to preserve the natural beauty of the countryside and public park and recreation lands [T]he Secretary shall not approve any program or project which requires the use of any publicly owned land from a public park, recreation area, or wildlife and waterfowl refuge of national, State, or local significance as determined by the Federal, State, or local officials having jurisdiction thereof . . . as so determined by such officials unless (1) there is no feasible and prudent alternative to the use of such land, and (2) such program includes all possible planning to minimize harm to such park” (Emphasis added.)

Even the Secretary admits that he has failed to make formal findings about feasible and prudent alternative routes. Respondents have argued that formal findings are unnecessary. This seems an unlikely reading of the Act because without findings it will be difficult for courts to review the Secretary's determinations, and the intent of Congress to protect parklands is likely to be frustrated.² Furthermore, it is simply not realistic to consider the construction of this expressway “section by section” as the District Court and the Secretary of

² Ironically, the Secretary of Transportation now appears to recognize that written findings should be made for highway grant-in-aid approvals and such findings are now provided for by his own regulation, Dept. of Transportation Order 5610.1, issued Oct. 7, 1970. But the Secretary has not been willing to apply his regulation to this case. In my view the regulation alone is sufficient reason to reverse and remand for findings of fact. Cf. *Thorpe v. Housing Authority*, 393 U. S. 268 (1969).

Transportation have done here. Once construction is begun and heavy investment made on the two end segments, the available options for routing the middle segment are severely limited. In the words of the Act alternatives for the middle segment which were "feasible and prudent" will no longer be "feasible" once the two end segments are constructed.

In the last several years, Congress has enacted coordinated legislation designed to protect our Nation's environment from destruction by water pollution, air pollution, and noise pollution. This legislation has come about in response to aroused citizens who have awakened to the importance of a decent environment for our Nation's well-being and our very survival. Section 18 (a) of the Federal-Aid Highway Act and the National Environmental Policy Act are two major parts of this broad plan. The former was designed to prevent the systematic and thoughtless burial of public parks under the concrete of federally funded highways. The implementation of this legislation by the Department of Transportation is disheartening. The Act prohibits the Secretary from approving highway construction through parklands unless there is no "feasible and prudent" alternative. Congress has assigned a high value to parks, trees, and clean air. Parks are not to be condemned and taken in order to try to save a few dollars on a multimillion-dollar highway project. Congress was willing to sacrifice parks only when there is "no feasible alternative." Yet the Secretary has proceeded without formal findings to approve two segments of a highway which devour parkland. And the two segments now approved stand like gun barrels pointing into the heartland of the park. The Secretary and his staff are not wholly inexperienced in highway construction. They know full well the difficulty of preserving the park's heartland once the barrels have been loaded and the guns cocked. The efforts of our citizens and the

Congress to save our parklands and to preserve our environment deserve a more hospitable reception and more faithful observance than they have apparently found either in the Executive Branch or, thus far, in the courts.

MR. JUSTICE DOUGLAS, with whom MR. JUSTICE BLACK and MR. JUSTICE BRENNAN concur, dissenting.

This case is here on a stay presented to MR. JUSTICE BLACK and by him referred to the Court. We granted a stay pending consideration of a petition for certiorari before judgment of the Court of Appeals for the Fifth Circuit, *ante*, p. 939, which has now been filed. The Court dissolves the stay and denies certiorari, without any opinion. I dissent. This is an important case that involves the construction of 9.6 miles of an expressway through 250 acres of the Brackenridge-Olmos Basin parklands situated at the headwaters of the San Antonio River within the city of San Antonio. It involves the application of a new law—the National Environmental Policy Act of 1969, 42 U. S. C. § 4331 (1964 ed., Supp. V), which was signed by the President on January 1, 1970. The new Act applies by § 102 (2) to “all agencies of the Federal Government” and provides that such agencies shall include in every recommendation for

“major Federal actions significantly affecting the quality of the human environment, a detailed statement by the responsible official on—(i) the environmental impact of the proposed action, (ii) any adverse environmental effects which cannot be avoided should the proposal be implemented, (iii) alternatives to the proposed action, (iv) the relationship between local short-term uses of man’s environment and the maintenance and enhancement of long-term productivity, and (v) any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented.” § 102 (2)(C).

There can be no doubt that federal funding of a state highway project is covered by the 1969 Act. The most controversial aspect of the highway design and location is that it proposes to run a massive elevated eight- and six-lane expressway through a park in San Antonio. The Brackenridge-Olmos Basin parklands is a unique park, recreational, and open-spaces area. Specific land uses include the original Brackenridge Park grant, the Sunken Gardens, and adjacent outdoor amphitheater, the San Jacinto Park, the Alamo Stadium, the San Antonio Zoo, the Olmos Basin picnic area, the Franklin Fields, and numerous other parks, public, and open-space areas.

Many, including Senator Metcalf of Montana, had sounded the alarm over the devastation caused by federal highways:¹

“Today the land is being covered by four and six lane highways, supermarket parking lots, suburban

¹ Speech, Stanford University, April 9, 1969.

Senator Metcalf on January 24, 1963, spoke of the great need for consideration of ecological factors before highway construction was launched:

“When Congress adjourned last fall, I decided to determine the extent to which highway construction was threatening our streams and rivers. I sent questionnaires to fish and game management officials in each of our 50 States. To date, Mr. President, I have received responses from 46 States.

“The questionnaire consisted of 10 questions, one of which was: ‘Are trout streams or other important fishing streams or lakes adversely affected by highway construction in your State?’ Thirty-two of the forty-six States which have responded to the questionnaire answered affirmatively, although damage varies in seriousness from State to State.

“Perhaps more significant were the responses to the question: ‘Do you feel that additional legislation at the Federal or State levels is necessary to bring about a satisfactory degree of coordination of highway and wildlife conservation interests and objectives in your State?’ To this question, Mr. President, fish and game management men in 37 States replied, ‘Yes.’ Two States were undecided about

high rise apartment buildings and lost to itself and to the people alike.”

Parks—the breathing space of urban centers—were part of the concern of Congress, not only wilderness areas, rivers, lakes, and other aspects of the biosphere.² The Senate Committee stated in its report:

“The inadequacy of present knowledge, policies, and institutions is reflected in our Nation’s history, in our national attitudes, and in our contemporary life. We see increasing evidence of this inadequacy all around us: haphazard urban and suburban growth; crowding, congestion, and *conditions within our central cities* which result in civil unrest and detract from man’s social and psychological well-being; *the loss of valuable open spaces*; inconsistent and, often, incoherent rural and urban land-use policies; critical air and water pollution problems; *diminishing recreational opportunity*; continuing soil erosion; *the degradation of unique ecosystems*; needless deforestation; the decline and extinction of fish and wildlife species; *faltering and poorly de-*

the necessity for legislation, and only seven see no need for action in this area.

“Mr. President, my questionnaire revealed general agreement, among those most qualified to know, that there is a need for legislation. This is not a partisan, political issue; it is a conservation problem cutting across party lines, as shown by responses to my questionnaire. Fish and game officials working for Republican and Democratic State administrations agreed that there is a need for legislation to protect fish, wildlife, and recreation resources from damage due to highway construction.

“Our bill, Mr. President, provides a method of meeting that need. I urge my colleagues to study this problem as it relates to their own States. I hope this matter will receive the attention of the Congress this year.” 109 Cong. Rec. 871.

² For the legislative history see the Appendix to this opinion.

signed transportation systems; poor architectural design and ugliness in public and private structures; rising levels of noise; the continued proliferation of pesticides and chemicals without adequate consideration of the consequences; radiation hazards; thermal pollution; an increasingly ugly landscape cluttered with billboards, powerlines, and junkyards; and many, many other environmental quality problems." S. Rep. No. 91-296, p. 4. (Italics added.)

The report noted that environmental programs were administered by 63 federal agencies located within 10 of the 13 departments, as well as in 16 independent agencies. *Id.*, at 6.

"[P]oor land-use policies and urban decay" can no longer be deferred, the report stated. *Id.*, at 5.

"We no longer have the margins for error that we once enjoyed. The ultimate issue posed by shortsighted, conflicting, and often selfish demands and pressures upon the finite resources of the earth are clear." *Ibid.*

And so the Act was drafted "to assure that all Federal agencies plan and work toward meeting the challenge of a better environment." *Id.*, at 9.

Yet in spite of this mandate embodied in § 102 (2)(C) the Department of Transportation has made no findings on the impact of this massive elevated freeway on the environment of San Antonio. The Court does not tell us why none need be made.

On August 4, 1970, the State, after revising its plans, agreed to the federal plan for the end segments of the projects. But we are advised that it was not until August 13, 1970, that the Secretary of Transportation approved the construction by Texas of the two end seg-

ments; and he has not yet approved the middle section. It is said:

“The Secretary expressly reserved final approval on the middle section because there is much parkland contained in the middle section.

“As a matter of fact, one of the primary reasons the Secretary has not approved the middle section is due to the consideration of the views expressed by plaintiffs in opposition to the proposed route the middle section will take through the parklands.”

We were told on November 16, 1970, that there are “at least four (4) possible alternative routes on which the middle section could be constructed to connect the two ends which the District Court has approved.”

That is to say, 11 months after the Environmental Policy Act became effective, the gist of the location problem so far as the park is concerned had not been resolved.

The Solicitor General contends that the two end segments were approved in 1969. But the facts are that while Secretary Volpe gave preliminary approval of these segments on December 23, 1969, he withheld authorization of federal funds pending an agreement by the State to study further the middle segment. As already stated, Texas agreed to the end segments on August 4, 1970, and the Secretary gave his “unqualified approval” and authorization of them on August 13, 1970, long after the new Act became effective. Yet no findings under the 1969 Act were made.

It seems obvious, moreover, that approval of the two end segments has some effect on the alternatives for the middle section. For, once the expressway is split into segments and each segment considered separately, the environmental impact of the entire project will turn, at least in part, on the fact that the two ends are already built.

The Solicitor General states: "The Secretary could well approve a route in the middle segment that would involve little or no use of parklands, or substantially less than the proposed route location now contemplates."

Thus we have a fair indication that some of the park is going to be a freeway regardless. Yet as I read the Act a federal highway project "significantly affecting" even an acre of parkland cannot be launched without a finding on the environmental consequences.

The legal questions posed by § 102 (2)(C) include at least the following:

Should any piece of the park be destroyed to accommodate the freeway?

How can end segments of a highway aimed at the heart of a park be approved without appraising the dangers of drawing a dotted line between the two segments?

How important is the park to the people of San Antonio? How many use it? For what purposes? What wildlife does it embrace? To what extent will a massive eight- and six-lane highway decrease the value of the park as a place of solitude or recreation?

What are the alternatives that would save the park completely? Could a passage by way of tunnels be devised? Could the freeway be rerouted so as to avoid the parklands completely and leave it as a sanctuary?

Is not the ruination of a sanctuary created for urban people an "irreversible and irretrievable" loss within the meaning of § 102 (2)(C)?

I do not think we will have a more important case this Term. Congress has been moving with alarm against the perils of the environment. One need not be an expert to realize how awful the consequences are when urban sanctuaries are filled with structures, paved with concrete or asphalt, and converted into thoroughfares of high-speed modern traffic.

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Those are some of the things with which Congress was concerned in the 1969 Act.

No federal question would, of course, be presented if Texas or San Antonio decided to turn these parklands into a biological desert. But when Congress helps finance a project like this freeway,³ it becomes a federal project. See *Wickard v. Filburn*, 317 U. S. 111, 131; *Ivanhoe Irrig. Dist. v. McCracken*, 357 U. S. 275, 295; *Simkins v. Memorial Hosp.*, 323 F. 2d 959. And if one thing is clear from the legislative history of this 1969 Act, it is that Congress has resolved that it will not allow federal agencies or federal funds to be used in a predatory manner so far as the environment is concerned. Congress has, indeed, gone further and said that the Department of Transportation, like other federal agencies, may no longer act as engineers alone and design and construct freeways solely by engineering standards. Congress has said that ecology has become paramount and that nothing must be done by federal agencies which does ecological harm when there are alternative, albeit more expensive, ways of achieving the result.

I would continue the stay, grant the petition for certiorari before judgment, 28 U. S. C. § 1254 (1), and let the bureaucracy know that § 102 (2)(C) is the law of the land to be observed meticulously.

APPENDIX TO OPINION OF DOUGLAS, J., DISSENTING

Much of the legislative history of the Act is a discussion of air pollution, water pollution, and solid waste disposal. But when specifics are mentioned highway problems are present. And the mention of highway problems at every stage in the legislative history leaves

³ The Federal Government is providing the funds for 50% of the cost of this expressway.

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no doubt that the Department of Transportation's highway programs are subject to the Act.

At the Senate Hearing on the Act, the Department was represented by the Assistant Secretary for Urban Systems and Environment. He immediately recognized the reason he was present.

"I think that perhaps the reason that the Department of Transportation was asked to have a representative here before your committee was because within the purview of the Department of Transportation has lain in the past and will continue to lie in the future many of the activities that, at least, are most apparent to the people of the country in the field of environmental impact."

He talked about the views of those people who live in metropolitan areas of the country. They have, he stated:

"a growing concern, though in most instances it is not a deep knowledge perhaps of scientific implications . . . as to what might happen to life itself in some of the areas of which we are destroying our environment, it is concerned with the things that they see about them in their daily lives. And in this area, I think, transportation and the activities of transportation organizations have been one of those which they have observed and which has created perhaps as much controversy and concern as any other area of the State and Federal operations." Hearing on S. 1075, S. 237, and S. 1752, before the Senate Committee on Interior and Insular Affairs, 91st Cong., 1st Sess., 76.

Included in the House Hearings is a letter from the Chairman of the House Subcommittee considering the 1969 Act to the Chairman of the President's Council on Environmental Quality which notes that neither the De-

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partment of Transportation nor the Department of the Interior has promulgated the procedures it will use under the Act. "The fact that there has not been full compliance by these Departments disturbs me greatly." Hearings before the Subcommittee on Fisheries and Wildlife Conservation of the House Committee on Merchant Marine and Fisheries, Ser. No. 91-32, p. 69. And before the House Hearings were printed the Department of Transportation had complied with the request and the Department's procedures under the Act were printed with the House Hearings. *Id.*, at 153-159.

The debates on the Act on the floors of both Houses were relatively short, attesting in some measure to the popularity of enacting an extensive environmental bill. Yet just as the Senate and House Hearings had demonstrated that the Department of Transportation was an integral part of the Federal Government's creation of environmental problems, so, too, did the debates alert one to the fact that highways caused environmental problems when not approached from an ecological perspective. In the House only a handful of speakers discussed the bill for any length of time and all spoke in broad generalities. Representative Pelly, a member of the subcommittee which considered the Act, provided the focus on the problems of highways.

"We have experts in the field of transportation coping with the problem of moving people from one city to another in the least possible time with the greatest degree of safety. We have constructed a vast system of interstate highways to accomplish this. Yet at the same time, we have created serious problems of soil erosion, stream pollution and urban displacement. . . .

". . . The experts have, by and large, done their job well, but we must remember that their job is

building highways, increasing our food production, preventing floods, and so on. Their primary concern is not the quality of our environment considered as a totality." 115 Cong. Rec. 26573.

The Senate debates were also brief and again often dealt largely with the generalities of air and water pollution. Senator Allott, a member of the committee which considered the Act, recognized this and reminded his colleagues that more was involved.

"I think there is a little too much of a tendency, probably not in the committees involved here, but on the part of the public, to regard environment as involving only air pollution and water pollution. . . .

". . . [T]he environment does not involve only water and air; . . . it involves noise—and we are all becoming acutely conscious of this factor. More and more as time goes on—environmental questions will also involve land distribution, land planning for the future, what kind of future cities we will plan, and what we will do about the ghettos—for the ghettos are a part of the environmental picture . . ."

Id., at 29061.

Senator Jackson, chairman of the committee which considered the Act, reviewed the legislative history of the Act for the benefit of the other Senators. He stated that concepts and ideas were drawn from the many other bills before Congress when the Senate Committee considered the Act. These bills

"were directly concerned with environmental issues, covering a broad area of interest—cleaning up the Nation's rivers and better approaches to smog control, improving the use of open space and prevention of disorderly encroachment by super-highways, factories and other developments . . . and the control

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of urban sprawl, unsightly junkyards, billboards, and power facilities that lower the amenities of landscape." *Id.*, at 29068.

Thus there can be no doubt but that Congress intended the Act to apply to federally funded highways and the Department of Transportation.

Rehearing Denied

No. 1109, October Term, 1968. *WEED v. BILBREY ET AL.*, 394 U. S. 1018, 395 U. S. 971, and 397 U. S. 930. Motion for leave to file third petition for rehearing denied. THE CHIEF JUSTICE and MR. JUSTICE BLACKMUN took no part in the consideration or decision of this motion.

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

This suit grows out of the death of Mrs. Weed's husband in Florida. He was killed while on navigable waters within the State. She recovered nothing in her action for wrongful death because the trial court found her husband had been negligent and applied the Florida doctrine of contributory negligence. She contended that the maritime rule of comparative negligence should apply. She lost. Meanwhile a similar suit was progressing through the federal courts in Florida. Mrs. Moragne had also lost her husband on the navigable waters of that State. She contended that the maritime principle of unseaworthiness should apply. The Florida Supreme Court, asked whether the state law incorporated the principle, ruled that it did not, and that she was not entitled to recover under Florida law. 211 So. 2d 161 (1968).

The District Court of Appeal of Florida ruled, in the *Weed* case, that Florida law did incorporate the federal maritime doctrine of comparative negligence. 201 So.

2d 771 (1967). The defendants appealed to the Florida Supreme Court. That court, considering the claim of Mrs. Weed indistinguishable from that of Mrs. Moragne, denied three weeks earlier, reversed the appellate court. 215 So. 2d 479 (1968).

Mrs. Weed preceded Mrs. Moragne to this Court. She claimed that she had a cause of action under federal maritime law even though it was not statutorily authorized. She asked this Court to overrule its decision in *The Harrisburg*, 119 U. S. 199, that maritime law did not afford a cause of action for wrongful death. Her petition for certiorari was denied in May 1969, over three dissents. 394 U. S. 1018. Three weeks later, Mrs. Moragne filed a petition for certiorari in this Court, raising the same claim. Mrs. Weed filed a petition for rehearing, asking that her claim be heard with that of Mrs. Moragne. Mrs. Weed's request was denied in June 1969. 395 U. S. 971. In November 1969, certiorari was granted in the *Moragne* case. 396 U. S. 900.

Mrs. Weed again asked that her case be considered with that of Mrs. Moragne. This request was also denied. 397 U. S. 930.

In June 1970, this Court vindicated the claim of Mrs. Moragne.* 398 U. S. 375. Mrs. Weed now presents a compelling argument. She is one of two widows from the State of Florida who lost their husbands on navigable waters. One has recovered and one has not, because a different law was ultimately applied. Though both parties challenged the same rule, at nearly the

*This Court overruled *The Harrisburg*, 119 U. S. 199, and held that an action does lie under general maritime law for death caused by violation of maritime duties. Had Mrs. Weed's petition been granted, or had she been allowed to join with Mrs. Moragne before this Court, this holding would have meant that she was entitled to recovery, diminished by the doctrine of comparative negligence, rather than barred by the doctrine of contributory negligence.

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same time, this Court has favored one and ignored the other.

Every plaintiff who loses his claim cannot reinstate his action when a rule of law favorable to him is declared, either by the legislature or the court. But that is not what is attempted here. This action had hardly come to rest when the Moragne petition was filed, and Mrs. Weed had continually asked this Court to be considered with that case. The facts of this case are even more compelling than those in *Gondeck v. Pan American World Airways, Inc.*, 382 U. S. 25, in which this Court confirmed that, "the interest in finality of litigation must yield where the interests of justice would make unfair the strict application of our rules." *Id.*, at 26-27. Moreover, had Mrs. Weed proceeded through the federal courts, or had she instituted her suit later, she might have arrived in this Court after Mrs. Moragne. She did reach the Court three weeks before Mrs. Moragne; but her petition was denied. Had she followed Mrs. Moragne to this Court, the result in her case would have been different. All she asks is that the Court apply the law in her case that was applied in the one following hers.

No. 300. ODOM *v.* UNITED STATES, *ante*, p. 23;

No. 339. SLAKMAN *v.* FLORIDA, *ante*, p. 901;

No. 520. CIMINI *v.* UNITED STATES, *ante*, p. 911;

No. 521. O'MALLEY *v.* UNITED STATES, *ante*, p. 911;

No. 553. MARTIN, DBA SILKO NEW IMPROVED PRODUCTS Co. *v.* CROWN ZELLERBACH CORP., *ante*, p. 911;

No. 572. COUSINS *v.* UNITED STATES, *ante*, p. 904;

No. 5255. SHOLE *v.* O'FERRALL, ASSISTANT ATTORNEY GENERAL OF MARYLAND, ET AL., *ante*, p. 839;

No. 5377. KAMSLER *v.* BELLOWS, BELLOWS & MAGIDSON, *ante*, p. 912; and

No. 5710. SHOLE *v.* HOWARD ET AL., JUDGES, *ante*, p. 928. Petitions for rehearing denied.

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No. 481. BUSH *v.* ALLSTATE INSURANCE Co., *ante*, p. 833;

No. 5212. NIX *v.* ILLINOIS, *ante*, p. 836; and

No. 5508. MCKINNON *v.* UNITED STATES, *ante*, p. 868.
Motions for leave to file petitions for rehearing denied.

No. 5671. CANTRELL *v.* UNITED STATES, *ante*, p. 920.
Petition for rehearing denied. MR. JUSTICE BLACKMUN took no part in the consideration or decision of this petition.

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Miscellaneous Orders

No. —. IN RE HOGAN. Sup. Ct. Minn. Motion for leave to file petition for writ of mandamus and stay presented to MR. JUSTICE BLACKMUN, and by him referred to the Court, denied.

No. 6295. ST. CLAIR *v.* SELECTIVE SERVICE LOCAL BOARD No. 35, BROOKLYN, NEW YORK, ET AL. C. A. 2d Cir. Application for stay presented to MR. JUSTICE DOUGLAS, and by him referred to the Court, denied.

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Affirmed on Appeal. (See also No. 789, *infra.*)

No. 463. SEA PAK, A DIVISION OF W. R. GRACE & Co. *v.* INDUSTRIAL, TECHNICAL & PROFESSIONAL EMPLOYEES, DIVISION OF NATIONAL MARITIME UNION, AFL-CIO. Affirmed on appeal from C. A. 5th Cir. MR. JUSTICE HARLAN is of the opinion that probable jurisdiction should be noted and case set for oral argument. Reported below: 423 F. 2d 1229.

No. 836. HENKES ET AL. *v.* FISHER ET AL. Affirmed on appeal from D. C. Mass. Reported below: 314 F. Supp. 101.

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Appeals Dismissed

No. 809. *ATTIC CLUB, INC. v. TEXAS LIQUOR CONTROL BOARD*. Appeal from Sup. Ct. Tex. dismissed for want of substantial federal question. Reported below: 457 S. W. 2d 41.

No. 813. *TIMMONS v. SOUTH CAROLINA TRICENTENIAL COMMISSION ET AL.* Appeal from Sup. Ct. S. C. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied. Reported below: 254 S. C. 378, 175 S. E. 2d 805.

No. 820. *COIT ET AL. v. GREEN ET AL.* Appeal from D. C. D. C. dismissed for want of jurisdiction. Reported below: 309 F. Supp. 1127.

No. 828. *WASHINGTON TELEPHONE CO. v. WASHINGTON*. Appeal from Sup. Ct. Wash. dismissed for want of substantial federal question. MR. JUSTICE DOUGLAS took no part in the consideration or decision of this case. Reported below: 77 Wash. 2d 923, 468 P. 2d 687.

No. 5978. *WASHINGTON v. NEW YORK*. Appeal from App. Term, Sup. Ct. N. Y., 1st Jud. Dept., dismissed for want of substantial federal question.

No. 6011. *FOWLER v. ADAMS, SECRETARY OF STATE OF FLORIDA*. Appeal from D. C. M. D. Fla. dismissed for want of jurisdiction. Reported below: 315 F. Supp. 592.

Vacated and Remanded on Appeal. (See also Nos. 793, 794, and 797, *infra*.)

No. 115. *JIMENEZ ET AL. v. NAFF, YAKIMA COUNTY AUDITOR, ET AL.* Appeal from D. C. E. D. Wash. [Probable jurisdiction noted, 397 U. S. 1005.] Judgment vacated and case remanded to the United States District Court for the Eastern District of Washington for further consideration in light of *Oregon v. Mitchell*, *ante*, p. 112.

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No. 137. UNITED STATES ET AL. *v.* CHICAGO & EASTERN ILLINOIS RAILROAD Co.; and

No. 138. ILLINOIS COMMERCE COMMISSION ET AL. *v.* CHICAGO & EASTERN ILLINOIS RAILROAD Co. Appeals from D. C. N. D. Ill. [Probable jurisdiction noted, 398 U. S. 957.] Judgment vacated and cases remanded to the United States District Court for the Northern District of Illinois with directions to remand to the Interstate Commerce Commission for a determination as to whether the trains involved constitute an "intercity" service within the meaning of § 102 (5) of the Rail Passenger Service Act of 1970, Pub. L. 91-518, 84 Stat. 1328. Reported below: 308 F. Supp. 645.

No. 768. MESSER ET AL. *v.* RICHARDSON, SECRETARY OF HEALTH, EDUCATION, AND WELFARE. Appeal from D. C. E. D. Ky. Upon consideration of suggestion of mootness and examination of entire record, judgment vacated and case remanded to the United States District Court for the Eastern District of Kentucky with directions to dismiss case as moot. Reported below: 314 F. Supp. 511.

Other Summary Dispositions

No. 789. CITY OF CHICAGO ET AL. *v.* UNITED STATES ET AL.;

No. 793. WESTERN PACIFIC RAILROAD Co. *v.* CITY OF CHICAGO ET AL.;

No. 794. BURLINGTON NORTHERN, INC., ET AL. *v.* CITY OF CHICAGO ET AL.; and

No. 797. UNITED STATES ET AL. *v.* CITY OF CHICAGO ET AL. Appeals from D. C. N. D. Ill. That portion of judgment appealed from in No. 789 affirmed. Those portions of judgment appealed from in Nos. 793, 794, and 797 reversed and cases remanded to the United States District Court for the Northern District of Illinois for further proceedings. *United States v. City of Chicago*, ante, p. 8. Reported below: 314 F. Supp. 886.

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Certiorari Granted—Vacated and Remanded

No. 5561. *LILLY v. RUNDLE*, CORRECTIONAL SUPERINTENDENT. C. A. 3d Cir. Motion for leave to proceed *in forma pauperis* and certiorari granted. Judgment vacated and case remanded to the United States Court of Appeals for the Third Circuit with directions to reinstate appeal in conformity with suggestions filed by respondent.

*Certiorari Dismissed**

No. 5958. *IRVIN v. UNITED STATES*. C. A. 9th Cir. Petition for writ of certiorari dismissed. Case and record referred to the United States Court of Appeals for the Ninth Circuit for further consideration in accordance with suggestion contained in the memorandum filed by the Solicitor General.

Miscellaneous Orders

No. 338. *BLONDER-TONGUE LABORATORIES, INC. v. UNIVERSITY OF ILLINOIS FOUNDATION ET AL.* C. A. 7th Cir. [Certiorari granted, *ante*, p. 864.] Motion of Automatic Electric Co. for leave to file a brief as *amicus curiae* granted. Motions of Automatic Electric Co. and American Patent Law Assn. for leave to participate in oral argument as *amici curiae* denied. Motion of petitioner for additional time for oral argument denied.

No. 5257. *LABINE, TUTRIX v. VINCENT*, ADMINISTRATOR. Appeal from Sup. Ct. La. [Probable jurisdiction noted, *ante*, p. 817.] Motion of Center on Social Welfare Policy & Law for leave to file a brief as *amicus curiae* granted. Joint motion to substitute Wilbur Vincent in place of Simon Vincent, deceased, as party appellee granted.

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

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No. 360. GROVE PRESS, INC., ET AL. *v.* FLASK ET AL. Appeal from D. C. N. D. Ohio. Motion of Charles H. Keating, Jr., for leave to file a brief as *amicus curiae* granted. MR. JUSTICE DOUGLAS took no part in the consideration or decision of this motion.

No. 362. MCGEE *v.* UNITED STATES. C. A. 2d Cir. [Certiorari granted, *ante*, p. 864.] Motion of the Solicitor General for leave to Wm. Bradford Reynolds to present oral argument *pro hac vice* granted.

No. 464. GAINESVILLE UTILITIES DEPARTMENT ET AL. *v.* FLORIDA POWER CORP.; and

No. 469. FEDERAL POWER COMMISSION *v.* FLORIDA POWER CORP. C. A. 5th Cir. [Certiorari granted, *ante*, p. 877.] Motion of American Public Power Assn. for leave to file a brief as *amicus curiae* granted.

No. 5175. PEREZ ET UX. *v.* CAMPBELL ET AL. C. A. 9th Cir. [Certiorari granted, *ante*, p. 818.] Motion of National Organization for Women for leave to file a brief as *amicus curiae* granted.

No. 5949. BRINLEE *v.* HENDERSON, WARDEN;

No. 5957. JACKSON *v.* CRAVEN, WARDEN;

No. 6005. JOHNSON *v.* KERR, U. S. DISTRICT JUDGE, ET AL.; and

No. 6013. WALLACE *v.* WINGO, WARDEN. Motions for leave to file petitions for writs of habeas corpus denied.

No. 5959. GINGER *v.* KELLEY, ATTORNEY GENERAL OF MICHIGAN, ET AL.;

No. 5970. GARVIE *v.* UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT ET AL.; and

No. 5991. PAIDE *v.* UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT ET AL. Motions for leave to file petitions for writs of mandamus and/or prohibition denied.

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No. 5938. *WELTY v. UNITED STATES ET AL.* Motion for leave to file petition for writ of mandamus denied.

Probable Jurisdiction Noted

No. 557. *UNITED STATES v. INTERNATIONAL MINERALS & CHEMICAL CORP.* Certified appeal from D. C. S. D. Ohio. Probable jurisdiction noted.

No. 821. *UNITED STATES v. GREATER BUFFALO PRESS, INC., ET AL.* Appeal from D. C. W. D. N. Y. Probable jurisdiction noted. Reported below: 327 F. Supp. 305.

Certiorari Granted. (See also No. 5561, *supra.*)

No. 577. *UNITED STATES v. JOHNSON.* C. A. 9th Cir. Certiorari granted. Reported below: 425 F. 2d 630.

No. 740. *GREEN v. KENTUCKY.* Ct. App. Ky. Certiorari granted. Reported below: 454 S. W. 2d 336.

No. 785. *NATIONAL LABOR RELATIONS BOARD v. NATURAL GAS UTILITY DISTRICT OF HAWKINS COUNTY, TENNESSEE.* C. A. 6th Cir. Certiorari granted. Reported below: 427 F. 2d 312.

No. 783. *CLAY, AKA ALI v. UNITED STATES.* C. A. 5th Cir. Certiorari granted limited to Question 4 presented by the petition which reads as follows:

"4. Whether petitioner's conviction should be vacated in light of this Court's decision in *Welsh v. United States*, 398 U. S. 333 (1970), because the denial to petitioner of a conscientious objector exemption may have been based upon the Department of Justice's erroneous characterization of his objections to participation in war as 'political and racial' rather than 'religious'?"

MR. JUSTICE BRENNAN is of the opinion that certiorari should be granted limited to Questions 1, 2, and 4 presented by the petition. MR. JUSTICE MARSHALL took no part in the consideration or decision of this petition. Reported below: 430 F. 2d 165.

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No. 5250. *BOSTIC v. UNITED STATES*. C. A. 6th Cir. Motion for leave to proceed *in forma pauperis* and certiorari granted. Reported below: 424 F. 2d 951.

No. 5485. *JOHNSON v. MISSISSIPPI*. Sup. Ct. Miss. Motion for leave to proceed *in forma pauperis* and certiorari granted. Reported below: 233 So. 2d 116.

Certiorari Denied. (See also No. 813, *supra*.)

No. 93. *LITTMAN v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 421 F. 2d 981.

No. 383. *HAYNEY v. NEW JERSEY*. Super. Ct. N. J. Certiorari denied.

No. 417. *SANTOS v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 426 F. 2d 244.

No. 561. *SWEENEY INDEPENDENT SCHOOL DISTRICT ET AL. v. HARKLESS ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 427 F. 2d 319.

No. 604. *LEIMBACH CONSTRUCTION Co. v. MAYOR OF BALTIMORE ET AL.* Ct. App. Md. Certiorari denied. Reported below: 257 Md. 635, 264 A. 2d 109.

No. 606. *MISSOURI EX INF. DANFORTH, ATTORNEY GENERAL v. BANKS*. Sup. Ct. Mo. Certiorari denied. Reported below: 454 S. W. 2d 498.

No. 763. *NATIONAL SCREEN SERVICE CORP. ET AL. v. EXHIBITORS POSTER EXCHANGE, INC.* C. A. 5th Cir. Certiorari denied. Reported below: 421 F. 2d 1313.

No. 764. *ABERDEEN CABLE TV SERVICE, INC., ET AL. v. CITY OF ABERDEEN ET AL.* Sup. Ct. S. D. Certiorari denied. Reported below: — S. D. —, 176 N. W. 2d 738.

No. 770. *PULAKOS v. REDEVELOPMENT AUTHORITY OF THE CITY OF ERIE*. Sup. Ct. Pa. Certiorari denied. Reported below: 439 Pa. 157, 267 A. 2d 873.

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No. 771. *BENEDEK ET AL. v. COMMISSIONER OF INTERNAL REVENUE*. C. A. 2d Cir. Certiorari denied. Reported below: 429 F. 2d 41.

No. 777. *HOLIDAY INNS OF AMERICA, INC. v. ZIMMERMAN ET AL.** Sup. Ct. Pa. Certiorari denied. Reported below: 438 Pa. 528, 266 A. 2d 87.

No. 779. *LEWIS ET UX. v. HICKEL, SECRETARY OF THE INTERIOR, ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 427 F. 2d 673.

No. 781. *SEARS, ROEBUCK & CO. ET AL. v. SOLIEN, REGIONAL DIRECTOR, NATIONAL LABOR RELATIONS BOARD, ET AL.* Petition for certiorari before judgment to C. A. 8th Cir. Certiorari denied.

No. 782. *NATIONAL AIRLINES INC. v. INTERNATIONAL ASSOCIATION OF MACHINISTS & AEROSPACE WORKERS, DISTRICT LODGE 145, ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 430 F. 2d 957.

No. 791. *MCDONOUGH v. BERSHAD*. C. A. 7th Cir. Certiorari denied. Reported below: 428 F. 2d 693.

No. 792. *SULLIVAN v. RAZA*. C. A. D. C. Cir. Certiorari denied. Reported below: 139 U. S. App. D. C. 184, 432 F. 2d 617.

No. 802. *BUTCHER ET AL. v. FLORIDA INDUSTRIAL COMMISSION ET AL.* Dist. Ct. App. Fla., 3d Dist. Certiorari denied. Reported below: 231 So. 2d 47.

No. 806. *UNITED SERVICES AUTOMOBILE ASSN. v. UNITED STATES ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 431 F. 2d 735.

No. 807. *DONALD v. ZACK MEYER'S T. V. SALES & SERVICE ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 426 F. 2d 1027.

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No. 816. *ZERVOS v. MONEYMAKER, TRUSTEE IN BANKRUPTCY*. C. A. 9th Cir. Certiorari denied. Reported below: 428 F. 2d 1203.

No. 818. *D. H. OVERMYER CO., INC., ET AL. v. WOODWARD ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 428 F. 2d 880.

No. 827. *HORTON & HORTON, INC. v. VAUGHAN MARINE, INC.* C. A. 5th Cir. Certiorari denied. Reported below: 428 F. 2d 1131.

No. 829. *ADLER CONSTRUCTION CO. v. UNITED STATES*. Ct. Cl. Certiorari denied. Reported below: 191 Ct. Cl. 607, 423 F. 2d 1362.

No. 830. *CLARK v. GULESIAN*. C. A. 1st Cir. Certiorari denied. Reported below: 429 F. 2d 405.

No. 5046. *MASON ET AL. v. UNITED STATES*. C. A. 10th Cir. Certiorari denied. Reported below: 408 F. 2d 903.

No. 5123. *BAKER v. CALIFORNIA*. Sup. Ct. Cal. Certiorari denied. Reported below: 1 Cal. 3d 277, 461 P. 2d 361.

No. 5260. *NEWKIRK v. NEW JERSEY*. Sup. Ct. N. J. Certiorari denied.

No. 5418. *ETHRIDGE v. UNITED STATES*;

No. 5427. *BEARD v. UNITED STATES*; and

No. 5428. *COLE v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 424 F. 2d 951.

No. 5478. *WAINMAN v. CLARK, SHERIFF, ET AL.* Sup. Ct. Cal. Certiorari denied.

No. 5532. *PINCUS v. NEW YORK*. Ct. App. N. Y. Certiorari denied. Reported below: 25 N. Y. 2d 990 and 26 N. Y. 2d 973; 259 N. E. 2d 486.

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No. 5519. *BRADLEY v. McMANN, WARDEN*. C. A. 2d Cir. Certiorari denied. Reported below: 423 F. 2d 656.

No. 5533. *ARAUJO v. CALIFORNIA*. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 5537. *FURGISON v. IOWA*. Sup. Ct. Iowa. Certiorari denied. Reported below: 175 N. W. 2d 383.

No. 5560. *SATTERLY v. UNITED STATES*. C. A. 6th Cir. Certiorari denied.

No. 5577. *CHEEKS v. RUSSELL, CORRECTIONAL SUPERINTENDENT*. C. A. 3d Cir. Certiorari denied. Reported below: 424 F. 2d 647.

No. 5589. *NALL v. CHOCTAW CONSTRUCTION CO. ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 425 F. 2d 1296.

No. 5594. *JONES v. NEW YORK*. Ct. App. N. Y. Certiorari denied.

No. 5616. *HAMRICK v. FLORIDA*. Dist. Ct. App. Fla., 3d Dist. Certiorari denied. Reported below: 235 So. 2d 360.

No. 5618. *GREY v. VERMONT*. Sup. Ct. Vt. Certiorari denied. Reported below: — Vt. —, 266 A. 2d 447.

No. 5634. *LILLIE v. BRANTLEY, WARDEN*. C. A. 7th Cir. Certiorari denied.

No. 5666. *WINGATE v. FLORIDA*. Dist. Ct. App. Fla., 3d Dist. Certiorari denied. Reported below: 232 So. 2d 44.

No. 5681. *SMALLEY v. CIRCUIT COURT FOR BROWARD COUNTY*. Sup. Ct. Fla. Certiorari denied. Reported below: 241 So. 2d 162.

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No. 5725. *CASH v. TENNESSEE*. Ct. Crim. App. Tenn. Certiorari denied.

No. 5781. *ARNOLD v. GEORGIA BOARD OF PARDONS AND PAROLES*. C. A. 5th Cir. Certiorari denied.

No. 5843. *CHAPMAN v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 426 F. 2d 303.

No. 5879. *ARNOLD v. SMITH, WARDEN*. C. A. 5th Cir. Certiorari denied.

No. 5892. *TSERMENGAS v. MICHIGAN*. Sup. Ct. Mich. Certiorari denied.

No. 5895. *SMITH v. CADY*. C. A. 7th Cir. Certiorari denied.

No. 5899. *BEVERLY v. WISCONSIN*. Sup. Ct. Wis. Certiorari denied. Reported below: 47 Wis. 2d 725, 177 N. W. 2d 870.

No. 5902. *SKINNER v. OKLAHOMA ET AL.* C. A. 10th Cir. Certiorari denied.

No. 5906. *HUSSEY v. LAVALLEE, WARDEN*. C. A. 2d Cir. Certiorari denied. Reported below: 428 F. 2d 457.

No. 5907. *LOHMAN v. CALIFORNIA*. Ct. App. Cal., 4th App. Dist. Certiorari denied. Reported below: 6 Cal. App. 3d 760, 86 Cal. Rptr. 221.

No. 5914. *HALL v. REA ET AL.* C. A. 2d Cir. Certiorari denied.

No. 5915. *VISCONTI v. NEW YORK*. App. Div., Sup. Ct. N. Y., 1st Jud. Dept. Certiorari denied. Reported below: 34 App. Div. 2d 619, 313 N. Y. S. 2d 639.

No. 5919. *DURSO ET AL. v. PATE, WARDEN*. C. A. 7th Cir. Certiorari denied. Reported below: 426 F. 2d 1083.

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No. 5916. *CRENSHAW v. UNITED STATES*. C. A. 6th Cir. Certiorari denied.

No. 5917. *MELLER v. MISSOURI*. C. A. 8th Cir. Certiorari denied. Reported below: 431 F. 2d 120.

No. 5920. *OLSON v. CALIFORNIA ADULT AUTHORITY*. C. A. 9th Cir. Certiorari denied. Reported below: 428 F. 2d 1228.

No. 5921. *CASTELLANO v. NEW YORK*; and

No. 5929. *GONZALEZ v. NEW YORK*. Ct. App. N. Y. Certiorari denied. Reported below: 27 N. Y. 2d 53, 261 N. E. 2d 605.

No. 5922. *ORTEGA v. BENNETT, JUDGE*. C. A. 9th Cir. Certiorari denied.

No. 5923. *HENDERSON v. UNITED STATES*. C. A. 9th Cir. Certiorari denied.

No. 5930. *SCHEER v. PATTERSON, WARDEN*. C. A. 10th Cir. Certiorari denied. Reported below: 429 F. 2d 907.

No. 5931. *GRANT v. SWENSON, WARDEN*. C. A. 8th Cir. Certiorari denied.

No. 5932. *BOLTON v. NELSON, WARDEN*. C. A. 9th Cir. Certiorari denied. Reported below: 426 F. 2d 807.

No. 5933. *WIGGINS v. MARYLAND*. Ct. Sp. App. Md. Certiorari denied.

No. 5935. *SHAFFNER v. UNITED STATES*. C. A. 6th Cir. Certiorari denied.

No. 5937. *MORGAN v. COX, PENITENTIARY SUPERINTENDENT*. C. A. 4th Cir. Certiorari denied.

No. 5939. *BROCK v. UNITED STATES*. C. A. 10th Cir. Certiorari denied. Reported below: 431 F. 2d 204.

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No. 5945. *WOODBURY v. BETO, CORRECTIONS DIRECTOR*. C. A. 5th Cir. Certiorari denied. Reported below: 426 F. 2d 923.

No. 5947. *FLETCHER v. BRIERLEY, CORRECTIONAL SUPERINTENDENT*. C. A. 3d Cir. Certiorari denied.

No. 5948. *HAYES v. CANNIZZARO ET AL.* C. A. 4th Cir. Certiorari denied.

No. 5950. *HAYES v. NIXON, PRESIDENT OF THE UNITED STATES, ET AL.* C. A. 4th Cir. Certiorari denied.

No. 5951. *DAVIS v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 431 F. 2d 693.

No. 5955. *BRIGGS v. TENNESSEE*. Ct. Crim. App. Tenn. Certiorari denied.

No. 5956. *WROBLEWSKI v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 432 F. 2d 422.

No. 5963. *MISSLER v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 427 F. 2d 1369.

No. 5966. *GREEN v. UNITED STATES*. C. A. D. C. Cir. Certiorari denied. Reported below: 137 U. S. App. D. C. 424, 424 F. 2d 912.

No. 5968. *JONES v. CRAVEN, WARDEN*. C. A. 9th Cir. Certiorari denied. Reported below: 428 F. 2d 478.

No. 5973. *JOHNSON v. TENNESSEE*. Sup. Ct. Tenn. Certiorari denied.

No. 5977. *LUJAN v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 431 F. 2d 871.

No. 5979. *SLATON v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 430 F. 2d 1109.

No. 5984. *WELLS v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 431 F. 2d 434.

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No. 5989. *SCHLETTE v. CALIFORNIA ADULT AUTHORITY ET AL.* C. A. 9th Cir. Certiorari denied.

No. 5990. *STEVENSON v. WALDRON ET AL.* C. A. 2d Cir. Certiorari denied.

No. 5992. *ARNOLD v. BRANTLEY, WARDEN.* C. A. 7th Cir. Certiorari denied.

No. 5994. *MARTINEZ v. CALIFORNIA.* Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 5995. *JELKEN v. CALIFORNIA.* Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 5996. *KELLY v. BOCKHOLD ET AL.* C. A. 2d Cir. Certiorari denied.

No. 5998. *WHITE v. UNITED STATES.* C. A. 5th Cir. Certiorari denied. Reported below: 431 F. 2d 84.

No. 6009. *ODOM v. CITY OF PENSACOLA.* Cir. Ct. Fla., Escambia County. Certiorari denied.

No. 6010. *ACARINO v. UNITED STATES.* C. A. 2d Cir. Certiorari denied.

No. 6012. *GARZA v. TEXAS.* Ct. Crim. App. Tex. Certiorari denied. Reported below: — S. W. 2d —.

No. 6014. *GAYTON v. CALIFORNIA.* Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 6016. *KILBORN v. CALIFORNIA.* Ct. App. Cal., 4th App. Dist. Certiorari denied. Reported below: 7 Cal. App. 3d 998, and 8 Cal. App. 3d 760a, 87 Cal. Rptr. 189.

No. 603. *TABASKO v. OHIO.* Sup. Ct. Ohio. Motion to dispense with printing petition granted. Certiorari denied. Reported below: 22 Ohio St. 2d 36, 257 N. E. 2d 744.

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No. 6020. *HAWKINS ET AL. v. SMITH ET AL.* Sup. Ct. S. C. Certiorari denied. Reported below: 254 S. C. 423, 175 S. E. 2d 824.

No. 6017. *WARREN v. COX, PENITENTIARY SUPERINTENDENT.* C. A. 4th Cir. Certiorari denied.

No. 6022. *WALKER v. WAINWRIGHT, CORRECTIONS DIRECTOR.* C. A. 5th Cir. Certiorari denied. Reported below: 430 F. 2d 936.

No. 6023. *WASHINGTON v. SUPERIOR COURT FOR LOS ANGELES COUNTY.* Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 760. *MOORING ET AL. v. LOUISIANA STATE BOARD OF MEDICAL EXAMINERS.* Sup. Ct. La. Motion to dispense with printing petition granted. Certiorari denied.

No. 633. *RAY, TRADING AS CANDIS O. RAY AGENCY v. KANSAS CITY STOCKYARDS COMPANY OF MAINE, TRADING AS GOLDEN OX RESTAURANT, ET AL.* C. A. D. C. Cir. Certiorari denied. THE CHIEF JUSTICE took no part in the consideration or decision of this petition.

No. 695. *COUNTY OF SANTA BARBARA ET AL. v. MALLEY ET AL.* C. A. 9th Cir. Motion to defer consideration denied. Certiorari denied. MR. JUSTICE DOUGLAS and MR. JUSTICE HARLAN took no part in the consideration or decision of this motion and petition. Reported below: 426 F. 2d 164 and 171.

No. 756. *NEWS SYNDICATE Co., INC. v. SHILES.* Ct. App. N. Y. Certiorari denied. MR. JUSTICE DOUGLAS took no part in the consideration or decision of this petition. Reported below: 27 N. Y. 2d 9, 261 N. E. 2d 251.

No. 801. *SIMMONS ET AL. v. WOLFSON ET AL.* C. A. 6th Cir. Certiorari denied. MR. JUSTICE DOUGLAS took no part in the consideration or decision of this petition. Reported below: 428 F. 2d 455.

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No. 765. *HOFFA ET AL. v. UNITED STATES*; and
No. 788. *DRANOW v. UNITED STATES*. C. A. 7th Cir.
Certiorari denied. MR. JUSTICE WHITE and MR. JUSTICE
MARSHALL took no part in the consideration or decision
of these petitions. Reported below: 436 F. 2d 1243.

No. 772. *ALDRIDGE ET AL. v. CARR ET AL.* C. A. 5th
Cir. Motion of respondents to dispense with printing
brief granted. Certiorari denied. Reported below: 431
F. 2d 384.

No. 773. *LARSEN v. AIR CALIFORNIA*. C. A. 9th Cir.
Motion of petitioner for leave to proceed as a veteran
granted. Certiorari denied.

No. 780. *HARRIS ET AL. v. UNITED STATES*. C. A. 9th
Cir. Motion for leave to supplement petition granted.
Certiorari denied. MR. JUSTICE DOUGLAS is of the opin-
ion that certiorari should be granted. Reported below:
427 F. 2d 1368.

No. 800. *WEINGARTNER ET AL. v. UNION OIL CO. OF
CALIFORNIA*. C. A. 9th Cir. Certiorari denied. MR.
JUSTICE HARLAN took no part in the consideration or de-
cision of this petition. Reported below: 431 F. 2d 26.

No. 817. *EXPORT LIQUOR SALES, INC. v. AMMEX
WAREHOUSE CO., INC., ET AL.* C. A. 6th Cir. Certiorari
denied. MR. JUSTICE STEWART took no part in the con-
sideration or decision of this petition. Reported below:
426 F. 2d 251.

No. 825. *NEW YORK v. COOPER*, U. S. DISTRICT JUDGE.
C. A. 2d Cir. Certiorari denied. MR. JUSTICE WHITE
took no part in the consideration or decision of this peti-
tion.

No. 5437. *ETHRIDGE v. UNITED STATES*. C. A. 6th
Cir. Motion for leave to amend petition granted. Cer-
torari denied. Reported below: 424 F. 2d 951.

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No. 831. GRAY *v.* GULF MOBILE & OHIO RAILROAD CO. ET AL. C. A. 5th Cir. Certiorari denied. THE CHIEF JUSTICE and MR. JUSTICE DOUGLAS are of the opinion that certiorari should be granted. Reported below: 429 F. 2d 1064.

No. 832. SALERNO ET AL. *v.* KUHN ET AL. C. A. 2d Cir. Certiorari denied. MR. JUSTICE DOUGLAS is of the opinion that certiorari should be granted. Reported below: 429 F. 2d 1003.

No. 5997. ACOSTA *v.* BETO, CORRECTIONS DIRECTOR. C. A. 5th Cir. Motion for leave to amend petition granted. Certiorari denied. Reported below: 425 F. 2d 963.

No. 5941. JENKINS *v.* RICHARDSON, SECRETARY OF HEALTH, EDUCATION, AND WELFARE. C. A. 6th Cir. Certiorari denied. MR. JUSTICE DOUGLAS and MR. JUSTICE STEWART are of the opinion that certiorari should be granted. Reported below: 430 F. 2d 243.

No. 5981. SNYDER ET AL. *v.* ARIZONA. Ct. App. Ariz. Certiorari denied. MR. JUSTICE DOUGLAS, MR. JUSTICE BRENNAN, and MR. JUSTICE MARSHALL are of the opinion that certiorari should be granted. Reported below: 12 Ariz. App. 142, 468 P. 2d 593.

No. 6019. SULLIVAN *v.* SCAFATI, CORRECTIONAL SUPERINTENDENT. C. A. 1st Cir. Certiorari denied. MR. JUSTICE BLACKMUN is of the opinion that certiorari should be granted. Reported below: 428 F. 2d 1023.

Rehearing Denied

No. 5630. ARZONICA *v.* CASSIDY ET AL., *ante*, p. 918. Motion for leave to file petition for rehearing denied.

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- No. 262. CRICHTON *v.* MCGEHEE ET AL., *ante*, p. 919;
No. 425. SCHIEFFELIN & CO. ET AL. *v.* UNITED STATES, *ante*, p. 869;
No. 493. COLLINS *v.* UNITED STATES, *ante*, p. 919;
No. 589. PORT CONSTRUCTION CO. *v.* VIRGIN ISLANDS HOUSING AUTHORITY, *ante*, p. 916;
No. 596. FELDSTEIN *v.* UNITED STATES, *ante*, p. 920;
No. 605. GREEN *v.* UNITED STATES, *ante*, p. 916;
No. 618. INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 450, AFL-CIO *v.* CONSTRUCTION EMPLOYERS' ASSOCIATION OF TEXAS ET AL., *ante*, p. 926;
No. 625. BIRMELIN *v.* BOYMER ET UX., *ante*, p. 926;
No. 627. THRIFTIMART, INC., DBA SMART & FINAL IRIS CO., ET AL. *v.* UNITED STATES, *ante*, p. 926;
No. 628. KAZUBOWSKI *v.* KAZUBOWSKI, *ante*, p. 926;
No. 642. MENGARELLI *v.* UNITED STATES, *ante*, p. 926;
No. 660. SMITH, TRUSTEE IN BANKRUPTCY *v.* MERRITT, REFEREE IN BANKRUPTCY, *ante*, p. 951;
No. 5261. HIGGINS *v.* WAINWRIGHT, CORRECTIONS DIRECTOR, *ante*, p. 905;
No. 5385. WARD *v.* PAGE, WARDEN, *ante*, p. 917;
No. 5458. CHIPLEY *v.* ROBERTS ET AL., *ante*, p. 905;
No. 5633. DARGAN *v.* NEW YORK, *ante*, p. 920;
No. 5663. NAZARIO *v.* NEW YORK, *ante*, p. 920;
No. 5680. GILHART *v.* UNITED STATES, *ante*, p. 918;
No. 5730. THOMPSON ET AL. *v.* UNITED STATES, *ante*, p. 929;
No. 5792. SMITH *v.* LASH, WARDEN, *ante*, p. 948; and
No. 5812. O'NEAL *v.* CROUSE, WARDEN, *ante*, p. 948.
Petitions for rehearing denied.

No. 106. ALABAMA POWER CO. ET AL. *v.* UNITED STATES ET AL., *ante*, p. 73. Petition for rehearing denied. MR. JUSTICE DOUGLAS took no part in the consideration or decision of this petition.

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Miscellaneous Order

No. —. HARRIS *v.* TEXAS. Ct. Crim. App. Tex. Motion of the State of Texas to terminate petitioner's stay of execution denied. Motion of petitioner that the Court consider his motion for stay of execution as a petition for writ of certiorari granted and case placed on docket as No. 6458.

Certiorari Granted. (See *Harris v. Texas, supra.*)

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Affirmed on Appeal

No. 5912. RAMOS ET AL. *v.* MONTGOMERY, DIRECTOR, DEPARTMENT OF SOCIAL WELFARE OF CALIFORNIA, ET AL. Affirmed on appeal from D. C. S. D. Cal. MR. JUSTICE DOUGLAS is of the opinion that probable jurisdiction should be noted. Reported below: 313 F. Supp. 1179.

No. 5993. CONNER ET AL. *v.* RICHARDSON, SECRETARY OF HEALTH, EDUCATION, AND WELFARE, ET AL. Affirmed on appeal from D. C. N. D. Ill. Reported below: 314 F. Supp. 364.

Appeals Dismissed

No. 843. LUZAITIS ET AL. *v.* MUNICIPAL COURT OF LOS ANGELES JUDICIAL DISTRICT, COUNTY OF LOS ANGELES. Appeal from Ct. App. Cal., 2d App. Dist., dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied.

No. 5745. BATES *v.* CATHERWOOD, INDUSTRIAL COMMISSIONER OF NEW YORK. 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.

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No. 851. STRAZZULA *v.* BUILDING INSPECTOR OF WELLESLEY ET AL. Appeal from Sup. Jud. Ct. Mass. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied. Reported below: — Mass. —, 260 N. E. 2d 163.

Certiorari Granted—Vacated and Remanded

No. 326. CROSSLIN ET VIR *v.* MOUNTAIN STATES TELEPHONE & TELEGRAPH CO. C. A. 9th Cir. Motion of National Association for Advancement of Colored People for leave to file a brief as *amicus curiae* granted. Certiorari granted, judgment vacated, and case remanded to the United States District Court for the District of Arizona for reconsideration in light of suggestions contained in brief of the Solicitor General as *amicus curiae* filed November 19, 1970. By this remand this Court intimates no view as to the merits of the Solicitor General's position. Reported below: 422 F. 2d 1028.

MR. JUSTICE DOUGLAS, dissenting.

Title VII of the Civil Rights Act of 1964, 78 Stat. 253, 42 U. S. C. § 2000e *et seq.*, establishes methods of securing relief for individuals complaining of discrimination in employment. An individual may bring court action to enforce his rights under Title VII only after he has filed a timely charge with the Equal Employment Opportunity Commission (EEOC). Section 706 (b), 42 U. S. C. § 2000e-5 (b), of the Act provides no charge may be filed with the EEOC until 60 days after the commencement of proceedings (unless they are terminated earlier) before a state or local agency, if one exists, which has power "to grant or seek relief" or to "institute criminal proceedings" with respect to the complaint. The EEOC has interpreted § 706 (b) as requiring initial submission of the complaint to state agencies only where the agency can provide adequate relief. At present Arizona and six

other States* have agencies with remedial powers which the EEOC finds inadequate.

This case arose in Arizona. Petitioners brought a complaint of racial discrimination in employment to the EEOC without first going to the Arizona Civil Rights Commission. The EEOC found there was reasonable cause to believe the charge was true and sent a statutory Notice-of-Right-To-Sue-Within-Thirty-Days and the action was timely filed. The Court of Appeals held that the District Court should have dismissed the complaint for lack of jurisdiction because the Arizona Civil Rights Commission should have been given the initial opportunity to consider the complaint. The court found that a state agency empowered "to grant and seek relief" included an agency that could only attempt to settle the dispute by conciliation and persuasion.

The proper functioning of the various Civil Rights Acts is of critical importance. This Court has recently re-emphasized the importance of deference to an administrative interpretation by the agency charged with the initial interpretation of a new law. *United States v. City of Chicago*, ante, p. 8; *Udall v. Tallman*, 380 U. S. 1, 16. The court below rejected the administrative interpretation of § 706 (b). In so doing it requires pursuing a state remedy classified as inadequate by the EEOC.

The various Civil Rights Acts represent a national commitment to achieve an end to racial discrimination. Forcing an alleged victim of racial discrimination—usually an indigent—first to seek a state remedy prior to vindication of his federal rights when that state remedy is palpably inadequate presents an issue of considerable importance. See *Glover v. St. Louis-San Francisco R. Co.*, 393 U. S. 324. I would grant certiorari to decide the question presented in this case.

*Idaho, Maine, Montana, Oklahoma, Tennessee, and Vermont.

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No. 5788. SMITH *v.* UNITED STATES. C. A. 6th Cir. Motions for leave to amend petition for writ of certiorari and for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case remanded to United States District Court for the Northern District of Ohio for reconsideration in light of suggestion contained in the Solicitor General's memorandum filed December 16, 1970.

Miscellaneous Orders

No. 1112, October Term, 1968. LEIGHTON *v.* ONE WILLIAM STREET FUND, INC., ET AL., 394 U. S. 988, 395 U. S. 942. Motion for relief *pendente lite* denied. MR. JUSTICE MARSHALL took no part in the consideration or decision of this motion. Motion for leave to file second petition for rehearing denied. THE CHIEF JUSTICE, MR. JUSTICE MARSHALL, and MR. JUSTICE BLACKMUN took no part in the consideration or decision of the latter motion.

No. —. ANDERSON *v.* ROCKEFELLER, GOVERNOR OF NEW YORK, ET AL. Sup. Ct. N. Y. Application for stay presented to MR. JUSTICE HARLAN, and by him referred to the Court, denied.

No. 144. GRIFFIN ET AL. *v.* BRECKENRIDGE ET AL. C. A. 5th Cir. [Certiorari granted, 397 U. S. 1074.] Motion of respondents for appointment of counsel granted. It is ordered that W. D. Moore, Esquire, of Philadelphia, Mississippi, a member of the Bar of this Court, be, and he is hereby, appointed to serve as counsel for respondents in this case.

No. 338. BLONDER-TONGUE LABORATORIES, INC. *v.* UNIVERSITY OF ILLINOIS FOUNDATION ET AL. C. A. 7th Cir. [Certiorari granted, *ante*, p. 864.] Motion of Kawneer Co., Inc., for leave to file a brief as *amicus curiae* granted.

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No. 507. CALIFORNIA DEPARTMENT OF HUMAN RESOURCES DEVELOPMENT ET AL. *v.* JAVA ET AL. Appeal from D. C. N. D. Cal. [Probable jurisdiction noted, *ante*, p. 877.] Motion of Southern California Edison Co. et al. for leave to participate in oral argument as *amicus curiae* denied. Motion of State of Tennessee for leave to join in the *amicus curiae* brief of State of New Hampshire granted. Motion of State of Illinois for leave to join in the *amicus curiae* brief of State of Maryland granted.

No. 853. IN RE DISBARMENT OF WOLDEN. It having been reported to this Court that Russell L. Wolden, of San Francisco, State of California, has been disbarred from the practice of law in all of the courts of the State of California, and this Court by order of October 12, 1970 [*ante*, p. 809], having suspended the said Russell L. Wolden 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 Russell L. Wolden 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. 6028. SHIVERS *v.* WAINWRIGHT, CORRECTIONS DIRECTOR. Motion for leave to file petition for writ of habeas corpus denied.

No. 6008. YOUNG *v.* UNITED STATES. Motion for leave to file petition for writ of mandamus denied. MR. JUSTICE BLACK and MR. JUSTICE WHITE are of the opinion that the motion should be granted.

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No. 5682. *PICKENS v. CALIFORNIA SUPREME COURT*. Motion for leave to file petition for writ of mandamus denied.

Certiorari Granted. (See also No. 5370, *ante*, p. 423; and Nos. 326 and 5788, *supra*.)

No. 758. *UNITED STATES v. RYAN*. C. A. 9th Cir. *Certiorari* granted. Reported below: 430 F. 2d 658.

No. 798. *UNITED STATES ET AL. v. MITCHELL ET AL.* C. A. 5th Cir. *Certiorari* granted. Reported below: 430 F. 2d 1 and 7.

No. 840. *ASTRUP v. IMMIGRATION AND NATURALIZATION SERVICE*. C. A. 9th Cir. *Certiorari* granted. Reported below: 432 F. 2d 438.

No. 835. *DEWEY v. REYNOLDS METALS Co.* C. A. 6th Cir. *Certiorari* granted. MR. JUSTICE HARLAN took no part in the consideration or decision of this petition. Reported below: 429 F. 2d 324.

Certiorari Denied. (See also Nos. 843, 851, and 5745, *supra*.)

No. 833. *UNITED STATES FIDELITY & GUARANTY Co. v. HILL*. C. A. 5th Cir. *Certiorari* denied. Reported below: 428 F. 2d 112.

No. 837. *CRESTA CORP., S. A. v. COMMISSIONER OF INTERNAL REVENUE*. C. A. 2d Cir. *Certiorari* denied. Reported below: 429 F. 2d 1209.

No. 841. *GENTILE ET AL. v. IVES, STATE HIGHWAY COMMISSIONER*. Sup. Ct. Conn. *Certiorari* denied. Reported below: 159 Conn. 443, 270 A. 2d 680.

No. 848. *WARD ET AL. v. UNITED STATES*. Ct. Cl. *Certiorari* denied. Reported below: 192 Ct. Cl. 710, 428 F. 2d 1288.

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No. 842. *WING v. MISSOURI*. Sup. Ct. Mo. Certiorari denied. Reported below: 455 S. W. 2d 457.

No. 845. *STUBBS ET UX. v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 428 F. 2d 885.

No. 849. *FIELDING ET AL. v. FEDERAL SAVINGS & LOAN INSURANCE CORP. ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: See 309 F. Supp. 1146.

No. 854. *LUCKENBACH STEAMSHIP CO. v. ZIM ISRAEL NAVIGATION Co., LTD., ET AL.*; and

No. 855. *TELFAIR v. ZIM ISRAEL NAVIGATION Co., LTD., ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 428 F. 2d 127.

No. 856. *GREENSPUN v. NEVADA ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 430 F. 2d 1327.

No. 857. *GWYTHER ET AL. v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 431 F. 2d 1142.

No. 859. *HARDIN, SECRETARY OF AGRICULTURE v. HARRY H. PRICE & SONS, INC., ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 425 F. 2d 1137.

No. 860. *ARIZONA v. SHAW*. Sup. Ct. Ariz. Certiorari denied. Reported below: 106 Ariz. 103, 471 P. 2d 715.

No. 863. *MIDDLEBROOKS v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 431 F. 2d 299.

No. 864. *DADE COUNTY CLASSROOM TEACHERS' ASSN., INC. v. RUBIN ET AL.* Sup. Ct. Fla. Certiorari denied. Reported below: 238 So. 2d 284.

No. 5245. *WILLIAMS v. NEW YORK*. App. Div., Sup. Ct. N. Y., 2d Jud. Dept. Certiorari denied. Reported below: 33 App. Div. 2d 906, 307 N. Y. S. 2d 842.

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No. 1182. *BRUNSWICK CORP. v. CLEMENTS, TRUSTEE IN BANKRUPTCY*. C. A. 6th Cir. Certiorari denied.

No. 5332. *KEEBY ET AL. v. CONNECTICUT*. Sup. Ct. Conn. Certiorari denied. Reported below: 159 Conn. 201, 268 A. 2d 652.

No. 5648. *WHALEY v. GRIMM ET AL.* C. A. 9th Cir. Certiorari denied.

No. 5678. *DAEGELE v. CROUSE, WARDEN*. C. A. 10th Cir. Certiorari denied. Reported below: 429 F. 2d 503.

No. 5692. *WILLIAMS ET AL. v. ILLINOIS*. Sup. Ct. Ill. Certiorari denied. Reported below: 45 Ill. 2d 319, 260 N. E. 2d 1.

No. 5713. *THIBADOUX v. MANCUSI, WARDEN*. C. A. 2d Cir. Certiorari denied.

No. 5732. *WILLIAMS v. FLORIDA*. C. A. 5th Cir. Certiorari denied.

No. 5741. *McKIRDIE ET AL. v. ILLINOIS*. Sup. Ct. Ill. Certiorari denied. Reported below: 45 Ill. 2d 300, 259 N. E. 2d 16.

No. 5758. *BRUFFET v. KANSAS*. Sup. Ct. Kan. Certiorari denied. Reported below: 205 Kan. 863, 472 P. 2d 206.

No. 5763. *JONES v. NEW YORK*. C. A. 2d Cir. Certiorari denied.

No. 5765. *SMITH v. OHIO ET AL.* C. A. 6th Cir. Certiorari denied.

No. 5778. *OLNEY v. PERINI, CORRECTIONAL SUPERINTENDENT*. C. A. 6th Cir. Certiorari denied.

No. 5972. *HAHN v. SMITH, WARDEN*. C. A. 7th Cir. Certiorari denied.

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No. 5985. *ESTRELLA v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 429 F. 2d 397.

No. 6003. *HUDSON v. UNITED STATES*; and
No. 6190. *WHITE v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 431 F. 2d 468.

No. 6026. *BROWN v. BETO, CORRECTIONS DIRECTOR*. C. A. 5th Cir. Certiorari denied.

No. 6027. *BURKE v. ERICKSON*. C. A. 8th Cir. Certiorari denied.

No. 6029. *HENRY v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 432 F. 2d 114.

No. 6030. *COLLINS, AKA COTTON v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 432 F. 2d 1136.

No. 6032. *WILLIAMS v. NEIL, WARDEN*. C. A. 6th Cir. Certiorari denied.

No. 6033. *VENNARD v. CONNECTICUT*. Sup. Ct. Conn. Certiorari denied. Reported below: 159 Conn. 385, 270 A. 2d 837.

No. 6034. *WALKER v. STADER ET AL.* C. A. 7th Cir. Certiorari denied.

No. 6035. *LYTLE v. MICHIGAN*. Sup. Ct. Mich. Certiorari denied.

No. 6038. *REESE v. SMITH, WARDEN*. C. A. 5th Cir. Certiorari denied.

No. 6040. *WELLS v. CRAVEN, WARDEN*. C. A. 9th Cir. Certiorari denied.

No. 6044. *POLESE v. UNITED STATES ET AL.* C. A. 9th Cir. Certiorari denied.

No. 6385. *WALLS v. CALIFORNIA*. Ct. App. Cal. Certiorari denied.

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No. 776. *RODICKER v. ILLINOIS CENTRAL RAILROAD Co.* Sup. Ct. Miss. Certiorari denied. Reported below: 236 So. 2d 414.

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

This is a tragic case in which a 23-year-old railroad worker was permanently and totally disabled while performing his duties. He has been denied his right to recover damages by what I believe was the gross error of the Mississippi Supreme Court in depriving him of his constitutional right to a jury trial.

Petitioner Robert Rodicker, a man with an eighth-grade education, has earned his living doing manual labor for respondent Illinois Central Railroad since the age of 18. On September 16, 1964, Rodicker was working a switch engine with two other Illinois Central Railroad employees coupling an Illinois Central car to a train at the Union Passenger Terminal in New Orleans. As the engine backed up, it spewed out a shower of sparks, covering Rodicker with fire and burning his back and neck. He leaned away from the engine's steps to save himself from the sparks and smashed into a negligently placed steel garbage container that knocked him to the tracks unconscious. He brought suit against respondent under the Federal Employers' Liability Act, 35 Stat. 65, as amended, 45 U. S. C. § 51 *et seq.*, urging that his injury was negligently caused by the engine's excessive sparks and the dangerous placement of the steel garbage container. The Mississippi Supreme Court affirmed a judgment directing a verdict for the railroad. That court held that as a matter of law petitioner was an employee of the Union Passenger Terminal and not the Illinois Central at the time of this terrible accident. I cannot understand the Court's refusal to grant certiorari.

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Respondent had made an agreement with the Union Passenger Terminal whereby the latter used Illinois Central employees and those of other railroads as crews to switch the railroad's cars when they entered the terminal. Petitioner was working on such a crew when he was injured. He had an Illinois Central employee number and was being paid by check drawn on the Illinois Central. He regularly applied to the Illinois Central for vacation time and received vacation pay from it. And, of course, he was actually coupling an Illinois Central car at the time of the injury.

On this record petitioner was entitled to have a jury determine whether he should recover from the Illinois Central. See, *e. g.*, *Sinkler v. Missouri Pacific R. Co.*, 356 U. S. 326 (1958); *Wilkerson v. McCarthy*, 336 U. S. 53 (1949); *Terminal R. Assn. of St. Louis v. Fitzjohn*, 165 F. 2d 473 (CA8 1948). Today the Court deprives petitioner of his right to a jury trial and frustrates the plan of Congress to provide a remedy for railroad employees injured by their employers' negligence.

I think it is of paramount importance that the purpose of Congress to protect people like petitioner should not be frustrated by the will of judges. I would grant certiorari and reverse the judgment of the court below.

No. 815. *BRUNSWICK CORP. v. CLEMENTS, TRUSTEE IN BANKRUPTCY*. C. A. 6th Cir. Motion to dispense with printing respondent's brief granted. Certiorari denied. Reported below: 424 F. 2d 673.

No. 838. *MONTANA POWER CO. v. FEDERAL POWER COMMISSION ET AL.* C. A. D. C. Cir. Certiorari denied. MR. JUSTICE HARLAN is of the opinion that certiorari should be granted. THE CHIEF JUSTICE took no part in the consideration or decision of this petition. Reported below: — U. S. App. D. C. —, — F. 2d —.

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No. 5987. *KAMSLER v. ATTORNEY GENERAL OF THE UNITED STATES*. C. A. 7th Cir. Motion to strike respondent's brief denied. Certiorari denied. Reported below: 430 F. 2d 635.

No. 5961. *WEINTRAUB v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 429 F. 2d 658.

MR. JUSTICE DOUGLAS, dissenting.

I dissent from a denial of certiorari in this case.

The Selective Service Regulations¹ provide the sequence in which registrants shall be ordered to report for induction. Petitioner was in the group of non-volunteers who are to be inducted "in the order of their dates of birth with the oldest being selected first."²

It seems clear that the order-of-call provisions are mandatory and that the local board's failure to observe them is a defense to an indictment.³ On the trial of

¹ 32 CFR § 1631.7 (a)(3) (1967) provided:

"Such registrants, including those in a medical, dental, or allied specialist category, shall be selected and ordered to report for induction in the following order: . . . (3) Nonvolunteers who have attained the age of 19 years and have not attained the age of 26 years . . . in the order of their dates of birth with the oldest being selected first."

² *Ibid.*

³ One case holds that a local board's failure to observe the order-of-call regulations does not prevent a conviction for either refusal to report for civilian work, refusal to submit to induction, or refusal to report for induction. That case, *Schutz v. United States*, 422 F. 2d 991 (CA5), stands apart from the great weight of authority.

Two district court decisions expressly held that the Government had the burden of proof on the regularity of the order of call. *United States v. Rhodes*, Cr. No. 41112 (ND Cal. 1967) (unreported); *United States v. Lybrand*, 279 F. Supp. 74 (EDNY 1967). No other court has subsequently adopted that position and all circuit courts which have faced the issue have rejected the *Rhodes-Lybrand* position.

The Second Circuit rejected *Lybrand* in *United States v. Sandbank*, 403 F. 2d 38 (1968). In a footnote that court stated: "An analogy

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petitioner for failure to submit to induction, his counsel proffered evidence that some 18 registrants older than this petitioner and classified as I-A were available for in-

may be drawn to a defense of insanity; although it is an essential element of criminality that the perpetrator must have acted with a sane mind, the government need not establish sanity as part of its case in chief in every prosecution." *Id.*, at 40 n. The Tenth Circuit has expressly adopted *Sandbank*. *Little v. United States*, 409 F. 2d 1343 (1969).

The First Circuit accepts a presumption of regularity within the Selective Service System, but has announced: "There is no difficulty in the perhaps rare case where a defendant can produce evidence of a person who should have been called before him but was not. In such a case, the government cannot disprove a leak in a bucket simply by showing most of it was tight. But where the defendant lacks any such proof, his only recourse is to examine the clerk of the local board. This may not conclusively establish the absence of any violation of the regulation but, since the clerk must testify in any case to the validity of the order to report, there is little extra burden on the government to have him prepared to testify on order of call." *Yates v. United States*, 404 F. 2d 462, 466 (1968). In a case involving failure to report pursuant to an order for induction the Ninth Circuit held that where the defendant adduces proof showing the order of call was not regular then the burden shifts to the Government "to justify by affirmative evidence the by-passing" of the older individuals. *United States v. Baker*, 416 F. 2d 202, 205 (1969).

In two cases involving failure to report for civilian work the Fifth Circuit announced it followed a rule presuming regularity but did not state the consequences of overcoming the presumption. *Greer v. United States*, 378 F. 2d 931 (1967); *Lowe v. United States*, 389 F. 2d 51 (1968). Subsequently that circuit has refused to even allow evidence of irregularity in the order of call where the defendant refused to report for induction. *Schutz v. United States*, *supra*. The decision is unclear although the court rests on the distinction between refusal to report and refusal to submit: "This appellant was convicted of failing to report for induction as ordered, not for refusing to be inducted after arrival at the induction center. Therefore, we do not discuss the cases which have dealt with the latter situation, other than to say that wilful refusal to report for induction is a separate offense." *Id.*, at 994. The court felt every "registrant is required to report for induction as ordered even

duction on the day he was ordered to report but were not sent notices of induction. The District Judge indicated he probably would grant a motion for a judgment of acquittal unless the Government rebutted the evidence of violation of the regulations. The Government thereupon called the clerk of the board who advised the court that the Selective Service records of other registrants were confidential and could not be released except with the permission of the Director.⁴ The court suggested that permission of the Director be sought.⁵ It was so sought

though he may have valid legal grounds for refusing to submit to induction." *Ibid.* Besides being the only case rejecting the defense it would appear to conflict with the Ninth Circuit's *Baker* decision which also involved failure to report for induction.

The Eighth Circuit has only passed on regularity of call in a case involving an attempt to get pre-induction review. *Green v. Local Board No. 87*, 419 F. 2d 813. It held that showing older I-A registrants were not called was not "facially unlawful" for purposes of pre-induction review.

The Maryland district court has adopted the presumption of regularity that the Fifth Circuit announced in *Greer and Lowe. United States v. Shacter*, 293 F. Supp. 1057 (D. C. Md. 1968). A district court in Wisconsin, without indicating what test it would apply, cited *Sandbank*, *Yates*, and *Lybrand* and appears to indicate it would at least hold if the defendant could establish irregularities that there would be acquittal. *United States v. Ball*, 49 F. R. D. 153 (ED Wis. 1969). Another district court noted the defendant failed to prove irregularities without stating what it would do if he had. *United States v. Noonan*, 2 S. S. L. R. 3595 (WD Pa. 1969). In a footnote that court noted three registrants older than the defendant and in his category had not been called for physicals. It was this local board's policy to defer a physical when appearances or appeals were pending. The court noted this violated the regulations, but in each instance the other person was deferred. "Since the deferments precluded these registrants' inductions, the failure to administer a physical examination in no way hastened defendant's induction." *Id.*, at 3596 n. 4.

⁴ 32 CFR § 1606.32.

⁵ 32 CFR § 1606.32 (c).

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but refused. The court thereupon examined the files *in camera*, reading into the record some of their contents but refusing to let counsel examine all of them. Petitioner was convicted and appealed.

The Court of Appeals disagreed with the District Court, saying:

“The principal contention of the appellant is that counsel for the defense should have been allowed to see the files and determine for himself whether any material therein could have based an attack on cross-examination on the board’s determination which might have demonstrated a lack of basis in fact for the determination. We think this contention well founded. A defendant is entitled to such an inspection, subject to protective order by the court to mask the names or by other means prevent public disclosure of the content of the files, so that without violating the confidentiality of the files he may properly determine for himself whether there is a proper foundation for the board’s apparent deviation from the order of call suggested by the Form 102, see *Alderman v. United States*, 394 U. S. 165 . . . (1969), and so that a proper record may be preserved for appeal.” 429 F. 2d 658, 661.

It held, however, that the error was harmless.

One of the summaries concerned E. S. and the Court of Appeals made the following statement concerning him:

“E. S. was not available for induction on June 8, 1967. He was a registrant who had already signed up for the Reserves. While his request for an appeal or personal appearance may have been untimely because it was made 12 days after the mailing of his notice of classification, rather than the required 10 days, he was still unavailable for induction

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because he had not had a pre-induction physical or mental examination. He was finally classified I-D, which means he was a member of a Reserve Unit or the National Guard." *Id.*, at 662 n. 4.

If "signed up" means application for the Reserves, then the enlistment requirement of Rule 1622.13 (f)⁶ would not be satisfied and E. S. should have been called before petitioner. The error could not be "harmless" if petitioner was called up ahead of his time; and there is no way of determining whether E. S. had enlisted without probing the facts and cross-examining the Board's witness. The test we used in *Alderman v. United States*, 394 U. S. 165, 181, for determining what wiretap records should be turned over by the judge who makes his *in camera* investigation of them is whether the record is "arguably relevant" to the question whether "tainted evidence" had been used to convict. Application of such a test would make at least the file of E. S. available to counsel for petitioner.

I dissent from a denial of certiorari on the issue so posed.

No. 6043. *ROGERS v. CALIFORNIA*. C. A. 9th Cir. Motion for leave to amend petition granted. Certiorari denied.

Rehearing Denied. (See also No. 1112, October Term, 1968, *supra*.)

No. 5754. *DAWSON ET UX. v. SHENANDOAH RETREAT LAND CORP. ET AL.*, *ante*, p. 946; and

No. 5768. *CALVERT v. UNITED STATES*, *ante*, p. 952. Petitions for rehearing denied.

⁶ This regulation puts in Class I-D a registrant who "enlists or accepts appointment," before attaining the age of 26 years, in the Reserves.

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Dismissal Under Rule 60

No. 6069. HARRIS *v.* CONNECTICUT. Sup. Ct. Conn. Petition for writ of certiorari dismissed pursuant to Rule 60 of the Rules of this Court. Reported below: 159 Conn. 521, 271 A. 2d 74.

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Appeal Dismissed

No. 6098. WARD ET AL. *v.* WINSTEAD, COMMISSIONER OF PUBLIC WELFARE, ET AL. Appeal from D. C. N. D. Miss. dismissed for the reason that the notice of appeal was not timely filed pursuant to 28 U. S. C. § 2101 (b). Reported below: 314 F. Supp. 1225.

Certiorari Granted—Vacated and Remanded

No. 846. FIRST NATIONAL CITY BANK *v.* BANCO NACIONAL DE CUBA. C. A. 2d Cir. Certiorari granted, judgment vacated, and case remanded for reconsideration in light of the views of the Department of State expressed in its letter dated November 17, 1970, and transmitted to this Court by the Solicitor General. In taking this action, the Court is expressing no views on the merits of the case. Reported below: 431 F. 2d 394.

Miscellaneous Orders

No. 40, Orig. PENNSYLVANIA *v.* NEW YORK ET AL. Motion of State of Arizona for leave to intervene as a party defendant, and motion of State of Indiana for leave to intervene as a party plaintiff referred to Special Master. [For earlier orders herein, see, *e. g.*, *ante*, p. 924.]

No. 48, Orig. MISSISSIPPI *v.* ARKANSAS. Motion for leave to file bill of complaint granted. Defendant allowed 60 days to answer or otherwise respond to complaint.

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No. 5338. *APODACA ET AL. v. OREGON*. Ct. App. Ore. [Certiorari granted, *ante*, p. 901.] Motion to dispense with printing *amicus curiae* brief of National Legal Aid & Defender Assn. granted.

No. 688. *LYONS v. MURRAY*, U. S. DISTRICT JUDGE. Motion for leave to file petition for writ of mandamus denied.

Probable Jurisdiction Noted

No. 759. *UNITED STATES v. ARMOUR & Co. ET AL.* Appeal from D. C. N. D. Ill. Probable jurisdiction noted. MR. JUSTICE BLACK and MR. JUSTICE BLACKMUN took no part in the consideration or decision of this matter.

Certiorari Granted. (See also No. 846, *supra*.)

No. 5750. *STANLEY v. ILLINOIS*. Sup. Ct. Ill. Motion for leave to proceed *in forma pauperis* and certiorari granted. Reported below: 45 Ill. 2d 132, 256 N. E. 2d 814.

Certiorari Denied

No. 861. *BURTMAN ET AL. v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 428 F. 2d 865.

No. 865. *MARINE CARRIERS CORP. v. FOWLER, SECRETARY OF THE TREASURY, ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 429 F. 2d 702.

No. 870. *McGEE v. CALIFORNIA*. App. Dept., Super. Ct. Cal., County of Santa Cruz. Certiorari denied.

No. 871. *DAY-GLO COLOR CORP. (FORMERLY SWITZER BROTHERS, INC.) ET AL. v. LOCKLIN ET AL., DBA RADIANT COLOR Co.*; and

No. 923. *LOCKLIN ET AL., DBA RADIANT COLOR Co. v. DAY-GLO COLOR CORP. ET AL.* C. A. 7th Cir. Certiorari denied. Reported below: 429 F. 2d 873.

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No. 872. RAILWAY LABOR EXECUTIVES' ASSN. ET AL. *v.* ATCHISON, TOPEKA & SANTA FE RAILWAY CO. C. A. 9th Cir. Certiorari denied. Reported below: 430 F. 2d 994.

No. 873. HAWKINS *v.* GENERAL MOTORS CORP. ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 427 F. 2d 148.

No. 875. HEYWARD-ROBINSON Co., INC., ET AL. *v.* UNITED STATES FOR THE USE AND BENEFIT OF D'AGOSTINO EXCAVATORS, INC. C. A. 2d Cir. Certiorari denied. Reported below: 430 F. 2d 1077.

No. 884. JASKIEWICZ *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 433 F. 2d 415.

No. 885. SNYDER TANK CORP. *v.* NATIONAL LABOR RELATIONS BOARD. C. A. 2d Cir. Certiorari denied. Reported below: 428 F. 2d 1348.

No. 886. EVANS *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 889. BEAR MANUFACTURING Co. *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 430 F. 2d 152.

No. 893. COOPER *v.* BETO, CORRECTIONS DIRECTOR. Ct. Crim. App. Tex. Certiorari denied.

No. 894. ROTH *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 430 F. 2d 1137.

No. 896. ALAMO EXPRESS, INC., ET AL. *v.* NATIONAL LABOR RELATIONS BOARD. C. A. 5th Cir. Certiorari denied. Reported below: 430 F. 2d 1032.

No. 899. RICCI *v.* CALIFORNIA. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 6053. HARRISON *v.* CLARK COUNTY SCHOOL DISTRICT ET AL. C. A. 9th Cir. Certiorari denied.

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No. 6057. *WILSON v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 431 F. 2d 1118.

No. 6059. *SILVERTHORNE v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 430 F. 2d 675.

No. 6063. *THOMAS, AKA TOOHEY v. NITZE, SECRETARY OF THE NAVY, ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 429 F. 2d 1332.

No. 6065. *BORK v. MARYLAND*. Ct. Sp. App. Md. Certiorari denied.

No. 6066. *MASSIMO v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 432 F. 2d 324.

No. 6067. *TYCZKOWSKI v. PENNSYLVANIA*. Sup. Ct. Pa. Certiorari denied.

No. 6070. *MIXEN v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 428 F. 2d 746.

No. 6072. *LOGAN v. CASSCLES, WARDEN*. C. A. 2d Cir. Certiorari denied.

No. 6078. *GILBOY v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 431 F. 2d 1391.

No. 6079. *ENGEL v. CITY OF MADISON, WISCONSIN, ET AL.* C. A. 7th Cir. Certiorari denied.

No. 6086. *HOLMES v. ZELKER, WARDEN*. C. A. 2d Cir. Certiorari denied.

No. 6092. *ROBINSON v. McMANN, WARDEN*. C. A. 2d Cir. Certiorari denied.

No. 6093. *WARBURTON v. CALIFORNIA*. Ct. App. Cal., 2d App. Dist. Certiorari denied. Reported below: 7 Cal. App. 3d 815, 86 Cal. Rptr. 894.

No. 6094. *THOMAS v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 432 F. 2d 120.

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No. 6095. *AKERS v. UNITED STATES*. C. A. 3d Cir. Certiorari denied.

No. 6097. *PARKS v. WAINWRIGHT, CORRECTIONS DIRECTOR, ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 429 F. 2d 1240.

No. 6100. *JOLLY ET AL. v. GORMAN ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 428 F. 2d 960.

No. 6101. *WALKER v. ILLINOIS*. C. A. 7th Cir. Certiorari denied.

No. 6102. *MANN ET AL. v. SUPERIOR COURT OF SAN BERNARDINO COUNTY ET AL.* Sup. Ct. Cal. Certiorari denied. Reported below: 3 Cal. 3d 1, 472 P. 2d 468.

No. 6103. *STEVENSON v. MANCUSI, CORRECTIONAL SUPERINTENDENT*. App. Div., Sup. Ct. N. Y., 4th Jud. Dept. Certiorari denied.

No. 6104. *WALKER v. FOLLETTE, WARDEN*. C. A. 2d Cir. Certiorari denied.

No. 6112. *MENECHINO v. OSWALD ET AL., NEW YORK STATE BOARD OF PAROLE*. C. A. 2d Cir. Certiorari denied. Reported below: 430 F. 2d 403.

No. 6116. *VITORATOS v. EMMONS, JUDGE*. Sup. Ct. Ohio. Certiorari denied.

No. 6121. *MILLS v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 430 F. 2d 526.

No. 6124. *WARFORD v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 430 F. 2d 1181.

No. 6126. *YBARRA v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 430 F. 2d 1230.

No. 6132. *RICHARDS v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 430 F. 2d 1240.

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No. 6133. *WILMOT v. UNITED STATES*. C. A. 2d Cir. Certiorari denied.

No. 6136. *ALLEN v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 433 F. 2d 846.

No. 6137. *ADAMS v. PATE, WARDEN*. C. A. 7th Cir. Certiorari denied.

No. 6138. *WATKINS v. NELSON, WARDEN*. C. A. 9th Cir. Certiorari denied. Reported below: 430 F. 2d 1311.

No. 6140. *FRENCH v. ILLINOIS*. Sup. Ct. Ill. Certiorari denied. Reported below: 46 Ill. 2d 104, 262 N. E. 2d 901.

No. 868. *HARPER v. UNITED STATES*. C. A. 1st Cir. Motion to dispense with printing petition granted. Certiorari denied.

No. 881. *BARNES v. UNITED STATES*. C. A. 9th Cir. Motion to dispense with printing petition granted. Certiorari denied. Reported below: 431 F. 2d 878.

No. 895. *FOWLER v. BOARD OF SUPERVISORS OF ELECTIONS OF PRINCE GEORGES COUNTY*. Ct. App. Md. Motion to dispense with printing petition granted. Certiorari denied.

No. 869. *CHRISTOPHER ET AL. v. E. I. DUPONT DE NEMOURS & Co., INC.* C. A. 5th Cir. Certiorari denied. MR. JUSTICE HARLAN and MR. JUSTICE WHITE took no part in the consideration or decision of this petition. Reported below: 431 F. 2d 1012.

No. 5867. *MITCHELL v. GEORGIA*. Sup. Ct. Ga. Certiorari denied. MR. JUSTICE DOUGLAS is of the opinion that certiorari should be granted. Reported below: 226 Ga. 450, 175 S. E. 2d 545.

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Rehearing Denied

- No. 288. JOINER *v.* DECKARD, *ante*, p. 941;
No. 291. McVEAN *v.* FLORIDA, *ante*, p. 941;
No. 414. DUNN *v.* NEWSPAPERS, INC., *ante*, p. 830;
No. 711. BECKMAN INSTRUMENTS, INC., ET AL. *v.*
CHEMTRONICS, INC., ET AL., *ante*, p. 956;
No. 5789. VEACH *v.* TENNESSEE, *ante*, p. 948; and
No. 5893. HARRIS *v.* UNITED STATES, *ante*, p. 966.
Petitions for rehearing denied.

No. 78. ATLANTIC CITY ELECTRIC CO. ET AL. *v.* UNITED STATES ET AL., *ante*, p. 73. Petition for rehearing denied. MR. JUSTICE DOUGLAS took no part in the consideration or decision of this petition.

No. 421. TREFINA, A. G. *v.* UNITED STATES, *ante*, p. 878. Motion for leave to file petition for rehearing denied.

No. 673. LEE NATIONAL CORP. *v.* ATLANTIC RICHFIELD Co. ET AL., *ante*, p. 940. Petition for rehearing and/or to amend order denied.

JANUARY 26, 1971

Dismissal Under Rule 60

No. 5602. MITCHELL *v.* BISHOP, PENITENTIARY SUPERINTENDENT. Sup. Ct. Ark. Petition for writ of certiorari dismissed pursuant to Rule 60 of the Rules of this Court. Reported below: 248 Ark. 427, 452 S. W. 2d 340.

JANUARY 27, 1971

Miscellaneous Order. (For Court's order prescribing the Rules of Procedure for the Trial of Minor Offenses before United States Magistrates, see *post*, p. 1031.)

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Dismissal Under Rule 60

No. 1219. CONFEDERATION LIFE ASSN. *v.* VEGA Y ARMINAN. Dist. Ct. App. Fla., 3d Dist. Petition for writ of certiorari dismissed pursuant to Rule 60 of the Rules of this Court. Reported below: 237 So. 2d 839.

FEBRUARY 3, 1971

Miscellaneous Order

No. 89. 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];

No. 153. TILTON ET AL. *v.* RICHARDSON, SECRETARY OF HEALTH, EDUCATION, AND WELFARE, ET AL. Appeal from D. C. Conn. [Probable jurisdiction noted, *sub nom.* *Tilton v. Finch*, 399 U. S. 904];

No. 569. EARLEY *v.* DiCENSO ET AL.; and

No. 570. ROBINSON, COMMISSIONER OF EDUCATION OF RHODE ISLAND, ET AL. *v.* DiCENSO ET AL. Appeals from D. C. R. I. [Probable jurisdiction noted, *ante*, p. 901.] Motion to postpone oral argument denied. MR. JUSTICE MARSHALL took no part in the consideration or decision of this motion.