

ORDERS FROM END OF OCTOBER TERM, 1971
THROUGH JANUARY 15, 1973

JULY 7, 1972*

Miscellaneous Order

No. A-1320. ATCHISON, TOPEKA & SANTA FE RAILWAY CO. ET AL. *v.* WICHITA BOARD OF TRADE ET AL. D. C. Kan.

On consideration of the appellants' application for stay, the appellees' reply to the application, and the affidavits and memoranda filed in support of the application and reply, IT IS ORDERED:

(1) That, subject to the condition set forth in paragraph 2 herein, the judgment of the United States District Court for the District of Kansas entered in this matter on June 8, 1972, be and hereby is stayed pending a final determination of the appeal by this Court.

(2) That, as a condition of the foregoing stay, each railroad collecting in-transit grain inspection charges under the challenged tariffs shall immediately take steps, including publication of appropriate provisions in applicable tariffs, to do the following:

(a) keep accurate accounts in detail of all amounts hereafter received during the existence of the stay by reason of in-transit grain inspection charges, specifying by whom and in whose behalf such amounts are paid; and

(b) in the event the order suspending the charges is affirmed by this Court, refund (with interest) of

*[REPORTER'S NOTE: The Court had been convened in Special Term on this date to consider applications for stays in Nos. A-23 and A-24. See *ante*, p. 1.]

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such amounts to persons in whose behalf such amounts were paid, without the necessity for such persons to make applications for refunds. In the event this Court's action should be other than in affirmance of the results reached by the District Court, this Court may make such further order concerning the disposition of the aforesaid amounts as the Court may deem appropriate.

CASES DISMISSED IN VACATION

No. 72-5139. *HERRMANN v. UNITED STATES*. C. A. 9th Cir. Petition for writ of certiorari dismissed August 28, 1972, under Rule 60 of the Rules of this Court.

No. 72-5051. *BETHEA ET AL. v. UNITED STATES*. C. A. 4th Cir. Petition for writ of certiorari dismissed as to petitioner Brunson, August 30, 1972, under Rule 60 of the Rules of this Court.

No. 71-771. *LAZARD FRERES & CO. ET AL. v. ROSENFELD ET AL.* C. A. 2d Cir. Petition for writ of certiorari dismissed September 1, 1972, under Rule 60 of the Rules of this Court. Reported below: 445 F. 2d 1337.

No. 71-6747. *IN RE KNIGHT*. C. A. 1st Cir. Petition for writ of certiorari dismissed September 1, 1972, under Rule 60 of the Rules of this Court.

No. 71-553. *THORNTON ET AL. v. PRICHARD ET AL.* Appeal from D. C. E. D. Va. dismissed September 18, 1972, under Rule 60 of the Rules of this Court. [Probable jurisdiction noted, 405 U. S. 1063.] Reported below: 330 F. Supp. 1138.

No. 72-5092. *HARVELL v. UNITED STATES*. C. A. 7th Cir. Petition for writ of certiorari dismissed September 18, 1972, under Rule 60 of the Rules of this Court.

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No. A-362. *BRIDGE v. NEW JERSEY*. Super. Ct. N. J. Application for stay presented to MR. JUSTICE DOUGLAS, and by him referred to the Court, denied. MR. JUSTICE DOUGLAS would grant stay.

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No. A-325. *AMERICAN PARTY OF TEXAS ET AL. v. BULLOCK, SECRETARY OF STATE OF TEXAS*. D. C. W. D. Tex. Application for temporary restraining order, presented to MR. JUSTICE DOUGLAS and by him referred to the Court, denied. Reported below: 349 F. Supp. 1272.

MR. JUSTICE DOUGLAS, dissenting.

The American Party, seeking to get on the Texas ballot for this year's election, brought an action which asked a three-judge federal court to hold provisions of the Texas election laws unconstitutional.

Texas has four methods of nominating candidates.

First, those whose party's gubernatorial candidate polled more than 200,000 votes in the last general election may be nominated through primaries. Election Code, Art. 13.02 (1967). Second, those whose party's candidates polled less than 200,000 votes but more than 2% of the total votes cast for governor may be nominated by primaries or by nominating conventions. Election Code, Art. 13.45 subd. 1 (Supp. 1972). Third, those whose party's candidates polled less than 2% of the total gubernatorial vote and those whose party did not have a nominee for governor in the last general election may be nominated by convention only or by fulfilling the requirements of Art. 13.45 subd. 2 of the Election Code (Supp. 1972). Fourth, nonpartisan and independent candidates

may appear on the ballot after meeting the requirements of Art. 13.50 of the Election Code.

The American Party falls in the third category. In order to get its nominees printed on the ballot it must meet the following requirements:

It must by the previous September declare its intention to nominate by convention. That entails a statewide party organization with an executive committee. It also requires the filing with the Secretary of State by February of the names of the candidates; it requires the filing of party rules by March. It requires the holding of precinct conventions on the day of the primary and the holding of county conventions the following week and a state convention on a day certain.

The American Party must in addition do the following:

(1) It must furnish a list of participants in each precinct convention with the names, addresses, and registration certificate numbers of qualified voters attending such conventions. The names on the list must total at least 1% of the total votes cast for governor at the last preceding general election.

(2) If the number of qualified voters attending the precinct conventions is less than 1%, there must be filed a petition requesting that the names of the nominees be printed on the election ballot, signed by a sufficient number of additional qualified voters to make a combined total of at least 1% of the total votes cast for governor in the last election.

(3) No person who during the voting year voted at any primary election or participated in any convention of any other party may attend the minority party convention or sign the petition. If he does, he is subject to criminal penalties.

(4) The petition may not be circulated until after the date set for the holding of the major parties' primaries. Signatures must be certified before 20 days after the date

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of the party's convention, which in 1972 gave it approximately 53 days to gather signatures.

(5) Each person who signs a petition must be administered an oath before a notary public at the time he signs.

This election scheme is not as severe or oppressive as the one we condemned in *Williams v. Rhodes*, 393 U. S. 23; nor is it as benign as the one we approved in *Jenness v. Fortson*, 403 U. S. 431.

While Texas requires only 1% of the voters for governor to endorse the new party, that requirement must be met by obtaining signatures of those attending precinct conventions, supplemented, if need be, by signatures obtained after the primaries. But all cross-over signing is barred and it is supported by criminal sanctions. Moreover, the supplemental signatures can be obtained only after the major parties have held their primaries. And only a 55-day period is available for obtaining the necessary signatures.

While the requirement of 1% of the total vote for governor may be less than Georgia's requirement of 5% of those eligible to vote in the last election for the filling of the office the candidate is seeking, the Texas machinery for launching a minority party is almost as cumbersome and involved as the one we struck down in *Williams v. Rhodes*.

The minority party must be statewide even though its appeal may be essentially to urban voters or to rural voters, as the case may be. That requirement did not appear in Georgia's scheme.

In Georgia 180 days was allowed for circulating a nominating petition; in Texas, less than 60 days.

In Georgia the minority party had to meet the same deadline as did candidates running in the primaries of the regular parties. In Texas the regular parties first have their primaries; only then can a minority party

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solicit signatures for its candidates. Moreover, no one who voted in a primary is eligible to sign the petition for the minority party.

The minority party therefore must draw its support from the ranks of those who were either unwilling or unable to vote in the primaries of the established parties.

The minority party therefore cannot compete with the regular parties; it must be content with the leftovers to get on the ballot.

We said in *Jenness v. Fortson, supra*, at 438, "Georgia's election laws, unlike Ohio's, do not operate to freeze the status quo." Texas, though not as severe as Ohio, works in that direction. It therefore seems to me, at least prima facie, to impose an invidious discrimination on the unorthodox political group.

Perhaps full argument would dispel these doubts. But they are so strong that I would grant the requested stay so that candidates for the American Party may get on the Texas ballot for next month's presidential election. To do so it must be certified by the Secretary of State no later than October 6. We cannot possibly decide the merits by that date. But if the American Party is on the ballot, the voting and associational rights which we have been alert to protect will be honored; and if meanwhile the merits are reached and we affirm the three-judge court, holding the Texas scheme constitutional, the ballots will not be counted. That was the way Justice Black avoided the dilemma in a Florida case;* and I would follow his course here.

No. A-370. WHITCOMB, GOVERNOR OF INDIANA, ET AL. v. COMMUNIST PARTY OF INDIANA ET AL. D. C. N. D. Ind. Motion of applicants for emergency stay presented to MR. JUSTICE REHNQUIST, and by him referred to the Court, denied as moot. Cross motion of Communist

*See *Davis v. Adams*, 400 U. S. 1203.

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Party of Indiana et al. to petition for mandate to enforce prior order of United States District Court also denied. MR. JUSTICE DOUGLAS would treat motion of Communist Party of Indiana et al. as jurisdictional statement and postpone question of jurisdiction to hearing of case on the merits.

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No. A-374. PATTANI ET AL. *v.* MEYERS ET AL. C. A. 3d Cir. Application for temporary restraining order presented to MR. JUSTICE BRENNAN, and by him referred to the Court, denied.

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Affirmed on Appeal

No. 71-1235. CRAIG, COMMISSIONER OF SOCIAL SERVICES, ET AL. *v.* GILLIARD ET AL. Appeal from D. C. W. D. N. C. Motion to dispense with printing motion to affirm granted. Judgment affirmed. Reported below: 331 F. Supp. 587.

No. 71-1363. DAVIS ET AL. *v.* CINEMA CLASSICS, LTD., INC., ET AL.; and

No. 71-1364. BUSCH, DISTRICT ATTORNEY OF LOS ANGELES COUNTY, ET AL. *v.* CINEMA CLASSICS, LTD., INC., ET AL. Affirmed on appeals from D. C. C. D. Cal. MR. JUSTICE STEWART would note probable jurisdiction and set cases for oral argument. Reported below: 339 F. Supp. 43.

No. 71-1416. HOLSHOUSER *v.* SCOTT, GOVERNOR OF NORTH CAROLINA, ET AL. Affirmed on appeal from D. C. M. D. N. C. Reported below: 335 F. Supp. 928.

No. 71-1560. TEXAS BOARD OF BARBER EXAMINERS ET AL. *v.* BOLTON ET AL. Affirmed on appeal from D. C. N. D. Tex.

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No. 71-1399. INTERSTATE COMMERCE COMMISSION *v.* GOLD KIST, INC., ET AL.;

No. 71-1404. REFRIGERATED TRANSPORT CO., INC. *v.* GOLD KIST, INC., ET AL.; and

No. 71-1407. AMERICAN TRUCKING ASSNS., INC. *v.* GOLD KIST, INC., ET AL. Affirmed on appeals from D. C. N. D. Ga. MR. JUSTICE STEWART and MR. JUSTICE BLACKMUN would note probable jurisdiction and set cases for oral argument. Reported below: 339 F. Supp. 1249.

No. 71-1676. ARCHER ET AL. *v.* SMITH, GOVERNOR OF TEXAS, ET AL. Affirmed on appeal from D. C. W. D. Tex. Reported below: 343 F. Supp. 704.

No. 71-1683. WASHINGTON STATE LABOR COUNCIL, AFL-CIO, ET AL. *v.* PRINCE ET AL. Affirmed on appeal from D. C. W. D. Wash.

No. 72-45. NATIONAL ASSOCIATION OF LETTER CARRIERS, AFL-CIO, ET AL. *v.* NATIONAL ALLIANCE OF POSTAL & FEDERAL EMPLOYEES ET AL. Affirmed on appeal from D. C. D. C. Reported below: 341 F. Supp. 370.

No. 71-1592. AUERBACH ET AL. *v.* MANDEL, GOVERNOR OF MARYLAND, ET AL. Appeal from D. C. Md. Renewed motion to expedite denied. Judgments affirmed.

No. 71-1664. ESSEX, SUPERINTENDENT OF PUBLIC INSTRUCTION, ET AL. *v.* WOLMAN ET AL. Affirmed on appeal from D. C. S. D. Ohio. MR. JUSTICE WHITE would note probable jurisdiction and set case for oral argument. Reported below: 342 F. Supp. 399.

No. 71-6791. BRISCOE *v.* KLEINDIENST, ATTORNEY GENERAL, ET AL. Affirmed on appeal from D. C. D. C. MR. JUSTICE DOUGLAS and MR. JUSTICE BRENNAN would note probable jurisdiction and set case for oral argument. Reported below: 356 F. Supp. 1292.

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No. 71-6902. MOORE ET AL. *v.* HAUGH, WARDEN, ET AL. Affirmed on appeal from D. C. N. D. Iowa. MR. JUSTICE DOUGLAS would note probable jurisdiction and set case for oral argument. Reported below: 341 F. Supp. 1263.

No. 72-46. UTE MOUNTAIN TRIBE OF INDIANS *v.* NAVAJO TRIBE OF INDIANS. Affirmed on appeal from D. C. N. M. MR. JUSTICE DOUGLAS would note probable jurisdiction and set case for oral argument.

No. 72-36. WILLIAMS *v.* DEMOCRATIC PARTY OF GEORGIA ET AL. Appeal from D. C. N. D. Ga. Motions to dispense with printing jurisdictional statement and motion to dismiss or affirm granted. Judgment affirmed. MR. JUSTICE DOUGLAS would dismiss appeal as moot. MR. JUSTICE BRENNAN and MR. JUSTICE MARSHALL would note probable jurisdiction and set case for oral argument.

No. 72-83. STERRETT ET AL. *v.* MOTHERS' & CHILDREN'S RIGHTS ORGANIZATION ET AL. Appeal from D. C. N. D. Ind. Motion of appellees for leave to proceed *in forma pauperis* granted. Judgment affirmed.

No. 72-114. GAUNT ET AL. *v.* BROWN, SECRETARY OF STATE OF OHIO, ET AL. Appeal from D. C. S. D. Ohio. Motion to dispense with printing jurisdictional statement granted. Judgment affirmed. Reported below: 341 F. Supp. 1187.

Vacated and Remanded on Appeal

No. 70-5083. NEWMAN *v.* NEWMAN. Appeal from Sup. Ct. La. Motion for leave to proceed *in forma pauperis* granted. Judgment vacated and case remanded for further consideration in light of *Boddie v. Connecticut*, 401 U. S. 371 (1971).

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Appeals Dismissed

No. 71-1027. *BAKER ET AL. v. NELSON*. Appeal from Sup. Ct. Minn. dismissed for want of substantial federal question. Reported below: 291 Minn. 310, 191 N. W. 2d 185.

No. 71-1132. *MAYOR OF BALTIMORE ET AL. v. SILVER ET UX*. Appeal from Ct. App. Md. dismissed for want of substantial federal question. Reported below: 263 Md. 439, 283 A. 2d 788.

No. 71-1445. *SPECTER, DISTRICT ATTORNEY OF PHILADELPHIA COUNTY v. TUCKER, SECRETARY OF THE COMMONWEALTH, ET AL.* Appeal from Sup. Ct. Pa. dismissed for want of substantial federal question. Reported below: 448 Pa. 1, 293 A. 2d 15.

No. 71-1530. *RETZA v. FORTUNE*. Appeal from Ct. App. Ohio, Cuyahoga County, dismissed for want of substantial federal question.

No. 71-1681. *SURETY SAVINGS & LOAN ASSN. v. WISCONSIN DEPARTMENT OF TRANSPORTATION, DIVISION OF HIGHWAYS*. Appeal from Sup. Ct. Wis. dismissed for want of substantial federal question. Reported below: 54 Wis. 2d 438, 195 N. W. 2d 464.

No. 72-61. *SNOHOMISH COUNTY BOARD OF EQUALIZATION ET AL. v. WASHINGTON STATE DEPARTMENT OF REVENUE ET AL.* Appeal from Sup. Ct. Wash. dismissed for want of substantial federal question. Reported below: 80 Wash. 2d 262, 493 P. 2d 1012.

No. 72-88. *MESA VERDE Co. v. BOARD OF COUNTY COMMISSIONERS OF MONTEZUMA COUNTY ET AL.* Appeal from Sup. Ct. Colo. dismissed for want of substantial federal question. Reported below: — Colo. —, 495 P. 2d 229.

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No. 72-91. *DAVIS v. NEW YORK*. Appeal from App. Term, Sup. Ct. N. Y., 1st Jud. Dept., dismissed for want of substantial federal question.

No. 72-5065. *CRAWFORD v. MISSOURI*. Appeal from Sup. Ct. Mo. dismissed for want of substantial federal question. Reported below: 478 S. W. 2d 314.

No. 71-1109. *NORRIS ET AL. v. JORDAN ET AL.*; and

No. 71-1439. *NORRIS ET AL. v. JORDAN ET AL.* Appeals from D. C. N. D. Ohio. Motion to defer consideration denied. Appeals dismissed for want of jurisdiction.

No. 71-1186. *FRY'S FOOD STORES, INC., ET AL. v. CALIFORNIA*. Appeal from Sup. Ct. Cal. dismissed.

No. 71-1233. *BRIDGEFORTH v. ILLINOIS*; and

No. 71-6422. *DAVIS v. ILLINOIS*. Appeals from Sup. Ct. Ill. Motions to dispense with printing jurisdictional statement and to dismiss in No. 71-1233 granted. Motion to supplement jurisdictional statement in No. 71-6422 granted. Appeals dismissed for want of substantial federal question. MR. JUSTICE DOUGLAS would note probable jurisdiction and set cases for oral argument. Reported below: 51 Ill. 2d 52, 281 N. E. 2d 617.

No. 71-1402. *COLEMAN v. LOUISIANA*. Appeal from Sup. Ct. La. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied. Reported below: 260 La. 897, 257 So. 2d 652.

No. 71-1616. *RONWIN v. FAIR EMPLOYMENT PRACTICES COMMISSION (FRESNO STATE COLLEGE, REAL PARTY IN INTEREST)*. Appeal from Ct. App. Cal., 5th App. Dist., 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. 71-6423. *HOUSE v. HOUSE*. Appeal from C. A. 4th Cir. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied.

No. 71-6568. *CLARK v. DELAWARE*. Appeal from Sup. Ct. Del. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied. Reported below: — Del. —, 287 A. 2d 660.

No. 71-6624. *TILLMAN v. MARYLAND*. Appeal from Ct. Sp. App. Md. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied. Reported below: 13 Md. App. 570, 284 A. 2d 259.

No. 71-6643. *PICKING v. YATES ET AL.* Appeal from Ct. App. Md. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied. Reported below: 265 Md. 1, 288 A. 2d 146.

No. 71-6668. *NIEDER v. MERCURY FEDERAL SAVINGS & LOAN ASSN.* Appeal from Sup. Ct. N. J. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied.

No. 72-133. *BERNSTEIN ET AL. v. NATIONWIDE MUTUAL INSURANCE Co.* Appeal from C. A. 4th Cir. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied. Reported below: 458 F. 2d 506.

No. 71-6264. *ANDERSON v. MUNICIPAL COURT, SAN DIEGO JUDICIAL DISTRICT, ET AL.* Appeal from D. C. S. D. Cal. dismissed for want of jurisdiction.

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No. 72-5107. *DAWLEY v. COUNTY OF SACRAMENTO*. Appeal from Ct. App. Cal., 3d 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. 71-1482. *FLEMING ET AL. v. BOSTON SAFE DEPOSIT & TRUST CO. ET AL.* Appeal from Sup. Jud. Ct. Mass. dismissed for want of substantial federal question. MR. JUSTICE DOUGLAS would note probable jurisdiction and set case for oral argument. Reported below: — Mass. —, 279 N. E. 2d 342.

No. 71-1651. *NEWBERN, EXECUTRIX, ET AL. v. ALABAMA*. Appeal from Ct. Civ. App. Ala. dismissed for want of substantial federal question. MR. JUSTICE DOUGLAS would note probable jurisdiction and set case for oral argument. Reported below: See 46 Ala. App. 210, 239 So. 2d 780.

No. 71-6520. *JACK ET AL. v. CALIFORNIA*. Appeal from App. Dept., Super. Ct. Cal., County of Santa Clara, dismissed for want of substantial federal question. MR. JUSTICE DOUGLAS would note probable jurisdiction and set case for oral argument.

No. 72-5070. *KELLEY v. IOWA DEPARTMENT OF SOCIAL SERVICES*. Appeal from Sup. Ct. Iowa dismissed for want of substantial federal question. MR. JUSTICE DOUGLAS would note probable jurisdiction and set case for oral argument. Reported below: 197 N. W. 2d 192.

No. 72-20. *MOTTELER, ADMINISTRATRIX v. J. A. JONES CONSTRUCTION Co.* Appeal from C. A. 7th Cir. 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 would note probable jurisdiction and set case for oral argument. Reported below: 457 F. 2d 917.

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No. 72-92. *BUTCHER ET AL. v. TOWNSHIP OF GROSSE ILE ET AL.* Appeal from Sup. Ct. Mich, dismissed for want of substantial federal question. MR. JUSTICE STEWART would dismiss appeal for want of a properly presented federal question. Reported below: 387 Mich. 42, 194 N. W. 2d 845.

No. 72-5080. *BUNCH v. CITY OF CINCINNATI.* Appeal from Sup. Ct. Ohio dismissed for want of substantial federal question. MR. JUSTICE DOUGLAS and MR. JUSTICE MARSHALL would note probable jurisdiction and set case for oral argument.

No. 72-5133. *BUCHANAN v. TEXAS.* Appeal from Ct. Crim. App. Tex. dismissed for want of substantial federal question. MR. JUSTICE BRENNAN and MR. JUSTICE BLACKMUN would note probable jurisdiction and set case for oral argument. Reported below: 480 S. W. 2d 207.

Certiorari Granted—Vacated and Remanded

No. 71-1302. *SUPERINTENDENT OF FIELD UNIT No. 9 v. TERRY.* C. A. 4th Cir. Motion of respondent for leave to proceed *in forma pauperis* and certiorari granted. Judgment vacated and case remanded for further consideration in light of *Colten v. Kentucky*, 407 U. S. 104.

No. 71-1548. *IN RE LEARY.* Super. Ct. Div., Gen. Ct. of Justice, County of Wake, N. C. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Jackson v. Indiana*, 406 U. S. 715. MR. JUSTICE DOUGLAS dissents from vacating and remanding this case.

No. 71-6773. *DUNCAN v. UNITED STATES.* C. A. 9th Cir. Motion for leave to proceed *in forma pauperis* and certiorari granted. Judgment vacated and case remanded for further consideration in light of *Gelbard v. United States*, 408 U. S. 41. Reported below: 456 F. 2d 1401.

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No. 71-6460. GAUSE *v.* ARIZONA. Sup. Ct. Ariz. Motion for leave to proceed *in forma pauperis* and certiorari granted. Judgment vacated and case remanded for further consideration in light of *Stewart v. Massachusetts*, 408 U. S. 845. Reported below: 107 Ariz. 491, 489 P. 2d 830.

No. 71-6570. KETOLA *v.* UNITED STATES. C. A. 9th Cir. Motion for leave to proceed *in forma pauperis* and certiorari granted. Upon representations of the Solicitor General, set forth in his Memorandum for the United States filed June 16, 1972, judgment vacated and case remanded for further consideration in light of position presently asserted by the Government. Application for bail denied without prejudice to renewal of application to the Court of Appeals. Reported below: 455 F. 2d 83.

No. 72-5009. WEBB *v.* UNITED STATES. C. A. 9th Cir. Motion for leave to proceed *in forma pauperis* and certiorari granted. Judgment vacated and case remanded for further consideration in light of *Gelbard v. United States*, 408 U. S. 41.

No. 72-28. NORTHERN STATES POWER CO. *v.* IHRKE ET UX. C. A. 8th Cir. Certiorari granted, judgment vacated, and case remanded with instructions to dismiss case as moot. MR. JUSTICE POWELL took no part in the consideration or decision of this case. Reported below: 459 F. 2d 566.

No. 72-5110. MARTINEZ-FRAUSTO *v.* UNITED STATES. C. A. 9th Cir. Motion for leave to proceed *in forma pauperis* and certiorari granted. Upon representations of the Solicitor General, set forth in his Memorandum for the United States filed September 6, 1972, judgment vacated and case remanded for further consideration in light of the position presently asserted by the Government. Reported below: 463 F. 2d 231.

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No. 72-34. O'BRIEN ET AL. v. BROWN ET AL. C. A. D. C. Cir. Motions to dispense with printing petition and respondents' brief granted. Certiorari granted, judgment vacated, and case remanded with directions to dismiss case as moot. Reported below: 152 U. S. App. D. C. 157, 469 F. 2d 563.

No. 72-35. KEANE ET AL. v. NATIONAL DEMOCRATIC PARTY ET AL. C. A. D. C. Cir. Motions to dispense with printing petition and respondents' brief granted. Certiorari granted, judgment vacated, and case remanded to determine whether case has become moot. Reported below: 152 U. S. App. D. C. 157, 469 F. 2d 563.

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No. A-1165, October Term, 1971. IN RE DISBARMENT OF MORTON. It having been reported to this Court that William M. Morton, Jr., of St. Joseph, Missouri, has been disbarred from the practice of law in all of the courts of the State of Missouri, and this Court by order of May 15, 1972 [406 U. S. 914], having suspended the said William M. Morton, Jr., 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 has expired;

IT IS ORDERED that the said William M. Morton, Jr., 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. 36, Orig. TEXAS v. LOUISIANA. Exceptions to Report of Special Master set for oral argument in due course. [For earlier orders herein, see, *e. g.*, 406 U. S. 941.]

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No. A-271. NON-RESIDENT TAXPAYERS ASSOCIATION OF PENNSYLVANIA AND NEW JERSEY ET AL. *v.* MURRAY, SHERIFF, ET AL. D. C. E. D. Pa. Application for injunction presented to MR. JUSTICE DOUGLAS, and by him referred to the Court, denied. MR. JUSTICE DOUGLAS would grant the application. Reported below: 347 F. Supp. 399.

No. 56, Orig. VIRGINIA *v.* INTERNATIONAL AIR TRANSPORT ASSN. ET AL. Motion of Metropolitan Washington Board of Trade for leave to file a brief as *amicus curiae* granted. Motion for leave to file bill of complaint denied. *Washington v. General Motors Corp.*, 406 U. S. 109. MR. JUSTICE POWELL took no part in the consideration or decision of these motions.

No. 70-18. ROE ET AL. *v.* WADE, DISTRICT ATTORNEY OF DALLAS COUNTY. Appeal from D. C. N. D. Tex.; and

No. 70-40. DOE ET AL. *v.* BOLTON, ATTORNEY GENERAL OF GEORGIA, ET AL. Appeal from D. C. N. D. Ga. [Restored to calendar, 408 U. S. 919.] Motion of California Committee to Legalize Abortion et al. for leave to file a brief as *amici curiae* granted.

No. 70-106. HEFFERNAN, GUARDIAN *v.* DOE ET AL. Appeal from D. C. N. D. Ill. Motion of appellant to consolidate with No. 70-18 [*Roe v. Wade*] and No. 70-40 [*Doe v. Bolton*] for oral argument denied.

No. 71-485. GOTTSCHALK, ACTING COMMISSIONER OF PATENTS *v.* BENSON ET AL. C. C. P. A. [Certiorari granted, 405 U. S. 915.] Motion of Association of Data Processing Service Organizations, Software Products and Service Section, for leave to participate in oral argument as *amicus curiae* denied. MR. JUSTICE STEWART, MR. JUSTICE BLACKMUN, and MR. JUSTICE POWELL took no part in the consideration or decision of this motion.

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No. 71-36. CALIFORNIA ET AL. *v.* LARUE ET AL. Appeal from D. C. D. C. Cal. [Probable jurisdiction noted, 404 U. S. 999.] Motion to permit two counsel to argue on behalf of appellees granted.

No. 71-123. NATIONAL LABOR RELATIONS BOARD *v.* BURNS INTERNATIONAL SECURITY SERVICES, INC., ET AL.; and

No. 71-198. BURNS INTERNATIONAL SECURITY SERVICES, INC. *v.* NATIONAL LABOR RELATIONS BOARD ET AL., 406 U. S. 272. Motion to recall judgment denied.

No. 71-366. TIDEWATER OIL CO. *v.* UNITED STATES ET AL. C. A. 9th Cir. [Certiorari granted, 405 U. S. 986.] Motion of the Solicitor General to permit A. Raymond Randolph, Jr., to argue orally *pro hac vice* on behalf of the United States granted.

No. 71-507. KEYES ET AL. *v.* SCHOOL DISTRICT No. 1, DENVER, COLORADO, ET AL. C. A. 10th Cir. [Certiorari granted, 404 U. S. 1036.] Joint motion for additional time for oral argument granted and 15 minutes allotted for that purpose to each side. MR. JUSTICE WHITE took no part in the consideration or decision of this motion.

No. 71-575. GOMEZ *v.* PEREZ. Appeal from Ct. Civ. App. Tex., 4th Sup. Jud. Dist. [Probable jurisdiction noted, 408 U. S. 920.] Motion of appellant to dispense with printing appendix and to proceed on original record granted. Motion of American Civil Liberties Union for leave to file a brief as *amicus curiae* granted.

No. 71-666. UNITED STATES *v.* GLAXO GROUP LTD. ET AL. Appeal from D. C. D. C. [Probable jurisdiction noted, 405 U. S. 914.] Motion of appellant for additional time for oral argument granted and 15 minutes allotted for that purpose. Appellees also allotted 15 additional minutes for oral argument.

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No. 71-651. CALIFORNIA *v.* KRIVDA ET AL. Sup. Ct. Cal. [Certiorari granted, 405 U. S. 1039.] Motion to permit showing of motion picture during oral argument, to permit two counsel to argue orally, and for additional time for oral argument denied. Motion of National Legal Aid & Defender Assn. for leave to dispense with printing *amicus curiae* brief granted.

No. 71-685. LEHNHAUSEN, DIRECTOR, DEPARTMENT OF LOCAL GOVERNMENT AFFAIRS OF ILLINOIS *v.* LAKE SHORE AUTO PARTS Co. ET AL.; and

No. 71-691. BARRETT, COUNTY CLERK OF COOK COUNTY, ILLINOIS, ET AL. *v.* SHAPIRO ET AL. Sup. Ct. Ill. [Certiorari granted, 405 U. S. 1039.] Motion of American National Bank & Trust Co. of Chicago et al., as members of Corporate Fiduciaries Assn. of Illinois, for leave to file a brief as *amici curiae* granted. Motion of Proviso Township High School District #209 et al. for leave to file a brief as *amici curiae* granted, but motion to participate in oral argument as *amici curiae* denied. Motion of Charles Marshall, State's Attorney, County of DeKalb, Illinois, for leave to intervene in No. 71-685 denied.

No. 71-829. MOURNING *v.* FAMILY PUBLICATIONS SERVICE, INC. C. A. 5th Cir. [Certiorari granted, 405 U. S. 987.] Motion of National Consumer Law Center, Inc., for leave to dispense with printing *amicus curiae* brief granted. Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* in support of petitioner granted and 15 minutes allotted for that purpose. Respondent also allotted 15 additional minutes for oral argument.

No. 71-1182. MATTZ *v.* ARNETT, DIRECTOR, DEPARTMENT OF FISH AND GAME. Ct. App. Cal., 1st App. Dist. The Solicitor General is invited to file a brief in this case expressing the views of the United States. Reported below: 20 Cal. App. 3d 729, 97 Cal. Rptr. 894.

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No. 71-834. *McCLANAHAN v. ARIZONA TAX COMMISSION*. Appeal from Ct. App. Ariz. [Probable jurisdiction noted, 406 U. S. 916.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* in support of appellants granted and 15 minutes allotted for that purpose. Appellee allotted 15 additional minutes for oral argument.

No. 71-863. *COLUMBIA BROADCASTING SYSTEM, INC. v. DEMOCRATIC NATIONAL COMMITTEE*;

No. 71-864. *FEDERAL COMMUNICATIONS COMMISSION ET AL. v. BUSINESS EXECUTIVES' MOVE FOR VIETNAM PEACE ET AL.*;

No. 71-865. *POST-NEWSWEEK STATIONS, CAPITAL AREA, INC. v. BUSINESS EXECUTIVES' MOVE FOR VIETNAM PEACE*; and

No. 71-866. *AMERICAN BROADCASTING COS., INC. v. DEMOCRATIC NATIONAL COMMITTEE*. C. A. D. C. Cir. [Certiorari granted, 405 U. S. 953.] Motion of Columbia Broadcasting System, Inc., and Post-Newsweek Stations, Capital Area, Inc., for additional time for oral argument granted and 7½ minutes allotted to petitioners for that purpose. Respondents also allotted 7½ additional minutes for oral argument.

No. 71-991. *OTTER TAIL POWER CO. v. UNITED STATES*. Appeal from D. C. Minn. [Probable jurisdiction noted, 406 U. S. 944.] Motion of appellant for additional time for oral argument denied. Motion of Federal Power Commission for leave to participate in oral argument as *amicus curiae* denied. MR. JUSTICE BLACKMUN and MR. JUSTICE POWELL took no part in the consideration or decision of these motions.

No. 71-1672. *GUTHRIE ET AL. v. ALABAMA BY-PRODUCTS CO. ET AL.* C. A. 5th Cir. The Solicitor General is invited to file a brief in this case expressing the views of the United States. Reported below: 456 F. 2d 1294.

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No. 71-1021. *EMPLOYEES OF THE DEPARTMENT OF PUBLIC HEALTH AND WELFARE OF MISSOURI ET AL. v. DEPARTMENT OF PUBLIC HEALTH AND WELFARE OF MISSOURI ET AL.* C. A. 8th Cir. [Certiorari granted, 405 U. S. 1016.] The Solicitor General is invited to file a brief in this case expressing the views of the United States.

No. 71-1031. *TONASKET v. WASHINGTON ET AL.* Appeal from Sup. Ct. Wash. [Probable jurisdiction noted, 407 U. S. 908.] Motion of appellant for additional time for oral argument denied.

No. 71-1119. *INDIANA EMPLOYMENT SECURITY DIVISION ET AL. v. BURNEY.* Appeal from D. C. N. D. Ind. [Probable jurisdiction noted, 406 U. S. 956.] Motion of College-University Corporation of Indianapolis, Indiana, et al. for leave to file a brief as *amici curiae* granted. Motion of California Department of Human Resources Development for leave to argue orally as *amicus curiae* denied.

No. 71-1136. *TILLMAN ET AL. v. WHEATON-HAVEN RECREATION ASSN., INC., ET AL.* C. A. 4th Cir. [Certiorari granted, 406 U. S. 916.] Motion of Montgomery County, Maryland, for leave to participate in oral argument as *amicus curiae* denied.

No. 71-1192. *GOLDSTEIN ET AL. v. CALIFORNIA.* App. Dept., Super. Ct. Cal., County of Los Angeles. [Certiorari granted, 406 U. S. 956.] Motion of Custom Recording Co., Inc., et al. for leave to file a brief as *amici curiae* granted.

No. 72-434. *BYRN, GUARDIAN v. NEW YORK CITY HEALTH & HOSPITALS CORP. ET AL.* Appeal from Ct. App. N. Y. Motion of appellant to expedite consideration denied. Reported below: 31 N. Y. 2d 194, 286 N. E. 2d 887.

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No. 71-1332. *SAN ANTONIO INDEPENDENT SCHOOL DISTRICT ET AL. v. RODRIGUEZ ET AL.* Appeal from D. C. W. D. Tex. [Probable jurisdiction noted, 406 U. S. 966.] Motions of John Serrano, Jr., et al.; American Civil Liberties Union et al.; Wilson Riles, Superintendent of Public Instruction of California, et al.; NAACP Legal Defense Fund et al.; Mayor of Baltimore et al.; National Education Assn. et al.; Houston L. Flournoy, Controller of California; and Wendell Anderson, Governor of Minnesota, et al., for leave to file briefs as *amici curiae* granted. Motions of John Serrano, Jr., et al. and Wendell Anderson, Governor of Minnesota, et al. for leave to participate in oral argument as *amici curiae* denied.

No. 71-1586. *WOOD v. GOODSON*, JUDGE. Cir. Ct. Ark., Miller County. Motion to defer consideration of petition for writ of certiorari granted.

No. 71-6278. *ALMEIDA-SANCHEZ v. UNITED STATES*. C. A. 9th Cir. [Certiorari granted, 406 U. S. 944.] Motion of Luke McKissack for leave to file a brief as *amicus curiae* granted.

No. 71-6516. *BRADEN v. 30TH JUDICIAL CIRCUIT COURT OF KENTUCKY*. C. A. 6th Cir. [Certiorari granted, 407 U. S. 909.] Motion of M. Curran Clem, Esquire, to permit John M. Famularo, Esquire, to argue *pro hac vice* on behalf of respondent granted. Motion of American Civil Liberties Union for leave to file a brief as *amicus curiae* granted. Reported below: 454 F. 2d 145.

No. 71-1531. *NOLAN v. JUDICIAL COUNCIL OF THE THIRD CIRCUIT OF THE UNITED STATES ET AL.* Motion for leave to file petition for writ of prohibition and/or mandamus denied. MR. JUSTICE BRENNAN took no part in the consideration or decision of this motion.

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No. 72-190. SMITH ET AL. *v.* BOARD OF EDUCATION, INDEPENDENT SCHOOL DISTRICT No. 1, TULSA COUNTY, OKLAHOMA, ET AL. C. A. 10th Cir. Motion to advance denied. Reported below: 459 F. 2d 720.

No. 72-482. MARCHETTI *v.* UNITED STATES. C. A. 4th Cir. Motion of petitioner to expedite consideration denied. Reported below: 466 F. 2d 1309.

No. A-320 (72-521). IRISH NORTHERN AID COMMITTEE *v.* ATTORNEY GENERAL OF THE UNITED STATES. C. A. 2d Cir. Application for stay presented to Mr. JUSTICE MARSHALL, and by him referred to the Court, granted. Should petition for writ of certiorari be denied, stay is to terminate automatically. Should petition for writ of certiorari be granted, stay is to remain in effect pending the sending down of the judgment of this Court.

No. 71-6603. HOUSE *v.* SMITH, WARDEN; and

No. 72-5054. GIBSON *v.* WAINWRIGHT, CORRECTIONS DIRECTOR. Motions for leave to file petitions for writs of habeas corpus denied.

No. 71-6564. NEWELL *v.* BOHANON, U. S. DISTRICT JUDGE;

No. 72-5034. DOYLE *v.* UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MINNESOTA ET AL.; and

No. 72-5035. BEY *v.* UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT. Motions for leave to file petitions for writs of mandamus denied.

No. 71-1655. FALKNER *v.* SUPREME COURT OF FLORIDA ET AL. Motion to dispense with printing petition granted. Motion for leave to file petition for writ of prohibition and/or mandamus denied.

No. 71-6510. LEVY ET AL. *v.* UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT ET AL. Motion for leave to file petition for writ of prohibition and/or mandamus denied.

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No. 71-288. LAIRD, SECRETARY OF DEFENSE, ET AL. v. TATUM ET AL., 408 U. S. 1. Motion to withdraw opinion of this Court denied. Motion to recuse, *nunc pro tunc*, presented to MR. JUSTICE REHNQUIST, by him denied.*

Memorandum of MR. JUSTICE REHNQUIST.

Respondents in this case have moved that I disqualify myself from participation. While neither the Court nor any Justice individually appears ever to have done so, I have determined that it would be appropriate for me to state the reasons which have led to my decision with respect to respondents' motion. In so doing, I do not wish to suggest that I believe such a course would be desirable or even appropriate in any but the peculiar circumstances present here.¹

Respondents contend that because of testimony that I gave on behalf of the Department of Justice before the Subcommittee on Constitutional Rights of the Judiciary Committee of the United States Senate at its hearings during the 92d Cong., 1st Sess., on Federal Data Banks, Computers and the Bill of Rights (hereinafter Hearings), and because of other statements I made in speeches related to this general subject, I should have

*[REPORTER'S NOTE: See also *post*, p. 901.]

¹ In a motion of this kind, there is not apt to be anything akin to the "record" that supplies the factual basis for adjudication in most litigated matters. The judge will presumably know more about the factual background of his involvement in matters that form the basis of the motion than do the movants, but with the passage of any time at all his recollection will fade except to the extent it is refreshed by transcripts such as those available here. If the motion before me turned only on disputed factual inferences, no purpose would be served by my detailing my own recollection of the relevant facts. Since, however, the main thrust of respondents' motion is based on what seems to me an incorrect interpretation of the applicable statute, I believe that this is the exceptional case where an opinion is warranted.

disqualified myself from participating in the Court's consideration or decision of this case. The governing statute is 28 U. S. C. § 455, which provides:

"Any justice or judge of the United States shall disqualify himself in any case in which he has a substantial interest, has been of counsel, is or has been a material witness, or is so related to or connected with any party or his attorney as to render it improper, in his opinion, for him to sit on the trial, appeal, or other proceeding therein."

Respondents also cite various draft provisions of Standards of Judicial Conduct prepared by a distinguished committee of the American Bar Association, and adopted by that body at its recent annual meeting. Since I do not read these particular provisions as being materially different from the standards enunciated in the statute, there is no occasion for me to give them separate consideration.²

Respondents in their motion summarize their factual contentions as follows:

"Under the circumstances of the instant case, MR. JUSTICE REHNQUIST's impartiality is clearly questionable because of his appearance as an expert witness for the Justice Department in Senate hearings inquiring into the subject matter of the case, because of his intimate knowledge of the evidence underlying the respondents' allegations, and because of his public statements about the lack of merit in respondents' claims."

Respondents are substantially correct in characterizing my appearance before the Ervin Subcommittee as an "expert witness for the Justice Department" on the sub-

² See S. Exec. Rep. No. 91-12, Nomination of Clement F. Haynsworth, Jr., 10-11.

ject of statutory and constitutional law dealing with the authority of the Executive Branch to gather information. They are also correct in stating that during the course of my testimony at that hearing, and on other occasions, I expressed an understanding of the law, as established by decided cases of this Court and of other courts, which was contrary to the contentions of respondents in this case.

Respondents' reference, however, to my "intimate knowledge of the evidence underlying the respondents' allegations" seems to me to make a great deal of very little. When one of the Cabinet departments of the Executive Branch is requested to supply a witness for the congressional committee hearing devoted to a particular subject, it is generally confronted with a minor dilemma. If it is to send a witness with personal knowledge of every phase of the inquiry, there will be not one spokesman but a dozen. If it is to send one spokesman to testify as to the department's position with respect to the matter under inquiry, that spokesman will frequently be called upon to deal not only with matters within his own particular bailiwick in the department, but with those in other areas of the department with respect to which his familiarity may be slight. I commented on this fact in my testimony before Senator Ervin's Subcommittee:

"As you might imagine, the Justice Department, in selecting a witness to respond to your inquiries, had to pick someone who did not have personal knowledge in every field. So I can simply give you my understanding" Hearings 619.

There is one reference to the case of *Tatum v. Laird* in my prepared statement to the Subcommittee, and one reference to it in my subsequent appearance during a

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colloquy with Senator Ervin. The former appears as follows in the reported hearings:

"However, in connection with the case of *Tatum v. Laird*, now pending in the U. S. Court of Appeals for the District of Columbia Circuit, one printout from the Army computer has been retained for the inspection of the court. It will thereafter be destroyed." Hearings 601.

The second comment respecting the case was in a discussion of the applicable law with Senator Ervin, the chairman of the Subcommittee, during my second appearance.

My recollection is that the first time I learned of the existence of the case of *Laird v. Tatum*, other than having probably seen press accounts of it, was at the time I was preparing to testify as a witness before the Subcommittee in March 1971. I believe the case was then being appealed to the Court of Appeals by respondents. The Office of the Deputy Attorney General, which is customarily responsible for collecting material from the various divisions to be used in preparing the Department's statement, advised me or one of my staff as to the arrangement with respect to the computer print-out from the Army Data Bank, and it was incorporated into the prepared statement that I read to the Subcommittee. I had then and have now no personal knowledge of the arrangement, nor so far as I know have I ever seen or been apprised of the contents of this particular print-out. Since the print-out had been lodged with the Justice Department by the Department of the Army, I later authorized its transmittal to the staff of the Subcommittee at the request of the latter.

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At the request of Senator Hruska, one of the members of the Subcommittee, I supervised the preparation of a memorandum of law, which the record of the hearings indicates was filed on September 20, 1971. Respondents refer to it in their petition, but no copy is attached, and the hearing records do not contain a copy. I would expect such a memorandum to have commented on the decision of the Court of Appeals in *Laird v. Tatum*, treating it along with other applicable precedents in attempting to state what the Department thought the law to be in this general area.

Finally, I never participated, either of record or in any advisory capacity, in the District Court, in the Court of Appeals, or in this Court, in the Government's conduct of the case of *Laird v. Tatum*.

Respondents in their motion do not explicitly relate their factual contentions to the applicable provisions of 28 U. S. C. § 455. The so-called "mandatory" provisions of that section require disqualification of a Justice or judge "in any case in which he has a substantial interest, has been of counsel, is or has been a material witness"

Since I have neither been of counsel nor have I been a material witness in *Laird v. Tatum*, these provisions are not applicable. Respondents refer to a memorandum prepared in the Office of Legal Counsel for the benefit of MR. JUSTICE WHITE shortly before he came on the Court, relating to disqualification. I reviewed it at the time of my confirmation hearings and found myself in substantial agreement with it. Its principal thrust is that a Justice Department official is disqualified if he either signs a pleading or brief or "if he actively participated in any case even though he did not sign a pleading or brief." I agree. In both *United States v. United States District Court*, 407 U. S. 297 (1972), for which I was not officially responsible in the Department

but with respect to which I assisted in drafting the brief, and in *S&E Contractors v. United States*, 406 U. S. 1 (1972), in which I had only an advisory role which terminated immediately prior to the commencement of the litigation, I disqualified myself. Since I did not have even an advisory role in the conduct of the case of *Laird v. Tatum*, the application of such a rule would not require or authorize disqualification here.

This leaves remaining the so-called discretionary portion of the section, requiring disqualification where the judge "is so related to or connected with any party or his attorney as to render it improper, in his opinion, for him to sit on the trial, appeal, or other proceeding therein." The interpretation and application of this section by the various Justices who have sat on this Court seem to have varied widely. The leading commentator on the subject is John P. Frank, whose two articles, Disqualification of Judges, 56 Yale L. J. 605 (1947), and Disqualification of Judges: In Support of the Bayh Bill, 35 Law & Contemp. Prob. 43 (1970), contain the principal commentary on the subject. For a Justice of this Court who has come from the Justice Department, Mr. Frank explains disqualification practices as follows:

"Other relationships between the Court and the Department of Justice, however, might well be different. The Department's problem is special because it is the largest law office in the world and has cases by the hundreds of thousands and lawyers by the thousands. For the most part, the relationship of the Attorney General to most of those matters is purely formal. As between the Assistant Attorneys General for the various Departmental divisions, there is almost no connection." *Supra*, 35 Law & Contemp. Prob., at 47.

Indeed, different Justices who have come from the Department of Justice have treated the same or very

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similar situations differently. In *Schneiderman v. United States*, 320 U. S. 118 (1943), a case brought and tried during the time Mr. Justice Murphy was Attorney General, but defended on appeal during the time that Mr. Justice Jackson was Attorney General, the latter disqualified himself but the former did not. 320 U. S., at 207.

I have no hesitation in concluding that my total lack of connection while in the Department of Justice with the defense of the case of *Laird v. Tatum* does not suggest discretionary disqualification here because of my previous relationship with the Justice Department.

However, respondents also contend that I should disqualify myself because I have previously expressed in public an understanding of the law on the question of the constitutionality of governmental surveillance. While no provision of the statute sets out such a provision for disqualification in so many words, it could conceivably be embraced within the general language of the discretionary clause. Such a contention raises rather squarely the question of whether a member of this Court, who prior to his taking that office has expressed a public view as to what the law is or ought to be, should later sit as a judge in a case raising that particular question. The present disqualification statute applying to Justices of the Supreme Court has been on the books only since 1948, but its predecessor, applying by its terms only to district court judges, was enacted in 1911. Mr. Chief Justice Stone, testifying before the Judiciary Committee in 1943, stated:

“And it has always seemed to the Court that when a district judge could not sit in a case because of his previous association with it, or a circuit court of appeals judge, it was our manifest duty to take the same position.” Hearings Before Committee on the Judiciary on H. R. 2808, 78th Cong., 1st Sess.,

24 (1943), quoted in Frank, *supra*, 56 Yale L. J., at 612 n. 26.

My impression is that none of the former Justices of this Court since 1911 have followed a practice of disqualifying themselves in cases involving points of law with respect to which they had expressed an opinion or formulated policy prior to ascending to the bench.

Mr. Justice Black while in the Senate was one of the principal authors of the Fair Labor Standards Act; indeed, it is cited in the popular-name index of the 1970 edition of the United States Code as the "Black-Connery Fair Labor Standards Act." Not only did he introduce one of the early versions of the Act, but as Chairman of the Senate Labor and Education Committee he presided over lengthy hearings on the subject of the bill and presented the favorable report of that Committee to the Senate. See S. Rep. No. 884, 75th Cong., 1st Sess. (1937). Nonetheless, he sat in the case that upheld the constitutionality of that Act, *United States v. Darby*, 312 U. S. 100 (1941), and in later cases construing it, including *Jewell Ridge Coal Corp. v. Local 6167, UMW*, 325 U. S. 161 (1945). In the latter case, a petition for rehearing requested that he disqualify himself because one of his former law partners argued the case, and Justices Jackson and Frankfurter may be said to have implicitly criticized him for failing to do so.³ But to my knowledge his Senate role with respect to the Act was never a source of criticism for his participation in the above cases.

Mr. Justice Frankfurter had, prior to coming to this Court, written extensively in the field of labor law. The Labor Injunction which he and Nathan Green wrote was considered a classic critique of the abuses by the fed-

³ See denial of petition for rehearing in *Jewell Ridge Coal Corp. v. Local 6167, UMW*, 325 U. S. 897 (1945) (Jackson, J., concurring).

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eral courts of their equitable jurisdiction in the area of labor relations. Professor Sanford H. Kadish has stated:

"The book was in no sense a disinterested inquiry. Its authors' commitment to the judgment that the labor injunction should be neutralized as a legal weapon against unions gives the book its energy and direction. It is, then, a brief, even a 'downright brief' as a critical reviewer would have it." Labor and the Law, in Felix Frankfurter *The Judge* 153, 165 (W. Mendelson ed. 1964).

Justice Frankfurter had not only publicly expressed his views, but had when a law professor played an important, perhaps dominant, part in the drafting of the Norris-LaGuardia Act, 47 Stat. 70, 29 U. S. C. §§ 101-115. This Act was designed by its proponents to correct the abusive use by the federal courts of their injunctive powers in labor disputes. Yet, in addition to sitting in one of the leading cases interpreting the scope of the Act, *United States v. Hutcheson*, 312 U. S. 219 (1941), Justice Frankfurter wrote the Court's opinion.

Mr. Justice Jackson in *McGrath v. Kristensen*, 340 U. S. 162 (1950), participated in a case raising exactly the same issue that he had decided as Attorney General (in a way opposite to that in which the Court decided it). 340 U. S., at 176. Mr. Frank notes that Mr. Chief Justice Vinson, who had been active in drafting and preparing tax legislation while a member of the House of Representatives, never hesitated to sit in cases involving that legislation when he was Chief Justice.

Two years before he was appointed Chief Justice of this Court, Charles Evans Hughes wrote a book entitled *The Supreme Court of the United States* (Columbia University Press, 1928). In a chapter entitled Liberty, Property, and Social Justice he discussed at some length the doctrine expounded in the case of *Adkins v. Children's Hospital*, 261 U. S. 525 (1923). I think that one

would be warranted in saying that he implied some reservations about the holding of that case. See pp. 205, 209-211. Nine years later, Mr. Chief Justice Hughes wrote the Court's opinion in *West Coast Hotel Co. v. Parrish*, 300 U. S. 379 (1937), in which a closely divided Court overruled *Adkins*. I have never heard any suggestion that because of his discussion of the subject in his book he should have recused himself.

Mr. Frank summarizes his view of Supreme Court practice as to disqualification in the following words:

"In short, Supreme Court Justices disqualify when they have a dollar interest; when they are related to a party and, more recently, when they are related to counsel; and when the particular matter was in one of their former law offices during their association; or, when in the government, they dealt with the precise matter and particularly with the precise case; otherwise, generally no." *Supra*, 35 Law & Contemp. Prob., at 50.

Not only is the sort of public-statement disqualification upon which respondents rely not covered by the terms of the applicable statute, then, but it does not appear to me to be supported by the practice of previous Justices of this Court. Since there is little controlling authority on the subject, and since under the existing practice of the Court disqualification has been a matter of individual decision, I suppose that one who felt very strongly that public-statement disqualification is a highly desirable thing might find a way to read it into the discretionary portion of the statute by implication. I find little to commend the concept on its merits, however, and I am, therefore, not disposed to construe the statutory language to embrace it.

I do not doubt that a litigant in the position of respondents would much prefer to argue his case be-

fore a Court none of whose members had expressed the views that I expressed about the relationship between surveillance and First Amendment rights while serving as an Assistant Attorney General. I would think it likewise true that counsel for Darby would have preferred not to have to argue before Mr. Justice Black; that counsel for Kristensen would have preferred not to argue before Mr. Justice Jackson;⁴ that counsel for the United States would have preferred not to argue before Mr. Justice Frankfurter; and that counsel for West Coast Hotel Co. would have preferred a Court which did not include Mr. Chief Justice Hughes.

The Term of this Court just past bears eloquent witness to the fact that the Justices of this Court, each seeking to resolve close and difficult questions of constitutional interpretation, do not reach identical results. The differences must be at least in some part due to differing jurisprudential or philosophical propensities.

MR. JUSTICE DOUGLAS' statement about federal district judges in his dissenting opinion in *Chandler v. Judicial Council*, 398 U. S. 74, 137 (1970), strikes me as being equally true of the Justices of this Court:

"Judges are not fungible; they cover the constitutional spectrum; and a particular judge's emphasis may make a world of difference when it comes to rulings on evidence, the temper of the courtroom, the tolerance for the proffered defense, and the like. Lawyers recognize this when they talk about 'shopping' for a judge; Senators recognize this when they are asked to give their 'advice and consent' to judicial appointments; laymen recognize this

⁴ The fact that Mr. Justice Jackson reversed his earlier opinion after sitting in *Kristensen* does not seem to me to bear on the disqualification issue. A judge will usually be required to make any decision as to disqualification before reaching any determination as to how he will vote if he does sit.

when they appraise the quality and image of the judiciary in their own community.”

Since most Justices come to this bench no earlier than their middle years, it would be unusual if they had not by that time formulated at least some tentative notions that would influence them in their interpretation of the sweeping clauses of the Constitution and their interaction with one another. It would be not merely unusual, but extraordinary, if they had not at least given opinions as to constitutional issues in their previous legal careers. Proof that a Justice's mind at the time he joined the Court was a complete *tabula rasa* in the area of constitutional adjudication would be evidence of lack of qualification, not lack of bias.

Yet whether these opinions have become at all widely known may depend entirely on happenstance. With respect to those who come here directly from private life, such comments or opinions may never have been publicly uttered. But it would be unusual if those coming from policymaking divisions in the Executive Branch, from the Senate or House of Representatives, or from positions in state government had not divulged at least some hint of their general approach to public affairs, if not as to particular issues of law. Indeed, the clearest case of all is that of a Justice who comes to this Court from a lower court, and has, while sitting as a judge of the lower court, had occasion to pass on an issue that later comes before this Court. No more compelling example could be found of a situation in which a Justice had previously committed himself. Yet it is not and could not rationally be suggested that, so long as the cases be different, a Justice of this Court should disqualify himself for that reason. See, *e. g.*, the statement of Mr. Justice Harlan, joining in *Lewis v. Manufacturers National Bank*, 364 U. S. 603, 610 (1961). Indeed, there is weighty authority for this proposition even when the cases are

the same. Mr. Justice Holmes, after his appointment to this Court, sat in several cases which reviewed decisions of the Supreme Judicial Court of Massachusetts rendered, with his participation, while he was Chief Justice of that court. See *Worcester v. Street R. Co.*, 196 U. S. 539 (1905), reviewing 182 Mass. 49 (1902); *Dunbar v. Dunbar*, 190 U. S. 340 (1903), reviewing 180 Mass. 170 (1901); *Glidden v. Harrington*, 189 U. S. 255 (1903), reviewing 179 Mass. 486 (1901); and *Williams v. Parker*, 188 U. S. 491 (1903), reviewing 174 Mass. 476 (1899).

Mr. Frank sums the matter up this way:

"Supreme Court Justices are strong-minded men, and on the general subject matters which come before them, they do have propensities; the course of decision cannot be accounted for in any other way."

Supra, 35 Law & Contemp. Prob., at 48.

The fact that some aspect of these propensities may have been publicly articulated prior to coming to this Court cannot, in my opinion, be regarded as anything more than a random circumstance that should not by itself form a basis for disqualification.⁵

Based upon the foregoing analysis, I conclude that the applicable statute does not warrant my disqualification in this case. Having so said, I would certainly concede that fair-minded judges might disagree about the matter. If all doubts were to be resolved in favor of disqualification, it may be that I should disqualify myself

⁵ In terms of propriety, rather than disqualification, I would distinguish quite sharply between a public statement made prior to nomination for the bench, on the one hand, and a public statement made by a nominee to the bench. For the latter to express any but the most general observation about the law would suggest that, in order to obtain favorable consideration of his nomination, he deliberately was announcing in advance, without benefit of judicial oath, briefs, or argument, how he would decide a particular question that might come before him as a judge.

simply because I do regard the question as a fairly debatable one, even though upon analysis I would resolve it in favor of sitting.

Here again, one's course of action may well depend upon the view he takes of the process of disqualification. Those federal courts of appeals that have considered the matter have unanimously concluded that a federal judge has a duty to *sit* where *not disqualified* which is equally as strong as the duty to *not sit* where *disqualified*. *Edwards v. United States*, 334 F. 2d 360, 362 n. 2 (CA5 1964); *Tynan v. United States*, 126 U. S. App. D. C. 206, 376 F. 2d 761 (1967); *In re Union Leader Corp.*, 292 F. 2d 381 (CA1 1961); *Wolfson v. Palmieri*, 396 F. 2d 121 (CA2 1968); *Simmons v. United States*, 302 F. 2d 71 (CA3 1962); *United States v. Hoffa*, 382 F. 2d 856 (CA6 1967); *Tucker v. Kerner*, 186 F. 2d 79 (CA7 1950); *Walker v. Bishop*, 408 F. 2d 1378 (CA8 1969). These cases dealt with disqualification on the part of judges of the district courts and of the courts of appeals. I think that the policy in favor of the "equal duty" concept is even stronger in the case of a Justice of the Supreme Court of the United States. There is no way of substituting Justices on this Court as one judge may be substituted for another in the district courts. There is no higher court of appeal that may review an equally divided decision of this Court and thereby establish the law for our jurisdiction. See, *e. g.*, *Tinker v. Des Moines School District*, 258 F. Supp. 971 (SD Iowa 1966), affirmed by an equally divided court, 383 F. 2d 988 (CA8 1967), certiorari granted and judgment reversed, 393 U. S. 503 (1969). While it can seldom be predicted with confidence at the time that a Justice addresses himself to the issue of disqualification whether or not the Court in a particular case will be closely divided, the disqualification of one Justice of this Court raises the possibility of an affirmance of the judgment below by an

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equally divided Court. The consequence attending such a result is, of course, that the principle of law presented by the case is left unsettled. The undesirability of such a disposition is obviously not a reason for refusing to disqualify oneself where in fact one deems himself disqualified, but I believe it is a reason for not "bending over backwards" in order to deem oneself disqualified.

The prospect of affirmance by an equally divided Court, unsatisfactory enough in a single case, presents even more serious problems where companion cases reaching opposite results are heard together here. During the six months in which I have sat as a Justice of this Court, there were at least three such instances.⁶ Since one of the stated reasons for granting certiorari is to resolve a conflict between federal courts of appeals, the frequency of such instances is not surprising. Yet affirmance of each of such conflicting results by an equally divided Court would lay down "one rule in Athens, and another rule in Rome" with a vengeance. And since the notion of "public statement" disqualification that I understand respondents to advance appears to have no ascertainable time limit, it is questionable when or if such an unsettled state of the law could be resolved.

The oath prescribed by 28 U. S. C. § 453 that is taken by each person upon becoming a member of the federal judiciary requires that he "administer justice without respect to persons, and do equal right to the poor and to the rich," that he "faithfully and impartially discharge and perform all the duties incumbent upon [him] . . . agreeably to the Constitution and laws of the United States." Every litigant is entitled to have his case heard by a judge mindful of this oath. But neither the oath, the disqualification statute, nor the

⁶ *Branzburg v. Hayes*, 408 U. S. 665 (1972); *Gelbard v. United States*, 408 U. S. 41 (1972); *Evansville Airport v. Delta Airlines Inc.*, 405 U. S. 707 (1972).

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practice of the former Justices of this Court guarantees a litigant that each judge will start off from dead center in his willingness or ability to reconcile the opposing arguments of counsel with his understanding of the Constitution and the law. That being the case, it is not a ground for disqualification that a judge has prior to his nomination expressed his then understanding of the meaning of some particular provision of the Constitution.

Based on the foregoing considerations, I conclude that respondents' motion that I disqualify myself in this case should be, and it hereby is, denied.⁷

Probable Jurisdiction Noted or Postponed

No. 71-1476. GAFFNEY v. CUMMINGS ET AL. Appeal from D. C. Conn. Probable jurisdiction noted. Reported below: 341 F. Supp. 139.

No. 72-77. NORWOOD ET AL. v. HARRISON ET AL. Appeal from D. C. N. D. Miss. Probable jurisdiction noted. Reported below: 340 F. Supp. 1003.

⁷ Petitioners in *Gravel v. United States*, 408 U. S. 606 (1972), have filed a petition for rehearing which asserts as one of the grounds that I should have disqualified myself in that case.* Because respondents' motion in *Laird* was addressed to me, and because it seemed to me to be seriously and responsibly urged, I have dealt with my reasons for denying it at some length. Because I believe that the petition for rehearing in *Gravel*, insofar as it deals with disqualification, possesses none of these characteristics, there is no occasion for me to treat it in a similar manner. Since such motions have in the past been treated by the Court as being addressed to the individual Justice involved, however, I do venture the observation that in my opinion the petition insofar as it relates to disqualification verges on the frivolous. While my peripheral advisory role in *New York Times Co. v. United States*, 403 U. S. 713 (1971), would have warranted disqualification had I been on the Court when that case was heard, it could not conceivably warrant disqualification in *Gravel*, a different case raising entirely different constitutional issues.

*[REPORTER'S NOTE: See *post*, p. 902.]

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No. 71-1637. CITY OF BURBANK ET AL. *v.* LOCKHEED AIR TERMINAL, INC., ET AL. Appeal from C. A. 9th Cir. Probable jurisdiction noted. Reported below: 457 F. 2d 667.

No. 71-1694. FRONTIERO ET VIR *v.* LAIRD, SECRETARY OF DEFENSE, ET AL. Appeal from D. C. M. D. Ala. Probable jurisdiction noted. Reported below: 341 F. Supp. 201.

No. 72-147. BULLOCK, SECRETARY OF STATE OF TEXAS, ET AL. *v.* REGESTER ET AL. Appeal from D. C. W. D. Tex. Probable jurisdiction noted. Reported below: 343 F. Supp. 704.

No. 72-11. PALMORE *v.* UNITED STATES. Appeal from Ct. App. D. C. Motion to dispense with printing jurisdictional statement granted. Further consideration of question of jurisdiction postponed to hearing of case on the merits. Reported below: 290 A. 2d 573.

Certiorari Granted

No. 71-1428. HENSLEY *v.* MUNICIPAL COURT, SAN JOSE-MILPITAS JUDICIAL DISTRICT, SANTA CLARA COUNTY. C. A. 9th Cir. Certiorari granted. Reported below: 453 F. 2d 1252.

No. 71-1459. UNITED STATES *v.* LITTLE LAKE MISERE LAND Co., INC., ET AL. C. A. 5th Cir. Certiorari granted. Reported below: 453 F. 2d 360.

No. 71-1598. HODGSON, SECRETARY OF LABOR *v.* ARNHEIM & NEELY, INC., ET AL. C. A. 3d Cir. Certiorari granted. Reported below: 444 F. 2d 609.

No. 71-1665. UNITED STATES *v.* CARTWRIGHT, EXECUTOR. C. A. 2d Cir. Certiorari granted. Reported below: 457 F. 2d 567.

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No. 71-1698. UNITED STATES *v.* BISHOP. C. A. 9th Cir. Certiorari granted. Reported below: 455 F. 2d 612.

No. 72-10. MOOR ET AL. *v.* COUNTY OF ALAMEDA ET AL. C. A. 9th Cir. Certiorari granted. Reported below: 458 F. 2d 1217.

No. 71-1442. COLGROVE *v.* BATTIN, U. S. DISTRICT JUDGE. C. A. 9th Cir. Motion of International Association of Insurance Counsel for leave to file a brief as *amicus curiae* and certiorari granted. Reported below: 456 F. 2d 1379.

No. 71-6481. DAVIS *v.* UNITED STATES. C. A. 5th Cir. Motion for leave to proceed *in forma pauperis* and certiorari granted. Reported below: 455 F. 2d 919.

No. 71-6698. MORRIS *v.* RICHARDSON, SECRETARY OF HEALTH, EDUCATION, AND WELFARE. C. A. 4th Cir. Motion for leave to proceed *in forma pauperis* and certiorari granted. Reported below: 455 F. 2d 775.

No. 71-6742. HURTADO ET AL. *v.* UNITED STATES. C. A. 5th Cir. Motion for leave to proceed *in forma pauperis* and certiorari granted. Reported below: 452 F. 2d 951.

Certiorari Denied. (See also Nos. 71-1402, 71-1616, 71-6423, 71-6568, 71-6624, 71-6643, 71-6668, 72-20, 72-133, and 72-5107, *supra.*)

No. 71-1168. STRECKFUS STEAMERS, INC., ET AL. *v.* CITY OF ST. LOUIS ET AL. St. Louis Ct. App. Mo. Certiorari denied. Reported below: 472 S. W. 2d 660.

No. 71-1175. FORKS ET AL. *v.* CITY OF WARSAW. Sup. Ct. Ind. Certiorari denied. Reported below: 257 Ind. 237, 273 N. E. 2d 856.

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No. 71-1231. *PACE v. PACE*. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 71-1236. *ALABAMA v. RENNOW*; and

No. 71-6263. *RENNOW v. ALABAMA*. Ct. Crim. App. Ala. Certiorari denied. Reported below: 47 Ala. App. 419, 255 So. 2d 602.

No. 71-1357. *REYNOLDS v. UNITED STATES*; and

No. 71-1358. *STAMP v. UNITED STATES*. C. A. D. C. Cir. Certiorari denied. Reported below: 147 U. S. App. D. C. 340, 458 F. 2d 759.

No. 71-1360. *KABINTO ET AL. v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 456 F. 2d 1087.

No. 71-1373. *LACOB v. UNITED STATES*. C. A. 7th Cir. Certiorari denied.

No. 71-1376. *GEOGHEGAN & MATHIS, INC. v. COMMISSIONER OF INTERNAL REVENUE*. C. A. 6th Cir. Certiorari denied. Reported below: 453 F. 2d 1324.

No. 71-1378. *INTERCONTINENTAL INDUSTRIES, INC. v. AMERICAN STOCK EXCHANGE ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 452 F. 2d 935.

No. 71-1382. *SCHROUD v. MILWAUKEE COUNTY DEPARTMENT OF PUBLIC WELFARE*. Sup. Ct. Wis. Certiorari denied. Reported below: 53 Wis. 2d 650, 193 N. W. 2d 671.

No. 71-1387. *HIKEN v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 458 F. 2d 24.

No. 71-1390. *BENTER v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 457 F. 2d 1174.

No. 71-1391. *SMITH, WARDEN v. HIATT*. C. A. 5th Cir. Certiorari denied. Reported below: 455 F. 2d 979.

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No. 71-1393. *DANIEL ET UX. v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 454 F. 2d 1166.

No. 71-1397. *MIAMI POLICE BENEVOLENT ASSN., INC. v. ADAMS ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 454 F. 2d 1315.

No. 71-1403. *FORBES LEASING & FINANCE CORP. v. LEBOWITZ*. C. A. 3d Cir. Certiorari denied. Reported below: 456 F. 2d 979.

No. 71-1405. *DEMOCRATIC NATIONAL COMMITTEE v. FEDERAL COMMUNICATIONS COMMISSION ET AL.* C. A. D. C. Cir. Certiorari denied. Reported below: 148 U. S. App. D. C. 383, 460 F. 2d 891.

No. 71-1413. *BROWN ET AL. v. UNITED STATES*. C. A. 1st Cir. Certiorari denied. Reported below: 457 F. 2d 731.

No. 71-1418. *LOMAYAKTEWA ET AL. v. CORCORAN, U. S. DISTRICT JUDGE, ET AL.* C. A. D. C. Cir. Certiorari denied.

No. 71-1432. *DIRECT MAIL ADVERTISING ASSN., INC., ET AL. v. UNITED STATES POSTAL SERVICE ET AL.* C. A. D. C. Cir. Certiorari denied. Reported below: 147 U. S. App. D. C. 394, 458 F. 2d 813.

No. 71-1436. *BLAND v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 458 F. 2d 1.

No. 71-1438. *CECERE v. UNITED STATES*; and

No. 71-1568. *DECARLO v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 458 F. 2d 358.

No. 71-1440. *WENGER v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 457 F. 2d 1082.

No. 71-1455. *BURSTEN v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 453 F. 2d 605.

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No. 71-1463. *MILLIKEN, GOVERNOR OF MICHIGAN, ET AL. v. BRADLEY ET AL.* C. A. 6th Cir. Certiorari denied.

No. 71-1467. *FLYNN v. BOARD OF EXAMINERS, BOARD OF EDUCATION OF THE CITY OF NEW YORK.* App. Div., Sup. Ct. N. Y., 2d Jud. Dept. Certiorari denied.

No. 71-1468. *BOSLEY ET UX. v. GRAND LODGE OF ANCIENT FREE & ACCEPTED MASONS OF MARYLAND.* Ct. App. Md. Certiorari denied. Reported below: 263 Md. 303, 283 A. 2d 587.

No. 71-1480. *ALEXANDER v. UNITED STATES.* C. A. 2d Cir. Certiorari denied.

No. 71-1481. *COLLINS ET AL. v. AVERY ET AL.* C. A. 5th Cir. Certiorari denied.

No. 71-1484. *FINK ET UX. v. UNITED STATES.* Ct. Cl. Certiorari denied. Reported below: 197 Ct. Cl. 187, 454 F. 2d 1387.

No. 71-1485. *HARNESS v. KENTUCKY.* Ct. App. Ky. Certiorari denied. Reported below: 475 S. W. 2d 485.

No. 71-1486. *HART, DBA SAN DIEGO CABINETS, ET AL. v. NATIONAL LABOR RELATIONS BOARD.* C. A. 9th Cir. Certiorari denied. Reported below: 453 F. 2d 215.

No. 71-1488. *WACHOVIA BANK & TRUST CO. v. HARRIS, TRUSTEE.* C. A. 4th Cir. Certiorari denied. Reported below: 455 F. 2d 841.

No. 71-1489. *PLASTILINE, INC. v. NATIONAL LABOR RELATIONS BOARD.* C. A. 4th Cir. Certiorari denied.

No. 71-1490. *BETHLEHEM MINES CORP. ET AL. v. UNITED MINE WORKERS OF AMERICA ET AL.* C. A. 3d Cir. Certiorari denied. Reported below: 456 F. 2d 1233.

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No. 71-1492. DYAL *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 456 F. 2d 800.

No. 71-1493. FHAGEN ET AL. *v.* MILLER, COMMISSIONER OF MENTAL HYGIENE, ET AL. Ct. App. N. Y. Certiorari denied. Reported below: 29 N. Y. 2d 348, 278 N. E. 2d 615.

No. 71-1494. TUSCANY FABRICS, INC. *v.* UNITED STATES. C. C. P. A. Certiorari denied. Reported below: 59 C. C. P. A. (Cust.) 77, 454 F. 2d 1188.

No. 71-1496. CASANOVA GUNS, INC. *v.* SHULTZ, SECRETARY OF THE TREASURY, ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 454 F. 2d 1320.

No. 71-1497. BECK *v.* CONNECTICUT GENERAL LIFE INSURANCE Co. C. A. 5th Cir. Certiorari denied. Reported below: 456 F. 2d 1040.

No. 71-1498. INTERNATIONAL ASSOCIATION OF MACHINISTS & AEROSPACE WORKERS ET AL. *v.* NORTHEAST AIRLINES, INC. C. A. 1st Cir. Certiorari denied.

No. 71-1499. DEVCON CORP. *v.* WOODHILL CHEMICAL SALES CORP. C. A. 1st Cir. Certiorari denied. Reported below: 455 F. 2d 830.

No. 71-1500. KNOX ET AL. *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 458 F. 2d 612.

No. 71-1504. PANOTEX PIPE LINE Co. ET AL. *v.* PHILIPS PETROLEUM Co. ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 457 F. 2d 1279.

No. 71-1506. FICHMAN *v.* UNITED STATES. Ct. Cl. Certiorari denied.

No. 71-1508. CHONG YUK WAH *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

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No. 71-1507. *MONROE, DBA NORTH AREA REFUSE Co. v. CUSSEN*. C. A. 9th Cir. Certiorari denied. Reported below: 454 F. 2d 1151.

No. 71-1515. *RODOVICH v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 455 F. 2d 1225.

No. 71-1516. *HARRELL v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 458 F. 2d 655.

No. 71-1518. *HANDY v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 454 F. 2d 885.

No. 71-1519. *BROWN ET AL. v. SCOTT*. C. A. 8th Cir. Certiorari denied. Reported below: 454 F. 2d 693.

No. 71-1520. *KIRKPATRICK v. WISCONSIN DEPARTMENT OF NATURAL RESOURCES*. Sup. Ct. Wis. Certiorari denied. Reported below: 53 Wis. 2d 522, 192 N. W. 2d 856.

No. 71-1521. *HEATH ET AL. v. UNITED STATES*. C. A. 6th Cir. Certiorari denied.

No. 71-1524. *LAY ET AL. v. CITY OF KINGSPORT, TENNESSEE, ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 454 F. 2d 345.

No. 71-1526. *EISENSTADT, SHERIFF v. BAKER*; and

No. 71-1679. *BAKER v. EISENSTADT, SHERIFF*. C. A. 1st Cir. Certiorari denied. Reported below: 456 F. 2d 382.

No. 71-1527. *FLORIDA MACHINE & FOUNDRY Co. ET AL. v. NATIONAL LABOR RELATIONS BOARD*. C. A. D. C. Cir. Certiorari denied.

No. 71-1533. *BELLO ET AL. v. UNITED STATES*. C. A. 1st Cir. Certiorari denied.

No. 71-1557. *NATIONAL SURETY CORP. v. UNITED STATES*. Ct. Cl. Certiorari denied.

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No. 71-1535. *TRAVELERS INDEMNITY CO. v. ERICKSON'S, INC.* C. A. 5th Cir. Certiorari denied. Reported below: 454 F. 2d 884.

No. 71-1540. *CITIZENS ORGANIZED FOR THE PRESERVATION OF OUR ENVIRONMENT ET AL. v. RICHFIELD BOARD OF ZONING APPEALS ET AL.* Sup. Ct. Ohio. Certiorari denied.

No. 71-1551. *ROSNER v. DUCHESS MUSIC CORP. ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 458 F. 2d 1305.

No. 71-1552. *HOOVER ET AL. v. WYANDOTTE CHEMICALS CORP.* C. A. 5th Cir. Certiorari denied. Reported below: 455 F. 2d 387.

No. 71-1555. *JOHNSTON ET UX. v. BYRD.* Sup. Ct. Ala. Certiorari denied. Reported below: 288 Ala. 156, 258 So. 2d 866.

No. 71-1559. *BAXTER ET AL. v. RAILWAY EXPRESS AGENCY, INC., AKA REA EXPRESS, ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 455 F. 2d 693.

No. 71-1561. *HEYMAN ET AL. v. KLINE.* C. A. 2d Cir. Certiorari denied. Reported below: 456 F. 2d 123.

No. 71-1564. *THOMPSON v. AMIS ET AL.* Sup. Ct. Kan. Certiorari denied. Reported below: 208 Kan. 658, 493 P. 2d 1259.

No. 71-1565. *RAIMONDI v. UNITED STATES.* C. A. 1st Cir. Certiorari denied. Reported below: 459 F. 2d 639.

No. 71-1569. *SINGH v. IMMIGRATION AND NATURALIZATION SERVICE ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 456 F. 2d 1092.

No. 71-1570. *HOBBS v. CUSTOM FINANCE CO. ET AL.* C. A. 4th Cir. Certiorari denied.

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No. 71-1571. *NOSSER ET AL. v. BRADLEY ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 456 F. 2d 835.

No. 71-1575. *LEVINE v. UNITED STATES ET AL.* C. A. 9th Cir. Certiorari denied.

No. 71-1576. *ANDREAS v. UNITED STATES.* C. A. 8th Cir. Certiorari denied. Reported below: 458 F. 2d 491.

No. 71-1578. *BERGER v. COLUMBIA BROADCASTING SYSTEM, INC.* C. A. 5th Cir. Certiorari denied. Reported below: 453 F. 2d 991.

No. 71-1580. *CATALDO ET UX. v. UNITED STATES.* C. A. 2d Cir. Certiorari denied.

No. 71-1589. *SINGER CO. v. GREENE.* C. A. 3d Cir. Certiorari denied. Reported below: 461 F. 2d 242.

No. 71-1590. *HAMLETT v. CONCO, INC.* C. A. 4th Cir. Certiorari denied.

No. 71-1591. *WASHINGTON URBAN LEAGUE, INC. v. PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA ET AL.* Ct. App. D. C. Certiorari denied.

No. 71-1593. *ARONOW v. CALIFORNIA.* App. Dept., Super. Ct. Cal., County of Santa Clara. Certiorari denied.

No. 71-1594. *SALVAGGIO v. UNITED STATES.* C. A. 2d Cir. Certiorari denied.

No. 71-1595. *MIDDLEBROOKS v. UNITED STATES.* C. A. 5th Cir. Certiorari denied. Reported below: 457 F. 2d 657.

No. 71-1599. *COOK COUNTY COLLEGE TEACHERS UNION, LOCAL 1600, AMERICAN FEDERATION OF TEACHERS, AFL-CIO, ET AL. v. BYRD ET AL.* C. A. 7th Cir. Certiorari denied. Reported below: 456 F. 2d 882.

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No. 71-1597. *FEDERAL POWER COMMISSION v. GREENE COUNTY PLANNING BOARD ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 455 F. 2d 412.

No. 71-1600. *UNION CAMP CORP. v. DYAL ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 460 F. 2d 678.

No. 71-1606. *KARLIN v. AVIS ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 457 F. 2d 57.

No. 71-1609. *REGENTS OF THE UNIVERSITY OF CALIFORNIA v. KARST ET AL.* Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 71-1610. *MEHRTENS, U. S. DISTRICT JUDGE v. PROTECTIVE COMMITTEE FOR INDEPENDENT STOCKHOLDERS OF TMT TRAILER FERRY, INC., ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 457 F. 2d 100, 103, and 104.

No. 71-1611. *W. R. BEAN & SON, INC. v. NATIONAL LABOR RELATIONS BOARD.* C. A. 5th Cir. Certiorari denied. Reported below: 450 F. 2d 93.

No. 71-1615. *KNAPP ET UX. v. MIAMI MEMORIAL PARK, INC., ET AL.* Sup. Ct. Fla. Certiorari denied.

No. 71-1619. *BAKER v. NEW YORK.* Ct. App. N. Y. Certiorari denied. Reported below: 30 N. Y. 2d 252, 282 N. E. 2d 614.

No. 71-1621. *ESTATE OF MONTGOMERY ET AL. v. COMMISSIONER OF INTERNAL REVENUE.* C. A. 5th Cir. Certiorari denied. Reported below: 458 F. 2d 616.

No. 71-1622. *HOLLAND v. HOLLAND.* Sup. Ct. Ohio. Certiorari denied.

No. 71-1629. *EDWARDS v. UNITED STATES.* C. A. 6th Cir. Certiorari denied.

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No. 71-1630. *KELLOGG Co. v. NATIONAL LABOR RELATIONS BOARD*. C. A. 6th Cir. Certiorari denied. Reported below: 457 F. 2d 519.

No. 71-1632. *CAST OPTICS CORP. v. NATIONAL LABOR RELATIONS BOARD ET AL.* C. A. 3d Cir. Certiorari denied. Reported below: 458 F. 2d 398.

No. 71-1640. *BANK OF AMERICA NATIONAL TRUST & SAVINGS ASSN. v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 457 F. 2d 931.

No. 71-1643. *SCHULTE ET AL. v. OKLAHOMA CITY*. Sup. Ct. Okla. Certiorari denied. Reported below: 494 P. 2d 638.

No. 71-1644. *STEINER v. COMMISSIONER OF INTERNAL REVENUE*. C. A. D. C. Cir. Certiorari denied.

No. 71-1650. *C & G BOAT CO., INC., ET AL. v. CRESCENT RIVER PORT PILOTS ASSN. ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 456 F. 2d 1290.

No. 71-1653. *McFARLAND v. KNAPP ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 457 F. 2d 881.

No. 71-1657. *SCOTT v. MARYLAND*. Ct. App. Md. Certiorari denied.

No. 71-1660. *THOMPSON ET VIR v. BOARD OF COMMISSIONERS OF THE OAK BROOK PARK DISTRICT OF DU-PAGE COUNTY ET AL.* App. Ct. Ill., 2d Dist. Certiorari denied.

No. 71-1661. *MOVEABLE OFFSHORE, INC. v. HALL*. C. A. 5th Cir. Certiorari denied. Reported below: 455 F. 2d 633.

No. 71-1662. *ATLANTIC-RICHFIELD Co. v. CHERRY ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 456 F. 2d 1310.

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No. 71-1659. *MILDER v. UNITED STATES*. C. A. 8th Cir. Certiorari denied.

No. 71-1663. *MANFREDONIA v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 459 F. 2d 1392.

No. 71-1667. *LOVE v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 460 F. 2d 310.

No. 71-1670. *BERTRAM YACHT SALES, INC. v. MORON ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 458 F. 2d 500.

No. 71-1671. *KANSAS CITY v. WEBB ET AL.* Sup. Ct. Mo. Certiorari denied. Reported below: 484 S. W. 2d 817.

No. 71-1673. *SAILOR ET AL. v. UNITED STATES*. C. A. 6th Cir. Certiorari denied.

No. 71-1677. *TUCKER v. BITONTI*. Sup. Ct. Conn. Certiorari denied. Reported below: 162 Conn. 626, 295 A. 2d 545.

No. 71-1678. *PRIGNANO v. ILLINOIS*. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 2 Ill. App. 3d 1063, 278 N. E. 2d 128.

No. 71-1682. *DENNETT v. UNITED STATES ET AL.* C. A. 10th Cir. Certiorari denied.

No. 71-1685. *UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA, LOCAL 169, ET AL. v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 457 F. 2d 210.

No. 71-1686. *HARDY, ACTING WARDEN v. VUITCH*. C. A. 4th Cir. Certiorari denied.

No. 71-1689. *MUIRHEAD v. SPANN*. Sup. Ct. Miss. Certiorari denied. Reported below: 259 So. 2d 698.

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No. 71-1687. *EAST TEXAS STEEL CASTINGS Co., INC. v. NATIONAL LABOR RELATIONS BOARD*. C. A. 5th Cir. Certiorari denied. Reported below: 457 F. 2d 879.

No. 71-1688. *MUIRHEAD v. HINDS COUNTY DEMOCRATIC EXECUTIVE COMMITTEE ET AL.* Sup. Ct. Miss. Certiorari denied. Reported below: 259 So. 2d 692.

No. 71-1692. *ANNORENO ET AL. v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 460 F. 2d 1303.

No. 71-1693. *IRWIN v. EAGLE STAR INSURANCE Co., LTD.* C. A. 5th Cir. Certiorari denied. Reported below: 455 F. 2d 827.

No. 71-1696. *BARTON v. OREGON*. Sup. Ct. Ore. Certiorari denied. Reported below: See 8 Ore. App. 186, 492 P. 2d 828.

No. 71-1697. *PACIFIC MARITIME ASSN. v. NATIONAL LABOR RELATIONS BOARD ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 457 F. 2d 572.

No. 71-1703. *KOSHER v. WASHINGTON STATE BAR ASSN.* Sup. Ct. Wash. Certiorari denied.

No. 71-1704. *BORROWDALE ET AL. v. BOARD OF JUNIOR COLLEGE DISTRICT No. 515 ET AL.* Sup. Ct. Ill. Certiorari denied. Reported below: See 3 Ill. App. 3d 1006, 279 N. E. 2d 754.

No. 71-1706. *SHELTON v. TENNESSEE*. Ct. Crim. App. Tenn. Certiorari denied. Reported below: — Tenn. Cr. App. —, 479 S. W. 2d 817.

No. 71-1707. *COUNTY COLLECTOR OF COOK COUNTY ET AL. v. NORTHWESTERN UNIVERSITY*. Sup. Ct. Ill. Certiorari denied. Reported below: 51 Ill. 2d 131, 281 N. E. 2d 334.

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No. 71-1708. *BUDZANOSKI ET AL. v. SABOLSKY ET AL.* C. A. 3d Cir. Certiorari denied. Reported below: 457 F. 2d 1245.

No. 71-5610. *ROLLINS ET AL. v. OHIO.* Sup. Ct. Ohio. Certiorari denied.

No. 71-5769. *RODRIGUEZ v. OLSON ET AL.* C. A. 7th Cir. Certiorari denied.

No. 71-6127. *OSBORNE ET AL. v. NOBLES.* Ct. App. Ga. Certiorari denied. Reported below: 124 Ga. App. 454, 184 S. E. 2d 207.

No. 71-6155. *JOSHUA v. MICHIGAN.* Sup. Ct. Mich. Certiorari denied.

No. 71-6226. *DESSUS v. PENNSYLVANIA.* C. A. 3d Cir. Certiorari denied. Reported below: 452 F. 2d 557.

No. 71-6243. *AMOS v. MCCARTHY.* C. A. 9th Cir. Certiorari denied.

No. 71-6260. *MACLEOD v. SLAYTON, PENITENTIARY SUPERINTENDENT.* C. A. 4th Cir. Certiorari denied.

No. 71-6301. *ENRIQUEZ v. BETO, CORRECTIONS DIRECTOR.* C. A. 5th Cir. Certiorari denied.

No. 71-6309. *RALLS v. MISSOURI.* K. C. Ct. App. Mo. Certiorari denied. Reported below: 472 S. W. 2d 642.

No. 71-6321. *THOMAS v. BETO, CORRECTIONS DIRECTOR.* C. A. 5th Cir. Certiorari denied. Reported below: 452 F. 2d 1072.

No. 71-6329. *ESTES v. NORTHCROSS ET AL.* C. A. 6th Cir. Certiorari denied.

No. 71-6349. *WEAVER v. TEXAS.* C. A. 5th Cir. Certiorari denied. Reported below: 453 F. 2d 1226.

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No. 71-6368. *PHILLIPS v. PITCHESS, SHERIFF*. C. A. 9th Cir. Certiorari denied. Reported below: 451 F. 2d 913.

No. 71-6370. *FERGUSON v. CARDWELL, WARDEN*. C. A. 6th Cir. Certiorari denied. Reported below: 452 F. 2d 1011.

No. 71-6380. *ALLERS v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 453 F. 2d 1244.

No. 71-6390. *HARDING v. WARDEN, MARYLAND PENITENTIARY*. C. A. 4th Cir. Certiorari denied.

No. 71-6396. *HOWARD v. SIGLER, WARDEN*. C. A. 8th Cir. Certiorari denied. Reported below: 454 F. 2d 115.

No. 71-6407. *THOMAS v. CARDWELL, WARDEN*. C. A. 6th Cir. Certiorari denied.

No. 71-6412. *WARD v. CALIFORNIA*. Ct. App. Cal., 5th App. Dist. Certiorari denied.

No. 71-6413. *WILSON, AKA GRIFFIN v. GAFFNEY, WARDEN, ET AL.* C. A. 10th Cir. Certiorari denied. Reported below: 454 F. 2d 142.

No. 71-6414. *HUMPHREY v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 456 F. 2d 683.

No. 71-6417. *JACKSON v. CALIFORNIA*. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 71-6420. *CRANFORD v. NEW MEXICO*. Sup. Ct. N. M. Certiorari denied. Reported below: 83 N. M. 294, 491 P. 2d 511.

No. 71-6430. *TOWNSEND v. TWOMEY, WARDEN*. C. A. 7th Cir. Certiorari denied. Reported below: 452 F. 2d 350.

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No. 71-6437. *DAVIS v. MISSISSIPPI*. Sup. Ct. Miss. Certiorari denied. Reported below: 255 So. 2d 916.

No. 71-6441. *ADAMS v. WAINWRIGHT, CORRECTIONS DIRECTOR*. C. A. 5th Cir. Certiorari denied. Reported below: 453 F. 2d 416.

No. 71-6457. *GAITO v. SCHNUPP ET AL.* C. A. 3d Cir. Certiorari denied.

No. 71-6461. *CHRISMAN v. FIELD, MEN'S COLONY SUPERINTENDENT, ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 448 F. 2d 175.

No. 71-6464. *MURRAY v. CITY OF CINCINNATI*. Sup. Ct. Ohio. Certiorari denied.

No. 71-6466. *LAWLESS v. MARYLAND*. Ct. Sp. App. Md. Certiorari denied. Reported below: 13 Md. App. 220, 283 A. 2d 160.

No. 71-6486. *MAYS v. PENNSYLVANIA*. C. A. 3d Cir. Certiorari denied.

No. 71-6487. *MEDINA v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 455 F. 2d 461.

No. 71-6495. *CALDRONE v. GAFFNEY, WARDEN*. C. A. 10th Cir. Certiorari denied.

No. 71-6496. *BAKER v. GAFFNEY, WARDEN*. C. A. 10th Cir. Certiorari denied.

No. 71-6503. *ECKERT v. CLERK'S OFFICE OF THE U. S. DISTRICT COURT*. C. A. 3d Cir. Certiorari denied.

No. 71-6506. *DOYLE v. DOYLE*. Ct. Civ. App. Tex., 9th Sup. Jud. Dist. Certiorari denied. Reported below: 482 S. W. 2d 285.

No. 71-6509. *HIGGINS v. ILLINOIS*. Sup. Ct. Ill. Certiorari denied. Reported below: 50 Ill. 2d 221, 278 N. E. 2d 68.

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No. 71-6511. RHODES *v.* HAYNES, WARDEN. C. A. 4th Cir. Certiorari denied.

No. 71-6521. SAILER *v.* CRAVEN, WARDEN. Sup. Ct. Cal. Certiorari denied.

No. 71-6523. JACOBS *v.* PENNSYLVANIA. Sup. Ct. Pa. Certiorari denied. Reported below: 445 Pa. 364, 284 A. 2d 717.

No. 71-6524. KIRK *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied.

No. 71-6529. ARCHER *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 455 F. 2d 193.

No. 71-6532. FORRESTER *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 456 F. 2d 905.

No. 71-6537. JOHNSON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 455 F. 2d 932.

No. 71-6540. GRENE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 455 F. 2d 376.

No. 71-6543. HAMPTON *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 457 F. 2d 299.

No. 71-6546. NUNLEY *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied.

No. 71-6547. LEWIS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 457 F. 2d 502.

No. 71-6549. TAYLOR *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 456 F. 2d 1101.

No. 71-6552. ATKIN, AKA ATKINSON *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied.

No. 71-6555. ROBINS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 453 F. 2d 1374.

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No. 71-6551. *SKEELS v. RICHARDSON, SECRETARY OF HEALTH, EDUCATION, AND WELFARE*. C. A. 5th Cir. Certiorari denied. Reported below: 453 F. 2d 882.

No. 71-6556. *TELIO v. ILLINOIS*. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 1 Ill. App. 3d 526, 275 N. E. 2d 222.

No. 71-6557. *FLOURNOY v. ILLINOIS*. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 1 Ill. App. 3d 918, 275 N. E. 2d 289.

No. 71-6558. *WORKMAN v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 454 F. 2d 1124.

No. 71-6565. *MORAN v. UNITED STATES*. C. A. 1st Cir. Certiorari denied.

No. 71-6567. *MANNS v. ILLINOIS*. App. Ct. Ill., 5th Dist. Certiorari denied. Reported below: 1 Ill. App. 3d 871, 274 N. E. 2d 194.

No. 71-6569. *LOWTHER v. UNITED STATES*. C. A. 10th Cir. Certiorari denied. Reported below: 455 F. 2d 657.

No. 71-6572. *WILLIAMS v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 455 F. 2d 361.

No. 71-6575. *MCQUEEN v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 458 F. 2d 1049.

No. 71-6576. *HAVELOCK v. UNITED STATES*. C. A. 10th Cir. Certiorari denied.

No. 71-6583. *LUALLEN v. NEIL, WARDEN*. C. A. 6th Cir. Certiorari denied. Reported below: 453 F. 2d 428.

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No. 71-6580. *GIBBONEY v. UNITED STATES*. C. A. 4th Cir. Certiorari denied.

No. 71-6582. *GROOMS v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 454 F. 2d 1308.

No. 71-6584. *JOHNSON v. UNITED STATES*. C. A. 9th Cir. Certiorari denied.

No. 71-6585. *BUCHOWIECKI-KORTKIEWICZ v. IMMIGRATION AND NATURALIZATION SERVICE*. C. A. 9th Cir. Certiorari denied. Reported below: 455 F. 2d 972.

No. 71-6586. *CHITWOOD v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 457 F. 2d 676.

No. 71-6587. *BREDY v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 455 F. 2d 1382.

No. 71-6588. *RANDAZZO v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 457 F. 2d 1058.

No. 71-6594. *TYLER v. PARKS*. C. A. 8th Cir. Certiorari denied.

No. 71-6610. *VALENTINE v. UNITED STATES*. C. A. 4th Cir. Certiorari denied.

No. 71-6611. *CARTER v. UNITED STATES DISTRICT COURT FOR THE DISTRICT OF SOUTH CAROLINA ET AL.* C. A. 4th Cir. Certiorari denied.

No. 71-6612. *ECKERT v. SENATE OF THE UNITED STATES ET AL.* C. A. 3d Cir. Certiorari denied.

No. 71-6614. *ESTRADA v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 457 F. 2d 255.

No. 71-6615. *BEHNING v. ILLINOIS*. C. A. 7th Cir. Certiorari denied.

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No. 71-6619. *THOMAS v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 455 F. 2d 469.

No. 71-6629. *HENKEL v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 451 F. 2d 777.

No. 71-6631. *HELTON v. FLORIDA*. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 257 So. 2d 917.

No. 71-6634. *BEANE v. RICHARDSON, SECRETARY OF HEALTH, EDUCATION, AND WELFARE*. C. A. 9th Cir. Certiorari denied. Reported below: 457 F. 2d 758.

No. 71-6637. *JOHNSON v. MISSOURI*. Sup. Ct. Mo. Certiorari denied. Reported below: 476 S. W. 2d 516.

No. 71-6639. *SCIORTINO v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 452 F. 2d 1135.

No. 71-6640. *MADISON v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 458 F. 2d 974.

No. 71-6641. *WYSOCKI v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 457 F. 2d 1155.

No. 71-6646. *GUERIN v. CALIFORNIA*. Ct. App. Cal., 2d App. Dist. Certiorari denied. Reported below: 22 Cal. App. 3d 775, 99 Cal. Rptr. 573.

No. 71-6648. *GONZALEZ v. NEW YORK*. Ct. App. N. Y. Certiorari denied. Reported below: 30 N. Y. 2d 28, 280 N. E. 2d 882.

No. 71-6650. *GOODWIN v. UNITED STATES*. C. A. 10th Cir. Certiorari denied. Reported below: 455 F. 2d 710.

No. 71-6651. *COPELAND v. UNITED STATES*. C. A. 6th Cir. Certiorari denied.

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No. 71-6653. *NUNN v. COX, ACTING WARDEN*. C. A. 6th Cir. Certiorari denied.

No. 71-6654. *STEVENSON v. MONTANYE, CORRECTIONAL SUPERINTENDENT*. C. A. 2d Cir. Certiorari denied.

No. 71-6656. *MACHADO v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 457 F. 2d 1372.

No. 71-6657. *SANDERS v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 459 F. 2d 86.

No. 71-6659. *KORCZAK v. DIVISION OF EMPLOYMENT, COLORADO DEPARTMENT OF LABOR AND EMPLOYMENT, ET AL.* Sup. Ct. Colo. Certiorari denied.

No. 71-6660. *PACK, AKA PARKER v. UNITED STATES*. C. A. 4th Cir. Certiorari denied.

No. 71-6662. *CARROLL v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 452 F. 2d 1199.

No. 71-6663. *HARRIS v. ILLINOIS*. C. A. 7th Cir. Certiorari denied. Reported below: 457 F. 2d 191.

No. 71-6664. *VILLAUERDA v. UNITED STATES*. C. A. 2d Cir. Certiorari denied.

No. 71-6666. *SCHLANGER v. SEAMANS, SECRETARY OF THE AIR FORCE, ET AL.* C. A. D. C. Cir. Certiorari denied.

No. 71-6667. *MCDONNELL v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 457 F. 2d 1049.

No. 71-6669. *SIDDLE v. OHIO*. Sup. Ct. Ohio. Certiorari denied. Reported below: 28 Ohio St. 2d 135, 276 N. E. 2d 641.

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No. 71-6665. *RAY v. BRIERLEY, WARDEN*. C. A. 3d Cir. Certiorari denied.

No. 71-6671. *BRADLEY v. CARDWELL, WARDEN*. C. A. 6th Cir. Certiorari denied.

No. 71-6672. *MATTHEWS v. FLORIDA-VANDERBILT DEVELOPMENT CORP. ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 454 F. 2d 194.

No. 71-6673. *GOLDEN v. HENDERSON, WARDEN*. C. A. 5th Cir. Certiorari denied. Reported below: 456 F. 2d 376.

No. 71-6674. *LIPSCOMB v. UNITED STATES BOARD OF PAROLE*. C. A. 5th Cir. Certiorari denied.

No. 71-6675. *COPP v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 459 F. 2d 73.

No. 71-6676. *MATHERS v. RHAY, PENITENTIARY SUPERINTENDENT*. C. A. 9th Cir. Certiorari denied.

No. 71-6677. *ALLARD v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 458 F. 2d 1136.

No. 71-6678. *YEATON v. WEISENBURG*. C. A. 9th Cir. Certiorari denied. Reported below: 457 F. 2d 803.

No. 71-6680. *FERGUSON v. VIRGINIA*. Sup. Ct. Va. Certiorari denied. Reported below: 212 Va. 745, 187 S. E. 2d 189.

No. 71-6681. *COSTANZA v. NEW JERSEY*. C. A. 3d Cir. Certiorari denied.

No. 71-6683. *SAILER v. CALIFORNIA ADULT AUTHORITY*. Ct. App. Cal., 3d App. Dist. Certiorari denied.

No. 71-6685. *HART v. UNITED STATES*. C. A. 10th Cir. Certiorari denied. Reported below: 457 F. 2d 1087.

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No. 71-6684. *BROWN v. WISCONSIN STATE DEPARTMENT OF PUBLIC WELFARE*. C. A. 7th Cir. Certiorari denied. Reported below: 457 F. 2d 257.

No. 71-6686. *ELLISON v. OKLAHOMA*. Ct. Crim. App. Okla. Certiorari denied. Reported below: 493 P. 2d 837.

No. 71-6688. *LARA v. HARRIS, WARDEN, ET AL.* C. A. 10th Cir. Certiorari denied.

No. 71-6691. *ZIMMER v. GAFFNEY, WARDEN*. C. A. 10th Cir. Certiorari denied.

No. 71-6692. *CARTER v. ROBERTS*, U. S. DISTRICT JUDGE. C. A. 5th Cir. Certiorari denied.

No. 71-6695. *RANDALL v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 454 F. 2d 1132.

No. 71-6696. *PERWIN v. NEW JERSEY*. Sup. Ct. N. J. Certiorari denied. Reported below: 60 N. J. 138, 286 A. 2d 511.

No. 71-6697. *BATISTA v. UNITED STATES*; and

No. 71-6715. *LOPEZ v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 453 F. 2d 749.

No. 71-6699. *ALBIDREZ v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 456 F. 2d 1288.

No. 71-6701. *HARRISON v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 460 F. 2d 270.

No. 71-6702. *TARLTON v. WOLFE*. C. A. 5th Cir. Certiorari denied. Reported below: 457 F. 2d 512.

No. 71-6704. *INGRAHAM v. FLORIDA*. Dist. Ct. App. Fla., 3d Dist. Certiorari denied. Reported below: 256 So. 2d 521.

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No. 71-6703. *JOHNSON v. TWOMEY, WARDEN*. C. A. 7th Cir. Certiorari denied.

No. 71-6705. *LAMONGE v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 458 F. 2d 197.

No. 71-6706. *MIDDLETON v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 458 F. 2d 482.

No. 71-6707. *COX v. GAFFNEY, WARDEN*. C. A. 10th Cir. Certiorari denied. Reported below: 459 F. 2d 50.

No. 71-6708. *CIOTTI v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 457 F. 2d 1027.

No. 71-6709. *KAYE v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 457 F. 2d 878.

No. 71-6710. *BLACKWOOD v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 456 F. 2d 526.

No. 71-6712. *ENGLE, AKA TENNANT v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 458 F. 2d 1021.

No. 71-6713. *MITMAN v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 459 F. 2d 451.

No. 71-6714. *RIVERA v. UNITED STATES*. C. A. 5th Cir. Certiorari denied.

No. 71-6716. *TORRES v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 457 F. 2d 810.

No. 71-6717. *ROBINSON v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 457 F. 2d 1304.

No. 71-6718. *CLEAVES v. PARKER*. C. A. 6th Cir. Certiorari denied.

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No. 71-6719. *BROWN v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 459 F. 2d 319.

No. 71-6722. *MARTIN v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 459 F. 2d 1009.

No. 71-6723. *CHAIKIN-SHULMAN v. BANK OF AMERICA TRUST NO. 54212*. C. A. 9th Cir. Certiorari denied. Reported below: 456 F. 2d 253.

No. 71-6725. *SANCHEZ v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 459 F. 2d 100.

No. 71-6726. *LOBON v. GOVERNMENT OF THE CANAL ZONE*; and

No. 71-6727. *LOBON v. GOVERNMENT OF THE CANAL ZONE*. C. A. 5th Cir. Certiorari denied. Reported below: 457 F. 2d 511.

No. 71-6728. *BAILEY v. UNITED STATES*. C. A. D. C. Cir. Certiorari denied.

No. 71-6729. *WEAVER v. CALIFORNIA DEPARTMENT OF CORRECTIONS ET AL.* C. A. 9th Cir. Certiorari denied.

No. 71-6730. *WILKES v. UNITED STATES*. C. A. 9th Cir. Certiorari denied.

No. 71-6731. *DIXON v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 460 F. 2d 309.

No. 71-6733. *GALI v. CALIFORNIA*. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 71-6735. *KENNEDY, AKA THOMAS, ET AL. v. UNITED STATES*. C. A. 10th Cir. Certiorari denied. Reported below: 457 F. 2d 63.

No. 71-6736. *DAVIS v. BETO, CORRECTIONS DIRECTOR*. C. A. 5th Cir. Certiorari denied. Reported below: 457 F. 2d 511.

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No. 71-6737. *DONOHUE v. UNITED STATES*. C. A. 10th Cir. Certiorari denied. Reported below: 458 F. 2d 237.

No. 71-6738. *DENNIS v. UNITED STATES*. C. A. 6th Cir. Certiorari denied.

No. 71-6744. *RODRIGUEZ v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 459 F. 2d 983.

No. 71-6745. *McCRAY v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 458 F. 2d 389.

No. 71-6746. *EVANS ET AL. v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 459 F. 2d 481.

No. 71-6748. *CASTILLO v. UNITED STATES*. C. A. 4th Cir. Certiorari denied.

No. 71-6749. *PARKS v. UNITED STATES*. C. A. 8th Cir. Certiorari denied.

No. 71-6750. *HAMMONDS v. MISSOURI*. C. A. 8th Cir. Certiorari denied.

No. 71-6751. *DAWN, DBA GAME Co. v. STERLING DRUG, INC., ET AL.* Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 71-6753. *SCOGIN v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 459 F. 2d 182.

No. 71-6754. *VAN PELT v. DiCOSIMO*. C. A. 9th Cir. Certiorari denied.

No. 71-6756. *CUNNINGHAM v. A. S. ABELL Co.* Ct. App. Md. Certiorari denied. Reported below: 264 Md. 649, 288 A. 2d 157.

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No. 71-6755. *MORLAND v. UNITED STATES*. C. A. 10th Cir. Certiorari denied.

No. 71-6761. *SCOTT v. UNITED STATES*. C. A. 10th Cir. Certiorari denied. Reported below: 457 F. 2d 848.

No. 71-6762. *CARNATHAN v. TEXAS*. Ct. Crim. App. Tex. Certiorari denied.

No. 71-6766. *HORD v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 459 F. 2d 1003.

No. 71-6771. *MITCHELL v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 457 F. 2d 513.

No. 71-6772. *LOPEZ v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 457 F. 2d 396.

No. 71-6775. *BURDETTE v. SHORE ET AL.* C. A. 6th Cir. Certiorari denied.

No. 71-6776. *JORDAN v. FLORIDA*. Dist. Ct. App. Fla., 2d Dist. Certiorari denied.

No. 71-6779. *LEWIS v. CALIFORNIA*. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 71-6780. *MANSOUR v. NEW JERSEY*. Sup. Ct. N. J. Certiorari denied.

No. 71-6782. *ELLIS v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 461 F. 2d 962.

No. 71-6783. *RYAN v. UNITED STATES*. C. A. 8th Cir. Certiorari denied.

No. 71-6784. *PENDERGRAFT v. TURNER ET AL.* C. A. 4th Cir. Certiorari denied.

No. 71-6785. *KNUDSEN v. PENNSYLVANIA*. Sup. Ct. Pa. Certiorari denied. Reported below: 443 Pa. 412, 278 A. 2d 881.

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No. 71-6786. *CROW v. EYMAN, WARDEN, ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 459 F. 2d 24.

No. 71-6787. *BRUCE v. UNITED STATES.* C. A. 4th Cir. Certiorari denied. Reported below: 458 F. 2d 511.

No. 71-6788. *BROWNE v. COMMISSIONER OF INTERNAL REVENUE.* C. A. 5th Cir. Certiorari denied. Reported below: 456 F. 2d 799.

No. 71-6792. *GARDNER v. UNITED STATES.* C. A. 9th Cir. Certiorari denied. Reported below: 454 F. 2d 534.

No. 71-6793. *KRIKMANIS v. MONTGOMERY ET AL.* C. A. 1st Cir. Certiorari denied.

No. 71-6794. *BOYD v. UNITED STATES.* C. A. 3d Cir. Certiorari denied. Reported below: 457 F. 2d 1358.

No. 71-6795. *TATE v. UNITED STATES.* C. A. 6th Cir. Certiorari denied.

No. 71-6796. *SHAFFER v. PENNSYLVANIA.* Sup. Ct. Pa. Certiorari denied. Reported below: 447 Pa. 91, 288 A. 2d 727.

No. 71-6797. *CURTIS v. NATIONAL LABOR RELATIONS BOARD.* C. A. 2d Cir. Certiorari denied.

No. 71-6798. *ARD ET AL. v. UNITED STATES.* C. A. 4th Cir. Certiorari denied. Reported below: 458 F. 2d 36.

No. 71-6801. *QUINN v. GAGNON, WARDEN.* C. A. 7th Cir. Certiorari denied.

No. 71-6802. *JONES v. FIELD, MEN'S COLONY SUPERINTENDENT.* C. A. 9th Cir. Certiorari denied.

No. 71-6804. *SANTANA v. UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF NEW YORK.* C. A. 2d Cir. Certiorari denied.

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No. 71-6805. *LEWIS v. OHIO ET AL.* Sup. Ct. Ohio. Certiorari denied.

No. 71-6806. *ROSENBERG v. UNITED STATES.* C. A. 5th Cir. Certiorari denied. Reported below: 458 F. 2d 1183.

No. 71-6807. *COLE v. UNITED STATES*; and

No. 71-6808. *COLE v. UNITED STATES.* C. A. 9th Cir. Certiorari denied. Reported below: 457 F. 2d 1141.

No. 71-6809. *MORTON v. HAYNES, TRAINING CENTER SUPERINTENDENT.* C. A. 8th Cir. Certiorari denied.

No. 71-6810. *BATTS v. CALIFORNIA.* Sup. Ct. Cal. Certiorari denied.

No. 71-6811. *ROSS v. UNITED STATES.* C. A. 5th Cir. Certiorari denied. Reported below: 458 F. 2d 1144.

No. 71-6813. *FERMIN v. RICHARDSON, SECRETARY OF HEALTH, EDUCATION, AND WELFARE.* C. A. D. C. Cir. Certiorari denied. Reported below: 149 U. S. App. D. C. 122, 461 F. 2d 1208.

No. 71-6814. *LEBRUN v. CUPP, WARDEN.* C. A. 9th Cir. Certiorari denied.

No. 71-6815. *BOWERS ET AL. v. UNITED STATES.* C. A. 5th Cir. Certiorari denied. Reported below: 458 F. 2d 1045.

No. 71-6816. *EARP v. CUPP, WARDEN.* C. A. 9th Cir. Certiorari denied. Reported below: 453 F. 2d 378.

No. 71-6817. *DORROUGH v. UNITED STATES.* C. A. 5th Cir. Certiorari denied.

No. 71-6820. *STIDHAM ET AL. v. UNITED STATES.* C. A. 10th Cir. Certiorari denied. Reported below: 459 F. 2d 297.

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No. 71-6818. *BARBER v. UNITED STATES*. C. A. 10th Cir. Certiorari denied. Reported below: 456 F. 2d 164.

No. 71-6819. *NELSON v. BUTLER, PRISON SUPERINTENDENT*. C. A. 2d Cir. Certiorari denied.

No. 71-6821. *KNIGHT v. UNITED STATES*. C. A. 1st Cir. Certiorari denied.

No. 71-6822. *ALLEN v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 457 F. 2d 1361.

No. 71-6823. *SMITH v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 460 F. 2d 1236.

No. 71-6828. *LAUCHLI v. UNITED STATES ET AL.* C. A. 7th Cir. Certiorari denied.

No. 71-6829. *GAUTHIER v. MASSACHUSETTS*. Sup. Jud. Ct. Mass. Certiorari denied. Reported below: — Mass. —, 280 N. E. 2d 426.

No. 71-6831. *CAGLE v. HARRIS, WARDEN*. C. A. 10th Cir. Certiorari denied.

No. 71-6832. *HALL v. SNYDER ET AL.* C. A. 7th Cir. Certiorari denied.

No. 71-6833. *SINGAL v. TWO UNKNOWN NAMED PATROLMEN ET AL.* C. A. 6th Cir. Certiorari denied.

No. 71-6834. *GREER v. UNITED STATES*. C. A. 6th Cir. Certiorari denied.

No. 71-6835. *KASEY ET UX. v. COMMISSIONER OF INTERNAL REVENUE*. C. A. 9th Cir. Certiorari denied. Reported below: 457 F. 2d 369.

No. 71-6838. *HOLMES ET AL. v. LAIRD, SECRETARY OF DEFENSE, ET AL.* C. A. D. C. Cir. Certiorari denied. Reported below: 148 U. S. App. D. C. 187, 459 F. 2d 1211.

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No. 71-6837. *DORSEY v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 462 F. 2d 361.

No. 71-6842. *MALLORY v. UNITED STATES*. C. A. 10th Cir. Certiorari denied. Reported below: 460 F. 2d 243.

No. 71-6843. *DOYAL v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 456 F. 2d 1292.

No. 71-6845. *THOMAS v. UNITED STATES*. C. A. D. C. Cir. Certiorari denied. Reported below: 149 U. S. App. D. C. 368, 463 F. 2d 314.

No. 71-6846. *VARNELL v. BETO, CORRECTIONS DIRECTOR*. C. A. 5th Cir. Certiorari denied.

No. 71-6847. *MARTIN v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 453 F. 2d 1370.

No. 71-6848. *PARKER v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 457 F. 2d 512.

No. 71-6849. *JACKSON v. CONNECTICUT*. Sup. Ct. Conn. Certiorari denied. Reported below: 162 Conn. 440, 294 A. 2d 517.

No. 71-6850. *BROWN ET AL. v. NORTH CAROLINA*. Sup. Ct. N. C. Certiorari denied. Reported below: 280 N. C. 588, 187 S. E. 2d 85.

No. 71-6851. *HEBAH, ADMINISTRATRIX v. UNITED STATES*. Ct. Cl. Certiorari denied. Reported below: 197 Ct. Cl. 729, 456 F. 2d 696.

No. 71-6855. *GRANDI, AKA RICOLLET v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 424 F. 2d 399.

No. 71-6862. *DICANIO v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 456 F. 2d 1335.

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No. 71-6854. *MASTERS v. HARRIS, WARDEN*. C. A. 10th Cir. Certiorari denied.

No. 71-6857. *MARTIN v. UNITED STATES*. C. A. 2d Cir. Certiorari denied.

No. 71-6859. *MUNNS v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 457 F. 2d 271.

No. 71-6860. *CHRISTIAN v. NEW YORK STATE BOARD OF PAROLE*. Ct. App. N. Y. Certiorari denied.

No. 71-6861. *DOCKERY v. CALIFORNIA*. C. A. 9th Cir. Certiorari denied.

No. 71-6864. *SUDDUTH v. UNITED STATES*. C. A. 10th Cir. Certiorari denied. Reported below: 458 F. 2d 1222.

No. 71-6865. *ALSTON v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 460 F. 2d 48.

No. 71-6866. *COLEMAN v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 460 F. 2d 1038.

No. 71-6867. *LARA v. TEXAS*. Ct. Crim. App. Tex. Certiorari denied. Reported below: 480 S. W. 2d 661.

No. 71-6868. *PARTON v. TENNESSEE*. Ct. Crim. App. Tenn. Certiorari denied. Reported below: — Tenn. Cr. App. —, 483 S. W. 2d 753.

No. 71-6870. *MATHIS v. LAIRD, SECRETARY OF DEFENSE*. C. A. 5th Cir. Certiorari denied. Reported below: 457 F. 2d 926.

No. 71-6871. *LUCAS v. OHIO*. Sup. Ct. Ohio. Certiorari denied.

No. 71-6873. *NEELY v. FIELD, U. S. DISTRICT JUDGE, ET AL.* C. A. 4th Cir. Certiorari denied.

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No. 71-6874. *MITCHELL v. NELSON, WARDEN*. C. A. 9th Cir. Certiorari denied.

No. 71-6875. *MORAN v. TUITION PLAN OF NEW HAMPSHIRE, INC.* C. A. 3d Cir. Certiorari denied. Reported below: 456 F. 2d 1030.

No. 71-6876. *BAILES ET UX. v. SOUTHERN FARM BUREAU CASUALTY INSURANCE Co. ET AL.* Sup. Ct. La. Certiorari denied. Reported below: 261 La. 106, 259 So. 2d 29.

No. 71-6878. *ROBINSON v. MAMMOTH LIFE & ACCIDENT INSURANCE Co.* C. A. 7th Cir. Certiorari denied. Reported below: 454 F. 2d 698.

No. 71-6881. *WILLIAMS v. OHIO*. Sup. Ct. Ohio. Certiorari denied.

No. 71-6882. *JAMES v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 459 F. 2d 443.

No. 71-6883. *FAIR v. HODGES ET AL.* C. A. 5th Cir. Certiorari denied.

No. 71-6884. *HUDSON v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 460 F. 2d 1262.

No. 71-6887. *WILLIAMS v. UNITED STATES*. C. A. D. C. Cir. Certiorari denied.

No. 71-6889. *MOORE v. UNITED STATES*. C. A. 9th Cir. Certiorari denied.

No. 71-6890. *KARTSONIS v. DISTRICT UNEMPLOYMENT COMPENSATION BOARD*. Ct. App. D. C. Certiorari denied. Reported below: 289 A. 2d 370.

No. 71-6905. *DOYAL v. DEPARTMENT OF THE TREASURY, BUREAU OF CUSTOMS, ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 456 F. 2d 799.

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No. 71-6891. *HAUFF v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 461 F. 2d 1061.

No. 71-6892. *SAILER v. CRAVEN, WARDEN*. C. A. 9th Cir. Certiorari denied. Reported below: 458 F. 2d 1362.

No. 71-6896. *LATHROP v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 460 F. 2d 761.

No. 71-6900. *PATTERSON v. SMITH, WARDEN*. C. A. 5th Cir. Certiorari denied.

No. 71-6901. *MORROW v. UNITED STATES*. C. A. 9th Cir. Certiorari denied.

No. 71-6903. *NEASE v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 458 F. 2d 1361.

No. 71-6904. *TUBBS v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 461 F. 2d 43.

No. 71-6906. *SPRINGER v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 460 F. 2d 1344.

No. 71-6907. *WATSON v. STYNCHCOMBE, SHERIFF*. C. A. 5th Cir. Certiorari denied.

No. 71-6910. *THORNLEY v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 460 F. 2d 1188.

No. 71-6911. *MEDINA v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 459 F. 2d 546.

No. 71-6912. *PASQUA v. NEW YORK*. App. Div., Sup. Ct. N. Y., 1st Jud. Dist. Certiorari denied.

No. 71-6913. *JOHNSON v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 460 F. 2d 1203.

No. 71-6924. *OBSTEIN v. NEW JERSEY*. Sup. Ct. N. J. Certiorari denied. Reported below: 60 N. J. 353, 289 A. 2d 798.

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No. 71-6915. *KILE v. UNITED STATES*. C. A. 6th Cir. Certiorari denied.

No. 71-6916. *DAHL v. UNITED STATES ET AL.* C. A. 7th Cir. Certiorari denied.

No. 71-6917. *SCOPES v. NEW YORK*. C. A. 2d Cir. Certiorari denied.

No. 71-6919. *BIRCH v. LAVALLEE, WARDEN*. C. A. 2d Cir. Certiorari denied.

No. 71-6921. *MIRANDA v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 458 F.2d 1179.

No. 71-6922. *LOWRY v. UNITED STATES*. C. A. 2d Cir. Certiorari denied.

No. 72-2. *PALMER ET AL. v. UNITED STATES*. C. A. 6th Cir. Certiorari denied.

No. 72-3. *LONG MANUFACTURING CO. v. LILLISTON IMPLEMENT CO.* C. A. 4th Cir. Certiorari denied. Reported below: 457 F. 2d 1317.

No. 72-4. *CHEMICAL CARRIERS, INC., ET AL. v. ANDREWS, EXECUTRIX*. C. A. 3d Cir. Certiorari denied. Reported below: 457 F. 2d 636.

No. 72-5. *KOHN, TRUSTEE, ET AL. v. AMERICAN METAL CLIMAX, INC., ET AL.*; and

No. 72-132. *ROAN SELECTION TRUST LTD. ET AL. v. KOHN, TRUSTEE, ET AL.* C. A. 3d Cir. Certiorari denied. Reported below: 458 F. 2d 255.

No. 72-9. *BONKOWSKI v. COMMISSIONER OF INTERNAL REVENUE*. C. A. 7th Cir. Certiorari denied. Reported below: 458 F. 2d 709.

No. 72-26. *DALY v. ALABAMA*. Ct. Crim. App. Ala. Certiorari denied. Reported below: 47 Ala. App. 681, 260 So. 2d 412.

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No. 72-7. *FIRESTONE v. TIME, INC.* C. A. 5th Cir. Certiorari denied. Reported below: 460 F. 2d 712.

No. 72-13. *SEGURA v. UNITED STATES.* C. A. 2d Cir. Certiorari denied. Reported below: 456 F. 2d 1336.

No. 72-14. *CARLTON v. UNITED STATES.* C. A. 5th Cir. Certiorari denied. Reported below: 459 F. 2d 1390.

No. 72-15. *SCHAACK v. UNITED STATES.* C. A. 7th Cir. Certiorari denied.

No. 72-18. *ENGLE v. UNITED STATES.* C. A. 8th Cir. Certiorari denied. Reported below: 458 F. 2d 1017.

No. 72-27. *BITTNER v. NEBRASKA.* Sup. Ct. Neb. Certiorari denied. Reported below: 188 Neb. 298, 196 N. W. 2d 186.

No. 72-30. *EGAN v. UNITED STATES.* C. A. 2d Cir. Certiorari denied. Reported below: 459 F. 2d 997.

No. 72-31. *HONOLULU RAPID TRANSIT Co., LTD. v. PUBLIC UTILITIES COMMISSION OF HAWAII ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 459 F. 2d 551.

No. 72-33. *WILLIAMS v. UNITED STATES.* C. A. 2d Cir. Certiorari denied. Reported below: 458 F. 2d 1406.

No. 72-38. *SOUTHWESTERN BELL TELEPHONE Co. v. FRANKE ET AL.* Sup. Ct. Mo. Certiorari denied. Reported below: 479 S. W. 2d 472.

No. 72-43. *COHN v. UNITED STATES.* C. A. 2d Cir. Certiorari denied.

No. 72-47. *HAYDEN PUBLISHING Co., INC., ET AL. v. VAN VALKENBURGH, NOOGER & NEVILLE, INC.* Ct. App. N. Y. Certiorari denied. Reported below: 30 N. Y. 2d 34, 281 N. E. 2d 142.

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No. 72-39. *REDERI A/B NORDSTJERNAN ET AL. v. RIVERA ET AL.* C. A. 1st Cir. Certiorari denied. Reported below: 456 F. 2d 970.

No. 72-50. *RAILEX CORP. v. SPEED CHECK CO., INC.* C. A. 5th Cir. Certiorari denied. Reported below: 457 F. 2d 1040.

No. 72-51. *MICHAUD ET AL. v. UNITED STATES.* C. A. 3d Cir. Certiorari denied. Reported below: 458 F. 2d 953.

No. 72-52. *SKIL CORP. v. LUCERNE PRODUCTS, INC.* C. A. 6th Cir. Certiorari denied.

No. 72-57. *SHELCO, INC., ET AL. v. DOW CHEMICAL CO. ET AL.* C. A. 7th Cir. Certiorari denied.

No. 72-58. *NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC. v. HARWELL ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 459 F. 2d 461.

No. 72-63. *DICKSON v. UNITED STATES.* C. A. 4th Cir. Certiorari denied. Reported below: 462 F. 2d 184.

No. 72-65. *JOHN B. WHITE, INC. v. COMMISSIONER OF INTERNAL REVENUE.* C. A. 3d Cir. Certiorari denied. Reported below: 458 F. 2d 989.

No. 72-66. *CLARK EQUIPMENT CO. v. WIRTH.* C. A. 9th Cir. Certiorari denied. Reported below: 457 F. 2d 1262.

No. 72-68. *LANE v. UNITED STATES.* C. A. 8th Cir. Certiorari denied. Reported below: 464 F. 2d 593.

No. 72-70. *LEFKOWITZ, ATTORNEY GENERAL OF NEW YORK v. WEISS ET AL.* C. A. 2d Cir. Certiorari denied.

No. 72-78. *GIFFORD ET AL. v. ALLEN ET UX.* C. A. 4th Cir. Certiorari denied. Reported below: 462 F. 2d 615.

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No. 72-71. *HILLIARD ET AL. v. PENNSYLVANIA*. Sup. Ct. Pa. Certiorari denied.

No. 72-73. *KLEVE v. RETAIL CREDIT CO.* Sup. Ct. Ohio. Certiorari denied.

No. 72-80. *HELTSLEY ET AL. v. DISTRICT No. 23, UNITED MINE WORKERS OF AMERICA, ET AL.* Ct. App. Ky. Certiorari denied. Reported below: 477 S. W. 2d 134.

No. 72-85. *QUINTANA v. UNITED STATES*. C. A. 10th Cir. Certiorari denied. Reported below: 457 F. 2d 874.

No. 72-87. *HARRIS ET AL. v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 460 F. 2d 1041.

No. 72-89. *CARTER ET AL. v. CITY OF FORT WORTH ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 456 F. 2d 572.

No. 72-94. *JACQUES v. LOUISIANA STATE BAR ASSN.* Sup. Ct. La. Certiorari denied. Reported below: 260 La. 803, 257 So. 2d 413.

No. 72-98. *SCHNEIDER ET AL. v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 459 F. 2d 540.

No. 72-99. *LUTHER v. ALABAMA*. Ct. Crim. App. Ala. Certiorari denied. Reported below: 47 Ala. App. 647, 259 So. 2d 857.

No. 72-101. *AVENI v. RICHMAN, TRUSTEE IN BANKRUPTCY*. C. A. 6th Cir. Certiorari denied. Reported below: 458 F. 2d 972.

No. 72-102. *AUNT MID, INC. v. FJELL-ORANJE LINES ET AL.* C. A. 7th Cir. Certiorari denied. Reported below: 458 F. 2d 712.

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No. 72-100. *MARTIN v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 459 F. 2d 300.

No. 72-103. *LLERENA v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 459 F. 2d 949.

No. 72-106. *BRADSHAW v. THOMPSON ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 454 F. 2d 75.

No. 72-107. *SPEARS v. HOUGH*. C. A. 8th Cir. Certiorari denied. Reported below: 458 F. 2d 529.

No. 72-110. *EAGLE STAR INSURANCE GROUP v. WALKER, ADMINISTRATOR, ET AL.* C. A. 3d Cir. Certiorari denied.

No. 72-112. *ZEGERS, INC. v. ZEGERS*. C. A. 7th Cir. Certiorari denied. Reported below: 458 F. 2d 726.

No. 72-113. *STERLING DRUG, INC. v. SINGER ET VIR.* C. A. 7th Cir. Certiorari denied. Reported below: 461 F. 2d 288.

No. 72-122. *BISHOP, EXECUTRIX v. UNITED STATES*. C. A. 5th Cir. Certiorari denied.

No. 72-123. *GUTHRIE v. ARIZONA*. Sup. Ct. Ariz. Certiorari denied. Reported below: 108 Ariz. 280, 496 P. 2d 580.

No. 72-125. *REE ET AL. v. MUNICIPAL COURT OF THE LOS ANGELES JUDICIAL DISTRICT, COUNTY OF LOS ANGELES*. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 72-126. *BOYER BROS., INC. v. NATIONAL LABOR RELATIONS BOARD*. C. A. 3d Cir. Certiorari denied. Reported below: 448 F. 2d 555.

No. 72-127. *SHERIS ET AL. v. SHERIS CO. ET AL.* Sup. Ct. Va. Certiorari denied. Reported below: 212 Va. 825, 188 S. E. 2d 367.

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No. 72-138. *ANDERSON ET AL. v. LECON PROPERTIES, INC.* C. A. 8th Cir. Certiorari denied. Reported below: 457 F. 2d 929.

No. 72-139. *PEARSON v. FLORIDA*; and

No. 72-140. *PEARSON v. FLORIDA*. Dist. Ct. App. Fla., 3d Dist. Certiorari denied. Reported below: 254 So. 2d 573.

No. 72-143. *BRATRUD v. DUNNING, TRUSTEE IN BANKRUPTCY*. C. A. 9th Cir. Certiorari denied. Reported below: 456 F. 2d 414.

No. 72-144. *WEST TENNESSEE ACLU ET AL. v. CITY OF MEMPHIS ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 454 F. 2d 1162.

No. 72-155. *BALLANTYNE v. CENTRAL RAILROAD OF NEW JERSEY*. C. A. 3d Cir. Certiorari denied. Reported below: 460 F. 2d 540.

No. 72-161. *ROSE v. COMMISSIONER OF INTERNAL REVENUE*. C. A. 6th Cir. Certiorari denied. Reported below: 459 F. 2d 28.

No. 72-162. *DODSON ET AL. v. GRAHAM ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 462 F. 2d 144.

No. 72-170. *MOORE v. BOARD OF TRUSTEES, CARSON-TAHOE HOSPITAL, ET AL.* Sup. Ct. Nev. Certiorari denied. Reported below: 88 Nev. 207, 495 P. 2d 605.

No. 72-203. *LITTON BUSINESS SYSTEMS, INC. v. MONROE LODGE NO. 770, INTERNATIONAL ASSOCIATION OF MACHINISTS & AEROSPACE WORKERS, AFL-CIO*. C. A. 4th Cir. Certiorari denied.

No. 72-230. *FREESE, EXECUTRIX v. UNITED STATES*. C. A. 10th Cir. Certiorari denied. Reported below: 455 F. 2d 1146.

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No. 72-165. *ENYART v. ASHLAND DISCOUNT CO. ET AL.* C. A. 6th Cir. Certiorari denied.

No. 72-235. *McKY v. HOCHFELDER ET AL.* C. A. 7th Cir. Certiorari denied.

No. 72-5003. *CORCORAN v. UNITED STATES.* Ct. Cl. Certiorari denied.

No. 72-5005. *ABSHIRE v. UNITED STATES.* C. A. 9th Cir. Certiorari denied.

No. 72-5006. *ROBINS v. UNITED STATES.* C. A. 10th Cir. Certiorari denied. Reported below: 461 F. 2d 248.

No. 72-5008. *ABBAMONTE v. UNITED STATES.* C. A. 2d Cir. Certiorari denied.

No. 72-5011. *HOHENSEE v. SCIENTIFIC LIVING, INC., ET AL.* Sup. Ct. Pa. Certiorari denied.

No. 72-5012. *EATON ET AL. v. UNITED STATES.* C. A. 7th Cir. Certiorari denied. Reported below: 458 F. 2d 704.

No. 72-5013. *SMITH v. CUPP, WARDEN.* C. A. 9th Cir. Certiorari denied. Reported below: 457 F. 2d 1098.

No. 72-5015. *PRESTON v. UNITED STATES.* C. A. 7th Cir. Certiorari denied. Reported below: 463 F. 2d 544.

No. 72-5016. *CLARK v. UNITED STATES.* C. A. 8th Cir. Certiorari denied. Reported below: 459 F. 2d 977.

No. 72-5017. *ANDERSON v. PARKER, COULTER, DALEY & WHITE ET AL.* C. A. 1st Cir. Certiorari denied.

No. 72-5018. *BREWER v. UNITED STATES;* and

No. 72-5061. *GARR v. UNITED STATES.* C. A. 5th Cir. Certiorari denied. Reported below: 461 F. 2d 487.

No. 72-5021. *WEST v. UNITED STATES.* C. A. 4th Cir. Certiorari denied.

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No. 72-5023. *RAWLS v. SECRETARY OF THE INTERIOR ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 460 F. 2d 1200.

No. 72-5025. *MILLER v. UNITED STATES.* C. A. 9th Cir. Certiorari denied. Reported below: 460 F. 2d 293.

No. 72-5027. *ZAMORA-YESCAS v. UNITED STATES.* C. A. 9th Cir. Certiorari denied. Reported below: 460 F. 2d 1272.

No. 72-5028. *SCHOEFIELD v. UNITED STATES.* C. A. D. C. Cir. Certiorari denied. Reported below: 150 U.S. App. D. C. 380, 465 F. 2d 560.

No. 72-5029. *WEAVER v. UNITED STATES.* C. A. 6th Cir. Certiorari denied. Reported below: 459 F. 2d 473.

No. 72-5032. *ATKINSON v. NORTH CAROLINA;* and

No. 72-5087. *ATKINSON v. NORTH CAROLINA.* Sup. Ct. N. C. Certiorari denied. Reported below: 281 N. C. 51 and 52, 187 S. E. 2d 702 and 703.

No. 72-5036. *CHAPA v. 1020 N. QUINCEY STREET, LTD., ET AL.* C. A. 4th Cir. Certiorari denied.

No. 72-5037. *WILSON v. LASH, WARDEN.* C. A. 7th Cir. Certiorari denied. Reported below: 457 F. 2d 106.

No. 72-5040. *SCHAFER v. UNITED STATES.* C. A. 9th Cir. Certiorari denied. Reported below: 461 F. 2d 856.

No. 72-5041. *HILLIARD v. CALIFORNIA.* C. A. 9th Cir. Certiorari denied.

No. 72-5042. *DEFARLO ET AL. v. CALIFORNIA.* Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 72-5043. *WARRINER v. WISEHEART ET AL.* C. A. 5th Cir. Certiorari denied.

No. 72-5046. *FORD v. UNITED STATES.* C. A. 9th Cir. Certiorari denied. Reported below: 461 F. 2d 534.

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No. 72-5048. *DAMERON v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 460 F. 2d 294.

No. 72-5049. *RAMSDELL v. UNITED STATES*. C. A. 10th Cir. Certiorari denied. Reported below: 458 F. 2d 161.

No. 72-5051. *BETHEA v. UNITED STATES*. C. A. 4th Cir. Certiorari denied.

No. 72-5052. *COX v. McNAMARA ET AL.* Ct. App. Ore. Certiorari denied. Reported below: 8 Ore. App. 242, 493 P. 2d 54.

No. 72-5055. *COLLINS v. MARYLAND*. Ct. Sp. App. Md. Certiorari denied. Reported below: 14 Md. App. 674, 288 A. 2d 221.

No. 72-5056. *LONG v. ALLDREDGE, WARDEN, ET AL.* C. A. 3d Cir. Certiorari denied. Reported below: 455 F. 2d 466.

No. 72-5057. *THACKER v. SLAYTON, PENITENTIARY SUPERINTENDENT, ET AL.* C. A. 4th Cir. Certiorari denied.

No. 72-5060. *DIGGS v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 458 F. 2d 1407.

No. 72-5064. *REILLY v. CAULDWELL-WINGATE Co., INC., ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 465 F. 2d 1405.

No. 72-5067. *WIMBERLEY ET AL. v. LYNCH, ATTORNEY GENERAL OF CALIFORNIA, ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 460 F. 2d 316.

No. 72-5074. *PUCO v. UNITED STATES*. C. A. 2d Cir. Certiorari denied.

No. 72-5078. *TROY v. KANSAS ET AL.* C. A. 10th Cir. Certiorari denied.

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No. 72-5076. *ESKRIDGE v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 456 F. 2d 1202.

No. 72-5081. *GRIFFITH v. GOVERNMENT OF THE CANAL ZONE*. C. A. 5th Cir. Certiorari denied. Reported below: 459 F. 2d 1036.

No. 72-5083. *BRADLEY v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 460 F. 2d 529.

No. 72-5084. *PEEL ET AL. v. NICHLOS ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 460 F. 2d 1068.

No. 72-5086. *CRUTCH, AKA JENKINS v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 461 F. 2d 1200.

No. 72-5088. *WALKER v. UNITED STATES*. C. A. 6th Cir. Certiorari denied.

No. 72-5093. *GAINES v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 460 F. 2d 176.

No. 72-5097. *RICHERSON v. UNITED STATES*. C. A. 10th Cir. Certiorari denied. Reported below: 461 F. 2d 935.

No. 72-5098. *VERDUZCO-MACIAS v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 463 F. 2d 105.

No. 72-5101. *SERZYSKO v. CHASE MANHATTAN BANK*. C. A. 2d Cir. Certiorari denied. Reported below: 461 F. 2d 699.

No. 72-5105. *HARKINS v. UNITED STATES*. C. A. 6th Cir. Certiorari denied.

No. 72-5106. *SMITH v. UNITED STATES*. C. A. 10th Cir. Certiorari denied.

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No. 72-5102. *SPAULDING v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 462 F. 2d 1346.

No. 72-5111. *HARRISON v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 461 F. 2d 1127.

No. 72-5115. *RICHARDSON v. MASSACHUSETTS*. Sup. Jud. Ct. Mass. Certiorari denied. Reported below: — Mass. —, 282 N. E. 2d 95.

No. 72-5124. *FOUCHEY v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 462 F. 2d 585.

No. 72-5129. *HARRIS v. UNITED STATES*. C. A. 10th Cir. Certiorari denied.

No. 72-5140. *TRAHAN v. CUPP, WARDEN*. Sup. Ct. Ore. Certiorari denied.

No. 72-5142. *BUENO v. BETO, CORRECTIONS DIRECTOR*. C. A. 5th Cir. Certiorari denied. Reported below: 458 F. 2d 457.

No. 72-5153. *LEAVITT v. HOWARD, WARDEN*. C. A. 1st Cir. Certiorari denied. Reported below: 462 F. 2d 992.

No. 72-5156. *SANDERS ET AL. v. TEXAS*. Ct. Crim. App. Tex. Certiorari denied. Reported below: 482 S. W. 2d 648.

No. 71-1012. *NEIL, WARDEN v. PHILLIPS*. C. A. 6th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 452 F. 2d 337.

No. 71-1065. *WAINWRIGHT, CORRECTIONS DIRECTOR v. ROSS*. C. A. 5th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 451 F. 2d 298.

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No. 71-1148. SMITH, WARDEN *v.* SMITH. C. A. 5th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 454 F. 2d 572.

No. 71-1324. ILLINOIS *v.* RAYMOND. C. A. 7th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 455 F. 2d 62.

No. 71-1579. BROWN, DIRECTOR, VIRGINIA DEPARTMENT OF WELFARE AND INSTITUTIONS, ET AL. *v.* WOOLFOLK ET AL. C. A. 4th Cir. Motion of respondents for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 456 F. 2d 652.

No. 71-1588. FLORIDA *v.* ROBERSON. Sup. Ct. Fla. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 258 So. 2d 257.

No. 71-1626. McMANN, WARDEN *v.* WRIGHT. C. A. 2d Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 460 F. 2d 126.

No. 71-1636. ELLIOTT, WARDEN *v.* TAYLOR. C. A. 5th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied.

No. 71-1695. MANUFACTURERS NATIONAL BANK OF DETROIT *v.* HARRIS. C. A. 6th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 457 F. 2d 631.

No. 72-17. LAVALLEE, CORRECTIONAL SUPERINTENDENT *v.* FITZGERALD. C. A. 2d Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 461 F. 2d 601.

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No. 72-8. *NEW JERSEY ET AL. v. WOODARD*. C. A. 3d Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied.

No. 71-1279. *SINCLAIR v. SPATOCCO, AKA REED, ET AL.* C. A. 9th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 452 F. 2d 1213.

No. 71-1306. *PENDERGRAFT v. COOK, PENITENTIARY SUPERINTENDENT*. C. A. 5th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 446 F. 2d 1222.

No. 71-1359. *JUDICE ET AL. v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 457 F. 2d 414.

No. 71-1361. *SIMMS v. WYOMING*. Sup. Ct. Wyo. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 492 P. 2d 516.

No. 71-1452. *PANAS v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari.

No. 71-1453. *BROWN v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 456 F. 2d 983.

No. 71-1469. *GHASSEMI ET AL. v. UNITED STATES ET AL.* C. A. 2d Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari.

No. 71-1473. *DEAN ET AL. v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari.

No. 71-1501. *RUGGIRELLO v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 454 F. 2d 725.

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No. 71-1491. *TWO TRACTS OF LAND ET AL. v. TENNESSEE VALLEY AUTHORITY*. C. A. 6th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 456 F. 2d 264.

No. 71-1538. *BLANK v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 459 F. 2d 383.

No. 71-1573. *PELTZMAN v. NATIONAL LABOR RELATIONS BOARD*. C. A. 2d Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari.

No. 71-1574. *JALIL v. HAMPTON, CHAIRMAN, UNITED STATES CIVIL SERVICE COMMISSION*. C. A. D. C. Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 148 U. S. App. D. C. 415, 460 F. 2d 923.

No. 71-1603. *MILNARIK ET AL. v. M-S COMMODITIES, INC., ET AL.* C. A. 7th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 457 F. 2d 274.

No. 71-1608. *JOHNSON ET AL. v. MORTON, SECRETARY OF THE INTERIOR, ET AL.* C. A. 5th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 456 F. 2d 68.

No. 71-1614. *LOWRY ET AL. v. UNITED STATES*. C. A. 10th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 455 F. 2d 657.

No. 71-1624. *LEWIS v. STRACHAN SHIPPING CO. ET AL.* C. A. 5th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 460 F. 2d 1108.

No. 71-6431. *NASH v. TEXAS*. Ct. Crim. App. Tex. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 477 S. W. 2d 557.

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No. 71-1646. *NATIONAL LABOR RELATIONS BOARD v. MAY DEPARTMENT STORES Co.* C. A. 9th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 454 F. 2d 148.

No. 71-6448. *BASTION v. LOUISIANA.* Sup. Ct. La. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari.

No. 71-6476. *KILBOURNE v. LOUISIANA.* Sup. Ct. La. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 260 La. 569, 256 So. 2d 630.

No. 71-6490. *McINTYRE v. NORTH CAROLINA.* Sup. Ct. N. C. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 280 N. C. 220, 185 S. E. 2d 633.

No. 71-6500. *DOHERTY v. UNITED STATES.* C. A. 9th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari.

No. 71-6508. *SCOTT ET AL. v. UNITED STATES.* C. A. 5th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 458 F. 2d 670.

No. 71-6554. *MILLER v. OKLAHOMA.* Ct. Crim. App. Okla. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari.

No. 71-6566. *WARE v. UNITED STATES.* C. A. 7th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 457 F. 2d 828.

No. 71-6598. *FUGATE v. GAFFNEY.* C. A. 8th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 453 F. 2d 362.

No. 71-6617. *FARRIES ET AL. v. UNITED STATES.* C. A. 3d Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 459 F. 2d 1057.

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No. 71-6711. *LEAL ET AL. v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 460 F. 2d 385.

No. 71-6741. *KELLY ET AL. v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari.

No. 71-6760. *LASCH v. RICHARDSON, SECRETARY OF HEALTH, EDUCATION, AND WELFARE*. C. A. 7th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 457 F. 2d 435.

No. 71-6764. *EVANS v. MOSELEY, WARDEN*. C. A. 10th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 455 F. 2d 1084.

No. 71-6781. *LEANO v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 457 F. 2d 1208.

No. 71-6825. *DYKES v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 460 F. 2d 324.

No. 72-37. *HOFF v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 461 F. 2d 846.

No. 72-49. *FRANKEL ET AL. v. SECURITIES AND EXCHANGE COMMISSION ET AL.* C. A. 2d Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 460 F. 2d 813.

No. 72-60. *ERDMANN v. STEVENS ET AL.* C. A. 2d Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 458 F. 2d 1205.

No. 72-116. *RAGLAND v. VOLPE, SECRETARY OF TRANSPORTATION, ET AL.* C. A. 5th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari.

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No. 72-108. *OSTROWSKI v. OHIO*. Sup. Ct. Ohio. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 30 Ohio St. 2d 34, 282 N. E. 2d 359.

No. 72-5152. *BYRD v. LYKES BROTHERS STEAMSHIP Co., INC.* C. A. 5th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 461 F. 2d 1264.

No. 71-1345. *CRISMON v. UNITED STATES*. C. A. 8th Cir. Motion to supplement petition granted. Certiorari denied.

No. 71-1394. *CALIFORNIA HIGHWAY COMMISSION ET AL. v. LA RAZA UNIDA OF SOUTHERN ALAMEDA COUNTY ET AL.* Petitioner for certiorari before judgment to C. A. 9th Cir. Motion to dispense with printing respondents' brief granted. Certiorari denied. Reported below: See 337 F. Supp. 221.

No. 71-1401. *SMITH, TRUSTEE v. BAKER ET AL.*;

No. 71-1451. *IANNOTTI, TRUSTEE v. BAKER ET AL.*;
and

No. 71-1539. *NEW YORK, NEW HAVEN & HARTFORD RAILROAD COMPANY FIRST MORTGAGE 4% BONDHOLDERS COMMITTEE v. BAKER ET AL.* C. A. 2d Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. MR. JUSTICE BLACKMUN took no part in the consideration or decision of these petitions. Reported below: 457 F. 2d 683.

No. 71-1429. *PARTICULAR CLEANERS, INC., ET AL. v. COMMONWEALTH EDISON Co.* C. A. 7th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. MR. JUSTICE POWELL took no part in the consideration or decision of this petition. Reported below: 457 F. 2d 189.

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No. 72-6. *INTERSTATE COMMERCE COMMISSION ET AL. v. BURLINGTON NORTHERN, INC.* C. A. D. C. Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. MR. JUSTICE POWELL took no part in the consideration or decision of this petition. Reported below: 149 U. S. App. D. C. 176, 462 F. 2d 280.

No. 71-1471. *PENSEC v. UNITED STATES.* C. A. 3d Cir. Motion to dispense with printing petition granted. Certiorari denied. Reported below: 456 F. 2d 435.

No. 71-1483. *MASELLI v. CALIFORNIA.* Ct. App. Cal., 4th App. Dist. Motion to dispense with printing petition granted. Certiorari denied.

No. 71-1525. *HOULE ET AL. v. DUVAL, COMMISSIONER OF LABOR.* Sup. Ct. N. H. Motion to dispense with printing petition granted. Certiorari denied. Reported below: 111 N. H. 333, 287 A. 2d 418.

No. 71-1620. *ESTATE OF WITKOWSKI v. UNITED STATES.* C. A. 5th Cir. Motion to dispense with printing petition granted. Certiorari denied. Reported below: 451 F. 2d 1249.

No. 71-1666. *HUIE ET AL. v. UNITED STATES.* C. A. 5th Cir. Motion to dispense with printing petition granted. Certiorari denied. Reported below: 458 F. 2d 875.

No. 72-22. *GODWIN v. FEDERAL LAND BANK OF HOUSTON.* C. A. 5th Cir. Motion to dispense with printing petition granted. Certiorari denied.

No. 72-23. *GODWIN v. WOODWARD, JUDGE, ET AL.* C. A. 5th Cir. Motion to dispense with printing petition granted. Certiorari denied.

No. 72-97. *IN RE HAMPDEN VALLEY CONSTRUCTION CO., INC.* C. A. 1st Cir. Motion to dispense with printing petition granted. Certiorari denied.

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No. 72-130. *CHAMBERLAIN v. CHAMBERLAIN*. Ct. App. D. C. Motion to dispense with printing petition granted. Certiorari denied. Reported below: 287 A. 2d 530.

No. 71-1505. *ASKEW, GOVERNOR OF FLORIDA, ET AL. v. AEROJET-GENERAL CORP.* C. A. 5th Cir. Motion to strike petitioners' reply brief and certiorari denied. Reported below: 453 F. 2d 819.

No. 71-1514. *BERGER v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. MR. JUSTICE STEWART would grant certiorari.

No. 71-1522. *ALLGOOD ET AL. v. BREWER ET AL.* C. A. 4th Cir. Certiorari denied. MR. JUSTICE POWELL took no part in the consideration or decision of this petition. Reported below: 456 F. 2d 943.

No. 71-1605. *PAN AMERICAN MATCH INC. v. SEARS, ROEBUCK & CO. ET AL.* C. A. 1st Cir. Certiorari denied. MR. JUSTICE POWELL took no part in the consideration or decision of this petition. Reported below: 454 F. 2d 871.

No. 71-1627. *BROTHERHOOD OF RAILWAY, AIRLINE & STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS & STATION EMPLOYEES ET AL. v. REA EXPRESS, INC.* C. A. 5th Cir. Certiorari denied. MR. JUSTICE POWELL took no part in the consideration or decision of this petition. Reported below: 459 F. 2d 226.

No. 71-1649. *A-T-O, INC., ET AL. v. SPERRY RAND CORP.*; and

No. 71-1700. *SPERRY RAND CORP. v. A-T-O, INC., ET AL.* C. A. 4th Cir. Certiorari denied. MR. JUSTICE POWELL took no part in the consideration or decision of these petitions. Reported below: 447 F. 2d 1387 and 459 F. 2d 19.

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No. 71-1628. POWER AUTHORITY OF NEW YORK *v.* FADEL ET AL. Ct. App. N. Y. Certiorari denied. MR. JUSTICE POWELL took no part in the consideration or decision of this petition. Reported below: 29 N. Y. 2d 790, 281 N. E. 2d 838.

No. 71-1658. SEABOARD COAST LINE RAILROAD Co. *v.* McDANIEL. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. MR. JUSTICE POWELL took no part in the consideration or decision of this petition. Reported below: 254 So. 2d 15.

No. 71-1680. LOUISVILLE & NASHVILLE RAILROAD Co. ET AL. *v.* RODES, TRUSTEE IN BANKRUPTCY, ET AL.;

No. 72-21. METROPOLITAN GOVERNMENT OF NASHVILLE ET AL. *v.* RODES, TRUSTEE IN BANKRUPTCY, ET AL.;

No. 72-24. KOPPERS Co., INC. *v.* RODES, TRUSTEE IN BANKRUPTCY, ET AL.; and

No. 72-62. WILSON COUNTY, TENNESSEE *v.* RODES, TRUSTEE IN BANKRUPTCY, ET AL. C. A. 6th Cir. Certiorari denied. MR. JUSTICE POWELL took no part in the consideration or decision of these petitions. Reported below: 463 F. 2d 73.

No. 71-6803. ECHEVERRIA *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. MR. JUSTICE POWELL took no part in the consideration or decision of this petition.

No. 72-93. AMERICAN OIL Co. ET AL. *v.* CITY OF PHILADELPHIA ET AL. C. A. 3d Cir. Certiorari denied. MR. JUSTICE POWELL took no part in the consideration or decision of this petition.

No. 72-174. CITY COUNCIL OF THE CITY OF CHICAGO ET AL. *v.* COUSINS ET AL. C. A. 7th Cir. Certiorari denied. MR. JUSTICE MARSHALL took no part in the consideration or decision of this petition. Reported below: 466 F. 2d 830.

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No. 71-1546. STAPLETON ET AL. *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. MR. JUSTICE MARSHALL took no part in the consideration or decision of this petition. Reported below: 454 F. 2d 1210.

No. 71-6895. GRADSKY *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. MR. JUSTICE MARSHALL took no part in the consideration or decision of this petition. Reported below: 434 F. 2d 880.

No. 71-1596. PENNSYLVANIA ET AL. *v.* UNITED STATES ET AL. C. A. 3d Cir. Certiorari denied. MR. JUSTICE BLACKMUN took no part in the consideration or decision of this petition. Reported below: 455 F. 2d 989.

No. 71-1604. PORT OF HOUSTON AUTHORITY OF HARRIS COUNTY, TEXAS *v.* INTERNATIONAL ORGANIZATION OF MASTERS, MATES & PILOTS, AFL-CIO, ET AL. C. A. 5th Cir. Motion of Republic of Liberia for leave to file a brief as *amicus curiae* granted. Certiorari denied. Reported below: 456 F. 2d 50.

No. 71-1617. SCHMITZ *v.* SOCIETE INTERNATIONALE POUR PARTICIPATIONS INDUSTRIELLES ET COMMERCIALES, S. A. C. A. D. C. Cir. Certiorari denied. MR. JUSTICE WHITE took no part in the consideration or decision of this petition.

No. 71-1635. KEISTER *v.* FROEHLKE, SECRETARY OF THE ARMY, ET AL. C. A. 3d Cir. Motion to dispense with printing petition granted. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 462 F. 2d 471.

No. 71-1638. NELSON ET AL. *v.* DUNCAN; and

No. 72-5128. DUNCAN *v.* NELSON ET AL. C. A. 7th Cir. Motion of respondent in No. 71-1638 for leave to proceed *in forma pauperis* granted. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari.

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No. 71-1633. *LARSEN v. AIR CALIFORNIA*. C. A. 9th Cir. Motion to proceed as a veteran granted. Certiorari denied. Reported below: 459 F. 2d 52.

No. 71-1654. *McKINNEY v. CITY OF BIRMINGHAM*. Ct. Crim. App. Ala. Certiorari denied, it appearing that the judgment below rests upon an adequate state ground.

No. 71-1701. *WHITE v. CENTRAL CHARGE SERVICE, INC.* Ct. App. D. C. Motion for leave to proceed on typewritten papers granted. Certiorari denied. Reported below: 285 A. 2d 305.

No. 71-6305. *RETTIG v. ILLINOIS*. Sup. Ct. Ill. Certiorari denied. MR. JUSTICE DOUGLAS and MR. JUSTICE MARSHALL would grant certiorari and reverse judgment. *Turner v. Louisiana*, 379 U. S. 466 (1965), and *Gonzales v. Beto*, 405 U. S. 1052 (1972). MR. JUSTICE BLACKMUN would grant certiorari, vacate judgment, and remand case. *Turner v. Louisiana*, *supra*, and *Gonzales v. Beto*, *supra*. Reported below: 50 Ill. 2d 317, 278 N. E. 2d 781.

No. 71-6415. *CHERRY v. HENDERSON, WARDEN*. C. A. 5th Cir. Certiorari denied. MR. JUSTICE WHITE would grant certiorari.

No. 71-6451. *HARRIS v. CALIFORNIA*. Ct. App. Cal., 1st App. Dist. Certiorari denied. MR. JUSTICE MARSHALL would grant certiorari.

No. 71-6467. *THOMAS v. CALIFORNIA*. Ct. App. Cal., 1st App. Dist. Certiorari denied. MR. JUSTICE MARSHALL would grant certiorari.

No. 71-6767. *WASHINGTON v. JACOBS, HOSPITAL SUPERINTENDENT*. C. A. D. C. Cir. Certiorari denied. THE CHIEF JUSTICE took no part in the consideration or decision of this petition. Reported below: 147 U. S. App. D. C. 366, 458 F. 2d 785.

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No. 71-6528. *MORNINGSTAR v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. MR. JUSTICE BRENNAN, MR. JUSTICE STEWART, and MR. JUSTICE BLACKMUN would grant certiorari, vacate judgment, and remand case for further proceedings in light of the memorandum of the Solicitor General, filed June 7, 1972, stating that the prejeopardy dismissal of the indictment was appealable, not to the Court of Appeals, but directly to this Court. See *United States v. International Minerals & Chemical Corp.*, 402 U. S. 558 (1971), and *United States v. Fabrizio*, 385 U. S. 263 (1966). Reported below: 456 F. 2d 278.

No. 71-6536. *GUY v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Motion to recuse presented to MR. JUSTICE BLACKMUN and MR. JUSTICE REHNQUIST by them severally denied. Reported below: 456 F. 2d 1157.

No. 72-19. *WEISS ET AL. v. CITY OF CHICAGO*. Sup. Ct. Ill. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari and reverse judgment. *Coates v. City of Cincinnati*, 402 U. S. 611 (1971). Reported below: 51 Ill. 2d 113, 281 N. E. 2d 310.

No. 72-29. *MATHEWS v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari and reverse judgment. *Lemke v. United States*, 346 U. S. 325 (1953). Reported below: 462 F. 2d 182.

No. 72-134. *McCLURE v. SALVATION ARMY*. C. A. 5th Cir. Motion of National Organization for Women for leave to file a brief as *amicus curiae* granted. Certiorari denied for reason that petition not timely filed. Reported below: 460 F. 2d 553.

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Rehearing Denied

No. 1469, October Term, 1970. HOMART DEVELOPMENT CO. *v.* DIAMOND ET AL., 402 U. S. 988, 404 U. S. 874, 405 U. S. 981. Motion for leave to file third petition for rehearing denied. MR. JUSTICE BLACKMUN would call for a response pursuant to Rule 58 (3).

No. 40, Orig. PENNSYLVANIA *v.* NEW YORK ET AL., 407 U. S. 206 and 223;

No. 68-5006. WRIGHT *v.* BETO, CORRECTIONS DIRECTOR, 408 U. S. 934;

No. 68-5013. SCOLERI *v.* PENNSYLVANIA, 408 U. S. 934;

No. 68-5022. KRUCHTEN *v.* EYMAN, WARDEN, 408 U. S. 934;

No. 68-5023. SMITH *v.* TEXAS, 408 U. S. 934;

No. 69-3. PARK *v.* GEORGIA, 408 U. S. 935;

No. 69-5001. MOORE *v.* ILLINOIS, 408 U. S. 786;

No. 69-5006. SULLIVAN *v.* GEORGIA, 408 U. S. 935;

No. 69-5015. MANOR *v.* GEORGIA, 408 U. S. 935;

No. 69-5026. ROBLES *v.* CALIFORNIA, 406 U. S. 972;

No. 69-5027. CUMMINGS *v.* GEORGIA, 408 U. S. 935;

No. 69-5032. ARKWRIGHT *v.* GEORGIA, 408 U. S. 936;

No. 69-5039. LEE, AKA KING *v.* GEORGIA, 408 U. S. 936;

No. 69-5043. HUFFMAN *v.* BETO, CORRECTIONS DIRECTOR, 408 U. S. 936;

No. 69-5045. THACKER *v.* GEORGIA, 408 U. S. 936;

No. 69-5049. WILLIAMS *v.* GEORGIA, 408 U. S. 936;

No. 70-3. WALKER *v.* GEORGIA, 408 U. S. 936;

No. 70-295. FIRST NATIONAL CITY BANK *v.* BANCO NACIONAL DE CUBA, 406 U. S. 759;

No. 70-303. UNITED STATES *v.* KORMAN ET AL., 406 U. S. 952; and

No. 70-322. IN RE WARREN, 408 U. S. 942. Petitions for rehearing denied.

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- No. 70-5008. *DAVID, AKA DAVIS v. TEXAS*, 408 U. S. 937;
- No. 70-5011. *THAMES v. TEXAS*, 408 U. S. 937;
- No. 70-5022. *TEA v. TEXAS*, 408 U. S. 937;
- No. 70-5024. *FARRELL v. STOVALL ET AL.*, 407 U. S. 901;
- No. 70-5031. *SELLARS v. BETO, CORRECTIONS DIRECTOR*, 408 U. S. 937;
- No. 70-5044. *JACKSON v. BETO, CORRECTIONS DIRECTOR*, 408 U. S. 937;
- No. 70-5064. *JEFFERSON ET AL. v. HACKNEY, COMMISSIONER OF PUBLIC WELFARE, ET AL.*, 406 U. S. 535;
- No. 70-5065. *MILLER v. GEORGIA*, 408 U. S. 938;
- No. 70-5066. *WILLIAMS v. SMITH, WARDEN*, 408 U. S. 938;
- No. 70-5067. *MORALES v. TEXAS*, 408 U. S. 938;
- No. 70-5069. *McKENZIE v. TEXAS*, 408 U. S. 938;
- No. 70-5079. *HENDERSON v. GEORGIA*, 408 U. S. 938;
- No. 71-249. *ORR v. TRINTER ET AL.*, 408 U. S. 943;
- No. 71-308. *UNITED STATES v. BYRUM, EXECUTRIX*, 408 U. S. 125;
- No. 71-473. *WEG v. UNITED STATES*, 406 U. S. 962;
- No. 71-506. *UNITED STATES ET AL. v. MIDWEST VIDEO CORP.*, 406 U. S. 649;
- No. 71-1111. *MUSE v. NORTH CAROLINA*, 406 U. S. 974;
- No. 71-1147. *FORD MOTOR CO. v. ELLIPSE CORP.*, 406 U. S. 948;
- No. 71-1164. *WATTS v. MYLIUS*, 406 U. S. 906;
- No. 71-1206. *DEPUGH v. UNITED STATES*, 407 U. S. 920;
- No. 71-1214. *STEIN v. UNITED STATES*, 408 U. S. 922; and
- No. 71-1227. *MASTROTATARO v. UNITED STATES*, 406 U. S. 967. Petitions for rehearing denied.

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No. 71-1257. *MOORE ET AL. v. UNITED STATES*, 407 U. S. 910;

No. 71-1270. *McKEE v. UNITED STATES*, 407 U. S. 910;

No. 71-1280. *B. FORMAN CO., INC., ET AL. v. COMMISSIONER OF INTERNAL REVENUE*, 407 U. S. 934;

No. 71-1295. *WENGER v. UNITED STATES*, 407 U. S. 920;

No. 71-1307. *SAMUELS v. UNITED STATES*, 407 U. S. 920;

No. 71-1330. *KATZ v. UNITED STATES*, 408 U. S. 923;

No. 71-1379. *WATTS v. TEAGLE ET AL.*, 407 U. S. 920;

No. 71-1383. *POOLEY v. MISSISSIPPI*, 408 U. S. 928;

No. 71-1457. *MONSANTO CO. v. ROHM & HAAS CO.*, 407 U. S. 934;

No. 71-1466. *GORSALITZ v. OLIN MATHIESON CHEMICAL CORP.*, 407 U. S. 921;

No. 71-1549. *BLANKNER v. CITY OF CHICAGO*, 408 U. S. 931;

No. 71-5228. *CURRY v. TEXAS*, 408 U. S. 939;

No. 71-5744. *PHELAN v. BRIERLEY, WARDEN*, 408 U. S. 939;

No. 71-5972. *ESGATE v. ENGLISH, SHERIFF*, 406 U. S. 959;

No. 71-6025. *HOOD v. BURNETT ET AL.*, 405 U. S. 1068;

No. 71-6068. *STANLEY v. TEXAS*, 408 U. S. 939;

No. 71-6158. *FOGGY v. ARIZONA ET AL.*, 407 U. S. 915;

No. 71-6164. *LEVY v. UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF FLORIDA ET AL.*, 406 U. S. 916;

No. 71-6183. *MATTHEWS v. TEXAS*, 408 U. S. 940;

No. 71-6210. *ANSLEY v. GEORGIA*, 408 U. S. 929; and

No. 71-6256. *ALERS v. SUPERIOR COURT OF PUERTO RICO*, 406 U. S. 914. Petitions for rehearing denied.

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- No. 71-6342. *WALTON v. VIRGINIA*, 408 U. S. 925;
No. 71-6344. *QUATTRUCCI v. UNITED STATES*, 406 U. S. 960;
No. 71-6391. *FREEMAN v. UNITED STATES*, 406 U. S. 975;
No. 71-6400. *NASH v. AMERADA HESS CORP. ET AL.*, 406 U. S. 948;
No. 71-6418. *KRIKMANIS v. WHITE, MAYOR OF BOSTON, ET AL.*, 406 U. S. 961;
No. 71-6443. *CLARK v. JOHNSON ET AL.*, 407 U. S. 913;
No. 71-6452. *ECKERT v. CITY OF PHILADELPHIA, PENNSYLVANIA, ET AL.*, 406 U. S. 970;
No. 71-6474. *ERWING v. UNITED STATES*, 407 U. S. 922;
No. 71-6519. *BLAUNER v. UNITED STATES*, 407 U. S. 920;
No. 71-6538. *HUCKABAY v. WOODMANSEE, JUDGE, ET AL.*, 407 U. S. 926;
No. 71-6573. *GERARDI v. UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA ET AL.*, 407 U. S. 919;
No. 71-6578. *PILLIS ET AL. v. GOVERNOR OF VIRGINIA ET AL.*, 407 U. S. 923;
No. 71-6600. *IN RE WAYLAND*, 407 U. S. 924; and
No. 71-6630. *PILLIS ET AL. v. STATE BOARD OF ELECTIONS ET AL.*, 408 U. S. 927. Petitions for rehearing denied.
- No. 68-5008. *MILLER v. MARYLAND*, 408 U. S. 934;
No. 69-5013. *MEFFORD v. WARDEN, MARYLAND PENITENTIARY*, 408 U. S. 935;
No. 69-5025. *KELBACH ET AL. v. UTAH*, 408 U. S. 935; and
No. 70-5046. *JOHNSON v. MARYLAND*, 408 U. S. 937. Motions for leave to file petitions for rehearing denied.

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No. 70-5062. CUNNINGHAM *v.* WARDEN, MARYLAND PENITENTIARY, 408 U. S. 938;

No. 70-5326. ARRINGTON *v.* MARYLAND, 408 U. S. 938;

No. 71-5008. BARTHOLOMEY *v.* MARYLAND, 408 U. S. 938;

No. 71-5192. TULL *v.* WARDEN, MARYLAND PENITENTIARY, 408 U. S. 939;

No. 71-5197. STRONG *v.* MARYLAND, 408 U. S. 939;

No. 71-5689. NACHBAUR *v.* HERMAN, 405 U. S. 931;

No. 71-6109. NEGRON *v.* AGNEW, STATE HOSPITAL DIRECTOR, 406 U. S. 968;

No. 71-6120. SHIELDS *v.* UNITED STATES, 406 U. S. 910;

No. 71-6137. GILMORE *v.* MARYLAND, 408 U. S. 940;

No. 71-6341. DIGGS *v.* UNITED STATES, 406 U. S. 952;

No. 71-6242. BRADLEY *v.* WINGO, WARDEN, 406 U. S. 915;

No. 71-6257. OWINGS *v.* SECRETARY OF THE AIR FORCE, 406 U. S. 926;

No. 71-6480. TILLI *v.* DAVIS ET AL., 407 U. S. 908. Motions for leave to file petitions for rehearing denied.

No. 71-183. AGUA CALIENTE BAND OF MISSION INDIANS ET AL. *v.* COUNTY OF RIVERSIDE, CALIFORNIA, 405 U. S. 933, 1033;

No. 71-5428. LIPSCOMB *v.* UNITED STATES, 404 U. S. 1021, 406 U. S. 911; and

No. 71-5531. LIPSCOMB *v.* WARDEN, ATLANTA PENITENTIARY, ET AL., 404 U. S. 1005, 1064. Motions for leave to file second petitions for rehearing denied.

No. 71-288. LAIRD, SECRETARY OF DEFENSE, ET AL. *v.* TATUM ET AL., 408 U. S. 1. Petition for rehearing denied.*

*[REPORTER'S NOTE: See also *ante*, p. 824.]

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No. 69-5003. *FURMAN v. GEORGIA*;

No. 69-5030. *JACKSON v. GEORGIA*; and

No. 69-5031. *BRANCH v. TEXAS*, 408 U. S. 238. Motion of Committee of State Chief Justices (retired) for leave to file a brief as *amicus curiae* in support of rehearing granted. Petitions for rehearing denied.

No. 70-5039. *FUENTES v. SHEVIN, ATTORNEY GENERAL OF FLORIDA, ET AL.*, 407 U. S. 67. Motion of National Consumer Law Center, Inc., for leave to file a brief as *amicus curiae* in opposition to petitions for rehearing denied. Petitions for rehearing denied. MR. JUSTICE POWELL and MR. JUSTICE REHNQUIST took no part in the consideration or decision of these petitions and this motion.

No. 70-5138. *PARHAM ET AL. v. CORTESE ET AL.*, 407 U. S. 67. Petition for rehearing denied. MR. JUSTICE POWELL and MR. JUSTICE REHNQUIST took no part in the consideration or decision of this petition.

No. 71-315. *DEEPSOUTH PACKING CO., INC. v. LAITRAM CORP.*, 406 U. S. 518. Motion for leave to supplement petition for rehearing granted. Petition for rehearing denied.

No. 71-573. *LAIRD, SECRETARY OF DEFENSE, ET AL. v. NELMS ET AL.*, 406 U. S. 797. Petition for rehearing denied. MR. JUSTICE DOUGLAS took no part in the consideration or decision of this petition.

No. 71-1017. *GRAVEL v. UNITED STATES*; and

No. 71-1026. *UNITED STATES v. GRAVEL*, 408 U. S. 606. Motion to recuse, presented to MR. JUSTICE REHNQUIST, by him denied.* Petition for rehearing denied.

No. 71-1169. *MOBIL OIL CORP. v. MATZEN ET AL.* Petition for rehearing denied. MR. JUSTICE STEWART and MR. JUSTICE POWELL took no part in the consideration or decision of this petition.

*[REPORTER'S NOTE: See also *ante*, p. 839 n. 7.]

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No. 71-1179. AMOCO PRODUCTION CO. *v.* WAECHTER ET AL.;

No. 71-1188. CITIES SERVICE OIL CO. *v.* MATZEN ET AL.; and

No. 71-1326. FEDERAL POWER COMMISSION *v.* MOBIL OIL CORP. ET AL., 406 U. S. 976. Petitions for rehearing denied. MR. JUSTICE STEWART and MR. JUSTICE POWELL took no part in the consideration or decision of these petitions.

No. 71-1232. LANDERMAN ET AL. *v.* COMMISSIONER OF INTERNAL REVENUE, 406 U. S. 967. Motion to dispense with printing petition for rehearing granted. Motion for leave to file petition for rehearing denied.

No. 71-1291. CHANDLER, U. S. DISTRICT JUDGE *v.* BATTISTI, CHIEF JUDGE, U. S. DISTRICT COURT, 406 U. S. 956. Petition for rehearing denied. MR. JUSTICE MARSHALL took no part in the consideration or decision of this petition.

No. 71-1411. LII *v.* SIDA OF HAWAII, INC., ET AL., 408 U. S. 930. Motion to dispense with printing petition for rehearing granted. Petition for rehearing denied.

No. 71-1435. STATE DEPARTMENT OF HEALTH AND REHABILITATIVE SERVICES OF FLORIDA ET AL. *v.* ZARATE ET AL., 407 U. S. 918. Petition for rehearing or in the alternative for clarification of lower court opinion denied.

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 District of Columbia Circuit beginning December 4, 1972, and ending December 8, 1972, 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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Dismissal Under Rule 60

No. 72-273. NORTHERN ACCEPTANCE TRUST 1065 *v.* BRINKERHOFF ET AL. C. A. 9th Cir. Petition for writ of certiorari dismissed under Rule 60 of the Rules of this Court.

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Affirmed on Appeal

No. 71-1447. DAVIDSON, SECRETARY, MARYLAND DEPARTMENT OF EMPLOYMENT AND SOCIAL SERVICES, ET AL. *v.* FRANCIS ET AL. Appeal from D. C. Md. Motion of appellees for leave to proceed *in forma pauperis* granted. Judgment affirmed. Reported below: 340 F. Supp. 351.

No. 71-1547. C & H TRANSPORTATION Co., INC., ET AL. *v.* INTERSTATE COMMERCE COMMISSION; and

No. 72-149. UNITED STATES *v.* INTERSTATE COMMERCE COMMISSION (INTERNATIONAL TRANSPORT, INC., CASE). Affirmed on appeal from D. C. W. D. Mo. Reported below: 337 F. Supp. 985.

No. 71-6774. SIMPSON *v.* OATES ET AL. Affirmed on appeal from D. C. E. D. Cal.

No. 72-25. AMERICAN YEARBOOK Co., INC. *v.* ASKEW, GOVERNOR OF FLORIDA, ET AL. Affirmed on appeal from D. C. M. D. Fla. MR. JUSTICE BRENNAN and MR. JUSTICE WHITE would note probable jurisdiction and set case for oral argument. MR. JUSTICE BLACKMUN took no part in the consideration or decision of this case. Reported below: 339 F. Supp. 719.

No. 72-150. UNITED STATES *v.* INTERSTATE COMMERCE COMMISSION (ACE DORAN HAULING Co. CASE). Affirmed on appeal from D. C. W. D. Pa. MR. JUSTICE DOUGLAS would note probable jurisdiction and set case for oral argument. Reported below: 345 F. Supp. 743.

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Appeals Dismissed

No. 71-1408. AERO MAYFLOWER TRANSIT CO., INC., ET AL. v. UNITED STATES ET AL. Appeal from D. C. S. D. Ind.; and

No. 71-1419. HUTTER ET UX. v. KORZEN. Appeal from Sup. Ct. Ill. Motion to supplement jurisdictional statement in No. 71-1408 granted. Appeals dismissed for failure to docket cases within time prescribed by Rule 13 (1) of the Rules of this Court.

MR. JUSTICE DOUGLAS, dissenting.

These cases, here on appeal, are dismissed by the Court, as being out of time under our Rules. I dissent from that disposition.

We held in *United Public Workers v. Mitchell*, 330 U. S. 75, 84-86, that the Rules of this Court determine the effect of untimely docketing. Only the filing of the notice of appeal is jurisdictional. Docketing is prescribed by Rule 13 (1), and this Court in case after case has in its discretion waived the strictures of that rule. Up to now it has, indeed, been more concerned with disposing of cases as justice may require rather than finding technical ways to avoid decision of knotty questions.

In the *Aero Mayflower Transit Co.* case the three-judge court entered its judgment on December 29, 1971, and Aero Mayflower filed its notice of appeal on February 14, 1972, within the 60-day period prescribed by 28 U. S. C. § 2101 (a) but did not docket its case within the subsequent 60-day period. Instead, it filed its jurisdictional statement on April 28, 1972, 14 days out of time.

In the *Hutter* case the notice of appeal was filed on February 17, 1972, following denial by the Illinois Supreme Court of Hutter's motion to reconsider on January 18, 1972. This was timely under § 2101 (c). Dock-

eting on May 1, 1972, however, did not occur within the period provided by Rule 13 (1), but was 14 days late.

The delay in each of these appeals was much shorter than that which occurred in *Johnson v. Florida*, 391 U. S. 596, where we entertained an appeal that was not docketed until 56 days after the time provided in Rule 13 (1) expired. 391 U. S., at 598 n.

In *Durham v. United States*, 401 U. S. 481 (1971), the Court considered a petition for certiorari in which the opinion of the Court of Appeals was filed on November 12, 1969, rehearing was denied on March 5 1970, and the petition was filed on September 26, 1970. Under Rule 22 (2) that applied in that case, the petition was more than five months out of time. Only MR. JUSTICE BLACKMUN dissented.

Our Rules are only guidelines for litigants and we do disservice to the administration of justice by exalting them as Baron Parke doubtless would have done. Our experience with our Rules shows that lateness in docketing may be due to slow delivery of the mail (which is even worse today than it was 10 years ago), to snowstorms¹ that stop or slow up all traffic, to sickness of

¹ *Teague v. Regional Comm'r of Customs*, 394 U. S. 977, 984, was a case in which a petition for certiorari was filed two days after the 90-day statutory period had elapsed, the delay being caused by a snowstorm. Justice Black wrote in dissent:

"It might be well to imagine for a moment what would have happened if some Senator or Representative had suggested an amendment to 'clarify' the proposed § 2101 (c) by stating that a petition filed after the 90-day period will not be out of time 'when the delay is caused solely by an interruption of the mail service due to snowstorms.' It is conceivable that more than a few members of Congress would consider such an amendment an insult to this Court's intelligence and would feel it unnecessary to lead this Court by the hand on such matters of elementary common sense. It is impossible, however, to believe that any of them would have regarded an amendment to the opposite effect as properly reflecting the purpose of the statute, and yet this opposite amendment, ruling a peti-

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counsel, or to other accidents that make untimely docketing that normally would be on time. Before we penalize litigants for late docketing of appeals we should have a case that shows palpable neglect.²

No. 71-1554. UNITED STATES CHAMBER OF COMMERCE v. FRANCIS ET AL. Appeal from D. C. Md. Motion of appellee Wright for leave to proceed *in forma pauperis* granted. Motion for consolidation with No. 71-1447 [*Davidson v. Francis, supra*] and for other relief denied. Appeal dismissed for want of jurisdiction. Reported below: See 340 F. Supp. 351.

No. 71-6740. LLOYD ET AL. v. THIRD JUDICIAL DISTRICT COURT IN AND FOR SALT LAKE COUNTY. Appeal from Sup. Ct. Utah dismissed, it appearing that the judgment below rests upon an adequate state ground. Reported below: 27 Utah 2d 322, 495 P. 2d 1262.

No. 72-189. KISLEY, TRADING AS FALLS CHURCH HEALTH CENTER, ET AL. v. CITY OF FALLS CHURCH ET AL. Appeal from Sup. Ct. Va. dismissed for want of substantial federal question. Reported below: 212 Va. 693, 187 S. E. 2d 168.

tion out of time under these circumstances, is precisely the amendment that the Court today tacitly engrafts onto § 2101 (c).

"I would not adopt any such pointlessly harsh interpretation of the statute, one that furthers no congressional objective whatsoever and denies litigants their opportunity to seek review in this Court on the basis of atmospheric events wholly beyond their control. This is a return to all the cruel technicalities of common-law pleading, and then some. . . ."

² In many of our cases we have entertained petitions, though docketed after expiration of the time prescribed in our Rules: *Smith v. Mississippi*, 373 U. S. 238; *Arnold v. North Carolina*, 376 U. S. 773; *Mazzie v. United States*, 375 U. S. 32; *Robison v. United States*, 390 U. S. 198; *Nelson v. United States*, 392 U. S. 303; *Fuller v. Alaska*, 393 U. S. 80; *Banks v. California*, 382 U. S. 420; *Long v. Parker*, 384 U. S. 32; *Serio v. United States*, 392 U. S. 305.

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No. 72-5252. *HOWARD v. ALLEN*. Appeal from Sup. Ct. Ohio dismissed for want of substantial federal question. Reported below: 30 Ohio St. 2d 130, 283 N. E. 2d 167.

No. 72-5161. *SAFFIOTI v. UNITED STATES*. Appeal from C. A. 2d Cir. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied.

No. 72-5294. *HILL ET AL. v. ILLINOIS*. Appeal from Sup. Ct. Ill. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied. Reported below: 51 Ill. 2d 418, 283 N. E. 2d 225.

Certiorari Granted—Vacated and Remanded

No. 72-5026. *GAGLIE v. UNITED STATES*. C. A. 9th Cir. Motion for leave to proceed *in forma pauperis* and certiorari granted. Judgment vacated and case remanded for further consideration in light of position presently asserted by the Government.

Miscellaneous Orders

No. A-294 (72-492). *FRIED v. UNITED STATES*. C. A. 2d Cir. Application for continuance of bail and stay of mandate presented to MR. JUSTICE MARSHALL, and by him referred to the Court, denied.

No. A-349. *STONE ET AL. v. MAINE*. Sup. Jud. Ct. Maine. Application for bail presented to MR. JUSTICE DOUGLAS, and by him referred to the Court, denied. Reported below: 294 A. 2d 683.

No. A-360 (72-730). *MARKLE ET AL. v. ABELE ET AL.* D. C. Conn. Application for stay presented to THE CHIEF JUSTICE, and by him referred to the Court, granted. MR. JUSTICE DOUGLAS would deny the application. Reported below: 351 F. Supp. 224.

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No. A-377. BOARD OF EDUCATION OF MEMPHIS CITY SCHOOLS ET AL. *v.* NORTHCROSS ET AL. D. C. W. D. Tenn. Application for stay presented to MR. JUSTICE STEWART, and by him referred to the Court, denied. Reported below: See 341 F. Supp. 583.

No. A-393. SLOBODIAN *v.* NEW JERSEY. Sup. Ct. N. J. Application for bail presented to MR. JUSTICE BRENNAN, and by him referred to the Court, denied.

No. 9, Orig. UNITED STATES *v.* LOUISIANA ET AL. (LOUISIANA BOUNDARY CASE). Motion of State of Louisiana for entry of a supplemental decree (No. 4) as to the United States granted [see *ante*, p. 17]. Motion of the United States for leave to file an account of funds released from impoundment pursuant to supplemental decree (No. 3) of December 20, 1971 [404 U. S. 388], granted. MR. JUSTICE MARSHALL took no part in the consideration or decision of these motions.

No. 58, Orig. AMERICAN PARTY ET AL. *v.* NEW YORK ET AL. Motion for temporary restraining order denied.

No. 70-2. UNITED STATES *v.* 12 200-FT. REELS OF SUPER 8MM. FILM ET AL. (PALADINI, CLAIMANT). Appeal from D. C. C. D. Cal. [Probable jurisdiction noted, 403 U. S. 930.] Motion of First Amendment Lawyers' Assn. for leave to file untimely brief as *amicus curiae* in support of appellees granted. Motion of Joel Hirschhorn for leave to participate in oral argument as *amicus curiae* in support of appellees denied.

No. 70-40. DOE ET AL. *v.* BOLTON, ATTORNEY GENERAL OF GEORGIA, ET AL. Appeal from D. C. N. D. Ga. [Restored to calendar, 408 U. S. 919.] Motion of appellants for leave to present late authorities granted.

No. 72-5238. KOCHER *v.* MARYLAND. Motion for leave to file petition for writ of habeas corpus denied.

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No. 71-653. GIBSON ET AL. v. BERRYHILL ET AL. Appeal from D. C. M. D. Ala. [Probable jurisdiction noted, 408 U. S. 920.] Motion to dispense with printing appendix granted.

No. 71-718. MCGINNIS, CORRECTION COMMISSIONER, ET AL. v. ROYSTER ET AL. Appeal from D. C. S. D. N. Y. [Probable jurisdiction noted, 405 U. S. 986.] Motion to permit G. Jeffery Sorge, Esquire, to argue *pro hac vice* in place of James J. McDonough for appellees granted.

No. 71-1134. ROADEN v. KENTUCKY. Ct. App. Ky. [Certiorari granted, 406 U. S. 905.] Motion of Charles H. Keating, Jr., for leave to file a brief as *amicus curiae* granted. Motion of First Amendment Lawyers' Assn. for leave to file untimely brief as *amicus curiae* in support of petitioner denied. Motion of Joel Hirschhorn for leave to participate in oral argument as *amicus curiae* in support of petitioner denied.

No. 71-1136. TILLMAN ET AL. v. WHEATON-HAVEN RECREATION ASSN., INC., ET AL. C. A. 4th Cir. [Certiorari granted, 406 U. S. 916.] Motion of respondent McIntyre for additional counsel to participate in oral argument granted but motion for additional time for oral argument denied.

No. 71-1192. GOLDSTEIN ET AL. v. CALIFORNIA. App. Dept., Super. Ct. Cal., County of Los Angeles. [Certiorari granted, 406 U. S. 956.] Motions of American Federation of Musicians et al. and Recording Industry Association of America, Inc., for leave to file briefs as *amici curiae* granted.

No. 72-549. SCHOOL BOARD OF RICHMOND, VIRGINIA, ET AL. v. STATE BOARD OF EDUCATION OF VIRGINIA ET AL. C. A. 4th Cir. Motion to advance and for *pendente lite* relief denied. Reported below: 462 F. 2d 1058.

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No. 71-1315. ALEXANDER ET AL. v. VIRGINIA. Sup. Ct. Va. [Certiorari granted, 408 U. S. 921.] Motion of First Amendment Lawyers' Assn. for leave to file untimely brief as *amicus curiae* in support of petitioners granted. Motion of Joel Hirschhorn for leave to participate in oral argument as *amicus curiae* in support of petitioners denied.

No. 72-5038. CHAVEZ ET AL. v. FRESHPICT FOODS, INC., ET AL. C. A. 10th Cir. The Solicitor General is invited to file a brief expressing the views of the United States. Reported below: 456 F. 2d 890.

Probable Jurisdiction Noted

No. 71-1523. HUNT v. MCNAIR, GOVERNOR OF SOUTH CAROLINA, ET AL. Appeal from Sup. Ct. S. C. Probable jurisdiction noted. Reported below: 258 S. C. 97, 187 S. E. 2d 645.

No. 72-75. GEORGIA ET AL. v. UNITED STATES. Appeal from D. C. N. D. Ga. Probable jurisdiction noted. Reported below: 351 F. Supp. 444.

No. 71-1583. BROWN, SECRETARY OF STATE OF CALIFORNIA v. CHOTE. Appeal from D. C. N. D. Cal. Motion of appellee for leave to proceed *in forma pauperis* granted. Probable jurisdiction noted. Reported below: 342 F. Supp. 1353.

Certiorari Granted

No. 71-1005. MICHIGAN v. PAYNE. Sup. Ct. Mich. Motion of respondent for leave to proceed *in forma pauperis* and certiorari granted. Reported below: 386 Mich. 84, 191 N. W. 2d 375.

No. 71-1585. UNITED STATES v. RUSSELL. C. A. 9th Cir. Motion of respondent for leave to proceed *in forma pauperis* and certiorari granted. Reported below: 459 F. 2d 671.

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No. 72-95. *TOLLETT, WARDEN v. HENDERSON*. C. A. 6th Cir. Motion of respondent for leave to proceed *in forma pauperis* and certiorari granted. Reported below: 459 F. 2d 237.

No. 71-6732. *CHAFFIN v. STYNCHCOMBE, SHERIFF*. C. A. 5th Cir. Motion for leave to proceed *in forma pauperis* and certiorari granted. Reported below: 455 F. 2d 640.

Certiorari Denied. (See also Nos. 72-5161 and 72-5294, *supra*.)

No. 71-1566. *BLASECKI ET AL. v. CITY OF DURHAM, NORTH CAROLINA, ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 456 F. 2d 87.

No. 71-1572. *BOWLING ET AL. v. CALIFORNIA*. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 71-1618. *OTTO v. KOSOFSKY ET AL.* Ct. App. Ky. Certiorari denied. Reported below: 476 S. W. 2d 626.

No. 71-1705. *BOMBACINO v. ILLINOIS*. Sup. Ct. Ill. Certiorari denied. Reported below: 51 Ill. 2d 17, 280 N. E. 2d 697.

No. 71-5601. *SWEENEY v. COUNTY OF MONROE ET AL.* Ct. App. N. Y. Certiorari denied.

No. 71-6185. *MALLARD v. OKLAHOMA*. Ct. Crim. App. Okla. Certiorari denied. Reported below: 490 P. 2d 1383.

No. 71-6298. *GABRIELSON v. IOWA*. Sup. Ct. Iowa. Certiorari denied. Reported below: 192 N. W. 2d 792.

No. 71-6326. *BLAKE v. COINER, WARDEN*. C. A. 4th Cir. Certiorari denied.

No. 71-6644. *VANDEBURGH v. NEW YORK*. App. Div., Sup. Ct. N. Y., 4th Jud. Dept. Certiorari denied.

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No. 71-6517. DOTSON *v.* LOUISIANA. Sup. Ct. La. Certiorari denied. Reported below: 260 La. 471, 256 So. 2d 594.

No. 71-6724. PATTERSON *v.* OHIO. Sup. Ct. Ohio. Certiorari denied. Reported below: 28 Ohio St. 2d 181, 277 N. E. 2d 201.

No. 71-6744. BOONE ET AL. *v.* CALIFORNIA. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 71-6739. EVANS *v.* ARKANSAS. C. A. 8th Cir. Certiorari denied.

No. 71-6765. FINCHER *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied. Reported below: 212 Va. 552, 186 S. E. 2d 75.

No. 71-6768. DAVIS *v.* SUPERIOR COURT OF LOS ANGELES COUNTY. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 71-6839. GOMORI *v.* OHIO. Sup. Ct. Ohio. Certiorari denied.

No. 71-6856. SMITH *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied.

No. 71-6872. LOVINGOOD *v.* ROSS, PRISON FARM SUPERINTENDENT. C. A. 4th Cir. Certiorari denied.

No. 71-6898. SMITH *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied.

No. 71-6908. HOLIDAY *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 457 F. 2d 912.

No. 71-6909. PICKERELL *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 71-6923. RONSTADT *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

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No. 71-6925. *HANDLEY ET AL. v. ILLINOIS*. Sup. Ct. Ill. Certiorari denied. Reported below: 51 Ill. 2d 229, 282 N. E. 2d 131.

No. 72-40. *GONZALES v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 461 F. 2d 1000.

No. 72-54. *PLAQUEMINE EQUIPMENT & MACHINE CO. ET AL. v. NEUMAN, DEPUTY COMMISSIONER, BUREAU OF EMPLOYEES' COMPENSATION, U. S. DEPARTMENT OF LABOR*. C. A. 5th Cir. Certiorari denied. Reported below: 460 F. 2d 1241.

No. 72-74. *BARRETT ET AL. v. KUNZIG, ADMINISTRATOR, GENERAL SERVICES ADMINISTRATION, ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: See 331 F. Supp. 266.

No. 72-82. *TOMEIO v. UNITED STATES*. C. A. 10th Cir. Certiorari denied. Reported below: 459 F. 2d 445.

No. 72-118. *KROPKE v. UNITED STATES*;

No. 72-119. *STAPLETON v. UNITED STATES*;

No. 72-120. *KUNZ v. UNITED STATES*;

No. 72-121. *MURPHY v. UNITED STATES*; and

No. 72-128. *STERNKOPF v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 462 F. 2d 1205.

No. 72-131. *GRANT ET AL. v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 462 F. 2d 28.

No. 72-141. *GREENSEID ET AL. v. STEWART, SUPERINTENDENT OF INSURANCE*. Ct. App. N. Y. Certiorari denied. Reported below: 30 N. Y. 2d 730, 284 N. E. 2d 152.

No. 72-142. *RUISI ET AL. v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 460 F. 2d 153.

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No. 72-152. *MING v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 466 F. 2d 1000.

No. 72-153. *GNOSS ET AL. v. YOUNG ET AL.* Sup. Ct. Cal. Certiorari denied. Reported below: 7 Cal. 3d 18, 496 P. 2d 445.

No. 72-156. *ZARATE v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 458 F. 2d 514.

No. 72-168. *ANDERSON v. UNITED STATES*. C. A. 6th Cir. Certiorari denied.

No. 72-183. *CRAWFORD v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 462 F. 2d 597.

No. 72-186. *MUNCHAK v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 460 F. 2d 1407.

No. 72-188. *MARTINEZ-VILLANUEVA ET AL. v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 463 F. 2d 1336.

No. 72-194. *LANDIS TOOL CO., DIVISION OF LITTON INDUSTRIES v. NATIONAL LABOR RELATIONS BOARD*. C. A. 3d Cir. Certiorari denied. Reported below: 460 F. 2d 23.

No. 72-197. *WOMACK, EXECUTOR, ET AL. v. FAIR ET AL.* Sup. Ct. Tenn. Certiorari denied. Reported below: — Tenn. —, 482 S. W. 2d 555.

No. 72-199. *ROMANO v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 460 F. 2d 1198.

No. 72 206. *COLQUITT COUNTY BOARD OF EDUCATION ET AL. v. HARRINGTON ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 460 F. 2d 193.

No. 72-5022. *WRIGHT v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 461 F. 2d 586.

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No. 72-209. *VLAHAKIS v. SCHOSTAK ET AL.* App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 133 Ill. App. 2d 690, 274 N. E. 2d 655.

No. 72-211. *LEWRON TELEVISION, INC. v. UNITED NETWORK, INC., FORMERLY JAYMAC, INC.* C. A. 2d Cir. Certiorari denied. Reported below: 459 F. 2d 556.

No. 72-5033. *BULLARD v. UNITED STATES.* C. A. 5th Cir. Certiorari denied. Reported below: 458 F. 2d 17.

No. 72-5047. *SANDERS v. UNITED STATES.* C. A. 5th Cir. Certiorari denied. Reported below: 469 F. 2d 1406.

No. 72-5062. *HURD v. SLAUGHTER ET AL.* C. A. 9th Cir. Certiorari denied.

No. 72-5071. *VON PERRY v. TEXAS.* C. A. 5th Cir. Certiorari denied. Reported below: 456 F. 2d 879.

No. 72-5077. *SMITH v. NEW JERSEY.* Super. Ct. N. J. Certiorari denied.

No. 72-5085. *JACKSON v. CALIFORNIA.* Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 72-5091. *BENNETT v. RUNDLE, WARDEN, ET AL.* C. A. 3d Cir. Certiorari denied.

No. 72-5094. *DOBBS v. ANDERSON, WARDEN.* C. A. 10th Cir. Certiorari denied.

No. 72-5096. *PATURSO v. MANCUSI, CORRECTIONAL SUPERINTENDENT.* C. A. 2d Cir. Certiorari denied.

No. 72-5103. *WION v. UNITED STATES.* C. A. 10th Cir. Certiorari denied.

No. 72-5104. *WION v. UNITED STATES.* C. A. 10th Cir. Certiorari denied.

No. 72-5108. *BRUDNEY v. UNITED STATES.* C. A. 9th Cir. Certiorari denied. Reported below: 463 F. 2d 376.

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No. 71-1386. OHIO AFL-CIO, UNITED AUTOWORKERS OF OHIO, ET AL. v. INSURANCE RATING BOARD ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 451 F. 2d 1178.

MR. JUSTICE DOUGLAS, dissenting.

I would grant certiorari in this case.

The District Court dismissed petitioners' complaint, which alleged that respondents had engaged in an illegal combination and conspiracy in the fixing of automobile insurance premiums in violation of the Sherman Antitrust Act, 26 Stat. 209, as amended, 15 U. S. C. § 1 *et seq.*, for lack of subject matter jurisdiction due to the exemption of the insurance industry from antitrust laws by § 2 of the McCarran-Ferguson Act, 59 Stat. 34, 15 U. S. C. § 1012.

The McCarran-Ferguson Act provides, in part, that the Sherman Antitrust Act "shall be applicable to the business of insurance to the extent that such business is not regulated by State law." In *FTC v. National Casualty Co.*, 357 U. S. 560, 563, after examining the statute and its legislative history, we held that federal regulation as to advertising practices was prohibited in those States which were regulating such practices under their own laws. We indicated, however, that the grant of exclusive regulatory power to the State would be ineffective if the state statutory provisions which purported to regulate were a "mere pretense" of regulation.

In the instant case the petitioners allege that the state statutory scheme is such a "mere pretense" of regulation. This allegation is based on the following factors: Although rating organizations are required to be examined at least once every five years under the statutory scheme, the state Department of Insurance has examined only two rate bureaus in the last five years, and only six examinations have been conducted in the last 20

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years. The Insurance Rating Board, composed of 129 insurance companies which write approximately 17% of the automobile liability insurance and approximately 22% of the physical damage insurance in the State, is permitted under the statutory scheme to determine the amount of any rate increase and institute that increase at a date picked by it. Review of that determination may occur only upon the challenge of the state Department of Insurance, which has never challenged an increase, and which in fact does not even employ an actuary so as to be able to examine the increase.

A governmental regulatory agency which, in contradiction of a statutory direction, only rarely exercises its examinatory powers; which has never exercised its power of review of rate increases; and which does not even employ the personnel which would be necessary to exercise the power would *prima facie* seem to be no more than a "mere pretense" of regulation. Perhaps a full hearing would show otherwise. But enough has been tendered to make the trial court's dismissal of the complaint improper and this petition a clear grant.

No. 72-5109. *HILL v. GAUVIN ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 457 F. 2d 511.

No. 72-5112. *BRYANT v. UNITED STATES.* C. A. D. C. Cir. Certiorari denied.

No. 72-5113. *ENOCH v. UNITED STATES.* C. A. 5th Cir. Certiorari denied. Reported below: 455 F. 2d 1382.

No. 72-5114. *TREVINO v. UNITED STATES.* C. A. 5th Cir. Certiorari denied.

No. 72-5121. *DONOVAN v. UNITED STATES.* C. A. 2d Cir. Certiorari denied.

No. 72-5122. *WILKE v. UNITED STATES.* C. A. 9th Cir. Certiorari denied. Reported below: 450 F. 2d 877.

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No. 71-1532. CHONGRIS ET AL. v. CORRIGAN ET AL.
Sup. Ct. Ohio. Certiorari denied. Reported below: 29
Ohio St. 2d 39, 278 N. E. 2d 658.

MR. JUSTICE DOUGLAS, dissenting.

In 1946, this Court articulated the standard to be applied in testing flight patterns over private property against the Just Compensation Clause of the Fifth Amendment. *United States v. Causby*, 328 U. S. 256. We held that "the flight of airplanes, which skim the surface but do not touch it, is as much an appropriation of the use of the land as a more conventional entry upon it." We noted that the important factor is whether the intrusion impinges on "the owner's full enjoyment of the property and . . . his exploitation of it." *Id.*, at 264-265. And, in 1962, we reiterated that standard. *Griggs v. Allegheny County*, 369 U. S. 84.

State after State, in the years since *Causby*, has come to the conclusion that airport zoning schemes that impose height restrictions on the use of the land located below the flight paths of approaching and departing aircraft are unconstitutional efforts to avoid the costs properly incident to the use of airport facilities, and that the imposition of such regulations upon private property constitutes a "taking" prohibited by the Constitution. *Yara Engineering Corp. v. Newark*, 132 N. J. L. 370, 40 A. 2d 559 (1945); *Ackerman v. Port of Seattle*, 55 Wash. 2d 400, 348 P. 2d 664 (1960); *Indiana Toll Road Comm'n v. Jankovich*, 244 Ind. 574, 193 N. E. 2d 237 (1963); *Roark v. Caldwell*, 87 Idaho 557, 394 P. 2d 641 (1964); *Jackson Municipal Airport Authority v. Evans*, 191 So. 2d 126 (Miss. 1966); and *Sneed v. County of Riverside*, 218 Cal. App. 2d 205, 32 Cal. Rptr. 318 (1963). Lower Ohio courts agreed. *Hageman v. Bd. of Trustees*, 20 Ohio App. 2d 12, 251 N. E. 2d 507 (Montgomery Co., 1969); 23 Ohio Misc. 93, 259 N. E. 2d 162 (Common Pleas, Montgomery Co., 1968).

Yet a quarter of a century after *Causby*, the Supreme Court of Ohio has sustained the Airport Zoning Statutes contained in Chapter 4563 of the Ohio Revised Code.

It accomplishes this tour de force through the application of *Euclid v. Ambler Realty Co.*, 272 U. S. 365. Reasoning that zoning regulations always involve some restriction on the uses to which land may be put, the court balanced "the loss of use against the benefits to society thus obtained." *Village of Willoughby Hills v. Corrigan*, 29 Ohio St. 2d 39, 46, 278 N. E. 2d 658, 663 (1972). It is a nice question when police power comes to an end as a justification for public taking of private property. Is it when the public at large is benefited at the expense of an owner of private property who has refrained from using his land in a way that is not obnoxious to his neighbors? Arguably eminent domain principles then apply; and, although the public may force upon the property owner the public need for his land, compensation is due him.

The Court's denial of the petition for certiorari in this case suggests that "[w]e are in danger of forgetting that a strong public desire to improve the public condition is not enough to warrant achieving the desire by a shorter cut than the constitutional way of paying for the change." *Pennsylvania Coal Co. v. Mahon*, 260 U. S. 393, 416 (Holmes, J.).

The present case tenders some of the issues present when the government seeks a scenic easement so as to bar the erection of towers or other high structures. We said in *Causby*:

"The path of glide for airplanes might reduce a valuable factory site to grazing land, an orchard to a vegetable patch, a residential section to a wheat field. Some value would remain. But the use of the airspace immediately above the land would limit the utility of the land and cause a diminution in its value." 328 U. S., at 262.

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Whether there has been a diminution in value of petitioners' property is not clear from the present record. Whether the zoning regulations themselves constitute a taking is necessarily involved, as is the question of the appropriate remedy for an aggrieved property owner.

These are all important questions of public importance throughout the country and lead me to conclude that the petition should be granted and the case put down for oral argument.

No. 72-5123. *DAVIS v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 461 F. 2d 83.

No. 72-5127. *LACAZE ET AL. v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 457 F. 2d 1075.

No. 72-5130. *SALAZAR v. NEW MEXICO*. C. A. 10th Cir. Certiorari denied.

No. 72-5131. *LEWIS v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 459 F. 2d 315.

No. 71-1537. *NEBRASKA STATE BOARD OF EDUCATION ET AL. v. SCHOOL DISTRICT OF HARTINGTON, AKA SCHOOL DISTRICT No. 8, CEDAR COUNTY*. Sup. Ct. Neb. Certiorari denied. Reported below: 188 Neb. 1, 195 N. W. 2d 161.

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

I would grant this petition for certiorari and put the case down for oral argument. It involves alleged violations of the First Amendment which are applicable to the States by reason of the Fourteenth Amendment; and the violations, on the papers before us, seem to me to be of the kind that we struck down in *Lemon v. Kurtzman*, 403 U. S. 602.

What happened was this: The school district made application to the State for financial aid in instructing stu-

dents in remedial reading and remedial mathematics. The application stated that the school district was leasing the facilities of the Cedar Catholic High School as a place to conduct this project. The students from both the public school and the private school would attend these classes.

The lease provided that no objects, pictures, or other articles having a religious connotation would be visible in the classroom.

This action was instituted in the Nebraska courts when the state authorities refused to undertake the project. The Supreme Court of Nebraska, by a divided vote, approved the project over the objection that it violated the First Amendment. 188 Neb. 1, 195 N. W. 2d 161. Under the project as approved, state funds will be channeled into this parochial school. In this case, as in *Lemon v. Kurtzman*, the State is supplying funds for instruction in parochial schools leading to a degree of entanglement between government and religion which runs counter to our opinions.

If a State can finance two courses in a parochial school, there is no reason and logic why it cannot finance the teaching and learning of an entire curriculum. In *Sanders v. Johnson*, 403 U. S. 955, we affirmed a district court decision (319 F. Supp. 421) that held invalid a program whereby the State had contracted with parochial schools for the "purchase" by the State of "secular educational services" to be supplied to the children. The contract in that case is different only in scope and in form from the present one. There is no provision in the lease for surveillance of the use of the premises except for making sure that no objects, pictures, or other articles having a religious connotation are present in the classrooms. Yet, those teaching in a parochial school may be members of that faith or under compelling pressures. In light of the command of the First Amendment, the State

in each case must see that all courses of instruction are confined to the "secular" area and do not trench on religious tenets or doctrine. To police this statutory standard would require the exercise of broad powers of surveillance by the State. As stated by the District Court in the *Sanders* case:

"In the present case, the parochial school function which is funded is the entirety of secular 'instruction' itself. In order to confine assistance to this rather amorphous use, the Act would introduce state supervision into virtually every nook and cranny of a school's administration. Perhaps this is logically necessary. If a conscientious public official is to be certain that tax dollars are spent only for activities which are proper secular subcategories of the school's instruction, he must engage in a program of inspecting and monitoring which even the copious specifications of the Act and its open-ended supplementary regulations only begin to suggest." 319 F. Supp., at 431.

The District Court went on to say:

"[T]he detailed plan which the legislature has enacted to separate, purchase, 'promote,' and regulate the contents of secular instruction goes well beyond a theoretical 'subsidy' and brings the potentiality of mutually-damaging involvement to life. Public officials must investigate curricula, materials, and manner of teaching in detail, case by case; oversee the training of teachers; and audit financial records. By doing so, they might disentangle the last thread of religious doctrine from all secular instruction; but by this very process, they would certainly enmesh the state in continuous conflict with churches over the effectiveness with which governmental investigating and policing machinery would be operated." *Id.*, at 432.

The necessity for surveillance is necessarily implied.*

Denial of certiorari here does not appear consistent with our affirmance of *Sanders*. These considerations lead me to vote to take this case and put it down for oral argument so that the entire plan may be carefully examined against the requirements of the First Amendment.

MR. JUSTICE BRENNAN.

The situation, as I see it, is not that portrayed in my Brother DOUGLAS' dissent. Hartington, Nebraska, is a small town¹ where neither the public nor the parochial schools offered remedial reading and remedial mathe-

*That was the view of Chief Justice White, joined by Justice Spencer of the Supreme Court of Nebraska, as stated in his dissenting opinion:

"In summary, it seems to me, over and beyond the other reasons touched on in this dissent, that this act, this scheme, this procedure requires that the state will be amidst the daily affairs of a religious school. It must be remembered that we are not dealing with something as simple as a bus ride, or a textbook, or a mere lease agreement; we have here an innovative program of noble purpose and it carries with it those highly feared risks of conflict and divisiveness which history has shown follow any close proximity between government and religion.

"If this statute, and the state action asked to be taken under it, is constitutionally permissible, then I see no obstruction or impediment to the state and the federal government taking complete and literal control of the contracting schools and making their entire secular curricula part of its public system for all purposes, including the hiring of teachers, the renting of the physical facilities, and perhaps the admission of students. Such action plainly runs afoul of the state and federal Constitutions. We must remember that the real test of constitutionality is not what is actually done under the act but what the act authorizes." 188 Neb. 1, 13, 195 N. W. 2d 161, 168.

¹The population of Hartington, according to the 1970 census, is 1,581. The Hartington public schools had a total enrollment of 572 pupils during the 1969-1970 school year.

matics courses.² The school district decided to avail itself of the benefits of the federally financed courses in such subjects provided under the Federal Elementary and Secondary Education Act of 1965, 79 Stat. 27, and submitted a grant proposal, as required by that Act, adequate to provide the courses for all educationally deprived children within the school district—91 public school and 48 parochial school children. But there was a problem of space because there were no available classrooms in the public schools.³ There were, however, two unused classrooms in the Hartington Cedar Catholic High School and the school district proposed to lease one classroom full time and the second classroom half time at an annual rent of \$200 for the full-time classroom and \$100 for the half-time classroom. The lease provided that the classrooms would be used only for carrying on the project under the Federal Elementary and Secondary Education Act of 1965; that the Hartington School District would have full control over the classrooms and the educational programs; and that no objects, pictures, or other articles having a religious meaning or connotation would be in the classrooms. The lease represented the complete extent of the relations between the school district and the parochial school. There is not the slightest suggestion that this was a subterfuge to make a subsidy to the

² The lease agreement states that:

"[T]he above described project for said courses does not and will not duplicate or replace, either in whole or in part, any course of study in the present curricula of either the public schools or the private schools in Hartington and its environs"

³ The Superintendent of the Hartington Public Schools, in a letter to the State Board of Education, indicated that a consolidation of rural school districts into the Hartington School District had increased total enrollment in Hartington's public schools from 394 students in 1967-1968 to 572 students in 1969-1970. As a consequence, the school district was making preparations to conduct three kindergarten classes in the city auditorium. R. 10.

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parochial school, or anything except an arrangement motivated solely by the lack of space in the public schools. Thus, the school district would have no part whatever in the curriculum of the parochial school either by way of subsidy of its costs through financing of teaching or otherwise. The remedial reading and remedial mathematics courses would operate completely independently of that curriculum and of the Catholic school administration. My Brother DOUGLAS relies on *Sanders v. Johnson*, 403 U. S. 955 (1971), aff'g 319 F. Supp. 421 (Conn. 1970). The situation there is poles apart from this. That was an undisguised subsidy in the form of "purchasing" "secular educational services" from parochial schools and was patently invalid under our decision in *Lemon v. Kurtzman*, *Earley v. DiCenso*, and *Robinson v. DiCenso*, 403 U. S. 602 (1971). I have heretofore expressed my view that the First Amendment does not render unconstitutional "every vestige, however slight, of cooperation or accommodation between religion and government." *Abington School District v. Schempp*, 374 U. S. 203, 294 (1963) (concurring opinion). The accommodation involved in this case would not trespass beyond permissible bounds. For this reason, I join in denying the petition for certiorari.

No. 71-1582. *FELTS v. SEABOARD COAST LINE RAILROAD Co.*; and

No. 72-163. *ADKINS v. KELLY'S CREEK RAILROAD Co.* C. A. 4th Cir. Certiorari denied. MR. JUSTICE POWELL took no part in the consideration or decision in No. 71-1582. Reported below: No. 72-163, 458 F. 2d 26.

MR. JUSTICE DOUGLAS, dissenting.

These cases present recurring problems under § 6 of the Federal Employers' Liability Act, 35 Stat. 66, as amended, 45 U. S. C. § 56.

In No. 72-163, Adkins, an employee, lost a part of his left leg while attempting to repair a broken rail. Kelly's Creek was a carrier by rail wholly owned by Warners Collieries Co., a mining company. The jury returned a verdict for Adkins in the amount of \$117,568.44. The District Court granted a defense motion for judgment *n. o. v.*; and the Court of Appeals affirmed. 458 F.2d 26.

In No. 71-1582, Felts was a Pullman conductor who reported for work on the Seaboard Silver Comet Train out of Richmond, Virginia. He was injured while trying to open the trap door which would allow passengers to leave or to board the car. The jury returned a verdict for Felts which the District Court set aside; and the Court of Appeals affirmed.

These two cases are classic examples of the type of cases memorialized in our many FELA controversies—a page in our history highlighted by *Rogers v. Missouri Pac. R. Co.*, 352 U. S. 500, where we said:

“Under this statute the test of a jury case is simply whether the proofs justify with reason the conclusion that employer negligence played any part, even the slightest, in producing the injury or death for which damages are sought. It does not matter that, from the evidence, the jury may also with reason, on grounds of probability, attribute the result to other causes, including the employee's contributory negligence. Judicial appraisal of the proofs to determine whether a jury question is presented is narrowly limited to the single inquiry whether, with reason, the conclusion may be drawn that negligence of the employer played any part at all in the injury or death. Judges are to fix their sights primarily to make that appraisal and, if that test is met, are bound to find that a case for the jury is made out whether or not the evidence allows the jury a choice of other probabilities. The statute

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expressly imposes liability upon the employer to pay damages for injury or death due 'in whole or in part' to its negligence." *Id.*, at 506-507.

Trial by jury is "part and parcel of the remedy afforded railroad workers" under FELA. *Bailey v. Central Vermont R. Co.*, 319 U. S. 350, 354. The question whether the plaintiff was an employee of the carrier turns on factual elements, to be resolved by the jury under appropriate instructions. *Baker v. Texas & P. R. Co.*, 359 U. S. 227.

In *Felts*, while the conductor was a Pullman employee he was under instructions that "[w]hile on cars, on trains, in stations and yards, or on other railroad property" he was also "subject to instructions of the train conductor and officials of the railroad companies." The Seaboard train conductor had control and supervision over Felts, the Pullman conductor, and had authority to make him perform the assigned duties and to remove him if he did not. In other like situations the question whether an employee of one firm had become in performance of his work an employee of a railroad was a jury question.* We so held in *Baker v. Texas & P. R. Co.*, *supra*, which should be controlling here.

In *Adkins* the defense, sustained by the lower courts, was that the carrier and its insurance company had settled the claim with the employee. Here again the question whether a carrier sued under FELA should be estopped to plead limitations, *Glus v. Brooklyn Eastern District Terminal*, 359 U. S. 231, or has obtained a valid release from the injured employee, *Dice v. Akron, C. & Y. R. Co.*, 342 U. S. 359, is a question for the jury.

*See *Cimorelli v. New York Central R. Co.*, 148 F. 2d 575; *Byrne v. Pennsylvania R. Co.*, 262 F. 2d 906; *Missouri-Kansas-Texas R. Co. v. Hearson*, 422 F. 2d 1037.

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The history of FELA litigation shows how narrow, prejudiced judicial constructions of the Act in time subtly amended it, so as to deprive it of its original beneficent purpose of protecting the men who risk life and limb to keep our rail carriers operating. See *Rogers v. Missouri Pac. R. Co.*, *supra*, at 507-509.

The emasculation that the judiciary made of this important social legislation led eventually to the revision of the Act by Congress in 1939 (*Rogers v. Missouri Pac. R. Co.*, *supra*, at 510) so that litigation under it could start with a new mandate rather than with the crippling construction given by the courts. *Tiller v. Atlantic Coast Line R. Co.*, 318 U. S. 54, 63-68. It was in that tradition that *Rogers*, *Bailey*, *Baker*, *Glus*, and a host of other cases were decided. If the voice of Hugo Black were still heard and heeded, these two cases would be granted and reversed outright. That would be my vote. But at the very least we should put these cases down for argument. Our rejection of them means the start of a dark and disastrous retreat from the humanitarian purposes of this Act of Congress and a renewal of the ancient judicial art of emasculation of remedial legislation.

No. 71-1602. CRAVEN, WARDEN *v.* CARMICAL. C. A. 9th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied.

No. 71-1652. SARNOFF ET AL. *v.* SHULTZ, SECRETARY OF THE TREASURY, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 457 F. 2d 809.

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

Petitioners brought this suit for an injunction against disbursements under certain sections of the Foreign Assistance Act of 1961, 75 Stat. 424, as amended, §§ 510, 610, 614 (a), 22 U. S. C. §§ 2318, 2360, 2364 (a). Re-

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spondents, as agents of the Chief Executive, made the disbursements in pursuit of our military venture in Vietnam.* Their request for a three-judge court was denied, and the Court of Appeals affirmed, 457 F. 2d 809, saying that the complaint tendered a "political question" beyond judicial cognizance.

This would be a difficult case under the regime of *Frothingham v. Mellon*, 262 U. S. 447, whose broad language denied a federal taxpayer standing to challenge the constitutionality of a federal statute. But *Frothingham* was greatly narrowed by our 1968 decision in *Flast v. Cohen*, 392 U. S. 83. *Flast* held that federal taxpayers have standing if the constitutionality of the taxing or spending claims of Art. I, § 8, of the Constitution were squarely involved and if the taxpayer can show that "the challenged enactment exceeds specific constitutional limitations imposed upon the exercise of the congressional taxing and spending power and not simply that the enactment is generally beyond the powers delegated to Congress by Art. I, § 8." *Id.*, at 102-103.

In *Flast* the challenged expenditures were said to have violated the Establishment and Free Exercise Clauses of the First Amendment. Here they are said to contravene the provision in Art. I, § 8, cl. 11, which gives Congress the power to "declare War." No declaration of war has been made respecting Vietnam. Hence the question can be phrased in terms of the constitutionality of the use of funds to pursue a "Presidential war."

The action here, as in *Flast*, is a challenge by federal taxpayers of a violation of a specific constitutional provision. Actions of the Congress and of the Executive Branch are involved here as in *Flast*. The question is

*I have previously filed dissents in various cases tendering this question, the Court having consistently refused to entertain them. See, e. g., *Holmes v. United States*, 391 U. S. 936; *Hart v. United States*, 391 U. S. 956; *McArthur v. Clifford*, 393 U. S. 1002.

therefore no more "political" in this case than in *Flast*.

There has in the past been much confusion over the distinction between a "political" question and one that is "justiciable." We dispelled much of that confusion in *Baker v. Carr*, 369 U. S. 186, 217, when we said:

"It is apparent that several formulations which vary slightly according to the settings in which the questions arise may describe a political question, although each has one or more elements which identify it as essentially a function of the separation of powers. 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."

We added that a bona fide controversy "as to whether some action denominated 'political' exceeds constitutional authority" cannot be rejected by the courts. *Ibid*.

Whether after full argument and deliberation we would hold that this case falls in the category of *Flast v. Cohen* is unknown. But certainly the issue is important and substantial. The provisions in Art. I, § 8, cl. 11, which give Congress, not the President, the power to "declare War" is a specific grant of power that impliedly bars its exercise by the Executive Branch. And the power

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is so pervasive in its reach that it may affect the lives, the property, and the well-being of the entire Nation. Arguably the principles announced in *Flast v. Cohen* control this case.

I would therefore grant the petition and put the case down for oral argument.

No. 72-368. BENSINGER, CORRECTIONS DIRECTOR, ET AL. v. DOSS. C. A. 7th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 463 F. 2d 576.

No. 71-1656. ACHTENBERG v. UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 459 F. 2d 91.

MR. JUSTICE DOUGLAS, dissenting.

I would grant certiorari.

Petitioner was convicted of attempting to destroy "war material" and "war premises" in violation of 18 U. S. C. § 2153 (a). This section makes it a crime "when the United States is at war, or in *times of national emergency as declared by the President* or by the Congress" to willfully destroy or attempt to destroy "any war material, war premises, or war utilities . . ." (Emphasis added.)

A criminal statute which fails to give a person of ordinary intelligence fair notice that his contemplated conduct is forbidden is constitutionally infirm. Predicating criminal liability on conduct engaged in under special circumstances or at certain times is not constitutionally infirm, as long as men of common intelligence are not forced to guess as to a statute's meaning or differ as to its application. Under the terms of the above statute, the defendant is prohibited from doing specific acts at "times of national emergency as declared by the President." The declared national emergency under which petitioner was held to have acted is the 1950

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declaration of President Truman issued in response to the Korean conflict; the resolution by its terms contemplates termination of the emergency only by act of the President or by concurrent resolution of Congress, neither of which has yet been done.

I doubt that many lawyers, let alone laymen, of ordinary intelligence are aware of the continuing effect of the 1950 national emergency declaration. Under these circumstances, it is questionable whether proper notice of possible criminal liability has been afforded to any individual prosecuted under 18 U. S. C. § 2153 (a). The viability of criminal responsibility predicated upon evaluations of current political temperament or outdated presidential proclamations is an important issue worthy of our consideration on the merits.

No. 71-1690. *KRESSE ET AL. v. BUTZ, SECRETARY OF AGRICULTURE*; and

No. 71-1691. *RASMUSSEN, DBA SARIVAL GUERNSEY FARMS v. BUTZ, SECRETARY OF AGRICULTURE*. C. A. 9th Cir. Motion for leave to amend petition in No. 71-1691 granted. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 461 F. 2d 595.

No. 71-6512. *MARCOVICH v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 454 F. 2d 138.

No. 71-6544. *WALLACE v. WARNER, SECRETARY OF THE NAVY, ET AL.* C. A. 9th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 451 F. 2d 1374.

No. 72-81. *VETERANS AND RESERVISTS FOR PEACE IN VIETNAM v. REGIONAL COMMISSIONER OF CUSTOMS, REGION II, ET AL.* C. A. 3d Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 459 F. 2d 676.

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No. 71-6606. *WETTEROFF ET AL. v. GRAND, TRUSTEE*. C. A. 8th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 453 F. 2d 544.

No. 71-6869. *DORADO ET AL. v. KERR, CHAIRMAN, CALIFORNIA ADULT AUTHORITY*. C. A. 9th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 454 F. 2d 892.

No. 72-64. *DEMOULIN ET AL. v. CITY OF DENVER ET AL.* Sup. Ct. Colo. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 177 Colo. 129, 495 P. 2d 203.

No. 72-145. *NOLAND ET AL. v. DESOBRY*. C. A. 6th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari.

No. 72-146. *HUNTER, DBA COURIER v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 459 F. 2d 205.

No. 72-198. *MORTON INTERNATIONAL, INC. v. SOUTHERN PACIFIC TRANSPORTATION Co.* Sup. Ct. Utah. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 27 Utah 2d 256, 495 P. 2d 31.

No. 71-6489. *McLAMORE v. SOUTH CAROLINA ET AL.* Sup. Ct. S. C. Certiorari denied. Reported below: 257 S. C. 413, 186 S. E. 2d 250.

MR. JUSTICE DOUGLAS, dissenting.

I vote to hear this case because of the importance of the question raised.

A prisoner sentenced in the State of South Carolina, in any case in which confinement is the punishment, can be sent (1) to a county to work on its chain gang (if the county maintains one) (2) or in the alternative to the Department of Corrections and then to the local jail

or state penitentiary.¹ Under the statute, an elected official, the County Supervisor, makes the choice. There are no statutory criteria by which he is to make his choice.

Petitioner was sentenced under S. C. Code Ann. § 17-554 and assigned to the chain gang of Richland County, South Carolina. Under the Post Conviction Relief Statute of South Carolina he sought review of two questions: (1) whether the chain gang was cruel and unusual punishment prohibited by the Eighth and Fourteenth Amendments, and (2) whether the sending of certain prisoners to the penitentiary where some rehabilitative services are available and others to the chain gang where none exists is a denial of equal protection of the laws under the Fourteenth Amendment.

On April 28, 1971, the relief in both areas was denied and the decision was affirmed by the Supreme Court of South Carolina, 257 S. C. 413, 186 S. E. 2d 250 (1972). The case is here on certiorari.

The delineation of just what conditions constitute cruel and unusual punishment is not well defined. But we know from *Weems v. United States*, 217 U. S. 349 (1910), that the concept is not rigid but progressive; that it acquires meaning as the public becomes enlightened.

¹ S. C. Code Ann. § 17-554 (1962):

"Able-bodied male convicts to work on county or municipal chain gangs.—In every case in which imprisonment is provided as the punishment, in whole or in part, for any crime, all able-bodied male convicts shall be sentenced to hard labor on the public works of the county in which convicted, if such county maintains a chain gang, without regard to the length of service, and in the alternative to imprisonment in the county jail or State Penitentiary at hard labor. . . . In any case the presiding judge shall have the power, by special order, to direct that any person convicted before him be confined in the State Penitentiary if it is considered unsafe or unwise for such convict to be committed to the county chain gang."

Whether the exclusion of women raises an equal protection claim is not raised by the present petition.

Id., at 378. As Mr. Chief Justice Warren said, "the words of the Amendment are not precise, and . . . their scope is not static. The Amendment must draw its meaning from the evolving standards of decency that mark the progress of a maturing society" *Trop v. Dulles*, 356 U. S. 86, 100-101 (1958).

Does the chain gang fit into our current concept of penology? If not, does it violate the Eighth Amendment? This is an important question never decided by the Court.

The second point is of equal importance. South Carolina creates two classes of prisoners, those who work on the chain gang, and those who are sent to the penitentiary. The latter are under the Department of Corrections and have counseling, psychiatric service, and educational and vocational programs, although no penitentiary has all the programs that are available within the system. Those assigned to the chain gang have none of the rehabilitative services made available by the Corrections Department. As I have said, there are no statutory standards for the County Supervisor to use in determining where each man goes; the decision is entirely within his discretion to treat one type of offender differently from another though the two are in the same class, and though each be found guilty of the same crime and sentenced to serve the same number of years.

A State can, of course, create different classes of prisoners and treat them differently as long as those classes are created for legitimate state aims. And if the basis on which groups so defined bears a reasonable relation to the purpose, the class will survive. See *Gulf, C. & S. F. R. Co. v. Ellis*, 165 U. S. 150, 158. The courts must determine whether the classification is reasonable in light of its purpose. For this Court to refuse to make the decision in this case allows a procedure to exist which

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arguably has many aspects of involuntary servitude for some, while others of the same class are treated in a more enlightened way.²

No. 71-6888. *HADLEY v. ALABAMA*. Sup. Ct. Ala. Certiorari denied. Reported below: 288 Ala. 293, 259 So. 2d 853.

MR. JUSTICE DOUGLAS, dissenting.

I vote to hear this case because I assume that equal protection and due process of law under our Constitution apply to the rich as well as to the poor, to whites as well as to the minorities.¹

In Alabama a certified transcript or sufficient statement of the evidence must be filed within 60 days from the taking of an appeal or from the trial court's ruling on

² *Wilson v. Kelley*, 294 F. Supp. 1005, aff'd *per curiam*, 393 U. S. 266, is not determinative of the present case. The *Wilson* case, so far as material here, only held that work camps are not *per se* unconstitutional, saving, however, a prisoner's right to raise "the question of his own particular treatment as being a violation of his constitutional rights," 294 F. Supp., at 1012. No such question was reached in that case, as only a class action was involved.

For a recent account of the dark chapter resulting from the Court's decisions last century that the paramount duty to protect civil rights rested with the States, not the Federal Government, see Scott, Justice Bradley's Evolving Concept of the Fourteenth Amendment From the Slaughterhouse Cases to the Civil Rights Cases, 25 Rutgers L. Rev. 552 (1971).

¹ In *Johnson v. Committee on Examinations*, 407 U. S. 915, the Court last Term denied a petition for certiorari in a case from Arizona where a white candidate for admission to the Bar claimed discrimination against him as compared with the treatment accorded black candidates. It seems that the passing grade on the Arizona bar examination is 70. Petitioner alleged that he got below 70 and was rejected, while the blacks were admitted whose grades were likewise below 70 and no better than his own. I dissented from the denial of certiorari in that case. Like the present one, it seemed to be a case of reverse discrimination.

a motion for new trial, whichever is later.² Petitioner filed his transcript three days beyond the deadline. The Alabama Court of Criminal Appeals dismissed his appeal as out of time. *Hadley v. State*, 47 Ala. App. 738, 259 So. 2d 853 (1971).

The Supreme Court of the State of Alabama affirmed, with three justices dissenting. *Ex parte Hadley*, 288 Ala. 293, 259 So. 2d 853 (1972). Under the case law of the Supreme Court of Alabama, had petitioner been an indigent, such tardiness would not have prevented appeal. In *Leonard v. State*, 43 Ala. App. 454, 192 So. 2d 461 (1966), the transcript of evidence was filed approximately sixteen days after its due date. The court did not dismiss for tardiness but laid down a new procedure: "[T]his court will not honor requests to strike where a lower court . . . has ordered a free transcript. See Rule 48." *Id.*, at 457, 192 So. 2d, at 463. Such motion to dismiss was also denied in *Brummitt v. State*, 44 Ala. App. 78, 203 So. 2d 133 (1967), where the court allowed a late filing on a showing of indigency the day after defendant's arrest, although no formal adjudication of indigency was ever made.

The question petitioner Hadley raises here and raised in the Alabama Supreme Court below, is whether by case law, a State can give more time for filing of a transcript

² Code of Alabama, Title 7, § 827 (4) (1960):

"The court reporter's certified transcript shall be filed with the clerk within sixty days from the date of the taking of the appeal or within sixty days from the date of the court's ruling on the motion for a new trial, whichever date is later; and any succinct statement of the evidence made in lieu of such transcript, as authorized in section 827 (3) hereof, shall be filed with the clerk within sixty days from the date of the taking of the appeal, or within sixty days from the date of the court's ruling on the motion for a new trial, whichever date is later. Provided, that this period may be extended by the trial court for cause."

for a person without funds than for a person of wealth.³ The exception for indigents was created by Rule 48 of the Supreme Court of Alabama which puts within the court's discretion the power to hear appeals in cases where the transcript filing is late but within time for taking an appeal.⁴ Such was the case here. The spirit of the Rule is a generous and progressive one. Although not written to create classes of appellants, the courts have added that feature. The class is defined by wealth. We have held that a class based on wealth is inherently suspect. *Williams v. Illinois*, 399 U. S. 235 (1970); *Tate v. Short*, 401 U. S. 395 (1971); *Boddie v. Connecticut*, 401 U. S. 371 (1971); *Harper v. Virginia Bd. of Elections*, 383 U. S. 663 (1966). And when a suspect classification is made in such a manner as to impair a fundamental right, the burden on the State to prove a compelling state interest is a heavy one. While there is no constitutional right to appeal, a State may not grant appellate review in such a way as to discriminate between those appellants who are wealthy and those who are poor. *Griffin v. Illinois*, 351 U. S. 12, 18 (1956).

Alabama's law seems to be out of line with that principle. I would therefore grant the petition and put the case down for oral argument.

³ Petitioner obtained private counsel at trial and paid personally for the transcript, but was without counsel on appeal.

⁴ Supreme Court of Alabama Rule 48:

"In cases at law where the court reporter's transcript of the evidence is not filed with the clerk of the circuit court within the time prescribed by law, but is filed within the time for taking an appeal, it will be considered by this court if no objection thereto is presented upon the submission of the cause; and it may be so considered in the discretion of the court, even though the point as to the delay be presented on appeal, unless counsel objecting thereto shall point out, with supporting affidavit, material omissions or defects in such certified transcript which should or would have been the subject of contest before the trial judge; in which latter event the certified transcript is not to be considered."

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No. 72-53. FRANCIS v. UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 457 F. 2d 553.

MR. JUSTICE DOUGLAS, dissenting.

This petition on its face seems to me to be one we should grant and reverse the judgment below on the basis of *Sicurella v. United States*, 348 U. S. 385. At the very least we should put the case down for oral argument.

Petitioner was convicted for failure to report for induction into the Armed Forces in violation of 50 U. S. C. App. § 462 (a) and the Court of Appeals affirmed. 457 F. 2d 553.

When classified as I-A, petitioner requested classification as a conscientious objector. The Board rejected his request on five grounds:

"1. Left Church. Religion is not thoroughly understood.

"2. Appears insincere in his I-O request. Possibly coached.

"3. Could help a wounded man, but wouldn't in battle.

"4. Decision to fill out SSS 150 and apply for I-O status came after he fell behind academically.

"5. Won't take military orders. Appears that he is against taking any orders."

The first reason seems plainly untenable as a ground for denying the I-O classification. Two years earlier petitioner had joined the Church of Christ. But the fact that he left it is irrelevant to his I-O status. His tie to a church is irrelevant to his claim, because purely ethical or moral grounds, though unrelated to any church, are adequate, if sincerely believed. *United States v. Seeger*, 380 U. S. 163; *Welsh v. United States*, 398 U. S. 333.

The third ground is also plainly insufficient. It is true as the Government says that the extent to which petitioner would be willing to help the wounded is relevant as to whether he should be assigned to Class I-A-O for non-

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combatant service. Yet one's objection to all military service may well include even that part of military service that one can serve in a noncombatant capacity. That apparently was the point of petitioner's willingness to help an injured man, except in battle. It underlines his asserted belief that service even in a noncombatant capacity infringes upon his beliefs. The fifth ground stated by the Selective Service Board is really part and parcel of petitioner's asserted objection to all military service.

In *Sicurella v. United States*, 348 U. S., at 392, it was impossible to say on what grounds the Selective Service Board made the classification. One ground being illegitimate, we set aside the conviction, for the integrity of the system demanded that the Board rely on some legitimate ground. We followed that course in *Clay v. United States*, 403 U. S. 698, 703-704, where concededly two of the three grounds on which the Board denied relief were not valid ones. And we noted that, since *Sicurella*, that rule had become the established practice of federal courts, when dealing with the criminal sanction of the Selective Service Laws. *Id.*, at 705.

I see no way to distinguish this case from *Sicurella* and *Clay* and would therefore grant certiorari and reverse. Or, as I said, at the very least we should grant certiorari and put the case down for oral argument.

No. 72-96. MEMPHIS LIGHT, GAS & WATER DIVISION *v.* FEDERAL POWER COMMISSION ET AL. C. A. D. C. Cir. Certiorari denied. MR. JUSTICE POWELL took no part in the consideration or decision of this petition. Reported below: 149 U. S. App. D. C. 238, 462 F. 2d 853.

No. 72-105. CAPITAL ASSISTANCE CORP. *v.* UNITED STATES ET AL. C. A. 9th Cir. Motion to dispense with printing petition granted. Certiorari denied. Reported below: 460 F. 2d 256.

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No. 72-151. *HENDERSON, WARDEN v. FAVRE*. C. A. 5th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. MR. JUSTICE BLACKMUN would grant certiorari. Reported below: 464 F. 2d 359.

No. 72-204. *SOLOMON v. SEABOARD COAST LINE RAILROAD Co.* Sup. Ct. Va. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. MR. JUSTICE POWELL took no part in the consideration or decision of this petition.

No. 72-207. *COLE ET AL. v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. MR. JUSTICE MARSHALL took no part in the consideration or decision of this petition. Reported below: 463 F. 2d 163.

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Miscellaneous Order

No. A-406. *SCOTT v. NEW JERSEY*. Sup. Ct. N. J. Application for stay of execution and enforcement of judgment of conviction presented to MR. JUSTICE BRENNAN, and by him referred to the Court, denied. Reported below: See 62 N. J. 68, 299 A. 2d 66.

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Affirmed on Appeal

No. 70-15. *SWEETENHAM ET AL. v. GILLIGAN, GOVERNOR OF OHIO, ET AL.* Affirmed on appeal from D. C. S. D. Ohio. MR. JUSTICE DOUGLAS, MR. JUSTICE BRENNAN, and MR. JUSTICE MARSHALL would note probable jurisdiction and set case for oral argument. Reported below: 318 F. Supp. 1262.

No. 72-12. *AMOS, SECRETARY OF STATE OF ALABAMA, ET AL. v. SIMS ET AL.* Affirmed on appeal from D. C. M. D. Ala. Reported below: 336 F. Supp. 924; 340 F. Supp. 691.

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No. 70-48. PRATT ET AL. *v.* BEGLEY, SECRETARY OF STATE OF KENTUCKY, ET AL. Affirmed on appeal from D. C. E. D. Ky. MR. JUSTICE DOUGLAS, MR. JUSTICE BRENNAN, and MR. JUSTICE MARSHALL would note probable jurisdiction and set case for oral argument. Reported below: 352 F. Supp. 328.

No. 71-1668. MAYES ET AL. *v.* ELLIS ET AL.; and

No. 71-1684. HILL ET AL. *v.* McKEITHEN, GOVERNOR OF LOUISIANA, ET AL. Affirmed on appeal from D. C. E. D. La. MR. JUSTICE DOUGLAS would note probable jurisdiction and set cases for oral argument. Reported below: 345 F. Supp. 1025.

No. 72-44. FUGATE, STATE HIGHWAY COMMISSIONER *v.* POTOMAC ELECTRIC POWER CO. ET AL. Affirmed on appeal from D. C. E. D. Va. MR. JUSTICE POWELL took no part in the consideration or decision of this case. Reported below: 341 F. Supp. 887.

Appeals Dismissed

No. 71-1625. KIRSTEL *v.* MARYLAND. Appeal from Ct. Sp. App. Md. dismissed for want of substantial federal question. MR. JUSTICE DOUGLAS would note probable jurisdiction and set case for oral argument. Reported below: 13 Md. App. 482, 284 A. 2d 12.

No. 72-180. NATIONAL SMALL SHIPMENTS TRAFFIC CONFERENCE, INC., ET AL. *v.* RINGSBY TRUCK LINES, INC., ET AL. Appeal from D. C. Colo. dismissed for want of jurisdiction.

No. 72-232. BOROUGH OF EAST RUTHERFORD ET AL. *v.* NEW JERSEY SPORTS AND EXPOSITION AUTHORITY ET AL. Appeal from Sup. Ct. N. J. dismissed for want of substantial federal question. MR. JUSTICE DOUGLAS took no part in the consideration or decision of this case. Reported below: 61 N. J. 1, 292 A. 2d 545.

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No. 72-234. THOMPSON ET AL. *v.* KANSAS CITY POWER & LIGHT Co. Appeal from Sup. Ct. Kan. 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 would note probable jurisdiction and set case for oral argument. Reported below: 208 Kan. 869, 494 P. 2d 1092.

Vacated and Remanded on Appeal

No. 71-6627. MARTIN *v.* CITY OF NEW ORLEANS. Appeal from Sup. Ct. La. Motion for leave to proceed *in forma pauperis* granted. Judgment vacated and case remanded for further consideration in light of *Gooding v. Wilson*, 405 U. S. 518 (1972). See *Lewis v. City of New Orleans*, 408 U. S. 913 (1972). THE CHIEF JUSTICE, MR. JUSTICE BLACKMUN, and MR. JUSTICE REHNQUIST dissent for the reasons expressed in the several opinions in *Rosenfeld v. New Jersey*, 408 U. S. 901 (1972); *Lewis v. City of New Orleans*, *supra*; and *Brown v. Oklahoma*, 408 U. S. 914 (1972). MR. JUSTICE POWELL would remand cause for further consideration only in light of *Chaplinsky v. New Hampshire*, 315 U. S. 568 (1942). See concurring opinion in *Lewis v. City of New Orleans*, *supra*. Reported below: 260 La. 691, 257 So. 2d 152.

Certiorari Granted—Vacated and Remanded

No. 72-216. SMILOW *v.* UNITED STATES. C. A. 2d Cir. On representation of the Solicitor General, set forth in his Memorandum for the United States, filed September 28, 1972, certiorari granted. Judgment vacated and case remanded for further consideration in light of position presently asserted by the Government. Reported below: 465 F. 2d 802.

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Miscellaneous Orders

No. A-263. OXNARD SCHOOL DISTRICT BOARD OF TRUSTEES ET AL. *v.* SORIA ET AL. C. A. 9th Cir. Application for stay presented to MR. JUSTICE POWELL, and by him referred to the Court, denied. Reported below: 467 F. 2d 59.

No. A-419 (72-618). AMERICAN PARTY OF FLORIDA ET AL. *v.* ASKEW, GOVERNOR OF FLORIDA, ET AL. D. C. N. D. Fla. Application for stay presented to MR. JUSTICE POWELL, and by him referred to the Court, denied.

No. 71-485. GOTTSCHALK, ACTING COMMISSIONER OF PATENTS *v.* BENSON ET AL. C. C. P. A. [Certiorari granted, 405 U. S. 915.] Motion of Computer Software Analysts, Inc., et al. for leave to file an untimely brief as *amici curiae* granted. MR. JUSTICE STEWART, MR. JUSTICE BLACKMUN, and MR. JUSTICE POWELL took no part in the consideration or decision of this motion.

No. 71-1051. PARIS ADULT THEATRE I ET AL. *v.* SLATON ET AL. Sup. Ct. Ga. [Certiorari granted, 408 U. S. 921.] Motion of Charles H. Keating, Jr., for leave to file an untimely brief as *amicus curiae* in support of respondent granted.

No. 71-1082. ASKEW, GOVERNOR OF FLORIDA, ET AL. *v.* AMERICAN WATERWAYS OPERATORS, INC., ET AL. Appeal from D. C. M. D. Fla. [Probable jurisdiction noted, 405 U. S. 1063.] Motion of American Bar Assn. for leave to file a brief as *amicus curiae* granted.

No. 71-1178. GULF STATES UTILITIES CO. *v.* FEDERAL POWER COMMISSION ET AL. C. A. D. C. Cir. [Certiorari granted, 406 U. S. 956.] Motion of American Public Power Assn. for leave to file a brief as *amicus curiae* granted.

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No. 71-1119. INDIANA EMPLOYMENT SECURITY DIVISION ET AL. *v.* BURNEY. Appeal from D. C. N. D. Ind. [Probable jurisdiction noted, 406 U. S. 956.] Motions of National Employment Law Project et al., and American Federation of Labor and Congress of Industrial Organizations for leave to file briefs as *amici curiae* granted.

No. 71-1193. UNITED STATES *v.* ENMONS ET AL. Appeal from D. C. E. D. La. [Probable jurisdiction noted, 406 U. S. 916.] Motion of American Newspaper Publishers Assn. for leave to file a brief as *amicus curiae* granted.

No. 71-1585. UNITED STATES *v.* RUSSELL. C. A. 9th Cir. [Certiorari granted, *ante*, p. 911.] Motion for appointment of counsel granted. It is ordered that Thomas H. S. Brucker, Esquire, of Seattle, Washington, be, and he is hereby, appointed to serve as counsel for respondent in this case.

No. 72-243. CLEAN AIR COORDINATING COMMITTEE *v.* ROTH ADAM FUEL CO. ET AL. C. A. 7th Cir. The Solicitor General is invited to file a brief expressing the views of the United States. Reported below: 465 F. 2d 323.

No. 72-160. DURST *v.* UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT. Motions to dispense with printing petition and for leave to use record in No. 72-42 [*Durst v. National Casualty Co., Inc., infra*] granted. Motion for leave to file petition for writ of certiorari denied.

No. 72-136. DURST *v.* UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT ET AL. Motion to dispense with printing petition for writ of mandamus granted. Motion for leave to file petition for writ of mandamus and other relief denied.

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No. 72-159. *DURST v. UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT ET AL.* Motions to dispense with printing petition for writ of mandamus and for leave to use record in No. 72-42 [*Durst v. National Casualty Co., Inc., infra*] granted. Motion for leave to file petition for writ of mandamus and other relief denied.

No. 72-5185. *FAIR v. ROBERTS, CHIEF JUSTICE, SUPREME COURT OF FLORIDA, ET AL.* Motion for leave to file petition for writ of prohibition and/or mandamus denied.

Probable Jurisdiction Noted

No. 71-1623. *BULLOCK, SECRETARY OF STATE OF TEXAS v. WEISER ET AL.* Appeal from D. C. N. D. Tex. Motion to dispense with printing motion to dismiss or affirm granted. Probable jurisdiction noted.

Certiorari Granted

No. 71-1545. *BUTZ, SECRETARY OF AGRICULTURE, ET AL. v. GLOVER LIVESTOCK COMMISSION CO., INC.* C. A. 8th Cir. Certiorari granted. Reported below: 454 F. 2d 109.

No. 71-1553. *GILLIGAN, GOVERNOR OF OHIO, ET AL. v. MORGAN ET AL.* C. A. 6th Cir. Certiorari granted. Reported below: 456 F. 2d 608.

No. 72-178. *STRUCK v. SECRETARY OF DEFENSE ET AL.* C. A. 9th Cir. Certiorari granted. Reported below: 460 F. 2d 1372.

No. 72-90. *UNITED STATES v. CHICAGO, BURLINGTON & QUINCY RAILROAD Co.* Ct. Cl. Certiorari granted. MR. JUSTICE POWELL took no part in the consideration or decision of this petition. Reported below: 197 Ct. Cl. 264, 455 F. 2d 993.

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Certiorari Denied. (See also No. 72-234, *supra*.)

No. 71-1502. FITZHARRIS, CONSERVATION CENTER SUPERINTENDENT *v.* BLAYLOCK. C. A. 9th Cir. Certiorari denied. Reported below: 455 F. 2d 462.

No. 71-1536. CENTRAL GULF STEAMSHIP CORP. *v.* DENNIS ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 453 F. 2d 137.

No. 71-1558. KANTNER ET AL. *v.* HAWAII. Sup. Ct. Haw. Certiorari denied. Reported below: 53 Haw. 327, 493 P. 2d 306.

No. 71-1675. ADAM *v.* ILLINOIS. Sup. Ct. Ill. Certiorari denied. Reported below: 51 Ill. 2d 46, 280 N. E. 2d 205.

No. 71-6826. BAILEY *v.* NORTH CAROLINA. Sup. Ct. N. C. Certiorari denied. Reported below: 280 N. C. 264, 185 S. E. 2d 683.

No. 71-6844. JACKSON *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 72-176. STEVENS *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 461 F. 2d 317.

No. 72-181. J. RAY McDERMOTT & Co., INC. *v.* THE MORNING STAR ET AL.; and

No. 72-229. FISH MEAL CO. ET AL. *v.* J. RAY McDERMOTT & Co., INC. C. A. 5th Cir. Certiorari denied. Reported below: 457 F. 2d 815.

No. 72-182. JIFFY JUNE FARMS, INC., ET AL. *v.* COLEMAN ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 458 F. 2d 1139.

No. 72-184. RAIMONDI *v.* MARYLAND. Ct. App. Md. Certiorari denied. Reported below: 265 Md. 229, 288 A. 2d 882.

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No. 72-192. *BUFFALO CAB CO., INC. v. NATIONAL LABOR RELATIONS BOARD*. C. A. 5th Cir. Certiorari denied. Reported below: 458 F. 2d 499.

No. 72-201. *STEIN v. CLEVELAND BAR ASSN.* Sup. Ct. Ohio. Certiorari denied. Reported below: 29 Ohio St. 2d 77, 278 N. E. 2d 670.

No. 72-208. *CARSON v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 464 F. 2d 424.

No. 72-215. *REDERI A/B SOYA ET AL. v. EVERGREEN MARINE CORP., S. A., ET AL.* C. A. 4th Cir. Certiorari denied.

No. 72-219. *COOK v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 461 F. 2d 906.

No. 72-222. *LOUISVILLE & NASHVILLE RAILROAD CO. v. KENTUCKY EX REL. LUCKETT, COMMISSIONER OF REVENUE*. Ct. App. Ky. Certiorari denied. Reported below: 479 S. W. 2d 15.

No. 72-224. *TANNER ET AL. v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 47 F. 2d 128.

No. 72-225. *RODULFA ET AL. v. UNITED STATES ET AL.* C. A. D. C. Cir. Certiorari denied. Reported below: 149 U. S. App. D. C. 154, 461 F. 2d 1240.

No. 72-226. *ANDERSON ET AL. v. CALIFORNIA ET AL.* C. A. 9th Cir. Certiorari denied.

No. 72-228. *BANK OF AMERICA NATIONAL TRUST & SAVINGS ASSN. v. UNITED STATES*. Ct. Cl. Certiorari denied. Reported below: 198 Ct. Cl. 263, 459 F. 2d 513.

No. 72-236. *BUDZANOSKI ET AL. v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 462 F. 2d 443.

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No. 72-233. *LEBMAN v. UNITED STATES*. C. A. 5th Cir. Certiorari denied.

No. 72-237. *RUSCH v. ILLINOIS*. App. Ct. Ill., 2d Dist. Certiorari denied. Reported below: 3 Ill. App. 3d 500, 278 N. E. 2d 198.

No. 72-241. *BROTHERHOOD OF LOCOMOTIVE FIREMEN & ENGINEMEN, NOW UNITED TRANSPORTATION UNION v. INDIANA HARBOR BELT RAILROAD Co.* C. A. 7th Cir. Certiorari denied. Reported below: 458 F. 2d 1077.

No. 72-244. *OCCIDENTAL PETROLEUM CORP. ET AL. v. BUTTES GAS & OIL Co. ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 461 F. 2d 1261.

No. 72-248. *ALGA, INC., DBA MONTGOMERY BOOK MART, ET AL. v. CROSLAND ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 459 F. 2d 1038.

No. 72-249. *CITY OF AKRON v. VILLAGE OF MIDDLEFIELD ET AL.* Sup. Ct. Ohio. Certiorari denied.

No. 72-367. *ESSLING ET AL. v. BRUBACHER, COMMISSIONER OF ADMINISTRATION OF MINNESOTA*. C. A. 8th Cir. Certiorari denied.

No. 72-5069. *KIER v. UNITED STATES*. C. A. 9th Cir. Certiorari denied.

No. 72-5116. *REYNOLDS v. WAINWRIGHT, CORRECTIONS DIRECTOR*. C. A. 5th Cir. Certiorari denied. Reported below: 460 F. 2d 1026.

No. 72-5135. *WILCYNSKI v. ARIZONA*. Sup. Ct. Ariz. Certiorari denied.

No. 72-5136. *WEBSTER v. NEW YORK*. Ct. App. N. Y. Certiorari denied.

No. 72-5143. *SINCLAIR v. LOUISIANA*. C. A. 5th Cir. Certiorari denied.

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No. 72-5137. *SCHARBROUGH v. CUPP, WARDEN*. Sup. Ct. Ore. Certiorari denied. Reported below: See 7 Ore. App. 596, 490 P. 2d 529.

No. 72-5141. *BENNETT v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 461 F. 2d 848.

No. 72-5144. *THOMAS v. UNITED STATES*. C. A. 5th Cir. Certiorari denied.

No. 72-5147. *BENG-JOC, AKA LEE ET AL. v. UNITED STATES*. C. A. 2d Cir. Certiorari denied.

No. 72-5148. *ROCHE v. UNITED STATES*. C. A. 2d Cir. Certiorari denied.

No. 72-5149. *ROCHE v. UNITED STATES*. C. A. 2d Cir. Certiorari denied.

No. 72-5150. *GARCIA-TURINO v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 458 F. 2d 1345.

No. 72-5154. *BISHOP, AKA SPEER v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 462 F. 2d 127.

No. 72-5155. *PARIS ET AL. v. FOREMAN, U. S. DISTRICT JUDGE*. C. A. 7th Cir. Certiorari denied.

No. 72-5158. *SIKES ET AL. v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 463 F. 2d 540.

No. 72-5159. *HARRIS v. UNITED STATES*. C. A. 9th Cir. Certiorari denied.

No. 72-5160. *HAWK v. MICHIGAN*. Sup. Ct. Mich. Certiorari denied.

No. 72-5164. *TYLER v. UNITED STATES*. C. A. 10th Cir. Certiorari denied. Reported below: 459 F. 2d 647.

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No. 72-5163. *JOHNSON v. UNITED STATES*. C. A. D. C. Cir. Certiorari denied. Reported below: 151 U.S. App. D. C. 162, 466 F. 2d 333.

No. 72-5165. *DZIALAK v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 463 F. 2d 221.

No. 72-5166. *HILL v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 463 F. 2d 235.

No. 72-5167. *PIERCE v. GEORGIA*. C. A. 5th Cir. Certiorari denied.

No. 72-5169. *LINCOLN v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 462 F. 2d 1368.

No. 72-5171. *SIBONGA v. ADMINISTRATOR OF VETERANS AFFAIRS*. Ct. App. D. C. Certiorari denied.

No. 72-5172. *STEAD v. UNITED STATES*. C. A. 8th Cir. Certiorari denied.

No. 72-5173. *WADDELL v. NORTH CAROLINA*. C. A. 4th Cir. Certiorari denied.

No. 72-5174. *GODIN v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 464 F. 2d 116.

No. 72-5176. *TRIBBLET v. SALISBURY, CORRECTIONAL SUPERINTENDENT*. C. A. 6th Cir. Certiorari denied.

No. 72-5177. *JOHNSON v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 462 F. 2d 608.

No. 72-5178. *DELUCIA v. NEW JERSEY*. Super. Ct. N. J. Certiorari denied.

No. 72-5181. *LANE v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 461 F. 2d 343.

No. 72-5189. *BURKLEY v. SLAYTON, PENITENTIARY SUPERINTENDENT*. C. A. 4th Cir. Certiorari denied.

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No. 71-1487. CONFEDERATION LIFE INSURANCE CO. v. DE LARA ET AL. Sup. Ct. Fla. Certiorari denied. Reported below: 257 So. 2d 42.

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

I dissent from the Court's refusal to grant certiorari to consider whether the Florida Supreme Court's choice of law in this action on a life insurance contract deprived petitioner of due process under the Fourteenth Amendment and the principles established in *Home Insurance Co. v. Dick*, 281 U. S. 397 (1930).

Petitioner, a Canadian insurance company, issued a policy of life insurance in 1938 to German Lopez Sanchez, who was a citizen and resident of Cuba until his death in 1962. The policy provided that all payments would be made in United States dollars, which were then recognized as one of two legal currencies in Cuba. But on June 30, 1951, the Government of Cuba suspended the legal tender status of the dollar and decreed that all previously contracted dollar obligations would henceforth be payable exclusively in Cuban pesos at the rate of one peso per dollar. Petitioner concluded that the decree automatically converted the policy from dollars to pesos, and on July 1, 1951, it notified the insured that

"[a]ll premiums payable in accordance with this policy as well as all other liabilities contracted under the same and in which a reference is made to American currency, will from now on be payable in Cuban National currency, at par, in accordance with Law No. 13 of 1948 and Decree No. 1384 of April 1951."

The insured declined to terminate the policy in light of this notification, and made all subsequent payments entirely in pesos. By legislation in 1959 and 1961 the Cuban Government reconfirmed the 1951 decree and provided criminal penalties for its violation. Petitioner

maintains peso reserves in Cuba precisely for the purpose of meeting its obligations under this and similar contracts, but it is barred by the Cuban currency laws from transferring those funds outside of Cuba. Under Cuban law it thus seems clear that petitioner was obligated to pay the benefits due under the policy only in Cuba and only in pesos.

Nevertheless, in this suit brought by respondents, beneficiaries of the insured who are now living in Florida, the Supreme Court of Florida held that petitioner's obligations under the contract should be determined according to Florida law. And applying the law of that State, the court concluded that petitioner was obligated to pay the benefits in Florida and in United States dollars. *De Lara v. Confederation Life Assn.*, 257 So. 2d 42 (Fla. 1971).

Whether the state court correctly applied its own substantive law is, of course, not in issue here. We are concerned only with the state court's choice of law. Petitioner maintains that the Due Process Clause of the Fourteenth Amendment precludes a State from altering "substantive obligations arising out of a foreign transaction having no significant relation to the state." The general validity of that proposition is clearly established by *Dick, supra*, where we held that the State of Texas was "without power to affect the terms of the contracts" since "[a]ll acts relating to the making of the policy were done in Mexico." In an opinion by Mr. Justice Brandeis, the Court held that the attempt by the Texas courts "to impose a greater obligation than that agreed upon and to seize property in payment of the imposed obligation violates the guaranty against deprivation of property without due process of law." 281 U. S., at 408.

In *Clay v. Sun Insurance Office*, 377 U. S. 179 (1964), we reaffirmed by implication the validity of *Dick*, but

concluded that, on the particular facts of that case, the forum State could reasonably apply its own law. We distinguished *Dick* and *Hartford Accident & Indem. Co. v. Delta & Pine Land Co.*, 292 U. S. 143 (1934), on the grounds that in the latter the relationship of the forum State to the transaction was too slight and casual to permit application of local law, and in the former the relationship was "wholly lacking." 377 U. S., at 181-182. The question, therefore, is whether this case is controlled by *Dick* and *Delta & Pine Land Co.* or by *Clay*. In my view, the facts of this case warrant plenary review by this Court of the question whether the obligation of the parties is governed by Cuban law. Florida has no relationship to the insurance policy at issue here. The deceased lived in Cuba until his death in 1962. All premiums were paid in Cuba. And assets held in reserve to meet the insurer's obligations were also maintained in Cuba. Measured under any reasonable choice-of-law test, these facts argue forcefully against the application of Florida law.

Respondents maintain, however, that even if the Florida Supreme Court erred in applying Florida law, the court could properly have applied the law of Canada and reached the same result. As a statement of Canadian law, respondents cite the decision of the Supreme Court of Canada in *Imperial Life Assurance Co. of Canada v. Colmenares*, 1967 Can. L. Rep. 443. And they point out that the Florida trial court, reasoning that the contract was made in Toronto, Canada, and that the *lex loci contractus* was Canadian law, applied the decision in *Colmenares* as an alternative basis for its decision. Petitioner's head office is, of course, located in Toronto. But the conclusion of the trial court flies in the face of the undisputed fact that the policy was negotiated in Cuba and became effective there; that it was to be performed in Cuba; that premiums were to be paid there;

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that it was drafted in Spanish and in conformance with Cuban law; that it was issued through petitioner's Havana office and was notarized there. It may well be that on this record the Florida Supreme Court perceived no basis for the conclusion that the contract was in any sense "made" in Canada.

In any case, the short answer to respondents' contention is that the Florida Supreme Court relied on Florida law—and Florida law alone—in disposing of the case. The court declined to comment on the trial court's alternative holding, and rested its decision squarely and exclusively on *Confederation Life Assn. v. Vega*, 207 So. 2d 33 (Fla. Dist. Ct. App.), aff'd, 211 So. 2d 169 (Fla.), cert. denied, 393 U. S. 980 (1968), where it had applied Florida law to determine the obligations of an insurer under a contract issued to a Cuban. Thus, there is a substantial question whether the only asserted basis of the decision of the Florida Supreme Court—application of Florida law—was erroneous under the Due Process Clause of the Fourteenth Amendment. And since the Government of Canada has represented to us that the decision of the Florida court has significant international ramifications, considerations of comity provide an additional and forceful reason for granting the petition for certiorari and setting the case for oral argument.

No. 72-5190. *WOMACK v. CRAVEN, WARDEN*. C. A. 9th Cir. Certiorari denied.

No. 72-5191. *GREGORY v. UNITED STATES*. C. A. 1st Cir. Certiorari denied. Reported below: 463 F. 2d 600.

No. 71-6679. *ALMOND v. SLAYTON, PENITENTIARY SUPERINTENDENT*. C. A. 4th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari.

No. 72-148. *ROTHMAN ET AL. v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 463 F. 2d 488.

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No. 71-1645. *WEAVER ET UX. v. HUTSON, TRUSTEE IN REORGANIZATION*. C. A. 4th Cir. Certiorari denied. Reported below: 459 F. 2d 741.

MR. JUSTICE WHITE, dissenting.

Section 70 (b) of the Bankruptcy Act provides in part:

"[A]n express covenant [in a lease] that an assignment by operation of law or the bankruptcy of a specified party thereto or of either party shall terminate the lease or give the other party an election to terminate the same is enforce[ea]ble." 11 U. S. C. § 110 (b).

In *Finn v. Meighan*, 325 U. S. 300 (1945), the Court held § 70 (b) fully applicable in c. X reorganization proceedings despite arguments that enforcement of forfeiture clauses could deprive the debtor of property vital to the continuance of the business and so defeat the very purpose of the reorganization proceedings.* The Court said:

"There is some suggestion, however, that that provision is applicable only in ordinary bankruptcy proceedings and not to reorganizations under Ch. X. It is pointed out that frequently the value of enterprises is greatly enhanced by leases on strategic

*The petitioner argued, Brief for Petitioner in No. 953, O. T. 1944, pp. 4-5, 11:

"The fundamental purpose of Chapter X of that Act would in many cases be thwarted if valuable, and often vital, assets were lost by the very fact of the institution of reorganization proceedings designed to conserve the debtor's property. . . . In innumerable instances, corporate contracts, including leases, constitute assets which, in many cases, are vital to the continuance of the business. Many such corporate contracts contain clauses of the type involved herein. If the decision in the instant case of the Circuit Court of Appeals for the Second Circuit should in such situations be followed, the very filing and approval of the petition for reorganization would immediately operate to cancel such executory contracts and thus defeat in large part the very purpose of the reorganization proceedings"

premises and that if forfeiture clauses were allowed to be enforced, reorganization plans might be seriously impaired. But Congress has made the forfeiture provision of § 70 applicable to reorganization proceedings under Ch. X. . . . Thus we must read § 70 (b) as providing that an express covenant is enforceable which allows the lessor to terminate the lease if a petition to reorganize the lessee under Ch. X is approved. Cf. *In re Walker*, 93 F. 2d 281. That being the policy adopted by Congress, our duty is to enforce it." 325 U. S., at 302-303.

In the case before us the Court of Appeals for the Fourth Circuit refused to apply § 70 (b) in a reorganization proceeding and to enforce a termination provision in a lease, because to do so, in its opinion, would emasculate the reorganization plan. The Court of Appeals relied on *Smith v. Hoboken R. Co.*, 328 U. S. 123 (1946), where this Court held that § 70 (b) did not require recognition of a forfeiture provision in the context of a railroad reorganization under § 77 because the forfeiture would deprive the Interstate Commerce Commission of its statutory function. The Court was careful to distinguish *Finn*:

"*Finn v. Meighan*, *supra*, involved the forfeiture of a lease in reorganization proceedings under Ch. X. But the problem there was not complicated by any provisions of Ch. X giving to an administrative agency the functions entrusted to the Interstate Commerce Commission under § 77. As we stated in *Palmer v. Massachusetts*, 308 U. S. 79, 87, ' . . . the whole scheme of § 77 leaves no doubt that Congress did not mean to grant to the district courts the same scope as to bankrupt roads that they may have in dealing with other bankrupt estates.'" 328 U. S., at 133 n. 5.

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Because the decision of the Court of Appeals appears to depart from the views of the Court expressed in *Finn*, I would grant the petition for certiorari and set the case for argument.

No. 71-6518. MARTINEZ *v.* MANCUSI, CORRECTIONAL SUPERINTENDENT. C. A. 2d Cir. Certiorari denied. Reported below: 455 F. 2d 705.

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

I dissent. I think petitioner's guilty plea entered in New York state court was clearly involuntary, particularly after our decision last Term in *Santobello v. New York*, 404 U. S. 257 (1971).

On October 23, 1968, petitioner was charged in an indictment returned in New York state court with one count of criminally selling a dangerous drug in the second degree¹ and one count of criminally selling a dangerous drug in the third degree.² In November 1968, a second indictment was returned against petitioner in state court charging him with a single count of criminally selling a dangerous drug in the third degree. Prior to the 1969 amendments of the New York Penal Law, criminally selling a dangerous drug in the second degree was punishable by a maximum of 15 years' imprisonment, while the maximum sentence under a third-degree charge was seven years' imprisonment.³ At arraignment, petitioner pleaded not guilty to all the charges; the case was set for trial.

On February 17, 1969, the State moved for trial. Before the proceedings commenced, the prosecutor, the defense counsel, and the trial judge met in the judge's

¹ N. Y. Penal Law § 220.35 (Supp. 1972-1973).

² N. Y. Penal Law § 220.30 (Supp. 1972-1973).

³ See N. Y. Penal Law § 70.00, subds. 2 (c)-(d) (1967).

chambers—in the absence of the petitioner—to discuss the case. When the case was subsequently called for disposition, the prosecutor began by stating that he understood petitioner wished to withdraw his earlier pleas of not guilty and to “enter a plea of guilty to the second count of [the October 23 indictment] . . . charging [him] with the crime of Criminally Selling a Dangerous Drug in the Third Degree.” At this point the court interrupted the prosecutor and the following exchange occurred:

“The Court: Wait a minute. Third Degree?”

“[Prosecutor]: The second count, your Honor, of [the first indictment].

“[Defense Counsel]: There are two counts of Second Degree and one of Third Degree.

“The Court: That is not what I understood.

“(Whereupon a conversation was had off the record).

“The Court: . . . [A]s far as I am concerned, it may be that two indictments were to be disposed of through one plea, but it was not a plea to Selling a Dangerous Drug in the Third Degree. That was no part of our talk.

“[Defense Counsel]: It was this afternoon, Judge.

“The Court: It was not part of our talk.”

Unable to obtain the plea he had expected, defense counsel requested a one-day adjournment because he was “not prepared to go to trial.”

“The Court: The case will proceed to trial or disposition right now.

“[Defense Counsel]: . . . This case was answered ready by my office at the February calendar, but I was not informed until this morning that we were proceeding. And I would again respectfully request

that the court grant me until at least tomorrow morning.

"The Court: Application denied."

When the defense counsel subsequently turned to the prosecutor—the same prosecutor who only a moment before had stated in open court that he understood the defendant wished to change his pleas of not guilty to a plea of guilty to the third degree charge—for assistance in clearing up the confusion, the only response was, "No comment."

Defense counsel indicated that he was going to withdraw "because I can't adequately defend this man without some preparation, and I think the District Attorney should at least give me that kind of notice." Defense counsel was given a few moments to speak with petitioner. Faced with the dilemma of either proceeding immediately to trial on all three charges with unprepared counsel or pleading guilty to one count of selling a dangerous drug in the second degree, petitioner not unexpectedly chose the latter course as the lesser of two evils. The usual litany of the plea then followed.⁴ In advance of sentencing, petitioner sought to withdraw his plea, but this was denied and he received an indefinite sentence of from five to 15 years' imprisonment. After appealing his case through the state courts,⁵ petitioner sought review of his plea by way of federal habeas corpus. The District Court denied relief without a hearing, and

⁴ Indeed, there was only a single slip by petitioner when he indicated that he had been told what sentence he would receive. Defense counsel quickly denied this, and petitioner naturally corrected himself.

⁵ *People v. Martinez*, 34 App. Div. 2d 174, 311 N. Y. S. 2d 117 (1970), leave to appeal to the New York Court of Appeals was denied, and a petition for a writ of certiorari was denied by this Court, 401 U. S. 941 (1971).

the Court of Appeals affirmed, with one judge dissenting, 455 F. 2d 705 (CA2 1972).

Last Term in *Santobello* we emphasized the importance of the plea-bargaining process: "If every criminal charge were subjected to a full-scale trial, the States and Federal Government would need to multiply by many times the number of judges and court facilities," 404 U. S., at 260. But a guilty plea necessarily involves the waiver of a variety of fundamental constitutional rights, see, e. g., *Duncan v. Louisiana*, 391 U. S. 145 (1968) (right to jury trial); *Pointer v. Texas*, 380 U. S. 400 (1965) (right to confront one's accusers), and the process by which it is obtained must therefore be governed by a standard of absolute fairness. The plea must be the result of "a voluntary and intelligent choice among the alternative courses of action open to the defendant." *North Carolina v. Alford*, 400 U. S. 25, 31 (1970). See also *Boykin v. Alabama*, 395 U. S. 238, 242 (1969); *Machibroda v. United States*, 368 U. S. 487, 493 (1962). I think it clear that this petitioner was denied such a choice. To be sure, it is in the nature of the plea-bargaining process that some pressure is brought to bear on the defendant to enter a plea. But here the normal pressures inherent in the plea-bargaining process were improperly augmented by both the prosecutor and the trial judge.

In *Santobello*, *supra*, at 262, we said "that when a plea rests in any significant degree on a promise or agreement of the prosecutor, so that it can be said to be part of the inducement or consideration, such promise must be fulfilled." In that decision, we condemned a prosecutor's failure to abide by the agreement of an associate who had promised to make no recommendation as to sentence in return for the guilty plea. What occurred here was far more serious. It would be naive to deny that, at least as between defense counsel and the prosecutor, a clear understanding had been reached in the judge's chambers

that petitioner would be allowed to plead guilty to the third-degree charge. The prosecutor's opening remarks in the subsequent proceedings unquestionably indicate that this was the case. Yet when defense counsel turned to the prosecutor for corroboration that the deal struck was indeed for a plea to the less serious charge in the third degree, he received only the unhelpful "No comment." This is not fulfillment by the prosecutor of his promise. And at this juncture it is impossible to assess what impact affirmative support from the prosecutor might have had upon the trial judge, who quickly became unreceptive to the unsupported efforts of defense counsel to clarify the situation.

I would not stop in this case, however, with the prosecutor. For the trial judge saw fit to become a party to the plea negotiations and agreement. Whatever the considerations when the judge is not a participant in the plea-bargaining process, it seems to me that once he has injected himself into that process he must be held to the same strict standard of fairness as the prosecutor. This is not to say that the trial judge should be deprived of his traditional discretion to reject a plea of guilty; I agree that "[t]here is . . . no absolute right to have a guilty plea accepted," *Santobello, supra*, at 262, citing *Lynch v. Overholser*, 369 U. S. 705, 719 (1962). By the same token, though, a trial judge cannot be allowed to use his discretion to apply undue pressures on a defendant. Nothing could be more destructive of the integrity—and ultimately the viability—of the plea-bargaining process. I do not doubt that in this instance there was a misunderstanding between the prosecutor and defense counsel, on the one hand, and the trial judge, on the other, as to the charge to which petitioner would be allowed to plead guilty. In light of this confusion over the plea agreement, the trial judge was justified in refusing to accept the plea to the third-degree

charge. But he certainly was not justified in visiting the consequences of the misunderstanding and the resulting confusion on petitioner by compelling him either to go to trial on all three charges with counsel who was unprepared or to plead guilty to the more serious charge. Having been a party to the negotiations and having thereafter refused to accept the plea that both the other parties to the negotiations thought was agreed upon, the trial judge was obligated to allow petitioner to extract himself from the predicament in which he had been placed by the misunderstanding that subsequently became apparent. Consequently, I believe that the judge should at least have granted the one-day continuance requested by defense counsel.

It is no answer that defense counsel should have been prepared to proceed to trial at once because his office had answered ready to the call of the February calendar. First, it is not disputed that defense counsel was not informed until the morning of the proceeding that the case was to be heard. We cannot ignore that in these days of crowded dockets, attorneys—as well as judges—are often forced to juggle unreasonably large case loads. Moreover, regardless of whether defense counsel technically should have been ready for trial because the case had previously been answered ready at the call of the February calendar, counsel undoubtedly could have made valuable use of the time between the conference in the judge's chambers and the formal disposition of the case had he not been under the misimpression that a bargain had been struck.⁶ In short, I question whether defense counsel can be faulted for his unpreparedness for immediate trial upon discover-

⁶ Although the record is not entirely clear on this point, it does appear that a substantial amount of time elapsed between the conference in the judge's chambers and when petitioner's case was called for formal disposition.

ing that a plea to a third-degree charge would not be accepted. But whatever the justification for defense counsel's unpreparedness, it was the petitioner, not his counsel, whom the trial judge forced to bear the consequences. I cannot accept this penalizing of petitioner for the conduct of his attorney, given the importance of the rights at stake. Weighed against the right of effective assistance of counsel, the request for a one-day continuance was hardly unreasonable. Previously we have said:

"The matter of continuance is traditionally within the discretion of the trial judge, and it is not every denial of a request for more time that violates due process even if the party fails to offer evidence or is compelled to defend without counsel. . . . Contrariwise, a myopic insistence upon expeditiousness in the face of a justifiable request for delay can render the right to defend with counsel an empty formality. . . ." *Ungar v. Sarafite*, 376 U. S. 575, 589 (1964).

And the alternative to proceeding with unprepared counsel was the waiver of a variety of important constitutional rights by way of a plea of guilty to a charge as to which, as a matter of unfettered choice, petitioner was obviously not prepared to concede guilt. Therefore, I think—as I have already indicated—granting of the short continuance⁷ requested was incumbent on the trial judge

⁷ The Court of Appeals majority, in discounting the unpreparedness of defense counsel and the importance of the continuance, suggested that "the very request for merely an overnight adjournment would indicate the lack of complexity of the defense." We have noted, though, that whether or not a continuance would in fact "have been useful to the accused, . . . the importance of the assistance of counsel in a serious criminal charge after arraignment is too large to permit speculation on its effect." *Hawk v. Olson*, 326 U. S. 271, 278 (1945).

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once he had rejected the plea bargain that everyone else understood to have been struck. The judge's refusal to grant the continuance can only be viewed as an unjustified compounding of the coercive circumstances under which petitioner's plea was procured.

Hence, I would grant the petition for certiorari and remand the case with instructions that petitioner's plea be vacated and he be allowed to replead to the original charges. In *Santobello*, the Court declined to direct that the guilty plea there at issue be vacated and simply remanded for reconsideration. The broken promise in *Santobello*, however, affected only the petitioner's sentence, not the charge to which he had pleaded guilty. Here, by contrast, the conduct of the prosecutor and the trial judge improperly coerced petitioner to plead guilty to the second-degree charge.

No. 71-6571. *ALBERT v. SOUTH CAROLINA*. Sup. Ct. S. C. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 257 S. C. 131, 184 S. E. 2d 605.

No. 71-6830. *WEST v. MILLER, STATE WELFARE ADMINISTRATOR, ET AL.* Sup. Ct. Nev. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 88 Nev. 105, 493 P. 2d 1332.

No. 72-210. *NICHOLS v. UNITED STATES ET AL.* C. A. 10th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 460 F. 2d 671.

No. 72-223. *HAHN ET UX. v. NORWEGIAN AMERICA LINE*. C. A. 7th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari.

No. 72-239. *CHILDS v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 463 F. 2d 390.

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No. 72-187. *SQUARE D Co. v. HODGSON, SECRETARY OF LABOR*. C. A. 6th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 459 F. 2d 805.

No. 72-258. *LEHMAN v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 468 F. 2d 93.

No. 72-276. *TAYLOR, EXECUTRIX v. UNITED STATES ET AL.* C. A. 9th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 459 F. 2d 1007.

No. 72-5179. *POWERS v. KLEINDIENST, ATTORNEY GENERAL, ET AL.* C. A. 9th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 463 F. 2d 212.

No. 72-5180. *WILLIAMS v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 463 F. 2d 1183.

No. 72-42. *DURST v. NATIONAL CASUALTY Co. ET AL.* C. A. 9th Cir. Motion to dispense with printing petition granted. Certiorari and other relief denied.

No. 72-191. *HUMBLE OIL & REFINING Co. v. CALVERT ET AL.* Sup. Ct. Tex. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. MR. JUSTICE POWELL took no part in the consideration or decision of this petition. Reported below: 478 S. W. 2d 926.

No. 72-213. *LATIN AMERICA/PACIFIC COAST STEAMSHIP CONFERENCE ET AL. v. FEDERAL MARITIME COMMISSION ET AL.* C. A. D. C. Cir. Motion to dispense with printing petitioners' reply brief granted. Certiorari denied. Reported below: 150 U. S. App. D. C. 362, 465 F. 2d 542.

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No. 71-6789. SELLARS ET AL. v. BETO, CORRECTIONS DIRECTOR. C. A. 5th Cir. Motion of National Prison Project of the American Civil Liberties Union et al. for leave to file a brief as *amici curiae* granted. Certiorari denied. Reported below: 453 F. 2d 661; 456 F. 2d 1303.

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

I vote to hear this case because it raises substantial questions of law in the area of the Eighth and Fourteenth Amendments.

Petitioners are inmates of the Texas Department of Corrections (T. D. C.). They brought a class action under 42 U. S. C. § 1983, challenging the constitutionality of:

- (1) a T. D. C. regulation barring all inmate assistance in preparation of legal work;
- (2) the primitive conditions of the solitary confinement as administered by the T. D. C.

The District Court denied relief, *Novak v. Beto*, 320 F. Supp. 1206 (SD Tex. 1970).

On appeal, the United States Court of Appeals for the Fifth Circuit unanimously reversed as to the prohibition on prisoners' legal assistance, holding that the State had not met its burden of providing alternatives to assure access to the courts as required by *Johnson v. Avery*, 393 U. S. 483 (1969).

A divided court affirmed the constitutionality of the conditions of solitary confinement. *Novak v. Beto*, 453 F. 2d 661 (1971). A motion for a rehearing and rehearing *en banc* was denied March 8, 1972, six judges dissenting. *Novak v. Beto*, 456 F. 2d 1303.

If we are to believe the facts as stated by petitioners, and for purposes of review we must, a prisoner placed in solitary confinement in Texas will find himself in a shockingly primitive condition.

The cell is kept in complete darkness 24 hours a day. A barred iron gate backed up by a wooden door blocks all light and prevents any human contact with those in the hall.¹ Within this black interior is a combination toilet-water basin and a steel bunk. The bunk has no mattress although the prisoner is given a blanket. The cell is otherwise bare. The inmate is fed on a bread and water diet with one full meal every 72 hours.² He is clothed only by a cloth gown. In addition to those conditions, which were considered inhumane at the time of Charles Dickens, the prisoner has no opportunity to exercise; he is not permitted correspondence with family, friends, or lawyer; no visits are allowed and he is allowed no reading material of any kind.

The prisoner is not seen by a psychologist, psychiatrist, or counselor before, during, or after confinement to solitary. And all deprivations involved in solitary confinement apply uniformly regardless of the individual's background or criminal record or offense for which he is being punished.

A prisoner can be kept so confined for 15 days and re-confined after a two-day respite. Such practices as above described exist in all of Texas' 14 correctional facilities.

¹ On July 10, 1972, the T. D. C. revised its regulations on the lighting and diet.

"50.92322 *Lighting*.

"The solid doors of the solitary cells will be left open. If an inmate becomes noisy and creates a disturbance the door will be closed. On some units the open doors create a security problem, and it is not practical to utilize this procedure. If this occurs, artificial lighting will be provided during the normal daylight hours."

² "50.9233 *Diet*.

"50.92331 Inmates in solitary [confinement] are to be fed twice a day a hot meal consisting of vegetables from the regular serving line, and are to be given unlimited drinking water."

The petitioners do not question the right of the prison to isolate inmates for cause but do challenge these practices.

Weems v. United States, 217 U. S. 349 (1910), was a landmark in the definition of the Cruel and Unusual Punishment Clause. *Robinson v. California* made the Eighth Amendment binding on the States through the Fourteenth Amendment. 370 U. S. 660 (1962). We said that the "dignity of man" was the overriding value preserved by that clause. *Trop v. Dulles*, 356 U. S. 86, 100 (1958).

The fitness of punishment is to be judged by applying evolving standards, for the clause "is not fastened to the obsolete but may acquire meaning as public opinion becomes enlightened by a humane justice." 217 U. S., at 378. What those standards are is now tendered. The extent to which the prohibition against cruel and unusual punishment will apply in prison must also be determined. In *Haines v. Kerner*, 404 U. S. 519 (1972), we held that a bare allegation of onerous penal conditions is sufficient to require a hearing.

Lower courts have often dealt with the issue and have reached divergent results³ without guidance from us. See *Morales v. Schmidt*, 340 F. Supp. 544 (1972).

³ Some lower courts have held that some conditions of imprisonment constitute cruel and unusual punishment. See *Wright v. McMann*, 387 F. 2d 519 (CA2 1967), on remand, 321 F. Supp. 127 (NDNY 1970), affirmed in part and reversed in part, 460 F. 2d 126 (CA2 1972); *Hancock v. Avery*, 301 F. Supp. 786 (MD Tenn. 1969); *Holt v. Sarver*, 300 F. Supp. 825 (ED Ark. 1969); *Barnes v. Hocker*, No. R 2071 (Nev. Sept. 5, 1969); *Jordan v. Fitzharris*, 257 F. Supp. 674 (ND Cal. 1966). *Contra: Sostre v. McGinnis*, 442 F. 2d 178, 192 (CA2 1971); *Courtney v. Bishop*, 409 F. 2d 1185 (CA8 1969); *Ford v. Board of Managers*, 407 F. 2d 937 (CA3 1969); *Krist v. Smith*, 309 F. Supp. 497 (SD Ga. 1970), aff'd, 439 F. 2d 146 (CA5 1971).

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Denial of the petition here in my view constitutes a travesty of justice. As Judge Tuttle stated in his dissent:

"I do not hesitate to assert the proposition that the only way the law has progressed from the days of the rack, the screw and the wheel is the development of moral concepts, or, as stated by the Supreme Court in *Trop v. Dulles*, the application of 'evolving standards of decency.'" *Novak v. Beto*, 453 F. 2d, at 672.⁴

I would grant this petition and put the case down for argument.

No. 72-221. *SHERDON v. CARMONA ET AL.* Ct. App. Cal., 4th App. Dist. Motion to dispense with printing petition granted. Certiorari denied.

NOVEMBER 3, 1972

Miscellaneous Order

No. A-467. *LAIRD, SECRETARY OF DEFENSE, ET AL. v. SPOCK ET AL.* C. A. 3d Cir. Application for stay of judgment of the United States Court of Appeals for the Third Circuit (No. 72-1934) denied. THE CHIEF JUSTICE, MR. JUSTICE WHITE, MR. JUSTICE BLACKMUN, and MR. JUSTICE REHNQUIST would grant the stay. Reported below: 469 F. 2d 1047.

⁴ As stated by Judge Kaufman in *Wright v. McMann*, 387 F. 2d, at 526:

"We are of the view that civilized standards of humane decency simply do not permit a man for a substantial period of time to be denuded and exposed to the bitter cold of winter in northern New York State and to be deprived of the basic elements of hygiene such as soap and toilet paper. The subhuman conditions alleged by Wright to exist in the 'strip cell' at Dannemora could only serve to destroy completely the spirit and undermine the sanity of the prisoner. The Eighth Amendment forbids treatment so foul, so inhuman and so violative of basic concepts of decency."

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Affirmed on Appeal

No. 72-175. *FIDELL ET AL. v. BOARD OF ELECTIONS OF THE CITY OF NEW YORK ET AL.* Affirmed on appeal from D. C. E. D. N. Y. MR. JUSTICE DOUGLAS would note probable jurisdiction and set case for oral argument. Reported below: 343 F. Supp. 913.

No. 72-200. *CHIEF OF THE CAPITOL POLICE ET AL. v. JEANNETTE RANKIN BRIGADE ET AL.* Affirmed on appeal from D. C. D. C. Reported below: 342 F. Supp. 575.

No. 72-251. *LoFRISCO ET AL. v. SCHAFFER, SECRETARY OF STATE OF CONNECTICUT, ET AL.* Affirmed on appeal from D. C. Conn. Reported below: 341 F. Supp. 743.

No. 72-252. *KERR MOTOR LINES, INC. v. UNITED STATES ET AL.* Affirmed on appeal from D. C. N. D. N. Y.

Appeals Dismissed

No. 71-1584. *STAUFFER v. WEEDLUN, DIRECTOR, DEPARTMENT OF MOTOR VEHICLES, ET AL.* Appeal from Sup. Ct. Neb. dismissed for want of substantial federal question. MR. JUSTICE DOUGLAS would note probable jurisdiction and set case for oral argument. Reported below: 188 Neb. 105, 195 N. W. 2d 218.

No. 72-115. *CUNNINGHAM ET AL. v. KING COUNTY BOUNDARY REVIEW BOARD ET AL.* Appeal from Ct. App. Wash. dismissed for want of substantial federal question. Reported below: 6 Wash. App. 385, 493 P. 2d 811.

No. 72-318. *RAFTER v. NEWARK INSURANCE Co.* Appeal from Ct. App. N. Y. dismissed. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied.

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No. 72-240. *HARPER v. UNITED STATES*. Appeal from C. A. 1st Cir. Motion to dispense with printing jurisdictional statement granted. Appeal dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied.

No. 72-5007. *CORRADO v. RHODE ISLAND BAR ASSN.* Appeal from Sup. Ct. R. I. dismissed. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied.

No. 72-5290. *BIRDWELL v. WASHINGTON*. Appeal from Ct. App. Wash. dismissed. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied. Reported below: 6 Wash. App. 284, 492 P. 2d 249.

No. 72-319. *KENNECOTT COPPER CORP. ET AL. v. STATE TAX COMMISSION OF UTAH*. Appeal from Sup. Ct. Utah. Motions of Financial Executives Institute, Tax Executives Institute, Inc., and Committee on State Taxation of the Council of State Chambers of Commerce et al. for leave to file briefs as *amici curiae* granted. Appeal dismissed for want of substantial federal question. MR. JUSTICE WHITE would note probable jurisdiction and set case for oral argument. Reported below: 27 Utah 2d 119, 493 P. 2d 632.

Certiorari Granted—Reversed. (See No. 72-55, *ante*, p. 41.)

Miscellaneous Orders

No. A-410 (72-5579). *BEKENY ET UX. v. WANDSCHNEIDER, EXECUTOR, ET AL.* C. A. 2d Cir. Application for stay presented to THE CHIEF JUSTICE, and by him referred to the Court, denied.

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No. A-428. *COOK ET AL. v. CALHOUN ET AL.* C. A. 5th Cir. Application for stay presented to MR. JUSTICE POWELL, and by him referred to the Court, denied. MR. JUSTICE MARSHALL took no part in the consideration or decision of this application.

No. D-1. *IN RE DISBARMENT OF KAHN.* It is ordered that Frances Kahn, of New York, New York, be suspended from the practice of law in this Court and that a rule issue returnable within 40 days requiring her to show cause why she should not be disbarred from the practice of law in this Court.

No. D-2. *IN RE DISBARMENT OF ABRAMS.* It is ordered that Hyman Abrams, of New York, New York, be suspended from the practice of law in this Court and that a rule issue returnable within 40 days requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D-3. *IN RE DISBARMENT OF KONIGSBERG.* It is ordered that Sidney Konigsberg, of New York, New York, be suspended from the practice of law in this Court and that a rule issue returnable within 40 days requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D-4. *IN RE DISBARMENT OF BROUNER.* It is ordered that Samuel B. Brouner, of New York, New York, 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. 27, Orig. *OHIO v. KENTUCKY.* Exceptions to Report of Special Master set for oral argument in due course. [For earlier orders herein, see, *e. g.*, 406 U. S. 915.]

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No. D-5. *IN RE DISBARMENT OF SIGNER*. It is ordered that Burton R. Signer, of Cincinnati, Ohio, be suspended from the practice of law in this Court and that a rule issue returnable within 40 days requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D-6. *IN RE DISBARMENT OF YUDOW*. It is ordered that Daniel D. Yudow, of New York, New York, be suspended from the practice of law in this Court and that a rule issue returnable within 40 days requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D-7. *IN RE DISBARMENT OF SCHERMAN*. It is ordered that Benjamin B. Scherman, of New York, New York, be suspended from the practice of law in this Court and that a rule issue returnable within 40 days requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D-8. *IN RE DISBARMENT OF PAVSNER*. It is ordered that Emanuel H. Pavsner, of New York, New York, 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. 71-92. *CORKEY ET AL. v. EDWARDS ET AL.* Appeal from D. C. W. D. N. C. Motion to set questions V, VI, and IV for briefing and oral argument denied. Reported below: 322 F. Supp. 1248.

No. 71-829. *MOURNING v. FAMILY PUBLICATIONS SERVICE, INC.* C. A. 5th Cir. [Certiorari granted, 405 U. S. 987.] Motion of the Solicitor General to permit A. Raymond Randolph, Jr., Esquire, to present oral argument *pro hac vice* as *amicus curiae* in support of petition granted.

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No. 71-708. *TRAFFICANTE ET AL. v. METROPOLITAN LIFE INSURANCE CO. ET AL.* C. A. 9th Cir. [Certiorari granted, 405 U. S. 915.] Motion to permit two counsel to argue on behalf of respondents granted.

No. 71-850. *UNITED STATES v. MARA, AKA MARASOVICH.* C. A. 7th Cir. [Certiorari granted, 406 U. S. 956.] Motion of Legal Aid Society of New York for leave to participate in oral argument as *amicus curiae* in support of respondent granted.

No. 71-1031. *TONASKET v. WASHINGTON ET AL.* Appeal from Sup. Ct. Wash. [Probable jurisdiction noted, 407 U. S. 908.] Motion of Colville Confederated Tribes for leave to participate in oral argument as *amicus curiae* granted.

No. 71-1082. *ASKEW, GOVERNOR OF FLORIDA, ET AL. v. AMERICAN WATERWAYS OPERATORS, INC., ET AL.* Appeal from D. C. M. D. Fla. [Probable jurisdiction noted, 405 U. S. 1063.] Motions to permit two counsel to argue on behalf of appellants and two counsel to argue on behalf of appellees granted.

No. 71-1192. *GOLDSTEIN ET AL. v. CALIFORNIA.* App. Dept., Super. Ct. Cal., County of Los Angeles. [Certiorari granted, 406 U. S. 956.] Motion of Information Industry Assn. for leave to file untimely brief as *amicus curiae* granted. Motion of the Attorney General of California for additional time to participate in oral argument as *amicus curiae* denied.

No. 71-1470. *LEMON ET AL. v. KURTZMAN, SUPERINTENDENT OF PUBLIC INSTRUCTION OF PENNSYLVANIA, ET AL.* Appeal from D. C. E. D. Pa. [Probable jurisdiction noted, 406 U. S. 943.] Motion of Pennsylvania Association of Independent Schools to permit two counsel to argue on behalf of appellees denied.

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No. 71-5139. *HAM v. SOUTH CAROLINA*. Sup. Ct. S. C. [Certiorari granted, 404 U. S. 1057.] Motion of the Attorney General of South Carolina to permit Timothy G. Quinn to present oral argument *pro hac vice* on behalf of respondent granted.

No. 71-6356. *DOE ET AL. v. McMILLAN ET AL.* C. A. D. C. Cir. [Certiorari granted, 408 U. S. 922.] Motion to permit two counsel to argue on behalf of respondents granted.

No. 72-11. *PALMORE v. UNITED STATES*. Appeal from Ct. App. D. C. [Probable jurisdiction postponed, *ante*, p. 840.] Motion of appellant for leave to proceed further herein *in forma pauperis* granted.

No. 72-5214. *FLOYD v. HENDERSON, WARDEN*;

No. 72-5282. *BACA v. HARRIS, WARDEN, ET AL.*; and

No. 72-5295. *SHELTON v. HENDERSON, WARDEN*. Motions for leave to file petitions for writs of habeas corpus denied.

No. 71-6827. *SAMS v. FRANKEL*, U. S. DISTRICT JUDGE. Motion for leave to file petition for writ of mandamus denied.

Probable Jurisdiction Noted or Postponed

No. 72-269. *LEVITT, COMPTROLLER OF NEW YORK, ET AL. v. COMMITTEE FOR PUBLIC EDUCATION & RELIGIOUS LIBERTY ET AL.*;

No. 72-270. *BRYDGES v. COMMITTEE FOR PUBLIC EDUCATION & RELIGIOUS LIBERTY ET AL.*; and

No. 72-271. *CATHEDRAL ACADEMY ET AL. v. COMMITTEE FOR PUBLIC EDUCATION & RELIGIOUS LIBERTY ET AL.* Appeals from D. C. S. D. N. Y. Probable jurisdiction noted. Cases consolidated and a total of one hour allotted for oral argument. Reported below: 342 F. Supp. 439.

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No. 72-129. NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, NEW YORK CITY REGION OF NEW YORK CONFERENCE OF BRANCHES, ET AL. *v.* NEW YORK ET AL. D. C. D. C. Probable jurisdiction postponed to hearing of case on the merits. MR. JUSTICE MARSHALL took no part in the consideration or decision of this matter.

Certiorari Granted

No. 71-6757. FONTAINE *v.* UNITED STATES. C. A. 6th Cir. Motion for leave to proceed *in forma pauperis* and certiorari granted.

Certiorari Denied. (See also Nos. 72-240, 72-318, 72-5007, and 72-5290, *supra.*)

No. 71-1474. EASON ET AL. *v.* DANDRIDGE ET AL.; and
No. 71-1601. JEFFERSON PARISH SCHOOL BOARD ET AL. *v.* DANDRIDGE ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 456 F. 2d 552.

No. 71-1544. MAHONEY *v.* MARYLAND. Ct. Sp. App. Md. Certiorari denied. Reported below: 13 Md. App. 105, 281 A. 2d 421.

No. 71-1613. MCBRIDE *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied.

No. 71-5803. GOMEZ *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 71-6122. WILWORDING *v.* BURRELL ET AL. C. A. 8th Cir. Certiorari denied.

No. 71-6649. FAIR *v.* SEBESTA. C. A. 5th Cir. Certiorari denied.

No. 71-6758. DUDLEY *v.* BRANTLEY, WARDEN. C. A. 7th Cir. Certiorari denied. Reported below: 461 F. 2d 653.

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No. 71-6682. *STOCKMAN v. CALIFORNIA*. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 71-6759. *HUTCHINSON v. CRAVEN, WARDEN*. C. A. 9th Cir. Certiorari denied.

No. 71-6799. *CRAWFORD v. TEXAS*. Ct. Crim. App. Tex. Certiorari denied. Reported below: 479 S. W. 2d 682.

No. 71-6840. *McLAIN v. ESTELLE, CORRECTIONS DIRECTOR*. C. A. 5th Cir. Certiorari denied. Reported below: 458 F. 2d 503.

No. 71-6853. *TAFOYA, AKA HERRERA v. EYMAN, WARDEN*. C. A. 9th Cir. Certiorari denied. Reported below: 455 F. 2d 1265.

No. 71-6863. *KOMES v. CALIFORNIA*. App. Dept., Super. Ct. Cal., County of Santa Clara. Certiorari denied.

No. 71-6877. *MOORE v. ILLINOIS*. Sup. Ct. Ill. Certiorari denied. Reported below: 51 Ill. 2d 79, 281 N. E. 2d 294.

No. 71-6914. *SNIPES v. MISSOURI*. Sup. Ct. Mo. Certiorari denied. Reported below: 478 S. W. 2d 299.

No. 71-6920. *BULLY v. HENDERSON, CORRECTIONAL SUPERINTENDENT*. C. A. 2d Cir. Certiorari denied. Reported below: 458 F. 2d 1406.

No. 71-6930. *TYLER v. SWENSON, WARDEN*. C. A. 8th Cir. Certiorari denied.

No. 72-59. *UNITED STATES v. HARTFORD ACCIDENT & INDEMNITY Co.* C. A. 9th Cir. Certiorari denied. Reported below: 460 F. 2d 17.

No. 72-202. *IN RE MACLEOD*. Sup. Ct. Mo. Certiorari denied. Reported below: 479 S. W. 2d 443.

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No. 72-86. CLARK SHERWOOD OIL FIELD CONTRACTORS ET AL. *v.* SMITH ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 457 F. 2d 1339.

No. 72-117. IANNELLI *v.* UNITED STATES;

No. 71-6858. SQUIRES, AKA SPEARS *v.* UNITED STATES; and

No. 72-5274. TORTORA *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 461 F. 2d 483.

No. 72-173. JACKSONVILLE TERMINAL CO. *v.* HODGE, ADMINISTRATRIX. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 260 So. 2d 521.

No. 72-196. JAVITS *v.* ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK. App. Div., Sup. Ct. N. Y., 1st Jud. Dept. Certiorari denied. Reported below: 35 App. Div. 2d 442, 316 N. Y. S. 2d 943.

No. 72-247. NACIREMA OPERATING CO., INC., ET AL. *v.* OOSTING, DEPUTY COMMISSIONER, BUREAU OF EMPLOYEES' COMPENSATION, U. S. DEPARTMENT OF LABOR. C. A. 4th Cir. Certiorari denied. Reported below: 456 F. 2d 956.

No. 72-253. PET, INC. *v.* KYSOR INDUSTRIAL CORP. C. A. 6th Cir. Certiorari denied. Reported below: 459 F. 2d 1010.

No. 72-255. NATIONAL AMERICAN BANK OF NEW ORLEANS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 463 F. 2d 1168.

No. 72-257. ALVAREZ-FRANCO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 461 F. 2d 1261.

No. 72-260. MEYER ET AL. *v.* CITY OF OKLAHOMA CITY ET AL. Sup. Ct. Okla. Certiorari denied. Reported below: 496 P. 2d 789.

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No. 72-259. *ALOGDELIS v. BROOKLYN COLLEGE OF THE CITY UNIVERSITY OF NEW YORK ET AL.* App. Div., Sup. Ct. N. Y., 2d Jud. Dept. Certiorari denied. Reported below: 39 App. Div. 2d 728, 332 N. Y. S. 2d 414.

No. 72-261. *MILLER v. UNITED STATES*; and

No. 72-5292. *PINEDA ET AL. v. UNITED STATES.* C. A. 2d Cir. Certiorari denied.

No. 72-262. *O'BRIEN v. UNITED STATES.* C. A. 1st Cir. Certiorari denied.

No. 72-263. *AIKIN, AKA AKIN, ET AL. v. UNITED STATES.* C. A. 8th Cir. Certiorari denied. Reported below: 464 F. 2d 7.

No. 72-265. *PENNSYLVANIA v. COHEN.* Super. Ct. Pa. Certiorari denied. Reported below: 221 Pa. Super. 244, 289 A. 2d 96.

No. 72-268. *SCHOTT v. CITY OF KINGMAN.* C. A. 9th Cir. Certiorari denied. Reported below: 461 F. 2d 593.

No. 72-277. *FORTENBERRY v. NEW YORK LIFE INSURANCE Co.* C. A. 6th Cir. Certiorari denied. Reported below: 459 F. 2d 114.

No. 72-278. *CRAVENS ET AL. v. UNITED STATES.* C. A. 6th Cir. Certiorari denied.

No. 72-280. *MOJAR v. SIGNORELLI ET UX.* Super. Ct. N. J. Certiorari denied.

No. 72-281. *LAWRENCE CHRYSLER PLYMOUTH, INC. v. CHRYSLER CORP. ET AL.* C. A. 7th Cir. Certiorari denied. Reported below: 461 F. 2d 608.

No. 72-282. *BOARD OF EDUCATION OF THE CITY OF BESSEMER, ALABAMA, ET AL. v. BROWN ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 464 F. 2d 382.

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No. 72-283. MAHIN, DIRECTOR OF REVENUE OF ILLINOIS *v.* MITCHELL ET AL. Sup. Ct. Ill. Certiorari denied. Reported below: 51 Ill. 2d 452, 283 N. E. 2d 465.

No. 72-284. NORTH CAROLINA STATE PORTS AUTHORITY *v.* INTERNATIONAL LONGSHOREMEN'S ASSN., AFL-CIO. C. A. 4th Cir. Certiorari denied. Reported below: 463 F. 2d 1.

No. 72-285. TIBBITTS ET UX. *v.* CUSSEN, TRUSTEE IN BANKRUPTCY. C. A. 9th Cir. Certiorari denied. Reported below: 456 F. 2d 1314.

No. 72-286. AMERICAN AIRLINES, INC. *v.* LOCAYNIA ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 457 F. 2d 1253.

No. 72-289. DIEHL *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 457 F. 2d 511.

No. 72-290. CALIFORNIA *v.* HALPIN ET AL. Sup. Ct. Cal. Certiorari denied. Reported below: 6 Cal. 3d 885, 495 P. 2d 1295.

No. 72-291. UNITED STATES FIRE INSURANCE CO. *v.* MARINE SULPHUR TRANSPORT CORP. ET AL.; and

No. 72-344. MARINE SULPHUR TRANSPORT CORP. ET AL. *v.* HEARD ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 460 F. 2d 89.

No. 72-293. GASTON COUNTY DYEING MACHINE CO. *v.* BROWN. C. A. 4th Cir. Certiorari denied. Reported below: 457 F. 2d 1377.

No. 72-296. LEGARI *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 462 F. 2d 1328.

No. 72-299. PILGRIM EQUIPMENT COMPANY OF HOUSTON *v.* TEXAS ET AL. Ct. Civ. App. Tex., 1st Sup. Jud. Dist. Certiorari denied. Reported below: 473 S. W. 2d 945.

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No. 72-297. *PORTNER v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 462 F. 2d 678.

No. 72-301. *COMEAX v. BULLER ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 458 F. 2d 1407.

No. 72-305. *ARVIDSON ET AL. v. DILLINGHAM CORP., DBA ALBINA ENGINE & MACHINE WORKS*. C. A. 9th Cir. Certiorari denied. Reported below: 462 F. 2d 1.

No. 72-306. *STANLEY v. TAYLOR*. App. Ct. Ill., 4th Dist. Certiorari denied. Reported below: 4 Ill. App. 3d 98, 278 N. E. 2d 824.

No. 72-310. *RAINIER AVENUE CORP. v. CITY OF SEATTLE*. Sup. Ct. Wash. Certiorari denied. Reported below: 80 Wash. 2d 362, 494 P. 2d 996.

No. 72-311. *SPEED v. ILLINOIS*. Sup. Ct. Ill. Certiorari denied. Reported below: 52 Ill. 2d 141, 284 N. E. 2d 636.

No. 72-314. *KEEFER v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 464 F. 2d 1385.

No. 72-315. *NEW YORK CENTRAL RAILROAD Co. v. RAINES, SPECIAL ADMINISTRATOR*. Sup. Ct. Ill. Certiorari denied. Reported below: 51 Ill. 2d 428, 283 N. E. 2d 230.

No. 72-320. *LIGHTENBURGER ET AL. v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 460 F. 2d 391.

No. 72-323. *KHEEL ET AL. v. PORT OF NEW YORK AUTHORITY ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 457 F. 2d 46.

No. 72-328. *PARTEN ET AL. v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 462 F. 2d 430.

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No. 72-324. *CARTER v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 462 F. 2d 1252.

No. 72-325. *STECHEER v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 463 F. 2d 567.

No. 72-329. *SCHRENZEL v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 462 F. 2d 765.

No. 72-333. *BIBLE v. CHEVRON OIL CO. ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 460 F. 2d 1218.

No. 72-336. *PENAAT v. CITY OF SAN JOSE*. Ct. App. Cal., 1st App. Dist. Certiorari denied. Reported below: 24 Cal. App. 3d 707, 101 Cal. Rptr. 258.

No. 72-337. *ROSS v. UNITED STATES ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 462 F. 2d 618.

No. 72-340. *CANTWELL ET AL. v. BOARD OF TRUSTEES FOR UTILITIES, CITY OF INDIANAPOLIS, ET AL.* C. A. 7th Cir. Certiorari denied.

No. 72-342. *HANDEL v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 464 F. 2d 679.

No. 72-5010. *HAWKINS v. CONNECTICUT*. Sup. Ct. Conn. Certiorari denied. Reported below: 162 Conn. 514, 294 A. 2d 584.

No. 72-5019. *CAREF v. ILLINOIS*. Sup. Ct. Ill. Certiorari denied. Reported below: 51 Ill. 2d 220, 282 N. E. 2d 1.

No. 72-5024. *CAMPBELL v. GEORGIA ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 459 F. 2d 1039.

No. 72-5050. *WILSON v. CARDWELL, WARDEN*. C. A. 6th Cir. Certiorari denied.

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No. 72-5059. *JAMES v. FLORIDA*. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 254 So. 2d 838.

No. 72-5079. *PASCHALL v. HASKINS, CORRECTIONAL SUPERINTENDENT*. C. A. 6th Cir. Certiorari denied.

No. 72-5193. *MOORE v. UNITED STATES*. C. A. 4th Cir. Certiorari denied.

No. 72-5194. *SHEPPARD v. UNITED STATES*. C. A. D. C. Cir. Certiorari denied. Reported below: 149 U. S. App. D. C. 175, 462 F. 2d 279.

No. 72-5197. *MARAS v. LIPOW*. C. A. D. C. Cir. Certiorari denied.

No. 72-5198. *ROBERTSON v. UNITED STATES*. C. A. 6th Cir. Certiorari denied.

No. 72-5201. *WRIGHT v. GOVERNMENT OF THE CANAL ZONE*. C. A. 5th Cir. Certiorari denied. Reported below: 460 F. 2d 1402.

No. 72-5202. *LOPEZ, AKA BELIX v. UNITED STATES*. C. A. 2d Cir. Certiorari denied.

No. 72-5205. *REED v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 458 F. 2d 1363.

No. 72-5207. *SHELTON v. ESTELLE, CORRECTIONS DIRECTOR*. C. A. 5th Cir. Certiorari denied. Reported below: 460 F. 2d 1234.

No. 72-5208. *DAVIDSON v. UNITED STATES*. C. A. 1st Cir. Certiorari denied.

No. 72-5211. *CARPENTER v. UNITED STATES*; and

No. 72-5232. *MORRIS v. UNITED STATES*. C. A. 10th Cir. Certiorari denied. Reported below: 463 F. 2d 397.

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No. 72-5209. *JONES v. MISSOURI*. Sup. Ct. Mo. Certiorari denied.

No. 72-5212. *KERR v. TRAVELERS INSURANCE CO.* C. A. 4th Cir. Certiorari denied.

No. 72-5213. *STOKES v. UNITED STATES*. C. A. 4th Cir. Certiorari denied.

No. 72-5215. *BRIGGS v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 457 F. 2d 908.

No. 72-5216. *LINES v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 461 F. 2d 282.

No. 72-5217. *WEBB v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 463 F. 2d 1324.

No. 72-5219. *DEVILLE v. RICHARDSON, SECRETARY OF HEALTH, EDUCATION, AND WELFARE*. C. A. 6th Cir. Certiorari denied.

No. 72-5220. *NINOV v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 458 F. 2d 1360.

No. 72-5223. *O'CLAIR v. UNITED STATES*. C. A. 1st Cir. Certiorari denied.

No. 72-5224. *MARTIN v. WISCONSIN*. Sup. Ct. Wis. Certiorari denied.

No. 72-5225. *TURNER ET AL. v. DISTRICT OF COLUMBIA*. Ct. App. D. C. Certiorari denied. Reported below: 290 A. 2d 821.

No. 72-5228. *VOEGE v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 464 F. 2d 222.

No. 72-5229. *KING v. ALABAMA*. Ct. Crim. App. Ala. Certiorari denied. Reported below: 48 Ala. App. 154, 262 So. 2d 764.

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No. 72-5233. *PADILLA-PARTIDA v. IMMIGRATION AND NATURALIZATION SERVICE*. C. A. 9th Cir. Certiorari denied. Reported below: 462 F. 2d 619.

No. 72-5235. *SZCZYTKO v. JOHNSON, WARDEN*. C. A. 6th Cir. Certiorari denied.

No. 72-5237. *CHISUM v. UNITED STATES*. C. A. 9th Cir. Certiorari denied.

No. 72-5241. *JERKINS v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 464 F. 2d 1073.

No. 72-5242. *GOODMAN v. PENNSYLVANIA*. C. A. 3d Cir. Certiorari denied.

No. 72-5245. *STARNES v. CONNETT, WARDEN*. C. A. 5th Cir. Certiorari denied. Reported below: 464 F. 2d 524.

No. 72-5246. *LUCCHETTI v. UNITED STATES*. C. A. 2d Cir. Certiorari denied.

No. 72-5248. *THOMAS v. NELSON, WARDEN, ET AL.* C. A. 9th Cir. Certiorari denied.

No. 72-5249. *PEAPER v. MARYLAND*. Ct. Sp. App. Md. Certiorari denied. Reported below: 14 Md. App. 201, 286 A. 2d 176.

No. 72-5250. *GABBARD v. GABBARD*. Ct. App. Ky. Certiorari denied.

No. 72-5251. *PARKER v. NORTH CAROLINA*. Sup. Ct. N. C. Certiorari denied. Reported below: 279 N. C. 168, 181 S. E. 2d 432.

No. 72-5255. *KIRK v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 457 F. 2d 400.

No. 72-5263. *VALENTINE v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: See 422 F. 2d 358.

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No. 72-5259. *DeVERSE v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 464 F. 2d 80.

No. 72-5260. *AMMONS v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 464 F. 2d 414.

No. 72-5261. *COLLINS v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 462 F. 2d 792.

No. 72-5262. *WRIGHT v. PERINI, CORRECTIONAL SUPERINTENDENT*. C. A. 6th Cir. Certiorari denied.

No. 72-5264. *THACKER v. HENRY, PRISON ADMINISTRATOR, ET AL.* C. A. 4th Cir. Certiorari denied.

No. 72-5266. *STORY v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 463 F. 2d 326.

No. 72-5267. *WATERMAN v. SCHUTZER ET AL.* C. A. 2d Cir. Certiorari denied.

No. 72-5268. *GRIFFIN ET AL. v. UNITED STATES*. C. A. 10th Cir. Certiorari denied. Reported below: 463 F. 2d 177.

No. 72-5271. *BROWN v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 462 F. 2d 576.

No. 72-5276. *HUNTER v. TEXAS*. Ct. Crim. App. Tex. Certiorari denied. Reported below: 481 S. W. 2d 806.

No. 72-5277. *McCLARD v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 462 F. 2d 488.

No. 72-5280. *NORDLOF v. UNITED STATES*. C. A. 7th Cir. Certiorari denied.

No. 72-5281. *THOMPSON v. DEPARTMENT OF THE ARMY ET AL.* C. A. 2d Cir. Certiorari denied.

No. 72-5285. *BARRON v. UNITED STATES*. C. A. 6th Cir. Certiorari denied.

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No. 72-5286. *McGEE v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 464 F. 2d 542.

No. 72-5287. *WETZEL v. BLACKLEDGE, WARDEN*. C. A. 4th Cir. Certiorari denied.

No. 72-5288. *HESSLER v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 469 F. 2d 1294.

No. 72-5289. *FRIERSON v. SPRUILL, JUDGE, ET AL.* C. A. 4th Cir. Certiorari denied.

No. 71-1380. *CALDWELL, WARDEN v. MATHIS*. C. A. 5th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 455 F. 2d 979.

No. 71-6550. *DAVIDSON v. WARDEN, CALIFORNIA STATE PRISON AT SAN QUENTIN*. Sup. Ct. Cal. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari.

No. 71-6885. *HILLEN v. DIRECTOR, DEPARTMENT OF SOCIAL SERVICE AND HOUSING ET AL.* C. A. 9th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 455 F. 2d 510.

No. 71-6927. *JASHUNSKY v. ILLINOIS*. Sup. Ct. Ill. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 51 Ill. 2d 220, 282 N. E. 2d 1.

No. 72-16. *KARR ET AL. v. SCHMIDT ET AL.* C. A. 5th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 460 F. 2d 609.

No. 72-227. *WALLER v. CITY OF ST. PETERSBURG*. Sup. Ct. Fla. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 261 So. 2d 151.

No. 72-238. *BIRCH v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari.

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No. 72-242. *HANLY ET AL. v. KLEINDIENST, ATTORNEY GENERAL, ET AL.* C. A. 2d Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 460 F. 2d 640.

No. 72-295. *LEBLANC ET AL. v. SOUTHERN BELL TELEPHONE & TELEGRAPH CO. ET AL.* C. A. 5th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 460 F. 2d 1228.

No. 72-309. *SANDLER v. NATIONAL DIRECTOR OF SELECTIVE SERVICE ET AL.* C. A. 4th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 463 F. 2d 1096.

No. 72-316. *AZZONE v. UNITED STATES.* C. A. 8th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 464 F. 2d 236.

No. 72-330. *CAREY ET UX. v. COMMISSIONER OF INTERNAL REVENUE.* C. A. 4th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 460 F. 2d 1259.

No. 72-5001. *JONES v. HASKINS, CORRECTIONAL SUPERINTENDENT.* C. A. 6th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 459 F. 2d 479.

No. 72-5031. *CLINTON, ADMINISTRATRIX v. INGRAM CORP.* C. A. 5th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 455 F. 2d 741.

No. 72-5039. *BISNO v. MARTIN, DIRECTOR, CALIFORNIA DEPARTMENT OF SOCIAL WELFARE.* Ct. App. Cal., 2d App. Dist. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari.

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No. 72-5063. *JACKSON v. GEORGIA*. C. A. 5th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 461 F. 2d 682.

No. 72-5072. *BRAUN v. KANSAS*. Sup. Ct. Kan. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 209 Kan. 181, 495 P. 2d 1000.

No. 72-5134. *COX v. WOODSON, PENAL INSTITUTIONS DIRECTOR, ET AL.* C. A. 10th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari.

No. 72-5192. *BELL v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 464 F. 2d 667.

No. 72-5210. *HURT v. OHIO*. Sup. Ct. Ohio. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 30 Ohio St. 2d 86, 282 N. E. 2d 578.

No. 72-5222. *CARPENTER v. UNITED STATES*. C. A. 10th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 462 F. 2d 1363.

No. 72-5231. *FEATHERSTON v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 461 F. 2d 1119.

No. 72-5234. *KERESTY v. UNITED STATES*; and

No. 72-5236. *PHILLIPS v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 465 F. 2d 36.

No. 72-5270. *NAMMACK v. COMMISSIONER OF INTERNAL REVENUE*. C. A. 2d Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 459 F. 2d 1045.

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No. 72-5240. THOMAS ET AL. v. UNITED STATES. Ct. App. D. C. Certiorari denied.* Reported below: 294 A. 2d 164.

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

On May 27, 1971, a member of the District of Columbia Metropolitan Police Department obtained from a United States Magistrate a search warrant on the basis of an affidavit setting forth sufficient facts to establish probable cause to believe that narcotics and related contraband were on specified premises. The warrant was sought pursuant to 21 U. S. C. § 879 (a)—§ 509 (a) of the Controlled Substances Act of 1970, 84 Stat. 1274. The warrant was executed by members of the Metropolitan Police Force at 9:40 p. m. on May 29, 1971, and resulted in the seizure of narcotics paraphernalia. The defendants moved to suppress the evidence on the ground that the search warrant did not detail any basis for execution at night, as required by 21 U. S. C. § 879 (a) and D. C. Code Ann. § 23-521 (f)(5) (Supp. 1972) and that motion was granted. The District of Columbia Court of Appeals reversed with one judge dissenting. 294 A. 2d 164.

Petitioners raise two questions that entail an interpretation of the Controlled Substances Act of 1970. This Act was passed by Congress to consolidate many of the then-existing narcotics Acts in order to make a concerted attack on the drug problem. It was based on the recommendations of two presidential studies and contains both rehabilitative and punitive provisions.

The old provisions, 18 U. S. C. §§ 1405 (1) and (2) (1964 ed.), provided (1) that a search warrant may be

*[REPORTER'S NOTE: The following dissenting opinion of Mr. JUSTICE DOUGLAS was filed on November 13, 1972.]

served at any time of the day or night if the judge or the United States Commissioner issuing the warrant is satisfied that there is probable cause to believe that the grounds for the application exist; and (2) that a search warrant may be directed to any officer of the Metropolitan Police of the District of Columbia authorized to enforce or assist in enforcing a violation of any of such provisions.

These sections have now been replaced. 21 U. S. C. § 878 provides: "Any officer or employee of the Bureau of Narcotics and Dangerous Drug[s] designated by the Attorney General may . . . (2) execute and serve search warrants, arrest warrants, administrative inspection warrants, subpoenas, and summonses issued under the authority of the United States."

Section 879 (a) provides that "A search warrant relating to offenses involving controlled substances may be served at any time of the day or night if the judge or United States magistrate issuing the warrant is satisfied that there is probable cause to believe that grounds exist for the warrant *and for its service at such time.*" (Emphasis added.)

Petitioners first contend that since the Congress did not include the clause allowing the District police to secure warrants under this provision, they have no power to do so. But since the police have power under D. C. Code Ann. § 4-138 (1967) to secure any warrant issued in the District of Columbia, this contention would seem to lose merit.

Of more substance is the second assertion. Under former 18 U. S. C. § 1405 a search warrant could be served day or night on a showing of probable cause. In the District of Columbia the requirements for the service of a warrant in the nighttime required a showing of more than probable cause. Both parties agree that the warrant in question did not meet those standards. When Con-

gress changed § 1405 and added the phrase "probable cause to believe that grounds exist for the warrant and for its service at such time" did § 879 incorporate § 23-521 (f) (5) of the D. C. Code?*

Judge Gesell in *United States v. Gooding*, 328 F. Supp. 1005 (1971), ruled that the warrant was not adequate for a nighttime search and that case is now before the Court of Appeals for the District of Columbia. I would hold this case for that decision or grant certiorari and put it down for argument.

Section 23-521 is an important component in the criminal procedure amendments of the Court Reform Act of 1970, effective February 1, 1971. There is an indication that Congress intended that this section should protect a person against unreasonable invasions of privacy. See D. C. Code Leg. & Adm. Service, 91st Cong., 2d Sess., 502 (1970). Since the Court Reform Act did not distinguish between local and federal prosecutions in its procedure, it is arguable that the local rules are binding. Roughly 60% of the search warrants issued in the District of Columbia are drug related. Congress is not unaware of this fact. One would expect that if federal

*That section provides in part:

"(f) A search warrant shall contain . . . (5) a direction that the warrant be executed during the hours of daylight or, where the judicial officer has found cause therefor, including one of the grounds set forth in section 23-522 (c) (1), an authorization for execution at any time of day or night."

Section 23-522 (c) (1) provides:

"(c) The application may also contain—(1) a request that the search warrant be made executable at any hour of the day or night, upon the ground that there is probable cause to believe that (A) it cannot be executed during the hours of daylight, (B) the property sought is likely to be removed or destroyed if not seized forthwith, or (C) the property sought is not likely to be found except at certain times or in certain circumstances."

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narcotics search warrants were to be excluded from coverage, it would have said so.

The District of Columbia Court of Appeals, however, took the position that since § 1405 used the standard of probable cause for both day and night searches and § 879 was merely its substitute, there is no change in the law. The majority is supported in its view by the District Court's opinion in *United States v. Green*, 331 F. Supp. 44 (1971). The dissent, however, thought that that construction made the added phrase in § 879 (a) meaningless.

We should resolve this controversy. As Judge Gesell stated: "The search warrant statutes of possible application to narcotics searches in this jurisdiction are a bramblebush of uncertainties and contradictions. It is difficult if not impossible to determine the present congressional intent. This uncertainty should be clarified immediately, so that future search warrants will not be invalidated because of misunderstandings as to the applicable law." *United States v. Gooding*, *supra*, at 1008.

No. 72-5243. *MAUCLIN v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 464 F. 2d 1280.

No. 71-6743. *BRYANT v. NORTH CAROLINA*. Sup. Ct. N. C. Certiorari denied. Reported below: 280 N. C. 551, 187 S. E. 2d 111.

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

I would grant certiorari in this case.

Petitioner was convicted of rape and sentenced to life imprisonment. At trial petitioner took the stand and admitted the fact of intercourse, but argued that the alleged victim had consented. Upon cross-examination by the State, petitioner was asked if he had talked with

two police officers making certain statements while in custody and admitting his use of force. Petitioner replied that he had talked with the officers but denied making the statements. In rebuttal, the State called the two police officers to the stand. Over petitioner's objection they testified that petitioner had admitted to them just after his arrest that he had used force to subdue the victim. Prior to this testimony, the trial judge instructed the jury that the testimony was being offered solely for the purpose of impeaching the defendant, and not as substantive evidence. There was no allegation that prior to the time the alleged statement was made to the officers, petitioner had been advised of his rights under *Miranda v. Arizona*, 384 U. S. 436. Nor was there ever any determination as to the voluntariness of petitioner's alleged statements.*

A defendant's constitutional right to the fullest opportunity to meet the accusations against him and to be free to deny all the elements of the case against him (*Walder v. United States*, 347 U. S. 62), must include the right to remain silent unless he chooses to speak in the *unfettered* exercise of his own will. The allowance of tainted statements to impeach the accused who takes the stand fetters that choice. The instant case is just another example of the way *Harris v. New York*, 401

*The only discussion of voluntariness in the opinion of the Supreme Court of North Carolina is that, "While there was evidence he had been given the required warnings, *it was admitted* he had not waived his right to counsel, had not been given a voir dire hearing, and *the court had not found facts showing his statements and admissions were voluntary.*" *North Carolina v. Bryant*, 280 N. C. 551, 554, 187 S. E. 2d 111, 113 (emphasis added). The North Carolina Supreme Court never specifically states that petitioner did not raise these objections at trial; the decision appears to be based on the assumption that these issues are irrelevant since the statement is only being offered for impeachment purposes.

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U. S. 222, compromises these constitutionally guaranteed rights.

But my objection goes much farther. The instant case goes a step beyond *Harris* in allowing the introduction of illegally obtained statements for the impeachment of the defendant when the statement was merely a remembered verbal conversation rather than a typed signed statement; when the statement was presented as direct testimony rather than for the purpose of impeachment by cross-examination; when, although there was an issue of voluntariness, the statement was permitted without a prior determination as to its voluntariness; and when the jury instruction that the statement should not be considered as substantive evidence did not contain the admonition that the statement could not be considered as evidence of guilt.

If *Harris* is to be extended, we should do so only after argument and mature deliberation.

No. 72-5258. *STONE v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 463 F. 2d 779.

No. 72-5291. *WALL v. NEW JERSEY*. Super. Ct. N. J. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari.

No. 72-294. *L. GOLDSTEIN'S SONS, INC. v. TRIO PROCESS CORP.* C. A. 3d Cir. Motion of Ford Motor Co. for leave to file a brief as *amicus curiae* granted. Certiorari denied. Reported below: 461 F. 2d 66.

No. 72-302. *PICTURE MUSIC, INC. v. BOURNE, INC.* C. A. 2d Cir. Motion of Composers & Lyricists Guild of America, Inc., et al. for leave to file a brief as *amici curiae* granted. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 457 F. 2d 1213.

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No. 72-109. PRESIDENTS COUNCIL, DISTRICT 25, ET AL. v. COMMUNITY SCHOOL BOARD NO. 25 ET AL. C. A. 2d Cir. Motion of Authors League of America, Inc., for leave to file a brief as *amicus curiae* granted. Certiorari denied. MR. JUSTICE STEWART would grant the petition for certiorari and set case for oral argument. Reported below: 457 F. 2d 289.

MR. JUSTICE DOUGLAS, dissenting.

A book entitled *Down These Mean Streets* by Piri Thomas was purchased by the librarians of three junior high schools in School District 25 in Queens, New York. The novel describes in graphic detail sexual and drug and drug-related activities that are a part of everyday life for those who live in Spanish Harlem. Its purpose was to acquaint the youth of Queens with the problems of their contemporaries in this social setting. The book was objected to by some parents and, after a public meeting, the School Board by a vote of 5-3 banned it from the libraries. A later vote by the Board amended the order so the book is now kept on the shelves for direct loan to any parent who wants his or her children to have access to it. No child can borrow it directly.

This suit was brought on behalf of a principal, a librarian, and various parents and children who request that the court declare the resolution adopted by the Board unconstitutional, and order the defendants to place the book in normal circulation in the libraries and enjoin them from interfering with other school libraries within their jurisdiction which desire to purchase the book.

Actions of school boards are not immune from constitutional scrutiny. *Meyer v. Nebraska*, 262 U. S. 390 (1923); *Bartels v. Iowa*, 262 U. S. 404 (1923); *Epperson v. Arkansas*, 393 U. S. 97 (1968); *Tinker v. Des Moines School Dist.*, 393 U. S. 503 (1969). Academic freedom has been upheld against attack on various fronts.

Sweezy v. New Hampshire, 354 U. S. 234 (1957); *Wieman v. Updegraff*, 344 U. S. 183 (1952); *Keyishian v. Board of Regents*, 385 U. S. 589 (1967). The First Amendment involves not only the right to speak and publish, but also the right to hear, to learn, to know. *Martin v. Struthers*, 319 U. S. 141, 143 (1943); *Stanley v. Georgia*, 394 U. S. 557, 564 (1969); *Thomas v. Collins*, 323 U. S. 516, 534 (1945); *Red Lion Broadcasting Co. v. FCC*, 395 U. S. 367, 386, 390 (1969). And this Court has recognized that this right to know is "‘nowhere more vital’ than in our schools and universities," *Kleindienst v. Mandel*, 408 U. S. 753, 763 (1972); *Shelton v. Tucker*, 364 U. S. 479, 487 (1960); *Sweezy v. New Hampshire*, 354 U. S., at 250 (opinion of Warren, C. J.); *Keyishian v. Board of Regents*, 385 U. S., at 603. The book involved is not alleged to be obscene either under the standards of *Roth v. United States*, 354 U. S. 476 (1957), or under the stricter standards for minors set forth in *Ginsberg v. New York*, 390 U. S. 629 (1968).

The Board, however, contends that a book with such vivid accounts of sordid and perverted occurrences is not good for junior high students. At trial both sides produced expert witnesses to prove the value or harm of the novel. At school the children are allowed to discuss the contents of the book and the social problems it portrays. They can do everything but read it. This in my mind lessens somewhat the contention that the subject matter of the book is not proper.

The First Amendment is a preferred right and is of great importance in the schools. In *Tinker*, the Court held that the First Amendment can only be restricted in the schools when a disciplinary problem is raised. No such allegation is asserted here. What else can the School Board now decide it does not like? How else will its sensibilities be offended? Are we sending children to school to be educated by the norms of

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the School Board or are we educating our youth to shed the prejudices of the past, to explore all forms of thought, and to find solutions to our world's problems?

Another requirement of the First Amendment is that any statute that imposes restrictions on the freedoms it protects must be narrowly drawn so as to impose any limitation in only the least restrictive way. N. Y. Educ. Law § 2590-e (3) (1970) gives the Board power to "determine matters relating to the instruction of students, including the selection of textbooks and other instructional materials . . .," provided they are approved by the Chancellor. The regulation of the State Commissioner of Education says that secondary school book collections "shall consist of books approved as satisfactory for (1) supplementing the curriculum (2) reference and general information (3) appreciation and (4) pleasure reading," 8 N. Y. Code, Rules & Regs. Educ., § 91.1 (b) (1966). Even a casual reading of these regulations shows that they contain no discrete limitations of the type spoken of in *Cantwell v. Connecticut*, 310 U. S. 296 (1940), *Speiser v. Randall*, 357 U. S. 513 (1958), or *Shelton v. Tucker*, *supra*.

Because the issues raised here are crucial to our national life, I would hear argument in this case.

No. 72-218. FUGATE, COMMISSIONER, DEPARTMENT OF HIGHWAYS OF VIRGINIA *v.* ARLINGTON COALITION ON TRANSPORTATION ET AL. C. A. 4th Cir. Certiorari denied. THE CHIEF JUSTICE and MR. JUSTICE POWELL would grant certiorari. Reported below: 458 F. 2d 1323.

No. 72 266. STONE *v.* STONE ET AL. C. A. 4th Cir. Motion to dispense with printing petition granted. Certiorari denied. Reported below: 460 F. 2d 64.

No. 72-275. KATZ ET AL. *v.* ASPINWALL ET AL. C. A. 5th Cir. Certiorari denied. MR. JUSTICE REHNQUIST took no part in the consideration or decision of this petition. Reported below: 459 F. 2d 1045.

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No. 72-303. NEW HAMPSHIRE BANKERS ASSN. ET AL. *v.* NELSON, BANK COMMISSIONER OF NEW HAMPSHIRE, ET AL. C. A. 1st Cir. Certiorari denied. MR. JUSTICE DOUGLAS and MR. JUSTICE BLACKMUN would grant certiorari. Reported below: 460 F. 2d 307.

No. 72-313. METROPOLITAN COUNTY BOARD OF EDUCATION OF NASHVILLE AND DAVIDSON COUNTY ET AL. *v.* KELLEY ET AL. C. A. 6th Cir. Certiorari denied. MR. JUSTICE MARSHALL took no part in the consideration or decision of this petition. Reported below: 463 F. 2d 732.

No. 72-321. SEABOARD COAST LINE RAILROAD CO. *v.* JACKSON. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. MR. JUSTICE POWELL took no part in the consideration or decision of this petition. Reported below: 256 So. 2d 568.

No. 72-327. HOOGASIAN ET AL. *v.* SEARS, ROEBUCK & Co. Sup. Ct. Ill. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. MR. JUSTICE POWELL took no part in the consideration or decision of this petition. Reported below: 52 Ill. 2d 301, 287 N. E. 2d 677.

No. 72-339. LAMB ENTERPRISES, INC. *v.* TOLEDO BLADE CO. ET AL. C. A. 6th Cir. Certiorari denied. MR. JUSTICE DOUGLAS took no part in the consideration or decision of this petition. Reported below: 461 F. 2d 506.

No. 72-5269. RAYMOND *v.* UNITED STATES. C. A. 8th Cir. Motion for an order reinstating case No. 71-6536, *Guy v. United States* [*ante*, p. 896], and for simultaneous consideration denied. Certiorari denied. Reported below: 456 F. 2d 1157.

Rehearing Denied

No. 71-1433. BELLISTON ET AL. *v.* TEXACO INC., 408 U. S. 928. Motion for leave to file petition for rehearing denied.

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No. 71-1624. *LEWIS v. STRACHAN SHIPPING CO. ET AL.*, *ante*, p. 887;

No. 71-6260. *MACLEOD v. SLAYTON, PENITENTIARY SUPERINTENDENT*, *ante*, p. 853;

No. 71-6536. *GUY v. UNITED STATES*, *ante*, p. 896;

No. 71-6564. *NEWELL v. BOHANNON*, U. S. DISTRICT JUDGE, *ante*, p. 823; and

No. 71-6907. *WATSON v. STYNCHCOMBE, SHERIFF*, *ante*, p. 873. Petitions for rehearing denied.

No. 71-1218. *HOLMES ET AL. v. UNITED STATES*, 407 U. S. 909. Motion to dispense with printing motion for leave to file petition for rehearing granted. Motion for leave to file petition for rehearing denied.

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Miscellaneous Order

No. A-444. *POPKIN v. UNITED STATES*. C. A. 1st Cir. Application for stay presented to MR. JUSTICE BRENNAN, and by him referred to the Court, denied. MR. JUSTICE DOUGLAS would grant the stay. Reported below: 460 F. 2d 328.

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Affirmed on Appeal

No. 72-104. *KAPLAN ET AL. v. MILLIKEN, JUDGE, ET AL.* Affirmed on appeal from D. C. W. D. Ky.

No. 72-246. *INTERSTATE COMMERCE COMMISSION v. IML SEATRANSIT, LTD., ET AL.* Affirmed on appeal from D. C. N. D. Cal. MR. JUSTICE DOUGLAS, MR. JUSTICE WHITE, and MR. JUSTICE REHNQUIST would note prob-

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able jurisdiction and set case for oral argument. Reported below: 343 F. Supp. 32.

Appeals Dismissed

No. 71-6752. *WALKER v. KENTUCKY*. Appeal from Ct. App. Ky. dismissed for want of substantial federal question. Reported below: 476 S. W. 2d 630.

No. 72-32. *WINTER v. PRATT ET AL.* Appeal from Sup. Ct. S. C. dismissed for want of substantial federal question. Reported below: 258 S. C. 397, 189 S. E. 2d 7.

No. 72-354. *ROCKLAND COUNTY BUILDERS ASSN., INC., ET AL. v. MCALEVEY ET AL.*; and

No. 72-369. *GOLDEN ET AL. v. PLANNING BOARD OF THE TOWN OF RAMAPO ET AL.* Appeals from Ct. App. N. Y. dismissed for want of substantial federal question. Reported below: 30 N. Y. 2d 359, 285 N. E. 2d 291.

No. 72-365. *REILLEY v. REILLEY*. Appeal from Sup. Ct. App. W. Va. dismissed for want of substantial federal question.

No. 72-5513. *CORRADO, DBA PERRY'S SECOND HAND PLUMBING v. PROVIDENCE REDEVELOPMENT AGENCY*. Appeal from Super. Ct. R. I. dismissed for want of substantial federal question.

No. 72-373. *TEXAS EASTERN TRANSMISSION CORP. v. BENSON, COMMISSIONER OF REVENUE*. Appeal from Sup. Ct. Tenn. dismissed for want of substantial federal question. Mr. JUSTICE DOUGLAS, Mr. JUSTICE STEWART, and Mr. JUSTICE WHITE would note probable jurisdiction and set case for oral argument. Reported below: — Tenn. —, 480 S. W. 2d 905.

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Certiorari Granted—Vacated and Remanded. (See also No. 72-5256, *ante*, p. 56.)

No. 72-5317. *FRAZIER v. NORTH CAROLINA*. Sup. Ct. N. C. Motion for leave to proceed *in forma pauperis* and certiorari granted. Judgment vacated and case remanded for further consideration in light of *Stewart v. Massachusetts*, 408 U. S. 845 (1972). Reported below: 280 N. C. 181, 185 S. E. 2d 652.

Miscellaneous Orders

No. A-394 (72-5535). *DYE v. NEW JERSEY*. Sup. Ct. N. J. Application for bail presented to MR. JUSTICE STEWART, and by him referred to the Court, denied. MR. JUSTICE DOUGLAS would grant bail. MR. JUSTICE BRENNAN took no part in the consideration or decision of this application. Reported below: 60 N. J. 518, 291 A. 2d 825.

No. A-460. *IN RE BERG ET AL.* C. A. 9th Cir. Application for stay of execution of judgment and bail presented to MR. JUSTICE DOUGLAS, and by him referred to the Court, denied. MR. JUSTICE DOUGLAS would continue the stay.

No. 71-1178. *GULF STATES UTILITIES CO. v. FEDERAL POWER COMMISSION ET AL.* C. A. D. C. Cir. [Certiorari granted, 406 U. S. 956.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* in support of respondent cities granted and 15 minutes allotted for that purpose. Petitioner also allotted 15 additional minutes for oral argument.

No. 72-95. *TOLLETT, WARDEN v. HENDERSON*. C. A. 6th Cir. [Certiorari granted, *ante*, p. 912.] Motion of respondent for appointment of counsel granted. It is ordered that H. Fred Hoefle, Esquire, of Cincinnati, Ohio, 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. 71-1192. GOLDSTEIN ET AL. *v.* CALIFORNIA. App. Dept., Super. Ct. Cal., County of Los Angeles. [Certiorari granted, 406 U. S. 956.] Motion of Recording Industry Association of America, Inc., et al. for leave to participate in oral argument as *amici curiae* denied.

No. 71-6757. FONTAINE *v.* UNITED STATES. C. A. 6th Cir. [Certiorari granted, *ante*, p. 978.] Motion of petitioner 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 petitioner in this case.

No. 72-312. MERRILL LYNCH, PIERCE, FENNER & SMITH, INC. *v.* WARE ET AL. Ct. App. Cal., 1st App. Dist. The Solicitor General is invited to file a brief in this case expressing the views of the United States. Reported below: 24 Cal. App. 3d 35, 100 Cal. Rptr. 791.

No. 72-5324. McCrARY *v.* WAINWRIGHT, CORRECTIONS DIRECTOR. Motion for leave to file petition for writ of habeas corpus denied.

No. 72-5336. STEELE *v.* LAMBROS, JUDGE. Motion for leave to file petition for writ of mandamus denied.

Probable Jurisdiction Noted

No. 72-214. ATCHISON, TOPEKA & SANTA FE RAILWAY CO. ET AL. *v.* WICHITA BOARD OF TRADE ET AL.; and

No. 72-433. INTERSTATE COMMERCE COMMISSION *v.* WICHITA BOARD OF TRADE ET AL. Appeals from D. C. Kan. Probable jurisdiction noted. Cases consolidated and a total of one hour allotted for oral argument. Reported below: 352 F. Supp. 365.

No. 72-350. UNITED STATES *v.* STATE TAX COMMISSION OF MISSISSIPPI ET AL. Appeal from D. C. S. D. Miss. Probable jurisdiction noted. Reported below: 340 F. Supp. 903.

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*Certiorari Denied**

No. 71-1556. *McGOWAN v. MISSISSIPPI*. Sup. Ct. Miss. Certiorari denied. Reported below: 258 So. 2d 801.

No. 71-6720. *FLETCHER v. MARYLAND*. Ct. App. Md. Certiorari denied. Reported below: 265 Md. 256, 288 A. 2d 885.

No. 71-6880. *DAVIS v. CALDWELL, WARDEN*. Sup. Ct. Ga. Certiorari denied. Reported below: 229 Ga. 122, 189 S. E. 2d 423.

No. 71-6897. *ANDERSEN v. REGENTS OF THE UNIVERSITY OF CALIFORNIA*. Ct. App. Cal., 1st App. Dist. Certiorari denied. Reported below: 22 Cal. App. 3d 763, 99 Cal. Rptr. 531.

No. 72-67. *HILL ET UX. v. HILL*. Sup. Ct. Cal. Certiorari denied. Reported below: See 23 Cal. App. 3d 760, 100 Cal. Rptr. 458.

No. 72-79. *COUNTY BOARD OF EDUCATION OF RICHMOND COUNTY, GEORGIA, ET AL. v. ACREE ET AL.*; and

No. 72-167. *DRUMMOND ET AL. v. ACREE ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 458 F. 2d 486.

No. 72-135. *PROJANSKY v. UNITED STATES*;

No. 72-272. *LEAVITT v. UNITED STATES*;

No. 72-390. *GEIER v. UNITED STATES*; and

No. 72-514. *BRAININ v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 465 F. 2d 123.

No. 72-157. *LONQUEST v. WYOMING*. Sup. Ct. Wyo. Certiorari denied. Reported below: 495 P. 2d 575.

*[REPORTER'S NOTE: For dissenting opinion of Mr. Justice DOUGLAS, filed November 13, 1973, in No. 72-5240, *Thomas v. United States*, see *ante*, p. 992.]

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No. 72-177. *MILLER v. SLAYTON, PENITENTIARY SUPERINTENDENT*. C. A. 4th Cir. Certiorari denied. Reported below: 457 F. 2d 700.

No. 72-288. *POTTS ET AL. v. FLAX ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 464 F. 2d 865.

No. 72-335. *LEFLORE v. ALABAMA EX REL. MOORE*. Sup. Ct. Ala. Certiorari denied. Reported below: 288 Ala. 310, 260 So. 2d 581.

No. 72-343. *LOESER ET AL. v. LOESER*. Sup. Ct. Ill. Certiorari denied. Reported below: 51 Ill. 2d 567, 283 N. E. 2d 884.

No. 72-346. *HUMBLE v. UNITED STATES*. C. A. 9th Cir. Certiorari denied.

No. 72-347. *CUSTOM RECORDING Co., INC., ET AL. v. COLUMBIA BROADCASTING SYSTEM, INC.* Sup. Ct. S. C. Certiorari denied. Reported below: 258 S. C. 465, 189 S. E. 2d 305.

No. 72-353. *CERTIFIED GROCERS OF ILLINOIS, INC., ET AL. v. SPARKLE FOOD CENTER, INC., ET AL.* Sup. Ct. Ill. Certiorari denied. Reported below: 51 Ill. 2d 389, 282 N. E. 2d 728.

No. 72-358. *BISHOP v. CORAL DRILLING, INC., ET AL.* Sup. Ct. Miss. Certiorari denied. Reported below: 260 So. 2d 463.

No. 72-360. *INTERNATIONAL LONGSHOREMEN'S ASSN. ET AL. v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 460 F. 2d 497.

No. 72-362. *WINCHESTER TV CABLE Co., INC., ET AL. v. FEDERAL COMMUNICATIONS COMMISSION ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 462 F. 2d 115.

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No. 72-361. *GOTTLIEB v. DURYEA ET AL.* Ct. App. N. Y. Certiorari denied.

No. 72-363. *GRIMES v. NOTTOWAY COUNTY SCHOOL BOARD ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 462 F. 2d 650.

No. 72-372. *ROAD MATERIALS, INC. v. COMMISSIONER OF INTERNAL REVENUE.* C. A. 4th Cir. Certiorari denied.

No. 72-374. *SWARTHOUT v. OLUND.* C. A. 6th Cir. Certiorari denied. Reported below: 459 F. 2d 999.

No. 72-375. *SAN FRANCISCO NEWSPAPER PRINTING CO., INC., ET AL. v. NATIONAL LABOR RELATIONS BOARD ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 462 F. 2d 699.

No. 72-377. *CAMPBELL v. TEXAS.* Ct. Crim. App. Tex. Certiorari denied. Reported below: 480 S. W. 2d 391.

No. 72-378. *HERSH v. UNITED STATES.* C. A. 9th Cir. Certiorari denied. Reported below: 464 F. 2d 228.

No. 72-379. *M. J. PIROLI & SONS, INC. v. NATIONAL LABOR RELATIONS BOARD.* C. A. 1st Cir. Certiorari denied.

No. 72-380. *PERILLO ET UX. v. UNITED AMERICAN LIFE INSURANCE CO.* C. A. 9th Cir. Certiorari denied. Reported below: 462 F. 2d 254.

No. 72-381. *BASYAP, INC., ET AL. v. DISTRICT OF COLUMBIA REDEVELOPMENT LAND AGENCY ET AL.* C. A. D. C. Cir. Certiorari denied.

No. 72-383. *TEXACO INC. v. NATIONAL LABOR RELATIONS BOARD.* C. A. 3d Cir. Certiorari denied. Reported below: 462 F. 2d 812.

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No. 72-384. *KANSAI IRON WORKS, LTD. v. MARUBENI-IDA, INC., ET AL.* Sup. Ct. Wash. Certiorari denied. Reported below: 80 Wash. 2d 707, 497 P. 2d 1311.

No. 72-387. *SCHWARTZ v. UNITED STATES.* C. A. 2d Cir. Certiorari denied. Reported below: 464 F. 2d 499.

No. 72-391. *ROBINSON, TRUSTEE IN BANKRUPTCY v. FRASHER ET UX.* C. A. 9th Cir. Certiorari denied. Reported below: 458 F. 2d 492.

No. 72-395. *JOHN NUVEEN & Co., INC., ET AL. v. SANDERS.* C. A. 7th Cir. Certiorari denied. Reported below: 463 F. 2d 1075.

No. 72-420. *MONTANO v. UNITED STATES; and*

No. 72-5182. *GRIFFIN v. UNITED STATES.* C. A. 9th Cir. Certiorari denied. Reported below: 464 F. 2d 1352.

No. 72-5004. *COUSINO v. COULON ET AL.* C. A. 6th Cir. Certiorari denied.

No. 72-5014. *CONNORS v. JOHNSON, WARDEN.* C. A. 6th Cir. Certiorari denied.

No. 72-5297. *CARTER v. MANCUSI, CORRECTIONAL SUPERINTENDENT.* C. A. 2d Cir. Certiorari denied. Reported below: 460 F. 2d 1406.

No. 72-5298. *COOPER v. UNITED STATES.* C. A. 5th Cir. Certiorari denied. Reported below: 462 F. 2d 1343.

No. 72-5305. *HAYS v. CANALE ET AL.* C. A. 6th Cir. Certiorari denied.

No. 72-5306. *LABADIE v. MICHIGAN.* C. A. 6th Cir. Certiorari denied.

No. 72-5307. *GRAY ET AL. v. UNITED STATES.* C. A. 5th Cir. Certiorari denied. Reported below: 462 F. 2d 164.

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No. 72-5309. *BENNETT ET AL. v. UNITED STATES*. C. A. 9th Cir. Certiorari denied.

No. 72-5314. *HIBBERD v. CALIFORNIA*. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 72-5316. *KNOX v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 462 F. 2d 982.

No. 72-5318. *DOUGLAS v. NIXON, SHERIFF*. C. A. 6th Cir. Certiorari denied. Reported below: 459 F. 2d 325.

No. 72-5321. *BENNETT v. UNITED STATES*. C. A. 10th Cir. Certiorari denied.

No. 72-5325. *CODY v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 460 F. 2d 34.

No. 72-5326. *GRANTHAM v. NELSON, WARDEN*. C. A. 9th Cir. Certiorari denied.

No. 72-5327. *MONJE v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 465 F. 2d 141.

No. 72-5330. *WOLFE v. PENNSYLVANIA*. Sup. Ct. Pa. Certiorari denied.

No. 72-5332. *HAGAN v. CALIFORNIA*. Ct. App. Cal., 3d App. Dist. Certiorari denied.

No. 72-5333. *JONES v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 462 F. 2d 1376.

No. 72-5334. *LeBRUN v. OREGON*. Sup. Ct. Ore. Certiorari denied.

No. 72-5335. *JACKSON v. WOLFORD*. C. A. 6th Cir. Certiorari denied. Reported below: 460 F. 2d 319.

No. 72-5338. *WAGNER v. WORKMEN'S COMPENSATION APPEALS BOARD ET AL.* Ct. App. Cal., 2d App. Dist. Certiorari denied.

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No. 72-5339. *EMDY v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 465 F. 2d 378.

No. 72-5340. *CHACON v. McCLAIN ET AL.* C. A. 9th Cir. Certiorari denied.

No. 72-5341. *SPINKS v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 470 F. 2d 64.

No. 72-5342. *HOUP v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 462 F. 2d 1338.

No. 72-5344. *STROTHER v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 458 F. 2d 424.

No. 72-5345. *COOK v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 464 F. 2d 251.

No. 72-5514. *CORRADO v. PROVIDENCE REDEVELOPMENT AGENCY*. Sup. Ct. R. I. Certiorari denied. Reported below: 109 R. I. 956, 288 A. 2d 272.

No. 71-1642. *FARR v. SUPERIOR COURT OF CALIFORNIA, LOS ANGELES COUNTY*. Ct. App. Cal., 2d App. Dist. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 22 Cal. App. 3d 60, 99 Cal. Rptr. 342.

No. 71-6700. *VENABLE ET AL. v. TENNESSEE*. Ct. Crim. App. Tenn. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari.

No. 72-349. *SCARPETTA v. DeMARTINO ET UX.* Sup. Ct. Fla. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 262 So. 2d 442.

No. 72-352. *COLLINS v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari.

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No. 72-355. *RUSSELL, EXECUTRIX v. UNITED STATES*. C. A. 10th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 461 F. 2d 605.

No. 72-356. *SMITH, TRUSTEE v. BAKER, TRUSTEE, ET AL.* C. A. 3d Cir. Petition for certiorari before judgment to C. A. 3d Cir. denied. MR. JUSTICE DOUGLAS would grant certiorari.

No. 72-371. *NATIONAL LABOR RELATIONS BOARD v. TAMIMENT, INC.* C. A. 3d Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 451 F. 2d 794.

No. 72-382. *CARTER ET AL. v. PANAMA CANAL CO.* C. A. D. C. Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 150 U. S. App. D. C. 198, 463 F. 2d 1289.

No. 72-388. *GERACE ET VIR v. COUNTY OF LOS ANGELES ET AL.* Ct. App. Cal., 2d App. Dist. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari.

No. 72-389. *ZIZZO v. UNITED STATES ET AL.* C. A. 7th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 470 F. 2d 105.

No. 72-5296. *CHAGOIS v. LYKES BROS. STEAMSHIP Co., INC.* C. A. 5th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 457 F. 2d 343.

No. 72-5315. *BOATWRIGHT v. HENDRICKS, PRISON CAMP SUPERINTENDENT.* C. A. 5th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari.

No. 72-5328. *BROADWAY v. TEXAS.* C. A. 5th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 459 F. 2d 483.

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No. 72-5337. *NIX v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 465 F. 2d 90.

No. 71-6589. *SLADE v. VALLEY NATIONAL BANK, GLENDALE*. App. Dept., Super. Ct. Cal., County of Los Angeles. Motion for leave to dispense with printing *amicus curiae* brief by National Legal Aid & Defender Assn. granted. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari.

No. 72-41. *WASHINGTON PARISH SCHOOL BOARD ET AL. v. MOSES ET AL.* C. A. 5th Cir. Motion for leave to dispense with printing respondents' brief granted. Certiorari denied. Reported below: 456 F. 2d 1285.

No. 72-307. *RUSSO ET AL. v. BYRNE*, U. S. District Judge. C. A. 9th Cir. Certiorari denied. MR. JUSTICE BRENNAN would grant certiorari.

MR. JUSTICE DOUGLAS, dissenting.

I regret that the Court does not take this occasion to lay down some further ground rules for the conduct of criminal cases involving electronic surveillance in the sensitive area which involves both the Fourth and the Sixth Amendments.

In *Alderman v. United States*, 394 U. S. 165, we laid down rules governing the district courts where there had been electronic surveillance of the defendant in a criminal case or where in other surveillance his words had been recorded. *Alderman* and its descendants made possible the conduct of criminal trials with fairness to all sides and with no disturbance to orderly proceedings.

The present case is one of several that have come across my desk this year involving not the surveillance of a

defendant in a criminal case but the surveillance of his lawyer.

It is time, I think, that we hold that the confidences of the lawyer-client relationship remain inviolate. It is also time that we set forth the prescribed procedures in an *Alderman* type of opinion.

The problems where the lawyer is involved seem to me to be as critical as those where the defendant's privacy under the Fourth Amendment is violated.¹ The ruling

¹ Wiretapping, which Justice Holmes called "dirty business," *Olmstead v. United States*, 277 U. S. 438, 470 (dissenting), was put by Justice Brandeis in a constitutional frame of reference:

"The makers of our Constitution undertook to secure conditions favorable to the pursuit of happiness. They recognized the significance of man's spiritual nature, of his feelings and of his intellect. They knew that only a part of the pain, pleasure and satisfactions of life are to be found in material things. They sought to protect Americans in their beliefs, their thoughts, their emotions and their sensations. They conferred, as against the Government, the right to be let alone—the most comprehensive of rights and the right most valued by civilized men. To protect that right, every unjustifiable intrusion by the Government upon the privacy of the individual, whatever the means employed, must be deemed a violation of the Fourth Amendment." *Id.*, at 478.

And he added:

"Decency, security and liberty alike demand that government officials shall be subjected to the same rules of conduct that are commands to the citizen. In a government of laws, existence of the government will be imperilled if it fails to observe the law scrupulously. Our Government is the potent, the omnipresent teacher. For good or for ill, it teaches the whole people by its example. Crime is contagious. If the Government becomes a law-breaker, it breeds contempt for law; it invites every man to become a law unto himself; it invites anarchy. To declare that in the administration of the criminal law the end justifies the means—to declare that the Government may commit crimes in order to secure the conviction of a private criminal—would bring terrible retribution. Against that pernicious doctrine this Court should resolutely set its face." *Id.*, at 485.

which I made this last summer when I granted the stay in this case was based on the premise that the teaching of *Alderman* would fully apply to a case where the Sixth Amendment rights of a defendant were imperiled.

We held in *United States v. United States District Court*, 407 U. S. 297, that electronic surveillance of internal security measures was not permissible on the basis of an order of the Attorney General, but only on judicial search warrants. We reserved decision "with respect to activities of foreign powers or their agents." *Id.*, at 322. When the argument was held last summer on the stay order, the prosecution in oral presentation distinguished that case on the ground that it involved "domestic" surveillance while the present one involved "foreign" surveillance. The prosecution seemed reluctant to enlarge on that distinction, which led me to note in the opinion I filed granting the stay that we may be dealing only with a matter of semantics. The prosecution never submitted to me *in camera* the logs in question. I have now seen them, and it appears that the electronic surveillance was of a telephone of a foreign national and that the intercepted conversations in this case had nothing to do "with respect to activities of foreign powers or their agents," the question we reserved in the previous case. *Ibid.* As I understand it, the conversation was an inquiry by one of the counsel concerning wholly personal social and commercial matters. It is not conceivable to me that this conversation is in the "foreign" field in the sense the word is used in the statutes involved in the *United States District Court* case. No activity of any foreign "agent" is even suggested. We should therefore take the case to resolve what immunity the Executive Branch has in setting up schemes of pervasive surveillance of foreign nationals that is unrelated to espionage.

It is, however, said that the conversation is utterly irrelevant to the issues in the present case. How can we know? Only one immersed in building a case for the prosecution or constructing a defense can know whether an innocuous-appearing conversation would be a "link" in a chain of evidence which in time would be necessary or convenient for either the prosecution or the defense. That is why I feel strongly that, as we held in *Alderman v. United States*, *supra*, the question of relevance must be submitted for adversary hearing before the trial judge.²

I suspect that if that had been done here, the dispute that has delayed this trial for some months would have been quickly resolved. A grave injustice may or may not ride on the denial of certiorari today. My concern is

² In *Alderman v. United States* we read:

"Adversary proceedings are a major aspect of our system of criminal justice. Their superiority as a means for attaining justice in a given case is nowhere more evident than in those cases, such as the ones at bar, where an issue must be decided on the basis of a large volume of factual materials, and after consideration of the many and subtle interrelationships which may exist among the facts reflected by these records. As the need for adversary inquiry is increased by the complexity of the issues presented for adjudication, and by the consequent inadequacy of *ex parte* procedures as a means for their accurate resolution, the displacement of well-informed advocacy necessarily becomes less justifiable.

"Adversary proceedings will not magically eliminate all error, but they will substantially reduce its incidence by guarding against the possibility that the trial judge, through lack of time or unfamiliarity with the information contained in and suggested by the materials, will be unable to provide the scrutiny which the Fourth Amendment exclusionary rule demands. It may be that the prospect of disclosure will compel the Government to dismiss some prosecutions in deference to national security or third-party interests. But this is a choice the Government concededly faces with respect to material which it has obtained illegally and which it admits, or which a judge would find, is arguably relevant to the evidence offered against the defendant." 394 U. S., at 183-184.

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not that, but the administration of the law. I use the word law in its largest sense—where the prosecution as well as the defense is required to live within the spirit and letter of the constitutional rules designed to keep Government off the backs of the people and to take no shortcuts because of public hysteria or political pressures.

That question concerning the applicability of the pre-trial procedures laid out in *Alderman* to the protection of Sixth Amendment claims makes this case a singularly appropriate occasion for laying down the ground rules that will apply in federal trials.

No. 72-345. *RAO v. BOARD OF COUNTY COMMISSIONERS (PIERCE COUNTY) ET AL.* Sup. Ct. Wash. Motion to dispense with printing petition granted. Certiorari denied. Reported below: 80 Wash. 2d 695, 497 P. 2d 591.

No. 72-5247. *GRUBB v. OKLAHOMA.* Ct. Crim. App. Okla. Certiorari denied. Reported below: 497 P. 2d 1305.

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

Petitioner and Lynette Murphy lived together as husband and wife in Collinsville, Oklahoma, from September 1970 through the end of January 1971. After leaving petitioner, Lynette went to live with her sister and brother-in-law, Lana and Larry Sanders, in Collinsville. At approximately 8 p. m. on February 2, 1971, petitioner went to the Sanders' residence, displayed a gun, and informed Gary Hany, another occupant, that he intended to take Lynette with him. After a wait of approximately 45 minutes, Lynette, Lana, and Larry arrived at the residence. Petitioner told Lynette that if she refused to go with him he would kill them all. Lynette became "kind of shook up" and agreed to go. Petitioner then

took Larry Sanders' money (three dollars) and car keys, and left with Lynette in the Sanders' car. After an extensive chase, petitioner was apprehended by the Oklahoma police and was charged with kidnaping, two counts of armed robbery, and unauthorized use of a motor vehicle.*

Although all of these charges arose out of the "same transaction or occurrence," they were prosecuted by the State in two separate proceedings. At the first trial, petitioner was convicted of the armed robbery of Larry Sanders. At the second trial, he was convicted of kidnaping Lynette Murphy, and was acquitted of a charge of armed robbery of Lana Sanders. Petitioner's contention that this second prosecution was barred by the provisions against double jeopardy in both the State and Federal Constitutions was rejected by the Oklahoma Court of Criminal Appeals, one judge dissenting. *Grubb v. State*, 497 P. 2d 1305 (1972).

I would grant the petition for certiorari and reverse. I adhere to my view that the Double Jeopardy Clause of the Fifth Amendment, which is applicable to the States through the Fourteenth Amendment, *Benton v. Maryland*, 395 U. S. 784 (1969), requires the prosecution, except in most limited circumstances not present here, "to join at one trial all the charges against a defendant that grow out of a single criminal act, occurrence, episode, or transaction." *Ashe v. Swenson*, 397 U. S. 436, 453-454 (1970) (concurring opinion); see *Miller v. Oregon*,

*The charge of unauthorized use of a motor vehicle was dismissed by the trial court on the ground that it violated petitioner's right against double jeopardy. The court apparently ruled that the prosecution for armed robbery of Larry Sanders, which included the forcible taking of Sanders' car keys, precluded an additional prosecution for unauthorized use of the vehicle itself.

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405 U. S. 1047 (1972) (dissenting opinion); *Harris v. Washington*, 404 U. S. 55, 57 (1971) (concurring opinion). Under this "same transaction" test, all charges against petitioner should have been brought in a single prosecution.

No. 72-5299. *SALTER v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. MR. JUSTICE STEWART would grant certiorari.

Rehearing Denied

No. 71-6594. *TYLER v. PARKS*, *ante*, p. 858;

No. 71-6691. *ZIMMER v. GAFFNEY, WARDEN*, *ante*, p. 862;

No. 71-6729. *WEAVER v. CALIFORNIA DEPARTMENT OF CORRECTIONS ET AL.*, *ante*, p. 864;

No. 71-6813. *FERMIN v. RICHARDSON, SECRETARY OF HEALTH, EDUCATION, AND WELFARE*, *ante*, p. 868;

No. 71-6819. *NELSON v. BUTLER, PRISON SUPERINTENDENT*, *ante*, p. 869;

No. 71-6861. *DOCKERY v. CALIFORNIA*, *ante*, p. 871; and

No. 72-5067. *WIMBERLEY ET AL. v. LYNCH, ATTORNEY GENERAL OF CALIFORNIA, ET AL.*, *ante*, p. 882. Petitions for rehearing denied.

No. 71-1270. *McKEE v. UNITED STATES*, 407 U. S. 910, and *ante*, p. 899. Motion for leave to file second petition for rehearing denied.

No. 71-1401. *SMITH, TRUSTEE v. BAKER ET AL.*, *ante*, p. 890. Petition for rehearing denied. MR. JUSTICE BLACKMUN took no part in the consideration or decision of this petition.

No. 71-5689. *NACHBAUR v. HERMAN*, 405 U. S. 931. Second motion for leave to file petition for rehearing denied.

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Affirmed on Appeal

No. 72-334. *ROSE v. BONDURANT, CHAIRMAN, BOARD OF BAR EXAMINERS OF NEW MEXICO, ET AL.* Affirmed on appeal from D. C. N. M. MR. JUSTICE STEWART would vacate judgment and remand case to determine whether case has become moot. Reported below: 339 F. Supp. 257.

No. 72-413. *SIMON v. SARGENT, GOVERNOR OF MASSACHUSETTS, ET AL.* Affirmed on appeal from D. C. Mass. Reported below: 346 F. Supp. 277.

No. 72-432. *MORITT v. ROCKEFELLER, GOVERNOR OF NEW YORK, ET AL.* Appeal from D. C. S. D. N. Y. Motion to dispense with printing jurisdictional statement granted. Judgment affirmed. MR. JUSTICE DOUGLAS would postpone question of jurisdiction to a hearing of case on the merits. Reported below: 346 F. Supp. 34.

Appeals Dismissed

No. 71-1478. *FALKNER ET UX. v. PASTRANO ET UX.* Appeal from Sup. Ct. Fla. Motion to dispense with printing jurisdictional statement and motion to dismiss granted. Appeal dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied. Reported below: 255 So. 2d 688.

No. 72-412. *MARTINEZ v. TEXAS STATE BOARD OF MEDICAL EXAMINERS.* Appeal from Ct. Civ. App. Tex., 4th Sup. Jud. Dist., dismissed for want of substantial federal question. Reported below: 476 S. W. 2d 400.

No. 72-415. *CONN-WOOD INVESTMENT CORP. ET AL. v. WORKMEN'S COMPENSATION APPEALS BOARD OF CALIFORNIA ET AL.* Appeal from Ct. App. Cal., 2d App. Dist., dismissed for want of substantial federal question.

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No. 72-5118. *MARTIN v. TEXAS*. Appeal from Ct. Crim. App. 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: 475 S. W. 2d 265.

Other Summary Disposition

No. 71-1133. *UPPER PECOS ASSN. v. PETERSON, SECRETARY OF COMMERCE, ET AL.* C. A. 10th Cir. [Certiorari granted, 406 U. S. 944.] Upon consideration of memorandum for respondents suggesting mootness and brief in opposition thereto, judgment vacated and case remanded to determine whether case has become moot. MR. JUSTICE BRENNAN took no part in the consideration or decision of this case. Reported below: 452 F. 2d 1233.

*Miscellaneous Orders**

No. A-360 (72-730). *MARKLE ET AL. v. ABELE ET AL.* D. C. Conn. Motion to vacate stay heretofore granted by the Court on October 16, 1972 [*ante*, p. 908], denied. Reported below: 351 F. Supp. 224.

No. A-457. *BORKENHAGEN v. UNITED STATES*. C. A. 7th Cir. Application for stay and/or bail presented to MR. JUSTICE DOUGLAS, and by him referred to the Court, denied. MR. JUSTICE DOUGLAS would grant the stay. 468 F. 2d 43.

No. 58, Orig. *AMERICAN PARTY ET AL. v. NEW YORK ET AL.* Motion for leave to file bill of complaint denied.

No. 71-1043. *HELLER v. NEW YORK*. Ct. App. N. Y. [Certiorari granted, 406 U. S. 916.] Motion of Charles H. Keating, Jr., to file untimely brief as *amicus curiae* in support of respondent granted.

*For reference to Court's order prescribing Rules of Evidence for United States Courts and Magistrates, Amendments to the Federal Rules of Civil Procedure, and Amendments to the Federal Rules of Criminal Procedure, see *post*, p. 1132.

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No. 72-397. *BONELLI CATTLE CO. ET AL. v. ARIZONA ET AL.* Sup. Ct. Ariz. The Solicitor General is invited to file a brief expressing the views of the United States. MR. JUSTICE REHNQUIST took no part in the consideration or decision of this order. Reported below: 108 Ariz. 258, 495 P. 2d 1312.

No. 72-400. *ROSE, WARDEN v. RIVERA.* C. A. 6th Cir. Motion of petitioner to consolidate case with Nos. 71-1281 [*Linder, Warden v. Recor*] and 71-1472 [*Neil, Warden v. Pendergrass*] denied. Reported below: 465 F. 2d 727.

Certiorari Denied. (See also Nos. 71-1478 and 72-5118, *supra.*)

No. 71-1567. *BERRY v. NORTH CAROLINA.* Ct. App. N. C. *Certiorari* denied. Reported below: 13 N. C. App. 310, 185 S. E. 2d 463.

No. 71-6824. *MORTON v. WYOMING.* Sup. Ct. Wyo. *Certiorari* denied.

No. 71-6841. *SIGMAN v. ILLINOIS.* Sup. Ct. Ill. *Certiorari* denied. Reported below: 50 Ill. 2d 229, 278 N. E. 2d 73.

No. 71-6894. *MCGHEE v. WOLFF, WARDEN.* C. A. 8th Cir. *Certiorari* denied. Reported below: 455 F. 2d 987.

No. 71-6899. *REARDON v. MEACHAM.* Sup. Ct. Wyo. *Certiorari* denied.

No. 72-396. *JOHNS v. JOHNS.* C. A. 5th Cir. *Certiorari* denied.

No. 72-401. *CITIZENS UTILITIES WATER COMPANY OF ARIZONA v. SUPERIOR COURT OF ARIZONA IN AND FOR THE COUNTY OF PIMA ET AL.* Sup. Ct. Ariz. *Certiorari* denied. Reported below: 108 Ariz. 296, 497 P. 2d 55.

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No. 72-404. *DISPOSABLE SERVICES, INC. v. ITT LIFE INSURANCE COMPANY OF NEW YORK*. C. A. 5th Cir. Certiorari denied. Reported below: 453 F. 2d 218 and 457 F. 2d 972.

No. 72-405. *MERRICK v. UNITED STATES*. C. A. 10th Cir. Certiorari denied. Reported below: 464 F. 2d 1087.

No. 72-409. *LAURIA v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 464 F. 2d 1129.

No. 72-411. *MASONITE CORP. ET AL. v. HENDRY ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 455 F. 2d 955.

No. 72-423. *HADCO PRODUCTS, INC. v. WALTER KIDDE & Co.* C. A. 3d Cir. Certiorari denied. Reported below: 462 F. 2d 1265.

No. 72-424. *CITY OF CRYSTAL CITY v. DEL MONTE CORP., DBA DEL MONTE FOODS, INC.* C. A. 5th Cir. Certiorari denied. Reported below: 463 F. 2d 976.

No. 72-427. *SUN SHIPBUILDING & DRY DOCK Co. v. UNITED STATES ET AL.* Ct. Cl. Certiorari denied. Reported below: 198 Ct. Cl. 693, 461 F. 2d 1352.

No. 72-428. *ALABAMA v. UNITED STATES*. Ct. Cl. Certiorari denied. Reported below: 198 Ct. Cl. 683, 461 F. 2d 1324.

No. 72-429. *BOLTON v. CALIFORNIA*. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 72-430. *DOSS v. LEWIS-GALE HOSPITAL, INC.* Cir. Ct. Roanoke, Va. Certiorari denied.

No. 72-437. *MADER ET AL. v. ARMEL ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 461 F. 2d 1123.

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No. 72-439. *ALEXANDER v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 463 F. 2d 18.

No. 72-440. *SAEZ v. GOSLEE ET AL.* C. A. 1st Cir. Certiorari denied. Reported below: 463 F. 2d 214.

No. 72-443. *CAMPO CORP. ET AL. v. SUPREME JUDICIAL COURT OF MASSACHUSETTS*. Sup. Jud. Ct. Mass. Certiorari denied. Reported below: — Mass. —, 285 N. E. 2d 419.

No. 72-445. *DUQUESNE BREWING COMPANY OF PITTSBURGH v. CONNOR ET AL.* Sup. Ct. Pa. Certiorari denied.

No. 42-447. *HUTTER ET UX. v. CITY OF CHICAGO*. Sup. Ct. Ill. Certiorari denied.

No. 72-449. *CAPITOL TILE & MARBLE, INC., ET AL. v. DEESE*. C. A. D. C. Cir. Certiorari denied.

No. 72-450. *BELLINGHAM STEVEDORING Co. v. DAMPSKIBSAKTIESELSKABET ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 457 F. 2d 889.

No. 72-454. *ESTATE OF HEDRICK v. COMMISSIONER OF INTERNAL REVENUE*. C. A. 9th Cir. Certiorari denied. Reported below: 457 F. 2d 501.

No. 72-458. *HOSPITAL TELEVISION, INC. v. WELLS TELEVISION, INC., ET AL.* C. A. 8th Cir. Certiorari denied. Reported below: 462 F. 2d 417.

No. 72-460. *GARRISON v. SHAW*. C. A. 5th Cir. Certiorari denied. Reported below: 467 F. 2d 113.

No. 72-5020. *GAY v. LICENSE BRANCH, REAL ESTATE COMMISSION OF THE DISTRICT OF COLUMBIA*. Ct. App. D. C. Certiorari denied.

No. 72-5132. *REDMAN v. CONBOY, CORRECTIONAL SUPERINTENDENT*. C. A. 2d Cir. Certiorari denied.

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No. 72-5044. *HUGHES v. MARYLAND*. Ct. Sp. App. Md. Certiorari denied. Reported below: 14 Md. App. 497, 287 A. 2d 299.

No. 72-5346. *RENSING v. ZELKER*, CORRECTIONAL SUPERINTENDENT. C. A. 2d Cir. Certiorari denied.

No. 72-5347. *WYNN v. UNITED STATES*. C. A. 4th Cir. Certiorari denied.

No. 72-5350. *DAPPER v. O'CONNOR ET AL.* C. A. 9th Cir. Certiorari denied.

No. 72-5351. *NEWELL v. UNITED STATES*. C. A. 10th Cir. Certiorari denied.

No. 72-5352. *JOHNSON v. MEACHAM*. Sup. Ct. Wyo. Certiorari denied.

No. 72-5354. *BUSTILLO v. UNITED STATES*. C. A. 10th Cir. Certiorari denied.

No. 72-5355. *MITCHELSON v. HENDERSON*, CORRECTIONAL SUPERINTENDENT. C. A. 2d Cir. Certiorari denied.

No. 72-5357. *PRIORE v. OHIO*. Ct. App. Ohio, Cuyahoga County. Certiorari denied.

No. 72-5360. *NAVALLEZ v. UNITED STATES*. C. A. 9th Cir. Certiorari denied.

No. 72-5361. *DAVIS v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 464 F. 2d 558.

No. 72-5364. *WILLIAMS v. UNITED STATES*. C. A. 4th Cir. Certiorari denied.

No. 72-5369. *HARBOLT v. ALLDREDGE*, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 464 F. 2d 1243.

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No. 72-5365. *CASSIDY v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 457 F. 2d 813.

No. 72-5366. *YEAGER v. CRAVEN, WARDEN*. C. A. 9th Cir. Certiorari denied.

No. 72-5370. *CONGROVE v. UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF KENTUCKY*. C. A. 6th Cir. Certiorari denied.

No. 72-5373. *POTTS v. SLAYTON, PENITENTIARY SUPERINTENDENT*. C. A. 4th Cir. Certiorari denied.

No. 72-5374. *ETHINGTON v. UNITED STATES*. C. A. 6th Cir. Certiorari denied.

No. 72-5376. *JOHNS v. NEW JERSEY*. Super. Ct. N. J. Certiorari denied.

No. 72-5378. *PEJOKOVICH v. BOARD OF EDUCATION, PRINCE GEORGE'S COUNTY, ET AL.* Ct. App. Md. Certiorari denied. Reported below: 265 Md. 488, 290 A. 2d 510.

No. 72-5380. *BANKS v. SLAYTON, PENITENTIARY SUPERINTENDENT*. C. A. 4th Cir. Certiorari denied.

No. 72-5382. *KELLER v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 463 F. 2d 1136.

No. 72-5384. *ROBERTS v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 466 F. 2d 193.

No. 72-5393. *FERRER-VEGA v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 464 F. 2d 12.

No. 72-5394. *HITCHCOCK v. GOMES, WARDEN*. C. A. 9th Cir. Certiorari denied.

No. 72-5395. *BUCKLES v. WYOMING*. Sup. Ct. Wyo. Certiorari denied. Reported below: 500 P. 2d 518.

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No. 72-5396. *McBRIDE v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 463 F. 2d 44.

No. 72-5397. *LINWOOD ET AL. v. BOARD OF EDUCATION OF CITY OF PEORIA, SCHOOL DISTRICT No. 150*. C. A. 7th Cir. Certiorari denied. Reported below: 463 F. 2d 763.

No. 72-5402. *TATE v. D. C. TRANSIT Co.* Ct. App. D. C. Certiorari denied.

No. 72-5404. *LEBRUN v. CUPP, WARDEN*. C. A. 9th Cir. Certiorari denied.

No. 72-5410. *BLACK v. UNITED STATES*. C. A. 7th Cir. Certiorari denied.

No. 71-1381. *CALDWELL, WARDEN v. THORNTON*. C. A. 5th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 454 F. 2d 1167.

No. 71-6690. *KEENY v. SWENSON, WARDEN*. C. A. 8th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 458 F. 2d 680.

No. 72-326. *CHARLTON v. UNITED STATES ET AL.* C. A. 3d Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 462 F. 2d 59.

No. 72-370. *MARCUS ET AL. v. NEW YORK*. Ct. App. N. Y. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 31 N. Y. 2d 12, 286 N. E. 2d 234.

No. 72-398. *WAIT RADIO v. FEDERAL COMMUNICATIONS COMMISSION*. C. A. D. C. Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 148 U. S. App. D. C. 179, 459 F. 2d 1203.

No. 72-417. *WARE ET AL. v. ESTES, SUPERINTENDENT, DALLAS PUBLIC SCHOOLS, ET AL.* C. A. 5th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 458 F. 2d 1360.

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No. 72-406. *DOMINEY v. DOMINEY*. Ct. Civ. App. Tex., 8th Sup. Jud. Dist. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 481 S. W. 2d 473.

No. 72-416. *SEWARD MOTOR FREIGHT, INC., ET AL. v. NEBRASKA STATE RAILWAY COMM'N ET AL.* Sup. Ct. Neb. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 188 Neb. 223, 196 N. W. 2d 200.

No. 72-418. *HAMMOND v. UNITED PAPERMAKERS & PAPERWORKERS UNION, AFL-CIO, ET AL.* C. A. 6th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 462 F. 2d 174.

No. 72-431. *CLARK ET AL. v. UNITED STATES*. Ct. Cl. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 198 Ct. Cl. 593, 461 F. 2d 781.

No. 72-5353. *BROWNSTEIN v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 462 F. 2d 1132.

No. 72-5362. *HEREDEN v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 464 F. 2d 611.

No. 72-5363. *GANT v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 463 F. 2d 216.

No. 72-5399. *TATUM v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari.

No. 72-5409. *GEDARRO v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari.

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No. 72-399. WILLIAMS *v.* HILLIARD. C. A. 6th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 465 F. 2d 1212.

No. 72-5073. ZEIGLER *v.* RILEY, PENITENTIARY SUPERINTENDENT. Ct. App. N. Y. Certiorari denied. MR. JUSTICE DOUGLAS would deny the petition on ground of mootness.

Rehearing Denied

No. 71-1109. NORRIS ET AL. *v.* JORDAN ET AL.; and

No. 71-1439. NORRIS ET AL. *v.* JORDAN ET AL., *ante*, p. 811. Motion of appellants for specification of grounds for finding want of jurisdiction denied. Petition for rehearing of appellant Kerns denied.

No. 71-1666. HUIE ET AL. *v.* UNITED STATES, *ante*, p. 891;

No. 71-6487. MEDINA *v.* UNITED STATES, *ante*, p. 855;

No. 71-6673. GOLDEN *v.* HENDERSON, WARDEN, *ante*, p. 861;

No. 71-6723. CHAIS-SHULMAN *v.* BANK OF AMERICA TRUST No. 54212, *ante*, p. 864;

No. 71-6786. CROW *v.* EYMAN, WARDEN, ET AL., *ante*, p. 867; and

No. 72-5133. BUCHANAN *v.* TEXAS, *ante*, p. 814. Petitions for rehearing denied.

No. 71-1680. LOUISVILLE & NASHVILLE RAILROAD CO. ET AL. *v.* RODES, TRUSTEE IN BANKRUPTCY, ET AL., *ante*, p. 893. Petition for rehearing denied. MR. JUSTICE POWELL took no part in the consideration or decision of this petition.

No. 72-5101. SERZYSKO *v.* CHASE MANHATTAN BANK, *ante*, p. 883. Motion to recuse MR. JUSTICE POWELL and MR. JUSTICE REHNQUIST denied. Petition for rehearing denied.

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NOVEMBER 22, 1972

Dismissal Under Rule 60

No. 71-1586. *WOOD v. GOODSON, JUDGE*. Cir. Ct. Ark., Miller County. Petition for writ of certiorari dismissed under Rule 60 of the Rules of this Court.

NOVEMBER 27, 1972

Dismissal Under Rule 60

No. 72-536. *THIRD BREVOORT CORP. v. BOARD OF STANDARDS AND APPEALS OF THE CITY OF NEW YORK ET AL.* Ct. App. N. Y. Petition for writ of certiorari dismissed under Rule 60 of the Rules of this Court.

DECEMBER 1, 1972

Miscellaneous Order

No. A-555. *ADAMS v. MAYLIN*. Sup. Ct. La. Application for stay of execution and enforcement of judgment presented to MR. JUSTICE DOUGLAS, and by him referred to the Court, denied. MR. JUSTICE DOUGLAS would grant the application.

DECEMBER 4, 1972

Order Appointing Librarian

It is ordered that Edward G. Hudon, be, and he is hereby, appointed Librarian of this Court in the place of Henry Charles Hallam, Jr., retired.

Appeals Dismissed

No. 71-6658. *ANDERSON ET AL. v. LOUISIANA*. Appeal from Sup. Ct. La. 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 would note probable jurisdiction and set case for oral argument. Reported below: 261 La. 244, 259 So. 2d 310.

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No. 72-484. *FELLAND v. SCHAEFER ET AL.* Appeal from Sup. Ct. Minn. dismissed for want of substantial federal question.

No. 72-516. *O'CONNOR ET AL. v. NEW JERSEY ET AL.* Appeal from Super. Ct. N. J. dismissed for want of substantial federal question. Reported below: See 117 N. J. Super. 575, 285 A. 2d 270.

No. 72-570. *WASHER ONE, INC., DBA IRISH WASH-WOMAN, ET AL. v. KENTUCKY EX REL. DIVISION OF UNEMPLOYMENT INSURANCE.* Appeal from Ct. App. Ky. dismissed for want of substantial federal question. Reported below: 482 S. W. 2d 590.

No. 72-546. *FINGER LAKES RACING ASSN., INC. v. NEW YORK STATE OFF-TRACK PARI-MUTUEL BETTING COMMISSION ET AL.* Appeal from Ct. App. N. Y. dismissed for want of substantial federal question. MR. JUSTICE DOUGLAS would note probable jurisdiction and set case for oral argument. Reported below: 30 N. Y. 2d 207, 282 N. E. 2d 592.

No. 72-5412. *RUDERER v. UNITED STATES.* Appeal from C. A. 8th Cir. 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: 462 F. 2d 897.

Certiorari Dismissed

No. 72-517. *PENNSYLVANIA v. LINDE.* Sup. Ct. Pa. It appearing that respondent, a defendant in a state criminal proceeding, died on November 2, 1972, the petition for writ of certiorari to the Supreme Court of Pennsylvania, Western District, is dismissed. *Gersewitz v. New York*, 326 U. S. 687 (1945). Reported below: 448 Pa. 230, 293 A. 2d 62.

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Certiorari Granted—Vacated and Remanded or Reversed.

(See also No. 71-6647, *ante*, p. 95; and No. 72-72, *ante*, p. 100.)

No. 72-5206. ALEXANDER *v.* HENDERSON, WARDEN. C. A. 5th Cir. Motion for leave to proceed *in forma pauperis* and certiorari granted. Judgment vacated insofar as it leaves undisturbed the death penalty imposed and case remanded for further proceedings. See *Stewart v. Massachusetts*, 408 U. S. 845 (1972). Reported below: 459 F. 2d 1391.

Miscellaneous Orders. (See also No. 71-6883, *infra*, p. 1051.)

No. 70-279. UNITED STATES ET AL. *v.* FLORIDA EAST COAST RAILWAY CO. ET AL. Appeal from D. C. M. D. Fla. [Probable jurisdiction noted, 407 U. S. 908.] Motion of appellee Seaboard Coast Line Co. to permit two counsel to argue on behalf of appellees granted. MR. JUSTICE POWELL took no part in the consideration or decision of this motion.

No. A-552 (72-640). OREGON STATE ELKS ASSN. ET AL. *v.* FALKENSTEIN ET AL. D. C. Ore. Application for stay of judgment presented to MR. JUSTICE DOUGLAS, and by him referred to the Court, denied.

MR. JUSTICE DOUGLAS, dissenting.

A three-judge court has declared Oregon's tax exemption to the Benevolent and Protective Order of Elks unconstitutional because the Elks Lodge in question practices racial discrimination in membership selection. The Elks Lodge seeks to have the judgment of the three-judge court stayed pending its appeal to this Court, not on the merits, but from denial of its application to intervene. If the Elks Lodge could intervene as a matter of right, the order of the court denying intervention is generally appealable. *Sutphen Estates, Inc. v. United States*, 342

U. S. 19, 20; *Cascade Natural Gas Corp. v. El Paso Natural Gas Co.*, 386 U. S. 129, 132-136. The ground of intervention is the inadequacy of the representation of their interests by the Oregon tax authorities in the litigation.

The cases cited above were not appeals from a three-judge court but appeals from a single district judge in antitrust cases, where appeal lies to this Court from "the final judgment." 32 Stat. 823, as amended, 15 U. S. C. § 29. Title 28 U. S. C. § 1253, however, gives the right of appeal to this Court to "any party" where there has been an order "granting or denying" an injunction by a three-judge court.

Applicants were not parties; they are only seeking to be made parties. Whether such persons are "any party" within the meaning of § 1253, so far as unsuccessful intervenors are concerned, seems not to have been decided by this Court. The Voting Rights Act of 1965, 79 Stat. 437, 42 U. S. C. § 1973 *et seq.*, gives the District Court for the District of Columbia, sitting in a panel of three, the right to sit on and determine the issues in those cases. 42 U. S. C. § 1973b. And it is provided that the court is constituted the same as the other three-judge courts, since § 1973b refers to 28 U. S. C. § 2284, under which the three-judge court in the Oregon case was constituted. And the Voting Rights Act of 1965 provides that "any appeal shall lie to the Supreme Court." *Ibid.* It is therefore arguable that "any appeal" under the Voting Rights Act is restricted to those who are parties.

On November 6, 1972, we postponed the question of jurisdiction to the merits in No. 72-129, *NAACP v. New York*. That case raises the question whether the NAACP, which was denied intervention by a three-judge court sitting in a case under the Voting Rights Act of 1965, may appeal to this Court. That issue has not been resolved.

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Even if we were to decide that applicants are "any party" within the meaning of § 1253, that section still permits appeal to this Court only from the grant or denial of an injunction, whereas the Voting Rights Act refers to "any appeal." It would appear, then, that regardless of our decision in *NAACP v. New York*, the appeal in this case should have been taken to the Court of Appeals. In that event, applicants also should apply to that court for a stay.

Finally, applicants allege that they will lose their right to appeal on the merits if the final judgment below has not been stayed, even if they are successful on appeal from the denial of intervention. That result, however, is problematical. See *Cascade Natural Gas Corp. v. El Paso Natural Gas Co.*, *supra*, where we vacated the judgment below upon reversing the order denying intervention.

Since we decided to review *NAACP v. New York*, I would grant the stay.

No. 71-1136. *TILLMAN ET AL. v. WHEATON-HAVEN RECREATION ASSN., INC., ET AL.* C. A. 4th Cir. [Certiorari granted, 406 U. S. 916.] Motion of respondents for leave to file supplemental memorandum after oral argument granted.

No. 71-1178. *GULF STATES UTILITIES CO. v. FEDERAL POWER COMMISSION ET AL.* C. A. D. C. Cir. [Certiorari granted, 406 U. S. 956.] Motion of Public Service Company of Indiana, Inc., for leave to participate in oral argument and for additional time denied.

No. 71-1193. *UNITED STATES v. ENMONS ET AL.* Appeal from D. C. E. D. La. [Probable jurisdiction noted, 406 U. S. 916.] Motion of Chamber of Commerce of the United States for leave to file untimely brief as *amicus curiae* granted.

No. 71-1497. *BECK v. CONNECTICUT GENERAL LIFE*

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INSURANCE Co., *ante*, p. 845. Respondent requested to file response to petition for rehearing within 30 days.

No. 71-1371. ROSARIO ET AL. *v.* ROCKEFELLER, GOVERNOR OF NEW YORK, ET AL. C. A. 2d Cir. [Certiorari granted, 406 U. S. 957.] Motion of County Attorney for Nassau County, New York, for leave to participate in oral argument denied.

No. 71-1583. BROWN, SECRETARY OF STATE OF CALIFORNIA *v.* CHOTE. Appeal from D. C. N. D. Cal. [Probable jurisdiction noted, *ante*, p. 911.] It is ordered that Philip Elman, Esquire, of Washington, D. C., a member of the Bar of this Court, be, and he is hereby, appointed to serve as counsel for appellee in this case.

No. 71-6272. ROBINSON *v.* NEIL, WARDEN. C. A. 6th Cir. [Certiorari granted, 406 U. S. 916.] Motion of counsel for petitioner to allow additional time and/or division of argument denied.

No. 71-6278. ALMEIDA-SANCHEZ *v.* UNITED STATES. C. A. 9th Cir. [Certiorari granted, 406 U. S. 944.] Motion of Gilbert Foerster for leave to file untimely brief as *amicus curiae* granted.

No. 71-6316. GOOSBY ET AL. *v.* OSSER ET AL. C. A. 3d Cir. [Certiorari granted, 408 U. S. 922.] Motion of Elliot P. Platt and Joseph A. Torregrossa to permit Ann I. Torregrossa to argue *pro hac vice* for petitioners granted. Motion of the Attorney General of Pennsylvania for divided argument granted and an additional 10 minutes allotted for that purpose. Reported below: 452 F. 2d 39.

No. 72-77. NORWOOD ET AL. *v.* HARRISON ET AL. Appeal from D. C. N. D. Miss. [Probable jurisdiction noted, *ante*, p. 839.] Motion of appellants for leave to proceed further herein *in forma pauperis* granted.

No. 72-5388. ROBINSON *v.* WAINWRIGHT, CORREC-

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TIONS DIRECTOR. Motion for leave to file petition for writ of habeas corpus denied.

No. 71-6356. *DOE ET AL. v. McMILLAN ET AL.* C. A. D. C. Cir. [Certiorari granted, 408 U. S. 922.] Motion of Legislative Respondents for further divided argument granted and an additional five minutes for oral argument allotted to respondents for that purpose.

No. 72-5377. *MA GEE v. SUPERIOR COURT OF SAN FRANCISCO COUNTY, CALIFORNIA, ET AL.* Motion for leave to file petition for writ of mandamus and/or prohibition denied.

Probable Jurisdiction Noted

No. 72-493. *VLANDIS v. KLINE ET AL.* Appeal from D. C. Conn. Motion of appellees for leave to proceed *in forma pauperis* granted. Probable jurisdiction noted. Reported below: 346 F. Supp. 526.

No. 72-534. *UNITED STATES DEPARTMENT OF AGRICULTURE ET AL. v. MORENO ET AL.* Appeal from D. C. D. C. Motion of appellees for leave to proceed *in forma pauperis* granted. Probable jurisdiction noted. Reported below: 345 F. Supp. 310.

Certiorari Granted

No. 72-212. *CUPP, PENITENTIARY SUPERINTENDENT v. MURPHY.* C. A. 9th Cir. Certiorari granted. Reported below: 461 F. 2d 1006.

No. 72-490. *MCDONNELL DOUGLAS CORP. v. GREEN.* C. A. 8th Cir. Certiorari granted. Reported below: 463 F. 2d 337.

No. 72-419. *PITTSBURGH PRESS Co. v. PITTSBURGH COMMISSION ON HUMAN RELATIONS ET AL.* Pa. Commw. Ct. Motion of American Newspaper Publishers Assn. for leave to file a brief as *amicus curiae* and certiorari granted. Reported below: 4 Pa. Commw. 448, 287 A. 2d 161.

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No. 72-486. FEDERAL POWER COMMISSION *v.* MEMPHIS LIGHT, GAS & WATER DIVISION ET AL.; and

No. 72-488. TEXAS GAS TRANSMISSION CORP. *v.* MEMPHIS LIGHT, GAS & WATER DIVISION ET AL. C. A. D. C. Cir. Certiorari granted. Cases consolidated and a total of one hour allotted for oral argument. Reported below: 149 U. S. App. D. C. 238, 462 F. 2d 853.

No. 72-5323. KEEBLE *v.* UNITED STATES. C. A. 8th Cir. Motion for leave to proceed *in forma pauperis* granted. Certiorari granted limited to Question 2 presented by the petition which reads as follows: "Whether the District Court's refusal to give a lesser included offense instruction under 18 U. S. C. 1153 violated the Fifth Amendment's due process guarantee." Reported below: 459 F. 2d 757 and 762.

No. 72-5443. BARNES *v.* UNITED STATES. C. A. 9th Cir. Motion for leave to proceed *in forma pauperis* and certiorari granted. Reported below: 466 F. 2d 1361.

Certiorari Denied. (See also Nos. 71-6658 and 72-5412, *supra.*)

No. 71-1465. ROSENTHAL *v.* ARKANSAS LOUISIANA FINANCE CORP. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 71-1648. NAPOLITANO *v.* WARD, JUSTICE, SUPREME COURT OF ILLINOIS, ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 457 F. 2d 279.

No. 71-6694. WILSON *v.* DOWNIE, WARDEN. Sup. Ct. Ga. Certiorari denied. Reported below: 228 Ga. 656, 187 S. E. 2d 293.

No. 72-472. SIMS, GUARDIAN, ET AL. *v.* IDAHO STATE DEPARTMENT OF HIGHWAYS ET AL. Sup. Ct. Idaho. Certiorari denied. Reported below: 94 Idaho 801, 498 P. 2d 1274.

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No. 71-6777. *HESTON v. OHIO*. Sup. Ct. Ohio. Certiorari denied. Reported below: 29 Ohio St. 2d 152, 280 N. E. 2d 376.

No. 72-111. *BLOOM ET AL. v. FLORIDA*. Dist. Ct. App. Fla., 3d Dist. Certiorari denied. Reported below: 261 So. 2d 578.

No. 72-231. *BISCUITTI v. FLORIDA*. Dist. Ct. App. Fla., 4th Dist. Certiorari denied. Reported below: 253 So. 2d 750.

No. 72-322. *THE FLYING FOAM ET AL. v. IRON ORE TRANSPORT Co., LTD.* C. A. 4th Cir. Certiorari denied. Reported below: 461 F. 2d 779.

No. 72-422. *BENEVENTO ET AL. v. UNITED STATES*. Ct. Cl. Certiorari denied. Reported below: 198 Ct. Cl. 772, 461 F. 2d 1316.

No. 72-435. *MELANCON v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 462 F. 2d 82.

No. 72-436. *PATTERSON v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 465 F. 2d 360.

No. 72-442. *LOWENTHAL ET AL. v. TCHEREPNIN ET AL.* C. A. 7th Cir. Certiorari denied. Reported below: 461 F. 2d 544.

No. 72-461. *MODLA v. SOUTHSIDE HOSPITAL ET AL.* Ct. App. Ariz. Certiorari denied. Reported below: 17 Ariz. App. 54, 495 P. 2d 494.

No. 72-462. *FORD MOTOR Co. v. FORTUNATO*. C. A. 2d Cir. Certiorari denied. Reported below: 464 F. 2d 962.

No. 72-494. *DELLA CROCE v. NEW YORK*. App. Div., Sup. Ct. N. Y., 1st Jud. Dept. Certiorari denied.

No. 72-467. *KAUFMAN v. DIVERSIFIED INDUSTRIES*,

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INC. C. A. 2d Cir. Certiorari denied. Reported below: 460 F. 2d 1331.

No. 72-468. SHATTERPROOF GLASS CORP. *v.* GUARDIAN GLASS Co., INC., ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 462 F. 2d 1115.

No. 72-471. JOHNSON *v.* MARYLAND. Ct. Sp. App. Md. Certiorari denied. Reported below: 14 Md. App. 721, 288 A. 2d 622.

No. 72-473. MAHONEY *v.* HODGSON, SECRETARY OF LABOR. C. A. 1st Cir. Certiorari denied. Reported below: 460 F. 2d 326.

No. 72-477. STEPHENSON ET AL. *v.* LANDEGGER ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 464 F. 2d 133.

No. 72-479. GARREN ET AL. *v.* CITY OF WINSTON-SALEM, NORTH CAROLINA. C. A. 4th Cir. Certiorari denied. Reported below: 463 F. 2d 54.

No. 72-487. PRISCO *v.* NEW YORK. Ct. App. N. Y. Certiorari denied. Reported below: 30 N. Y. 2d 808, 286 N. E. 2d 279.

No. 72-495. STIGLETS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 463 F. 2d 242.

No. 72-496. BENSON *v.* NEWMAN ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 464 F. 2d 689.

No. 72-497. OKLAHOMA *v.* CHEROKEE NATION ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 461 F. 2d 674.

No. 72-508. CHARLES C. WILSON, INC., ET AL. *v.* MEDICENTERS OF AMERICA, INC. C. A. 5th Cir. Certiorari denied. Reported below: 461 F. 2d 847.

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No. 72-499. *TREMARCO v. NEW YORK*. App. Div., Sup. Ct. N. Y., 2d Jud. Dept. Certiorari denied.

No. 72-505. *PRICE v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 464 F. 2d 1217.

No. 72-509. *DiPAOLO v. NEW YORK*. Ct. App. N. Y. Certiorari denied. Reported below: 30 N. Y. 2d 962, 287 N. E. 2d 618.

No. 72-512. *BOLT ASSOCIATES, INC. v. WESTERN GEO-PHYSICAL COMPANY OF AMERICA ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 463 F. 2d 101.

No. 72-513. *DeROSA v. NEW JERSEY*. Sup. Ct. N. J. Certiorari denied.

No. 72-518. *ATWELL v. HARDY ET AL.* C. A. 6th Cir. Certiorari denied.

No. 72-519. *AMERICAN MANNEX CORP. v. ROZANDS, SHERIFF, ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 462 F. 2d 688.

No. 72-526. *PERREIRA v. DAMPSKIBSSELSKABET NORDEN A/S ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 461 F. 2d 848.

No. 72-527. *POTOMAC SAND & GRAVEL CO. v. GOVERNOR OF MARYLAND ET AL.* Ct. App. Md. Certiorari denied. Reported below: 266 Md. 358, 293 A. 2d 241.

No. 72-530. *LEVINE v. LONG ISLAND RAILROAD CO. ET AL.* Ct. App. N. Y. Certiorari denied.

No. 72-531. *DOW CHEMICAL CO. v. DIXIE CARRIERS, INC.* C. A. 5th Cir. Certiorari denied. Reported below: 463 F. 2d 120.

No. 72-543. *SMITH, ADMINISTRATRIX v. OLSEN & UGELSTAD*. C. A. 6th Cir. Certiorari denied. Reported below: 459 F. 2d 915.

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No. 72-533. LUTTRELL *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 72-544. BOARD OF EDUCATION OF OKLAHOMA CITY PUBLIC SCHOOLS ET AL. *v.* DOWELL. C. A. 10th Cir. Certiorari denied. Reported below: 465 F. 2d 1012.

No. 72-547. LESKIW ET AL. *v.* LOCAL 1470, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL-CIO-CLC, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 464 F. 2d 721.

No. 72-548. MICHAEL *v.* GOMES, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 462 F. 2d 626.

No. 72-551. DALY ET AL. *v.* MCCARTHY, CLERK, SUPREME COURT OF MINNESOTA, ET AL. Sup. Ct. Minn. Certiorari denied. Reported below: 294 Minn. 351, 200 N. W. 2d 913.

No. 72-554. MIMS ET AL. *v.* YARBOROUGH ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 461 F. 2d 1266.

No. 72-556. SID HARVEY, INC., ET AL. *v.* LOCAL 810, STEEL, METALS, ALLOYS & HARDWARE FABRICATORS & WAREHOUSEMEN, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA, ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 460 F. 2d 1.

No. 72-561. FLORIDA VANDERBILT DEVELOPMENT CORP., FORMERLY FLORIDA REALTY CO., ET AL. *v.* CHANDLER LEASING DIVISION, PEPSICO SERVICE INDUSTRIES LEASING CORP. C. A. 5th Cir. Certiorari denied. Reported below: 464 F. 2d 267.

No. 72-563. MCKY *v.* UNION BANK & TRUST COMPANY OF HELENA, MONTANA, EXECUTOR. C. A. 7th Cir. Certiorari denied. Reported below: 466 F. 2d 1035.

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No. 72-564. BOARD OF EDUCATION OF CENTRAL DISTRICT No. 1 OF THE TOWN OF ADDISON ET AL. *v.* JAMES. C. A. 2d Cir. Certiorari denied. Reported below: 461 F. 2d 566.

No. 72-565. BALDASSARO *v.* OHIO. Ct. App. Ohio, Franklin County. Certiorari denied.

No. 72-572. SCHOENLING BREWING CO., INC. *v.* WURZBURGER HOFBRAU AKTIENGESELLSCHAFT ET AL. C. A. 6th Cir. Certiorari denied.

No. 72-573. MARSH *v.* CURRY. C. A. 6th Cir. Certiorari denied. Reported below: 461 F. 2d 1003.

No. 72-576. ROBINSON ET AL. *v.* McCORKLE, COMMISSIONER, DEPARTMENT OF INSTITUTIONS AND AGENCIES, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 462 F. 2d 111.

No. 72-5030. WOLFE *v.* MISSISSIPPI. Sup. Ct. Miss. Certiorari denied. Reported below: 260 So. 2d 425.

No. 72-5038. CHAVEZ ET AL. *v.* FRESHPICT FOODS, INC., ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 456 F. 2d 890.

No. 72-5058. LOTZ *v.* KOLOSKI, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 460 F. 2d 1284.

No. 72-5082. WOCHER *v.* LOS ANGELES CITY SCHOOL DISTRICT ET AL. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 72-5089. TAHL *v.* O'CONNOR, SHERIFF. C. A. 9th Cir. Certiorari denied. Reported below: 460 F. 2d 1068.

No. 72-5100. MILLS *v.* MARYLAND. Ct. Sp. App. Md. Certiorari denied.

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No. 72-5145. *NUDO v. BRANTLEY, WARDEN, ET AL.*
C. A. 7th Cir. Certiorari denied.

No. 72-5157. *KYLE v. UNITED STATES.* C. A. 4th Cir.
Certiorari denied. Reported below: 461 F. 2d 1265.

No. 72-5196. *WATSON v. NORTH CAROLINA.* Sup. Ct.
N. C. Certiorari denied. Reported below: 281 N. C.
221, 188 S. E. 2d 289.

No. 72-5204. *TANNER v. TWOMEY, WARDEN, ET AL.*
C. A. 7th Cir. Certiorari denied.

No. 72-5356. *FORD v. CALIFORNIA STATE PERSONNEL
BOARD.* Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 72-5383. *WHITE v. UNITED STATES.* C. A. 5th
Cir. Certiorari denied. Reported below: 464 F. 2d
1037.

No. 72-5385. *KOTRLIK ET AL. v. UNITED STATES.*
C. A. 9th Cir. Certiorari denied. Reported below: 465
F. 2d 976.

No. 72-5387. *McEACHERN v. UNITED STATES.* C. A.
5th Cir. Certiorari denied. Reported below: 465 F. 2d
833.

No. 72-5392. *MARTIN v. UNITED STATES.* C. A. 5th
Cir. Certiorari denied. Reported below: 462 F. 2d 60.

No. 72-5400. *OVERTON v. UNITED STATES.* C. A. 5th
Cir. Certiorari denied.

No. 72-5403. *GARRETT v. NEW JERSEY.* Super. Ct.
N. J. Certiorari denied.

No. 72-5408. *JACKSON v. BOHLINGER.* C. A. 1st Cir.
Certiorari denied.

No. 72-5415. *WILSON v. SCOTT, DISTRICT ATTORNEY
OF KENOSHA COUNTY, ET AL.* C. A. 7th Cir. Certiorari
denied.

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No. 72-5416. *FIDANIAN v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 465 F. 2d 755.

No. 72-5417. *MURDOCK v. UNITED STATES*. C. A. D. C. Cir. Certiorari denied. Reported below: 152 U. S. App. D. C. 371, 471 F. 2d 923.

No. 72-5418. *PERRY v. CALIFORNIA*. Ct. App. Cal., 3d App. Dist. Certiorari denied.

No. 72-5419. *FLINCHUM v. CLINCHFIELD RAILROAD Co.* C. A. 6th Cir. Certiorari denied. Reported below: 460 F. 2d 252.

No. 72-5420. *OLDEN v. WILSON, WARDEN, ET AL.* C. A. 9th Cir. Certiorari denied.

No. 72-5421. *NICHOLS v. PAGE, WARDEN*. C. A. 10th Cir. Certiorari denied.

No. 72-5422. *DAILEY v. UNITED STATES*. C. A. 10th Cir. Certiorari denied.

No. 72-5423. *TRABER v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 466 F. 2d 483.

No. 72-5424. *TAYLOR v. UNITED STATES*. C. A. 8th Cir. Certiorari denied.

No. 72-5425. *COONEY v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 464 F. 2d 497.

No. 72-5427. *CARVER v. OHIO*. Sup. Ct. Ohio. Certiorari denied. Reported below: 30 Ohio. St. 2d 280, 285 N. E. 2d 26.

No. 72-5428. *STARNES v. HARRIS, WARDEN, ET AL.* C. A. 10th Cir. Certiorari denied.

No. 72-5430. *FLETCHER v. BRIERLEY, CORRECTIONAL SUPERINTENDENT*. C. A. 3d Cir. Certiorari denied. Reported below: 460 F. 2d 444.

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No. 72-5429. GRAYTON *v.* CONNECTICUT. Sup. Ct. Conn. Certiorari denied.

No. 72-5433. STOCK *v.* MARYLAND. C. A. 4th Cir. Certiorari denied.

No. 72-5435. HURST, AKA CLOE *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied.

No. 72-5436. LEWIS *v.* MANCUSI, CORRECTIONAL SUPERINTENDENT. C. A. 2d Cir. Certiorari denied.

No. 72-5438. WARNER *v.* UNITED STATES PATENT OFFICE ET AL. C. A. D. C. Cir. Certiorari denied.

No. 72-5439. EPPERSON *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 72-5440. WOODS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 468 F. 2d 1024.

No. 72-5444. JACKSON *v.* FOLLETTE, WARDEN. C. A. 2d Cir. Certiorari denied. Reported below: 462 F. 2d 1041.

No. 72-5445. HURD *v.* BAILEY ET AL. C. A. 1st Cir. Certiorari denied.

No. 72-5446. NELSON *v.* ZELKER, CORRECTIONAL SUPERINTENDENT. C. A. 2d Cir. Certiorari denied. Reported below: 465 F. 2d 1121.

No. 72-5447. TYLER *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 466 F. 2d 920.

No. 72-5448. WADDELL *v.* ALLDREDGE, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 72-5449. RATLIFF *v.* COINER, WARDEN. C. A. 4th Cir. Certiorari denied.

No. 72-5450. SANDERS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 464 F. 2d 1067.

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No. 72-5452. *DARAS v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 462 F. 2d 1361.

No. 72-5456. *FLORES v. EMPLOYERS' FIRE INSURANCE COMPANY OF SAN ANTONIO, TEXAS*. C. A. 5th Cir. Certiorari denied. Reported below: 464 F. 2d 1276.

No. 72-5457. *STROLLO v. ALLDREDGE, WARDEN*. C. A. 3d Cir. Certiorari denied. Reported below: 463 F. 2d 1194.

No. 72-5461. *ROGERS v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 466 F. 2d 513.

No. 72-5462. *LEE v. TEXAS*. C. A. 5th Cir. Certiorari denied.

No. 72-5463. *HILL v. OHIO*. Ct. App. Ohio, Summit County. Certiorari denied.

No. 72-5465. *BERRYHILL v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 466 F. 2d 621.

No. 72-5466. *LEWIS v. NORTH CAROLINA*. Sup. Ct. N. C. Certiorari denied. Reported below: 281 N. C. 564, 189 S. E. 2d 216.

No. 71-1634. *ZEMLIAK v. CALIFORNIA*. Ct. App. Cal., 2d App. Dist. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari.

No. 71-6929. *KOCHEL v. MARYLAND*. C. A. 4th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari.

No. 72-164. *HONEYCUTT v. NORTH CAROLINA*. Gen. Ct. Justice, Super. Ct. Div., Cumberland County, N. C. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari.

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No. 72-453. *ROGER v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 465 F. 2d 996.

No. 72-469. *BRADFORD TOWNSHIP ET AL. v. ILLINOIS STATE TOLL HIGHWAY AUTHORITY ET AL.* C. A. 7th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 463 F. 2d 537.

No. 72-476. *BALDIVID v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 465 F. 2d 1277.

No. 72-500. *DAVIS v. OHIO*. Sup. Ct. Ohio. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 30 Ohio St. 2d 312, 285 N. E. 2d 38.

No. 72-504. *SLONE v. SUPREME COURT OF OHIO*. Sup. Ct. Ohio. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari.

No. 72-553. *IN RE SCHWARZ*. Sup. Ct. Ill. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 51 Ill. 2d 334, 282 N. E. 2d 689.

No. 72-5053. *McCLENAN v. CALIFORNIA*. Sup. Ct. Cal. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari.

No. 72-5120. *KWITEK ET AL. v. WISCONSIN*. Sup. Ct. Wis. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 53 Wis. 2d 563, 193 N. W. 2d 682.

No. 72-5203. *CRADLE v. NORTH CAROLINA*. Sup. Ct. N. C. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 281 N. C. 198, 188 S. E. 2d 296.

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No. 72-5386. *VINES v. UNITED STATES*. C. A. 10th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari.

No. 72-5407. *KEPHART v. UNITED STATES*; and

No. 72-5459. *ROTH v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 466 F. 2d 1111.

No. 72-5458. *GRIFFITH v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari.

No. 71-1699. *GODWIN v. DIES, SECRETARY OF STATE OF TEXAS*. C. A. 5th Cir. Motion to dispense with printing petition granted. Certiorari denied.

No. 72-171. *STEWART v. VIRGINIA*. Sup. Ct. Va. Motion to dispense with printing petition granted. Certiorari denied.

No. 72-426. *COREY v. ATTORNEY GENERAL OF THE UNITED STATES ET AL.* C. A. D. C. Cir. Motion to dispense with printing petition granted. Certiorari denied.

No. 72-463. *SILVER v. CASTLE MEMORIAL HOSPITAL ET AL.* Sup. Ct. Hawaii. Motion to dispense with printing petition granted. Certiorari denied. Reported below: 53 Haw. 475, 497 P. 2d 564.

No. 72-464. *ALFAR DAIRY, INC. v. PALM BEACH COUNTY BOARD OF PUBLIC INSTRUCTION*. C. A. 5th Cir. Motion to dispense with printing petition granted. Certiorari denied. Reported below: 458 F. 2d 1258.

No. 72-475. *AUSTIN v. UNITED STATES*;

No. 72-5451. *SAVIDGE v. UNITED STATES*; and

No. 72-5476. *BEEMAN v. UNITED STATES*. C. A. 10th Cir. Certiorari denied. MR. JUSTICE POWELL would grant certiorari. Reported below: 462 F. 2d 724.

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No. 72-520. *TILLMAN v. NEW JERSEY*. Super. Ct. N. J. Motion to dispense with printing petition granted. Certiorari denied.

No. 72-478. *PERINI, CORRECTIONAL SUPERINTENDENT v. JOHNS*. C. A. 6th Cir. Motions to dispense with printing petition and respondent's brief granted. Certiorari denied. Reported below: 462 F. 2d 1308.

No. 72-489. *DAUER ET AL. v. CONLEY ET AL.* C. A. 3d Cir. Motion of respondents for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 463 F. 2d 63.

No. 72-571. *ZELKER, CORRECTIONAL SUPERINTENDENT v. LOPEZ*. C. A. 2d Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied.

No. 72-507. *GOUDIE v. SEARS, ROEBUCK & CO. ET AL.* Ct. App. D. C. Motion to dispense with printing portions of appendix granted. Certiorari denied. MR. JUSTICE POWELL took no part in the consideration or decision of this motion and petition. Reported below: 290 A. 2d 826.

Rehearing Denied

No. 71-1403. *FORBES LEASING & FINANCE CORP. v. LEBOWITZ*, *ante*, p. 843;

No. 71-1408. *AERO MAYFLOWER TRANSIT CO., INC., ET AL. v. UNITED STATES ET AL.*, *ante*, p. 905;

No. 71-1419. *HUTTER ET UX. v. KORZEN*, *ante*, p. 905;

No. 71-1519. *BROWN ET AL. v. SCOTT*, *ante*, p. 846;

No. 71-1547. *C & H TRANSPORTATION CO., INC., ET AL. v. INTERSTATE COMMERCE COMMISSION*; and

No. 72-149. *UNITED STATES v. INTERSTATE COMMERCE COMMISSION (INTERNATIONAL TRANSPORT, INC., CASE)*, *ante*, p. 904. Petitions for rehearing denied.

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No. 71-1573. PELTZMAN *v.* NATIONAL LABOR RELATIONS BOARD, *ante*, p. 887;

No. 71-1614. LOWRY ET AL. *v.* UNITED STATES, *ante*, p. 887;

No. 71-1640. BANK OF AMERICA NATIONAL TRUST & SAVINGS ASSN. *v.* UNITED STATES, *ante*, p. 850;

No. 71-1651. NEWBERN, EXECUTRIX, ET AL. *v.* ALABAMA, *ante*, p. 813;

No. 71-6329. ESTES *v.* NORTHCROSS ET AL., *ante*, p. 853;

No. 71-6431. NASH *v.* TEXAS, *ante*, p. 887;

No. 71-6464. MURRAY *v.* CITY OF CINCINNATI, *ante*, p. 855;

No. 71-6495. CALDRONE *v.* GAFFNEY, WARDEN, *ante*, p. 855;

No. 71-6518. MARTINEZ *v.* MANCUSI, CORRECTIONAL SUPERINTENDENT, *ante*, p. 959;

No. 71-6606. WETTEROFF ET AL. *v.* GRAND, TRUSTEE, *ante*, p. 934;

No. 71-6643. PICKING *v.* YATES ET AL., *ante*, p. 812;

No. 71-6677. ALLARD *v.* UNITED STATES, *ante*, p. 861;

No. 71-6680. FERGUSON *v.* VIRGINIA, *ante*, p. 861;

No. 71-6717. ROBINSON *v.* UNITED STATES, *ante*, p. 863;

No. 71-6873. NEELY *v.* FIELD, U. S. DISTRICT JUDGE, ET AL., *ante*, p. 871;

No. 71-6875. MORAN *v.* TUITION PLAN OF NEW HAMPSHIRE, INC., *ante*, p. 872;

No. 72-134. McCLURE *v.* SALVATION ARMY, *ante*, p. 896;

No. 72-148. ROTHMAN ET AL. *v.* UNITED STATES, *ante*, p. 956; and

No. 72-150. UNITED STATES *v.* INTERSTATE COMMERCE COMMISSION (ACE DORAN HAULING CO. CASE), *ante*, p. 904. Petitions for rehearing denied.

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No. 72-152. *MING v. UNITED STATES*, *ante*, p. 915;
No. 72-156. *ZARATE v. UNITED STATES*, *ante*, p. 915;
No. 72-5011. *HOHENSEE v. SCIENTIFIC LIVING, INC.,*
ET AL., *ante*, p. 880;

No. 72-5065. *CRAWFORD v. MISSOURI*, *ante*, p. 811;
and

No. 72-5158. *SIKES ET AL. v. UNITED STATES*, *ante*,
p. 951. Petitions for rehearing denied.

No. 71-1555. *JOHNSTON ET UX. v. BYRD*, *ante*, p. 847;
No. 71-1633. *LARSEN v. AIR CALIFORNIA*, *ante*, p. 895;
and

No. 71-1655. *FALKNER v. SUPREME COURT OF FLORIDA*
ET AL., *ante*, p. 823. Motions to dispense with printing
petitions for rehearing granted. Petitions for rehearing
denied.

No. 71-6754. *VAN PELT v. DiCOSIMO*, *ante*, p. 865;
No. 72-2. *PALMER ET AL. v. UNITED STATES*, *ante*, p.
874; and

No. 72-5109. *HILL v. GAUVIN ET AL.*, *ante*, p. 918.
Motions for leave to file petitions for rehearing denied.

No. 71-6883. *FAIR v. HODGES ET AL.*, *ante*, p. 872.
Application to enjoin respondents from hearing petition-
er's future cases, presented to Mr. JUSTICE DOUGLAS, and
by him referred to the Court, denied. Mr. JUSTICE
DOUGLAS would grant the application. Petition for re-
hearing denied.

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Affirmed on Appeal

No. 72-506. *ROBINSON v. McCORKLE, COMMISSIONER,*
DEPARTMENT OF INSTITUTIONS AND AGENCIES, ET AL.
Affirmed on appeal from D. C. N. J.

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Appeals Dismissed

No. 72-583. *BEARDEN v. METROPOLITAN DADE COUNTY*. Appeal from Sup. Ct. Fla. dismissed for want of substantial federal question. Reported below: 265 So. 2d 48.

No. 72-585. *PEPPER & TANNER, INC. v. INTERNATIONAL EQUITY CORP.* Appeal from Super. Ct. Pa. dismissed for want of substantial federal question. Reported below: 222 Pa. Super. 118, 293 A. 2d 108.

No. 72-588. *LOYAL ORDER OF MOOSE, LODGE No. 107 v. PENNSYLVANIA HUMAN RELATIONS COMMISSION*. Appeal from Sup. Ct. Pa. dismissed for want of substantial federal question. Reported below: 448 Pa. 451, 294 A. 2d 594.

No. 72-589. *KRAUSE, ADMINISTRATOR v. OHIO*. Appeal from Sup. Ct. Ohio dismissed for want of substantial federal question. Reported below: 31 Ohio St. 2d 132, 285 N. E. 2d 736.

No. 72-600. *CITIES SERVICE GAS CO. v. WESTERN NATURAL GAS CO. ET AL.* Appeal from Sup. Ct. Okla. dismissed. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied. Reported below: 507 P. 2d 1236.

No. 72-5529. *IN RE NEGRON*. Appeal from Ct. App. N. Y. dismissed for want of substantial federal question. MR. JUSTICE DOUGLAS would note probable jurisdiction and set case for oral argument.

Vacated and Remanded on Appeal

No. 72-582. *LAVINE, COMMISSIONER, DEPARTMENT OF SOCIAL SERVICES OF NEW YORK v. SHIRLEY ET AL.* Appeal from D. C. N. D. N. Y. Judgment vacated and case remanded for further consideration in light of Chapter 687 of the 1972 Laws of New York (N. Y. Soc. Serv. Law § 101-a, as amended). *Diffenderfer v. Central Baptist Church*, 404 U. S. 412 (1972).

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Reversed on Appeal

No. 72-5401. *CASON v. CITY OF COLUMBUS*. Appeal from Sup. Ct. Ohio. Motion for leave to proceed *in forma pauperis* granted. Judgment reversed. *Gooding v. Wilson*, 405 U. S. 518 (1972).

MR. JUSTICE POWELL, concurring in the result.

As the court below applied a *per se* rule, apparently without regard to the circumstances under which the words were used, I join in the reversal. See my dissenting opinion in *Rosenfeld v. New Jersey*, 408 U. S. 901, 903 (1972); *Lewis v. City of New Orleans*, 408 U. S. 913 (1972), and *Brown v. Oklahoma*, 408 U. S. 914 (1972) (both concurring in result).

THE CHIEF JUSTICE, MR. JUSTICE BLACKMUN, and MR. JUSTICE REHNQUIST dissent for the reasons expressed in the several opinions in *Rosenfeld v. New Jersey*, 408 U. S. 901 (1972); *Lewis v. City of New Orleans*, 408 U. S. 913 (1972); and *Brown v. Oklahoma*, 408 U. S. 914 (1972).

Certiorari Granted—Affirmed. (See No. 72-376, *ante*, p. 232.)

Certiorari Granted—Vacated and Remanded

No. 72-217. *ALLMAN v. MANNS*. C. A. 4th Cir. Motion of respondent for leave to proceed *in forma pauperis* and certiorari granted. Judgment vacated and case remanded for further consideration in light of *Colten v. Kentucky*, 407 U. S. 104 (1972).

Miscellaneous Orders

No. A-433 (72-762). *REYES v. NEW YORK*. Ct. App. N. Y. Application for bail presented to MR. JUSTICE DOUGLAS, and by him referred to the Court, denied. Reported below: 30 N. Y. 2d 881, 286 N. E. 2d 917.

No. A-556. *BERBLING, STATE'S ATTORNEY OF ALEXANDER COUNTY, ET AL. v. LITTLETON ET AL.* C. A. 7th

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Cir. Application for stay of judgment presented to MR. JUSTICE REHNQUIST, and by him referred to the Court, granted insofar as it applies to applicants O'Shea and Spomer pending the timely filing of a petition for writ of certiorari. Should such a petition be so timely filed, this order is to continue pending this Court's action on the petition. If the petition for writ of certiorari is denied, this order is to terminate automatically. In the event the petition for writ of certiorari is granted, this order is to remain in effect pending the sending down of the judgment of this Court. Reported below: 468 F. 2d 389.

No. A-580 (72-804). RUCKELSHAUS, ADMINISTRATOR, ENVIRONMENTAL PROTECTION AGENCY *v.* SIERRA CLUB ET AL. C. A. D. C. Cir. Application for stay presented to THE CHIEF JUSTICE, and by him referred to the Court, granted pending this Court's action on the petition for writ of certiorari. Should the petition for writ of certiorari be denied, this order is to terminate automatically. In the event the petition for writ of certiorari is granted, this order is to remain in effect pending the sending down of the judgment of this Court. MR. JUSTICE DOUGLAS would deny the stay.

No. A-600. HAMPTON, CHAIRMAN, U. S. CIVIL SERVICE COMMISSION, ET AL. *v.* FITZGERALD ET AL. C. A. D. C. Cir. Application for extension of time to file petition for writ of certiorari presented to THE CHIEF JUSTICE, and by him referred to the Court, granted. It is ordered that the time for filing such petition be, and the same is hereby, extended to and including January 13, 1973. Reported below: 152 U. S. App. D. C. 1, 467 F. 2d 755.

No. 71-1193. UNITED STATES *v.* ENMONS ET AL. Appeal from D. C. E. D. La. [Probable jurisdiction noted, 406 U. S. 916.] Motion of appellees for leave to file supplemental brief after argument granted.

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No. A-605. HAMPTON, CHAIRMAN, U. S. CIVIL SERVICE COMMISSION, ET AL. *v.* FITZGERALD ET AL. C. A. D. C. Cir. Application for stay of mandate presented to THE CHIEF JUSTICE, and by him referred to the Court, granted pending timely filing of petition for writ of certiorari. Should such petition be so timely filed, this order is to continue pending this Court's action on the petition. If the petition for writ of certiorari is denied, this order is to terminate automatically. In the event the petition for writ of certiorari is granted, this order is to remain in effect pending the sending down of the judgment of this Court. Reported below: 152 U. S. App. D. C. 1, 467 F. 2d 755.

No. 71-1442. COLGROVE *v.* BATTIN, U. S. DISTRICT JUDGE. C. A. 9th Cir. [Certiorari granted, *ante*, p. 841.] Motion of Nooter Corp. for leave to file a brief as *amicus curiae* granted.

No. 72-11. PALMORE *v.* UNITED STATES. Appeal from Ct. App. D. C. [Probable jurisdiction postponed, *ante*, p. 840.] Motion of appellee for additional time for oral argument granted and 15 minutes allotted for that purpose. Appellant also allotted 15 additional minutes for oral argument.

No. 72-239. CHILDS *v.* UNITED STATES, *ante*, p. 966. Respondent requested to file a response to petition for rehearing within 30 days.

No. 72-578. BUBLICK *v.* UNITED STATES. C. A. 7th Cir. Motion of Chicago Bar Assn. et al. for leave to file a brief as *amici curiae* granted.

No. 72-5162. BRADEN *v.* CAPPS, WARDEN. Motion for leave to file petition for writ of habeas corpus denied.

No. 72-5493. STRODE *v.* MISSISSIPPI. Motion for leave to file petition for writ of mandamus denied.

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No. A-603. SCHLESINGER *v.* LAIRD, SECRETARY OF DEFENSE, ET AL. C. A. 7th Cir. Application for stay presented to MR. JUSTICE DOUGLAS, and by him referred to the Court, denied.

MR. JUSTICE DOUGLAS, dissenting.

Applicant, a lieutenant in the United States Army Reserve, has asked this Court for a stay of the order requiring him to report to Fort Sill, Oklahoma, for active duty for training, concededly a part of his military obligation. He claims, however, that he is entitled to a medical discharge.

Applicant was examined by three physicians at the Great Lakes Naval Training Center in Illinois. Each was a specialist in the area in which he conducted his examination. Purporting to follow Army regulations governing the standards for retention in the Army, one determined that applicant has a disqualifying foot condition and another that he has a disqualifying allergic condition. The third, a psychiatrist, found that applicant's psychiatric condition, if further documented, would render him ineligible for service. Despite these findings, the Surgeon General, exercising his *ex parte* discretion pursuant to Army Regulation 40-501, determined that applicant is qualified for active duty. The only substantiation for that decision submitted to the Court is a letter written by the Surgeon General to Senator Percy, in which he stated that applicant's problems are not of sufficient severity to render him unfit under Army regulations.¹

Applicant brought an action in the United States District Court for the Northern District of Illinois, challenging the decision of the Surgeon General on the grounds

¹ The Surgeon General apparently considered earlier physical examinations of applicant in addition to those conducted at the Great Lakes Naval Training Center.

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that it constituted an abuse of discretion and was without a basis in fact. While this action was pending, applicant was ordered to active duty for training.² Subsequently, the District Court granted summary judgment for the Government, finding that the Surgeon General's action was not arbitrary or capricious. Applicant's appeal from that judgment is now pending before the United States Court of Appeals for the Seventh Circuit, which refused to stay his order to active duty pending appeal.³

Applicant does not challenge the validity of the regulation allowing the Surgeon General to review the decisions of examining physicians. And, indeed, it may be that applicant is in fact qualified for retention and that the Surgeon General has not abused his discretion. The difficulty I have with the procedure afforded applicant is that the record does not disclose any basis for the Surgeon General's action. When the District Court concluded that the decision was not arbitrary or capricious and granted summary judgment for the Government, it in effect refused to inquire into the basis for overriding the judgment of the specialists who had examined applicant. This amounts to a conclusion that the Surgeon General has unreviewable discretion.

However one views the merits of military service, there can be no question that it results in very real and severe restrictions on personal liberty. We have always demanded that such restraints, at a minimum, accord with accepted notions of procedural due process. In *SEC v. Chenery Corp.*, 318 U. S. 80, 94, we stated: "The Commission's action cannot be upheld merely because findings

² The order to active duty was postponed pending decision by the District Court. We are told that applicant subsequently was scheduled to report for active duty on December 6 or 7.

³ Applicant has requested a stay pending his petition to this Court for a writ of certiorari to the Seventh Circuit to review the order denying a stay pending appeal.

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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. . . . For the courts cannot exercise their duty of review unless they are advised of the considerations underlying the action under review. . . . [T]he orderly functioning of the process of review requires that the grounds upon which the administrative agency acted be clearly disclosed and adequately sustained." Certainly, no less protection should be afforded a person who is subjected to significant restraints on his personal liberty as a result of administrative action.

Since I conclude that the decision of the Surgeon General failed to comport with this basic requirement of procedural due process, I would grant the stay requested.

No. 72-5474. *MORTON v. UNITED STATES ET AL.* Motion for leave to file petition for writ of prohibition and/or mandamus denied.

Probable Jurisdiction Noted

No. 71-1639. *BROADRICK ET AL. v. OKLAHOMA ET AL.* Appeal from D. C. W. D. Okla. Probable jurisdiction noted. Reported below: 338 F. Supp. 711.

No. 72-402. *UNITED STATES v. GENERAL DYNAMICS CORP. ET AL.* Appeal from D. C. N. D. Ill. Probable jurisdiction noted. Reported below: 341 F. Supp. 534.

No. 72-634. *UNITED STATES CIVIL SERVICE COMMISSION ET AL. v. NATIONAL ASSOCIATION OF LETTER CARRIERS, AFL-CIO, ET AL.* Appeal from D. C. D. C. Probable jurisdiction noted. Reported below: 346 F. Supp. 578.

Certiorari Granted

No. 71-1647. *FEDERAL MARITIME COMMISSION v. SEATRAN LINES, INC., ET AL.* C. A. D. C. Cir. Certiorari granted. Reported below: 148 U. S. App. D. C. 424, 460 F. 2d 932.

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No. 72-586. CADY, WARDEN *v.* DOMBROWSKI. C. A. 7th Cir. Motion of respondent for leave to proceed *in forma pauperis* and certiorari granted. Reported below: 471 F. 2d 280.

Certiorari Denied. (See also No. 72-600, *supra*.)

No. 71-6670. RICHBURG *v.* LEEKE, CORRECTIONS DIRECTOR. C. A. 4th Cir. Certiorari denied.

No. 71-6926. SPLINTER *v.* HANRAHAN, STATE'S ATTORNEY OF COOK COUNTY. Sup. Ct. Ill. Certiorari denied. Reported below: 52 Ill. 2d 70, 285 N. E. 2d 129.

No. 72-220. PHELPS DODGE CORP. *v.* AFL-CIO JOINT NEGOTIATING COMMITTEE FOR PHELPS DODGE ET AL.; and

No. 72-359. NATIONAL LABOR RELATIONS BOARD *v.* AFL-CIO JOINT NEGOTIATING COMMITTEE FOR PHELPS DODGE ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 470 F. 2d 722.

No. 72-317. GOMEZ *v.* SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO. Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 72-332. FIOCCONI ET AL. *v.* ATTORNEY GENERAL OF THE UNITED STATES ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 462 F. 2d 475.

No. 72-491. BRACH *v.* UNITED STATES; and

No. 72-492. FRIED *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 464 F. 2d 983.

No. 72-503. HARRIS TRUST & SAVINGS BANK ET AL. *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 470 F. 2d 6.

No. 72-522. ROGERS ET AL. *v.* EQUAL EMPLOYMENT OPPORTUNITY COMMISSION. C. A. 5th Cir. Certiorari denied. Reported below: 470 F. 2d 965.

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No. 72-574. *SELLARS v. COMMITTEE ON ADMISSIONS OF THE DISTRICT OF COLUMBIA COURT OF APPEALS*. Ct. App. D. C. Certiorari denied.

No. 72-577. *CAWY BOTTLING CO., INC. v. MALTINA CORP. ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 462 F. 2d 1021.

No. 72-587. *HOLLAND-AMERICA LINE v. FOREIGN STUDY LEAGUE*. Sup. Ct. Utah. Certiorari denied. Reported below: 27 Utah 2d 442, 497 P. 2d 244.

No. 72-596. *ADAMS ET AL. v. EVANSVILLE-VANDEBURGH SCHOOL CORP. ET AL.* C. A. 7th Cir. Certiorari denied.

No. 72-597. *McDANIEL v. COLORADO*. Sup. Ct. Colo. Certiorari denied. Reported below: — Colo. —, 499 P. 2d 613.

No. 72-602. *HARSH BUILDING CO. ET AL. v. BIALAC ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 463 F. 2d 1185.

No. 72-605. *BUCKELEW v. ALABAMA*. Ct. Crim. App. Ala. Certiorari denied. Reported below: 48 Ala. App. 411, 265 So. 2d 195.

No. 72-607. *GAILLOT v. UNITED STATES DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE*. C. A. 5th Cir. Certiorari denied. Reported below: 464 F. 2d 598.

No. 72-614. *SHAPS v. UNION COMMERCE BANK*. Ct. Civ. App. Tex., 9th Sup. Jud. Dist. Certiorari denied. Reported below: 476 S. W. 2d 466.

No. 72-5175. *MEYER v. WEIL ET AL.* C. A. 7th Cir. Certiorari denied. Reported below: 458 F. 2d 1068.

No. 72-5473. *SADLER v. NORTH CAROLINA*. C. A. 4th Cir. Certiorari denied.

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No. 72-626. UNIVERSITY OF ILLINOIS FOUNDATION *v.* BLONDER-TONGUE LABORATORIES, INC. C. A. 7th Cir. Certiorari denied. Reported below: 465 F. 2d 380.

No. 72-639. SOUTHERN PACIFIC TRANSPORTATION CO. *v.* SUTTON'S STEEL & SUPPLY, INC., ET AL. C. A. 5th Cir. Certiorari denied.

No. 72-652. BROWN, EXECUTOR *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 464 F. 2d 512.

No. 72-688. WHITE MOTOR CORP. ET AL. *v.* STEWART ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 465 F. 2d 1085.

No. 72-5075. MYERS *v.* WASHINGTON. Ct. App. Wash. Certiorari denied. Reported below: 6 Wash. App. 557, 494 P. 2d 1015.

No. 72-5095. McINNIS *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 6 Cal. 3d 821, 494 P. 2d 690.

No. 72-5151. SMITH *v.* ESTELLE, CORRECTIONS DIRECTOR. C. A. 5th Cir. Certiorari denied. Reported below: 458 F. 2d 1407.

No. 72-5168. WHITNEY *v.* CRAVEN, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 460 F. 2d 1267.

No. 72-5188. HOOD *v.* PURCELL, SHERIFF. Ct. App. Ore. Certiorari denied. Reported below: 8 Ore. App. 352, 494 P. 2d 461.

No. 72-5478. SALAZAR *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 72-5483. DRIVER *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 462 F. 2d 808.

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No. 72-5481. *BANKS v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 465 F. 2d 1235.

No. 72-5482. *CARBONARO v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 461 F. 2d 1108.

No. 72-5485. *DREW v. UNITED STATES*. Ct. App. D. C. Certiorari denied. Reported below: 292 A. 2d 164.

No. 72-5487. *ENGLISH ET AL. v. UNITED STATES*. C. A. 9th Cir. Certiorari denied.

No. 72-5488. *LEGO v. TWOMEY, WARDEN*. C. A. 7th Cir. Certiorari denied.

No. 72-5489. *PERKINS v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 459 F. 2d 1392.

No. 72-5490. *BRYANT v. PICKETT, WARDEN*. C. A. 7th Cir. Certiorari denied.

No. 72-5491. *RICHARDS v. MARYLAND*. Ct. Sp. Ann. Md. Certiorari denied.

No. 72-5495. *DALTON v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 465 F. 2d 32.

No. 72-5498. *WHITE v. CARDWELL, WARDEN*. C. A. 6th Cir. Certiorari denied.

No. 72-5502. *BARTLEY v. KENTUCKY*. C. A. 6th Cir. Certiorari denied. Reported below: 462 F. 2d 610.

No. 72-5511. *TRACY v. HAWKS*. C. A. 10th Cir. Certiorari denied.

No. 72-5532. *CAMPBELL v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 466 F. 2d 529.

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No. 72-5515. *HARMON v. RICHARDSON, SECRETARY OF HEALTH, EDUCATION, AND WELFARE*. C. A. 9th Cir. Certiorari denied. Reported below: 460 F. 2d 1229.

No. 72-5517. *ROONEY ET UX. v. FIRST WISCONSIN NATIONAL BANK OF MILWAUKEE ET AL.* C. A. 7th Cir. Certiorari denied.

No. 72-5518. *KASEY ET UX. v. MOLYBDENUM CORPORATION OF AMERICA*. C. A. 9th Cir. Certiorari denied. Reported below: 467 F. 2d 1284.

No. 72-482. *MARCHETTI v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. MR. JUSTICE DOUGLAS, MR. JUSTICE BRENNAN, and MR. JUSTICE STEWART would grant certiorari. Reported below: 466 F. 2d 1309.

No. 72-501. *TERMINAL FREIGHT COOPERATIVE ASSN. ET AL. v. NATIONAL LABOR RELATIONS BOARD*. C. A. 3d Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 447 F. 2d 1099.

No. 72-515. *SANTORO ET AL. v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 464 F. 2d 1202.

No. 72-541. *VON SLEICHTER v. UNITED STATES*. C. A. D. C. Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 153 U. S. App. D. C. 169, 472 F. 2d 1244.

No. 72-559. *WESTERN & SOUTHERN LIFE INSURANCE Co. v. COMMISSIONER OF INTERNAL REVENUE*. C. A. 6th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 460 F. 2d 8.

No. 72-592. *CITIES SERVICE OIL Co., FORMERLY COLUMBIAN FUEL Co. v. UNITED STATES*. Ct. Cl. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 462 F. 2d 1134.

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No. 72-5545. *IN RE ENGLER*. Sup. Ct. Ind. Certiorari denied.

No. 72-5090. *PETERS v. CALIFORNIA*. Ct. App. Cal., 1st App. Dist. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 23 Cal. App. 3d 522, 101 Cal. Rptr. 403.

No. 72-5138. *MINOR v. KENTUCKY*. Ct. App. Ky. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 478 S. W. 2d 716.

No. 72-5486. *CROSSON v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 462 F. 2d 96.

No. 72-5492. *GLASS v. NEW YORK*. Ct. App. N. Y. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari.

No. 72-590. *ANDERS v. UNITED STATES*. Ct. Cl. Motion of petitioner to strike matter from brief for respondent denied. Certiorari denied. Reported below: 199 Ct. Cl. 1, 462 F. 2d 1147.

No. 72-599. *PHIPPS ET AL. v. ASSOCIATE FUNDINGS, INC., ET AL.* C. A. 9th Cir. Certiorari denied. MR. JUSTICE WHITE would grant certiorari. Reported below: 464 F. 2d 1136.

No. 72-629. *SPENCE ET AL. v. CANTERBURY*. C. A. D. C. Cir. Motion to dispense with printing respondent's brief granted. Certiorari denied. Reported below: 150 U. S. App. D. C. 263, 464 F. 2d 772.

No. 72-5537. *MARKOFF v. NEW YORK LIFE INSURANCE Co.* Sup. Ct. Nev. Certiorari denied. MR. JUSTICE POWELL took no part in the consideration or decision of this petition. Reported below: 88 Nev. 319, 497 P. 2d 904.

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No. 72-5301. NUGENT v. UNITED STATES. C. A. 2d Cir. Certiorari denied.

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

Acting on an informant's tip that one "Cherokee" had a mill for diluting narcotics in a certain apartment building, police officers secured the consent of the landlord to search, and then searched the basement area of the building open to use by both landlord and tenants. In one storage room they saw a closed but unlocked trunk, on top of which were a can of milk-sugar, a scale, rubber bands, and a brown paper bag with a message telling Cherokee that "we are out of . . . action." The trunk was then opened. Heroin and narcotics paraphernalia were discovered, seized, and used against Cherokee who was later arrested and tried.

Whether the search of the trunk and seizure of its contents squared with the Fourth Amendment is a substantial question warranting review here. The seizure was not incident to petitioner's arrest, which occurred later at another place. The officers were legally in the storage room by virtue of the landlord's consent, *Frazier v. Cupp*, 394 U. S. 731, 740 (1969), but nothing in the trunk was in plain view as long as the trunk was unopened, and it would seem that the landlord had no authority whatsoever to consent to the search of the trunk or the seizure of its contents, which were petitioner's effects within the protection of the Fourth Amendment.

The United States argues that there was probable cause to search the trunk and a warrant should not be required, because the items sought could be so easily moved. The Court has embraced such a rationale in the *Carroll-Chambers* line of cases with respect to automobiles, but

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has expressly questioned this approach with respect to other movable personal property. See *Coolidge v. New Hampshire*, 403 U. S. 443, 461 n. 18 (1971) ("We have found no case that suggests such an extension of *Carroll*" to "containers" that are "equally movable, *e. g.*, trunks, suitcases, boxes, briefcases, and bags"). Moreover, in *Chimel v. California*, 395 U. S. 752 (1969), searches incident to arrest were limited to the person and immediate vicinity, even though there is clearly probable cause to believe that contraband or evidence of crime will be found elsewhere on the premises where the arrest takes place. The Court there rejected the argument urged in dissent that a warrant could be dispensed with to avoid the disappearance of the property for which there was probable cause to search.

Because the decision below is arguably at odds with decisions of this Court, I would grant the petition for certiorari.

No. 72-5455. SMITH ET AL. v. UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 464 F. 2d 194.

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

Petitioners were convicted of sexually assaulting a fellow inmate while incarcerated in the Federal Youth Center, in violation of 18 U. S. C. § 13 and Colo. Rev. Stat. Ann. § 40-2-31 (1963). Immediately following the assault, petitioners were placed in segregated confinement and were not arraigned until more than five months later, after an indictment had been returned. They appealed their convictions, in part on the ground that they had not been brought promptly before a United States Commissioner as required by former Rule 5 (a) of the Federal

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Rules of Criminal Procedure.* The Court of Appeals for the Tenth Circuit held that Rule 5 does not apply when the person affected is "in custody pursuant to an unrelated valid conviction." Accord, *United States v. Reid*, 437 F. 2d 1166, 1167 (CA7 1971).

The result below stemmed from a narrow, technical reading of the word "arrest" in former Rule 5 (a). Since petitioners "were already in custody for unrelated convictions," 464 F. 2d 194, 196, according to the Court of Appeals, they had not been "arrested" for the alleged offense. The issue presented here is whether former Rule 5 (a) should be interpreted in this myopic fashion, without regard to the policies underlying Rule 5 as a whole.

Former Rule 5 (b) required the commissioner, *inter alia*, to "inform the defendant . . . of his right to retain counsel, of his right to request the assignment of counsel if he is unable to obtain counsel He shall also inform the defendant that he is not required to make a statement and that any statement made by him may be used against him." A basic purpose of this rule is to interpose a judicial officer between the accused and the accuser early in the process of custodial interrogation. This procedure insures that the accused is objectively and intelligently apprised of his rights and helps prevent the "utilization of intensive interrogation, easily gliding into the evils of 'the third degree.'" *Mallory v. United*

*Rule 5 (a) then provided:

"An officer making an arrest under a warrant issued upon a complaint or any person making an arrest without a warrant shall take the arrested person without unnecessary delay before the nearest available commissioner or before any other nearby officer empowered to commit persons charged with offenses against the laws of the United States. When a person arrested without a warrant is brought before a commissioner or other officer, a complaint shall be filed forthwith."

Rule 5 was amended, effective October 1, 1972. References herein are to the Rule as it existed at the time of the decision below.

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States, 354 U. S. 449, 453. The Court of Appeals effectively has deprived petitioners of the protection afforded by Rule 5 (b), even though there is no reason to believe that they were less vulnerable to the overbearing effects of custodial interrogation. The policies underlying Rule 5 (b) apply with as much force to the accused already in custody pursuant to an unrelated conviction as they do to the accused in custody solely on the basis of the alleged offense. Indeed, in the case at hand, the danger of overreaching by prison officials is vividly apparent from the very fact that petitioners were placed in segregated confinement. Certainly, it cannot be suggested that petitioners, because they previously had been convicted of another offense, were any less entitled to the rudimentary procedures afforded to a person who stands accused of a crime.

I would grant the petition for a writ of certiorari solely to consider whether petitioners should have been arraigned promptly after the alleged offense.

No. 72-5273. *MYERS v. PINNOCK*. Sup. Ct. Wash. Motion to consolidate with No. 72-5075 [*Myers v. Washington*] granted. Certiorari denied.

Rehearing Denied

No. 71-651. *CALIFORNIA v. KRIVDA ET AL.*, *ante*, p. 33;

No. 72-42. *DURST v. NATIONAL CASUALTY CO. ET AL.*, *ante*, p. 967;

No. 72-159. *DURST v. UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT ET AL.*, *ante*, p. 947;

No. 72-160. *DURST v. UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT*, *ante*, p. 946;

No. 72-324. *CARTER v. UNITED STATES*, *ante*, p. 984;

No. 72-5150. *GARCIA-TURINO v. UNITED STATES*, *ante*, p. 951; and

No. 72-5171. *SIBONGA v. ADMINISTRATOR OF VETERANS AFFAIRS*, *ante*, p. 952. Petitions for rehearing denied.

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No. 72-5289. FRIERSON *v.* SPRUILL, JUDGE, ET AL., *ante*, p. 989. Petition for rehearing denied.

No. 71-5005. BROOKS *v.* FLORIDA ET AL., 404 U. S. 956;

No. 71-5075. BROOKS *v.* FLORIDA, 404 U. S. 956;

No. 71-5207. BROOKS *v.* WAINWRIGHT, CORRECTIONS DIRECTOR, 404 U. S. 966; and

No. 71-5311. BROOKS *v.* WAINWRIGHT, CORRECTIONS DIRECTOR, 404 U. S. 1020. Motions for leave to file petitions for rehearing denied.

No. 72-136. DURST *v.* UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT ET AL., *ante*, p. 946. Motion for leave to use record in No. 72-42 [*Durst v. National Casualty Co. et al.*] in support of rehearing granted. Petition for rehearing denied.

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No. 72-421. RICHARDSON, SECRETARY OF HEALTH, EDUCATION, AND WELFARE *v.* DAVIS. Appeal from D. C. Conn. Motion of appellee for leave to proceed *in forma pauperis* granted. Judgment affirmed. *Weber v. Aetna Casualty & Surety Co.*, 406 U. S. 164 (1972). THE CHIEF JUSTICE, MR. JUSTICE STEWART, and MR. JUSTICE REHNQUIST would note probable jurisdiction and set case for oral argument. Reported below: 342 F. Supp. 588.

No. 72-655. RICHARDSON, SECRETARY OF HEALTH, EDUCATION, AND WELFARE *v.* GRIFFIN ET AL. Appeal from D. C. Md. Motion of appellee for leave to proceed *in forma pauperis* granted. Judgment affirmed. THE CHIEF JUSTICE, MR. JUSTICE STEWART, and MR. JUSTICE REHNQUIST would note probable jurisdiction and set case for oral argument. Reported below: 346 F. Supp. 1226.

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No. 72-465. LANCE ROOFING CO., INC., ET AL. v. HODGSON, SECRETARY OF LABOR, ET AL. Affirmed on appeal from D. C. N. D. Ga. MR. JUSTICE STEWART would note probable jurisdiction and set case for oral argument. Reported below: 343 F. Supp. 685.

No. 72-466. FRANK IREY, JR., INC. v. HODGSON, SECRETARY OF LABOR, ET AL. Affirmed on appeal from D. C. N. D. W. Va. MR. JUSTICE STEWART would note probable jurisdiction and set case for oral argument. Reported below: 354 F. Supp. 20.

No. 72-610. ACE DORAN HAULING & RIGGING CO. ET AL. v. INTERSTATE COMMERCE COMMISSION. Affirmed on appeal from D. C. W. D. Pa. MR. JUSTICE DOUGLAS dissents from the affirmance. Reported below: 345 F. Supp. 743.

No. 72-615. GLENOVICH ET AL. v. NOERENBERG, COMMISSIONER OF FISH AND GAME, ET AL. Affirmed on appeal from D. C. Alaska. Reported below: 346 F. Supp. 1286.

No. 72-618. AMERICAN PARTY OF FLORIDA ET AL. v. ASKEW, GOVERNOR OF FLORIDA, ET AL. Affirmed on appeal from D. C. N. D. Fla.

No. 72-650. STERRETT, ADMINISTRATOR, DEPARTMENT OF PUBLIC WELFARE, ET AL. v. GAITHER ET AL. Appeal from D. C. N. D. Ind. Motion of appellees for leave to proceed *in forma pauperis* granted. Judgment affirmed. Reported below: 346 F. Supp. 1095.

Appeals Dismissed

No. 71-6689. CLARK v. PAYNE. Appeal from C. A. 3d Cir. dismissed for want of jurisdiction. Treating the papers whereupon the appeal was taken as a petition for writ of certiorari, certiorari denied. Reported below: 455 F. 2d 516.

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No. 72-300. HUGGINS ET AL. *v.* DEMENT ET AL. Appeal from Sup. Ct. N. C. 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 would note probable jurisdiction and set case for oral argument. Reported below: 281 N. C. 314, 188 S. E. 2d 898.

No. 72-5170. SAYLES *v.* NUNZIO ET AL., JUDGES. Appeal from Ct. App. D. C. dismissed for want of substantial federal question.

No. 72-5549. HIGHT *v.* TEXAS. Appeal from Ct. Civ. App. Tex., 1st Sup. Jud. Dist. dismissed for want of substantial federal question. Reported below: 473 S. W. 2d 348.

Vacated and Remanded on Appeal

No. 71-1261. COOK, DIRECTOR, DEPARTMENT OF LIQUOR CONTROL, ET AL. *v.* PETO, DBA LOOP CARRY OUT. Appeal from D. C. S. D. Ohio. Judgment vacated and case remanded for further consideration in light of *California v. LaRue*, ante, p. 109. Reported below: 339 F. Supp. 1300.

Other Summary Disposition

No. 72-178. STRUCK *v.* SECRETARY OF DEFENSE ET AL. C. A. 9th Cir. [Certiorari granted, ante, p. 947.] Judgment vacated and case remanded to consider issue of mootness in light of the position presently asserted by the Government. MR. JUSTICE STEWART would postpone issue of mootness to hearing of case on the merits.

*Miscellaneous Orders**

No. 72-5530. ARNOLD *v.* OLIVER, JUDGE. Motion for leave to file petition for writ of prohibition denied.

*For reference to Court's order prescribing an amendment to the Federal Rules of Civil Procedure, see *post*, p. 1132.

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No. A-565 (72-774). *COOPER v. FLORIDA BOARD OF DENTISTRY*. Sup. Ct. Fla. Application for stay presented to MR. JUSTICE DOUGLAS, and by him referred to the Court, denied. Reported below: See 265 So. 2d 432.

No. A-598 (72-5800). *DAWSON v. UNITED STATES*. C. A. 8th Cir. Application for stay of execution and enforcement of mandate presented to MR. JUSTICE STEWART, and by him referred to the Court, denied. Reported below: 467 F. 2d 668.

No. A-612. *ENVIRONMENTAL DEFENSE FUND, INC., ET AL. v. FROEHLKE, SECRETARY OF THE ARMY, ET AL.* C. A. 8th Cir. Application for injunction presented to MR. JUSTICE BLACKMUN, and by him referred to the Court, denied. MR. JUSTICE DOUGLAS would grant the injunction.

No. A-633. *ENVIRONMENTAL DEFENSE FUND, INC., ET AL. v. CORPS OF ENGINEERS OF THE UNITED STATES ARMY ET AL.* C. A. 8th Cir. Application for injunction presented to MR. JUSTICE BLACKMUN, and by him referred to the Court, denied. MR. JUSTICE DOUGLAS would grant the injunction. Reported below: 470 F. 2d 289.

No. 71-685. *LEHNHAUSEN, DIRECTOR, DEPARTMENT OF LOCAL GOVERNMENT AFFAIRS OF ILLINOIS v. LAKE SHORE AUTO PARTS Co. ET AL.*; and

No. 71-691. *BARRETT, COUNTY CLERK OF COOK COUNTY, ILLINOIS, ET AL. v. SHAPIRO ET AL.* Sup. Ct. Ill. [Certiorari granted, 405 U. S. 1039.] Motion for order respecting oral argument granted. It is ordered that the Attorney General of Illinois be allotted 20 minutes for oral argument on behalf of petitioner in No. 71-685; that the State's Attorney be allotted 10 minutes for oral argument on behalf of petitioners in No. 71-691; that counsel for Lake Shore Auto Parts Co. be allotted 20 minutes for oral argument on behalf of respondents

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in No. 71-685; and that counsel for M. Weil & Sons, Inc., be allotted 10 minutes for oral argument on behalf of respondents in No. 71-691.

No. 71-1637. CITY OF BURBANK ET AL. *v.* LOCKHEED AIR TERMINAL, INC., ET AL. Appeal from C. A. 9th Cir. [Probable jurisdiction noted, *ante*, p. 840.] Motion of the Attorney General of California for leave to participate in oral argument as *amicus curiae* in support of appellants granted and 15 minutes allotted for that purpose. Appellees also allotted 15 additional minutes for oral argument.

No. 72-730. MARKLE ET AL. *v.* ABELE ET AL. Appeal from D. C. Conn. Motion of appellants to expedite consideration denied.

No. 71-6778. WILLIAMS *v.* CALIFORNIA;

No. 72-5522. BLANKENSHIP *v.* MEACHAM ET AL.; and

No. 72-5527. SZIJARTO *v.* NELSON, WARDEN. Motions for leave to file petitions for writs of habeas corpus denied.

No. 72-5593. ZENCHAK *v.* UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF KENTUCKY. Motion for leave to file petition for writ of mandamus denied.

Probable Jurisdiction Noted

No. 72-535. UNITED STATES ET AL. *v.* STUDENTS CHALLENGING REGULATORY AGENCY PROCEDURES (SCRAP) ET AL.; and

No. 72-562. ABERDEEN & ROCKFISH RAILROAD CO. ET AL. *v.* STUDENTS CHALLENGING REGULATORY AGENCY PROCEDURES (SCRAP) ET AL. Appeals from D. C. D. C. Motion of appellee SCRAP for leave to dispense with printing motion to dismiss or affirm granted. Probable jurisdiction noted. Cases consolidated and one hour allotted for oral argument. Motion

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of Aberdeen & Rockfish Railroad Co. et al. to advance cases granted. MR. JUSTICE POWELL took no part in the consideration or decision of the motions and the jurisdictional statements. Reported below: 346 F. Supp. 189.

Certiorari Granted

No. 71-1417. BOOSTER LODGE No. 405, INTERNATIONAL ASSOCIATION OF MACHINISTS & AEROSPACE WORKERS, AFL-CIO *v.* NATIONAL LABOR RELATIONS BOARD ET AL.; and

No. 71-1607. NATIONAL LABOR RELATIONS BOARD *v.* BOEING CO. ET AL. C. A. D. C. Cir. Certiorari granted. Cases consolidated and a total of one and one-half hours allotted for oral argument. Reported below: 148 U. S. App. D. C. 119, 459 F. 2d 1143.

No. 72-624. UNITED STATES *v.* PENNSYLVANIA INDUSTRIAL CHEMICAL CORP. C. A. 3d Cir. Certiorari granted. Reported below: 461 F. 2d 468.

No. 72-630. HALL ET AL. *v.* COLE. C. A. 2d Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari granted limited to Questions 1 and 2 presented by the petition which read as follows:

"1. Whether a federal court in a Section 102 proceeding, reviewing an expulsion of a member by a union, finding his expulsion in violation of Section 101 (a)(2), and directing his restoration to membership, may also award the member's attorney reasonable counsel fees.

"2. Whether a federal court in a Section 102 proceeding, in restoring an expelled member to membership, may award reasonable counsel fees when it is found that the member sustained no damages by reason of the expulsion; additionally found that the union in good faith believed it had the right to discipline the member for his conduct; further found no motivation of malice by the union in its discipline of the member and does not find that the

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member by his conduct acted in good faith, but instead concludes the member's conduct was motivated in part for personal political ambitions."

MR. JUSTICE MARSHALL took no part in the consideration or decision of the motion and petition. Reported below: 462 F. 2d 777.

Certiorari Denied. (See also Nos. 71-6689 and 72-300, *supra.*)

No. 71-1529. POFF, DBA 1ST KING *v.* DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL OF CALIFORNIA ET AL. Ct. App. Cal., 2d App. Dist. *Certiorari denied.*

No. 71-1563. BOEING Co. *v.* NATIONAL LABOR RELATIONS BOARD ET AL. C. A. D. C. Cir. *Certiorari denied.* Reported below: 148 U. S. App. D. C. 119, 459 F. 2d 1143.

No. 71-6928. VALENTINE *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. *Certiorari denied.*

No. 72-185. BYRD *v.* DISTRICT OF COLUMBIA ALCOHOLIC BEVERAGE CONTROL BOARD. Ct. App. D. C. *Certiorari denied.* Reported below: 289 A. 2d 877.

No. 72-195. COLEMAN, DBA CLUB HI DOLLY *v.* DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL OF CALIFORNIA ET AL. Ct. App. Cal., 2d App. Dist. *Certiorari denied.*

No. 72-279. KNOX *v.* ILLINOIS. App. Ct. Ill., 1st Dist. *Certiorari denied.* Reported below: 3 Ill. App. 3d 22, 278 N. E. 2d 252.

No. 72-441. WILLIAMS ET AL. *v.* BORNEMEIER ET AL.; and

No. 72-648. MORGAN *v.* BORNEMEIER ET AL. C. A. 6th Cir. *Certiorari denied.*

No. 72-542. SLATKO *v.* UNITED STATES. C. A. 5th Cir. *Certiorari denied.* Reported below: 462 F. 2d 1169.

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No. 72-456. *STAR INDUSTRIES, INC. v. UNITED STATES*. C. C. P. A. Certiorari denied. Reported below: 59 C. C. P. A. (Cust.) 159, 462 F. 2d 557.

No. 72-502. *IRONS v. COMMISSIONER OF PATENTS*. C. A. D. C. Cir. Certiorari denied. Reported below: 151 U. S. App. D. C. 23, 465 F. 2d 608.

No. 72-523. *PLANTATION PATTERNS, INC., ET AL. v. COMMISSIONER OF INTERNAL REVENUE*. C. A. 5th Cir. Certiorari denied. Reported below: 462 F. 2d 712.

No. 72-545. *LIBERTY AMENDMENT COMMITTEE OF THE U. S. A. v. UNITED STATES ET AL.* C. A. 9th Cir. Certiorari denied.

No. 72-557. *SMITH v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 464 F. 2d 1129.

No. 72-567. *BEAUCHAMP v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 465 F. 2d 700.

No. 72-568. *KRAUDE v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 467 F. 2d 37.

No. 72-575. *SHAMEIA v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 464 F. 2d 629.

No. 72-578. *BUBLICK v. UNITED STATES*. C. A. 7th Cir. Certiorari denied.

No. 72-593. *TRAVIS-EDWARDS, INC. v. HODGSON, SECRETARY OF LABOR*. C. A. 5th Cir. Certiorari denied. Reported below: 465 F. 2d 1050.

No. 72-604. *NEW JERSEY ET AL. v. SMITH*. C. A. 3d Cir. Certiorari denied. Reported below: 465 F. 2d 272.

No. 72-653. *LAIRD, SECRETARY OF DEFENSE, ET AL. v. ANDERSON ET AL.* C. A. D. C. Cir. Certiorari denied. Reported below: 151 U. S. App. D. C. 112, 466 F. 2d 283.

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No. 72-611. *GOODSON ET AL. v. DAVIS ET AL.*; and
No. 72-612. *MAY, AS INTERVENOR ON BEHALF OF
CUSTOM COMPONENT SWITCHES, INC. v. DAVIS ET AL.*
Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 72-613. *CARPENTERS DISTRICT COUNCIL OF HOUS-
TON AND VICINITY ET AL. v. LINBECK CONSTRUCTION
CORP.* C. A. 5th Cir. Certiorari denied. Reported be-
low: 462 F. 2d 575.

No. 72-616. *GULF OIL CORP. v. LEHRMAN.* C. A. 5th
Cir. Certiorari denied. Reported below: 464 F. 2d 26.

No. 72-651. *BERNDT ET AL. v. PAPILSKY.* C. A. 2d
Cir. Certiorari denied. Reported below: 466 F. 2d 251.

No. 72-659. *OFFENBERG ET UX. v. CALIFORNIA ET AL.*
Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 72-676. *CRAIG v. COLORADO.* Sup. Ct. Colo.
Certiorari denied. Reported below: — Colo. —, 498
P. 2d 942.

No. 72-5117. *CROWE ET AL. v. SOUTH CAROLINA.* Sup.
Ct. S. C. Certiorari denied. Reported below: 258 S. C.
258, 188 S. E. 2d 379.

No. 72-5183. *DODSON v. IOWA.* Sup. Ct. Iowa. Cer-
tiorari denied. Reported below: 195 N. W. 2d 684.

No. 72-5186. *FAIR v. FLORIDA ET AL.* C. A. 5th Cir.
Certiorari denied.

No. 72-5200. *THOMPSON v. GRAY, WARDEN.* C. A.
7th Cir. Certiorari denied.

No. 72-5253. *MOON v. SLAYTON, PENITENTIARY SU-
PERINTENDENT.* C. A. 4th Cir. Certiorari denied.

No. 72-5254. *VALDEZ v. NEW MEXICO.* Sup. Ct.
N. M. Certiorari denied. Reported below: 83 N. M.
720, 497 P. 231.

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No. 72-5265. *PRESSEL v. OREGON*. C. A. 9th Cir. Certiorari denied. Reported below: 460 F. 2d 313.

No. 72-5275. *FLINT v. HOWARD, WARDEN*. Sup. Ct. R. I. Certiorari denied. Reported below: — R. I. —, 291 A. 2d 625.

No. 72-5284. *HILL v. TEXAS*. Ct. Crim. App. Tex. Certiorari denied. Reported below: 480 S. W. 2d 200.

No. 72-5313. *DUNK ET AL. v. MANUFACTURERS LIGHT & HEAT Co.* Sup. Ct. Pa. Certiorari denied.

No. 72-5331. *SIMPSON v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 457 F. 2d 512.

No. 72-5479. *PRESTON v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 464 F. 2d 542.

No. 72-5499. *WAY v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 462 F. 2d 1367.

No. 72-5500. *CARDILLO v. UNITED STATES*. C. A. 1st Cir. Certiorari denied.

No. 72-5505. *STEED v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 465 F. 2d 1310.

No. 72-5510. *WILLIAMS v. LOUISIANA*. C. A. 5th Cir. Certiorari denied.

No. 72-5519. *SUTHERLAND v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 463 F. 2d 641.

No. 72-5523. *McMULLEN v. UNITED STATES*. C. A. 4th Cir. Certiorari denied.

No. 72-5555. *MAGEE v. SUPERIOR COURT, CITY AND COUNTY OF SAN FRANCISCO*. Ct. App. Cal., 1st App. Dist. Certiorari denied.

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No. 72-5516. *OCHOA v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 463 F. 2d 355.

No. 72-5524. *MA GEE v. NELSON, WARDEN*. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 72-5533. *ARVIN v. SLAYTON, PENITENTIARY SUPERINTENDENT*. C. A. 4th Cir. Certiorari denied.

No. 72-5534. *ALBERT v. WYOMING*. C. A. 10th Cir. Certiorari denied.

No. 72-5544. *KWITEK v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 467 F. 2d 1222.

No. 72-5548. *PORTER v. UNITED STATES*. C. A. 8th Cir. Certiorari denied.

No. 72-5551. *ANDREWS v. NORTH CAROLINA*. Sup. Ct. N. C. Certiorari denied.

No. 72-5554. *CRATIC v. OHIO*. Ct. App. Ohio, Cuyahoga County. Certiorari denied.

No. 72-5559. *STAFFORD v. N. A. A. EMPLOYEES FEDERAL CREDIT UNION ET AL.* C. A. 9th Cir. Certiorari denied.

No. 72-5577. *PAYNE v. ALABAMA*. Ct. Crim. App. Ala. Certiorari denied. Reported below: 48 Ala. App. 401, 265 So. 2d 185.

No. 72-5579. *BEKENY ET UX. v. WANDSCHNEIDER, EXECUTOR, ET AL.* C. A. 2d Cir. Certiorari denied.

No. 72-5587. *RITCH ET AL. v. TARRANT COUNTY HOSPITAL DISTRICT*. Sup. Ct. Tex. Certiorari denied. Reported below: 480 S. W. 2d 622.

No. 72-254. *NEIL, WARDEN v. VENABLE*. C. A. 6th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 463 F. 2d 1167.

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No. 72-521. IRISH NORTHERN AID COMMITTEE v. ATTORNEY GENERAL OF THE UNITED STATES. C. A. 2d Cir. Certiorari denied.

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

Petitioner is registered as a foreign agent under the Foreign Agents Registration Act of 1938, 52 Stat. 631, as amended, 22 U. S. C. § 611 *et seq.* The District Court ordered it to comply with the Act by filing, *inter alia*, a statement of contributions which included the names of contributors. The Court of Appeals for the Second Circuit affirmed in an unreported order.

I believe that the Foreign Agents Registration Act does not authorize the Attorney General to require lists of the names and addresses of contributors, as he has done in 28 CFR § 5.201 (e). Cf. *Kent v. Dulles*, 357 U. S. 116 (1958).

The Foreign Agents Registration Act sets out an extensive scheme to regulate the activities of foreign agents. But the scheme is not all-encompassing. Its purpose is to inform the American people of the activities of the agents of foreign principals so that the people may carefully "appraise them and the purposes for which they act." H. R. Rep. No. 1470, 89th Cong., 2d Sess., 2 (1966).

Congress has determined that we must know the extent to which a foreign agent is supported by his principal so that we may properly evaluate the agent's interest in the views he presents. To that end, the statute requires the agent to disclose "[t]he nature and amount of contributions, income, money, or thing of value, if any, that the registrant has received . . . from each such foreign principal . . ." 22 U. S. C. § 612 (a) (5). Prior to its amendment in 1966, the statute did require the disclosure of the name and address of "any person who has . . . contributed or paid money or anything of

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value to the registrant," § 2 (a) (7), 56 Stat. 252. This provision was omitted in 1966, leaving § 612 (a) (5) as essentially the only provision requiring disclosure of contributors.¹

The amendments adopted in 1966 were intended to limit the scope of the previous act and thereby to make effective enforcement more likely. In language repeated in each subsequent Committee report on the proposed revision, the Senate Committee on Foreign Relations referred to its bill as "better focusing the act on those individuals performing political or semipolitical activities." S. Rep. No. 875, 88th Cong., 2d Sess., 1 (1964).² The Committee said, "Too broadly written for today's needs, the present act's disclosure provisions have through the years been too narrowly enforced with the emphasis placed on subversive or potentially subversive

¹ Section 612 (a) (7) requires the disclosure of contributions from anyone other than the principal "for whom the registrant is acting . . . under such circumstances as require his registration hereunder." This provision is intended to prevent the foreign principal from acting through a facade or alter ego who would register and then simply act as a channel for funds to an unregistered person who would do all that the principal wanted done. H. R. Rep. No. 1470, 89th Cong., 2d Sess. (1966). The respondent argues that this section is a broad one. On its face, it is quite narrow. Respondent says, however, that the legislative history "makes it clear that Congress did not intend the provision to be read so narrowly." Brief for Respondent in Opposition 11. I confess that I cannot read the section to require anything more than disclosure of contributions "from each such person." That is, after all, just what the language of the section purports to require. The legislative history cited by respondent shows only that Congress intended to cover what the language of the section covers, the use of registered agents to convey money to unregistered third parties who would then disburse it within the United States. I find it hard to interpret this history as providing any guidance in deciding the case at hand. The only statutory basis for respondent's action that I can find is § 615.

² See also S. Rep. No. 143, 89th Cong., 1st Sess., 1 (1965); H. R. Rep. No. 1470, 89th Cong., 2d Sess., 2 (1966).

agents." *Id.*, at 5.³ Congress in 1966 deliberately narrowed the coverage of the statute. I would not read into it broad coverage, through a general authorization to the Attorney General, that is inconsistent with the thrust of the legislation taken as a whole.

The statute no longer requires, in terms, the disclosure of the names of all contributors.⁴ But the registrant must keep "such books of account and other records with respect to all his activities, the disclosure of which is required under the provisions of this subchapter . . . as the Attorney General, having due regard for the national security and the public interest, may by regulation prescribe as necessary or appropriate for the enforcement of the provisions of this subchapter." 22 U. S. C. § 615. The Attorney General has apparently determined that the names and addresses of all contributors must be disclosed to insure full disclosure of contributions from the foreign principal. 28 CFR § 5.201 (e). This requirement, I believe, goes beyond the bounds of the statute.

First, the Attorney General is authorized to require that records be kept as to "all . . . activities, the disclosure of which is required under the provisions of this subchapter," 22 U. S. C. § 615. The predicate of a valid regulation, then, is that it relate to an activity that must be disclosed by the terms of the Act itself. As I have noted, nothing in the Act requires the disclosure of the names of all contributors.

The Act does require that the organization disclose the extent to which it is controlled financially by its principal. And disclosure of the names of all contributors would make it easier for Americans to learn the degree of control which the foreign principal has over

³ See also S. Rep. No. 143, *supra*, n. 2, at 5.

⁴ It does require full disclosure of all expenditures. 22 U. S. C. § 612 (a) (8).

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an organization which solicits their contributions. But the respondent in this case has given no reason to believe that the foreign principal in this case has contributed more to the Irish Northern Aid Committee than has already been disclosed. Indeed, the very nature of the organization and the principal makes that very unlikely. For all that appears, the Irish Northern Aid Committee is a shoestring operation, which raises money at dances and house parties and sends it to an organization in Northern Ireland which seems to have few resources of its own. It is not the well-financed agent of an established government that sends money to this country for extensive efforts to influence public opinion.

The case might be different if the Attorney General had shown some reason to believe that the Irish Northern Aid Committee had failed to disclose contributions it had received from its principal. Full disclosure then might be the only way to discover whether that suspicion had some basis in fact. Without such a showing, however, the Attorney General has not established that the predicate for a valid regulation exists.⁵ The regulation he has promulgated, which does not require any showing of possible relevance to some disclosure required by the terms of the Act, is more than the Act permits.

Second, if we were to construe the Act as authorizing such a broad-ranging inquiry, I would be troubled by the possibility that Congress had authorized an inquiry which the First Amendment forbids. Membership in an organization is protected from disclosure when the Government's interest in disclosure is outweighed by the impact on association that disclosure causes. See *NAACP v. Alabama*, 357 U. S. 449, 462-464 (1958).

⁵ The case was submitted to the District Court on affidavits, none of which revealed any reason for respondent to believe that the petitioner was receiving undisclosed amounts from its principal.

This balancing can be done only after careful consideration is given to the competing interests. Here the Government's interest is said to be guaranteeing that the public knows the extent to which petitioner is supported by its foreign principal. The Committee has already registered as a foreign agent and is subject to a wide range of disclosure requirements that I do not question. It is hard to believe that the increment in public information provided by disclosure of the names and addresses of contributors would be great, especially in a case where the Attorney General has shown no reason to believe that disclosure would reveal hidden contributions from the foreign principal.

On the other side, petitioner claims that many of its contributors are properly fearful for the safety of their relatives who remain in the turbulent surroundings of Northern Ireland. On the record developed in the District Court, based solely on affidavits, we cannot, I think, make an informed judgment of the impact of such fears on potential contributors.

The constitutional argument is a difficult one. I would not assume that Congress had carefully considered it when enacting a statute which does not, in terms, pose the constitutional question. The statutory basis for the Attorney General's requirement that the names of contributors be disclosed, without any preliminary showing that such disclosure would advance the ends of the statute, is rather slender in the first instance. It is hardly construing the statute to avoid constitutional doubts to read into it authority for the Attorney General to adopt regulations that themselves raise constitutional questions.

I would grant the petition for writ of certiorari and set the case for oral argument.

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No. 72-529. *GREMILLION v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. MR. JUSTICE MARSHALL took no part in the consideration or decision of this petition. Reported below: 464 F. 2d 901.

No. 72-532. *KEEVER v. UNITED STATES*. C. A. 10th Cir. Motion for leave to dispense with printing petition granted. Certiorari denied.

No. 72-594. *MATHER v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 465 F. 2d 1035.

No. 72-625. *SMITH v. FALCON SEABOARD, INC.* C. A. 5th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 463 F. 2d 206.

No. 72-680. *SCHRADER v. SELECTIVE SERVICE SYSTEM LOCAL BOARD NO. 76 OF WISCONSIN ET AL.* C. A. 7th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 470 F. 2d 73.

No. 72-5146. *JOHNSON v. LOUISIANA*. Sup. Ct. La. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 261 La. 620, 260 So. 2d 645.

No. 72-5199. *PHILLIPS v. CARR ET AL.* C. A. 8th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari.

No. 72-5230. *BOAG v. CRAVEN, WARDEN*. C. A. 9th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari.

No. 72-5239. *LEROY v. OHIO*. Sup. Ct. Ohio. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 30 Ohio St. 2d 138, 283 N. E. 2d 136.

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No. 72-5508. ROSEMOND *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari.

No. 72-5556. HOOVER *v.* ESTELLE, CORRECTIONS DIRECTOR. C. A. 5th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 467 F. 2d 516.

No. 72-633. COPELAND REFRIGERATION CORP. *v.* WARINER HERMETICS, INC., ET AL. C. A. 5th Cir. Certiorari denied. MR. JUSTICE STEWART would grant certiorari. Reported below: 463 F. 2d 1002.

No. 72-5497. CLIZER *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. MR. JUSTICE STEWART would grant certiorari. Reported below: 464 F. 2d 121.

No. 72-644. D. C. TRANSIT SYSTEM, INC. *v.* WASHINGTON METROPOLITAN AREA TRANSIT COMM'N ET AL. C. A. D. C. Cir. Motion of respondent Black United Front for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 151 U. S. App. D. C. 223, 466 F. 2d 394.

No. 72-5506. JAMES *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. MR. JUSTICE DOUGLAS and MR. JUSTICE STEWART would grant certiorari. Reported below: 464 F. 2d 1228.

No. 72-5405. AL-KARAGHOLI *v.* IMMIGRATION AND NATURALIZATION SERVICE. C. A. D. C. Cir. Certiorari denied.

MR. JUSTICE DOUGLAS, dissenting.

Petitioner, a nonimmigrant student, was admitted to the United States in January 1962, pursuant to § 101 (a) (15) of the Immigration and Nationality Act, 66 Stat. 167, as amended, 8 U. S. C. § 1101 (a)(15), with authorization to remain in the country in that status until

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January 28, 1968. In June 1967, deportation proceedings were initiated against petitioner on the ground that he had failed to maintain his student status. These proceedings were apparently dropped.¹

On January 5, 1968, prior to the date of the expiration of his visa, petitioner filed an application for an extension of time under the visa for the purpose of continuing his education. This application was denied by the Special Inquiry Officer on the ground that the petitioner's primary interest in remaining in the United States was to work as a street vendor and not to pursue his educational interests. Petitioner was granted until May 21, 1969, to leave the country. On May 13, 1969, his application for reconsideration, wherein he verified his admission to the Washington Technical Institute, was denied.

On March 4, 1970, a deportation hearing was held at which time petitioner was represented by counsel. The Special Inquiry Officer found petitioner deportable. On appeal, the Board of Immigration Appeals observed that the principal basis for petitioner's appeal—the denial of his request for an extension of his student visa—was not appealable or subject to review.

Title 8 CFR § 214.2 (f) (4), a rule promulgated by the Immigration and Naturalization Service, indicates that there is no review available of the decisions on applications for extensions of student visas. "The applicant shall be notified of the decision and, if the application is denied, of the reason therefor. No appeal shall lie from the decision." In light of this Court's decisions,

¹ At the hearing before the Special Inquiry Officer, it was determined that petitioner had discontinued his education and he was ordered deported. The Board of Immigration Appeals remanded the case with directions to the Special Inquiry Officer to reopen the hearing to consider evidence, which had not been before him, which verified petitioner's student status. No further hearing was held.

recognizing the fundamental rights involved in deportation, this regulation denies applicants due process of law.

As early as 1921 this Court recognized that fundamental rights were involved in observing that not only does deportation² deprive a person of his liberty, but, "[i]t may result also in loss of both property and life; or of all that makes life worth living." *Ng Fung Ho v. White*, 259 U. S. 276, 284. Because of the nature of the deprivation, although deportation is not technically a criminal penalty, this Court has concluded that "*deportation is a penalty*—at times a most serious one Meticulous care must be exercised lest the procedure by which he [the alien] is deprived of that liberty not meet the essential standards of fairness." *Bridges v. Wixon*, 326 U. S. 135, 154. (Emphasis supplied.)

This Court has held that the denial of a motion to reopen by the Special Inquiry Officer is reviewable as a "final order of deportation." *Giova v. Rosenberg*, 379 U. S. 18; *Foti v. Immigration and Naturalization Service*, 375 U. S. 217. At least one federal court of appeals has interpreted these cases to authorize judicial review of a decision on an issue stemming from a deportation proceeding. *Rose v. Woolwine*, 344 F. 2d 993 (CA4).

Contrary to Regulation § 214.2 (f)(4), an order of the Special Inquiry Officer denying an application for an extension of time under a currently valid visa does operate as a final order and must be subject to judicial review.

² That approach is as important in dealing with deportation of students as it is in other alien cases. These days students are often political targets of their home country. Both Iran and Taiwan have been notorious in seeking our aid in deporting students, so that the students can be executed on their return for their opposed political ideas. While cancellation of the student visa in these troubled days may be sought for that purpose, Iraq does not seem to be the force behind the scenes in the present case.

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When the extension is denied, a deportation date is set. The alien is given no recourse to challenge this deportation other than to leave the country and attempt to regain entry or to stay in the United States illegally in hopes of obtaining review in a deportation proceeding. But, as in the instant case, that review is so limited as to be nonexistent, when the Board of Immigration Appeals feels compelled by Regulation § 214.2 (f)(4) not to give any consideration to the denial of the extension or the reasons thereunder.

Such a result would appear to be contrary to the provisions of the Administrative Procedure Act ³ (5 U. S. C. § 704) wherein "[a]gency action made reviewable by statute and final agency action for which there is no other adequate remedy in a court are subject to judicial review. *A preliminary, procedural, or intermediate agency action or ruling not directly reviewable is subject to review on the review of the final agency action.*" (Emphasis supplied.) It is asserted that petitioner was not seeking a true student status because his main purpose was to work here. That is a gross distortion of the record. Petitioner was and is a true student, whether brilliant or mediocre being not material. He is a penniless student and works his way through the schools here in the District of Columbia by being a vendor of articles in the parks and other places. He has no criminal record; his mastery of the English language is not superior, and he has problems understanding the requirements of our laws and the procedures before our bureaucracy, just as an American studying in Baghdad would have great difficulty in toeing the line of Arabic law as construed and applied by Iraqi officials.

I would grant the petition for certiorari and put the case down for oral argument.

³ See Sofaer, Judicial Control of Informal Discretionary Adjudication and Enforcement 72 Col. L. Rev. 1293, 1348 *et seq.* (1972).

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No. 72-5535. *DYE v. NEW JERSEY*. Sup. Ct. N. J. Certiorari denied. Reported below: 60 N. J. 518, 291 A. 2d 825.

MR. JUSTICE DOUGLAS, dissenting.

Petitioner was convicted of bookmaking in violation of state law. The evidence from which the conviction resulted arose primarily from a wiretap of a telephone on the premises where petitioner was employed. Petitioner challenges the admissibility of the wiretap product on the grounds that the judicial authorization was not in conformity with the state statute authorizing wiretapping (N. J. Stat. Ann. § 2A:156A-1) and that the wiretap violated his Fourth Amendment rights.

Pursuant to judicial authorization, a wiretap was placed on the pay telephone located in the restaurant-bar-liquor store in which petitioner was employed. The affidavits supporting the request for authorization of the tap included the following information: That the police had been advised that the number of the telephone in question was listed many times on the toll receipt of another telephone which was located at a place where there was "good reason to believe," pursuant to a different investigation, that bookmaking operations were being conducted; that police stakeouts in the restaurant-bar-liquor store overheard both petitioner and an unidentified male make a call on the telephone in which betting information was passed; that petitioner was observed taking notes from the sports pages of a newspaper and having guarded conversations with customers; and that when a reliable informer was requested to call the telephone number and place a bet, petitioner refused to take the bet, leading the informer to believe that petitioner would not deal with strangers.

From the above facts, the law division judge concluded that sufficient exigent circumstances existed for

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concluding that traditional investigative techniques would be unproductive, and issued a warrant which authorized the placing of a wiretap on the telephone between the hours of 10 a. m. and 3 p. m., Monday through Saturday for a 30-day period, with directions that the interception begin as soon as practicable. The order also directed that the wiretap be conducted in such a way as to minimize or eliminate the interception of communications other than the type described. Those communications subject to seizure were described as "communications of Bentley Dye [petitioner] relating to the offenses of Bookmaking and Conspiracy from telephone facility number 201-725-9743."

Pursuant to the order, the police placed a wiretap on the telephone which was operative for 22 days. Over 105 hours of conversations were tapped. A master tape of those conversations allegedly involving bookmaking and the conspiracy was made and it ran about 2½ hours. The recordings of nonrelated communications were sealed. (No reason is given as to why they were not destroyed.) On several days when petitioner was not at work the wiretap remained in effect, recording any calls made on the telephone.

In *Berger v. New York*, 388 U. S. 41, 63, this Court held that "[w]hile '[t]he requirements of the Fourth Amendment are not inflexible, or obtusely unyielding to the legitimate needs of law enforcement' . . . it is not asking too much that officers be required to comply with the basic command of the Fourth Amendment before the innermost secrets of one's home or office are invaded. Few threats to liberty exist which are greater than that posed by the use of eavesdropping devices."

In *Berger*, the language of the New York statute authorizing the wiretap was held to be unconstitutionally broad because authorization thereunder operated as the issuance of an illegal general warrant. The authoriza-

tion in *Berger* allowed a wiretap to be placed on the defendant's business office phone for a period of 60 days. The authorization was issued on the basis of affidavits advising the judge that the bases for the suspicions of a conspiracy to bribe the Chairman of the New York State Liquor Authority were recorded interviews between a complainant and the petitioner.

In *Berger* the Court placed special emphasis on the Fourth Amendment requirements that there be probable cause for the belief that a particular offense has been or is being committed and that the "property" (conversations) to be seized be described with particularity. In addition, the Court found the authorization constitutionally infirm on the grounds that an authorization for a period of two months constitutes a series of intrusions pursuant to a single showing of probable cause and that the authorization did not establish an intermediate termination date once the conversation sought was intercepted.

These same concerns dictate a reversal in the instant case: Only the merest investigation had been undertaken to establish that a particular offense was being committed, and part of that investigation, the unsuccessful attempt by an informer to place a bet, itself negated the suspicion. Although the authorization order limited the conversations to be seized, the execution of the order included seizure of all conversations on the telephone over the period of the wiretap. Such an invasion of privacy is even more horrendous since it involves a pay telephone in a public place where the majority of users and conversations, as indicated by the 102½ hours of innocent conversations out of the 105 hours of seized conversations, will have no relationship to the alleged criminal activity. Authorization for a 30-day wiretap would not appear to be any less of a continuing search than authorization for 60 days, especially in

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light of the absence of any establishment of an intermediate termination date once the conversation sought was intercepted.

It is alleged that the New Jersey statute under which this wiretap was authorized is for all practical purposes identical to the federal authorization for wiretapping contained in Title III of the Omnibus Crime Control and Safe Streets Act of 1968, 18 U. S. C. § 2510 *et seq.* If the authorization of the wiretap in the instant case, which is the equivalent of a general warrant, is allowed by either of these statutes, then it is difficult to declare them constitutional.

I would grant certiorari.

No. 72-5566. *EGBERT v. MARTINEZ ET AL.* C. A. 10th Cir. Application for extension of time to file petition *nunc pro tunc* presented to Mr. JUSTICE WHITE, and by him referred to the Court, denied. Certiorari denied.

Rehearing Denied

No. 71-1497. *BECK v. CONNECTICUT GENERAL LIFE INSURANCE Co.*, *ante*, p. 845;

No. 71-6500. *DOHERTY v. UNITED STATES*, *ante*, p. 888;

No. 71-6649. *FAIR v. SEBESTA*, *ante*, p. 978;

No. 71-6847. *MARTIN v. UNITED STATES*, *ante*, p. 870;

No. 72-240. *HARPER v. UNITED STATES*, *ante*, p. 973;

No. 72-319. *KENNECOTT COPPER CORP. ET AL. v. STATE TAX COMMISSION OF UTAH*, *ante*, p. 973;

No. 72-5014. *CONNORS v. JOHNSON, WARDEN*, *ante*, p. 1009; and

No. 72-5351. *NEWELL v. UNITED STATES*, *ante*, p. 1025. Petitions for rehearing denied.

No. 71-6540. *GRENE v. UNITED STATES*, *ante*, p. 856. Motion for leave to file petition for rehearing denied.

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Dismissals Under Rule 60

No. 72-457. *RODRIGUEZ v. SEAMANS, SECRETARY OF THE AIR FORCE, ET AL.* C. A. D. C. Cir. Certiorari dismissed under Rule 60 of the Rules of this Court. Reported below: 150 U. S. App. D. C. 1, 463 F. 2d 837.

No. 72-5302. *PHILLIPS v. HOUSING AUTHORITY OF CITY OF PROVIDENCE.* Appeal from Sup. Ct. R. I. dismissed under Rule 60 of the Rules of this Court. Reported below: 109 R. I. 612, 289 A. 2d 44.

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Affirmed on Appeal

No. 72-579. *MISSOURI PACIFIC RAILROAD Co. v. UNITED STATES ET AL.* Affirmed on appeal from D. C. E. D. Mo. MR. JUSTICE DOUGLAS would note probable jurisdiction and set case for oral argument. Reported below: 346 F. Supp. 1193.

No. 72-581. *KANSAS CITY SOUTHERN RAILWAY Co. ET AL. v. UNITED STATES ET AL.* Affirmed on appeal from D. C. W. D. Mo. Reported below: 346 F. Supp. 1211.

No. 72-632. *NATIONAL MOTOR FREIGHT TRAFFIC ASSN., INC., ET AL. v. UNITED STATES ET AL.* Affirmed on appeal from D. C. D. C.

No. 72-723. *UNITED STATES v. STATE CORPORATION COMMISSION OF VIRGINIA ET AL.* Affirmed on appeal from D. C. E. D. Va. MR. JUSTICE DOUGLAS would note probable jurisdiction and set case for oral argument. MR. JUSTICE POWELL took no part in the consideration or decision of this appeal. Reported below: 345 F. Supp. 843.

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No. 72-621. *WELLS v. EDWARDS, GOVERNOR OF LOUISIANA, ET AL.* Affirmed on appeal from D. C. M. D. La. Reported below: 347 F. Supp. 453.

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

The Louisiana constitutional provisions, which this Court today upholds against appellant's renewed constitutional attack, provide for the election of the State's Supreme Court Justices from election districts that are established without regard to population. Voters in five districts, composed of varying numbers of parishes, elect one justice each. A sixth district elects two justices. La. Const., Art. VII, § 9. The record before the District Court indicated that there was "considerable deviation between the population of some of the [election] districts," 347 F. Supp. 453, 454,¹ and that, therefore, the votes of some qualified voters, depending on the happenstance of residence, were of less value in electing justices than others cast elsewhere. But the District Court refused even to consider this evidence and, relying on a few isolated sentences in *Hadley v. Junior College District*, 397 U. S. 50 (1970), concluded that "the concept of one-man, one-vote apportionment does not apply to the judicial branch of the government." 347 F. Supp., at 454. Summary judgment was entered against appellant, who had attacked the Louisiana scheme under the Equal Protection Clause of the Fourteenth Amendment.

In *Hadley*, we held that the one-person, one-vote principle extended to the election of trustees for a consolidated junior college district. Mr. Justice Black, writing for the Court, stated broadly that, as a general rule, "whenever a state or local government

¹ The record indicates that in 1970 the election districts ranged in population from 369,485 to 682,072. The two-justice district had a total population of 1,007,449.

decides to select persons by popular election to perform governmental functions, the Equal Protection Clause of the Fourteenth Amendment requires that each qualified voter must be given an equal opportunity to participate in that election." 397 U. S., at 56. The District Court in this case seized upon the phrase "persons . . . to perform governmental functions," and concluded that such persons were limited to "officials who performed legislative or executive type duties." 347 F. Supp., at 455.² I find no such limiting import in the phrase. Judges are not private citizens who are sought out by litigious neighbors to pass upon their disputes. They are state officials, vested with state powers and elected (or appointed) to carry out the state government's judicial functions. As such, they most certainly "perform

² There is language in other district court opinions to the effect that the one-person, one-vote principle does not apply to the judiciary. See, e. g., *Holshouser v. Scott*, 335 F. Supp. 928 (MDNC 1971), aff'd, ante, p. 807; *Buchanan v. Rhodes*, 249 F. Supp. 860 (ND Ohio), appeal dismissed for want of jurisdiction, 385 U. S. 3 (1966); *Stokes v. Fortson*, 234 F. Supp. 575 (ND Ga. 1964). See also *New York Assn. of Trial Lawyers v. Rockefeller*, 267 F. Supp. 148 (SDNY 1967). The statutory schemes involved in those cases, however, differ materially from the Louisiana provisions at issue here. For example, in *Holshouser* and *Stokes*, district judges were nominated through primaries in districts with varying populations; the judges were elected, however, on a statewide basis that conformed to the one-person, one-vote principle. In this context, the district courts rejected the claim that plaintiffs' primary votes were "diluted" by the general election. Cf. *Sailors v. Board of Education*, 387 U. S. 105 (1967); *Dusch v. Davis*, 387 U. S. 112 (1967). In *Buchanan*, plaintiffs claimed that the apportionment of trial judges in the State resulted in fewer judges per capita in urban districts than in rural districts. Plaintiffs challenged the apportionment on the ground that it denied them speedy justice, not on the ground that their vote in statewide elections was diluted.

See generally Note, The Equal-Population Principle: Does It Apply To Elected Judges?, 47 Notre Dame Law. 316 (1971).

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governmental functions.” Indeed, this Court held precisely that nearly a decade ago, in *Gray v. Sanders*, 372 U. S. 368 (1963), by invalidating Georgia’s county unit system that had been used for counting Democratic Party primary votes for United States Senator, Governor, statehouse officers, justices of the Supreme Court, and judges of the Court of Appeals. Nowhere did we suggest that the county unit system was any less unconstitutional for the election of judges than for the election of governor. On the contrary, with the most direct language possible, the Court stated:

“The concept of ‘we the people’ under the Constitution visualizes no preferred class of voters but equality among those who meet the basic qualifications. The idea that every voter is equal to every other voter in his State, when he casts his ballot in favor of one of several competing candidates, underlies many of our decisions.” *Id.*, at 379–380.

We have held that a State may dispense with certain elections altogether (see *Sailors v. Board of Education*, 387 U. S. 105 (1967); cf. *Fortson v. Morris*, 385 U. S. 231 (1966)) and we have suggested that not all persons must be permitted to vote on an issue that may affect only a discernible portion of the public, see *Kramer v. Union Free School District*, 395 U. S. 621, 632 (1969). What I had thought the apportionment decisions at least established is the simple constitutional principle that, subject to narrow exceptions,³ once a State chooses to

³ For example, in *Hadley*, Mr. Justice Black conceded the possibility “that there might be some case in which a State elects certain functionaries whose duties are so far removed from normal governmental activities and so disproportionately affect different groups that a popular election in compliance with *Reynolds* . . . might not be required.” 397 U. S., at 56. See *Avery v. Midland County*, 390 U. S. 474, 483–484 (1968).

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select officials by popular vote, each qualified voter must be treated with an equal hand and not be subjected to irrational discrimination based on his residence. See *Reynolds v. Sims*, 377 U. S. 533, 554-555 (1964). Nothing could be plainer from Mr. Justice Black's statement in *Hadley*, 397 U. S., at 54-55:

"[W]hile the office of junior college trustee differs in certain respects from those offices considered in prior cases, it is exactly the same in the one crucial factor—these officials are elected by popular vote.

"When a court is asked to decide whether a State is required by the Constitution to give each qualified voter the same power in an election open to all, there is no discernible, valid reason why constitutional distinctions should be drawn on the basis of the purpose of the election. If one person's vote is given less weight through unequal apportionment, his right to equal voting participation is impaired just as much when he votes for a school board member as when he votes for a state legislator. While there are differences in the powers of different officials, the crucial consideration is the right of each qualified voter to participate on an equal footing in the election process. It should be remembered that in cases like this one we are asked by voters to insure that they are given equal treatment, and from their perspective the harm from unequal treatment is the same in any election, regardless of the officials selected."

The judgment of the District Court is questionable under a decade of this Court's decisions. It at least warrants plenary review here.

No. 72-660. DAVIS ET AL. v. EDWARDS, GOVERNOR OF LOUISIANA, ET AL. Affirmed on appeal from D. C. E. D. La. Reported below: 345 F. Supp. 1025.

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Appeals Dismissed

No. 71-1577. *REXRODE v. VIRGINIA*. Appeal from Sup. Ct. Va. dismissed for want of substantial federal question.

No. 72-695. *KELLEMS ET AL. v. BROWN, TAX COMMISSIONER, ET AL.* Appeal from Sup. Ct. Conn. dismissed for want of substantial federal question.

No. 72-179. *WILKINSON v. WILKINSON*. Appeal from Sup. Jud. Ct. Mass. Motion to dispense with printing jurisdictional statement and motion of appellee for leave to proceed *in forma pauperis* granted. Appeal dismissed for want of substantial federal question.

No. 72-622. *CUTRONE v. KELLY, ADMINISTRATIVE JUDGE, ET AL.* Appeal from App. Div., Sup. Ct. N. Y., 2d Jud. Dept., dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied. Reported below: 39 App. Div. 2d 725, 332 N. Y. S. 2d 413.

No. 72-670. *MCLEAN TRUCKING Co. v. COUNTY OF FORSYTH ET AL.* Appeal from Sup. Ct. N. 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: 281 N. C. 375, 189 S. E. 2d 194.

No. 72-640. *OREGON STATE ELKS ASSN. ET AL. v. FALKENSTEIN ET AL.* Appeal from D. C. Ore. dismissed for want of jurisdiction.

No. 72-5468. *CARR v. TEXAS*. Appeal from Ct. Crim. App. Tex. 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 would note probable jurisdiction and set case for oral argument. Reported below: 475 S. W. 2d 755.

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Certiorari Granted—Vacated and Remanded

No. 72-308. FITZHARRIS, WARDEN *v.* LOVE. C. A. 9th Cir. Motion of respondent for leave to proceed *in forma pauperis* and certiorari granted. Judgment vacated and case remanded with directions to dismiss case as moot. MR. JUSTICE STEWART and MR. JUSTICE MARSHALL would deny certiorari. Reported below: 460 F. 2d 382.

Miscellaneous Orders

No. A-557. ENDERS, DISTRICT ATTORNEY OF ONEIDA COUNTY, NEW YORK, ET AL. *v.* ESQUIRE THEATERS OF AMERICA, INC. D. C. N. D. N. Y. Application for stay of execution of judgment in case No. 72-CV-450 presented to THE CHIEF JUSTICE, and by him referred to the Court, granted pending disposition of case in the United States Court of Appeals for the Second Circuit.

No. A-605. HAMPTON, CHAIRMAN, U. S. CIVIL SERVICE COMMISSION, ET AL. *v.* FITZGERALD ET AL. C. A. D. C. Cir. Motion of the Solicitor General to dissolve stay granted. [See *ante*, p. 1055.]

No. D-1. IN RE DISBARMENT OF KAHN. It having been reported to this Court that Frances Kahn of New York, New York, has been disbarred from the practice of law in all of the courts of the State of New York, and this Court by order of November 6, 1972 (*ante*, p. 974), having suspended the said Frances Kahn from the practice of law in this Court and directed that a rule issue requiring her to show cause why she 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 has expired;

IT IS ORDERED that the said Frances Kahn be, and she is hereby, disbarred from the practice of law in this Court and that her name be stricken from the roll of attorneys admitted to practice before the Bar of this Court.

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No. A-665. KINGSTON ET AL., JUSTICES *v.* McLAUGHLIN, JUSTICE, ET AL. D. C. Mass. Application for stay of judgment presented to MR. JUSTICE DOUGLAS, and by him referred to the Court, denied. Reported below: 359 F. Supp. 25.

No. D-2. IN RE DISBARMENT OF ABRAMS. It having been reported to this Court that Hyman Abrams of New York, New York, has been disbarred from the practice of law in all of the courts of the State of New York, and this Court by order of November 6, 1972 (*ante*, p. 974), having suspended the said Hyman Abrams 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 has expired;

IT IS ORDERED that the said Hyman Abrams 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. D-4. IN RE DISBARMENT OF BROUNER. It having been reported to this Court that Samuel B. Brouner of New York, New York, has been disbarred from the practice of law in all of the courts of the State of New York, and this Court by order of November 6, 1972 (*ante*, p. 974), having suspended the said Samuel B. Brouner 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 issued and served upon the respondent and that the time within which to file a return has expired;

IT IS ORDERED that the said Samuel B. Brouner be, and he is hereby, disbarred from the practice of law in

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this Court and that his name be stricken from the roll of attorneys admitted to practice before the Bar of this Court.

No. D-8. IN RE DISBARMENT OF PAVSNER. It having been reported to this Court that Emanuel H. Pavsner of New York, New York, has been suspended from the practice of law by the Supreme Court of New York, Appellate Division, First Judicial Department, for a period of three years effective March 27, 1972, and until further order of that court, and such order was duly entered March 30, 1972, and this Court by order of November 6, 1972 (*ante*, p. 975), having suspended the said Emanuel H. Pavsner 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 a response has been filed,

It IS ORDERED that the said Emanuel H. Pavsner 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. 27, Orig. OHIO *v.* KENTUCKY. Motion of Ed W. Hancock, Attorney General of Kentucky, for leave to permit John M. Famularo, Esquire, to argue *pro hac vice* granted. [For earlier orders herein, see, *e. g.*, 406 U. S. 915.]

No. 71-1598. HODGSON, SECRETARY OF LABOR *v.* ARNHEIM & NEELY, INC., ET AL. C. A. 3d Cir. [Certiorari granted, *ante*, p. 840.] Motion of Institute of Real Estate Management for leave to participate in oral argument granted and five minutes of respondents' time allotted for that purpose.

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No. 50, Orig. VERMONT *v.* NEW YORK ET AL. Motion of the United States for leave to intervene referred to Special Master. [For earlier orders herein, see, *e. g.*, 408 U. S. 917.]

No. 71-685. LEHNHAUSEN, DIRECTOR, DEPARTMENT OF LOCAL GOVERNMENT AFFAIRS OF ILLINOIS *v.* LAKE SHORE AUTO PARTS CO. ET AL.; and

No. 71-691. BARRETT, COUNTY CLERK OF COOK COUNTY, ILLINOIS, ET AL. *v.* SHAPIRO ET AL. Sup. Ct. Ill. [Certiorari granted, 405 U. S. 1039.] Motion of Proviso Township High School District No. 209 et al. for reconsideration of their motion for leave to participate in oral argument as *amici curiae* denied.

No. 71-1021. EMPLOYEES OF THE DEPARTMENT OF PUBLIC HEALTH AND WELFARE OF MISSOURI ET AL. *v.* DEPARTMENT OF PUBLIC HEALTH AND WELFARE OF MISSOURI ET AL. C. A. 8th Cir. [Certiorari granted, 405 U. S. 1016.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* in support of petitioners granted and 15 minutes allotted for that purpose. Respondents also allotted 15 additional minutes for oral argument.

No. 71-1069. ASSOCIATED ENTERPRISES, INC., ET AL. *v.* TOLTEC WATERSHED IMPROVEMENT DISTRICT. Appeal from Sup. Ct. Wyo. [Probable jurisdiction noted, 407 U. S. 908.] Motion of American Civil Liberties Union et al. for leave to file a brief as *amici curiae* granted.

No. 71-6078. LINDA R. S. *v.* RICHARD D. ET AL. Appeal from D. C. N. D. Tex. [Probable jurisdiction postponed, 405 U. S. 1064.] Motion of appellant for appointment of counsel granted. It is ordered that Windle Turley, Esquire, of Dallas, Texas, a member of the Bar of this Court, be, and he is hereby, appointed to serve as counsel for appellant in this case.

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No. 71-1456. *SALYER LAND CO. ET AL. v. TULARE LAKE BASIN WATER STORAGE DISTRICT*. Appeal from D. C. E. D. Cal. [Probable jurisdiction noted, 408 U. S. 920.] Motion of American Civil Liberties Union et al. for leave to file a brief as *amici curiae* granted.

No. 71-1192. *GOLDSTEIN ET AL. v. CALIFORNIA*. App. Dept., Super. Ct. Cal., County of Los Angeles. [Certiorari granted, 406 U. S. 956.] Motion of respondent for leave to file supplemental brief after argument granted.

No. 71-1637. *CITY OF BURBANK ET AL. v. LOCKHEED AIR TERMINAL, INC., ET AL.* Appeal from C. A. 9th Cir. [Probable jurisdiction noted, *ante*, p. 840.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* in support of appellants granted and 15 minutes allotted for that purpose. Appellees also allotted 15 additional minutes for oral argument.

No. 72-146. *HUNTER, DBA COURIER v. UNITED STATES*, *ante*, p. 934. Respondent requested to file response to motion for leave to file petition for rehearing within 30 days.

No. 72-552. *SATIACUM v. WASHINGTON*. Sup. Ct. Wash. The Solicitor General is invited to file a brief expressing the views of the United States in this case. Reported below: 80 Wash. 2d 492, 495 P. 2d 1035.

No. 72-679. *UNITED MINE WORKERS OF AMERICA ET AL. v. YABLONSKI ET AL.* C. A. D. C. Cir. Motion of Paul R. Connolly, Esquire, and Earl C. Dudley, Jr., Esquire, of Washington, D. C., members of the Bar of this Court, for leave to withdraw as counsel for petitioners granted. Reported below: 151 U. S. App. D. C. 253, 466 F. 2d 424.

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No. 72-671. *ESPINOZA ET VIR v. FARAH MANUFACTURING Co., INC.* C. A. 5th Cir. The Solicitor General is invited to file a brief expressing the views of the United States in this case. Reported below: 462 F. 2d 1331.

No. 72-5655. *HILL v. HENDERSON, WARDEN.* Motion for leave to file petition for writ of habeas corpus denied.

No. 72-5304. *BRADLEY v. SUPREME COURT OF INDIANA;*

No. 72-5568. *DAVIS v. NEAHER, U. S. DISTRICT JUDGE, ET AL.;*

No. 72-5671. *OLDEN v. CHAMBERS, U. S. CIRCUIT JUDGE, ET AL.;* and

No. 72-5672. *MUNCASTER v. UNITED STATES.* Motions for leave to file petitions for writs of mandamus denied.

Probable Jurisdiction Noted

No. 72-658. *CITY OF KENOSHA ET AL. v. BRUNO ET AL.* Appeal from D. C. E. D. Wis. Probable jurisdiction noted. Reported below: 346 F. Supp. 43.

Certiorari Granted

No. 72-394. *RICHARDSON, SECRETARY OF HEALTH, EDUCATION, AND WELFARE, ET AL. v. HYNSON, WESTCOTT & DUNNING, INC.;*

No. 72-414. *HYNSON, WESTCOTT & DUNNING, INC. v. RICHARDSON, SECRETARY OF HEALTH, EDUCATION, AND WELFARE, ET AL.;*

No. 72-555. *RICHARDSON, SECRETARY OF HEALTH, EDUCATION, AND WELFARE, ET AL. v. BENTEX PHARMACEUTICALS, INC., ET AL.;*

No. 72-666. *USV PHARMACEUTICAL CORP. v. RICHARDSON, SECRETARY OF HEALTH, EDUCATION, AND WELFARE, ET AL.* C. A. 4th Cir.; and

No. 72-528. *CIBA CORP. v. RICHARDSON, SECRETARY OF HEALTH, EDUCATION, AND WELFARE, ET AL.* C. A. 3d Cir. Reported below: Nos. 72-394 and 72-414, 461 F. 2d

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215; No. 72-555, 463 F. 2d 363; No. 72-666, 461 F. 2d 223; and No. 72-528, 463 F. 2d 225. Motion of American Public Health Assn. et al. for leave to file a brief as *amici curiae* in No. 72-394 granted. Certiorari granted. Cases consolidated and a total of three hours allotted for oral argument.

No. 72-656. LOGUE ET AL. v. UNITED STATES. C. A. 5th Cir. Certiorari granted. Reported below: 459 F. 2d 408 and 463 F. 2d 1340.

No. 72-5521. STRUNK, AKA WAGNER v. UNITED STATES. C. A. 7th Cir. Motion for leave to proceed *in forma pauperis* and certiorari granted. Reported below: 467 F. 2d 969.

Certiorari Denied. (See also Nos. 72-622, 72-670, and 72-5468, *supra*.)

No. 71-1528. SPEARS v. MISSISSIPPI. Sup. Ct. Miss. Certiorari denied. Reported below: 257 So. 2d 876.

No. 71-6449. ELLINGBURG v. GOODSON, JUDGE, ET AL. C. A. 8th Cir. Certiorari denied.

No. 71-6800. D'AMBRA v. NEW YORK. App. Div., Sup. Ct. N. Y., 2d Jud. Dept. Certiorari denied.

No. 72-292. MARRERO LAND & IMPROVEMENT ASSN., LTD. v. JEFFERSON PARISH SCHOOL BOARD. Sup. Ct. La. Certiorari denied. Reported below: 261 La. 1054, 262 So. 2d 39.

No. 72-338. CARROLL, SHERIFF, ET AL. v. McDANIEL ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 457 F. 2d 968.

No. 72-348. HUTTER ET AL. v. TANCK ET AL. C. A. 7th Cir. Certiorari denied.

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No. 72-351. *MARAMAN v. HARDISTER ET AL.* Dist. Ct. App. Fla., 2d Dist. Certiorari denied.

No. 72-366. *VILLAGE OF WALTHILL, NEBRASKA, ET AL. v. OMAHA TRIBE OF NEBRASKA ET AL.* C. A. 8th Cir. Certiorari denied. Reported below: 460 F. 2d 1327.

No. 72-392. *CRAMER ET UX. v. DIRECTOR OF REVENUE.* Sup. Ct. Del. Certiorari denied.

No. 72-393. *UNITED TRANSPORTATION UNION v. UNITED STATES ET AL.* C. A. 8th Cir. Certiorari denied. Reported below: 464 F. 2d 301.

No. 72-444. *MISSOURI PACIFIC RAILROAD Co. v. WILLIAM A. SMITH CONTRACTING Co., INC.* Ct. App. Mo., Kansas City District. Certiorari denied. Reported below: 481 S. W. 2d 580.

No. 72-448. *DASHER v. BLACKMON, COMMISSIONER, DEPARTMENT OF REVENUE, ET AL.* Sup. Ct. Ga. Certiorari denied. Reported below: 229 Ga. 289, 191 S. E. 2d 82.

No. 72-474. *SCHATTMAN v. TEXAS EMPLOYMENT COMMISSION ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 459 F. 2d 32.

No. 72-483. *SALAZAR v. UNITED STATES;*

No. 72-485. *NORMAN v. UNITED STATES;*

No. 72-525. *COOPER v. UNITED STATES;*

No. 72-5454. *COOPER v. UNITED STATES;* and

No. 72-5563. *COOPER v. UNITED STATES.* C. A. 10th Cir. Certiorari denied. Reported below: 464 F. 2d 648.

No. 72-609. *KOKAS v. UNITED STATES.* C. A. 7th Cir. Certiorari denied. Reported below: 466 F. 2d 567.

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No. 72-595. *MOTT ET AL., EXECUTORS v. UNITED STATES*. Ct. Cl. Certiorari denied. Reported below: 199 Ct. Cl. 127, 462 F. 2d 512.

No. 72-628. *MOORE ET AL. v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 465 F. 2d 514.

No. 72-636. *LOMBARDOZZI v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 467 F. 2d 160.

No. 72-642. *MAYHUE'S SUPER LIQUOR STORES, INC., ET AL. v. HODGSON, SECRETARY OF LABOR*. C. A. 5th Cir. Certiorari denied. Reported below: 464 F. 2d 1196.

No. 72-645. *BRIOLA v. UNITED STATES*. C. A. 10th Cir. Certiorari denied. Reported below: 465 F. 2d 1018.

No. 72-646. *OREE v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 465 F. 2d 1405.

No. 72-657. *LOCAL UNION 103, INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL & ORNAMENTAL IRON WORKERS, AFL-CIO, ET AL. v. NATIONAL LABOR RELATIONS BOARD ET AL.* C. A. 7th Cir. Certiorari denied. Reported below: 465 F. 2d 327.

No. 72-661. *LEDES v. NEW YORK*. Ct. App. N. Y. Certiorari denied. Reported below: 30 N. Y. 2d 816, 286 N. E. 2d 282.

No. 72-662. *BATA v. BATA ET AL.* Sup. Ct. Pa. Certiorari denied. Reported below: 448 Pa. 355, 293 A. 2d 343.

No. 72-663. *TURNPIKE REALTY CO., INC. v. TOWN OF DEDHAM*. Sup. Jud. Ct. Mass. Certiorari denied. Reported below: — Mass. —, 284 N. E. 2d 891.

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No. 72-664. BECKER *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 466 F. 2d 886.

No. 72-672. POGUE *v.* RETAIL CREDIT CO. C. A. 4th Cir. Certiorari denied. Reported below: 453 F. 2d 336.

No. 72-674. BALDWIN-LIMA-HAMILTON CORP. *v.* AETNA CASUALTY & SURETY CO. ET AL. Sup. Ct. Conn. Certiorari denied. Reported below: 163 Conn. 331, 307 A. 2d 169.

No. 72-678. FORD, DBA FORD RECORDS *v.* FORD MOTOR CO. C. C. P. A. Certiorari denied. Reported below: 59 C. C. P. A. (Pat.) 1124, 462 F. 2d 1405.

No. 72-697. JEMCO, INC. *v.* NATIONAL LABOR RELATIONS BOARD. C. A. 6th Cir. Certiorari denied. Reported below: 465 F. 2d 1148.

No. 72-706. E. A. MCQUADE TOURS, INC. *v.* CONSOLIDATED AIR TOUR MANUAL COMMITTEE ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 467 F. 2d 178.

No. 70-709. RIALTO THEATRE CO. ET AL. *v.* CITY OF WILMINGTON ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 460 F. 2d 281.

No. 72-711. GERNETH ET AL. *v.* CITY OF DETROIT. C. A. 6th Cir. Certiorari denied. Reported below: 465 F. 2d 784.

No. 72-714. CALIFORNIA *v.* MUNICIPAL COURT FOR THE SACRAMENTO MUNICIPAL COURT DISTRICT OF SACRAMENTO COUNTY ET AL. (ALFORD, REAL PARTY IN INTEREST). Ct. App. Cal., 3d App. Dist. Certiorari denied. Reported below: 26 Cal. App. 3d 244, 102 Cal. Rptr. 667.

No. 72-728. BERGENTHAL *v.* CADY, WARDEN. C. A. 7th Cir. Certiorari denied. Reported below: 466 F. 2d 635.

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No. 72-732. *LANCASTER v. NEW YORK*. App. Div., Sup. Ct. N. Y., 2d Jud. Dept. Certiorari denied. Reported below: 39 App. Div. 2d 776, 332 N. Y. S. 2d 735.

No. 72-735. *FILTROL CORP. ET AL. v. KELLEHER*, U. S. DISTRICT JUDGE. C. A. 9th Cir. Certiorari denied. Reported below: 467 F. 2d 242.

No. 72-762. *REYES v. NEW YORK*. Ct. App. N. Y. Certiorari denied. Reported below: 31 N. Y. 2d 668, 288 N. E. 2d 806.

No. 72-5126. *HYDE v. NELSON, WARDEN*. C. A. 9th Cir. Certiorari denied.

No. 72-5226. *BASKERVILLE v. HENDERSON*, CORRECTIONAL SUPERINTENDENT. C. A. 2d Cir. Certiorari denied.

No. 72-5257. *SHANK v. PENNSYLVANIA*. C. A. 3d Cir. Certiorari denied. Reported below: 461 F. 2d 61.

No. 72-5303. *BIRNBAUM v. NEW JERSEY*. Middlesex County Ct. N. J. Certiorari denied.

No. 72-5310. *MATTHEWS v. SMITH ET AL.* C. A. 5th Cir. Certiorari denied.

No. 72-5320. *GARDNER v. MCCARTHY, MEN'S COLONY SUPERINTENDENT*. Sup. Ct. Cal. Certiorari denied.

No. 72-5349. *VALDIVIA v. CALIFORNIA*. Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 72-5359. *PARKER v. WISCONSIN*. Sup. Ct. Wis. Certiorari denied. Reported below: 55 Wis. 2d 131, 197 N. W. 2d 742.

No. 72-5390. *HERRERA v. NEW MEXICO*. Ct. App. N. M. Certiorari denied. Reported below: 84 N. M. 46, 499 P. 2d 364.

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No. 72-5520. FROMMHAGEN *v.* HODGSON, SECRETARY OF LABOR. C. A. 9th Cir. Certiorari denied.

No. 72-5536. JANOSKO *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied.

No. 72-5541. ALLISON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 72-5552. JONES *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 464 F. 2d 1118.

No. 72-5553. MOORE *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 466 F. 2d 547.

No. 72-5557. ZWEIG *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 467 F. 2d 1217.

No. 72-5558. WILSON *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 72-5561. JOHNSON *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 466 F. 2d 537.

No. 72-5562. MEDINA *v.* SMITH, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 72-5564. SMITH *v.* SALINE COUNTY DISTRICT COURT. Sup. Ct. Kan. Certiorari denied.

No. 72-5569. SCHNEIDER *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 72-5570. TRIPP *v.* SLAYTON, PENITENTIARY SUPERINTENDENT. C. A. 4th Cir. Certiorari denied.

No. 72-5571. RUSSEK *v.* GOVERNOR OF MARYLAND ET AL. Ct. App. Md. Certiorari denied. Reported below: 266 Md. 431, 293 A. 2d 817.

No. 72-5573. JOHNSON *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 466 F. 2d 1206.

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No. 72-5574. *BRYANT v. UNITED STATES*. C. A. D. C. Cir. Certiorari denied. Reported below: 153 U. S. App. D. C. 72, 471 F. 2d 1040.

No. 72-5575. *HESTER v. BRIERLEY, WARDEN*. C. A. 3d Cir. Certiorari denied.

No. 72-5578. *VITORATOS v. CARDWELL, WARDEN*. C. A. 6th Cir. Certiorari denied.

No. 72-5580. *O'BRIEN v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 466 F. 2d 517.

No. 72-5583. *ESCOFIL v. COMMISSIONER OF INTERNAL REVENUE*. C. A. 3d Cir. Certiorari denied. Reported below: 464 F. 2d 358.

No. 72-5584. *IN RE NIX*. C. A. 5th Cir. Certiorari denied. Reported below: 465 F. 2d 377.

No. 72-5585. *LASWELL v. UNITED STATES*; and

No. 72-5598. *BROWN v. UNITED STATES*. C. A. 9th Cir. Certiorari denied.

No. 72-5586. *CASSON v. UNITED STATES*. C. A. D. C. Cir. Certiorari denied.

No. 72-5588. *McCRAY v. WARDEN, MARYLAND PENITENTIARY*. C. A. 4th Cir. Certiorari denied.

No. 72-5589. *KELLY v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 465 F. 2d 1406.

No. 72-5590. *ALVAREZ v. UNITED STATES ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 463 F. 2d 1136.

No. 72-5594. *TOOMEY v. UNITED STATES*. C. A. 1st Cir. Certiorari denied.

No. 72-5595. *CHAVEZ v. GIBBONS ET AL.* C. A. 9th Cir. Certiorari denied.

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No. 72-5599. *WRENN v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 463 F. 2d 1136.

No. 72-5601. *MINER v. TENNESSEE*. Ct. Crim. App. Tenn. Certiorari denied.

No. 72-5602. *ROSS v. UNITED STATES*. C. A. 9th Cir. Certiorari denied.

No. 72-5603. *McCoy v. EGELER, ACTING WARDEN*. C. A. 6th Cir. Certiorari denied.

No. 72-5606. *OCHOA v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 466 F. 2d 488.

No. 72-5608. *HEINDL v. WASHINGTON TERMINAL CO.* Ct. App. D. C. Certiorari denied.

No. 72-5610. *TAYLOR v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 462 F. 2d 1348.

No. 72-5611. *MINOR v. CUPP, WARDEN*. C. A. 9th Cir. Certiorari denied. Reported below: 466 F. 2d 1369.

No. 72-5613. *KEANE v. SMITH*. Sup. Ct. Conn. Certiorari denied.

No. 72-5614. *CHAMPAGNE ET AL. v. PENROD DRILLING Co.* C. A. 5th Cir. Certiorari denied. Reported below: 459 F. 2d 1042 and 462 F. 2d 1372.

No. 72-5615. *HOUSER v. GEARY, SHERIFF, ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 465 F. 2d 193.

No. 72-5616. *CHIODI v. UNITED STATES*. C. A. 1st Cir. Certiorari denied.

No. 72-5620. *BAILEY v. TODD*. Ct. App. Ga. Certiorari denied. Reported below: 126 Ga. App. 731, 191 S. E. 2d 547.

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No. 72-5619. *BEECH v. MELANCON ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 465 F. 2d 425.

No. 72-5621. *LUCAS v. WISCONSIN ELECTRIC POWER Co. ET AL.* C. A. 7th Cir. Certiorari denied. Reported below: 466 F. 2d 638.

No. 72-5623. *BRIGHT v. NEW JERSEY.* C. A. 3d Cir. Certiorari denied.

No. 72-5628. *BERNSTEIN v. UNITED STATES.* C. A. 2d Cir. Certiorari denied.

No. 72-5631. *MEANS v. CALIFORNIA.* Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 72-5633. *REILLY v. NELSON, WARDEN.* C. A. 9th Cir. Certiorari denied.

No. 72-5635. *ALLEN v. THOMAS.* C. A. 4th Cir. Certiorari denied.

No. 72-5637. *SZABO v. WESTMORELAND COUNTY AUTHORITIES ET AL.* C. A. 3d Cir. Certiorari denied.

No. 72-5638. *IN RE SWOPE.* C. A. 7th Cir. Certiorari denied. Reported below: 466 F. 2d 936.

No. 72-5646. *DABNEY v. DISTRICT OF COLUMBIA.* Ct. App. D. C. Certiorari denied.

No. 72-5647. *EVANS v. SLAYTON, PENITENTIARY SUPERINTENDENT.* C. A. 4th Cir. Certiorari denied.

No. 72-5649. *MILSTEAD ET AL. v. CALIFORNIA ET AL.* Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 72-5650. *CAMPBELL v. ESTELLE, CORRECTIONS DIRECTOR.* C. A. 5th Cir. Certiorari denied.

No. 72-5696. *PLATZIS v. MICHIGAN ET AL.* Ct. App. Mich. Certiorari denied.

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No. 72-5653. *TAYLOR v. SLAYTON, PENITENTIARY SUPERINTENDENT*. C. A. 4th Cir. Certiorari denied.

No. 72-5663. *AUSBY v. NEW YORK*. App. Div., Sup. Ct. N. Y., 1st Jud. Dept. Certiorari denied.

No. 72-5667. *JONES v. CALIFORNIA*. Ct. App. Cal., 3d App. Dist. Certiorari denied.

No. 72-5675. *DAVIS v. GOMES, WARDEN*. C. A. 9th Cir. Certiorari denied.

No. 72-5690. *BRYANT v. BAILEY*. C. A. 5th Cir. Certiorari denied. Reported below: 464 F. 2d 560.

No. 72-5700. *LOTT v. NEW YORK*. Sup. Ct. N. Y., New York County. Certiorari denied.

No. 71-1510. *ROSS, ADMINISTRATIVE JUDGE, ET AL. v. RADICH*. C. A. 2d Cir. Certiorari denied. MR. JUSTICE DOUGLAS took no part in the consideration or decision of this petition. Reported below: 459 F. 2d 745.

No. 72-1. *BASKIN ET AL. v. CITY OF MIAMI BEACH*. Cir. Ct. Fla., Dade County. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari.

No. 72-298. *COOLEY ET AL. v. ENDICTOR ET AL.* C. A. 5th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 458 F. 2d 513.

No. 72-364. *DIRECTOR GENERAL, INDIA SUPPLY MISSION v. THE MARU ET AL.* C. A. 2d Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 459 F. 2d 1370.

No. 72-451. *KENNEDY ET AL. v. BUREAU OF NARCOTICS AND DANGEROUS DRUGS, UNITED STATES DEPARTMENT OF JUSTICE, ET AL.* C. A. 9th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 459 F. 2d 415.

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No. 72-580. *AMERICAN CIVIL LIBERTIES UNION ET AL. v. LAIRD, SECRETARY OF DEFENSE, ET AL.* C. A. 7th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 463 F. 2d 499.

No. 72-584. *MARTINO ET AL. v. UNITED STATES.* C. A. 5th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 459 F. 2d 1032.

No. 72-601. *COREY v. AVCO-LYCOMING DIVISION, AVCO CORP.* Sup. Ct. Conn. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 163 Conn. 309, 307 A. 2d 155.

No. 72-715. *UNITED STATES v. ST. LOUIS-SAN FRANCISCO RAILWAY CO. ET AL.* C. A. 8th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 464 F. 2d 301.

No. 72-716. *WILBANKS v. ALABAMA.* Ct. Crim. App. Ala. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 48 Ala. App. 754, 266 So. 2d 637.

No. 72-5184. *LYNCH v. IOWA.* Sup. Ct. Iowa. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 197 N. W. 2d 186.

No. 72-5244. *RIGDON v. UNITED STATES.* C. A. 6th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 459 F. 2d 379.

No. 72-5279. *HILLEN v. HAWAII STATE PRISON SUPERINTENDENT.* C. A. 9th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari.

No. 72-5389. *JOHNSON v. VIRGINIA.* Sup. Ct. Va. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 213 Va. 102, 189 S. E. 2d 678.

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No. 72-5526. *MASSIMO v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 463 F. 2d 1171.

No. 72-5540. *KYLE v. UNITED STATES*. C. A. D. C. Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 152 U. S. App. D. C. 141, 469 F. 2d 547.

No. 72-5560. *MENDEZ-RUIZ v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari.

No. 72-5567. *HENDERSON v. MARONEY, CORRECTIONAL SUPERINTENDENT, ET AL.* Sup. Ct. Pa. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 448 Pa. 411, 293 A. 2d 64.

No. 72-5654. *DOTSON v. ALABAMA*. Ct. Crim. App. Ala. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 48 Ala. App. 381, 265 So. 2d 164.

No. 72-5664. *MURRAY v. OWENS, RECEPTION CENTER SUPERINTENDENT, ET AL.* C. A. 2d Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 465 F. 2d 289.

No. 72-243. *CLEAN AIR COORDINATING COMMITTEE v. ROTH ADAM FUEL CO. ET AL.* C. A. 7th Cir. Certiorari denied. MR. JUSTICE DOUGLAS and MR. JUSTICE STEWART would grant certiorari. Reported below: 465 F. 2d 323.

No. 72-250. *GOLDSBERRY ET AL. v. HIEBER, JUDGE*. Sup. Ct. Ohio. Motions to dispense with printing petition and respondent's brief granted. Certiorari denied.

No. 72-5604. *MCDONALD v. METRO TRAFFIC AND PARKING COMMISSION ET AL.* C. A. 6th Cir. Certiorari and other relief denied.

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No. 72-598. *FOURNIER v. UNITED STATES*. C. A. 5th Cir. Motion to dispense with printing petition granted. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 468 F. 2d 952.

No. 72-665. *HACKENSACK MEADOWLANDS DEVELOPMENT COMMISSION v. TRANSCONTINENTAL GAS PIPE LINE CORP.* C. A. 3d Cir. Certiorari denied. MR. JUSTICE POWELL took no part in the consideration or decision of this petition. Reported below: 464 F. 2d 1358.

No. 72-684. *STEPHENS, INC. 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: 464 F. 2d 53.

No. 72-698. *HOUSE v. HOUSE*. Ct. App. Cal., 4th App. Dist. Motion of respondent to dispense with printing brief granted. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari.

Rehearing Denied

No. 71-1509. *UNITED STATES v. JIM ET AL.*, *ante*, p. 80;

No. 71-1612. *UTAH ET AL. v. JIM ET AL.*, *ante*, p. 80;

No. 71-6690. *KEENY v. SWENSON, WARDEN*, *ante*, p. 1027;

No. 71-6751. *DAWN, DBA GAME CO. v. STERLING DRUG, INC., ET AL.*, *ante*, p. 865;

No. 72-246. *INTERSTATE COMMERCE COMMISSION v. IML SEATRANSIT, LTD., ET AL.*, *ante*, p. 1003;

No. 72-266. *STONE v. STONE ET AL.*, *ante*, p. 1000;

No. 72-299. *PILGRIM EQUIPMENT COMPANY OF HOUSTON v. TEXAS ET AL.*, *ante*, p. 982;

No. 72-337. *ROSS v. UNITED STATES ET AL.*, *ante*, p. 984; and

No. 72-365. *REILLEY v. REILLEY*, *ante*, p. 1003. Petitions for rehearing denied.

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No. 72-370. *MARCUS ET AL. v. NEW YORK*, *ante*, p. 1027;

No. 72-373. *TEXAS EASTERN TRANSMISSION CORP. v. BENSON, COMMISSIONER OF REVENUE*, *ante*, p. 1003;

No. 72-374. *SWARTHOUT v. OLUND*, *ante*, p. 1008;

No. 72-381. *BASYAP, INC., ET AL. v. DISTRICT OF COLUMBIA REDEVELOPMENT LAND AGENCY ET AL.*, *ante*, p. 1008;

No. 72-447. *HUTTER ET UX. v. CITY OF CHICAGO*, *ante*, p. 1024;

No. 72-5064. *REILLY v. CAULDWELL-WINGATE CO., INC., ET AL.*, *ante*, p. 882;

No. 72-5097. *RICHERSON v. UNITED STATES*, *ante*, p. 883;

No. 72-5337. *NIX v. UNITED STATES*, *ante*, p. 1013;

No. 72-5342. *HOUP v. UNITED STATES*, *ante*, p. 1011;
and

No. 72-5394. *HITCHCOCK v. GOMES, WARDEN*, *ante*, p. 1026. Petitions for rehearing denied.

No. 71-1235. *CRAIG, COMMISSIONER OF SOCIAL SERVICES, ET AL. v. GILLIARD ET AL.*, *ante*, p. 807;

No. 71-6719. *BROWN v. UNITED STATES*, *ante*, p. 864;

No. 72-55. *MURCH ET AL. v. MOTTRAM*, *ante*, p. 41;
and

No. 72-5043. *WARRINER v. WISEHEART ET AL.*, *ante*, p. 881. Motions for leave to file petitions for rehearing denied.

Assignment Orders

An order of THE CHIEF JUSTICE designating and assigning Mr. Justice Clark (retired) to perform judicial duties in the United States Court of Appeals for the Second Circuit beginning April 16, 1973, and ending April 20, 1973, and for such further time as may be re-

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quired 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.

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 beginning June 11, 1973, and ending June 15, 1973, 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.

JANUARY 9, 1973

Dismissal Under Rule 60

No. 71-715. Fontham et al. v. Edwards, Governor of Louisiana, et al. Appeal from D. C. E. D. La. dismissed under Rule 60 of the Rules of this Court. Reported below: 336 F. Supp. 153.

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Affirmed on Appeal

No. 72-537. Georges et al. v. McClellan et al. Appeal from D. C. R. I. Motions of appellees for leave to proceed *in forma pauperis*, and of Rhode Island Consumers' Council for leave to file a brief as *amicus curiae*, granted. Judgment affirmed. Reported below: 350 F. Supp. 1013.

No. 72-669. Smith's Transfer Corp. v. United States et al. Affirmed on appeal from D. C. W. D. Va. Mr. Justice Douglas and Mr. Justice Rehnquist would note probable jurisdiction and set case for oral argument.

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No. 72-687. McLEAN TRUCKING CO. *v.* UNITED STATES ET AL. Affirmed on appeal from D. C. M. D. N. C. MR. JUSTICE DOUGLAS and MR. JUSTICE REHNQUIST would note probable jurisdiction and set case for oral argument. Reported below: 346 F. Supp. 349.

Vacated and Remanded on Appeal. (See No. 72-603, *ante*, p. 464, and No. 72-691, *ante*, p. 467.)

Appeals Dismissed

No. 72-446. TOMASINO *v.* 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. 72-833. WILLIAM E. GOETZ & SONS ET AL. *v.* BOARD OF REGENTS, STATE SENIOR COLLEGES, ET AL. Appeal from C. A. 5th Cir. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied. Reported below: 465 F. 2d 432.

No. 72-5612. BODISCO *v.* NIXON, PRESIDENT OF THE UNITED STATES, ET AL. Appeal from C. A. 9th Cir. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied.

No. 72-749. SUNSET AMUSEMENT CO. ET AL. *v.* BOARD OF POLICE COMMISSIONERS OF THE CITY OF LOS ANGELES. Appeal from Sup. Ct. Cal. dismissed for want of substantial federal question. Reported below: 7 Cal. 3d 64, 496 P. 2d 840.

No. 72-5471. FUCHS *v.* SILVESTER. Appeal from Ct. App. N. Y. dismissed for want of substantial federal question. Reported below: 31 N. Y. 2d 154, 286 N. E. 2d 717.

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Certiorari Granted—Remanded

No. 72-5293. *CARTER v. UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT*. Motion for leave to file petition for writ of mandamus denied. Motion for leave to proceed *in forma pauperis* granted. Treating the papers submitted as a petition for writ of certiorari, certiorari granted and case remanded to the United States Court of Appeals for the Fifth Circuit for further consideration in light of the memorandum for respondent filed by the Solicitor General in this Court on December 19, 1972.

Certiorari Granted—Vacated and Remanded

No. 72-5391. *JACKSON v. GEORGIA*. Sup. Ct. Ga. Motion for leave to proceed *in forma pauperis* and certiorari granted. Judgment vacated insofar as it leaves undisturbed the death penalty imposed, and case remanded for further consideration in light of *Stewart v. Massachusetts*, 408 U. S. 845 (1972). Reported below: 229 Ga. 191, 190 S. E. 2d 530.

Miscellaneous Orders

No. 40, Orig. *PENNSYLVANIA v. NEW YORK ET AL.*, 407 U. S. 206. Supplemental report of Special Master received and ordered filed. Exceptions, with supporting briefs, may be filed within 30 days.

No. 71-1031. *TONASKET v. WASHINGTON ET AL.* Appeal from Sup. Ct. Wash. [Probable jurisdiction noted, 407 U. S. 908.] Motion of appellant for order requiring briefs upon issue of jurisdiction denied.

No. 71-1553. *GILLIGAN, GOVERNOR OF OHIO, ET AL. v. MORGAN ET AL.* C. A. 6th Cir. [Certiorari granted, *ante*, p. 947.] Motion of Law Revision Center for leave to file a brief as *amicus curiae* granted.

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No. 70-35. AUSTIN ET AL. *v.* MEYER ET AL. Appeal from D. C. M. D. Fla. Motion of appellants to reinstate stay heretofore vacated by order of this Court on June 26, 1972 [408 U. S. 919], denied. MR. JUSTICE DOUGLAS took no part in the consideration or decision of this motion.

No. 71-1694. FRONTIERO ET VIR *v.* LAIRD, SECRETARY OF DEFENSE, ET AL. Appeal from D. C. M. D. Ala. [Probable jurisdiction noted, *ante*, p. 840.] Motion of appellants to divide oral argument granted.

No. 71-6732. CHAFFIN *v.* STYNCHCOMBE, SHERIFF. C. A. 5th Cir. [Certiorari granted, *ante*, p. 912.] Motion of petitioner for appointment of counsel granted. It is ordered that Glenn Zell, Esquire, of Atlanta, Georgia, a member of the Bar of this Court, be, and he is hereby, appointed to serve as counsel for petitioner in this case.

No. 72-5410. BLACK *v.* UNITED STATES, *ante*, p. 1027. Respondent requested to file response to motion for leave to file petition for rehearing within 30 days.

No. 72-5372. LUCAS *v.* WYOMING ET AL. Motion for leave to file petition for writ of habeas corpus denied.

Probable Jurisdiction Postponed

No. 72-792. NEW YORK STATE DEPARTMENT OF SOCIAL SERVICES ET AL. *v.* DUBLINO ET AL.; and

No. 72-802. ONONDAGA COUNTY DEPARTMENT OF SOCIAL SERVICES ET AL. *v.* DUBLINO ET AL. Appeals from D. C. W. D. N. Y. Motion of appellees for leave to proceed *in forma pauperis* granted. Further consideration of question of jurisdiction postponed to hearing of cases on the merits. Cases consolidated and a total of one hour allotted for oral argument. Reported below: 348 F. Supp. 290.

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Certiorari Granted

No. 71-1182. *MATTZ v. ARNETT, DIRECTOR, DEPARTMENT OF FISH AND GAME*. Ct. App. Cal., 1st App. Dist. Certiorari granted. Reported below: 20 Cal. App. 3d 729, 97 Cal. Rptr. 894.

No. 72-549. *SCHOOL BOARD OF CITY OF RICHMOND, VIRGINIA, ET AL. v. STATE BOARD OF EDUCATION OF VIRGINIA ET AL.*; and

No. 72-550. *BRADLEY ET AL. v. STATE BOARD OF EDUCATION OF VIRGINIA ET AL.* C. A. 4th Cir. Certiorari granted. Cases consolidated and a total of one hour allotted for oral argument. MR. JUSTICE POWELL took no part in the consideration or decision of these petitions. Reported below: 462 F. 2d 1058.

No. 72-606. *OKLAHOMA v. MASON, ADMINISTRATOR, ET AL.*; and

No. 72-654. *UNITED STATES v. MASON, ADMINISTRATOR, ET AL.* Ct. Cl. Certiorari granted. Cases consolidated and a total of one hour allotted for oral argument. Reported below: 198 Ct. Cl. 599, 461 F. 2d 1364.

No. 72-804. *RUCKELSHAUS, ADMINISTRATOR, ENVIRONMENTAL PROTECTION AGENCY v. SIERRA CLUB ET AL.* C. A. D. C. Cir. Motions to file briefs as *amici curiae* filed by Utah Power & Light Co., Chamber of Commerce of the United States, American Mining Congress, and the State of Arizona et al., granted. Certiorari granted.

Certiorari Denied. (See also Nos. 72-446, 72-833, and 72-5612, *supra.*)

No. 72-560. *FIRST NATIONAL BANK OF FAIRBANKS v. CAMP, COMPTROLLER OF THE CURRENCY, ET AL.* C. A. D. C. Cir. Certiorari denied. Reported below: 151 U. S. App. D. C. 1, 465 F. 2d 586.

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No. 72-627. BREZINA CONSTRUCTION Co., INC., ET AL. *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 464 F. 2d 1141.

No. 72-641. WESTERN INTERNATIONAL HOTELS Co. *v.* UNITED STATES ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 467 F. 2d 1000.

No. 72-673. GETTY OIL Co. (EASTERN OPERATIONS), INC. *v.* RUCKELSHAUS, ADMINISTRATOR, ENVIRONMENTAL PROTECTION AGENCY, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 467 F. 2d 349.

No. 72-685. FLANNERY *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 467 F. 2d 201.

No. 72-696. BOSLEY ET UX. *v.* ATLANTIC SEABOARD CORP. C. A. 4th Cir. Certiorari denied.

No. 72-712. JONES ET UX. *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 466 F. 2d 131.

No. 72-727. CERVANTES *v.* TIME, INC., ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 464 F. 2d 986.

No. 72-729. FRANKEL *v.* NEW JERSEY. Super. Ct. N. J. Certiorari denied. Reported below: 119 N. J. Super. 579, 293 A. 2d 196.

No. 72-733. MICHIGAN NATIONAL BANK *v.* SUPERIOR COURT OF CALIFORNIA, COUNTY OF CONTRA COSTA (KELL, REAL PARTY IN INTEREST). Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 72-742. FIRST NATIONAL BANK AT LUBBOCK, TRUSTEE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 463 F. 2d 716.

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No. 72-754. *DANNING, TRUSTEE IN BANKRUPTCY, ET AL. v. BRUNSWICK CORP. ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 466 F. 2d 1010.

No. 72-760. *KNOLL ET AL. v. PHOENIX STEEL CORP. ET AL.* C. A. 3d Cir. Certiorari denied. Reported below: 465 F. 2d 1128.

No. 72-765. *MILLER v. BOARD OF LAW EXAMINERS OF TENNESSEE.* Sup. Ct. Tenn. Certiorari denied.

No. 72-778. *WILKIN v. SUNBEAM CORP.* C. A. 10th Cir. Certiorari denied. Reported below: 466 F. 2d 714.

No. 72-5195. *SMITH v. SUPREME COURT OF OKLAHOMA.* C. A. 10th Cir. Certiorari denied.

No. 72-5283. *PARKER v. SWENSON, WARDEN.* C. A. 8th Cir. Certiorari denied. Reported below: 459 F. 2d 164.

No. 72-5311. *BROWN v. WYMARD ET AL.* C. A. 3d Cir. Certiorari denied.

No. 72-5322. *HINOJOS v. BLACK, CONSERVATION CENTER SUPERINTENDENT.* C. A. 9th Cir. Certiorari denied. Reported below: 462 F. 2d 621.

No. 72-5371. *WILEY v. STONE, CORRECTIONAL SUPERINTENDENT.* C. A. 9th Cir. Certiorari denied.

No. 72-5426. *KAHINU v. HAWAII.* Sup. Ct. Hawaii. Certiorari denied. Reported below: 53 Haw. 536, 498 P. 2d 635.

No. 72-5441. *BRYANT v. TEXAS.* C. A. 5th Cir. Certiorari denied. Reported below: 463 F. 2d 1095.

No. 72-5470. *CASTANEDA v. CALIFORNIA.* Ct. App. Cal., 3d App. Dist. Certiorari denied.

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No. 72-5501. *BURKHEART v. GOMES, WARDEN*. C. A. 9th Cir. Certiorari denied. Reported below: 462 F. 2d 1335.

No. 72-5582. *DRIVER v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 466 F. 2d 496.

No. 72-5597. *POLLARD ET AL. v. UNITED STATES*. C. A. 10th Cir. Certiorari denied. Reported below: 466 F. 2d 1.

No. 72-5605. *DURANT v. UNITED STATES*. Ct. App. D. C. Certiorari denied. Reported below: 292 A. 2d 157.

No. 72-5624. *BAUGUESS v. UNITED STATES*. C. A. 4th Cir. Certiorari denied.

No. 72-5626. *LEFTWICH v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 465 F. 2d 1405.

No. 72-5627. *KELLY v. UNITED STATES*. C. A. 9th Cir. Certiorari denied.

No. 72-5634. *AYALA v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 465 F. 2d 464.

No. 72-5636. *BOYD v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 467 F. 2d 1370.

No. 72-5644. *SIDMAN v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 470 F. 2d 1158.

No. 72-5651. *BORELLI v. UNITED STATES*. C. A. 2d Cir. Certiorari denied.

No. 72-5656. *PETERS v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 456 F. 2d 1157.

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No. 72-5658. *CANTU v. UNITED STATES*. C. A. 7th Cir. Certiorari denied.

No. 72-5660. *KOCHEL v. MCKELDIN ET AL.* C. A. 4th Cir. Certiorari denied.

No. 72-5666. *OTTOMANO v. UNITED STATES*. C. A. 1st Cir. Certiorari denied. Reported below: 468 F. 2d 269.

No. 72-5674. *AGNEW v. DAMNER*. Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 72-5678. *FERRELL v. OKLAHOMA*. C. A. 10th Cir. Certiorari denied.

No. 72-5679. *JACKSON v. ESTELLE, CORRECTIONS DIRECTOR, ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 465 F. 2d 1406.

No. 72-5680. *QUINONES-ALVARADO v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 464 F. 2d 12.

No. 72-5701. *BROUSSARD v. HENDERSON, WARDEN*. C. A. 5th Cir. Certiorari denied.

No. 72-5710. *SANDERS ET AL. v. WYMAN, COMMISSIONER, NEW YORK DEPARTMENT OF SOCIAL SERVICES, ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 464 F. 2d 488.

No. 72-5716. *BENNETT v. DISTRICT DIRECTOR OF INTERNAL REVENUE*. C. A. 4th Cir. Certiorari denied. Reported below: 468 F. 2d 584.

No. 72-5722. *CARTER v. SLAYTON, PENITENTIARY SUPERINTENDENT*. C. A. 4th Cir. Certiorari denied.

No. 72-5723. *FORD v. ARIZONA*. Sup. Ct. Ariz. Certiorari denied. Reported below: 108 Ariz. 404, 499 P. 2d 699.

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No. 72-5731. *LINGHAM v. COMMISSIONER OF INTERNAL REVENUE*. C. A. 2d Cir. Certiorari denied.

No. 72-5735. *STENGEL v. CITY OF ANAHEIM ET AL.* Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 72-5736. *SMITH v. INDIANA*. Sup. Ct. Ind. Certiorari denied. Reported below: — Ind. —, 285 N. E. 2d 275.

No. 71-6893. *GILSON v. MACKLIN, SHERIFF*. C. A. 9th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari.

No. 72-410. *BROOKS v. GEORGIA*. Ct. App. Ga. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 125 Ga. App. 867, 189 S. E. 2d 448.

No. 72-737. *WEISS v. WALSH ET AL.* C. A. 2d Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari.

No. 72-5467. *KLIER v. WAINWRIGHT, CORRECTIONS DIRECTOR*. C. A. 5th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 464 F. 2d 1245.

No. 72-5617. *JORDAN v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 466 F. 2d 99.

No. 72-5643. *WREN v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 460 F. 2d 988.

No. 72-386. *GERBERDING v. SWENSON, WARDEN*. C. A. 8th Cir. Motion to dispense with printing petition granted. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari.

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No. 72-5669. TAYLOR *v.* ARIZONA ET AL. C. A. 9th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 471 F. 2d 848.

No. 72-5694. GRAHAM ET AL. *v.* JONES ET AL. C. A. 10th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari.

No. 72-5743. HALE ET AL. *v.* SOUTH DAKOTA. C. A. 8th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 465 F. 2d 65.

No. 72-5746. MABEY ET AL. *v.* REAGAN ET AL. C. A. 9th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 467 F. 2d 953.

No. 72-699. HAYAKAWA ET AL. *v.* WONG ET AL. C. A. 9th Cir. Motion of respondents for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 464 F. 2d 1282.

No. 72-790. ALABAMA ET AL. *v.* BRINKS. C. A. 5th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 465 F. 2d 446.

No. 72-703. HAY ET VIR *v.* HOLLIS ET AL. C. A. 5th Cir. Motion to dispense with printing petition and motion of respondent Hollis to dispense with printing brief granted. Certiorari denied. Reported below: 463 F. 2d 1136.

No. 72-5099. DUBOSE *v.* CRAVEN, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. MR. JUSTICE STEWART would grant certiorari, vacate judgment of the Court of Appeals, and remand case to the United States District

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Court for the Southern District of California to hold a hearing on petitioner's claim.

No. 72-5724. RHODES *v.* NEBRASKA ET AL. C. A. 8th Cir. Certiorari denied. MR. JUSTICE BLACKMUN took no part in the consideration or decision of this petition.

Rehearing Denied

No. 72-239. CHILDS *v.* UNITED STATES, *ante*, p. 966;

No. 72-5020. GAY *v.* LICENSE BRANCH, REAL ESTATE COMMISSION OF THE DISTRICT OF COLUMBIA, *ante*, p. 1024;

No. 72-5082. WOCHER *v.* LOS ANGELES CITY SCHOOL DISTRICT ET AL., *ante*, p. 1042;

No. 72-5350. DAPPER *v.* O'CONNOR ET AL., *ante*, p. 1025;

No. 72-5415. WILSON *v.* SCOTT, DISTRICT ATTORNEY OF KENOSHA COUNTY, ET AL., *ante*, p. 1043; and

No. 72-5495. DALTON *v.* UNITED STATES, *ante*, p. 1062. Petitions for rehearing denied.

No. 71-1478. FALKNER ET UX. *v.* PASTRANO ET UX., *ante*, p. 1020; and

No. 72-463. SILVER *v.* CASTLE MEMORIAL HOSPITAL ET AL., *ante*, p. 1048. Motions to dispense with printing petitions granted. Petitions for rehearing denied.

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 Customs and Patent Appeals for the period January 8 and 9, 1973, 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.