

ORDERS FROM MARCH 23 THROUGH
MAY 14, 1973

MARCH 23, 1973

Miscellaneous Orders

No. A-968 (72-1290). *BUFALINO v. IMMIGRATION AND NATURALIZATION SERVICE*. C. A. 3d Cir. Application for stay of deportation presented to MR. JUSTICE BRENNAN, and by him referred to the Court, denied. MR. JUSTICE MARSHALL took no part in the consideration or decision of this application. Reported below: 473 F. 2d 728.

No. A-969. *BAKER ET AL. v. NEW YORK*. C. A. 2d Cir. Application for stay presented to MR. JUSTICE MARSHALL, and by him referred to the Court, denied.

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Dismissal Under Rule 60

No. 72-1236. *PONDER v. LOUISIANA STATE BAR ASSN.* Sup. Ct. La. Petition for writ of certiorari dismissed under Rule 60 of the Rules of this Court.

Affirmed on Appeal

No. 72-1070. *BINKOWSKI v. MILLER ET AL.* Affirmed on appeal from D. C. E. D. Mich.

Appeal Dismissed

No. 72-1082. *BENNERS, EXECUTRIX v. CITY OF UNIVERSITY PARK*. Appeal from Sup. Ct. Tex. dismissed for want of substantial federal question. Reported below: 485 S. W. 2d 773.

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Certiorari Granted—Vacated and Remanded. (See also No. 72-864, *ante*, p. 138.)

No. 71-6693. REED ET AL. *v.* CITY OF NEW ORLEANS. Sup. Ct. La. Motion for leave to proceed *in forma pauperis* and certiorari granted. Judgment vacated and case remanded for reconsideration in light of *Argersinger v. Hamlin*, 407 U. S. 25 (1972). MR. JUSTICE DOUGLAS would grant certiorari and reverse the judgment.

No. 72-5484. GEORGE *v.* LOUISIANA. Sup. Ct. La. 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: 262 La. 409, 263 So. 2d 339.

Miscellaneous Orders

No. A-920 (72-1004). BETHLEHEM STEEL CORP. *v.* WILLIAMSON ET AL. Application to vacate stay heretofore granted by the United States Court of Appeals for the Second Circuit presented to MR. JUSTICE MARSHALL, and by him referred to the Court, granted. Reported below: 468 F. 2d 1201.

No. 40, Orig. PENNSYLVANIA *v.* NEW YORK ET AL. It is hereby ordered that John F. Davis, the Special Master appointed in this cause, having completed his duties, is hereby discharged.

It is further ordered that his expenditures in preparing the supplemental report in amount of One Hundred Four Dollars (\$104) are approved.

It is further ordered that the compensation for services of the Special Master in the supplementary proceedings be fixed at One Thousand Dollars (\$1,000) and that that amount plus the approved expenditures shall be paid to him by Western Union out of the funds in its possession

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which are the subject of this suit and that Western Union be given credit for that amount divided pro rata among the parties who would otherwise be entitled to the money under the opinion and decree of this Court. [For earlier orders herein, see, *e. g.*, 410 U. S. 977.]

No. 71-6278. *ALMEIDA-SANCHEZ v. UNITED STATES*. C. A. 9th Cir. [Certiorari granted, 406 U. S. 944.] Motion of Prison Research Council for the University of Pennsylvania for leave to file an untimely brief as *amicus curiae* denied. Motion for appointment of counsel granted. It is ordered that John J. Cleary, Esquire, of San Diego, California, a member of the Bar of this Court, be, and he is hereby, appointed to serve as co-counsel for petitioner in this case.

No. 71-6732. *CHAFFIN v. STYNCHCOMBE, SHERIFF*. C. A. 5th Cir. [Certiorari granted, 409 U. S. 912.] Motion of the Attorney General of Tennessee for leave to file a brief as *amicus curiae* after argument granted.

No. 72-394. *WEINBERGER, SECRETARY OF HEALTH, EDUCATION, AND WELFARE, ET AL. v. HYNSON, WESTCOTT & DUNNING, INC.*;

No. 72-414. *HYNSON, WESTCOTT & DUNNING, INC. v. WEINBERGER, SECRETARY OF HEALTH, EDUCATION, AND WELFARE, ET AL.*;

No. 72-555. *WEINBERGER, SECRETARY OF HEALTH, EDUCATION, AND WELFARE, ET AL. v. BENTEX PHARMACEUTICALS, INC., ET AL.*;

No. 72-666. *USV PHARMACEUTICAL CORP. v. WEINBERGER, SECRETARY OF HEALTH, EDUCATION, AND WELFARE, ET AL.* C. A. 4th Cir.; and

No. 72-528. *CIBA CORP. v. WEINBERGER, SECRETARY OF HEALTH, EDUCATION, AND WELFARE, ET AL.* C. A. 3d Cir. [Certiorari granted, 409 U. S. 1105.] Motion of Bentex Pharmaceuticals, Inc., et al., for additional time for oral argument denied.

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No. 72-624. UNITED STATES *v.* PENNSYLVANIA INDUSTRIAL CHEMICAL CORP. C. A. 3d Cir. [Certiorari granted, 409 U. S. 1074]. Motions of Jones & Laughlin Steel Corp. and Chamber of Commerce of the United States for leave to participate in oral argument as *amici curiae* denied.

No. 72-658. CITY OF KENOSHA ET AL. *v.* BRUNO ET AL. Appeal from D. C. E. D. Wis. [Probable jurisdiction noted, 409 U. S. 1105.] Motion to dispense with filing a brief on the merits on behalf of appellees Richard Misurelli and David Robers granted.

No. 72-694. COMMITTEE FOR PUBLIC EDUCATION & RELIGIOUS LIBERTY ET AL. *v.* NYQUIST, COMMISSIONER OF EDUCATION OF NEW YORK, ET AL. Appeal from D. C. S. D. N. Y. [Probable jurisdiction noted, 410 U. S. 907.] Motion of National Education Assn. et al. for leave to file an untimely brief as *amici curiae* granted.

No. 72-822. RENEGOTIATION BOARD *v.* BANNERCRAFT CLOTHING CO., INC., ET AL. C. A. D. C. Cir. [Certiorari granted, 410 U. S. 907.] Motion of Sears, Roebuck & Co. for leave to file a brief as *amicus curiae* granted, and motion for leave to postpone oral argument denied. MR. JUSTICE POWELL took no part in the consideration or decision of these motions.

No. 72-950. REED *v.* REED, 410 U. S. 931. Motion of respondent for reasonable damages under Rule 56 (4) of the Rules of this Court denied.

No. 72-1061. WINDWARD SHIPPING (LONDON) LTD. ET AL. *v.* AMERICAN RADIO ASSN., AFL-CIO, ET AL. Ct. Civ. App. Tex., 14th Sup. Jud. Dist. The Solicitor General is invited to file a brief expressing the views of the United States. Reported below: 482 S. W. 2d 675.

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No. 72-5521. STRUNK, AKA WAGNER *v.* UNITED STATES C. A. 7th Cir. [Certiorari granted, 409 U. S. 1106.] Motion of Terence F. MacCarthy to permit John R. Wideikis to argue *pro hac vice* on behalf of petitioner granted.

No. 72-6170. KAPLAN *v.* JUDGES OF THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT ET AL. Motion for leave to file petition for writ of mandamus and/or prohibition denied.

Probable Jurisdiction Noted

No. 72-5830. PATTERSON *v.* WARNER ET AL. Appeal from D. C. S. D. W. Va. Motion for leave to proceed *in forma pauperis* granted. Probable jurisdiction noted.

Certiorari Granted

No. 72-1057. UNITED STATES *v.* GIORDANO ET AL. C. A. 4th Cir. Motion of respondent Giordano for leave to proceed *in forma pauperis* and certiorari granted. Reported below: 469 F. 2d 522.

Certiorari Denied

No. 72-944. MARULAKIS *v.* WILLIAMS. Sup. Ct. Ohio. Certiorari denied.

No. 72-975. NEWMAN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 468 F. 2d 791.

No. 72-980. VASTOLA *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 72-982. ROSENBERG *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 72-988. MOORE *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 469 F. 2d 788.

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No. 72-991. MILLER, AKA MULLER *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 72-1009. FLOOD ET UX. *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 9th Cir. Certiorari denied. Reported below: 468 F. 2d 904.

No. 72-1015. TRED-AIR OF CALIFORNIA, INC. *v.* NATIONAL LABOR RELATIONS BOARD. C. A. 9th Cir. Certiorari denied.

No. 72-1029. DISTRICT 65, DISTRIBUTIVE WORKERS OF AMERICA *v.* R & M KAUFMANN, A DIVISION OF RUSS TOGS, INC., ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 471 F. 2d 301.

No. 72-1045. BIBLE BAPTIST CHURCH *v.* IRELAND ET AL. Ct. Civ. App. Tex., 9th Sup. Jud. Dist. Certiorari denied. Reported below: 480 S. W. 2d 467.

No. 72-1060. JOHNSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied.

No. 72-1081. INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS *v.* WASHINGTON TERMINAL CO. C. A. D. C. Cir. Certiorari denied. Reported below: 154 U. S. App. D. C. 119, 473 F. 2d 1156.

No. 72-1083. O'BRIEN *v.* FRANICH ET AL. Ct. App. Wash. Certiorari denied. Reported below: 7 Wash. App. 107, 499 P. 2d 24.

No. 72-1089. LONDON *v.* PATTERSON, VOCATIONAL INSTITUTION SUPERINTENDENT. C. A. 9th Cir. Certiorari denied. Reported below: 463 F. 2d 95.

No. 72-1122. JACKSONVILLE NEWSPAPER PRINTING PRESSMAN & ASSISTANTS' UNION No. 57 *v.* FLORIDA PUBLISHING CO. C. A. 5th Cir. Certiorari denied. Reported below: 468 F. 2d 824.

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No. 72-5706. *HUGHES v. CARDWELL, WARDEN.* C. A. 6th Cir. Certiorari denied.

No. 72-5801. *STRADER v. NORTH CAROLINA.* C. A. 4th Cir. Certiorari denied.

No. 72-5833. *LOMBARDI v. WARNER, JUSTICE.* App. Div., Sup. Ct. N. Y., 1st Jud. Dept. Certiorari denied.

No. 72-5859. *HALL v. MARYLAND.* Ct. Sp. App. Md. Certiorari denied. Reported below: 15 Md. App. 363, 290 A. 2d 803.

No. 72-5860. *MURRAY v. MISSISSIPPI.* Sup. Ct. Miss. Certiorari denied. Reported below: 266 So. 2d 139.

No. 72-5892. *GORE v. ILLINOIS.* App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 6 Ill. App. 3d 51, 284 N. E. 2d 333.

No. 72-5897. *BROWN v. CARDWELL, WARDEN.* C. A. 6th Cir. Certiorari denied. Reported below: 471 F. 2d 654.

No. 72-5903. *DIXON v. CALIFORNIA.* Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 72-5947. *ELLINGBURG v. ARKANSAS.* C. A. 8th Cir. Certiorari denied.

No. 72-5971. *STEPHENSON v. UNITED STATES.* Ct. App. D. C. Certiorari denied. Reported below: 296 A. 2d 606.

No. 72-6007. *LIANTAUD v. UNITED STATES.* C. A. 9th Cir. Certiorari denied. Reported below: 466 F. 2d 1342.

No. 72-6016. *SOTO v. UNITED STATES.* C. A. 3d Cir. Certiorari denied.

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No. 72-6017. *CANTU v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 469 F. 2d 679.

No. 72-6021. *CREWS ET AL. v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 470 F. 2d 331.

No. 72-6028. *GAMMON v. UNITED STATES*. C. A. 4th Cir. Certiorari denied.

No. 72-6030. *ROBINSON v. UNITED STATES*. C. A. 3d Cir. Certiorari denied.

No. 72-6031. *KUBITSKY v. UNITED STATES*. C. A. 1st Cir. Certiorari denied. Reported below: 469 F. 2d 1253.

No. 72-6036. *RIGGS v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 470 F. 2d 505.

No. 72-6037. *SMITH v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 468 F. 2d 952.

No. 72-6045. *CROWDER v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 464 F. 2d 1284.

No. 72-6053. *MORRIS v. UNITED STATES*. C. A. 3d Cir. Certiorari denied.

No. 72-6091. *LEE v. ALABAMA*. Sup. Ct. Ala. Certiorari denied. Reported below: 289 Ala. 597, 269 So. 2d 184.

No. 72-6164. *WARDLAW v. INDIANA*. Sup. Ct. Ind. Certiorari denied. Reported below: — Ind. —, 286 N. E. 2d 649.

No. 72-6169. *RULO v. RUBIN, TRUSTEE IN BANKRUPTCY*. C. A. 8th Cir. Certiorari denied. Reported below: 468 F. 2d 826.

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No. 72-6071. *GEORGE v. UNITED STATES.* C. A. 5th Cir. Certiorari denied. Reported below: 468 F. 2d 952.

No. 72-6172. *CHERRY v. TEXAS.* Ct. Crim. App. Tex. Certiorari denied. Reported below: 488 S. W. 2d 744.

No. 72-6180. *SHADDEN v. TENNESSEE.* Ct. Crim. App. Tenn. Certiorari denied. Reported below: 488 S. W. 2d 54.

No. 72-6193. *GRAHAM v. HALL.* C. A. 6th Cir. Certiorari denied.

No. 72-6196. *MARTIN v. WAINWRIGHT, CORRECTIONS DIRECTOR, ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 469 F. 2d 1072.

No. 72-6212. *ROBINSON v. ALABAMA.* C. A. 5th Cir. Certiorari denied. Reported below: 469 F. 2d 690.

No. 72-6223. *JACKSON v. OHIO.* Sup. Ct. Ohio. Certiorari denied. Reported below: 32 Ohio St. 2d 203, 291 N. E. 2d 432.

No. 72-974. *POPKIN v. UNITED STATES.* C. A. 1st Cir. Certiorari denied. Mr. Justice Douglas would grant certiorari. Reported below: See 460 F. 2d 328.

No. 72-5835. *MARTIN v. FLORIDA.* C. A. 5th Cir. Certiorari denied. Mr. Justice Douglas would grant certiorari. Reported below: 464 F. 2d 1394.

No. 72-5966. *HEINRICH v. UNITED STATES.* C. A. 9th Cir. Certiorari denied. Mr. Justice Douglas would grant certiorari. Reported below: 470 F. 2d 238.

No. 72-977. *JACK v. UNITED STATES;* and

No. 72-978. *OVERTON v. UNITED STATES.* C. A. 2d Cir. Certiorari denied. Mr. Justice Marshall took no part in the consideration or decision of these petitions. Reported below: 470 F. 2d 761.

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No. 72-5973. *HALVERSON v. CADY, WARDEN*. C. A. 7th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari.

No. 72-1001. *MAJEWSKI v. UNITED STATES*. C. A. 2d Cir. Motion to dispense with printing petition granted. Certiorari denied.

No. 72-1116. *McCLOUD v. BRANCH ET AL.* C. A. 5th Cir. Motion to dispense with printing petition granted. Certiorari denied.

No. 72-5632. *WORTON v. OKLAHOMA*. C. A. 10th Cir. Motion to amend petition granted. Certiorari denied.

Rehearing Denied

No. 71-685. *LEHNHAUSEN, DIRECTOR, DEPARTMENT OF LOCAL GOVERNMENT AFFAIRS OF ILLINOIS v. LAKE SHORE AUTO PARTS CO. ET AL.*, 410 U. S. 356;

No. 71-691. *BARRETT, COUNTY CLERK OF COOK COUNTY, ILLINOIS, ET AL. v. SHAPIRO ET AL.*, 410 U. S. 356;

No. 71-1672. *GUTHRIE ET AL. v. ALABAMA BY-PRODUCTS CO. ET AL.*, 410 U. S. 946;

No. 72-839. *WILLIAMS v. MISSISSIPPI EXPORT RAILROAD*, 410 U. S. 942; and

No. 72-963. *HUTTER ET AL. v. COOK COUNTY, ILLINOIS, ET AL.*, 410 U. S. 955. Petitions for rehearing denied.

No. 71-991. *OTTER TAIL POWER CO. v. UNITED STATES*, 410 U. S. 366. Petition for rehearing denied. MR. JUSTICE BLACKMUN and MR. JUSTICE POWELL took no part in the consideration or decision of this petition.

No. 72-510. *FALKNER ET UX. v. BROWN, CHIEF JUDGE, U. S. COURT OF APPEALS*, 410 U. S. 923. Motion to dispense with printing petition granted. Petition for rehearing denied.

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Affirmed on Appeal

No. 72-997. *ATLEE ET AL. v. RICHARDSON, SECRETARY OF DEFENSE, ET AL.* Affirmed on appeal from D. C. E. D. Pa. MR. JUSTICE DOUGLAS, MR. JUSTICE BRENNAN, and MR. JUSTICE STEWART would note probable jurisdiction and set case for oral argument. Reported below: 347 F. Supp. 689.

No. 72-6025. *BRIGGS ET AL. v. ARAFEH, HOSPITAL SUPERINTENDENT, ET AL.* Affirmed on appeal from D. C. Conn. MR. JUSTICE DOUGLAS and MR. JUSTICE POWELL dissent from affirmance. Reported below: 346 F. Supp. 1265.

Appeals Dismissed

No. 72-795. *LEATHERS v. MASSELL ET AL.* Appeal from Sup. Ct. Ga. dismissed for want of substantial federal question. Reported below: 229 Ga. 503, 192 S. E. 2d 379.

No. 72-893. *FOX ET UX. v. NORBERG, TAX ADMINISTRATOR.* Appeal from Super. Ct. R. I. dismissed for want of substantial federal question. Reported below: See 110 R. I. 418, 293 A. 2d 520.

No. 72-1093. *VARIETY THEATRES, INC. v. CLEVELAND COUNTY ET AL.* Appeal from Sup. Ct. N. C. dismissed for want of substantial federal question. Reported below: 282 N. C. 272, 192 S. E. 2d 290.

No. 72-5919. *FAUBION v. JURAS, ADMINISTRATOR, OREGON PUBLIC WELFARE DIVISION, ET AL.* Appeal from Ct. App. Ore. dismissed for want of substantial federal question. MR. JUSTICE DOUGLAS dissents for reasons stated in his dissenting opinion in *Ortwein v. Schwab*, 410 U. S. 656, 661 (1973).

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No. 72-1106. *HAMMOND v. HAGER ET AL.* Appeal from Sup. Ct. Mont. dismissed for want of substantial federal question. Reported below: 160 Mont. 391, 503 P. 2d 52.

No. 72-1114. *HUTTER ET UX. v. KORZEN.* Appeal from App. Ct. Ill., 1st Dist., dismissed for want of substantial federal question. Reported below: 5 Ill. App. 3d 694, 293 N. E. 2d 905.

No. 72-5943. *BOYKIN ET AL. v. OTT, ADMINISTRATOR, OREGON MOTOR VEHICLES DIVISION.* Appeal from Ct. App. Ore. dismissed for want of substantial federal question. Reported below: 10 Ore. App. 210, 498 P. 2d 815.

Certiorari Granted—Vacated and Remanded

No. 72-1075. *BACHRODT CHEVROLET Co. v. NATIONAL LABOR RELATIONS BOARD.* C. A. 7th Cir. Certiorari granted, judgment vacated, and case remanded with instructions to remand case to the National Labor Relations Board for such further proceedings as may be appropriate in light of *NLRB v. Burns International Security Services, Inc.*, 406 U. S. 272 (1972). *FTC v. Sperry & Hutchinson Co.*, 405 U. S. 233, 245-250 (1972); *SEC v. Chenergy Corp.*, 318 U. S. 80, 87-88 (1943). Reported below: 468 F. 2d 963.

Miscellaneous Orders

No. A-987. *RUDERER v. BARTLETT, U. S. ATTORNEY.* C. A. 8th Cir. Motion for leave to file petition for injunctive order, presented to MR. JUSTICE BLACKMUN, and by him referred to the Court, denied. MR. JUSTICE BLACKMUN took no part in the consideration or decision of this motion.

No. 72-658. *CITY OF KENOSHA ET AL. v. BRUNO ET AL.* Appeal from D. C. E. D. Wis. [Probable jurisdiction noted, 409 U. S. 1105.] Motion to permit two counsel to argue orally on behalf of appellees granted.

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No. 48, Orig. *MISSISSIPPI v. ARKANSAS*. Report of Special Master received and ordered filed. Exceptions to Report, if any, with supporting briefs may be filed by the parties on or before May 17, 1973. Reply briefs, if any, to such exceptions may be filed on or before June 18, 1973. [For earlier orders herein, see, *e. g.*, 403 U. S. 951.]

No. 72-459. *SLOAN, TREASURER OF PENNSYLVANIA, ET AL. v. LEMON ET AL.*; and

No. 72-620. *CROUTER v. LEMON ET AL.* Appeals from D. C. E. D. Pa. [Probable jurisdiction noted, 410 U. S. 907.] Motion of National Association of Independent Schools, Inc., for leave to participate in oral argument as *amicus curiae* denied.

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, 409 U. S. 1124.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* in support of respondents granted and 15 minutes allotted for that purpose. Counsel for petitioners hereby allotted 15 additional minutes for oral argument. MR. JUSTICE POWELL took no part in the consideration or decision of this motion.

No. 72-5990. *MAGHE v. GUARINO, JUDGE*;

No. 72-6113. *JOHNSON v. STUART, U. S. DISTRICT JUDGE, ET AL.*;

No. 72-6186. *GERARDI v. SEAMANS, SECRETARY OF THE AIR FORCE*;

No. 72-6187. *GERARDI v. JOHNSON, ADMINISTRATOR OF VETERANS AFFAIRS*; and

No. 72-6188. *GERARDI v. UNITED STATES DEPARTMENT OF JUSTICE*. Motions for leave to file petitions for writs of mandamus denied.

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No. 72-694. COMMITTEE FOR PUBLIC EDUCATION & RELIGIOUS LIBERTY ET AL. *v.* NYQUIST, COMMISSIONER OF EDUCATION OF NEW YORK, ET AL.;

No. 72-753. ANDERSON *v.* COMMITTEE FOR PUBLIC EDUCATION & RELIGIOUS LIBERTY ET AL.;

No. 72-791. NYQUIST, COMMISSIONER OF EDUCATION OF NEW YORK, ET AL. *v.* COMMITTEE FOR PUBLIC EDUCATION & RELIGIOUS LIBERTY ET AL.; and

No. 72-929. CHERRY ET AL. *v.* COMMITTEE FOR PUBLIC EDUCATION & RELIGIOUS LIBERTY ET AL. Appeals from D. C. S. D. N. Y. [Probable jurisdiction noted, 410 U. S. 907.] Motion of Lawrence E. Klinger for leave to file an untimely brief as *amicus curiae* granted.

No. 72-804. RUCKELSHAUS, ADMINISTRATOR, ENVIRONMENTAL PROTECTION AGENCY *v.* SIERRA CLUB ET AL. C. A. D. C. Cir. [Certiorari granted, 409 U. S. 1124.] Motion of the State of Arizona et al. for leave to present oral argument as *amici curiae* denied.

No. 72-1187. COMBS, SUPERINTENDENT, GRAND PRAIRIE INDEPENDENT SCHOOL DISTRICT, ET AL. *v.* JOHNSON ET AL. C. A. 5th Cir. Motion to advance and for pendente lite relief denied. Reported below: 471 F. 2d 84.

No. 72-5881. MARSHALL *v.* UNITED STATES. C. A. 9th Cir. [Certiorari granted, 410 U. S. 954.] Motion for appointment of counsel granted. It is ordered that James F. Hewitt, Esquire, of San Francisco, California, a member of the Bar of this Court, be, and he is hereby, appointed to serve as counsel for petitioner in this case.

No. 72-1084. GROSSMAN *v.* KAVANAGH, CHIEF JUSTICE, SUPREME COURT OF MICHIGAN. Motion for leave to file petition for writ of mandamus and/or prohibition denied.

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Probable Jurisdiction Noted

No. 71-1631. KUSPER ET AL. *v.* PONTIKES. Appeal from D. C. N. D. Ill. Probable jurisdiction noted. Reported below: 345 F. Supp. 1104.

No. 72-922. PASCHALL ET AL. *v.* CHRISTIE-STEWART, INC., ET AL. Appeal from Sup. Ct. Okla. Probable jurisdiction noted. Reported below: 502 P. 2d 1265.

No. 72-1118. PHILLIPS, ACTING DIRECTOR, OFFICE OF ECONOMIC OPPORTUNITY, ET AL. *v.* KENNEDY ET AL. Appeal from D. C. N. D. Ill. Probable jurisdiction noted. Reported below: 349 F. Supp. 863.

Certiorari Granted

No. 72-953. O'SHEA, MAGISTRATE, CIRCUIT COURT OF ALEXANDER COUNTY, ILLINOIS, ET AL. *v.* LITTLETON ET AL. C. A. 7th Cir. Certiorari granted and case set for oral argument with No. 72-955 [immediately *infra*]. Reported below: 468 F. 2d 389.

No. 72-955. SPOMER, STATE'S ATTORNEY OF ALEXANDER COUNTY, ILLINOIS *v.* LITTLETON ET AL. C. A. 7th Cir. Certiorari granted and case set for oral argument with No. 72-953 [immediately *supra*]. Reported below: 468 F. 2d 389.

No. 72-6041. PERNELL *v.* SOUTHALL REALTY. Ct. App. D. C. Motion for leave to proceed *in forma pauperis* and certiorari granted. Reported below: 294 A. 2d 490.

Certiorari Denied

No. 72-819. REYES *v.* LABORERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL UNION NO. 16, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 464 F. 2d 595.

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No. 72-842. *BRADLEY v. FLORIDA*. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 265 So. 2d 532.

No. 72-898. *FIOCCONI ET AL. v. UNITED STATES*. C. A. 2d Cir. Certiorari denied.

No. 72-924. *LAFAYETTE AIRPORT COMMISSION ET AL. v. ROY ET AL.* Ct. App. La., 3d Cir. Certiorari denied. Reported below: 265 So. 2d 459.

No. 72-927. *BANKERS LIFE & CASUALTY CO. v. VILLAGE OF NORTH PALM BEACH, FLORIDA, ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 469 F. 2d 994.

No. 72-979. *THORNE v. UNITED STATES*. Ct. Cl. Certiorari denied.

No. 72-1011. *COOPER v. UNITED STATES*. C. A. 4th Cir. Certiorari denied.

No. 72-1014. *BRADEN v. HERMAN ET AL.* C. A. 8th Cir. Certiorari denied. Reported below: 468 F. 2d 592.

No. 72-1016. *CHIP STEAK CO., INC., ET AL. v. BUTZ, SECRETARY OF AGRICULTURE, ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 467 F. 2d 481.

No. 72-1017. *NEBRASKA ET AL. v. WEINBERGER, SECRETARY OF HEALTH, EDUCATION, AND WELFARE, ET AL.*; and

No. 72-1020. *NEBRASKA ET AL. v. WEINBERGER, SECRETARY OF HEALTH, EDUCATION, AND WELFARE, ET AL.* C. A. 8th Cir. Certiorari denied.

No. 72-1074. *MARTIN v. MARTIN*. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 261 So. 2d 179.

No. 72-1080. *PELTZMAN v. AMERICAN RADIO ASSN. ET AL.* App. Div., Sup. Ct. N. Y., 1st Jud. Dept. Certiorari denied.

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No. 72-1087. *CARD v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 470 F. 2d 144.

No. 72-1088. *PENNSYLVANIA v. BROWN*. Sup. Ct. Pa. Certiorari denied.

No. 72-1110. *USCIAK v. PENNSYLVANIA*. Super. Ct. Pa. Certiorari denied. Reported below: 222 Pa. Super. 235, 294 A. 2d 765.

No. 72-1121. *ELLIS ET AL. v. FLYING TIGER CORP.* C. A. 7th Cir. Certiorari denied.

No. 72-1132. *JACOBS, ADMINISTRATRIX v. CLARKE-WHITE*. Ct. App. Ohio, Franklin County. Certiorari denied.

No. 72-1143. *SPERCEL, DBA SPERCEL TOOL CO. v. STERLING INDUSTRIES, INC., ET AL.* Sup. Ct. Ohio. Certiorari denied. Reported below: 31 Ohio St. 2d 36, 285 N. E. 2d 324.

No. 72-1227. *MORTON, SECRETARY OF THE INTERIOR v. WILDERNESS SOCIETY ET AL.*;

No. 72-1228. *ALASKA v. WILDERNESS SOCIETY ET AL.*; and

No. 72-1229. *ALYESKA PIPELINE SERVICE CO. v. WILDERNESS SOCIETY ET AL.* C. A. D. C. Cir. Certiorari denied. Reported below: 156 U. S. App. D. C. 121, 479 F. 2d 842.

No. 72-5406. *CARTER v. HARDY*. C. A. 5th Cir. Certiorari denied. Reported below: 463 F. 2d 1136.

No. 72-5793. *LONG v. TWOMEY, WARDEN*. C. A. 7th Cir. Certiorari denied.

No. 72-5813. *BILTON v. ESTELLE, CORRECTIONS DIRECTOR*. C. A. 5th Cir. Certiorari denied.

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No. 72-5887. *PASSWATER ET AL. v. MYERS, JUDGE, ET AL.* C. A. 7th Cir. Certiorari denied.

No. 72-5898. *KNIGHT v. UNITED STATES.* C. A. 6th Cir. Certiorari denied. Reported below: 471 F. 2d 654.

No. 72-5912. *EVANS v. EVANS.* Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 72-5928. *McMURRAY v. ILLINOIS.* App. Ct. Ill., 1st Jud. Dist. Certiorari denied. Reported below: 6 Ill. App. 3d 129, 285 N. E. 2d 242.

No. 72-5968. *HARGROVE v. SLAYTON, PENITENTIARY SUPERINTENDENT.* C. A. 4th Cir. Certiorari denied.

No. 72-5969. *THOMAS v. SLAYTON, PENITENTIARY SUPERINTENDENT.* C. A. 4th Cir. Certiorari denied.

No. 72-5984. *LOVALLO v. FROEHLKE, SECRETARY OF THE ARMY, ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 468 F. 2d 340.

No. 72-6009. *SHORTER v. UNITED STATES.* C. A. 9th Cir. Certiorari denied.

No. 72-6042. *PELLEGRINO ET AL. v. UNITED STATES.* C. A. 2d Cir. Certiorari denied. Reported below: 470 F. 2d 1205.

No. 72-6051. *ALLEN v. CARDWELL, WARDEN.* C. A. 6th Cir. Certiorari denied.

No. 72-6052. *LANDRY v. UNITED STATES.* C. A. 9th Cir. Certiorari denied.

No. 72-6056. *MACIEL v. UNITED STATES.* C. A. 9th Cir. Certiorari denied. Reported below: 469 F. 2d 718.

No. 72-6062. *VALDEZ v. CALIFORNIA SELECTIVE SERVICE LOCAL BOARD NO. 44 ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 469 F. 2d 1087.

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No. 72-6061. *EVANS v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 469 F. 2d 696.

No. 72-6063. *PEREZ-VALLE v. UNITED STATES*. C. A. 9th Cir. Certiorari denied.

No. 72-6065. *CROWDER v. HARRIS, WARDEN*. C. A. 10th Cir. Certiorari denied.

No. 72-6077. *ALBERTI v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 470 F. 2d 878.

No. 72-6078. *WILLIAMS v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 471 F. 2d 655.

No. 72-6085. *DAVENPORT v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 470 F. 2d 1140.

No. 72-6087. *HENDERSON v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 471 F. 2d 654.

No. 72-6088. *GIARDINA v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 471 F. 2d 650.

No. 72-6089. *VON ATZINGEN v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 470 F. 2d 1297.

No. 72-6105. *FIELDS v. UNITED STATES*. C. A. 3d Cir. Certiorari denied.

No. 72-6184. *TORRES ET AL. v. NEW YORK CITY TRANSIT AUTHORITY ET AL.* C. A. 2d Cir. Certiorari denied.

No. 72-6204. *LE BRUN v. CUPP, PENITENTIARY SUPERINTENDENT*. C. A. 9th Cir. Certiorari denied.

No. 72-6214. *Cox v. WOLFF, WARDEN*. C. A. 8th Cir. Certiorari denied.

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No. 72-6215. *RIDGILL v. NEW YORK*. App. Div., Sup. Ct. N. Y., 1st Jud. Dept. Certiorari denied.

No. 72-6217. *ECKERT v. AMERICAN ARBITRATION ASSN.* C. A. 3d Cir. Certiorari denied.

No. 72-6219. *RECOR v. TENNESSEE*. Ct. Crim. App. Tenn. Certiorari denied. Reported below: 489 S. W. 2d 64.

No. 72-6220. *ECKERT v. PENNSYLVANIA*. C. A. 3d Cir. Certiorari denied.

No. 72-6225. *JOHNSON v. ILLINOIS*. C. A. 7th Cir. Certiorari denied. Reported below: 469 F. 2d 1297.

No. 72-6237. *THORNTON v. ESTELLE, CORRECTIONS DIRECTOR*. C. A. 5th Cir. Certiorari denied. Reported below: 470 F. 2d 657.

No. 72-6238. *KNIGHT v. OKLAHOMA*. Ct. Crim. App. Okla. Certiorari denied. Reported below: 502 P. 2d 347.

No. 72-995. *JENKINS v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Mr. Justice Douglas would grant certiorari. Reported below: 470 F. 2d 1061.

No. 72-1005. *SIERRA CLUB ET AL. v. MORTON, SECRETARY OF THE INTERIOR, ET AL.* C. A. 6th Cir. Certiorari denied. Mr. Justice Douglas would grant certiorari. Reported below: 467 F. 2d 1048.

No. 72-1063. *UNGER v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Mr. Justice Douglas would grant certiorari. Reported below: 469 F. 2d 1283.

No. 72-5808. *FRINKS v. NORTH CAROLINA*. C. A. 4th Cir. Certiorari denied. Mr. Justice Douglas would grant certiorari. Reported below: 468 F. 2d 639.

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No. 72-5899. *WYATT v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari.

No. 72-5951. *LINDSEY v. CALIFORNIA*. Ct. App. Cal., 2d App. Dist. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 27 Cal. App. 3d 622, 103 Cal. Rptr. 755.

No. 72-5981. *WASHINGTON v. TEXAS*. Ct. Crim. App. Tex. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 484 S. W. 2d 721.

No. 72-1094. *ESTELLE, CORRECTIONS DIRECTOR v. SANCHEZ*. C. A. 5th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 467 F. 2d 513.

No. 72-1115. *ROZELLE v. CONNECTICUT GENERAL LIFE INSURANCE CO. ET AL.* C. A. 10th Cir. Motion to dispense with printing petition granted. Certiorari denied. Reported below: 471 F. 2d 29.

No. 72-1131. *NEWBERRY v. TOWN OF FISHKILL*. C. A. 3d Cir. Motion to dispense with printing petition granted. Certiorari denied.

No. 72-1146. *MILAM ET UX. v. READING & BATES OFF-SHORE DRILLING CO. ET AL.* C. A. 5th Cir. Motion to dispense with printing petition granted. Certiorari denied. Reported below: 471 F. 2d 1197.

No. 72-5831. *ROTHSTEIN ET AL. v. WYMAN, COMMISSIONER, DEPARTMENT OF SOCIAL SERVICES OF NEW YORK, ET AL.* C. A. 2d Cir. Certiorari denied. MR. JUSTICE DOUGLAS and MR. JUSTICE WHITE would grant certiorari. Reported below: 467 F. 2d 226.

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Rehearing Denied

No. 72-5431. *ORTWEIN ET AL. v. SCHWAB ET AL.*, 410 U. S. 656;

No. 72-5712. *HIGGINBOTHAM v. UNITED STATES*, 410 U. S. 933;

No. 72-5779. *JACKSON v. UNITED STATES*, 410 U. S. 935;

No. 72-5803. *McCRAY v. UNITED STATES*, 410 U. S. 936;

No. 72-5872. *THOMAS ET AL. v. MISSISSIPPI*, 410 U. S. 939; and

No. 72-5885. *SELLARS v. ESTELLE, CORRECTIONS DIRECTOR*, 410 U. S. 940. Petitions for rehearing denied.

No. 71-364. *MAHAN, SECRETARY, STATE BOARD OF ELECTIONS, ET AL. v. HOWELL ET AL.*; and

No. 71-373. *CITY OF VIRGINIA BEACH v. HOWELL ET AL.*, 410 U. S. 315. Treating the petition for rehearing in No. 71-373 as a motion to modify the Court's opinion, the following order is hereby entered:

"The motion of appellant, city of Virginia Beach, to modify this Court's opinion is hereby granted. The first paragraph in Part II of the opinion is amended by adding 'a portion of' after the phrase 'Under the plan,' in the second sentence thereof, and by striking the phrase 'encompassing the cities of Norfolk and Virginia Beach' in the last sentence of the paragraph, substituting therefor the following phrase: 'encompassing the city of Norfolk and a portion of Virginia Beach.' "*

MR. JUSTICE POWELL took no part in the consideration or decision of this order.

*[REPORTER'S NOTE: The opinion is reported as so amended in 410 U. S., at 330 and 331.]

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No. 72-826. *BROUSSARD v. PATTON ET AL.*, 410 U. S. 942. Motion of James Abourezk et al. for leave to file a brief as *amici curiae* in support of petition for rehearing granted. Petition for rehearing denied.

No. 72-5771. *JAKALSKI v. UNITED STATES*, 410 U. S. 935. Petition for rehearing and other relief denied.

APRIL 5, 1973

Dismissal Under Rule 60

No. 72-1284. *INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS ET AL. v. SOUTHERN PACIFIC TRANSPORTATION CO.* C. A. 9th Cir. Petition for writ of certiorari dismissed under Rule 60 of the Rules of this Court. Reported below: 474 F. 2d 696.

APRIL 12, 1973

Dismissal Under Rule 60

No. 72-1147. *DORFMAN v. UNITED STATES*. C. A. 2d Cir. Petition for writ of certiorari dismissed under Rule 60 of the Rules of this Court. Reported below: 470 F. 2d 246.

APRIL 16, 1973

Affirmed on Appeal

No. 72-1128. *KINGSTON ET AL., JUSTICES v. McLAUGHLIN, JUSTICE, ET AL.* Affirmed on appeal from D. C. Mass. Reported below: 359 F. Supp. 25.

Appeals Dismissed

No. 72-925. *PALKES, DBA MADISON IRON & METAL CO. v. ILLINOIS*. Appeal from Sup. Ct. Ill. dismissed for want of final judgment. Reported below: 52 Ill. 2d 472, 288 N. E. 2d 469.

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No. 72-1025. B. P. O. E. LODGE 2043 OF BRUNSWICK ET AL. v. INGRAHAM ET AL. Appeal from Sup. Jud. Ct. Me. dismissed for want of substantial federal question. Reported below: 297 A. 2d 607.

MR. JUSTICE DOUGLAS, with whom MR. JUSTICE STEWART and MR. JUSTICE BLACKMUN concur, dissenting.

Appellants, 15 Maine lodges of the Benevolent and Protective Order of Elks, brought suit against the State Liquor Commission of Maine to enjoin it from denying them liquor licenses under § 1301-A of Tit. 17 of the Maine Rev. Stat. Ann.,¹ which reads:

“No person, firm or corporation holding a license under the State of Maine or any of its subdivisions for the dispensing of food, liquor or for any service or being a State of Maine corporation or a corporation authorized to do business in the State shall withhold membership, its facilities or services to any person on account of race, religion or national origin, except such organizations which are oriented to a particular religion or which are ethnic in character.”

The Elks require a person to be a “white citizen” to be a member.² The Commission denied licenses to the 15 subordinate lodges pursuant to § 55 (8) of Tit. 28

¹ Section 1301-A was added to Tit. 17 in 1969. C. 371, Me. Laws 1969.

² Section 144 of the Elks Stat. Ann. (1972) provides: “No person shall be accepted as a member of this Order unless he be a white citizen of the United States of America, of sound mind and body, of good character, not under the age of Twenty-one years, and a believer in God. No person shall be accepted as a member of this Order who is directly or indirectly a member of or in any way connected or affiliated with the Communist Party, or who believes [in] or advocates the overthrow of our Government by force.”

The bylaws of the National Order apparently are incorporated in the bylaws of each subordinate lodge.

of the Maine Rev. Stat. Ann., which provides that the Commission, in issuing or renewing licenses, "shall give consideration to the character of any applicant, the location of the place of business and the manner in which it has been operated." The Commission stated that the "whites only" limitation of the Elks Constitution established "bad moral character" of the subordinate lodges. The Supreme Judicial Court, reversing a decision of the superior court which had granted appellants a permanent injunction, upheld the Commission's action. The court stated:

"We find it unnecessary to predicate our decision on the specific basis assigned by the Commission to support its actions—i. e., that [appellants] had 'bad moral character.' We conclude, rather, that the Commission's ultimate denial of license renewals was justified under the avowed public policy of the State of Maine, as delineated in the provisions of 17 M. R. S. A. § 1301-A, and the authority afforded the Commission under that statute conjoined with the provisions of 28 M. R. S. A. § 55 (8) allowing the Commission to take into account the 'character' of the plaintiffs (*independently of 'morality' considerations*) and the 'manner' by which they have 'operated.'" 297 A. 2d 607, 610. (Emphasis added.)

In concluding that the Commission was justified in denying the licenses because the lodges had violated the State's public policy embodied in § 1301-A, the court rejected appellants' contention, *inter alia*, that the statute violates the Equal Protection Clause of the Fourteenth Amendment.

Appellants sought a stay pending appeal to this Court, and the state court denied it. A similar application to this Court, eventually referred to the Conference, was

granted, 410 U. S. 903. The Court now dismisses the appeal for want of a substantial federal question. I cannot agree with this disposition.

The Maine court specifically considered appellants' claim that the exception for "organizations which are oriented to a particular religion or which are ethnic in character" violates the Equal Protection Clause because it permits some associations to have liquor licenses notwithstanding their discriminatory membership policies. The court said:

"The fallacy of the argument is that it fails to recognize the differences between: (1) restrictive membership discriminations which are arbitrary, because without rational relationship to the fostering of the legitimate purposes for which the association has come into being, and (2) those which rationally promote such lawfully cognizable objectives. . . .

" . . . Since such organizations are formed to promote lawful objectives which their members share as common interests by virtue of their religious or ethnic identities, their confining of membership to persons who bear the same religious or ethnic identity is a rational classification. It thus lacks the arbitrariness by which discrimination becomes invidious and which is outlawed by the 'equal protection of the laws' clause of the Fourteenth Amendment of the Constitution of the United States when it is the result of State action.

"The exception as here recognized by the State of Maine is, therefore, consistent with the federal Fourteenth Amendment." 297 A. 2d, at 616-617.

Webster's New International Dictionary (2d ed.) tells us that "ethnic" means: "Relating to community of physical and mental traits in races, or designating groups of races of mankind discriminated on the basis of common

customs and characters." The "ethnic" exception in the Act therefore would seem to allow Chinese, Japanese, Malaysian, or African groups to practice discrimination in their lodges and still get liquor licenses but not to allow "whites" the same privilege. As stated long ago in *Strauder v. West Virginia*, 100 U. S. 303, 308:

"If in those States where the colored people constitute a majority of the entire population a law should be enacted excluding all white men from jury service, thus denying to them the privilege of participating equally with the blacks in the administration of justice, we apprehend no one would be heard to claim that it would not be a denial to white men of the equal protection of the laws. Nor if a law should be passed excluding all naturalized Celtic Irishmen, would there be any doubt of its inconsistency with the spirit of the amendment. The very fact that colored people are singled out and expressly denied by a statute all right to participate in the administration of the law, as jurors, because of their color, though they are citizens, and may be in other respects fully qualified, is practically a brand upon them, affixed by the law, an assertion of their inferiority, and a stimulant to that race prejudice which is an impediment to securing to individuals of the race that equal justice which the law aims to secure to all others."

We repeated the same thought in *Hernandez v. Texas*, 347 U. S. 475, 478, in speaking of discrimination against persons of Mexican descent:

"Throughout our history differences in race and color have defined easily identifiable groups which have at times required the aid of the courts in securing equal treatment under the laws. But community prejudices are not static, and from time to time

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other differences from the community norm may define other groups which need the same protection. Whether such a group exists within a community is a question of fact. When the existence of a distinct class is demonstrated, and it is further shown that the laws, as written or as applied, single out that class for different treatment not based on some reasonable classification, the guarantees of the Constitution have been violated. The Fourteenth Amendment is not directed solely against discrimination due to a 'two-class theory'—that is, based upon differences between 'white' and Negro."

That classifications based upon race³ or nationality⁴ are "suspect" and therefore demand close scrutiny is well established. See *San Antonio Ind. School Dist. v. Rodriguez*, *ante*, p. 1, at 104–105. (MARSHALL, J., dissenting). I do not question the State's beneficent motives in attempting to eliminate the scourge of discrimination by whites against nonwhites solely on the basis of color, but I cannot subscribe to the view that the State may legislate against this form of invidious discrimination and, at the same time, sanction and insulate another, albeit less invidious, in the State's eyes. Since the Maine statute and its application by the Supreme Judicial Court raise, in my mind, a substantial question under the Equal Protection Clause, I would note probable jurisdiction.

No. 72-6153. *RUDERER v. UNITED STATES ARMY AVIATION MATERIEL COMMAND ET AL.* Appeal from D. C. E. D. Ill. dismissed for want of jurisdiction. MR. JUSTICE BLACKMUN took no part in the consideration or decision of this appeal.

³ See, e. g., *McLaughlin v. Florida*, 379 U. S. 184, 191–192; *Loving v. Virginia*, 388 U. S. 1, 9.

⁴ See *Oyama v. California*, 332 U. S. 633, 644–646; *Korematsu v. United States*, 323 U. S. 214, 216.

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Certiorari Granted—Reversed and Remanded. (See No. 72-805, *ante*, p. 216.)

Miscellaneous Orders

No. A-1028. WORCESTER CITY HOSPITAL ET AL. *v.* HATHAWAY. C. A. 1st Cir. Application for stay of mandate presented to MR. JUSTICE BRENNAN, and by him referred to the Court, denied. Reported below: 475 F. 2d 701.

No. 72-394. WEINBERGER, SECRETARY OF HEALTH, EDUCATION, AND WELFARE, ET AL. *v.* HYNSON, WESTCOTT & DUNNING, INC.;

No. 72-414. HYNSON, WESTCOTT & DUNNING, INC. *v.* WEINBERGER, SECRETARY OF HEALTH, EDUCATION, AND WELFARE, ET AL.;

No. 72-555. WEINBERGER, SECRETARY OF HEALTH, EDUCATION, AND WELFARE, ET AL. *v.* BENTEX PHARMACEUTICALS, INC., ET AL.;

No. 72-666. USV PHARMACEUTICAL CORP. *v.* WEINBERGER, SECRETARY OF HEALTH, EDUCATION, AND WELFARE, ET AL. C. A. 4th Cir.; and

No. 72-528. CIBA CORP. *v.* WEINBERGER, SECRETARY OF HEALTH EDUCATION, AND WELFARE, ET AL. C. A. 3d Cir. [Certiorari granted, 409 U. S. 1105.] Motions of American Public Health Assn. et al., Pharmaceutical Manufacturers Assn., and Proprietary Assn. for leave to file briefs as *amici curiae* granted.

No. 72-459. SLOAN, TREASURER OF PENNSYLVANIA, ET AL. *v.* LEMON ET AL.; and

No. 72-620. CROUTER *v.* LEMON ET AL. Appeals from D. C. E. D. Pa. [Probable jurisdiction noted, 410 U. S. 907.] Motion of National Education Assn. et al. for leave to file a brief as *amicus curiae* granted.

No. 72-5794. DAVIS *v.* ALASKA. Sup. Ct. Alaska. [Certiorari granted, 410 U. S. 925.] Motion of Arthur Bembury for leave to file a brief as *amicus curiae* granted.

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No. 72-804. RUCKELSHAUS, ADMINISTRATOR, ENVIRONMENTAL PROTECTION AGENCY *v.* SIERRA CLUB ET AL. C. A. D. C. Cir. [Certiorari granted, 409 U. S. 1124.] Motion of the State of Michigan for additional time and for leave to present oral argument as *amicus curiae* denied. MR. JUSTICE DOUGLAS, MR. JUSTICE STEWART, and MR. JUSTICE WHITE would grant the motion.

No. 72-6033. PEDROSA *v.* ELROD, SHERIFF, ET AL.;

No. 72-6227. HAWKINS *v.* WYOMING ET AL.;

No. 72-6249. MUHAMMAD *v.* UNITED STATES;

No. 72-6269. CROW *v.* ARIZONA ET AL.; and

No. 72-6292. TURNER *v.* McCARTHY, MEN'S COLONY SUPERINTENDENT. Motions for leave to file petitions for writs of habeas corpus denied.

No. 72-1111. POKRANDT ET AL. *v.* VAN DUSEN, U. S. CIRCUIT JUDGE. Motion for leave to file petition for writ of mandamus and other relief denied.

Probable Jurisdiction Noted

No. 72-5704. CHRISTIAN ET AL. *v.* NEW YORK STATE DEPARTMENT OF LABOR, DIVISION OF EMPLOYMENT, ET AL. Appeal from D. C. S. D. N. Y. Motion for leave to proceed *in forma pauperis* granted. Probable jurisdiction noted. Reported below: 347 F. Supp. 1158.

Certiorari Granted

No. 72-1154. FOLEY ET AL. *v.* BLAIR & CO., INC., ET AL. C. A. 2d Cir. Certiorari granted. Reported below: 471 F. 2d 178.

No. 72-1076. HUDDLESTON *v.* UNITED STATES. C. A. 9th Cir. Motion to dispense with printing petition and certiorari granted. Reported below: 472 F. 2d 592.

Certiorari Denied

No. 72-824. BOARD OF EDUCATION OF THE CITY OF PLEASANT GROVE *v.* STOUT ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 466 F. 2d 1213.

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No. 72-857. *McKINNON v. CALIFORNIA*. Sup. Ct. Cal. Certiorari denied. Reported below: 7 Cal. 3d 899, 500 P. 2d 1097.

No. 72-1004. *BETHLEHEM STEEL CORP. v. WILLIAMSON ET AL.*; and

No. 72-1246. *UNITED STEELWORKERS OF AMERICA, AFL-CIO, LOCAL UNION 2601, ET AL. v. WILLIAMSON ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 468 F. 2d 1201.

No. 72-1013. *HANNA v. FLORIDA*. Dist. Ct. App. Fla., 4th Dist. Certiorari denied.

No. 72-1028. *FIELD v. UNITED STATES ET AL.* C. A. 2d Cir. Certiorari denied.

No. 72-1031. *KOCHER ET UX. v. UNITED STATES ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 468 F. 2d 503.

No. 72-1032. *LACHMANN v. UNITED STATES*. C. A. 1st Cir. Certiorari denied. Reported below: 469 F. 2d 1043.

No. 72-1034. *BIRCH ET UX v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 470 F. 2d 808.

No. 72-1037. *DIGGS ET AL. v. SHULTZ, SECRETARY OF THE TREASURY, ET AL.* C. A. D. C. Cir. Certiorari denied. Reported below: 152 U. S. App. D. C. 313, 470 F. 2d 461.

No. 72-1042. *STONE v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 471 F. 2d 170.

No. 72-1050. *KOMMANVITTELSKAPET HARWI (ROLF WIGAND) ET AL. v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 467 F. 2d 456.

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No. 72-1051. ROSENBERG *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 72-1066. RIVA *v.* KLEINDIENST, ATTORNEY GENERAL, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 460 F. 2d 1121.

No. 72-1078. JAVOR *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 467 F. 2d 481.

No. 72-1079. ROSENFIELD *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 469 F. 2d 598.

No. 72-1109. CENTRAL SCHOOL DISTRICT NO. 1 ET AL. *v.* RUSSO. C. A. 2d Cir. Certiorari denied. Reported below: 469 F. 2d 623.

No. 72-1123. WILLIAMS *v.* OHIO. Sup. Ct. Ohio. Certiorari denied.

No. 72-1126. HATTERSLEY *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied. Reported below: 487 S. W. 2d 354.

No. 72-1150. DALLAS CABANA, INC., ET AL. *v.* COLLIER, TRUSTEE IN BANKRUPTCY. C. A. 5th Cir. Certiorari denied. Reported below: 469 F. 2d 606.

No. 72-1157. AIR CARGO, INC., ET AL. *v.* BREEN AIR FREIGHT, LTD., ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 470 F. 2d 767.

No. 72-1158. BUILDING & CONSTRUCTION TRADES COUNCIL OF PHILADELPHIA & VICINITY ET AL. *v.* ALTEMOSSE CONSTRUCTION CO. Sup. Ct. Pa. Certiorari denied. Reported below: 449 Pa. 194, 296 A. 2d 504.

No. 72-1177. WELLCO CO. *v.* FRANKLIN. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 5 Ill. App. 3d 731, 283 N. E. 2d 913.

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No. 72-1190. *ALARID ET AL. v. NEW MEXICO BOARD OF BAR EXAMINERS.* Sup. Ct. N. M. Certiorari denied. Reported below: 84 N. M. 472, 505 P. 2d 67.

No. 72-1202. *VALLEY OIL CO. v. CITY OF GARLAND, TEXAS.* Ct. Civ. App. Tex., 5th Sup. Jud. Dist. Certiorari denied. Reported below: 482 S. W. 2d 342.

No. 72-1225. *CITY OF NEW ORLEANS ET AL. v. NEW ORLEANS FIREFIGHTERS ASSN., LOCAL 632, ET AL.* Sup. Ct. La. Certiorari denied. Reported below: 263 La. 649, 269 So. 2d 194.

No. 72-1252. *YODICE v. KONINKLIJKE NEDERLANDSCHE STOOMBOOT MAATSCHAPPIJ.* C. A. 2d Cir. Certiorari denied. Reported below: 471 F. 2d 705.

No. 72-5802. *ROBINSON v. CALIFORNIA.* Ct. App. Cal., 3d App. Dist. Certiorari denied.

No. 72-5950. *BUFORD v. ILLINOIS.* App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 4 Ill. App. 3d 533, 281 N. E. 2d 345.

No. 72-5956. *WEATHINGTON v. FLORIDA.* Dist. Ct. App. Fla., 3d Dist. Certiorari denied. Reported below: 262 So. 2d 724.

No. 72-5958. *BELL v. ILLINOIS.* App. Ct. Ill., 4th Jud. Dist. Certiorari denied. Reported below: 4 Ill. App. 3d 397, 280 N. E. 2d 487.

No. 72-5961. *KELLY v. UNITED STATES.* C. A. 7th Cir. Certiorari denied. Reported below: 467 F. 2d 262.

No. 72-5974. *ECHEVERRIA v. UNITED STATES.* C. A. 2d Cir. Certiorari denied. Reported below: 468 F. 2d 632.

No. 72-5982. *REDUS v. SWENSON, WARDEN.* C. A. 8th Cir. Certiorari denied. Reported below: 468 F. 2d 606.

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No. 72-5992. *MEEKINS v. UNITED STATES*; and

No. 72-6154. *JONES v. UNITED STATES*. C. A. 3d Cir. Certiorari denied.

No. 72-5993. *SULLIVAN v. VIRGINIA*. C. A. 4th Cir. Certiorari denied.

No. 72-6006. *WHAN v. TEXAS*. Ct. Crim. App. Tex. Certiorari denied. Reported below: 485 S. W. 2d 275.

No. 72-6055. *SCREETON v. HUTTO, CORRECTION COMMISSIONER*. C. A. 8th Cir. Certiorari denied.

No. 72-6059. *OLIVER v. TENNESSEE*. Ct. Crim. App. Tenn. Certiorari denied.

No. 72-6060. *TOLBERT v. BRAGAN, WARDEN, ET AL.* C. A. 5th Cir. Certiorari denied.

No. 72-6076. *ESPARZA-RAMIREZ v. UNITED STATES*. C. A. 7th Cir. Certiorari denied.

No. 72-6095. *HOLLAND v. UNITED STATES*. Ct. App. D. C. Certiorari denied.

No. 72-6097. *FIGGERS v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 468 F. 2d 952.

No. 72-6102. *McCULLOUGH ET AL. v. UNITED STATES*. C. A. 10th Cir. Certiorari denied.

No. 72-6108. *WHITE v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 469 F. 2d 1404.

No. 72-6109. *HARRIS v. UNITED STATES*. C. A. 10th Cir. Certiorari denied.

No. 72-6110. *MIRAMON v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 470 F. 2d 1362.

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No. 72-6116. *JENNINGS v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 471 F. 2d 1310.

No. 72-6117. *OWENS v. UNITED STATES*. C. A. 3d Cir. Certiorari denied.

No. 72-6120. *COUNTS v. UNITED STATES*; and

No. 72-6142. *ELAM v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 471 F. 2d 422.

No. 72-6121. *HULL v. UNITED STATES*. C. A. 3d Cir. Certiorari denied.

No. 72-6125. *DICKSON v. UNITED STATES*. C. A. 6th Cir. Certiorari denied.

No. 72-6131. *WARD v. UNITED STATES ET AL.* C. A. 10th Cir. Certiorari denied.

No. 72-6133. *LANDIS v. UNITED STATES*. C. A. 6th Cir. Certiorari denied.

No. 72-6135. *Cox v. UNITED STATES*. C. A. 4th Cir. Certiorari denied.

No. 72-6137. *GUZMAN-AYON v. UNITED STATES*. C. A. 9th Cir. Certiorari denied.

No. 72-6140. *GIANNONI v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 472 F. 2d 136.

No. 72-6144. *PREZZI v. SCHELTER ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 469 F. 2d 691.

No. 72-6146. *SUEL v. ADDINGTON ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 465 F. 2d 889.

No. 72-6148. *RATLIEF v. UNITED STATES*. C. A. 10th Cir. Certiorari denied.

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No. 72-6147. *WILLIAMS v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 470 F. 2d 1339.

No. 72-6159. *JORDAN v. UNITED STATES*. C. A. 4th Cir. Certiorari denied.

No. 72-6163. *COTTEN ET AL. v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 471 F. 2d 744.

No. 72-6165. *HOOK v. UNITED STATES*. C. A. 9th Cir. Certiorari denied.

No. 72-6222. *SPARROW v. UNITED STATES*. C. A. 10th Cir. Certiorari denied. Reported below: 470 F. 2d 885.

No. 72-6226. *FIGUEROA v. ZELKER, CORRECTIONAL SUPERINTENDENT*. C. A. 2d Cir. Certiorari denied.

No. 72-6235. *BOND v. OHIO*. Sup. Ct. Ohio. Certiorari denied. Reported below: 32 Ohio St. 2d 43, 289 N. E. 2d 900.

No. 72-6242. *McKINLEY ET AL. v. FEDERAL NATIONAL MORTGAGE ASSN.* App. Div., Sup. Ct. N. Y., 2d Jud. Dept. Certiorari denied. Reported below: 40 App. Div. 2d 1084, 338 N. Y. S. 2d 589.

No. 72-6246. *HIGH v. WASHINGTON*. Ct. App. Wash. Certiorari denied.

No. 72-6247. *CARTER v. ESTELLE, CORRECTIONS DIRECTOR*. C. A. 5th Cir. Certiorari denied.

No. 72-6251. *LUSTER v. CEDARS OF LEBANON ET AL.* Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 72-6261. *JOSEPH v. OHIO*. Ct. App. Ohio, Summit County. Certiorari denied.

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No. 72-6253. *JACKSON v. WARDEN*. C. A. 4th Cir. Certiorari denied.

No. 72-6256. *SNELL v. WAINWRIGHT, CORRECTIONS DIRECTOR*. C. A. 5th Cir. Certiorari denied.

No. 72-6263. *CHRISTIAN v. CALIFORNIA*. Ct. App. Cal., 2d App. Dist. Certiorari denied. Reported below: 27 Cal. App. 3d 554, 103 Cal. Rptr. 740.

No. 72-6264. *KRIKMANIS v. ROCKEFELLER, GOVERNOR OF NEW YORK, ET AL.* C. A. 2d Cir. Certiorari denied.

No. 72-6267. *BRIGGS ET AL. v. OHIO SAVINGS & TRUST CO. ET AL.* Ct. App. Ohio, Tuscarawas County. Certiorari denied.

No. 72-6273. *BOYD v. NEW MEXICO*. Ct. App. N. M. Certiorari denied. Reported below: 84 N. M. 290, 502 P. 2d 315.

No. 72-6276. *COLBERT v. APEX CARPET FINISHERS, INC., ET AL.* Sup. Ct. Ga. Certiorari denied. Reported below: 229 Ga. 770, 194 S. E. 2d 468.

No. 72-6277. *HANSON v. ILLINOIS*. Sup. Ct. Ill. Certiorari denied. Reported below: 53 Ill. 2d 79, 289 N. E. 2d 611.

No. 72-6289. *SMITH v. SALINE COUNTY DISTRICT COURT*. Sup. Ct. Kan. Certiorari denied.

No. 6294. *KAVALIAUSKAS v. RILEY ET AL.* Sup. Ct. Ill. Certiorari denied.

No. 72-6306. *BURTON v. ILLINOIS*. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 6 Ill. App. 3d 879, 286 N. E. 2d 792.

No. 72-6390. *THWING v. SOUTH DAKOTA*. C. A. 8th Cir. Certiorari denied. Reported below: 470 F. 2d 351.

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No. 72-1038. KRILICH *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 470 F. 2d 341.

No. 72-1056. FIORE, DBA FIORE TRUCKING CO. ET AL. *v.* BRENNAN, SECRETARY OF LABOR, ET AL. C. A. 3d Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 470 F. 2d 1149.

No. 72-1134. REIBERT ET AL. *v.* ATLANTIC RICHFIELD CO. ET AL. C. A. 10th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 471 F. 2d 727.

No. 72-1135. CENTRAL RAILROAD COMPANY OF NEW JERSEY *v.* BAKER, TRUSTEE, ET AL. C. A. 3d Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 469 F. 2d 857.

No. 72-1151. CITY OF SANTA FE ET AL. *v.* SANGRE DE CRISTO DEVELOPMENT CO., INC. Sup. Ct. N. M. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 84 N. M. 343, 503 P. 2d 323.

No. 72-5002. THOMAS *v.* ILLINOIS. Sup. Ct. Ill. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari.

No. 72-5732. DELL *v.* LOUISIANA. C. A. 5th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 468 F. 2d 324.

No. 72-5972. MARTIN *v.* JARRETT, JUDGE. Sup. Ct. App. W. Va. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari.

No. 72-6122. DUVALL *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari.

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No. 72-6124. *ALFORD v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 471 F. 2d 718.

No. 72-6145. *LOPEZ v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari.

No. 72-6252. *JOHNSON ET AL. v. OHIO*. Ct. App. Ohio, Cuyahoga County. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari.

No. 72-6274. *PHILLIPS v. HOCKER, WARDEN*. C. A. 9th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 473 F. 2d 395.

No. 72-937. *ZELKER, CORRECTIONAL SUPERINTENDENT v. ROBINSON*. C. A. 2d Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 468 F. 2d 159.

No. 72-1255. *VOWELL, COMMISSIONER OF PUBLIC WELFARE OF TEXAS v. LOPEZ*. C. A. 5th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 471 F. 2d 690.

No. 72-1024. *LOCAL 268, BROTHERHOOD OF RAILROAD TRAINMEN, ET AL. v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. MR. JUSTICE POWELL took no part in the consideration or decision of this petition. Reported below: 471 F. 2d 582.

No. 72-1101. *SWORDS v. UNITED STATES*. C. A. 3d Cir. Motion to dispense with printing petition granted. Certiorari denied.

No. 72-6048. *WILLIAMS v. ORISCELLO, SHERIFF, ET AL.* C. A. 3d Cir. Certiorari and/or habeas corpus denied.

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Rehearing Denied

No. 71-1022. UNITED STATES *v.* BASYE ET AL., 410 U. S. 441;

No. 71-1598. BRENNAN, SECRETARY OF LABOR *v.* ARNHEIM & NEELY, INC., ET AL., 410 U. S. 512;

No. 72-56. MARKLE ET AL. *v.* ABELE ET AL., 410 U. S. 951;

No. 72-730. MARKLE ET AL. *v.* ABELE ET AL., 410 U. S. 951;

No. 72-841. ECLIPSE FUEL ENGINEERING Co. *v.* MAXON PREMIX BURNER Co., INC., 410 U. S. 929;

No. 72-908. JOFTES *v.* WEXLER ET AL., 410 U. S. 966;

No. 72-946. MUSTO *v.* UNITED STATES, 410 U. S. 982;

No. 72-959. YOUNG *v.* UNITED STATES, 410 U. S. 967;

No. 72-5195. SMITH *v.* SUPREME COURT OF OKLAHOMA, 409 U. S. 1126;

No. 72-5726. FURGERSON *v.* CASPER, 410 U. S. 933;

No. 72-5745. LOPEZ *v.* CALIFORNIA, 410 U. S. 959;

No. 72-5882. WALKER *v.* ALABAMA, 410 U. S. 939;

No. 72-6014. TODD *v.* CARDWELL, WARDEN, 410 U. S. 970;

No. 72-6100. GERARDI *v.* FAVER, 410 U. S. 981; and

No. 72-6129. GERARDI *v.* MACLAUGHLIN ET AL., 410 U. S. 981. Petitions for rehearing denied.

No. 72-434. BYRN, GUARDIAN *v.* NEW YORK CITY HEALTH & HOSPITALS CORP. ET AL., 410 U. S. 949. Motion of Mrs. Arlethia Gilliam et al. for leave to file a brief as *amici curiae* in support of rehearing granted. Petition for rehearing denied.

No. 72-5401. CASON *v.* CITY OF COLUMBUS, 409 U. S. 1053. Motion for leave to supplement petition for rehearing granted. Petition for rehearing denied.

No. 72-5677. HESSEL *v.* ARIZONA ET AL., 410 U. S. 933. Petition for rehearing and other relief denied.

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No. 72-766. CALABRO *v.* UNITED STATES, 410 U. S. 926;

No. 72-5099. DUBOSE *v.* CRAVEN, WARDEN, ET AL., 409 U. S. 1130; and

No. 72-5173. WADDELL *v.* NORTH CAROLINA, 409 U. S. 952. Motions for leave to file petitions for rehearing denied.

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Affirmed on Appeal

No. 72-993. SAGER ET UX. *v.* BURGESS OF POTTSTOWN ET AL. Affirmed on appeal from D. C. E. D. Pa. Reported below: 350 F. Supp. 1310.

No. 72-1104. R-C MOTOR LINES, INC. *v.* UNITED STATES ET AL. Affirmed on appeal from D. C. M. D. Fla. Reported below: 350 F. Supp. 1169.

No. 72-1234. SILVERMAN, ADMINISTRATOR *v.* BROWNING ET AL. Affirmed on appeal from D. C. Conn. MR. JUSTICE DOUGLAS would note probable jurisdiction and set case for oral argument. Reported below: 359 F. Supp. 173.

Appeals Dismissed

No. 71-1263. KAHN ET UX. *v.* ARIZONA STATE TAX COMMISSION. Appeal from Ct. App. Ariz. Motion to dispense with printing jurisdictional statement granted. Appeal dismissed for want of substantial federal question. Reported below: 16 Ariz. App. 17, 490 P. 2d 846.

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

Appellants, after exhausting administrative remedies, brought suit in the Superior Court of the State of Arizona to recover personal income tax assessments paid under protest for the years 1967-1969. The assessments in question were imposed on the income of the appellant

husband (hereafter appellant) which he earned while being employed, first as a law clerk and then later as an attorney for the Navajo Tribe. Appellant's salary was paid out of Indian tribal funds. Appellant and his wife, who are not Indians, resided within the reservation. The Superior Court dismissed the suit for failure to state a claim upon which relief could be granted. The Arizona Supreme Court affirmed the dismissal.

Appellant's employment was controlled by 25 U. S. C. § 81, which governs the conditions under which contracts can be made with Indian tribes or Indians. Even more specifically, appellant's employment was subject to the regulations promulgated by the Secretary of the Interior in 25 CFR §§ 72.1-72.25. Under these regulations, any attorney performing legal services for the Indian tribe must have his employment contract, which includes fees and expenses, approved by the Secretary of the Interior. (25 CFR § 72.1.) In addition, in determining the appropriateness of the fees, the amount of tribal funds held in the tribal treasury, not otherwise appropriated and available for payment, must be considered. (25 CFR § 72.5.) Tribal funds may not be used for payment of attorney fees and expenses in the absence of express authorization by Congress. (25 CFR § 72.6.) In order to be eligible to act as an attorney for an Indian tribe, the area director must review the applying attorney's references and qualifications (25 CFR § 72.4) and transmit a recommendation to the Secretary of the Interior. In order to be qualified to provide such representation, the attorney must be admitted to practice before the Department of the Interior and the bureaus thereof. (25 CFR § 72.2.) An attorney performing legal services for an Indian tribe is subject to criminal penalties for the violation of the statutes governing attorney contracts with Indian tribes (18 U. S. C. § 438), and can be fired by the Secretary of the Interior (*Udall* v.

Littell, 125 U. S. App. D. C. 89, 366 F. 2d 668, cert. denied, 385 U. S. 1007).

As this Court recently stated in *McClanahan v. Arizona State Tax Comm'n*, *ante*, p. 164, at 168, “[t]he policy of leaving Indians free from state jurisdiction and control is deeply rooted in the Nation's history.’ *Rice v. Olson*, 324 U. S. 786, 789 (1945).” In *McClanahan* the Court rejected the theory that nothing remains of the notion that reservation Indians are a separate people to whom state jurisdiction, and therefore state tax legislation, may not extend.

In *Warren Trading Post Co. v. Arizona Tax Comm'n*, 380 U. S. 685, this Court struck down a state attempt to assess a 2% tax on the “gross proceeds of sales, or gross income” of the Warren Trading Post Co., which did retail trading with Indians on the reservation under a license granted by the Commissioner of Indian Affairs. The Court emphasized the comprehensive federal regulatory scheme applicable to persons doing business as Indian traders, which granted the Commissioner of Indian Affairs the authority to appoint the traders, specify the types of goods sold, and regulate the actual running of the business. The Court concluded that these apparently all-inclusive regulations and statutes would be sufficient to show that Congress had taken the business of Indian trading on reservations so fully in hand that no room remained for state laws imposing additional burdens.

Part of the Court's reasoning in *Warren Trading Post*, *supra*, was that “Congress has, since the creation of the Navajo Reservation nearly a century ago, left the Indians on it largely free to run the reservation and its affairs without state control, a policy which has automatically relieved Arizona of all burdens for carrying on those same responsibilities.” Therefore, the Court concluded that “[t]his state tax on gross income would put financial bur-

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dens on appellant or the Indians with whom it deals in addition to those Congress or the tribes have prescribed, and could thereby disturb and disarrange the statutory plan Congress set up in order to protect Indians against prices deemed unfair or unreasonable." *Id.*, at 690, 691.

These policy considerations should also be controlling here. Attorneys providing legal services for Indian tribes are subject to strict Federal Government regulation and control, from the very selection of counsel through negotiations of the employment contract to approval of the form and content of such contract, including fees, and criminal sanctions for the breach of these regulations.

Legal representation has become an important avenue by which the Indian tribes can attempt to salvage a decent lifestyle. Very simply, a skilled professional can afford to take a lower salary if he does not have to pay income taxes to the State. As in the situation of a tax on the income of a trading post, an additional tax on these essential services could indeed "disturb and disarrange the statutory plan Congress set up in order to protect Indians against prices deemed unfair or unreasonable."

I would note probable jurisdiction and not dispose of the case without full argument and briefing.

No. 72-871. *SILVERS v. DOWLING, JUDGE, ET AL.* Appeal from Sup. Ct. La. Motion to dispense with printing jurisdictional statement and motion to dispense with printing motion to dismiss or affirm 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. 72-1007. *MULLARKEY, ADMINISTRATOR v. FLORIDA FEED MILLS, INC., ET AL.* Appeal from Sup. Ct. Fla. dismissed for want of substantial federal question. Reported below: 268 So. 2d 363.

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No. 72-1206. READER'S DIGEST ASSN., INC. *v.* WASHINGTON. Appeal from Sup. Ct. Wash. dismissed for want of substantial federal question. Reported below: 81 Wash. 2d 259, 501 P. 2d 290.

No. 72-6255. RUDERER *v.* UNITED STATES ET AL. Appeal from D. C. E. D. Ill. dismissed for want of jurisdiction. MR. JUSTICE BLACKMUN took no part in the consideration or decision of this appeal.

Certiorari Granted—Vacated and Remanded

No. 72-1130. DENHAM ET AL., DBA DENHAM Co. *v.* NATIONAL LABOR RELATIONS BOARD. C. A. 9th Cir. Certiorari granted, judgment vacated, and case remanded with instructions to remand case to the National Labor Relations Board for such further proceedings as may be appropriate in light of *Burns International Security Services, Inc. v. NLRB*, 406 U. S. 272 (1972). *FTC v. Sperry & Hutchinson Co.*, 405 U. S. 233, 245-250 (1972); *SEC v. Chenery Corp.*, 318 U. S. 80, 87-88 (1943). Reported below: 469 F. 2d 239.

No. 72-6347. BUMPUS *v.* MASSACHUSETTS. Sup. Jud. Ct. Mass. Motion for leave to proceed *in forma pauperis* and certiorari granted. Judgment vacated and case remanded for reconsideration in light of *Ham v. South Carolina*, 409 U. S. 524 (1973). Reported below: — Mass. —, 290 N. E. 2d 167.

Miscellaneous Orders

No. 72-550. BRADLEY ET AL. *v.* STATE BOARD OF EDUCATION OF VIRGINIA ET AL. C. A. 4th Cir. [Certiorari granted, 409 U. S. 1124.] Motion of Black Parents of Atlanta, Georgia, for leave to file an untimely brief as *amici curiae* in support of petitioners granted. MR. JUSTICE POWELL took no part in the consideration or decision of this motion.

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No. 72-694. COMMITTEE FOR PUBLIC EDUCATION & RELIGIOUS LIBERTY ET AL. *v.* NYQUIST, COMMISSIONER OF EDUCATION OF NEW YORK, ET AL.;

No. 72-753. ANDERSON *v.* COMMITTEE FOR PUBLIC EDUCATION & RELIGIOUS LIBERTY ET AL.;

No. 72-791. NYQUIST, COMMISSIONER OF EDUCATION OF NEW YORK, ET AL. *v.* COMMITTEE FOR PUBLIC EDUCATION & RELIGIOUS LIBERTY ET AL.; and

No. 72-929. CHERRY ET AL. *v.* COMMITTEE FOR PUBLIC EDUCATION & RELIGIOUS LIBERTY ET AL. Appeals from D. C. S. D. N. Y. [Probable jurisdiction noted, 410 U. S. 980.] Motion of National Jewish Commission on Law & Public Affairs for leave to file an untimely brief as *amicus curiae* granted.

No. 72-5443. BARNES *v.* UNITED STATES. C. A. 9th Cir. [Certiorari granted, 409 U. S. 1037.] Motion for appointment of counsel granted. It is ordered that Malcolm H. Mackey, Esquire, of Los Angeles, California, a member of the Bar of this Court, be, and he is hereby, appointed *nunc pro tunc* to serve as counsel for petitioner in this Court.

No. 72-6259. THERIAULT ET AL. *v.* ESTABLISHMENT OF RELIGION ON TAXPAYERS' MONEY IN THE FEDERAL BUREAU OF PRISONS ET AL. Motion for leave to file petition for writ of certiorari denied.

No. 72-6298. CARTER *v.* UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT. Motion for leave to file petition for writ of mandamus denied.

Certiorari Granted

No. 72-671. ESPINOZA ET VIR *v.* FARAH MANUFACTURING Co., INC. C. A. 5th Cir. Certiorari granted. Reported below: 462 F. 2d 1331.

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No. 72-1176. NORTH DAKOTA STATE BOARD OF PHARMACY *v.* SNYDER'S DRUG STORES, INC. Sup. Ct. N. D. Certiorari granted. Reported below: 202 N. W. 2d 140.

No. 72-1188. RICHARDSON, SECRETARY OF DEFENSE, ET AL. *v.* RESERVISTS COMMITTEE TO STOP THE WAR ET AL. C. A. D. C. Cir. Certiorari granted.

No. 72-777. CLEVELAND BOARD OF EDUCATION ET AL. *v.* LAFLEUR ET AL. C. A. 6th Cir. Motion to dispense with printing petitioners' supplemental brief granted. Certiorari granted and case set for oral argument with No. 72-1129 [immediately *infra*]. Reported below: 465 F. 2d 1184.

No. 72-1129. COHEN *v.* CHESTERFIELD COUNTY SCHOOL BOARD ET AL. C. A. 4th Cir. Certiorari granted and case set for oral argument with No. 72-777 [immediately *supra*]. Reported below: 474 F. 2d 395.

No. 72-1052. MORTON, SECRETARY OF THE INTERIOR *v.* RUIZ ET UX. C. A. 9th Cir. Motion of respondents for leave to proceed *in forma pauperis* and certiorari granted. Reported below: 462 F. 2d 818.

No. 72-1148. CUPP, PENITENTIARY SUPERINTENDENT *v.* NAUGHTEN. C. A. 9th Cir. Motion of respondent for leave to proceed *in forma pauperis* and certiorari granted. Reported below: 476 F. 2d 845.

Certiorari Denied. (See also No. 72-871, *supra*.)

No. 72-1012. PARKS *v.* MISSISSIPPI. Sup. Ct. Miss. Certiorari denied. Reported below: 267 So. 2d 302.

No. 72-1077. WALTERS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 72-1092. CASSITY *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 471 F. 2d 317.

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No. 72-1085. *COMBS v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 468 F. 2d 1390.

No. 72-1095. *STOCKWELL v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 472 F. 2d 1186.

No. 72-1098. *ORTEGA v. UNITED STATES*; and

No. 72-1103. *ORSINI v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 471 F. 2d 1350.

No. 72-1099. *RUSSO v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 470 F. 2d 681.

No. 72-1102. *INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 57 v. UNITED STATES*. C. A. 1st Cir. Certiorari denied.

No. 72-1140. *GASPARINO v. NEW YORK*. App. Div., Sup. Ct. N. Y., 2d Jud. Dept. Certiorari denied.

No. 72-1184. *CHOCTAW COUNTY BOARD OF EDUCATION v. COLE*. C. A. 5th Cir. Certiorari denied. Reported below: 471 F. 2d 777.

No. 72-1186. *TOP VISION CABLE CO. OF KENTUCKY v. CITY OF OWENSBORO ET AL.* Ct. App. Ky. Certiorari denied. Reported below: 487 S. W. 2d 283.

No. 72-1205. *STOVE, FURNACE & ALLIED APPLIANCE WORKERS' INTERNATIONAL UNION OF NORTH AMERICA, AFL-CIO, LOCAL 123-B v. GAFFERS & SATTLER, INC.* C. A. 9th Cir. Certiorari denied. Reported below: 470 F. 2d 860.

No. 72-1233. *TEXAS MORTGAGE CO. v. PHILLIPS PETROLEUM CO. ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 470 F. 2d 497.

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No. 72-1269. *DAVIDSON v. LONG ISLAND RAILROAD* Co. C. A. 2d Cir. Certiorari denied. Reported below: 469 F. 2d 1404.

No. 72-6026. *DAVIS v. UNITED STATES ET AL.* C. A. 8th Cir. Certiorari denied.

No. 72-6034. *PIPITO v. CADY, WARDEN.* C. A. 7th Cir. Certiorari denied.

No. 72-6038. *MILLER v. CALIFORNIA.* Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 72-6128. *LACEY v. UNITED STATES.* C. A. 9th Cir. Certiorari denied. Reported below: 470 F. 2d 1179.

No. 72-6143. *McGANN v. UNITED STATES.* C. A. 2d Cir. Certiorari denied.

No. 72-6158. *BUENO v. UNITED STATES.* C. A. 5th Cir. Certiorari denied. Reported below: 470 F. 2d 154.

No. 72-6166. *KELLY v. UNITED STATES.* C. A. 6th Cir. Certiorari denied.

No. 72-6173. *HILLMAN v. UNITED STATES.* C. A. 7th Cir. Certiorari denied.

No. 72-6174. *RAGIN v. UNITED STATES.* C. A. 5th Cir. Certiorari denied.

No. 72-6176. *JUSTICE v. UNITED STATES.* C. A. 8th Cir. Certiorari denied.

No. 72-6178. *BATTAGLIA v. UNITED STATES.* C. A. 9th Cir. Certiorari denied. Reported below: 469 F. 2d 686.

No. 72-6194. *McANULTY v. UNITED STATES.* C. A. 8th Cir. Certiorari denied. Reported below: 469 F. 2d 254.

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No. 72-6181. *PLANTE v. UNITED STATES*. C. A. 1st Cir. Certiorari denied. Reported below: 472 F. 2d 829.

No. 72-6192. *STEVISON v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 471 F. 2d 143.

No. 72-6195. *NELSON v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 468 F. 2d 952.

No. 72-6207. *CARBALLEA-CUSIDOR ET AL. v. UNITED STATES*. C. A. 2d Cir. Certiorari denied.

No. 72-6210. *HUFF v. UNITED STATES*. C. A. 10th Cir. Certiorari denied.

No. 72-6297. *McGANN v. UNITED STATES*. C. A. 4th Cir. Certiorari denied.

No. 72-6311. *NUTTER v. REAGAN, GOVERNOR OF CALIFORNIA, ET AL.* C. A. 9th Cir. Certiorari denied.

No. 72-6318. *LANDES v. PAGEANT-POSEIDON, LTD.* C. A. 2d Cir. Certiorari denied.

No. 72-6320. *TURNER v. KENTUCKY*. Ct. App. Ky. Certiorari denied.

No. 72-6331. *SMITH v. MISSOURI*. C. A. 8th Cir. Certiorari denied.

No. 72-6333. *PORTELLI v. LAVALLEE, CORRECTIONAL SUPERINTENDENT*. C. A. 2d Cir. Certiorari denied. Reported below: 469 F. 2d 1239.

No. 72-6337. *CAMPBELL v. VIRGINIA*. Sup. Ct. Va. Certiorari denied.

No. 72-6339. *HOWARD v. GEORGIA*. Sup. Ct. Ga. Certiorari denied. Reported below: 229 Ga. 839, 195 S. E. 2d 14.

No. 72-6340. *RUDMAN v. STONE, CORRECTIONAL SUPERINTENDENT*. C. A. 9th Cir. Certiorari denied.

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No. 72-6341. *MASQUA v. KANSAS*. Sup. Ct. Kan. Certiorari denied. Reported below: 210 Kan. 419, 502 P. 2d 728.

No. 72-6343. *BERNATOWICZ v. TWOMEY, WARDEN*. C. A. 7th Cir. Certiorari denied.

No. 72-6346. *SOWDER v. CITY OF CINCINNATI*. Sup. Ct. Ohio. Certiorari denied.

No. 72-6354. *BAKER v. MARYLAND*. Ct. Sp. App. Md. Certiorari denied.

No. 72-6356. *LOMBARDI v. NEW YORK POST ET AL.* C. A. 2d Cir. Certiorari denied.

No. 72-6360. *HALLOWELL v. DELAWARE*. Sup. Ct. Del. Certiorari denied. Reported below: — Del. —, 298 A. 2d 330.

No. 72-6361. *BRYANT v. PRESCOTT ET AL.* C. A. D. C. Cir. Certiorari denied.

No. 72-6362. *DOSTAL v. NOVAK, CORRECTION ADMINISTRATOR*. C. A. 6th Cir. Certiorari denied.

No. 72-983. *LIGHTMAN v. MARYLAND*. Ct. App. Md. Certiorari denied. Mr. Justice Douglas would grant certiorari. Reported below: 266 Md. 550, 295 A. 2d 212.

No. 72-1096. *NADALINE ET AL. v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Mr. Justice Douglas would grant certiorari. Reported below: 471 F. 2d 340.

No. 72-1142. *MELTON ET UX. v. YOUNG ET AL.* C. A. 6th Cir. Certiorari denied. Mr. Justice Douglas would grant certiorari. Reported below: 465 F. 2d 1332.

No. 72-6183. *SMITH v. UNITED STATES*. Ct. App. D. C. Certiorari denied. Mr. Justice Douglas would grant certiorari. Reported below: 295 A. 2d 64.

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No. 72-1274. STILSON ET UX. *v.* READER'S DIGEST ASSN., INC., ET AL. Ct. App. Cal., 1st App. Dist. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 28 Cal. App. 3d 270, 104 Cal. Rptr. 581.

No. 72-6167. GIORDANO, AKA GINO, ET AL. *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 473 F. 2d 906.

No. 72-1208. PORZUCZEK, GUARDIAN *v.* TOWNER ET AL. Ct. App. Cal., 1st App. Dist. Motion to dispense with printing petition granted. Certiorari denied.

No. 72-6083. SMITH *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 470 F. 2d 1299.

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

Petitioner was originally charged with removing a United States Treasury check from the mail, in violation of 18 U. S. C. § 1702, and uttering a forged Treasury check, in violation of 18 U. S. C. § 495. After a jury trial, petitioner was convicted on the obstruction-of-the-mails charge but acquitted on the uttering charge. Thereafter, petitioner was granted a new trial.¹

Prior to the new trial, a superseding indictment was returned, which repeated the charge of removing a United States Treasury check from the mail in violation of 18 U. S. C. § 1702, but charged forgery of a Treasury check in violation of 18 U. S. C. § 495, rather than the uttering charge on which petitioner had been previously ac-

¹ The trial judge died before sentencing petitioner, and the case was reassigned to another judge who imposed sentence. Unnoticed in the transfer was the fact that the petitioner's motion for a new trial had never been ruled upon. When this was discovered, petitioner was granted a new trial.

quitted. Petitioner moved to dismiss the forgery count, contending that his acquittal at the first trial on the charge of uttering a forged instrument barred the Government from proving, at a second trial, that he was the forger. The District Court denied the motion. The Government moved to dismiss the obstruction-of-the-mails charge.² Petitioner waived his right to jury trial and on a stipulation to the facts alleged in this count was found guilty of forgery.

Petitioner urges that both the forgery and uttering charges should have been prosecuted in a single trial. I would agree. As was stated in the dissent in *Ashe v. Swenson*, 397 U. S. 436, 452: "Given the tendency of modern criminal legislation to divide the phases of a criminal transaction into numerous separate crimes, the opportunities for multiple prosecutions for an essentially unitary criminal episode are frightening." The instant action is a prime example of how the prosecution, with the hindsight of what developed at the initial trial, can thereafter choose another phase of the criminal transaction on which to indict a defendant and force him to go through the emotional and monetary strains of additional litigation.

I would adopt the interpretation of the Double Jeopardy Clause urged by the dissent in *Ashe*. Except in limited circumstances, the prosecution should be required to join in one trial all the charges against a single defendant which grow out of a single criminal act, occurrence, episode, or transaction. Only such an interpretation of the Double Jeopardy Clause will promote justice, economy, and convenience, as well as guard against

² The Government gave the petitioner the option of going to trial on either the charge of forgery or the charge of taking the check from the mails. Petitioner chose the forgery count, expressly acknowledging that he chose it even though the penalties thereunder were the more severe.

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vexatious prosecutions. Such an interpretation is imperative in light of the virtually unreviewable prosecutorial discretion concerning the initiation and scope of a criminal prosecution.

No. 72-6127. *EGGER v. UNITED STATES*. C. A. 9th Cir. Motion for leave to amend petition granted. Certiorari denied. Reported below: 470 F. 2d 1179.

No. 72-6190. *DOUVER v. UNITED STATES*. C. A. 9th Cir. Motions of Jack Harris, Jr., and Joe Mack Harris for leave to join in petition for writ of certiorari denied. Certiorari denied. Reported below: 472 F. 2d 472.

No. 72-6206. *NEELY v. PENNSYLVANIA*. Sup. Ct. Pa. Certiorari denied. Reported below: 449 Pa. 3, 295 A. 2d 75.

MR. JUSTICE DOUGLAS, with whom MR. JUSTICE STEWART and MR. JUSTICE MARSHALL concur, dissenting.

This case presents a question which this Court has not previously answered—under what circumstances a defendant, *prior to sentencing*, may withdraw a guilty plea.¹

¹ Although the opinion of MR. JUSTICE MARSHALL concurring in part and dissenting in part in *Santobello v. New York*, 404 U. S. 257, 267, joined by MR. JUSTICE BRENNAN and MR. JUSTICE STEWART, addressed this question, the Court, vacating petitioner's conviction because the State did not abide by a promise made to petitioner at the time of his guilty plea, remanded for a determination "whether the circumstances of this case require only that there be specific performance of the agreement on the plea, in which case petitioner should be resentenced by a different judge, or whether, in the view of the state court, the circumstances require granting the relief sought by petitioner, *i. e.*, the opportunity to withdraw his plea of guilty." *Id.*, at 263. In *Dukes v. Warden*, 406 U. S. 250, MR. JUSTICE MARSHALL, in dissent, joined by me, again addressed this issue. *Id.*, at 259. The Court, however, considered solely whether petitioner's guilty plea had been voluntary when entered. MR. JUSTICE STEWART

Harold Neely, the petitioner, was indicted by a Berks County, Pennsylvania, grand jury on a charge of murder.² Although petitioner initially pleaded not guilty at his arraignment on November 20, 1969, when his case was called for trial on March 23, 1970, he pleaded guilty on the advice of counsel and with the consent of the district attorney to the lesser included offense of voluntary manslaughter. There is no question that the trial judge, in accepting the plea, complied with the mandate of *Boykin v. Alabama*, 395 U. S. 238, that the record disclose that the plea was entered voluntarily and understandingly. At the same time, upon motion of the district attorney, the charge of murder was withdrawn.

On April 23, 1970, petitioner filed a petition for a rule to show cause why he should not be permitted to withdraw his plea. He alleged that the plea was induced upon advice of counsel "that should the defendant take the witness stand in his own defense, he is the same as any other witness and his credibility is in issue, and that the Commonwealth therefore may introduce evidence of his prior criminal record of conviction"³ At the

concurred on the understanding that the case did not properly present an instance where the defendant had moved to withdraw his guilty plea before judgment. *Id.*, at 258.

² The indictment charged that "on or about July 18, 1969, in said County, the said Harold Neely, feloniously, wilfully and of his malice aforethought did kill and murder Richard Earl Williams, all of which is against the peace and dignity of the Commonwealth of Pennsylvania."

³ The rule to show cause also alleged "[t]hat your petitioner is of the opinion that the Act of March 15, 1911, P. L. 20, Section 1 (19 P. S. 711) prohibits cross-examination by the Commonwealth of a Defendant as to his prior conviction for impeachment purposes unless the Defendant himself has placed his good character and reputation in issue." That Act provides in relevant part:

"Hereafter any person charged with any crime, and called as a witness in his own behalf, shall not be asked, and, if asked, shall

hearing on his petition, which was not held until September 2, 1970, petitioner testified that he had "a statement from a Ronnie Templeton who was an eyewitness originally for the State, who now changes his statement and says he was at another place and that the State's chief witness was with him at the time the shooting occurred, and makes it impossible for any one of them to have seen the incident at all."

The trial judge, without explication, ruled that both asserted reasons for withdrawing the guilty plea were "without merit" and stated that the court was "not aware of any unusual circumstances being present whereby justice will best be served by submitting the case to a jury." The petition to withdraw the plea was dismissed, and petitioner subsequently was sentenced. The Supreme Court of Pennsylvania affirmed.⁴ 449 Pa. 3, 295 A. 2d

not be required to answer, any question tending to show that he has committed, or been charged with, or been convicted of any offense other than the one wherewith he shall then be charged, or tending to show that he has been of bad character or reputation; unless,—

"One. He shall have at such trial, personally or by his advocate, asked questions of the witness for the prosecution with a view to establish his own good reputation or character, or has given evidence tending to prove his own good character or reputation; or,

"Two. He shall have testified at such trial against a co-defendant, charged with the same offense."

The State, in its answer to the rule to show cause, responded that "the line of cases interpreting this section have allowed the Commonwealth to introduce evidence of a Defendant's prior criminal record of conviction of felonies or of misdemeanors in the nature of *crimen falsi* for the purpose of affecting his credibility where a Defendant takes the witness stand in his own defense."

⁴ Three judges, concurring, would have adopted Standard 2.1 (b) of the American Bar Association Project on Standards for Criminal Justice, *Pleas of Guilty* (Approved Draft 1968), which provides:

"In the absence of a showing that withdrawal is necessary to correct a manifest injustice, a defendant may not withdraw his plea of guilty

75. I would grant the petition for a writ of certiorari and set the case for oral argument.

A guilty plea constitutes a waiver of the fundamental rights to a jury trial, *Duncan v. Louisiana*, 391 U. S. 145; to confront one's accusers, *Pointer v. Texas*, 380 U. S. 400; to remain silent, *Malloy v. Hogan*, 378 U. S. 1; and to be convicted by proof beyond all reasonable doubt, *In re Winship*, 397 U. S. 358. In short, we have recognized a "right not to plead guilty." *United States v. Jackson*, 390 U. S. 570, 581. It is because of the waiver of these rights and that a guilty plea is itself a conviction that a guilty plea "demands the utmost solicitude." *Boykin v. Alabama*, *supra*, at 243.

The court below in essence ruled that a defendant may not withdraw a guilty plea prior to sentencing unless there are "unusual circumstances . . . whereby justice will best be served by submitting the case to a jury." In my view, this standard deprived petitioner of the full panoply of fundamental rights subsumed within the right not to plead guilty. I would hold, instead, that "where the defendant presents a reason for vacating his plea and the government has not relied on the plea to its disadvantage, the plea may be vacated and the right to trial regained, at least where the motion to vacate is made prior to sentence and judgment." *Santobello v. New York*, 404 U. S. 257, 267-268 (MARSHALL, J., concurring in part and dissenting in part); see *Dukes v. Warden*, 406 U. S. 250, 257 (STEWART, J., concurring).

or nolo contendere as a matter of right once the plea has been accepted by the court. Before sentence, the court in its discretion may allow the defendant to withdraw his plea for any fair and just reason unless the prosecution has been substantially prejudiced by reliance upon the defendant's plea."

They concluded that under this standard the trial judge had not abused his discretion in refusing to allow petitioner to withdraw his plea.

I start with the premise that under our system of criminal justice a defendant is presumed innocent until proved guilty. Moreover, due process of law requires that a person be convicted by proof beyond all reasonable doubt. *In re Winship*, *supra*. A guilty plea, if it is to be consistent with these principles, should not be allowed to stand if the defendant upon reflection or additional developments seeks *in good faith* to exercise his right to trial. I cannot accept a concept of irrevocable waiver of constitutional rights, at least where the government will not suffer substantial prejudice in restoring those rights. The criminal process is not a contest where the government's success is necessarily measured by the number of convictions it obtains, regardless of the methods used. A conviction after trial accords with due process only if it is based upon a full and fair presentation of all the relevant evidence which bears upon the guilt of the defendant. See, *e. g.*, *Brady v. Maryland*, 373 U. S. 83, 87-88. Similarly, a guilty plea should not be a trap for the unwary or unwilling. We should not countenance the "easy way out" for the State merely because it has induced a guilty plea through a plea bargain.

It is true, of course, that the guilty plea plays an important role in the administration of the criminal law. See, *e. g.*, *Santobello v. New York*, *supra*, at 260. But, the mere interest of the government in avoiding a full-blown trial cannot outweigh the interests of the defendant, when he asserts sufficient reasons, valid on their face, for withdrawing a guilty plea. See *Dukes v. Warden*, *supra*, at 257-258 (STEWART, J., concurring). Here the petitioner claimed that he pleaded guilty on the basis of a misunderstanding of applicable law. Also, he had reason to believe that a key prosecution witness would not testify as originally expected. Presumably, petitioner believed in good faith that he might present

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a successful defense to the charge of murder. In its opposition to the motion to withdraw the plea, the State did not assert any prejudice whatsoever if the plea were withdrawn. Only now, in its opposition to the petition for a writ of certiorari, does the State claim prejudice: “[I]n the truest sense, the Commonwealth does change its position because it requires a total rescheduling of cases with all the difficulties encountered by the calling of witnesses.” This conclusory allegation, absent a showing that the State has suffered inroads on its ability to maintain a prosecution, is not sufficient to override the vindication of petitioner’s fundamental constitutional rights.

Rehearing Denied

No. 71-1332. SAN ANTONIO INDEPENDENT SCHOOL DISTRICT ET AL. *v.* RODRIGUEZ ET AL., *ante*, p. 1;

No. 71-1371. ROSARIO ET AL. *v.* ROCKEFELLER, GOVERNOR OF NEW YORK, ET AL., 410 U. S. 752;

No. 72-842. BRADLEY *v.* FLORIDA, *ante*, p. 916;

No. 72-1010. OHIO MUNICIPAL JUDGES ASSN. ET AL. *v.* DAVIS ET AL., *ante*, p. 144;

No. 72-5860. MURRAY *v.* MISSISSIPPI, *ante*, p. 907;

No. 72-6186. GERARDI *v.* SEAMANS, SECRETARY OF THE AIR FORCE, *ante*, p. 913;

No. 72-6187. GERARDI *v.* JOHNSON, ADMINISTRATOR OF VETERANS AFFAIRS, *ante*, p. 913; and

No. 72-6188. GERARDI *v.* UNITED STATES DEPARTMENT OF JUSTICE, *ante*, p. 913. Petitions for rehearing denied.

No. 71-6778. WILLIAMS *v.* CALIFORNIA, 409 U. S. 1073; and

No. 72-5161. SAFFIOTI *v.* UNITED STATES, 409 U. S. 908. Motions for leave to file petitions for rehearing denied.

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No. 72-794. *PAPISH v. BOARD OF CURATORS OF THE UNIVERSITY OF MISSOURI ET AL.*, 410 U. S. 667. Motion of Citizens for Decent Literature, Inc., for leave to file a brief as *amicus curiae* in support of rehearing granted. Petition for rehearing denied.

APRIL 24, 1973

*Miscellaneous Order**

Certiorari Granted. (See No. 72-11, *ante*, p. 389.)

MAY 1, 1973

Dismissals Under Rule 60

No. 72-6114. *MATTHEWS v. UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF FLORIDA*. Motion for leave to file petition for writ of mandamus dismissed under Rule 60 of the Rules of this Court.

No. 72-6451. *MARTINEZ v. UNITED STATES*. C. A. 5th Cir. Petition for writ of certiorari dismissed under Rule 60 of the Rules of this Court. Reported below: 471 F. 2d 652.

MAY 4, 1973

Miscellaneous Order

No. A-1110. *DOE ET AL. v. BELLIN MEMORIAL HOSPITAL ET AL.* Application to vacate stay order of Honorable John Paul Stevens of the United States Court of Appeals for the Seventh Circuit, dated May 3, 1973, presented to Mr. JUSTICE REHNQUIST, and by him referred to the Court, denied. Mr. JUSTICE WHITE and Mr. JUSTICE MARSHALL took no part in the consideration or decision of this order.

*For Court's order prescribing Bankruptcy Rules and Official Bankruptcy Forms, see *post*, p. 991.

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Affirmed on Appeal

No. 72-1003. *MERTES v. MERTES ET AL.* Affirmed on appeal from D. C. Del. MR. JUSTICE DOUGLAS would note probable jurisdiction and set case for oral argument. Reported below: 350 F. Supp. 472.

No. 72-1334. *FINCHER v. SCOTT ET AL.* Affirmed on appeal from D. C. M. D. N. C. MR. JUSTICE DOUGLAS would note probable jurisdiction and set case for oral argument. Reported below: 352 F. Supp. 117.

Appeals Dismissed

No. 72-1238. *BEENE ET AL. v. LOUISIANA.* Appeal from Sup. Ct. La. dismissed for want of substantial federal question. Reported below: 263 La. 865, 269 So. 2d 794.

No. 72-6149. *HOUSE v. ST. AGNES HOSPITAL, INC., ET AL.* 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. 72-6260. *WITZKOWSKI v. ILLINOIS.* Appeal from Sup. Ct. Ill. dismissed for want of final judgment.

No. 72-6271. *RUDERER v. VANCE ET AL.* Appeal from D. C. D. C. dismissed for want of jurisdiction. MR. JUSTICE BLACKMUN took no part in the consideration or decision of this appeal.

Certiorari Granted—Vacated and Remanded. (See also No. 72-6011, *ante*, p. 618.)

No. 71-1562. *CHOUNG v. LOWE, SHERIFF.* C. A. 9th Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Hensley v. Municipal Court, San Jose-Milpitas Judicial District*, *ante*, p. 345. Reported below: 456 F. 2d 176.

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No. 71-6836. *GUNSTON v. SUPERIOR COURT OF ALAMEDA COUNTY*. 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 *Hensley v. Municipal Court, San Jose-Milpitas Judicial District*, *ante*, p. 345.

Miscellaneous Orders

No. D-9. *IN RE DISBARMENT OF THALER*. It having been reported that Seymour R. Thaler 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 February 20, 1973 [410 U. S. 921], having suspended the said Seymour R. Thaler 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 respondent and that the time within which to file a return to the rule has expired;

It is ordered that the said Seymour R. Thaler 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. 72-812. *STORER ET AL. v. BROWN, SECRETARY OF STATE OF CALIFORNIA, ET AL.* Appeal from D. C. N. D. Cal. [Probable jurisdiction noted, 410 U. S. 965.] Motion of Committee for Democratic Election Laws for leave to file a brief as *amicus curiae* in support of appellants granted.

No. 72-1428. *ELLER ET AL. v. VAUGHNS ET AL.* C. A. 4th Cir. Motion to advance and for *pendente lite* relief denied.

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No. 72-6272. HIGGS *v.* SCHLESINGER, DIRECTOR, CENTRAL INTELLIGENCE AGENCY, ET AL. Motion for leave to file petition for writ of certiorari denied.

No. 72-6348. IN RE STYPMANN;

No. 72-6407. MAJCHSZAK, AKA MAJORS *v.* UNITED STATES;

No. 72-6421. LODDY *v.* WYOMING ET AL.; and

No. 72-6437. HAWKINS *v.* MEACHAM, WARDEN, ET AL. Motions for leave to file petitions for writs of habeas corpus denied.

No. 72-1171. GARNER *v.* CHAMBERS, CHIEF JUDGE, U. S. COURT OF APPEALS, ET AL. Motion for leave to file petition for writ of prohibition and/or mandamus denied.

Probable Jurisdiction Noted

No. 72-1058. O'BRIEN ET AL. *v.* SKINNER, SHERIFF, ET AL. Appeal from Ct. App. N. Y. Probable jurisdiction noted. Reported below: 31 N. Y. 2d 317, 291 N. E. 2d 134.

No. 72-1125. ALLEE ET AL. *v.* MEDRANO ET AL. Appeal from D. C. S. D. Tex. Probable jurisdiction noted. Reported below: 347 F. Supp. 605.

Certiorari Granted

No. 72-1019. SEA-LAND SERVICES, INC. *v.* GAUDET, ADMINISTRATRIX. C. A. 5th Cir. Certiorari granted. Reported below: 463 F. 2d 1331.

No. 72-1195. AMERICAN PIPE & CONSTRUCTION CO. ET AL. *v.* UTAH ET AL. C. A. 9th Cir. Certiorari granted. Reported below: 473 F. 2d 580.

No. 72-1168. UNITED STATES *v.* MAZE. C. A. 6th Cir. Motion of respondent for leave to proceed *in forma pauperis* and certiorari granted. Reported below: 468 F. 2d 529.

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No. 72-1231. NATIONAL LABOR RELATIONS BOARD *v.* SAVAIR MANUFACTURING CO. C. A. 6th Cir. Certiorari granted. Reported below: 470 F. 2d 305.

No. 72-1264. MAYOR OF PHILADELPHIA *v.* EDUCATIONAL EQUALITY LEAGUE ET AL. C. A. 3d Cir. Motion of respondents to dispense with printing response and certiorari granted. Reported below: 472 F. 2d 612.

No. 71-6852. LUBIN *v.* ALLISON, REGISTRAR-RECORDER OF COUNTY OF LOS ANGELES. Sup. Ct. Cal. Motion for leave to proceed *in forma pauperis* and certiorari granted. In addition to questions presented in the petition, parties should address themselves to question whether it is the candidate's indigency or the indigency of his supporting group that is the relevant issue in this case.

Certiorari Denied. (See also No. 72-6149, *supra*.)

No. 72-274. COHEN *v.* HONGISTO, SHERIFF, ET AL. C. A. 9th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari.

No. 72-786. BASEY *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 468 F. 2d 194.

No. 72-951. SALEM EQUIPMENT, INC., ET AL. *v.* KOCKUM INDUSTRIES, INC. C. A. 9th Cir. Certiorari denied. Reported below: 467 F. 2d 61.

No. 72-981. PIERRO *v.* UNITED STATES; and

No. 72-6266. PANICA *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 470 F. 2d 865.

No. 72-1068. SVEJCAR *v.* UNITED STATES; and

No. 72-1069. GRIZAFFI ET AL. *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 471 F. 2d 69.

No. 72-1091. HEITZLER *v.* O'NEILL, CHIEF JUSTICE, SUPREME COURT OF OHIO, ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 472 F. 2d 789.

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No. 72-1086. *DELONG CORP. ET AL. v. OREGON, BY AND THROUGH STATE HIGHWAY COMMISSION.* Sup. Ct. Ore. Certiorari denied. Reported below: See 9 Ore. App. 550, 495 P. 2d 1215.

No. 72-1100. *JENNING v. UNITED STATES.* C. A. 9th Cir. Certiorari denied.

No. 72-1124. *HYDROCRAFT, INC., ET AL. v. PANTHER PUMPS & EQUIPMENT CO., INC.* C. A. 7th Cir. Certiorari denied. Reported below: 468 F. 2d 225.

No. 72-1127. *O. M. SCOTT & SONS CO. v. NOLL ET AL., TRUSTEES.* C. A. 6th Cir. Certiorari denied. Reported below: 467 F. 2d 295.

No. 72-1133. *MORRIS ET AL. v. WERNER-CONTINENTAL, INC., ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 466 F. 2d 1185.

No. 72-1137. *CITY OF NEW HAVEN v. TOWN OF EAST HAVEN ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 470 F. 2d 148.

No. 72-1138. *HARRISON v. UNITED STATES.* C. A. 2d Cir. Certiorari denied.

No. 72-1141. *DE POMPEIS v. UNITED STATES.* C. A. 2d Cir. Certiorari denied. Reported below: 470 F. 2d 878.

No. 72-1144. *LOMPREZ ET AL. v. UNITED STATES.* C. A. 7th Cir. Certiorari denied. Reported below: 472 F. 2d 860.

No. 72-1156. *PARENTI v. UNITED STATES.* C. A. 3d Cir. Certiorari denied. Reported below: 470 F. 2d 1175.

No. 72-1160. *LUCAS v. UNITED STATES;* and

No. 72-6232. *JIMINEZ v. UNITED STATES.* C. A. 2d Cir. Certiorari denied.

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No. 72-1174. *SAGLIMBENE v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 471 F. 2d 16.

No. 72-1175. *LOBUE v. UNITED STATES*. C. A. 2d Cir. Certiorari denied.

No. 72-1189. *JOHNSON ET AL. v. WARNER, SECRETARY OF THE NAVY, ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 469 F. 2d 1216.

No. 72-1192. *BOSTIC v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 473 F. 2d 1388.

No. 72-1216. *BAKER ET AL. v. F & F INVESTMENT ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 470 F. 2d 778.

No. 72-1226. *BRIERLEY, WARDEN v. PHELAN*. C. A. 3d Cir. Certiorari denied.

No. 72-1230. *YOUNG v. CALIFORNIA*. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 72-1237. *SERVICE INVESTMENT CO., INC. v. STATE MUTUAL LIFE ASSURANCE COMPANY OF AMERICA*. C. A. 6th Cir. Certiorari denied.

No. 72-1241. *ILLMAN v. TOLEDO BAR ASSN.* Sup. Ct. Ohio. Certiorari denied.

No. 72-1242. *DURELL PRODUCTS, INC. v. AJAX REALTY CORP.* C. A. 4th Cir. Certiorari denied. Reported below: 493 F. 2d 818.

No. 72-1248. *MULTARI EQUIPMENT CORP. ET AL. v. NEW YORK*. App. Div., Sup. Ct. N. Y., 2d Jud. Dept. Certiorari denied. Reported below: 40 App. Div. 2d 836, 337 N. Y. S. 2d 295.

No. 72-1263. *WILK ET AL. v. YELLOW FREIGHT SYSTEM, INC., ET AL.* C. A. 6th Cir. Certiorari denied.

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No. 72-1258. HEITZLER *v.* CINCINNATI BAR ASSN. Sup. Ct. Ohio. Certiorari denied. Reported below: 32 Ohio St. 2d 214, 291 N. E. 2d 477.

No. 72-1261. DETROIT TYPOGRAPHICAL UNION No. 18, INTERNATIONAL TYPOGRAPHICAL UNION *v.* DETROIT NEWSPAPER PUBLISHERS ASSN. ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 471 F. 2d 872.

No. 72-1273. COHEN *v.* MONGIARDO ET AL. Super. Ct. N. J. Certiorari denied.

No. 72-1276. COLEMAN OIL Co., INC. *v.* CITIES SERVICE OIL Co. C. A. 1st Cir. Certiorari denied. Reported below: 470 F. 2d 925.

No. 72-1277. Rafter *v.* BLACKMON ET AL. C. A. 2d Cir. Certiorari denied.

No. 72-1278. BOARD OF JUNIOR COLLEGE DISTRICT No. 515 ET AL. *v.* HOSTROP. C. A. 7th Cir. Certiorari denied. Reported below: 471 F. 2d 488.

No. 72-1280. DAMCO TESTERS, INC., ET AL. *v.* SUPERIOR TESTERS, INC. C. A. 5th Cir. Certiorari denied. Reported below: 468 F. 2d 629.

No. 72-1283. MR. BOSTON DISTILLER CORP. ET AL. *v.* PALLOT ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 469 F. 2d 337.

No. 72-1286. CIRAOLO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 471 F. 2d 419.

No. 72-1326. BUFORD ET AL. *v.* SOUTHEAST DUBOIS COUNTY SCHOOL CORP. C. A. 7th Cir. Certiorari denied. Reported below: 472 F. 2d 890.

No. 72-5964. BLACK ET AL. *v.* ILLINOIS. Sup. Ct. Ill. Certiorari denied. Reported below: 52 Ill. 2d 544, 288 N. E. 2d 376.

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No. 72-5797. *WILLIAMS v. MARYLAND*. Ct. Sp. App. Md. Certiorari denied.

No. 72-5995. *HAYWOOD v. MARYLAND*. Ct. Sp. App. Md. Certiorari denied.

No. 72-6066. *RICHARD v. CALIFORNIA*. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 72-6080. *KRUSE v. GAGNON, WARDEN*. C. A. 7th Cir. Certiorari denied.

No. 72-6084. *BOAG v. CRAVEN, WARDEN*. C. A. 9th Cir. Certiorari denied.

No. 72-6086. *WHITE v. BROUH, WARDEN*. C. A. 4th Cir. Certiorari denied.

No. 72-6092. *JONES v. MISSOURI*. C. A. 8th Cir. Certiorari denied.

No. 72-6093. *CARTER v. GUPTON, JUDGE, ET AL.* Sup. Ct. Tex. Certiorari denied.

No. 72-6094. *BRITTAINE v. WHALEN ET AL.* C. A. 7th Cir. Certiorari denied.

No. 72-6096. *COLE v. FLORIDA*. Dist. Ct. App. Fla., 3d Dist. Certiorari denied. Reported below: 262 So. 2d 902.

No. 72-6112. *CONKLIN v. BRITTON, WARDEN*. C. A. 10th Cir. Certiorari denied.

No. 72-6151. *MORRIS v. VIRGINIA*. Sup. Ct. Va. Certiorari denied.

No. 72-6162. *NELSON v. CALIFORNIA*. Sup. Ct. Cal. Certiorari denied. Reported below: 8 Cal. 3d 463, 503 P. 2d 1322.

No. 72-6171. *DEMPSEY v. WAINWRIGHT, CORRECTIONS DIRECTOR*. C. A. 5th Cir. Certiorari denied.

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No. 72-6175. *DEAN v. UNITED STATES*. C. A. 1st Cir.
Certiorari denied.

No. 72-6177. *ELLIS v. TWOMEY, WARDEN*. C. A. 7th Cir.
Certiorari denied.

No. 72-6179. *HAYLES ET AL. v. UNITED STATES*. C. A. 5th Cir.
Certiorari denied. Reported below: 471 F. 2d 788.

No. 72-6202. *PAGE v. UNITED STATES*. C. A. 1st Cir.
Certiorari denied.

No. 72-6209. *RIVERS v. UNITED STATES*. C. A. 4th Cir.
Certiorari denied. Reported below: 468 F. 2d 1355.

No. 72-6216. *ANDERSON v. UNITED STATES*. C. A. 9th Cir.
Certiorari denied.

No. 72-6218. *GOODWIN v. UNITED STATES*. C. A. 5th Cir.
Certiorari denied. Reported below: 470 F. 2d 893.

No. 72-6228. *BALTIERRA-FRAUSTO v. UNITED STATES*. C. A. 9th Cir.
Certiorari denied. Reported below: 472 F. 2d 597.

No. 72-6229. *WALKER v. UNITED STATES*. C. A. 8th Cir.
Certiorari denied.

No. 72-6234. *RODRIQUEZ v. UNITED STATES*. C. A. 2d Cir.
Certiorari denied. Reported below: 472 F. 2d 982.

No. 72-6236. *JARRATT v. UNITED STATES*. C. A. 9th Cir.
Certiorari denied. Reported below: 471 F. 2d 226.

No. 72-6239. *BOZADA v. UNITED STATES*. C. A. 8th Cir.
Certiorari denied. Reported below: 473 F. 2d 389.

No. 72-6243. *LEACH v. UNITED STATES*. C. A. 6th Cir.
Certiorari denied. Reported below: 472 F. 2d 130.

No. 72-6245. *COLLETTI v. FARE*. Ct. App. Cal., 4th App. Dist. Certiorari denied.

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No. 72-6248. *CULP v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 472 F. 2d 459.

No. 72-6250. *FAULKENBERY v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 472 F. 2d 879.

No. 72-6268. *SMITH v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 474 F. 2d 844.

No. 72-6278. *VASQUEZ-VELASCO v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 471 F. 2d 294.

No. 72-6279. *SMITH v. RODGERS, JAIL SUPERINTENDENT*. C. A. D. C. Cir. Certiorari denied.

No. 72-6280. *CHAPMAN v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 472 F. 2d 117.

No. 72-6284. *ROOTES v. UNITED STATES*. C. A. 6th Cir. Certiorari denied.

No. 72-6285. *VALLE-ROJAS v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 469 F. 2d 79.

No. 72-6296. *SAPPINGTON v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 468 F. 2d 1378.

No. 72-6300. *SPROUSE v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 472 F. 2d 1167.

No. 72-6305. *MALINOWSKI v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 472 F. 2d 850.

No. 72-6307. *PIGG v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 471 F. 2d 843.

No. 72-6330. *McCLOUD v. GOWAN ET AL.* C. A. 5th Cir. Certiorari denied.

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No. 72-6369. *Cosco v. MEACHAM ET AL.* Sup. Ct. Wyo. Certiorari denied.

No. 72-6371. *PADILLA v. CALIFORNIA ET AL.* C. A. 9th Cir. Certiorari denied.

No. 72-6380. *MOCK v. ROSE, WARDEN.* C. A. 6th Cir. Certiorari denied. Reported below: 472 F. 2d 619.

No. 72-6381. *JONES v. NEW YORK.* App. Div., Sup. Ct. N. Y., 4th Jud. Dept. Certiorari denied.

No. 72-6382. *NEAL v. HOWARD JOHNSON, INC., ET AL.* Ct. App. Ga. Certiorari denied. Reported below: 126 Ga. App. 560, 191 S. E. 2d 350.

No. 72-6383. *STAHL v. HENDERSON, WARDEN.* C. A. 5th Cir. Certiorari denied.

No. 72-6387. *WOOLSEY v. ESTELLE, CORRECTIONS DIRECTOR.* C. A. 5th Cir. Certiorari denied. Reported below: 469 F. 2d 1407.

No. 72-6397. *OLLER v. CRAVEN, WARDEN.* C. A. 9th Cir. Certiorari denied.

No. 72-6399. *ELLISON v. ESTELLE, CORRECTIONS DIRECTOR.* C. A. 5th Cir. Certiorari denied.

No. 72-6403. *ALDABE v. ALDABE ET AL.* Ct. App. Cal., 3d App. Dist. Certiorari denied.

No. 72-6409. *HAWKINS v. HAWKINS.* Sup. Ct. N. C. Certiorari denied.

No. 72-6416. *MUERY v. MUERY.* Sup. Ct. Ala. Certiorari denied.

No. 72-6423. *MENDES v. BROTHERHOOD OF RAILWAY & AIRLINE CLERKS, FREIGHT HANDLERS, EXPRESS & STATION EMPLOYEES, AFL-CIO-CLC, ET AL.* C. A. 2d Cir. Certiorari denied.

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No. 72-6417. *RICHARDSON v. TEXAS*. Ct. Crim. App. Tex. Certiorari denied. Reported below: 487 S. W. 2d 719.

No. 72-6471. *PIZZOLATO v. SECRETARY, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE*. C. A. 2d Cir. Certiorari denied.

No. 72-992. *MURRAY v. VIRGINIA*. Sup. Ct. Va. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari.

No. 72-1136. *WEATHERFORD ET AL. v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 471 F. 2d 47.

No. 72-1159. *HABIG ET AL. v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 474 F. 2d 57.

No. 72-1244. *CLARK v. HOLMES ET AL.* C. A. 7th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 474 F. 2d 928.

No. 72-6106. *BLACKMAN v. FLORIDA*. Dist. Ct. App. Fla., 3d Dist. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 265 So. 2d 734.

No. 72-6257. *MITCHELL v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 472 F. 2d 1223.

No. 72-6262. *HARVEY v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 463 F. 2d 1022.

No. 72-6374. *RANDO v. ESTELLE, CORRECTIONS DIRECTOR*. C. A. 5th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 471 F. 2d 651.

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No. 72-6378. *THOMAS v. COWAN, PENITENTIARY SUPERINTENDENT.* C. A. 6th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 469 F. 2d 657.

No. 72-6472. *TURNER v. CLINCHFIELD RAILROAD CO.* Ct. App. Tenn. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 489 S. W. 2d 257.

No. 72-976. *WOODBURY ET AL. v. COLLER, JUDGE, ET AL.* Sup. Ct. Ohio. Motion to dispense with printing petition granted. Certiorari denied. Reported below: 31 Ohio St. 2d 195, 287 N. E. 2d 802.

No. 72-1149. *CARTER ET AL. v. STRAIGHT ET AL.* Ct. App. Ohio, Gallia County. Motion to dispense with printing petition granted. Certiorari denied.

No. 72-1161. *GENERAL MOTORS CORP. v. DEVEX CORP. ET AL.* C. A. 3d Cir. Certiorari denied. MR. JUSTICE POWELL took no part in the consideration or decision of this petition. Reported below: 467 F. 2d 257.

No. 72-1272. *BELTRONE v. GENERAL MOTORS CORP. ET AL.* C. A. D. C. Cir. Certiorari denied. MR. JUSTICE POWELL took no part in the consideration or decision of this petition.

No. 72-6213. *HUNTER v. GENERAL MOTORS CORP. ET AL.* C. A. 6th Cir. Certiorari denied. MR. JUSTICE POWELL took no part in the consideration or decision of this petition.

No. 72-1253. *WALSH, TRUSTEE IN BANKRUPTCY, ET AL. v. CEDOR ET AL.* C. A. 9th Cir. Motion of respondents for leave to proceed *in forma pauperis* granted. Certiorari denied. MR. JUSTICE BLACKMUN would grant certiorari. Reported below: 470 F. 2d 996.

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No. 72-5572. *GAY v. UNITED STATES.* Ct. App. D. C.
Certiorari denied.

MR. JUSTICE DOUGLAS, with whom MR. JUSTICE BRENNAN, MR. JUSTICE STEWART, and MR. JUSTICE MARSHALL concur, dissenting.

Petitioner was convicted of larceny. The District of Columbia Court of Appeals reversed. 241 A. 2d 446. The United States Court of Appeals reversed the latter court, 133 U. S. App. D. C. 337, 410 F. 2d 1036, and remanded the case to the District of Columbia Court of Appeals for a ruling on the propriety of the trial court's instruction. That court held that the instructions had not been prejudicial, 259 A. 2d 593, and the United States Court of Appeals affirmed. Thereafter petitioner sought relief by way of *coram nobis*. The trial court dismissed the case without prejudice and the District of Columbia Court of Appeals affirmed.

During the time petitioner's original or direct appeal was being considered by the court, Frank Q. Nebeker was Assistant United States Attorney in charge of the Appellate Section in the office of the United States Attorney for the District. One of his duties was to review the appellate briefs submitted by that office to the appellate courts. His name was on the brief opposing petitioner on the appeal. He was named to the District of Columbia Court of Appeals by President Nixon in May of 1969.

When the *coram nobis* action was brought to the District of Columbia Court of Appeals it was heard by a three-judge panel which included Judge Nebeker.

His prior role in the case was not brought to his attention and he doubtless was unaware of the fact that this case had been one of the many hundreds he had processed while in the United States Attorney's office.

Nonetheless Canon 3C (1)(b) of the recently adopted Code of Judicial Conduct provides:

"A judge should disqualify himself in a proceeding in which his impartiality might reasonably be questioned, including but not limited to instances where . . . he served as lawyer in the matter in controversy"

This Canon, as it applies to this case, is merely a reflection of the basic concept of due process of law that a person should not serve as both prosecutor and judge.

The matter might not be considered of any great moment here if the three judges in the panel had taken part. But one of the three, Judge Yeagley, did not participate in the decision. Hence, in one view there was only a single qualified judge sitting on the appeal. That fact makes singularly appropriate the suggestion of the Solicitor General that it may be just, under the circumstances, to vacate the judgment of the District of Columbia Court of Appeals and remand for further proceedings. I would do just that.

Although this issue may not rise to the level of a constitutional question and there is no federal statute involved, we should take this action under our supervisory authority over the administration of justice in the federal courts. See, *e. g.*, *Mallory v. United States*, 354 U. S. 449, 452-453; *McNabb v. United States*, 318 U. S. 332, 341; *Nardone v. United States*, 308 U. S. 338, 341-342. The District of Columbia Court of Appeals, established by Congress pursuant to Art. I, § 8, cl. 17, of the Constitution,¹ clearly is within the parameters of the federal

¹ See § 111 of the District of Columbia Court Reform and Criminal Procedure Act of 1970, 84 Stat. 475, D. C. Code Ann. § 11-101 (2)(A) (Supp. V, 1972). We discussed the differences between "legislative," or Art. I, courts and "constitutional," or Art. III, courts

court system. See *Embry v. Palmer*, 107 U. S. 3, 10; *Moss v. United States*, 23 App. D. C. 475, 482-483. The judges of that court are appointed, with the advice and consent of the Senate, by the President.² It is true, of course, that this Court normally will not review decisions of the courts of the District of Columbia which involve merely questions of "local law." See, e. g., *General Motors Corp. v. District of Columbia*, 380 U. S. 553, 556-557; *Griffin v. United States*, 336 U. S. 704, 717-718. To this extent the courts of the District may be comparable to state courts.³ Nevertheless, we heretofore have exercised jurisdiction where a decision "has an impact not confined to the Potomac's shores" *General Motors Corp. v. District of Columbia*, *supra*, at 556. See also *Miller v. United States*, 357 U. S. 301, 306.

in *Palmore v. United States*, *ante*, p. 389, and *Glidden Co. v. Zdanok*, 370 U. S. 530.

² District of Columbia Court Reform and Criminal Procedure Act of 1970, D. C. Code Ann. § 11-1501 (a).

³ The House Report states that the District of Columbia Court of Appeals will be "the highest court in the jurisdiction, similar to a state Supreme Court," H. R. Rep. No. 91-907, p. 23, and that "[t]he jurisdictional changes recommended by your Committee will result in a Federal-State court system in the District of Columbia analogous to the court systems in the several States." *Id.*, at 35.

The Senate Report states:

"This constitutional authority for the creation of a local court system, distinct from the Federal court system established pursuant to article III, has been recognized in *Keller v. Potomac Electric Power Co.*, 261 U. S. 428 (1923); *Federal Radio Commission v. General Electric Co.*, 281 U. S. 464 (1930); and *O'Donoghue v. United States*, 289 U. S. 516 (1933). The committee believes that there is nothing in the result reached in *Glidden v. Zdanok*, 370 U. S. 530 (1962), which denies the congressional authority to create a local court system for the District of Columbia which is distinct from the Federal court system." S. Rep. No. 91-405, p. 18.

The statement that the new D. C. court system is "distinct from the Federal court system" obviously relates only to the distinction between Art. I and Art. III courts. See n. 1, *supra*.

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In this case any appearance of impropriety may reflect adversely on the federal judiciary as a whole. Canon 1 of the Code of Judicial Conduct states that “[a]n independent and honorable judiciary is indispensable to justice in our society.” Canon 2 provides that a judge “should conduct himself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary,” and the commentary to that Canon states that he “must avoid all impropriety and appearance of impropriety.” We must bear the ultimate responsibility, within the limits of our jurisdiction,⁴ for insuring that the federal judiciary adheres scrupulously to these principles of impartial adjudication.

Rehearing Denied

No. 60, Orig. *PENNSYLVANIA v. NEW YORK ET AL.*, 410 U. S. 978;

No. 71-1515. *RODOVICH v. UNITED STATES*, 409 U. S. 846;

No. 72-921. *NEWPORT ASSOCIATES, INC. v. SOLOW*, 410 U. S. 931;

No. 72-1015. *TRED-AIR OF CALIFORNIA, INC. v. NATIONAL LABOR RELATIONS BOARD*, *ante*, p. 906;

No. 72-1080. *PELTZMAN v. AMERICAN RADIO ASSN. ET AL.*, *ante*, p. 916;

No. 72-1082. *BENNERS, EXECUTRIX v. CITY OF UNIVERSITY PARK*, *ante*, p. 901; and

No. 72-5066. *Ross v. UNITED STATES*, 410 U. S. 990. Petitions for rehearing denied.

⁴ This Court has jurisdiction under 28 U. S. C. § 1257 (3). See District of Columbia Court Reform and Criminal Procedure Act of 1970, *supra*, § 11-102. Under 28 U. S. C. § 2106, we may vacate the judgment below and “require such further proceedings to be had as may be just under the circumstances.”

While four of us would grant certiorari and vacate the judgment, we do not insist on oral argument.

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No. 72-5707. *BASSETT v. SMITH, WARDEN*, 410 U. S. 991;

No. 72-5725. *POLAK v. CRAVEN, WARDEN*, 410 U. S. 984;

No. 72-5811. *LARGE v. OHIO*, 410 U. S. 912;

No. 72-5897. *BROWN v. CARDWELL, WARDEN*, *ante*, p. 907;

No. 72-5985. *HARRIS v. WEINBERGER, SECRETARY OF HEALTH, EDUCATION, AND WELFARE*, 410 U. S. 986;

No. 72-5986. *PENIX v. WEINBERGER, SECRETARY OF HEALTH, EDUCATION, AND WELFARE*, 410 U. S. 986;

No. 72-6091. *LEE v. ALABAMA*, *ante*, p. 908; and

No. 72-6170. *KAPLAN v. JUDGES OF THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT ET AL.*, *ante*, p. 905. Petitions for rehearing denied.

No. 71-6742. *HURTADO ET AL. v. UNITED STATES*, 410 U. S. 578. Motion for leave to file petition for rehearing denied.

No. 72-1115. *ROZELLE v. CONNECTICUT GENERAL LIFE INSURANCE CO. ET AL.*, *ante*, p. 921. Motion tendering payment of money judgment presented to MR. JUSTICE WHITE, and by him referred to the Court, denied. Motion to stay decision on petition for rehearing denied. Motion to dispense with printing petition for rehearing granted. Petition for rehearing denied.

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Affirmed on Appeal

No. 72-264. *PARKER, TREASURER OF LOUISIANA, ET AL. v. LEVY ET AL.* Affirmed on appeal from D. C. M. D. La. Reported below: 346 F. Supp. 897.

No. 72-6446. *WINSTON ET AL. v. SCOTT, ATTORNEY GENERAL OF ILLINOIS, ET AL.* Affirmed on appeal from D. C. N. D. Ill.

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Appeals Dismissed

No. 72-1112. COFFEE-RICH, INC., ET AL. *v.* FIELDER, DIRECTOR OF AGRICULTURE, ET AL. Appeal from Ct. App. Cal., 2d App. Dist., dismissed for want of substantial federal question. Reported below: 27 Cal. App. 3d 792, 104 Cal. Rptr. 252.

No. 72-1287. MAGER ET UX. *v.* HILLTOWN TOWNSHIP. Appeal from Pa. Commw. Ct. dismissed for want of substantial federal question. Reported below: 6 Pa. Commw. 90, 293 A. 2d 631.

Certiorari Granted—Vacated and Remanded

No. 72-965. UNITED STATES *v.* KNIGHT. C. A. 9th 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 *United States v. Russell*, *ante*, p. 423.

No. 72-1240. SPITZER AKRON, INC. *v.* NATIONAL LABOR RELATIONS BOARD. C. A. 6th Cir. Certiorari granted, judgment vacated, and case remanded with instructions to remand case to the National Labor Relations Board for such further proceedings as may be appropriate in light of *Burns International Security Services, Inc. v. NLRB*, 406 U. S. 272 (1972). *FTC v. Sperry & Hutchinson Co.*, 405 U. S. 233, 245-250 (1972); *SEC v. Chenery Corp.*, 318 U. S. 80, 87-88 (1943); *Bachrodt Chevrolet Co. v. NLRB*, *ante*, p. 912; *Denham v. NLRB*, *ante*, p. 945. Reported below: 470 F. 2d 1000.

No. 72-6303. MODEL CITIES POLICY BOARD OF ANN ARBOR ET AL. *v.* LYNN, SECRETARY OF HOUSING AND URBAN DEVELOPMENT, ET AL. C. A. 6th Cir. Motion for leave to proceed *in forma pauperis* and certiorari granted. Judgment vacated and case remanded to consider question of mootness.

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Miscellaneous Orders

No. A-1083 (72-1441). *PHILLIPS v. UNITED STATES*. C. A. 7th Cir. Application for bail presented to MR. JUSTICE DOUGLAS, and by him referred to the Court, denied. Reported below: 474 F. 2d 1351.

No. A-1111. *FRIENDS OF THE EARTH ET AL. v. ARMSTRONG, COMMISSIONER, BUREAU OF RECLAMATION, DEPARTMENT OF THE INTERIOR, ET AL.* Application to vacate stay order of the United States Court of Appeals for the Tenth Circuit, dated May 1, 1973, presented to MR. JUSTICE WHITE, and by him referred to the Court, denied.

No. 71-1332. *SAN ANTONIO INDEPENDENT SCHOOL DISTRICT ET AL. v. RODRIGUEZ ET AL.*, 411 U. S. 1. Motions of respondents for leave to proceed *in forma pauperis nunc pro tunc* and to retax costs denied.

No. 72-6191. *CARTER v. HEARD, JUDGE*;

No. 72-6406. *DEAN v. UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT*; and

No. 72-6426. *WILSON v. SWYGERT, CHIEF JUDGE, U. S. COURT OF APPEALS, ET AL.* Motions for leave to file petitions for writs of mandamus denied.

Probable Jurisdiction Postponed

No. 72-1297. *JOHNSON, ADMINISTRATOR OF VETERANS' AFFAIRS, ET AL. v. ROBISON*. Appeal from D. C. Mass. Further consideration of question of jurisdiction postponed to hearing of case on the merits. Case set for oral argument with No. 72-700 [*Hernandez v. Veterans Administration*], *infra*. Reported below: 352 F. Supp. 848.

Certiorari Granted

No. 72-1328. *UNITED STATES v. KAHN ET UX.* C. A. 7th Cir. Certiorari granted. Reported below: 471 F. 2d 191.

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No. 72-700. *HERNANDEZ ET AL. v. VETERANS' ADMINISTRATION ET AL.* C. A. 9th Cir. Motion to dispense with printing petition and certiorari granted. Case set for oral argument with No. 72-1297 [*Johnson v. Robinson*], *supra*. Reported below: 467 F. 2d 479.

No. 72-948. *NATIONAL CABLE TELEVISION ASSN., INC. v. UNITED STATES ET AL.* C. A. 5th Cir. Certiorari granted and case set for oral argument with No. 72-1162 immediately *infra*. Reported below: 464 F. 2d 1313.

No. 72-1162. *FEDERAL POWER COMMISSION v. NEW ENGLAND POWER CO. ET AL.* C. A. D. C. Cir. Certiorari granted and case set for oral argument with No. 72-948 immediately *supra*. Reported below: 151 U. S. App. D. C. 371, 467 F. 2d 425.

No. 72-1289. *NATIONAL RAILROAD PASSENGER CORP. ET AL. v. NATIONAL ASSOCIATION OF RAILROAD PASSENGERS.* C. A. D. C. Cir. Certiorari granted. MR. JUSTICE POWELL took no part in the consideration or decision of this petition. Reported below: 154 U. S. App. D. C. 214, 475 F. 2d 325.

No. 72-6160. *MITCHELL v. W. T. GRANT Co.* Sup. Ct. La. Motion for leave to proceed *in forma pauperis* and certiorari granted. Reported below: 263 La. 627, 269 So. 2d 186.

Certiorari Denied

No. 72-846. *BALL, DIRECTOR, DEPARTMENT OF AGRICULTURE OF MICHIGAN, ET AL. v. ARMOUR & Co. ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 468 F. 2d 76.

No. 72-1172. *MILNER, DBA BELVEDERE DRIVING SCHOOL, ET AL. v. BURSON, DIRECTOR, GEORGIA DEPARTMENT OF PUBLIC SAFETY, ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 470 F. 2d 870.

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No. 72-1046. *SAN JACINTO JUNIOR COLLEGE ET AL. v. HANDER.* C. A. 5th Cir. Certiorari denied. Reported below: 468 F. 2d 619.

No. 72-1191. *KAHN v. UNITED STATES*; and

No. 72-1193. *TELEPROMPTER CORP. v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 472 F. 2d 272.

No. 72-1199. *CULPEPPER v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 473 F. 2d 906.

No. 72-1204. *PEARSON CANDY CO., A DIVISION OF W. R. GRACE & CO. v. NATIONAL LABOR RELATIONS BOARD*. C. A. 9th Cir. Certiorari denied. Reported below: 471 F. 2d 11.

No. 72-1214. *SILVERMAN v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 469 F. 2d 1404.

No. 72-1282. *BOWSER v. VIRGINIA*. Sup. Ct. Va. Certiorari denied.

No. 72-1288. *UNITED PACIFIC INSURANCE CO. v. DISCOUNT CO., INC., ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 472 F. 2d 792.

No. 72-1292. *INTERNATIONAL ASSOCIATION OF MACHINISTS & AEROSPACE WORKERS v. REEVE ALEUTIAN AIRWAYS, INC.* C. A. 9th Cir. Certiorari denied. Reported below: 469 F. 2d 990.

No. 72-1294. *WASHINGTON KELPERS ASSN. v. WASHINGTON ET AL.* Sup. Ct. Wash. Certiorari denied. Reported below: 81 Wash. 2d 410, 502 P. 2d 1170.

No. 72-1308. *SHUTLER ET AL. v. UNITED STATES*. C. A. 10th Cir. Certiorari denied. Reported below: 470 F. 2d 1143.

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No. 72-1303. *TUBBS v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 472 F. 2d 166.

No. 72-1348. *KUHLMAN ET AL. v. SIEGLER, ADMINISTRATRIX*. Sup. Ct. Wash. Certiorari denied. Reported below: 81 Wash. 2d 448, 502 P. 2d 1181.

No. 72-6090. *KING v. CALIFORNIA*. App. Dept., Super. Ct. Cal., County of Alameda. Certiorari denied.

No. 72-6182. *CORDLE v. UNITED STATES*. C. A. 6th Cir. Certiorari denied.

No. 72-6200. *VARNER v. CALIFORNIA*. Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 72-6205. *FORD v. MISSOURI*. Sup. Ct. Mo. Certiorari denied. Reported below: 487 S. W. 2d 1.

No. 72-6211. *LUCAS v. WYOMING ET AL.* Sup. Ct. Wyo. Certiorari denied. Reported below: 505 P. 2d 1270.

No. 72-6240. *LANHAM v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 473 F. 2d 906.

No. 72-6254. *HARVELL v. UNITED STATES*. C. A. 7th Cir. Certiorari denied.

No. 72-6270. *TATUM v. UNITED STATES*. C. A. 7th Cir. Certiorari denied.

No. 72-6275. *TEMPLE v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 471 F. 2d 652.

No. 72-6283. *BRANCH v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 472 F. 2d 1017.

No. 72-6302. *EVANS v. UNITED STATES*. C. A. 3d Cir. Certiorari denied.

No. 72-6304. *WILLIAMS v. UNITED STATES*. Ct. App. D. C. Certiorari denied.

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No. 72-6301. *THERIAULT v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 474 F. 2d 359.

No. 72-6313. *PATTERSON v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 470 F. 2d 731.

No. 72-6314. *TUCKER v. UNITED STATES*. C. A. D. C. Cir. Certiorari denied.

No. 72-6317. *STAMPS v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 471 F. 2d 652.

No. 72-6319. *DERKS v. UNITED STATES*. Ct. App. D. C. Certiorari denied.

No. 72-6323. *PYE v. FLORIDA*. Sup. Ct. Fla. Certiorari denied. Reported below: 267 So. 2d 827.

No. 72-6325. *THERIAULT v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 467 F. 2d 486.

No. 72-6326. *BIDDLE ET AL. v. UNITED STATES*. C. A. 6th Cir. Certiorari denied.

No. 72-6327. *KNOX v. UNITED STATES*. C. A. 8th Cir. Certiorari denied.

No. 72-6328. *JONES v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 473 F. 2d 293.

No. 72-6334. *HURT v. UNITED STATES*. C. A. 5th Cir. Certiorari denied.

No. 72-6338. *DEGRAFFENREID v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 471 F. 2d 23.

No. 72-6349. *CATANIO v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 464 F. 2d 1301.

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No. 72-6352. *LOWES v. WEINBERGER*, SECRETARY OF HEALTH, EDUCATION, AND WELFARE. C. A. 5th Cir. Certiorari denied. Reported below: 469 F. 2d 1406.

No. 72-6410. *WALTERS v. WALTERS*, COMMISSIONER OF INTERNAL REVENUE. C. A. 6th Cir. Certiorari denied.

No. 72-6422. *FULLEN v. WASHINGTON ET AL.* Ct. App. Wash. Certiorari denied. Reported below: 7 Wash. App. 369, 499 P. 2d 893.

No. 72-6431. *CRAIG v. ESTELLE*, CORRECTIONS DIRECTOR. C. A. 5th Cir. Certiorari denied. Reported below: 469 F. 2d 1405.

No. 72-6433. *ROGERS v. NEW YORK*. Ct. App. N. Y. Certiorari denied. Reported below: 31 N. Y. 2d 916, 292 N. E. 2d 788.

No. 72-6438. *FRITZ v. MISSOURI*. Sup. Ct. Mo. Certiorari denied. Reported below: 490 S. W. 2d 30.

No. 72-6439. *WILLIAMS v. ESTELLE*, CORRECTIONS DIRECTOR. Ct. Crim. App. Tex. Certiorari denied.

No. 72-6441. *MATTHEWS v. WINGO, WARDEN*. C. A. 6th Cir. Certiorari denied. Reported below: 474 F. 2d 1266.

No. 72-6444. *SALAZAR v. NEW MEXICO*. C. A. 10th Cir. Certiorari denied.

No. 72-6452. *MORRIS v. SPARROW ET AL.* Ct. App. Ky. Certiorari denied.

No. 72-6453. *FLINT v. GLASGOW, STATE'S ATTORNEY OF PIATT COUNTY, ILLINOIS, ET AL.* C. A. 7th Cir. Certiorari denied.

No. 72-6544. *ELLIOTT v. ESTELLE*, CORRECTIONS DIRECTOR. C. A. 5th Cir. Certiorari denied. Reported below: 474 F. 2d 856.

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No. 72-470. SLAYTON, PENITENTIARY SUPERINTENDENT *v.* HAIRSTON. C. A. 4th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 459 F. 2d 1382.

No. 72-1113. PENNSYLVANIA *v.* LOPINSON. Sup. Ct. Pa. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 449 Pa. 33, 296 A. 2d 524.

No. 72-1323. NORVELL, WARDEN *v.* JONES ET AL. C. A. 6th Cir. Motion of respondents for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 472 F. 2d 1185.

No. 72-1054. TYLER JUNIOR COLLEGE ET AL. *v.* LANDALE ET AL. C. A. 5th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 470 F. 2d 659.

No. 72-1145. NEWSOME *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 468 F. 2d 1399.

No. 72-1152. CEMENT MASONS UNION LOCAL 337, OPERATIVE PLASTERERS' & CEMENT MASONS' INTERNATIONAL ASSOCIATION OF UNITED STATES & CANADA, AFL-CIO, ET AL. *v.* NATIONAL LABOR RELATIONS BOARD ET AL. C. A. 9th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 468 F. 2d 1187.

No. 72-1194. KAHN ET UX. *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 471 F. 2d 191.

No. 72-1220. RICHARDSON *v.* HAMILTON INTERNATIONAL CORP. ET AL. C. A. 3d Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 469 F. 2d 1382.

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No. 72-1203. *SIMPSON v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 471 F. 2d 652.

No. 72-1257. *UNITED NEW YORK SANDY HOOK PILOTS ASSN. ET AL. v. DENT, SECRETARY OF COMMERCE, ET AL.* C. A. 2d Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 470 F. 2d 1176.

No. 72-5695. *KEETON v. PROCUNIER ET AL.* C. A. 9th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 468 F. 2d 810.

No. 72-6168. *FOXWORTH v. FLORIDA*. Sup. Ct. Fla. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 267 So. 2d 647.

No. 72-6345. *KIMBEL v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 471 F. 2d 652.

No. 72-1185. *FIELDS ET AL. v. SCHUYLER, COMMISSIONER OF PATENTS*. C. A. D. C. Cir. Certiorari denied. MR. JUSTICE STEWART and MR. JUSTICE WHITE would grant certiorari. Reported below: 153 U. S. App. D. C. 229, 472 F. 2d 1304.

No. 72-1315. *COLORADO PUMP & SUPPLY CO. v. FEBCO, INC., ET AL.* C. A. 10th Cir. Certiorari denied. MR. JUSTICE DOUGLAS and MR. JUSTICE WHITE would grant certiorari. Reported below: 472 F. 2d 637.

Rehearing Denied

No. 72-797. *BOWERS ET AL. v. UNITED STATES*, 410 U. S. 927. Motion to dispense with printing petition for rehearing granted. Petition for rehearing denied.

No. 72-5456. *FLORES v. EMPLOYERS' FIRE INSURANCE COMPANY OF SAN ANTONIO, TEXAS*, 409 U. S. 1046. Motion for leave to file petition for rehearing denied.

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No. 36, Orig. TEXAS *v.* LOUISIANA, 410 U. S. 702;

No. 72-5831. ROTHSTEIN ET AL. *v.* WYMAN, COMMISSIONER, DEPARTMENT OF SOCIAL SERVICES OF NEW YORK, ET AL., *ante*, p. 921;

No. 72-6117. OWENS *v.* UNITED STATES, *ante*, p. 935; and

No. 72-6204. LEBRUN *v.* CUPP, PENITENTIARY SUPERINTENDENT, *ante*, p. 919. Petitions for rehearing denied.