

ORDERS FROM END OF OCTOBER TERM, 1972  
THROUGH JANUARY 21, 1974

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CASES DISMISSED IN VACATION

No. 73-8. *PACIFIC SOUTHWEST AIRLINES v. UNITED STATES*. D. C. C. D. Cal. Motion for leave to file petition for writ of certiorari dismissed July 26, 1973, under Rule 60 of the Rules of this Court.

No. 73-7. *CALIFORNIA ET AL. v. UNITED STATES*. D. C. C. D. Cal. Motion for leave to file petition for writ of certiorari dismissed July 30, 1973, under Rule 60 of the Rules of this Court.

No. 72-6599. *BAXTER ET AL. v. UNITED STATES*. C. A. 9th Cir. Petition for writ of certiorari dismissed August 2, 1973, under Rule 60 of the Rules of this Court. Reported below: 492 F. 2d 150; 199; 200.

No. 72-6916. *WIGNALL v. UNITED STATES*. C. A. 9th Cir. Petition for writ of certiorari dismissed September 6, 1973, under Rule 60 of the Rules of this Court.

No. 72-6927. *SANCHEZ v. UNITED STATES*. C. A. 9th Cir. Petition for writ of certiorari dismissed September 19, 1973, under Rule 60 of the Rules of this Court.

OCTOBER 9, 1973

*Affirmed on Appeal*

No. 72-1477. *UNITED STATES v. TOPCO ASSOCIATES, INC.* Affirmed on appeal from D. C. N. D. Ill. MR. JUSTICE DOUGLAS would note probable jurisdiction and set case for oral argument. See 319 F. Supp. 1031.

October 9, 1973

414 U. S.

No. 72-6995. JAMERSON ET AL. *v.* LENNOX, SHERIFF, ET AL. Affirmed on appeal from D. C. E. D. Pa. MR. JUSTICE DOUGLAS would note probable jurisdiction and set case for oral argument. Reported below: 356 F. Supp. 1164.

No. 73-76. LUNG ET AL. *v.* O'CHESKEY ET AL. Affirmed on appeal from D. C. N. M. MR. JUSTICE DOUGLAS would note probable jurisdiction and set case for oral argument. Reported below: 358 F. Supp. 928.

No. 73-118. AMMEX WAREHOUSE Co., INC., ET AL. *v.* GALLMAN ET AL. Affirmed on appeal from D. C. N. D. N. Y. MR. JUSTICE DOUGLAS would note probable jurisdiction and set case for oral argument.

No. 72-1489. TEXAS *v.* PRUETT. Appeal from C. A. 5th Cir. Motion of appellee for leave to proceed *in forma pauperis* granted. Judgment affirmed. MR. JUSTICE DOUGLAS would note probable jurisdiction and set case for oral argument. Reported below: 470 F. 2d 1182.

No. 72-1535. CHIMENTO *v.* STARK, SECRETARY OF STATE OF NEW HAMPSHIRE. Appeal from D. C. N. H. Motion to dispense with printing jurisdictional statement granted. Judgment affirmed. Reported below: 353 F. Supp. 1211.

No. 72-1675. NATIONAL MOTOR FREIGHT TRAFFIC ASSN., INC., ET AL. *v.* UNITED STATES ET AL.; and

No. 72-1676. BRAY LINES, INC., ET AL. *v.* UNITED STATES ET AL. Affirmed on appeals from D. C. W. D. Okla. Reported below: 353 F. Supp. 1240.

#### *Appeals Dismissed*

No. 72-1155. DIXON *v.* DIXON. Appeal from Super. Ct. N. J. Motion to dispense with printing jurisdic-

414 U.S.

October 9, 1973

tional statement granted. Appeal dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied.

No. 72-1448. *HOWELL v. JONES, SHERIFF*. Appeal from Ct. Crim. App. Tex. Motion of Criminal Trial Lawyers Association of Northern California for leave to file a brief as *amicus curiae* granted. Appeal dismissed for want of substantial federal question. Reported below: 488 S. W. 2d 123.

No. 72-1571. *SCHWARTZ v. TALMO, DBA WARREN'S MASONRY, ET AL.* Appeal from Sup. Ct. Minn. dismissed for want of substantial federal question. Reported below: 295 Minn. 356, 205 N. W. 2d 318.

No. 72-1586. *CAMPBELL ET AL. v. OREGON*. Appeal from Sup. Ct. Ore. dismissed for want of substantial federal question. Reported below: 265 Ore. 802, 506 P. 2d 163.

No. 72-1626. *SHAW ET AL., TRUSTEES v. COMMISSIONER OF CORPORATIONS AND TAXATION OF MASSACHUSETTS*; and

No. 72-1627. *FROST, EXECUTOR v. COMMISSIONER OF CORPORATIONS AND TAXATION OF MASSACHUSETTS*. Appeals from Sup. Jud. Ct. Mass. dismissed for want of substantial federal question. Reported below: — Mass. —, 293 N. E. 2d 862.

No. 72-1670. *TEXAD, INC. (TEXAD SPECIALTY CO.) v. PARISH OF ST. MARY SALES AND USE TAX DEPT.* Appeal from Ct. App. La., 1st Cir., dismissed for want of substantial federal question. Reported below: 271 So. 2d 549.

October 9, 1973

414 U. S.

No. 72-1735. *INSURANCE COMPANY OF NORTH AMERICA v. MONTGOMERY, DIRECTOR, FINANCIAL INSTITUTIONS OF ILLINOIS*. Appeal from App. Ct. Ill., 4th Dist., dismissed for want of substantial federal question. Reported below: 8 Ill. App. 3d 871, 291 N. E. 2d 40.

No. 72-6984. *GERARD v. WISCONSIN*. Appeal from Sup. Ct. Wis. dismissed for want of substantial federal question. Reported below: 57 Wis. 2d 611, 205 N. W. 2d 374.

No. 73-5. *SIMANCO, INC. v. WISCONSIN DEPARTMENT OF REVENUE*. Appeal from Sup. Ct. Wis. dismissed for want of substantial federal question. Reported below: 57 Wis. 2d 47, 203 N. W. 2d 648.

No. 73-123. *CALIFORNIA v. JONES ET AL.* Appeal from Ct. App. Cal., 4th App. Dist., dismissed for want of substantial federal question. Reported below: 30 Cal. App. 3d 852, 106 Cal. Rptr. 749.

No. 73-148. *SHAPIRO v. CITY OF NEW YORK ET AL.* Appeal from Ct. App. N. Y. dismissed for want of substantial federal question. Reported below: 32 N. Y. 2d 96, 296 N. E. 2d 230.

No. 72-1682. *SHELOFSKY ET AL. v. HELSBY ET AL.* Appeal from Ct. App. N. Y. dismissed for want of substantial federal question. MR. JUSTICE DOUGLAS would note probable jurisdiction and set case for oral argument. Reported below: 32 N. Y. 2d 54, 295 N. E. 2d 774.

No. 72-6413. *NUTTALL v. DEPARTMENT OF SOCIAL WELFARE OF CALIFORNIA ET AL.* Appeal from Ct. App. Cal., 1st App. Dist. Motion to defer consideration denied. Appeal dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied.

414 U. S.

October 9, 1973

No. 72-6628. *VIRAMONTES v. CALIFORNIA*. Appeal from Ct. App. Cal., 2d App. Dist., dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied.

No. 72-6757. *DUN LEAVAY v. HALLAHAN ET AL.* Appeal from C. A. 2d Cir. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied.

No. 72-6832. *LONG v. GAMMILL ET AL.* Appeal from Ct. App. Ariz. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied.

No. 72-6932. *DIGGS v. HALL ET AL.* Appeal from C. A. D. C. Cir. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied.

No. 73-138. *BUNGE CORP. v. FEDERAL BARGE LINES, INC., ET AL.* Appeal from Sup. Ct. La. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied. Reported below: 275 So. 2d 868.

No. 73-5019. *GARGALLO v. GARGALLO*. Appeal from C. A. 6th Cir. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied. Reported below: 472 F. 2d 1219.

No. 72-6900. *DOE v. PLANNED PARENTHOOD ASSOCIATION OF UTAH*. Appeal from Sup. Ct. Utah dismissed for want of jurisdiction. Treating the papers whereon

October 9, 1973

414 U. S.

the appeal was taken as a petition for writ of certiorari, certiorari denied. MR. JUSTICE DOUGLAS would note probable jurisdiction and set case for oral argument. Reported below: 29 Utah 2d 356, 510 P. 2d 75.

No. 73-213. FORTIER, AKA FONTAINE *v.* PROJECT HOPE, INC. Appeal from Sup. Ct. Okla. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied. MR. JUSTICE DOUGLAS would note probable jurisdiction and set case for oral argument.

No. 73-215. FALKNER ET UX. *v.* FERGUSON, JUDGE, ET AL. Appeal from D. C. S. D. Fla. Motion to dispense with printing jurisdictional statement granted. Appeal dismissed. *Mengelkoch v. Industrial Welfare Commission*, 393 U. S. 83 (1968), and *Wilson v. City of Port Lavaca*, 391 U. S. 352 (1968).

No. 73-216. FALKNER ET UX. *v.* FERGUSON, JUDGE, ET AL. Appeal from D. C. S. D. Fla. Motion to dispense with printing jurisdictional statement granted. Appeal dismissed for want of jurisdiction. *Mengelkoch v. Industrial Welfare Commission*, 393 U. S. 83 (1968).

No. 73-249. UNION PACIFIC RAILROAD CO. *v.* HECKERS, EXECUTIVE DIRECTOR, DEPARTMENT OF REVENUE. Appeal from Sup. Ct. Colo. dismissed for want of substantial federal question. MR. JUSTICE DOUGLAS concurs, being of the view that a corporation is not a "person" within the meaning of the Equal Protection Clause of the Fourteenth Amendment. *Wheeling Steel Corp. v. Glander*, 337 U. S. 562, 576 (DOUGLAS, J., dissenting). Reported below: — Colo. —, 509 P. 2d 1255.

414 U. S.

October 9, 1973

*Certiorari Granted—Vacated and Remanded*

No. 72-1210. INTERNATIONAL ASSOCIATION OF MACHINISTS & AEROSPACE WORKERS, AFL-CIO, LOCAL LODGE No. 504, ET AL. *v.* O'REILLY ET AL.; and

No. 72-1502. NATIONAL LABOR RELATIONS BOARD *v.* MORTON SALT CO. C. A. 9th Cir. Certiorari granted, judgments vacated, and cases remanded for further consideration in light of *NLRB v. Boeing Co.*, 412 U. S. 67 (1973). Reported below: 472 F. 2d 416 and 426.

No. 72-1485. BOARD OF REGENTS OF THE UNIVERSITY OF TEXAS SYSTEM *v.* NEW LEFT EDUCATION PROJECT ET AL. C. A. 5th Cir. Certiorari granted, judgment vacated, and case remanded to the United States District Court for the Western District of Texas with directions to dismiss case as moot. MR. JUSTICE DOUGLAS dissents from vacating judgment below. Reported below: 472 F. 2d 218.

No. 72-1678. CAREY, WARDEN, ET AL. *v.* GAMMONS. C. A. 3d 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 *Cady v. Dombrowski*, 413 U. S. 433 (1973). MR. JUSTICE DOUGLAS dissents from the vacation and remand. Reported below: 475 F. 2d 1397.

No. 72-6454. HANAHAN *v.* UNITED STATES. C. A. 7th Cir. Motion for leave to proceed *in forma pauperis* and certiorari granted. Judgment vacated and case remanded to the United States District Court for the Northern District of Illinois for reconsideration in light of suggestion contained in the Solicitor General's memorandum filed July 3, 1973.

No. 72-6690. LEE *v.* UNITED STATES. C. A. 5th Cir. Motion for leave to proceed *in forma pauperis* and certio-

October 9, 1973

414 U. S.

rari granted. Judgment vacated and case remanded to the United States District Court for the Southern District of Florida with directions to dismiss the indictment. THE CHIEF JUSTICE and MR. JUSTICE BLACKMUN dissent for the reasons stated in the dissenting opinion of MR. JUSTICE BLACKMUN in *Durham v. United States*, 401 U. S. 481, 483 (1971). See *Bradley v. United States*, 404 U. S. 567 (1972). Reported below: 472 F. 2d 1407.

No. 72-6812. CHENOWETH *v.* WARNER, SECRETARY OF THE NAVY, ET AL. C. A. 9th Cir. Motion for leave to proceed *in forma pauperis* and certiorari granted. Judgment vacated and case remanded to the United States District Court for the Northern District of California with directions to dismiss case as moot.

No. 72-6836. RUSSELL *v.* DOUTHITT. Sup. Ct. Ind. Motion for leave to proceed *in forma pauperis* and certiorari granted. Judgment vacated and case remanded for further consideration in light of *Gagnon v. Scarpelli*, 411 U. S. 778 (1973). Reported below: — Ind. —, 291 N. E. 2d 361.

No. 73-6. BUILDING & CONSTRUCTION TRADES COUNCIL OF PHILADELPHIA & VICINITY *v.* SAMOFF, REGIONAL DIRECTOR, NATIONAL LABOR RELATIONS BOARD, ET AL. C. A. 3d Cir. Certiorari granted, judgment vacated, and case remanded to the United States District Court for the Eastern District of Pennsylvania with directions to dismiss case as moot. Reported below: 475 F. 2d 203.

No. 73-217. PENNSYLVANIA *v.* CAMPANA ET AL. Sup. Ct. Pa. Certiorari granted, judgments vacated, and case remanded to consider whether judgments are based on federal or state constitutional grounds, or both. See *California v. Krivda*, 409 U. S. 33 (1972). MR. JUSTICE DOUGLAS dissents from the vacation and remand. Reported below: 452 Pa. 233, 304 A. 2d 432.

414 U. S.

October 9, 1973

No. 73-5053. *SCARPA v. UNITED STATES BOARD OF PAROLE ET AL.* C. A. 5th Cir. Motion to proceed *in forma pauperis* and certiorari granted. Judgment vacated and case remanded for consideration of question of mootness. MR. JUSTICE DOUGLAS dissents. Reported below: 468 F. 2d 31 and 477 F. 2d 278.

*Miscellaneous Orders*

No. A-106. *RAYMOND v. GUNN, WARDEN.* Application for writ of habeas corpus presented to MR. JUSTICE DOUGLAS, and by him referred to the Court, denied.

No. A-230. *LYNN, SECRETARY OF HOUSING AND URBAN DEVELOPMENT v. PENNSYLVANIA ET AL.* Motion to vacate stay of judgment of the District Court for the District of Columbia pending appeal to the Court of Appeals for the District of Columbia Circuit, entered by THE CHIEF JUSTICE on August 29, 1973, or in the alternative for an order for applicant to file a petition for writ of certiorari before judgment, denied. MR. JUSTICE DOUGLAS would vacate stay.

No. A-288. *BURNS, ACTING COMMISSIONER, IOWA DEPARTMENT OF SOCIAL SERVICES, ET AL. v. ALCALA ET AL.* D. C. S. D. Iowa. Application for stay of judgment presented to MR. JUSTICE BLACKMUN, and by him referred to the Court, granted pending final disposition on appeal in the United States Court of Appeals for the Eighth Circuit. MR. JUSTICE DOUGLAS would deny the application.

No. D-10. *IN RE DISBARMENT OF KIRTZ.* It having been reported to this Court that Frank G. Kirtz, of St. Louis, Missouri, has been disbarred from the practice of law in all of the courts of the State of Missouri, and this Court by order of June 11, 1973 [412 U. S. 936], having suspended the said Frank G. Kirtz from the practice of

October 9, 1973

414 U. S.

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 the United States Marshal attempted to serve respondent and said respondent refused to accept service and that the time within which to file a return has expired;

It is ordered that the said Frank G. Kirtz 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 to practice before the Bar of this Court.

No. 48, Orig. MISSISSIPPI *v.* ARKANSAS. Exceptions to Report of Special Master set for oral argument in due course. [For earlier orders herein, see, *e. g.*, 411 U. S. 913.]

No. 62, Orig. NEVADA *v.* CALIFORNIA. Motion for leave to file bill of complaint denied.

No. 63, Orig. GEORGIA *v.* NIXON, PRESIDENT OF THE UNITED STATES, ET AL. Motion for leave to file bill of complaint denied.

No. 64, Orig. NEW HAMPSHIRE *v.* MAINE. Motion for leave to file bill of complaint granted. State of Maine allowed 30 days in which to answer or otherwise respond.

No. 71-1545. BUTZ, SECRETARY OF AGRICULTURE, ET AL. *v.* GLOVER LIVESTOCK COMMISSION CO., INC., 411 U. S. 182. Motion to waive costs denied.

No. 72-397. BONELLI CATTLE CO. ET AL. *v.* ARIZONA ET AL. Sup. Ct. Ariz. [Certiorari granted, 410 U. S. 908.] Motions of State of California and County of Mohave, Arizona, for leave to participate in oral argument as *amici curiae* denied.

414 U.S.

October 9, 1973

No. 72-481. DEPARTMENT OF GAME OF WASHINGTON *v.* PUYALLUP TRIBE ET AL.; and

No. 72-746. PUYALLUP TRIBE *v.* DEPARTMENT OF GAME OF WASHINGTON. Sup. Ct. Wash. [Certiorari granted, 410 U. S. 981.] Motion of Ramona C. Bennett et al. for leave to file a brief as *amici curiae* in support of Puyallup Tribe granted. Motion of National Congress of American Indians, Inc., et al., for leave to file a brief as *amici curiae* in support of Puyallup Tribe in No. 72-746 granted.

No. 72-490. McDONNELL DOUGLAS CORP. *v.* GREEN, 411 U. S. 792. Motion of respondent to retax costs denied.

No. 72-671. ESPINOZA ET VIR *v.* FARAH MANUFACTURING CO., INC. C. A. 5th Cir. [Certiorari granted, 411 U. S. 946.] Motion of Facilities Management Corp. for leave to file a brief as *amicus curiae* denied.

No. 72-777. CLEVELAND BOARD OF EDUCATION ET AL. *v.* LAFLEUR ET AL. C. A. 6th Cir.; and

No. 72-1129. COHEN *v.* CHESTERFIELD COUNTY SCHOOL BOARD ET AL. C. A. 4th Cir. Motions of American Civil Liberties Union et al., National Education Assn. et al., and International Union of Electrical Radio & Machine Workers, AFL-CIO, for leave to file briefs as *amici curiae* granted. Motion of Margaret M. Broussard for leave to file a brief as *amicus curiae* and to dispense with printing granted. Motion of International Association of Official Human Rights Agencies for leave to file a brief as *amicus curiae* in No. 72-777 granted. Motions of State of Maryland Commission on Human Relations et al., and Delta Air Lines, Inc., for leave to file briefs as *amici curiae* in No. 72-1129 granted.

October 9, 1973

414 U. S.

No. 72-847. MEMORIAL HOSPITAL ET AL. *v.* MARICOPA COUNTY ET AL. Appeal from Sup. Ct. Ariz. [Probable jurisdiction noted, 410 U. S. 981.] Motion of Legal Aid Society of Maricopa County, Arizona, for leave to dispense with printing *amicus curiae* brief denied.

No. 72-888. ZAHN ET AL. *v.* INTERNATIONAL PAPER Co. C. A. 2d Cir. [Certiorari granted, 410 U. S. 925.] Motions of Lloyd E. Canfield et al. and Consumers Union of the United States, Inc., for leave to file briefs as *amici curiae* denied.

No. 72-914. SCHEUER, ADMINISTRATRIX *v.* RHODES, GOVERNOR OF OHIO, ET AL.; and

No. 72-1318. KRAUSE, ADMINISTRATOR, ET AL. *v.* RHODES, GOVERNOR OF OHIO, ET AL. C. A. 6th Cir. [Certiorari granted, 413 U. S. 919.] Motion of National Council of the Churches of Christ in the U. S. A. et al. for leave to file a brief as *amici curiae* granted. Motion of Kent Legal Defense Fund for leave to file a brief as *amicus curiae* in No. 72-914 denied. Motion of National Bar Assn. for leave to file a brief as *amicus curiae* in No. 72-1318 granted.

No. 72-948. NATIONAL CABLE TELEVISION ASSN., INC. *v.* UNITED STATES ET AL. C. A. 5th Cir. [Certiorari granted, 411 U. S. 981.] Motions of National Association of Broadcasters and American Telephone & Telegraph Co. et al. for leave to file briefs as *amici curiae* 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, 411 U. S. 915.] Motion of Illinois State Bar Assn. for leave to file a brief as *amicus curiae* granted.

414 U. S.

October 9, 1973

No. 72-1040. COMMUNIST PARTY OF INDIANA ET AL. *v.* WHITCOMB, GOVERNOR OF INDIANA, ET AL. Appeal from D. C. N. D. Ind. [Probable jurisdiction postponed, 410 U. S. 981.] Motion of appellants for divided argument denied.

No. 72-1052. MORTON, SECRETARY OF THE INTERIOR *v.* RUIZ ET UX. C. A. 9th Cir. [Certiorari granted, 411 U. S. 947.] Motion of California Indian Legal Services for leave to participate in oral argument as *amicus curiae* denied. Motion of Arapahoe Tribe of Wyoming et al. for leave to file a brief as *amici curiae* granted.

No. 72-1180. OLD DOMINION BRANCH No. 496, NATIONAL ASSOCIATION OF LETTER CARRIERS, AFL-CIO, ET AL. *v.* AUSTIN ET AL. Appeal from Sup. Ct. Va. [Probable jurisdiction noted, 412 U. S. 917.] Motion of American Civil Liberties Union for leave to file a brief as *amicus curiae* granted.

No. 72-1289. NATIONAL RAILROAD PASSENGER CORP. ET AL. *v.* NATIONAL ASSOCIATION OF RAILROAD PASSENGERS. C. A. D. C. Cir. [Certiorari granted, 411 U. S. 981.] Motion of National Association of Regulatory Utility Commissioners for leave to file a brief as *amicus curiae* granted.

No. 72-1603. CARDWELL, WARDEN *v.* LEWIS. C. A. 6th Cir. Motion to dispense with printing petition denied with leave to file printed petition in conformity with Rule 39 of the Rules of this Court on or before November 8, 1973.

October 9, 1973

414 U. S.

No. 72-1694. *NEW YORK v. NEWMAN*. Ct. App. N. Y. The Solicitor General is invited to file a brief expressing the views of the United States.

No. 72-5847. *ALEXANDER v. GARDNER-DENVER CO.* C. A. 10th Cir. [Certiorari granted, 410 U. S. 925.] Motion of American Retail Federation for leave to file a brief as *amicus curiae* granted.

No. 72-6160. *MITCHELL v. W. T. GRANT CO.* Sup. Ct. La. [Certiorari granted, 411 U. S. 981.] Motion of National Consumer Law Center, Inc., for leave to file a brief as *amicus curiae* and to dispense with printing denied.

No. 73-686. *TELEPHONE USERS ASSN., INC. v. PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA ET AL.*; and

No. 73-687. *TELEPHONE USERS ASSN., INC. v. PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA ET AL.* Ct. App. D. C. Motion of petitioners for leave to proceed *in forma pauperis* denied. MR. JUSTICE POWELL took no part in the consideration or decision of this motion.

No. 72-6281. *McMASTER v. CONNETT, WARDEN*;

No. 72-6774. *MILLER v. MEACHAM, WARDEN*;

No. 73-5005. *OLDEN v. MCCARTHY, MEN'S COLONY SUPERINTENDENT, ET AL.*;

No. 73-5083. *LODDY v. MEACHAM, WARDEN, ET AL.*; and

No. 73-5190. *NEAL v. CALDWELL, WARDEN*. Motions for leave to file petitions for writs of habeas corpus denied.

No. 73-5158. *HAWKINS v. MEACHAM, WARDEN, ET AL.* Motion for leave to file petition for writ of habeas corpus and other relief denied.

414 U.S.

October 9, 1973

No. 72-6770. *DORROUGH v. UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT*;

No. 72-6771. *CHACON v. NELSON, WARDEN*;

No. 72-6821. *HAYES v. TEHAN, CHIEF JUDGE, U. S. DISTRICT COURT, ET AL.*;

No. 72-6839. *MAGHE v. GUARINO, JUDGE*;

No. 72-6881. *DUN LEAVAY v. PIERCE, U. S. DISTRICT JUDGE*;

No. 72-6886. *CARY v. UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT ET AL.*;

No. 72-6890. *DUN LEAVAY v. DUFFY, U. S. DISTRICT JUDGE*;

No. 72-6895. *DUN LEAVAY v. LIVINGSTON, CLERK, U. S. DISTRICT COURT*; and

No. 72-6929. *DIGGS v. KLINE, CLERK, U. S. COURT OF APPEALS, ET AL.* Motions for leave to file petitions for writs of mandamus denied.

No. 72-6996. *McLAUGHLIN ET AL. v. NEW YORK.* Motion for leave to file petition for writ of mandamus and/or prohibition denied.

No. 73-28. *WHITSON v. AGNEW, VICE PRESIDENT OF THE UNITED STATES, ET AL.* Motion for leave to file petition for writ of *quo warranto* denied.

No. 72-6747. *DUN LEAVAY v. FRIENDLY, U. S. DISTRICT JUDGE, ET AL.* Motion for leave to file petition for writ of prohibition and/or mandamus denied.

*Probable Jurisdiction Noted*

No. 72-1557. *SPEIGHT, T/A HAREM BOOK STORE, ET AL. v. SLATON ET AL.* Appeal from D. C. N. D. Ga. Probable jurisdiction noted. Reported below: 356 F. Supp. 1101.

No. 72-1690. *SPENCE v. WASHINGTON.* Appeal from Sup. Ct. Wash. Probable jurisdiction noted. Reported below: 81 Wash. 2d 788, 506 P. 2d 293.

October 9, 1973

414 U. S.

No. 72-1713. SECRETARY OF THE NAVY *v.* AVRECH. Appeal from C. A. D. C. Cir. Probable jurisdiction noted. Reported below: 155 U. S. App. D. C. 352, 477 F. 2d 1237.

No. 73-157. CALERO-TOLEDO ET AL. *v.* PEARSON YACHT LEASING Co. Appeal from D. C. Puerto Rico. Probable jurisdiction noted. Reported below: 363 F. Supp. 1337.

No. 72-985. CALIFORNIA BANKERS ASSN. *v.* SHULTZ, SECRETARY OF THE TREASURY, ET AL.;

No. 72-1073. SHULTZ, SECRETARY OF THE TREASURY, ET AL. *v.* CALIFORNIA BANKERS ASSN. ET AL.; and

No. 72-1196. STARK ET AL. *v.* SHULTZ, SECRETARY OF THE TREASURY, ET AL. Appeals from D. C. N. D. Cal. Probable jurisdiction noted. Cases consolidated and two hours allotted for oral argument. Reported below: 347 F. Supp. 1242.

*Certiorari Granted*

No. 72-1382. F. D. RICH Co., INC., ET AL. *v.* UNITED STATES FOR THE USE OF INDUSTRIAL LUMBER Co., INC. C. A. 9th Cir. Certiorari granted. Reported below: 473 F. 2d 720.

No. 72-1566. GRANNY GOOSE FOODS, INC., ET AL. *v.* BROTHERHOOD OF TEAMSTERS & AUTO TRUCK DRIVERS, LOCAL No. 70 OF ALAMEDA COUNTY, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA. C. A. 9th Cir. Certiorari granted. Reported below: 472 F. 2d 764.

No. 72-1589. RICHARDSON, COUNTY CLERK AND REGISTRAR OF VOTERS OF MENDOCINO COUNTY *v.* RAMIREZ ET AL. Sup. Ct. Cal. Certiorari granted. Reported below: 9 Cal. 3d 199, 507 P. 2d 1345.

No. 72-1598. NATIONAL LABOR RELATIONS BOARD *v.* BELL AEROSPACE COMPANY, DIVISION OF TEXTRON, INC.

414 U. S.

October 9, 1973

C. A. 2d Cir. Certiorari granted. Reported below: 475 F. 2d 485.

No. 72-1637. NATIONAL LABOR RELATIONS BOARD *v.* MAGNAVOX COMPANY OF TENNESSEE. C. A. 6th Cir. Certiorari granted. Reported below: 474 F. 2d 1269.

No. 73-9. COMMISSIONER OF INTERNAL REVENUE *v.* NATIONAL ALFALFA DEHYDRATING & MILLING CO. C. A. 10th Cir. Certiorari granted. Reported below: 472 F. 2d 796.

No. 72-1470. BOB JONES UNIVERSITY *v.* SHULTZ, SECRETARY OF THE TREASURY, ET AL. C. A. 4th Cir. Certiorari granted and case set for oral argument with No. 72-1371 [*Walters v. "Americans United" Inc.*, certiorari granted, 412 U. S. 927]. Reported below: 472 F. 2d 903 and 476 F. 2d 259.

No. 72-1490. FEDERAL POWER COMMISSION *v.* TEXACO INC. ET AL.; and

No. 72-1491. DOUGHERTY, EXECUTOR, ET AL. *v.* TEXACO INC. ET AL. C. A. D. C. Cir. Certiorari granted. Cases consolidated and a total of one hour allotted for oral argument. MR. JUSTICE STEWART took no part in the consideration or decision of these petitions. Reported below: 154 U. S. App. D. C. 168, 474 F. 2d 416.

No. 72-1554. SUPER TIRE ENGINEERING CO. ET AL. *v.* McCORKLE ET AL. C. A. 3d Cir. Motion of Chamber of Commerce of the United States for leave to intervene denied. Certiorari granted. Reported below: 469 F. 2d 911.

No. 72-1628. TELEPROMPTER CORP. ET AL. *v.* COLUMBIA BROADCASTING SYSTEM, INC., ET AL.; and

No. 72-1633. COLUMBIA BROADCASTING SYSTEM, INC., ET AL. *v.* TELEPROMPTER CORP. ET AL. C. A. 2d Cir. Motion of National Cable Television Assn., Inc., for leave

October 9, 1973

414 U.S.

to file a brief as *amicus curiae* in No. 72-1628 granted. Certiorari granted. Cases consolidated and a total of one hour allotted for oral argument. Reported below: 476 F. 2d 338.

No. 73-88. UNITED STATES *v.* EDWARDS ET AL. C. A. 6th Cir. Motion of respondents for leave to proceed *in forma pauperis* and certiorari granted. Reported below: 474 F. 2d 1206.

No. 73-187. KEWANEE OIL Co. *v.* BICRON CORP. ET AL. C. A. 6th Cir. Motions by the following organizations for leave to file briefs as *amici curiae* are granted: American Patent Law Assn., Association for the Advancement of Invention & Innovation, Manufacturing Chemists Assn., Licensing Executives Society, Patent Law Association of Chicago, American Bar Assn., New York Patent Law Assn., and SCM Corp. Certiorari granted. The Solicitor General is invited to file a brief expressing the views of the United States. Reported below: 478 F. 2d 1074.

*Certiorari Denied.* (See also Nos. 72-1155, 6413, 6628, 6757, 6832, 6900, and 6932; and 73-138, 213, and 5019, *supra.*)

No. 72-1217. RICHARDSON *v.* COMMUNICATIONS WORKERS OF AMERICA, AFL-CIO, ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 469 F. 2d 333.

No. 72-1339. INSURANCE COMPANY OF NORTH AMERICA *v.* WISE ET AL.; and

No. 72-6477. DA'VILLE, TUTRIX *v.* WISE ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 470 F. 2d 1364.

No. 72-1385. JEFFERY *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 473 F. 2d 268.

414 U.S.

October 9, 1973

No. 72-1391. SCALISE *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 474 F. 2d 1351.

No. 72-1392. BOYCE ET AL. *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 72-1393. CROCKARELL *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 72-1394. BILLINGSLEY *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 474 F. 2d 63.

No. 72-1395. GRIFFIN & BRAND OF McALLEN, INC. *v.* BRENNAN, SECRETARY OF LABOR. C. A. 5th Cir. Certiorari denied. Reported below: 471 F. 2d 235.

No. 72-1398. LITTLEFIELD *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied.

No. 72-1401. BALAX, INC., ET AL. *v.* BENDIX CORP. ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 471 F. 2d 149.

No. 72-1407. HENNINGER *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 473 F. 2d 814.

No. 72-1411. JENNINGS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 473 F. 2d 999.

No. 72-1412. NEWTON ET AL. *v.* CALIFORNIA. App. Dept., Super. Ct. Cal., County of Alameda. Certiorari denied.

No. 72-1423. CAMPOPIANO *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: See 446 F. 2d 869.

October 9, 1973

414 U.S.

No. 72-1427. *WILLIAMS v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 470 F. 2d 962.

No. 72-1429. *BOOZ v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: See 451 F. 2d 719.

No. 72-1432. *ACOSTA v. UNITED STATES*;

No. 72-1455. *FERNANDEZ ET AL. v. UNITED STATES*;  
and

No. 72-1600. *JACKSON v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 462 F. 2d 740 and 473 F. 2d 662.

No. 72-1441. *PHILLIPS v. UNITED STATES*; and

No. 72-6925. *YOCKEY v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 474 F. 2d 1351.

No. 72-1445. *SONDEREGGER v. SAGITTARIUS PRODUCTIONS, INC., ET AL.* C. A. 9th Cir. Certiorari denied.

No. 72-1449. *UNIVERSITY OF NEVADA ET AL. v. HALL ET AL.* Sup. Ct. Cal. Certiorari denied. Reported below: 8 Cal. 3d 522, 503 P. 2d 1363.

No. 72-1457. *CITIZENS FIRST NATIONAL BANK OF RIDGEWOOD, ADMINISTRATOR v. COMMISSIONER OF INTERNATIONAL REVENUE*. C. A. 3d Cir. Certiorari denied.

No. 72-1460. *RIGGS v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 474 F. 2d 699.

No. 72-1461. *HARKNESS v. UNITED STATES*. Ct. Cl. Certiorari denied. Reported below: 199 Ct. Cl. 721, 469 F. 2d 310.

No. 72-1463. *JONES v. THRIFT FUNDS OF BATON ROUGE, INC.* Sup. Ct. La. Certiorari denied. Reported below: 274 So. 2d 150.

414 U. S.

October 9, 1973

No. 72-1469. *LAVELLE v. UNITED STATES*; and

No. 72-1575. *THALER v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 475 F. 2d 270.

No. 72-1478. *WRIGHT v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 476 F. 2d 1027.

No. 72-1479. *MATSUSHITA ELECTRIC INDUSTRIAL CO., LTD., ET AL. v. UNITED STATES TREASURY DEPARTMENT ET AL.* C. C. P. A. Certiorari denied.

No. 72-1480. *GLENN W. TURNER ENTERPRISES, INC., ET AL. v. SECURITIES AND EXCHANGE COMMISSION*. C. A. 9th Cir. Certiorari denied. Reported below: 474 F. 2d 476.

No. 72-1481. *COX v. TENNESSEE*. Ct. Crim. App. Tenn. Certiorari denied.

No. 72-1482. *BROTHERHOOD OF TEAMSTERS & AUTO TRUCK DRIVERS, LOCAL NO. 70, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA v. NATIONAL LABOR RELATIONS BOARD ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 470 F. 2d 509.

No. 72-1483. *HELLWIG ET AL. v. UNITED STATES*. C. A. 9th Cir. Certiorari denied.

No. 72-1486. *GULLO v. ROBINSON, U. S. DISTRICT JUDGE*. C. A. D. C. Cir. Certiorari denied.

No. 72-1492. *CARMONA v. MOORE-McCORMACK LINES, INC.* App. Div., Sup. Ct. N. Y., 1st Jud. Dept. Certiorari denied. Reported below: 40 App. Div. 2d 760, 336 N. Y. S. 2d 1004.

No. 72-1493. *ROSS v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 475 F. 2d 688.

October 9, 1973

414 U.S.

No. 72-1494. UNITED STATES *v.* 100 ACRES IN MARIN COUNTY, CALIFORNIA. C. A. 9th Cir. Certiorari denied. Reported below: 468 F. 2d 1261.

No. 72-1497. WISCONSIN BEARING CO. *v.* NATIONAL LABOR RELATIONS BOARD. C. A. 7th Cir. Certiorari denied.

No. 72-1500. GENERAL ELECTRIC CO. *v.* LOCAL 783, ALLIED INDUSTRIAL WORKERS OF AMERICA, AFL-CIO. C. A. 6th Cir. Certiorari denied. Reported below: 471 F. 2d 751.

No. 72-1501. J. H. RUTTER REX MANUFACTURING Co., INC. *v.* NATIONAL LABOR RELATIONS BOARD. C. A. 5th Cir. Certiorari denied. Reported below: 473 F. 2d 223.

No. 72-1505. BEHRENS DRUG CO. *v.* BRENNAN, SECRETARY OF LABOR. C. A. 5th Cir. Certiorari denied. Reported below: 475 F. 2d 1041.

No. 72-1507. LUKAS *v.* DELAWARE. Sup. Ct. Del. Certiorari denied. Reported below: — Del. —, 303 A. 2d 664.

No. 72-1514. STERR *v.* KELLY. Sup. Ct. N. J. Certiorari denied. Reported below: 62 N. J. 105, 299 A. 2d 390.

No. 72-1515. FARRELL LINES, INC. *v.* RIVERA. C. A. 2d Cir. Certiorari denied. Reported below: 474 F. 2d 255.

No. 72-1516. PARKER ET AL. *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 72-1518. ROSE HILLS MEMORIAL PARK ASSN. *v.* UNITED STATES. Ct. Cl. Certiorari denied. Reported below: 199 Ct. Cl. 6, 463 F. 2d 425.

414 U. S.

October 9, 1973

No. 72-1520. BURROUGHS ET AL. *v.* STERLING TRANSIT Co. ET AL. C. A. 9th Cir. Certiorari denied.

No. 72-1522. CHARMAR INVESTMENT Co. *v.* CITY NATIONAL BANK & TRUST Co. ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 475 F. 2d 560.

No. 72-1523. PRICE *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 72-1525. SUNDRY *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 72-1526. COULTER ET AL. *v.* MELADY ET AL. Ct. Civ. App. Tex., 6th Sup. Jud. Dist. Certiorari denied. Reported below: 489 S. W. 2d 156.

No. 72-1527. BROWN *v.* UNITED STATES;

No. 72-1531. NASH *v.* UNITED STATES;

No. 72-6486. BOULIER *v.* UNITED STATES; and

No. 72-6497. NATHAN *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 476 F. 2d 456.

No. 72-1528. MIDWEST HANGER Co. *v.* NATIONAL LABOR RELATIONS BOARD. C. A. 8th Cir. Certiorari denied. Reported below: 474 F. 2d 1155.

No. 72-1529. UNITED STATES *v.* DOWDY. C. A. 4th Cir. Certiorari denied. Reported below: 479 F. 2d 213.

No. 72-1530. DUGAS *v.* KANSAS CITY SOUTHERN RAILWAY Co. ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 473 F. 2d 821.

No. 72-1532. PETERSON *v.* STANCZAK ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 474 F. 2d 1350.

No. 72-1533. H. HENTZ & Co. ET AL. *v.* KASNER ET UX. C. A. 5th Cir. Certiorari denied. Reported below: 475 F. 2d 119.

October 9, 1973

414 U. S.

No. 72-1534. *D. S. BROWN CO. ET AL. v. ACME HIGHWAY PRODUCTS CORP.* C. A. 6th Cir. Certiorari denied. Reported below: 473 F. 2d 849.

No. 72-1537. *KERSHAW v. BROOKS ET AL.*;

No. 72-1650. *CONCERNED PARENTS ASSN. ET AL. v. BROOKS ET AL.*; and

No. 73-82. *CARDEN v. BROOKS ET AL.* C. A. 6th Cir. Certiorari denied.

No. 72-1538. *BANK OF CAMILLA v. COLUMBIAN PEANUT Co.* C. A. 5th Cir. Certiorari denied. Reported below: 472 F. 2d 476.

No. 72-1539. *HOPE ET UX. v. COMMISSIONER OF INTERNAL REVENUE*; and

No. 72-1651. *COMMISSIONER OF INTERNAL REVENUE v. HOPE ET UX.* C. A. 3rd Cir. Certiorari denied. Reported below: 471 F. 2d 738.

No. 72-1541. *SCHOOL DISTRICT OF THE CITY OF FERNDALE, MICHIGAN v. DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE.* C. A. 6th Cir. Certiorari denied.

No. 72-1542. *HARDY, ACTING WARDEN v. VUITCH.* C. A. 4th Cir. Certiorari denied. Reported below: 473 F. 2d 1370.

No. 72-1544. *H. L. H. ENTERPRISES, INC., ET AL. v. MCGREGOR ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 470 F. 2d 188.

No. 72-1545. *BARRETT v. UNITED STATES.* C. A. 5th Cir. Certiorari denied. Reported below: 474 F. 2d 1345.

No. 72-1547. *MOHAN ET AL. v. KERR.* C. A. 7th Cir. Certiorari denied.

414 U.S.

October 9, 1973

No. 72-1548. *SCHECHTER v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 475 F. 2d 1099.

No. 72-1549. *THOMPSON v. GROSHENS ET AL.* C. A. 3d Cir. Certiorari denied. Reported below: 475 F. 2d 127.

No. 72-1551. *STROM v. STROM*. C. A. 8th Cir. Certiorari denied.

No. 72-1552. *EDELSTEIN v. UNITED STATES*. C. A. 6th Cir. Certiorari denied.

No. 72-1553. *MULLIGAN ET AL. v. UNITED STATES*. C. A. 6th Cir. Certiorari denied.

No. 72-1555. *GODFROY ET AL. v. UNITED STATES*. Ct. Cl. Certiorari denied. Reported below: 198 Ct. Cl. 1, 199 Ct. Cl. 487, and 200 Ct. Cl. 728, 458 F. 2d 93, 467 F. 2d 909, and 473 F. 2d 892.

No. 72-1556. *ECHOLS, AKA PAGE v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 477 F. 2d 37.

No. 72-1559. *HERTZ CORP. v. COX ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 472 F. 2d 552.

No. 72-1560. *NATIONAL FAMILY INSURANCE Co. v. EXCHANGE NATIONAL BANK OF CHICAGO*. C. A. 7th Cir. Certiorari denied. Reported below: 474 F. 2d 237.

No. 72-1563. *WAITE ET AL. v. F. P. PLAZA, INC., ET AL.* Sup. Ct. Ga. Certiorari denied. Reported below: 230 Ga. 161, 196 S. E. 2d 141.

No. 72-1564. *BERNABEI v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 473 F. 2d 1385.

October 9, 1973

414 U.S.

No. 72-1567. *JANSEN v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 475 F. 2d 312.

No. 72-1569. *GLEN MANOR HOME FOR THE JEWISH AGED v. NATIONAL LABOR RELATIONS BOARD*. C. A. 6th Cir. Certiorari denied. Reported below: 474 F. 2d 1145.

No. 72-1574. *BOB LAWRENCE REALTY, INC., ET AL. v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 474 F. 2d 115.

No. 72-1577. *KING v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 475 F. 2d 1401.

No. 72-1579. *MIELE v. UNITED STATES*. C. A. 5th Cir. Certiorari denied.

No. 72-1580. *PORTH v. WARDEN, NORTH CAROLINA STATE PENITENTIARY*. C. A. 4th Cir. Certiorari denied.

No. 72-1581. *BYRON ET AL. v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 475 F. 2d 1405.

No. 72-1583. *HATTON, DBA AIR CONTROL ENGINEERING Co. v. BRENNAN, SECRETARY OF LABOR*. C. A. 5th Cir. Certiorari denied. Reported below: 474 F. 2d 9.

No. 72-1585. *HOOVER, INC. v. COMMISSIONER OF INTERNAL REVENUE*. C. A. 6th Cir. Certiorari denied. Reported below: 474 F. 2d 1050.

No. 72-1587. *GAZZOLA v. UNITED STATES*. C. A. 2d Cir. Certiorari denied.

No. 72-1590. *KUSTOK v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 475 F. 2d 1405.

414 U.S.

October 9, 1973

No. 72-1591. *CITY OF BELLEVUE v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 474 F. 2d 473.

No. 72-1593. *LABEL, INC. v. COMMISSIONER, FOOD AND DRUG ADMINISTRATION, ET AL.* C. A. D. C. Cir. Certiorari denied.

No. 72-1595. *COX ET AL. v. WALTER E. HELLER & Co., INC.* C. A. 2d Cir. Certiorari denied. Reported below: See 343 F. Supp. 519.

No. 72-1596. *SIX FLAGS OVER GEORGIA, LTD., ET AL. v. BRENNAN, SECRETARY OF LABOR.* C. A. 5th Cir. Certiorari denied. Reported below: 474 F. 2d 18.

No. 72-1599. *RICCARDI v. NEW YORK*. Sup. Ct. N. Y., Kings County. Certiorari denied. Reported below: 73 Misc. 2d 19, 340 N. Y. S. 2d 996.

No. 72-1601. *N. C. FREED Co., INC. v. BOARD OF GOVERNORS, FEDERAL RESERVE SYSTEM, ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 473 F. 2d 1210.

No. 72-1608. *GITMAN v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 473 F. 2d 907.

No. 72-1609. *INTERNATIONAL PAPER Co. v. MISSISSIPPI ET AL.* Sup. Ct. Miss. Certiorari denied. Reported below: 271 So. 2d 395.

No. 72-1610. *GREENSPAN v. UNITED STATES*;

No. 73-39. *GEORGE v. UNITED STATES*; and

No. 73-61. *YONAN v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 477 F. 2d 508.

No. 72-1611. *TUCKER v. NEAL*. C. A. 9th Cir. Certiorari denied.

October 9, 1973

414 U. S.

No. 72-1618. *GIMELSTOB v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 475 F. 2d 157.

No. 72-1620. *MOSS v. O'DONNELL, ADMINISTRATRIX, ET AL.* C. A. 7th Cir. Certiorari denied. Reported below: 475 F. 2d 428.

No. 72-1623. *BOOTHE v. MORTON, SECRETARY OF THE INTERIOR, ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 473 F. 2d 790.

No. 72-1629. *BLUETT v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 474 F. 2d 1343.

No. 72-1632. *WRIGHT ET AL. v. VIRGINIA*. Sup. Ct. Va. Certiorari denied.

No. 72-1634. *DESERT OUTDOOR ADVERTISING, INC., ET AL. v. CITY OF ESCONDIDO*. Sup. Ct. Cal. Certiorari denied. Reported below: 8 Cal. 3d 785, 505 P. 2d 1012.

No. 72-1635. *OHIO CASUALTY GROUP v. PARRISH ET AL.* Dist. Ct. App. Fla., 3d Dist. Certiorari denied. Reported below: 260 So. 2d 550.

No. 72-1636. *McCOY v. UNITED STATES*. C. A. 10th Cir. Certiorari denied. Reported below: 478 F. 2d 176.

No. 72-1639. *BABICH ET AL. v. UNITED STATES*; and No. 72-1654. *SPANN v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 477 F. 2d 242.

No. 72-1640. *STANDARD EDUCATORS, INC., ET AL. v. FEDERAL TRADE COMMISSION*. C. A. D. C. Cir. Certiorari denied. Reported below: 154 U. S. App. D. C. 290, 475 F. 2d 401.

414 U.S.

October 9, 1973

No. 72-1643. CONTINENTAL CASUALTY Co. *v.* J. G. LINK & Co. ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 470 F. 2d 1133.

No. 72-1644. IMPACT DIE CASTING CORP. *v.* NATIONAL LABOR RELATIONS BOARD. C. A. 7th Cir. Certiorari denied.

No. 72-1645. GREEN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 474 F. 2d 1385.

No. 72-1647. MOBIL OIL CORP. ET AL. *v.* STANDARD INDUSTRIES, INC., ET AL.;

No. 72-1663. SUNRAY-DX OIL Co. *v.* STANDARD INDUSTRIES, INC., ET AL.; and

No. 72-1689. STANDARD INDUSTRIES, INC., ET AL. *v.* MOBIL OIL CORP. ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 475 F. 2d 220.

No. 72-1655. PARKER SWEEPER Co. *v.* E. T. RUGG Co. C. A. 6th Cir. Certiorari denied. Reported below: 474 F. 2d 950.

No. 72-1656. TENNENBAUM ET AL. *v.* TENNENBAUM ET AL. Sup. Ct. Ohio. Certiorari denied.

No. 72-1658. C & M PETROLEUM PRODUCERS, INC., ET AL. *v.* MEYERS ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 476 F. 2d 427.

No. 72-1666. PARAMOUNT FILM DISTRIBUTING CORP. *v.* NEW YORK. Ct. Cl. N. Y. Certiorari denied. Reported below: See 30 N. Y. 2d 415, 285 N. E. 2d 695.

No. 72-1667. KRODEL *v.* HOUGHTALING ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 468 F. 2d 887.

October 9, 1973

414 U.S.

No. 72-1668. *SHIOSAKI v. COMMISSIONER OF INTERNAL REVENUE*. C. A. 9th Cir. Certiorari denied. Reported below: 475 F. 2d 770.

No. 72-1672. *ALMADEN VOLKSWAGEN v. NATIONAL LABOR RELATIONS BOARD*. C. A. D. C. Cir. Certiorari denied.

No. 72-1673. *DENNY v. ALABAMA*. Ct. Crim. App. Ala. Certiorari denied. Reported below: 49 Ala. App. 621, 274 So. 2d 650.

No. 72-1674. *COX ET AL. v. BLACKMON ET AL.* Sup. Ct. Ga. Certiorari denied. Reported below: 230 Ga. 275, 196 S. E. 2d 403.

No. 72-1677. *LEE v. BROWN*. Sup. Ct. Ore. Certiorari denied. Reported below: 264 Ore. 341, 505 P. 2d 924.

No. 72-1683. *BENJAMIN v. WESTERN BOAT BUILDING CORP.* C. A. 5th Cir. Certiorari denied. Reported below: 472 F. 2d 723.

No. 72-1685. *OWEN v. OWEN*. Sup. Ct. Mich. Certiorari denied. Reported below: 389 Mich. 117, 205 N. W. 2d 181.

No. 72-1686. *DIANOVIN PHARMACEUTICALS, INC., ET AL. v. UNITED STATES*. C. A. 1st Cir. Certiorari denied. Reported below: 475 F. 2d 100.

No. 72-1687. *MILLER v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 476 F. 2d 667.

No. 72-1692. *D. D. I., INC., ET AL. v. UNITED STATES*. Ct. Cl. Certiorari denied. Reported below: 199 Ct. Cl. 380, 467 F. 2d 497.

414 U. S.

October 9, 1973

No. 72-1693. *BRIGHAM ET AL. v. UNITED STATES*. Ct. Cl. Certiorari denied. Reported below: 200 Ct. Cl. 68, 470 F. 2d 571.

No. 72-1695. *DAVIES v. JUDGES OF THE U. S. COURT OF MILITARY APPEALS ET AL.* C. A. 1st Cir. Certiorari denied.

No. 72-1696. *GREAT LAKES CAR DISTRIBUTORS, INC. v. KIBSGARD SPORTS CAR CENTER, INC.* C. A. 6th Cir. Certiorari denied.

No. 72-1697. *SHAFER v. UNITED STATES*. C. A. 6th Cir. Certiorari denied.

No. 72-1700. *HARMASH ET AL. v. UNITED STATES*; and  
No. 72-1730. *KIFFER v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 477 F. 2d 349.

No. 72-1702. *GUEST v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 475 F. 2d 1403.

No. 72-1705. *CARINI v. ZONING BOARD OF APPEALS OF THE TOWN OF WEST HARTFORD*. Sup. Ct. Conn. Certiorari denied.

No. 72-1708. *KELLEMS v. COMMISSIONER OF INTERNAL REVENUE*. C. A. 2d Cir. Certiorari denied. Reported below: 474 F. 2d 1399.

No. 72-1710. *WASHINGTON THEATER CLUB, INC. v. DISTRICT OF COLUMBIA DEPARTMENT OF FINANCE AND REVENUE, PROPERTY ASSESSMENT DIVISION*. Ct. App. D. C. Certiorari denied. Reported below: See 302 A. 2d 231.

October 9, 1973

414 U. S.

No. 72-1722. *DUNHAM v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 475 F. 2d 1241.

No. 72-1723. *ALVAREZ-FRANCO v. UNITED STATES*. C. A. 9th Cir. Certiorari denied.

No. 72-1725. *PENNSYLVANIA TRANSFER COMPANY OF PHILADELPHIA, INC. v. WHINSTON, DISTRICT DIRECTOR OF INTERNAL REVENUE*. C. A. 3d Cir. Certiorari denied.

No. 72-1726. *CHAMBER OF COMMERCE OF THE UNITED STATES v. LAVINE, COMMISSIONER, DEPARTMENT OF SOCIAL SERVICES OF NEW YORK, ET AL.* Ct. App. N. Y. Certiorari denied. Reported below: 31 N. Y. 2d 386, 292 N. E. 2d 667.

No. 72-1732. *CENTER SCHOOL DISTRICT No. 58 ET AL. v. GIERINGER*. C. A. 8th Cir. Certiorari denied. Reported below: 477 F. 2d 1164.

No. 72-1739. *SCHROEDER ET UX. v. TRUSTEES OF SCHOOLS OF TOWNSHIP 42 NORTH, RANGE 11, EAST OF THIRD PRINCIPAL MERIDIAN, COOK COUNTY, ET AL.* App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 8 Ill. App. 3d 122, 289 N. E. 2d 247.

No. 72-6428. *ROBERTS v. KANSAS*. Sup. Ct. Kan. Certiorari denied. Reported below: 210 Kan. 786, 504 P. 2d 242.

No. 72-6430. *RECOR v. ROSE, WARDEN*. C. A. 6th Cir. Certiorari denied.

No. 72-6434. *REESE, ADMINISTRATOR v. CITY OF SEATTLE ET AL.* Sup. Ct. Wash. Certiorari denied. Reported below: 81 Wash. 2d 374, 503 P. 2d 64.

No. 72-6473. *TULL v. WARDEN, MARYLAND PENITENTIARY*. Ct. App. Md. Certiorari denied.

414 U.S.

October 9, 1973

No. 72-6480. *LEWIS v. UNITED STATES*. C. A. 9th Cir. Certiorari denied.

No. 72-6484. *ANDREWS v. RANSELL*. C. A. 4th Cir. Certiorari denied. Reported below: 474 F. 2d 1341.

No. 72-6492. *KARCHER v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 472 F. 2d 1406.

No. 72-6504. *RAINEY v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 472 F. 2d 1407.

No. 72-6505. *BRAXTON v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 472 F. 2d 1407.

No. 72-6510. *GARCIA v. TEXAS*. Ct. Crim. App. Tex. Certiorari denied. Reported below: 491 S. W. 2d 669.

No. 72-6514. *ELLIS v. TWOMEY, WARDEN*. C. A. 7th Cir. Certiorari denied.

No. 72-6515. *COULTER v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 474 F. 2d 1004.

No. 72-6519. *AGRAN ET AL. v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 474 F. 2d 262.

No. 72-6522. *COCHRAN v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 475 F. 2d 1080.

No. 72-6527. *ODES v. DOPPELT ET AL.* Sup. Ct. Ill. Certiorari denied.

No. 72-6530. *WHITE v. ALABAMA*. C. A. 5th Cir. Certiorari denied. Reported below: 469 F. 2d 1407.

No. 72-6531. *MURPHY v. CALIFORNIA*. Sup. Ct. Cal. Certiorari denied.

No. 72-6533. *BEESON v. KASSOS ET AL.* C. A. 8th Cir. Certiorari denied. Reported below: 471 F. 2d 656.

October 9, 1973

414 U.S.

No. 72-6540. *HARVEY v. UNITED STATES*. C. A. 9th Cir. Certiorari denied.

No. 72-6547. *MUISE ET AL. v. UNITED STATES*. C. A. 1st Cir. Certiorari denied.

No. 72-6548. *TYNDALL ET AL. v. WOLFF, WARDEN*. C. A. 8th Cir. Certiorari denied. Reported below: 471 F. 2d 52.

No. 72-6550. *WOLFE v. UNITED STATES ET AL.* C. A. D. C. Cir. Certiorari denied.

No. 72-6552. *McPHATTER v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 473 F. 2d 1356.

No. 72-6560. *SPRUILL ET AL. v. UNITED STATES*; and  
No. 72-6947. *GRAY ET AL. v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 474 F. 2d 1343.

No. 72-6561. *RODRIQUEZ v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 471 F. 2d 651.

No. 72-6562. *JAMES v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 474 F. 2d 1336.

No. 72-6563. *SATTERFIELD v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 473 F. 2d 911.

No. 72-6564. *JENKINS v. ESTELLE, CORRECTIONS DIRECTOR*. C. A. 5th Cir. Certiorari denied. Reported below: 471 F. 2d 651.

No. 72-6565. *ALVER v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 474 F. 2d 1343.

414 U.S.

October 9, 1973

No. 72-6569. *ROSE v. WASHINGTON*. Ct. App. Wash. Certiorari denied. Reported below: 7 Wash. App. 176, 498 P. 2d 897.

No. 72-6570. *SMITH v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 473 F. 2d 906.

No. 72-6579. *STEWART v. UNITED STATES*. C. A. 8th Cir. Certiorari denied.

No. 72-6582. *LYONS v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 474 F. 2d 1345.

No. 72-6587. *MAYES v. ESTELLE, CORRECTIONS DIRECTOR*. C. A. 5th Cir. Certiorari denied. Reported below: 471 F. 2d 651.

No. 72-6588. *BURTON v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 475 F. 2d 469.

No. 72-6591. *LEBOULANGER v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 475 F. 2d 1273.

No. 72-6592. *MITCHELL v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 474 F. 2d 1351.

No. 72-6594. *GAMBLE v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 473 F. 2d 912.

No. 72-6596. *DAPPER v. O'CONNOR ET AL.* C. A. 9th Cir. Certiorari denied.

No. 72-6597. *CHAPMAN v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 474 F. 2d 300.

No. 72-6602. *STEELE v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 477 F. 2d 597.

No. 72-6604. *MALLEY v. MISSISSIPPI*. Sup. Ct. Miss. Certiorari denied. Reported below: 271 So. 2d 448.

October 9, 1973

414 U.S.

No. 72-6605. *WALTER, AKA WALTERS v. UNITED STATES*.  
C. A. 10th Cir. Certiorari denied.

No. 72-6610. *DAUGHERTY ET AL. v. UNITED STATES*.  
C. A. 10th Cir. Certiorari denied.

No. 72-6614. *ROZEN v. UNITED STATES*. C. A. 3d Cir.  
Certiorari denied. Reported below: 475 F. 2d 1397.

No. 72-6615. *ALBERT v. UNITED STATES*. C. A. 9th  
Cir. Certiorari denied.

No. 72-6616. *POWELL v. UNITED STATES*. C. A. 9th  
Cir. Certiorari denied. Reported below: 474 F. 2d 615.

No. 72-6617. *VASQUEZ v. UNITED STATES*. C. A. 5th  
Cir. Certiorari denied. Reported below: 476 F. 2d 730.

No. 72-6620. *LAWRENCE v. STONE, INSTITUTION SU-  
PERINTENDENT*. C. A. 9th Cir. Certiorari denied.

No. 72-6621. *KALLEN v. UNITED STATES*. C. A. 5th  
Cir. Certiorari denied. Reported below: 474 F. 2d 1345.

No. 72-6624. *SMITH v. UNITED STATES*. C. A. 9th  
Cir. Certiorari denied.

No. 72-6626. *ODOM v. UNITED STATES*. C. A. 3d Cir.  
Certiorari denied. Reported below: 475 F. 2d 1397.

No. 72-6627. *RAMOS v. UNITED STATES*. C. A. 9th  
Cir. Certiorari denied. Reported below: 476 F. 2d 624.

No. 72-6631. *COLEY v. NORTH CAROLINA*. Sup. Ct.  
N. C. Certiorari denied. Reported below: 282 N. C.  
552, 193 S. E. 2d 725.

No. 72-6632. *DAVIS v. PENNSYLVANIA*. Sup. Ct. Pa.  
Certiorari denied. Reported below: 449 Pa. 468, 297 A.  
2d 817.

414 U.S.

October 9, 1973

No. 72-6637. *COLEMAN v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 474 F. 2d 1337.

No. 72-6639. *SWINDLER v. UNITED STATES*. C. A. 10th Cir. Certiorari denied. Reported below: 476 F. 2d 167.

No. 72-6645. *WEBB v. PORTER ET AL.* C. A. 6th Cir. Certiorari denied.

No. 72-6646. *FUNGONE v. UNITED STATES*. C. A. 2d Cir. Certiorari denied.

No. 72-6648. *JEFFRIES v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 474 F. 2d 1351.

No. 72-6649. *MOORE, AKA McNESS v. UNITED STATES*. C. A. 10th Cir. Certiorari denied. Reported below: See 441 F. 2d 746.

No. 72-6650. *THACKER v. BLACK, WARDEN*. C. A. 6th Cir. Certiorari denied.

No. 72-6651. *SKINNER v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 474 F. 2d 1349.

No. 72-6652. *FERGUSON v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 474 F. 2d 1343.

No. 72-6653. *LANE v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 472 F. 2d 1407.

No. 72-6654. *JORDAN v. UNITED STATES*. C. A. 9th Cir. Certiorari denied.

No. 72-6655. *CLARK v. UNITED STATES*. C. A. 10th Cir. Certiorari denied.

October 9, 1973

414 U.S.

No. 72-6658. *FREEMAN v. UNITED STATES*. C. A. 10th Cir. Certiorari denied.

No. 72-6663. *BOYDEN v. UNITED STATES*; and  
No. 72-6882. *BOYDEN v. UNITED STATES*. C. A. 9th Cir. Certiorari denied.

No. 72-6665. *CAUDILL ET AL. v. PICKETT, WARDEN*. C. A. 7th Cir. Certiorari denied.

No. 72-6667. *WRIGHT v. PERINI, CORRECTIONAL SUPERINTENDENT, ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 473 F. 2d 911.

No. 72-6670. *WOJCIECHOWSKI v. UNITED STATES*. C. A. 2d Cir. Certiorari denied.

No. 72-6671. *BROWN v. NEW JERSEY STATE PAROLE BOARD*. Super. Ct. N. J. Certiorari denied.

No. 72-6672. *VAN ACKEREN v. NEBRASKA*. Sup. Ct. Neb. Certiorari denied. Reported below: 189 Neb. 639, 204 N. W. 2d 165.

No. 72-6675. *LEAMER v. DERAMUS, CORRECTIONAL SUPERINTENDENT*. C. A. 3d Cir. Certiorari denied.

No. 72-6678. *ASSENZA v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 474 F. 2d 1345.

No. 72-6680. *MORRIS v. UNITED STATES*. C. A. 9th Cir. Certiorari denied.

No. 72-6683. *HAWKINS v. UNITED STATES*. C. A. D. C. Cir. Certiorari denied. Reported below: 154 U. S. App. D. C. 307, 475 F. 2d 418.

No. 72-6685. *DRISCOLL v. VINCENT, CORRECTIONAL SUPERINTENDENT*. C. A. 2d Cir. Certiorari denied.

No. 72-6686. *HILL v. JOHNSON, CORRECTIONAL SUPERINTENDENT*. C. A. 3d Cir. Certiorari denied.

414 U.S.

October 9, 1973

No. 72-6687. *LOPEZ v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 475 F. 2d 537.

No. 72-6692. *ECKERT v. CITY OF PHILADELPHIA*. C. A. 3d Cir. Certiorari denied. Reported below: 477 F. 2d 610.

No. 72-6693. *TROPEANO v. UNITED STATES*; and

No. 72-6694. *MALONE v. UNITED STATES*. C. A. 1st Cir. Certiorari denied. Reported below: No. 72-6693, 476 F. 2d 586.

No. 72-6695. *GALARDI v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 476 F. 2d 1072.

No. 72-6696. *GUFFEY v. NORTH CAROLINA ET AL.* C. A. 4th Cir. Certiorari denied.

No. 72-6697. *WILLIAMS ET AL. v. UNITED STATES*. C. A. D. C. Cir. Certiorari denied.

No. 72-6698. *BURTON v. HASKINS, WARDEN*. C. A. 6th Cir. Certiorari denied.

No. 72-6700. *MULLINS v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 476 F. 2d 664.

No. 72-6701. *GRISSAM v. ESTELLE, CORRECTIONS DIRECTOR*. C. A. 5th Cir. Certiorari denied.

No. 72-6702. *SMITH v. UNITED STATES*. C. A. 9th Cir. Certiorari denied.

No. 72-6703. *JENSEN v. REEPLOEG ET AL.* Sup. Ct. Wash. Certiorari denied. Reported below: 81 Wash. 2d 541, 503 P. 2d 99.

No. 72-6704. *DILLARD v. NEW YORK CITY TRANSIT AUTHORITY*. Ct. App. N. Y. Certiorari denied.

No. 72-6705. *BEASLEY v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 476 F. 2d 164.

October 9, 1973

414 U.S.

No. 72-6706. *CROSS ET AL. v. STANFORD UNIVERSITY*. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 72-6707. *HARRINGTON v. UNITED STATES*. C. A. 2d Cir. Certiorari denied.

No. 72-6708. *DAVIS v. ESTELLE, CORRECTIONS DIRECTOR*. Ct. Crim. App. Tex. Certiorari denied.

No. 72-6709. *HAYES v. CALIFORNIA*. Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 72-6716. *INGRAM v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 477 F. 2d 236.

No. 72-6717. *MORENO v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 475 F. 2d 44.

No. 72-6718. *GRAY v. SLAYTON, PENITENTIARY SUPERINTENDENT*. C. A. 4th Cir. Certiorari denied.

No. 72-6719. *DEATON v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 477 F. 2d 65.

No. 72-6722. *KAMINER ET AL. v. FRANKLIN LIFE INSURANCE Co.* C. A. 5th Cir. Certiorari denied. Reported below: 472 F. 2d 1073.

No. 72-6724. *DOMENECH v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 476 F. 2d 1229.

No. 72-6728. *COOPER v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 472 F. 2d 64.

No. 72-6729. *PROGER, AKA PRAGER v. UNITED STATES*. C. A. 9th Cir. Certiorari denied.

No. 72-6730. *RILEY v. UNITED STATES*. Ct. App. D. C. Certiorari denied. Reported below: 298 A. 2d 228.

414 U.S.

October 9, 1973

No. 72-6731. *JONES v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 475 F. 2d 723.

No. 72-6732. *FLORES v. UNITED STATES*. C. A. 1st Cir. Certiorari denied. Reported below: 477 F. 2d 608.

No. 72-6733. *KEARNS v. KANSAS*. Sup. Ct. Kan. Certiorari denied. Reported below: 211 Kan. 158, 505 P. 2d 676.

No. 72-6735. *JOHNSON v. FLORIDA*. Sup. Ct. Fla. Certiorari denied. Reported below: 268 So. 2d 2.

No. 72-6736. *HAVEL v. UNITED STATES*. C. A. 3d Cir. Certiorari denied.

No. 72-6737. *RODRIGUES v. UNITED STATES*. C. A. 9th Cir. Certiorari denied.

No. 72-6739. *GALLARDO v. CALIFORNIA*. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 72-6740. *BALSLEY v. UNITED STATES*. C. A. 6th Cir. Certiorari denied.

No. 72-6741. *GRASS v. UNITED STATES*. C. A. 7th Cir. Certiorari denied.

No. 72-6743. *KINDRED v. UNITED STATES*. C. A. 9th Cir. Certiorari denied.

No. 72-6751. *MANGABAT v. IMMIGRATION AND NATURALIZATION SERVICE*. C. A. 9th Cir. Certiorari denied. Reported below: 477 F. 2d 108.

No. 72-6752. *CASAS ET AL. v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 474 F. 2d 1345.

No. 72-6754. *STARNES v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 475 F. 2d 1403.

October 9, 1973

414 U. S.

No. 72-6755. *BARTLETT v. UNITED STATES*. C. A. 8th Cir. Certiorari denied.

No. 72-6759. *GAY v. COMMISSIONER OF INTERNAL REVENUE*. C. A. D. C. Cir. Certiorari denied.

No. 72-6760. *KENNEDY v. TENNESSEE*. Ct. Crim. App. Tenn. Certiorari denied.

No. 72-6761. *JOHNSON v. WAINWRIGHT, CORRECTIONS DIRECTOR*. C. A. 5th Cir. Certiorari denied. Reported below: 475 F. 2d 1402.

No. 72-6762. *SMILGUS v. BERGMAN ET AL.* C. A. 6th Cir. Certiorari denied.

No. 72-6763. *ALBRIGHT v. UNITED STATES*. C. A. 9th Cir. Certiorari denied.

No. 72-6765. *RICO v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 475 F. 2d 1405.

No. 72-6766. *CARLTON v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 475 F. 2d 104.

No. 72-6767. *COLE v. TENNESSEE*. Ct. Crim. App. Tenn. Certiorari denied.

No. 72-6768. *ALLEN v. WARDEN, MARYLAND HOUSE OF CORRECTION*. Ct. Sp. App. Md. Certiorari denied.

No. 72-6769. *BROWN v. UNITED STATES*. C. A. 9th Cir. Certiorari denied.

No. 72-6775. *VITTA v. UNITED STATES*; and

No. 72-6827. *CANGIANO v. UNITED STATES*. C. A. 2d Cir. Certiorari denied.

No. 72-6776. *HAMILTON v. UNITED STATES*. C. A. 3d Cir. Certiorari denied.

No. 72-6779. *BANGOR v. UNITED STATES*. C. A. 9th Cir. Certiorari denied.

414 U. S.

October 9, 1973

No. 72-6780. *FERRARI v. HENDERSON, CORRECTIONAL SUPERINTENDENT*. C. A. 2d Cir. Certiorari denied. Reported below: 474 F. 2d 510.

No. 72-6781. *LASSITER v. NORTH CAROLINA*. Ct. App. N. C. Certiorari denied. Reported below: 17 N. C. App. 35, 193 S. E. 2d 265.

No. 72-6782. *HARPER v. TEGTMEYER, ACTING COMMISSIONER OF PATENTS, ET AL.* C. A. D. C. Cir. Certiorari denied.

No. 72-6783. *CLAYTON v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 476 F. 2d 89.

No. 72-6786. *SACASAS v. UNITED STATES*. C. A. 2d Cir. Certiorari denied.

No. 72-6788. *WILKINS v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 477 F. 2d 323.

No. 72-6789. *GOMEZ v. ESTELLE, CORRECTIONS DIRECTOR*. C. A. 5th Cir. Certiorari denied. Reported below: 471 F. 2d 774.

No. 72-6790. *SMILGUS v. LETTS, JUDGE*. C. A. 6th Cir. Certiorari denied.

No. 72-6792. *ECKERT v. UNITED STATES DEPARTMENT OF THE TREASURY ET AL.* C. A. 3d Cir. Certiorari denied.

No. 72-6793. *RICHARDSON v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 477 F. 2d 1280.

No. 72-6795. *BUTLER v. CRAVEN, WARDEN*. Sup. Ct. Cal. Certiorari denied.

No. 72-6796. *HAWKS v. NEW YORK*. App. Div., Sup. Ct. N. Y., 4th Jud. Dept. Certiorari denied.

October 9, 1973

414 U. S.

No. 72-6797. *KOSKY v. OHIO*. Ct. App. Ohio, Cuyahoga County. Certiorari denied.

No. 72-6798. *GERNAND v. UNITED STATES*. Ct. Cl. Certiorari denied. Reported below: 200 Ct. Cl. 747.

No. 72-6801. *BLECKLEY v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 475 F. 2d 1225.

No. 72-6802. *PORTER v. BLOOMSBURG STATE COLLEGE ET AL.* Sup. Ct. Pa. Certiorari denied. Reported below: 450 Pa. 375, 301 A. 2d 621.

No. 72-6803. *PORTER v. NOSSEN*. Super. Ct. Pa. Certiorari denied.

No. 72-6804. *KERR v. BORTHWICK*. C. A. D. C. Cir. Certiorari denied.

No. 72-6805. *WHITE v. CARDWELL, WARDEN*. C. A. 6th Cir. Certiorari denied.

No. 72-6806. *PUCO v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 476 F. 2d 1099.

No. 72-6807. *POLK v. CRAVEN, WARDEN*. C. A. 9th Cir. Certiorari denied.

No. 72-6809. *HAMMONDS v. MISSOURI*. C. A. 8th Cir. Certiorari denied.

No. 72-6810. *DULLES ET AL. v. FIDUCIARY TRUST CO.* C. A. D. C. Cir. Certiorari denied.

No. 72-6811. *EDMUNSON ET AL. v. UNITED STATES*. C. A. 3d Cir. Certiorari denied.

No. 72-6813. *SPIRES v. SOUTH CAROLINA ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 474 F. 2d 1343.

414 U. S.

October 9, 1973

No. 72-6814. *GLASGOW v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 478 F. 2d 850.

No. 72-6815. *POE v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 462 F. 2d 195.

No. 72-6816. *STITH v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 479 F. 2d 315.

No. 72-6817. *FOUNTAIN v. UNITED STATES*. C. A. 3d Cir. Certiorari denied.

No. 72-6819. *KAYE v. VINCENT, CORRECTIONAL SUPERINTENDENT*. C. A. 2d Cir. Certiorari denied.

No. 72-6824. *ALLEN v. UNITED STATES*; and

No. 72-6825. *O'BRIEN v. UNITED STATES*. C. A. 3d Cir. Certiorari denied.

No. 72-6826. *NYHAN v. CALIFORNIA*. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 72-6828. *LUNA v. ESTELLE, CORRECTIONS DIRECTOR*. C. A. 5th Cir. Certiorari denied. Reported below: 474 F. 2d 95.

No. 72-6829. *McMINN v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 477 F. 2d 599.

No. 72-6830. *PACE v. CAMPBELL ET AL.* C. A. 1st Cir. Certiorari denied.

No. 72-6831. *CRAWFORD v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 474 F. 2d 1352.

No. 72-6833. *TIDD ET AL. v. UNITED STATES*. C. A. 4th Cir. Certiorari denied.

No. 72-6835. *BLASETTI v. GAGLIARDI ET AL.* C. A. 2d Cir. Certiorari denied.

October 9, 1973

414 U. S.

No. 72-6837. JOSEPH *v.* HENDERSON, WARDEN. Sup. Ct. La. Certiorari denied.

No. 72-6838. WISE *v.* BRITTON, WARDEN. C. A. 10th Cir. Certiorari denied.

No. 72-6841. PEREZ-ALVAREZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 72-6842. JOHNSON *v.* DEPARTMENT OF WATER AND POWER OF THE CITY OF LOS ANGELES ET AL. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 72-6843. BRAGER *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 474 F. 2d 598.

No. 72-6844. JENKINS *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied.

No. 72-6845. PETERSON ET AL. *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 475 F. 2d 806.

No. 72-6848. BROWN *v.* MONTANYE, CORRECTIONAL SUPERINTENDENT. C. A. 2d Cir. Certiorari denied.

No. 72-6849. LIGHT ET AL. *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 478 F. 2d 494.

No. 72-6850. LITTLE *v.* TWOMEY, WARDEN. C. A. 7th Cir. Certiorari denied. Reported below: 477 F. 2d 767.

No. 72-6852. KELLY *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 477 F. 2d 597.

No. 72-6853. WHITE *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 72-6854. PHILLIPS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 477 F. 2d 913.

414 U. S.

October 9, 1973

No. 72-6855. CHAN KAM-SHU *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 72-6860. COLLINGWOOD *v.* MEACHAM, WARDEN. Sup. Ct. Wyo. Certiorari denied.

No. 72-6861. REDFORD *v.* UNITED STATES. Ct. Cl. Certiorari denied.

No. 72-6862. BROWN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied.

No. 72-6863. LINDSEY *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 72-6864. JONES *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 72-6866. KETOLA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 478 F. 2d 64.

No. 72-6867. HARRELSON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 477 F. 2d 383.

No. 72-6868. WILLIAMS *v.* WARDEN, MARYLAND PENITENTIARY. C. A. 4th Cir. Certiorari denied.

No. 72-6869. SIMPSON *v.* ALABAMA ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 472 F. 2d 1407.

No. 72-6870. ARNOLD *v.* BUFFAT ET AL. C. A. 6th Cir. Certiorari denied.

No. 72-6873. NEWELL *v.* HARRIS, WARDEN. C. A. 10th Cir. Certiorari denied.

No. 72-6875. OLDEN *v.* MCCARTHY, MEN'S COLONY SUPERINTENDENT. C. A. 9th Cir. Certiorari denied. Reported below: 474 F. 2d 693.

October 9, 1973

414 U. S.

No. 72-6876. *LARKIN v. KANSAS*. Sup. Ct. Kan. Certiorari denied. Reported below: 212 Kan. 158, 510 P. 2d 123.

No. 72-6877. *SERRANO-BUGARIN v. UNITED STATES*. C. A. 9th Cir. Certiorari denied.

No. 72-6878. *PERKINS v. UNITED STATES*. C. A. 9th Cir. Certiorari denied.

No. 72-6884. *LYNCH v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 477 F. 2d 924.

No. 72-6885. *PAYTON v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 472 F. 2d 1406.

No. 72-6887. *ROLLINS v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 475 F. 2d 97.

No. 72-6888. *BOATNER v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 478 F. 2d 737.

No. 72-6889. *NELSON ET AL. v. JAMAICA BUSES, INC.* App. Div., Sup. Ct. N. Y., 2d Jud. Dept. Certiorari denied.

No. 72-6891. *SHINDER v. ESMIOL*. App. Dept., Super. Ct. Cal., County of San Francisco. Certiorari denied.

No. 72-6893. *BAILEY v. TENNESSEE ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 474 F. 2d 1273.

No. 72-6894. *ENDRES v. SWENSON, WARDEN*. C. A. 8th Cir. Certiorari denied.

No. 72-6896. *JEFFERS v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 477 F. 2d 593.

414 U.S.

October 9, 1973

No. 72-6898. *SCHARTNER v. PIZZO, WARDEN, ET AL.* C. A. 3d Cir. Certiorari denied.

No. 72-6899. *CREIGHTON v. UNITED STATES.* C. A. 4th Cir. Certiorari denied. Reported below: 477 F. 2d 593.

No. 72-6901. *POLK v. CALIFORNIA.* Ct. App. Cal. 1st App. Dist. Certiorari denied.

No. 72-6903. *MOSS v. HOCKER, WARDEN.* C. A. 9th Cir. Certiorari denied.

No. 72-6904. *FROGGE v. UNITED STATES.* C. A. 5th Cir. Certiorari denied. Reported below: 476 F. 2d 969.

No. 72-6907. *YOUNG v. UNITED STATES.* C. A. 8th Cir. Certiorari denied. Reported below: 468 F. 2d 595.

No. 72-6909. *BILELLO v. NEW YORK.* Ct. App. N. Y. Certiorari denied. Reported below: 31 N. Y. 2d 922, 293 N. E. 2d 92.

No. 72-6910. *HALEY v. UNITED STATES.* C. A. 8th Cir. Certiorari denied. Reported below: 478 F. 2d 766.

No. 72-6911. *WALL v. UNITED STATES.* C. A. 5th Cir. Certiorari denied. Reported below: 475 F. 2d 1403.

No. 72-6912. *WHITE v. UNITED STATES.* C. A. 8th Cir. Certiorari denied.

No. 72-6913. *WHITESIDE v. ESTELLE, CORRECTIONS DIRECTOR.* C. A. 5th Cir. Certiorari denied. Reported below: 474 F. 2d 1346.

No. 72-6920. *COLLINS v. ESTELLE, CORRECTIONS DIRECTOR.* C. A. 5th Cir. Certiorari denied. Reported below: 474 F. 2d 988.

No. 72-6922. *LARUEA v. MARTHA WASHINGTON ASSOCIATES ET AL.* C. A. 2d Cir. Certiorari denied.

October 9, 1973

414 U. S.

No. 72-6923. *MILLER v. IMMIGRATION AND NATURALIZATION SERVICE*. C. A. 9th Cir. Certiorari denied.

No. 72-6926. *ROSS v. TEXAS*. C. A. 5th Cir. Certiorari denied. Reported below: 474 F. 2d 1150.

No. 72-6928. *HART v. ARIZONA*. Sup. Ct. Ariz. Certiorari denied.

No. 72-6935. *WHITED v. UNITED STATES*. C. A. 9th Cir. Certiorari denied.

No. 72-6936. *FARKAS v. LING-TEMCO-VOUGHT, INC.* C. A. 1st Cir. Certiorari denied.

No. 72-6937. *FEROLDI v. UNITED STATES*. C. A. 2d Cir. Certiorari denied.

No. 72-6938. *INDIA v. NEW YORK*. Ct. App. N. Y. Certiorari denied. Reported below: 32 N. Y. 2d 230, 298 N. E. 2d 65.

No. 72-6939. *JOHNSTON v. UNITED STATES*. C. A. 9th Cir. Certiorari denied.

No. 72-6940. *HUNT, AKA REED v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 478 F. 2d 357.

No. 72-6942. *DUN LEAVAY v. LUTZ APPELLATE PRINTERS, INC.* C. A. 2d Cir. Certiorari denied.

No. 72-6943. *DIXON v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 475 F. 2d 1403.

No. 72-6944. *HARDWICK v. DURDEN ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 471 F. 2d 651.

No. 72-6945. *HARRIS ET AL. v. NORTH CAROLINA*. Sup. Ct. N. C. Certiorari denied. Reported below: 283 N. C. 46, 194 S. E. 2d 796.

414 U. S.

October 9, 1973

No. 72-6946. *SHERMAN v. NEW YORK*. App. Div., Sup. Ct. N. Y., 1st Jud. Dept. Certiorari denied.

No. 72-6948. *JARRETT v. SCOTT, GOVERNOR OF NORTH CAROLINA, ET AL.* C. A. 4th Cir. Certiorari denied.

No. 72-6949. *AMES v. UNITED STATES*. C. A. 9th Cir. Certiorari denied.

No. 72-6953. *MILLER v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 478 F. 2d 1315.

No. 72-6954. *AVERITT v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 477 F. 2d 1009.

No. 72-6955. *COPPOLA v. UNITED STATES*. C. A. 2d Cir. Certiorari denied.

No. 72-6957. *GRILLS v. TENNESSEE*. C. A. 6th Cir. Certiorari denied.

No. 72-6958. *GARDNER v. NEW MEXICO*. Sup. Ct. N. M. Certiorari denied. Reported below: 85 N. M. 104, 509 P. 2d 871.

No. 72-6959. *WATKINS v. CALIFORNIA*. Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 72-6960. *THUNDERSHIELD v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 478 F. 2d 241.

No. 72-6961. *GAMMON v. UNITED STATES*. C. A. 10th Cir. Certiorari denied.

No. 72-6962. *McCARTHNEY v. CALIFORNIA*. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 72-6963. *SCARPA v. HENDERSON, WARDEN*. C. A. 2d Cir. Certiorari denied.

October 9, 1973

414 U.S.

No. 72-6964. *CLARK v. CALIFORNIA*. Ct. App. Cal., 4th App. Dist. Certiorari denied. Reported below: 30 Cal. App. 3d 549, 106 Cal. Rptr. 147.

No. 72-6965. *SLOAN v. UNITED STATES*. C. A. 9th Cir. Certiorari denied.

No. 72-6966. *MORRIS, AKA JACKSON v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 477 F. 2d 657.

No. 72-6968. *JOHNSON v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 476 F. 2d 1251.

No. 72-6969. *MENDES v. REA EXPRESS, INC.* C. A. 2d Cir. Certiorari denied.

No. 72-6970. *DENMAN ET AL. v. BERKMAN*. C. A. 6th Cir. Certiorari denied.

No. 72-6972. *CIMMINO v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 478 F. 2d 1362.

No. 72-6973. *SOOTS ET UX. v. CONNER*. Sup. Ct. Del. Certiorari denied.

No. 72-6974. *WATSON v. UNITED STATES*. C. A. 8th Cir. Certiorari denied.

No. 72-6975. *HESTER v. VETERANS' ADMINISTRATION CENTER ET AL.* C. A. 3d Cir. Certiorari denied.

No. 72-6977. *WILLIAMS v. UNITED STATES*. C. A. 6th Cir. Certiorari denied.

No. 72-6978. *TORRES v. FLORIDA*. C. A. 5th Cir. Certiorari denied. Reported below: 477 F. 2d 555.

No. 72-6980. *HARPER v. UNITED STATES*. C. A. 9th Cir. Certiorari denied.

414 U. S.

October 9, 1973

- No. 72-6981. *DE LEON v. UNITED STATES*; and  
No. 73-5018. *DE LEON v. UNITED STATES*. C. A. 5th  
Cir. Certiorari denied. Reported below: 462 F. 2d 170  
and 474 F. 2d 790.
- No. 72-6982. *MCCRAY v. ALABAMA*. C. A. 5th Cir.  
Certiorari denied. Reported below: 476 F. 2d 256.
- No. 72-6983. *SMITH v. UNITED STATES*. C. A. 9th  
Cir. Certiorari denied.
- No. 72-6985. *REED v. UNITED STATES*. C. A. 2d Cir.  
Certiorari denied.
- No. 72-6986. *JACKSON v. UNITED STATES*. C. A. 2d  
Cir. Certiorari denied.
- No. 72-6987. *BROWN v. UNITED STATES*. C. A. 8th  
Cir. Certiorari denied.
- No. 72-6989. *WRIGHT v. SMITH, WARDEN*. C. A. 5th  
Cir. Certiorari denied. Reported below: 474 F. 2d 349.
- No. 72-6990. *HERN v. UNITED STATES*. C. A. 3d Cir.  
Certiorari denied.
- No. 72-6993. *KELLY v. PERINI, WARDEN*. C. A. 6th  
Cir. Certiorari denied.
- No. 72-6997. *HOWELL v. WORKMEN'S COMPENSATION  
APPEALS BOARD OF CALIFORNIA ET AL.* Ct. App. Cal., 2d  
App. Dist. Certiorari denied.
- No. 72-6998. *DIAZ-AGUILAR ET AL. v. IMMIGRATION  
AND NATURALIZATION SERVICE*. C. A. 9th Cir. Certio-  
rari denied.
- No. 72-6999. *CARROLL v. CITY OF MIAMI ET AL.* C. A.  
5th Cir. Certiorari denied.

October 9, 1973

414 U.S.

No. 73-2. *KAEHNI ET AL. v. DIFFRACTION Co.* C. A. 4th Cir. Certiorari denied. Reported below: 473 F. 2d 908.

No. 73-12. *LIBERTY MUTUAL INSURANCE Co. v. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION.* C. A. 5th Cir. Certiorari denied. Reported below: 475 F. 2d 579.

No. 73-17. *MOGULNICKI v. CONNECTICUT.* C. A. 2d Cir. Certiorari denied.

No. 73-18. *ARLINGTON HOTEL Co., INC. v. REED.* C. A. 8th Cir. Certiorari denied. Reported below: 476 F. 2d 721.

No. 73-20. *ARONSON ET AL. v. AMBROSE ET AL.* C. A. 3d Cir. Certiorari denied. Reported below: 479 F. 2d 75.

No. 73-21. *GRUBBS, DBA T. R. GRUBBS TIRE & APPLIANCE v. GENERAL ELECTRIC CREDIT CORP.* C. A. 5th Cir. Certiorari denied. Reported below: 478 F. 2d 53.

No. 73-22. *STERLING OIL OF OKLAHOMA, INC., ET AL. v. CHAMBERLAIN ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 474 F. 2d 149.

No. 73-23. *FLYNN v. UNITED STATES.* C. A. 1st Cir. Certiorari denied. Reported below: 481 F. 2d 11.

No. 73-24. *GREENWALD v. UNITED STATES.* C. A. 6th Cir. Certiorari denied. Reported below: 479 F. 2d 320.

No. 73-27. *MURRAY ET UX. v. UNITED STATES.* Ct. Cl. Certiorari denied. Reported below: See 192 Ct. Cl. 63, 426 F. 2d 376.

No. 73-30. *SOLOMON v. PENNSYLVANIA.* C. A. 3d Cir. Certiorari denied. Reported below: 475 F. 2d 1397.

414 U. S.

October 9, 1973

No. 73-31. YEAGER, PRINCIPAL KEEPER *v.* MACON. C. A. 3d Cir. Certiorari denied. Reported below: 476 F. 2d 613.

No. 73-35. FAIR LAWN EDUCATION ASSN. *v.* NEW JERSEY. Sup. Ct. N. J. Certiorari denied. Reported below: 63 N. J. 112, 305 A. 2d 72.

No. 73-36. FREEHOLD REGIONAL HIGH SCHOOL EDUCATION ASSN. *v.* NEW JERSEY. Super. Ct. N. J. Certiorari denied.

No. 73-43. SOBIEK *v.* CALIFORNIA. Ct. App. Cal., 1st App. Dist. Certiorari denied. Reported below: 30 Cal. App. 3d 458, 106 Cal. Rptr. 519.

No. 73-45. WILSON BUILDING, INC. *v.* BRENNAN, SECRETARY OF LABOR. C. A. 5th Cir. Certiorari denied. Reported below: 478 F. 2d 1090.

No. 73-48. KAISER *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 475 F. 2d 1406.

No. 73-49. SULLIVAN ET AL. *v.* BRINEGAR, SECRETARY OF TRANSPORTATION, ET AL. C. A. 9th Cir. Certiorari denied.

No. 73-53. LASORSA ET AL. *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 480 F. 2d 522.

No. 73-54. DONELON ET AL. *v.* NEW ORLEANS TERMINAL Co. ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 474 F. 2d 1108.

No. 73-57. BLAKEWAY ET AL. *v.* SOUTHERN NATIONAL BANK OF HOUSTON. Ct. Civ. App. Tex., 14th Sup. Jud. Dist. Certiorari denied. Reported below: 487 S. W. 2d 234.

October 9, 1973

414 U.S.

No. 73-58. *SENAK v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 477 F. 2d 304.

No. 73-59. *AMERICAN FAMILY MUTUAL INSURANCE CO. v. LUKE ET AL.* C. A. 8th Cir. Certiorari denied. Reported below: 476 F. 2d 1015.

No. 73-60. *P. G. BERLAND PAINT CITY, INC. v. NATIONAL LABOR RELATIONS BOARD*. C. A. 7th Cir. Certiorari denied.

No. 73-63. *YOUNG v. CLEAR LAKE YACHT BASIN, INC., ET AL.* C. A. 5th Cir. Certiorari denied.

No. 73-68. *NEW JERSEY v. KAISER ET AL.* C. A. 3d Cir. Certiorari denied. Reported below: 476 F. 2d 610.

No. 73-70. *MONTANA v. GLICK ET AL.* Sup. Ct. Mont. Certiorari denied. Reported below: — Mont. —, 509 P. 2d 1.

No. 73-71. *WARREN v. ROSENTHAL, EXECUTRIX*. C. A. 2d Cir. Certiorari denied. Reported below: 475 F. 2d 438.

No. 73-77. *ROTHBERG v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 480 F. 2d 534.

No. 73-83. *GALARDI ET AL. v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 476 F. 2d 1072.

No. 73-84. *WALKER v. BRENNAN, SECRETARY OF LABOR*. C. A. 5th Cir. Certiorari denied. Reported below: 477 F. 2d 292.

No. 73-86. *POWERS v. BETHLEHEM STEEL CORP. ET AL.* C. A. 1st Cir. Certiorari denied. Reported below: 477 F. 2d 643.

414 U. S.

October 9, 1973

No. 73-92. COHEN ET AL., EXECUTORS *v.* FRANCHARD CORP. ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 478 F. 2d 115.

No. 73-95. SATKIN *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 73-97. DE IBERN *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 478 F. 2d 1405.

No. 73-99. IN RE KAUFFMAN MUTUAL FUND ACTIONS (JOSEPH B. KAUFFMAN, PETITIONER). C. A. 1st Cir. Certiorari denied. Reported below: 479 F. 2d 257.

No. 73-100. J. O. JOHNSON, INC. *v.* UNITED STATES. Ct. Cl. Certiorari denied. Reported below: 201 Ct. Cl. 315, 476 F. 2d 1337.

No. 73-101. HUNTER *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 478 F. 2d 1019.

No. 73-105. SUPERIOR PINE PRODUCTS Co. *v.* UNITED STATES. Ct. Cl. Certiorari denied. Reported below: 201 Ct. Cl. 455.

No. 73-106. HANSEN *v.* UNITED CALIFORNIA BANK. C. A. 9th Cir. Certiorari denied.

No. 73-108. STASSI *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 475 F. 2d 1403.

No. 73-111. GENERAL AMERICAN LIFE INSURANCE Co. *v.* LOHMAN ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 478 F. 2d 719.

No. 73-113. BUTTOLPH *v.* IOWA. Sup. Ct. Iowa. Certiorari denied. Reported below: 204 N. W. 2d 824.

No. 73-114. ARMSTRONG *v.* IOWA. Sup. Ct. Iowa. Certiorari denied. Reported below: 203 N. W. 2d 269.

October 9, 1973

414 U.S.

No. 73-117. *IKARD ET AL. v. ESTATE OF WYCHE ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 472 F. 2d 1406.

No. 73-119. *TRUSTEES OF BECK INDUSTRIES, INC. v. FELDMAN ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 479 F. 2d 410.

No. 73-124. *ALKIRE ET AL. v. CASHMAN ET AL.* C. A. 6th Cir. Certiorari denied.

No. 73-125. *ALBERT ET AL. v. CHEMICAL LEAMAN TANK LINES, INC., ET AL.* C. A. 4th Cir. Certiorari denied.

No. 73-129. *GRINNELL CORP. v. HACKETT, DIRECTOR, DEPARTMENT OF EMPLOYMENT SECURITY OF RHODE ISLAND, ET AL.* C. A. 1st Cir. Certiorari denied. Reported below: 475 F. 2d 449.

No. 73-132. *FRANKLIN ET UX. v. KENTUCKY.* Ct. App. Ky. Certiorari denied. Reported below: 490 S. W. 2d 148.

No. 73-135. *KING NUT Co. v. BEER NUTS, INC.* C. A. 6th Cir. Certiorari denied. Reported below: 477 F. 2d 326.

No. 73-137. *RICE ET AL. v. UNITED STATES ET AL.* C. A. 8th Cir. Certiorari denied. Reported below: 479 F. 2d 58.

No. 73-139. *CHEVRON CHEMICAL COMPANY, ORONITE DIVISION v. LIBERTY MUTUAL INSURANCE Co. ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 477 F. 2d 361.

No. 73-141. *SOUTHLAND MANUFACTURING CORP. v. NATIONAL LABOR RELATIONS BOARD.* C. A. D. C. Cir. Certiorari denied. Reported below: 154 U. S. App. D. C. 303, 475 F. 2d 414.

414 U.S.

October 9, 1973

No. 73-158. *ST. LOUIS-SAN FRANCISCO RAILWAY CO. v. DUNCAN*. C. A. 8th Cir. Certiorari denied. Reported below: 480 F. 2d 79.

No. 73-159. *GRIFFIN ET AL. v. PACIFIC MARITIME ASSN. ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 478 F. 2d 1118.

No. 73-160. *REEDER, DBA NUTRIFOODS CO. v. H & J FOODS, INC.* C. A. 9th Cir. Certiorari denied. Reported below: 477 F. 2d 1053.

No. 73-167. *GRAFF VENDING CO. ET AL. v. HAMPTON, DBA HAMPTON VENDING SUPPLY*. C. A. 5th Cir. Certiorari denied. Reported below: 478 F. 2d 527.

No. 73-176. *ARTHREE, INC., ET AL. v. KASKEL ET AL.* Dist. Ct. App. Fla., 3d Dist. Certiorari denied. Reported below: 269 So. 2d 699.

No. 73-189. *SMITH v. KENTUCKY STATE BAR ASSN.* Ct. App. Ky. Certiorari denied. Reported below: 492 S. W. 2d 880.

No. 73-194. *FUHRMAN, ADMINISTRATRIX, ET AL. v. UNITED STATES STEEL CORP. ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 479 F. 2d 489.

No. 73-207. *WAHL ET AL. v. VIBRANETICS, INC.* C. A. 6th Cir. Certiorari denied. Reported below: 474 F. 2d 971.

No. 73-209. *DESMARAIS ET AL. v. WACHUSETT REGIONAL SCHOOL DISTRICT ET AL.* Ct. App. Mass. Certiorari denied. Reported below: See — Mass. —, 276 N. E. 2d 691.

No. 73-218. *INDIANA WAR MEMORIALS COMMISSION v. INDIANA CIVIL LIBERTIES UNION, INC.* Sup. Ct. Ind.

October 9, 1973

414 U. S.

Certiorari denied. Reported below: — Ind. —, 291 N. E. 2d 888.

No. 73-223. *S. E. NICHOLS SHILLINGTON CORP. v. NATIONAL LABOR RELATIONS BOARD.* C. A. 3d Cir. Certiorari denied.

No. 73-239. *SMITH v. OHIO.* Sup. Ct. Ohio. Certiorari denied.

No. 73-243. *TRAP ROCK INDUSTRIES, INC. v. KOHL, COMMISSIONER OF TRANSPORTATION.* Sup. Ct. N. J. Certiorari denied. Reported below: 63 N. J. 1, 304 A. 2d 193.

No. 73-246. *MAKENS ET AL. v. FAIRFIELD PRODUCTS, INC.* C. A. 8th Cir. Certiorari denied.

No. 73-281. *BARON v. BARON.* Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 73-5001. *MEDLIN v. UNITED STATES.* C. A. 4th Cir. Certiorari denied. Reported below: 475 F. 2d 1401.

No. 73-5003. *BYRD v. UNITED STATES.* C. A. 2d Cir. Certiorari denied.

No. 73-5006. *JACOBS v. NEBRASKA.* Sup. Ct. Neb. Certiorari denied. Reported below: 190 Neb. 4, 205 N. W. 2d 662.

No. 73-5008. *FRANCISCO v. SLAYTON, PENITENTIARY SUPERINTENDENT.* C. A. 4th Cir. Certiorari denied.

No. 73-5010. *McGRATH v. UNITED STATES.* C. A. 5th Cir. Certiorari denied. Reported below: 477 F. 2d 595.

No. 73-5014. *BIRCH v. VINCENT, CORRECTIONAL SUPERINTENDENT.* C. A. 2d Cir. Certiorari denied.

414 U.S.

October 9, 1973

No. 73-5017. *BRADLEY v. CALIFORNIA*. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 73-5020. *BROWN v. TEXAS*. Ct. Crim. App. Tex. Certiorari denied. Reported below: 491 S. W. 2d 897.

No. 73-5022. *RIVERA v. UNITED STATES*. C. A. 3d Cir. Certiorari denied.

No. 73-5026. *HERRERA v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 474 F. 2d 1049.

No. 73-5027. *CHAVARRI-ALVA v. IMMIGRATION AND NATURALIZATION SERVICE*. C. A. 9th Cir. Certiorari denied.

No. 73-5030. *COBBS v. CONNECTICUT*. Sup. Ct. Conn. Certiorari denied.

No. 73-5031. *ONISKOR v. UTAH*. Sup. Ct. Utah. Certiorari denied. Reported below: 29 Utah 2d 395, 510 P. 2d 929.

No. 73-5033. *WHITE v. PADGETT ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 475 F. 2d 79.

No. 73-5034. *LANE v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 479 F. 2d 1134.

No. 73-5036. *MOORE v. McCLELLAN, WARDEN*. C. A. 4th Cir. Certiorari denied.

No. 73-5064. *RODRIGUEZ v. GRAY, WARDEN*. C. A. 7th Cir. Certiorari denied.

No. 73-5067. *WILLIAMS v. SUPERIOR COURT OF CALIFORNIA, CITY AND COUNTY OF SAN FRANCISCO*. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 73-5070. *ROSS v. BLACKLEDGE, WARDEN*. C. A. 4th Cir. Certiorari denied.

October 9, 1973

414 U. S.

No. 73-5071. *HOLLEY v. LAWRENCE*. C. A. 5th Cir. Certiorari denied.

No. 73-5076. *BROWN v. LAVALLEE, WARDEN*. C. A. 2d Cir. Certiorari denied.

No. 73-5081. *HOGAN v. TEXAS*. Ct. Crim. App. Tex. Certiorari denied. Reported below: 496 S. W. 2d 594.

No. 73-5084. *DIXON v. CALDWELL, WARDEN*. C. A. 5th Cir. Certiorari denied.

No. 73-5086. *WHETTON v. TURNER, WARDEN*. Sup. Ct. Utah. Certiorari denied. Reported below: 28 Utah 2d 47, 497 P. 2d 856.

No. 73-5088. *COX v. KENTUCKY*. Ct. App. Ky. Certiorari denied. Reported below: 491 S. W. 2d 834.

No. 73-5099. *SHIPP v. TENNESSEE*. C. A. 6th Cir. Certiorari denied.

No. 73-5109. *SPIERS v. TENNESSEE*. Ct. Crim. App. Tenn. Certiorari denied.

No. 73-5112. *SAUNDERS v. MUNICIPAL COURT, CITY AND COUNTY OF SAN FRANCISCO*. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 73-5122. *TINSLEY v. ESTELLE, CORRECTIONS DIRECTOR*. C. A. 5th Cir. Certiorari denied. Reported below: 475 F. 2d 1403.

No. 73-5125. *MAHONE v. HUBBART ET AL.* C. A. 5th Cir. Certiorari denied.

No. 73-5133. *MARTINEZ v. OSWALD, COMMISSIONER OF CORRECTIONS, ET AL.* C. A. 2d Cir. Certiorari denied.

No. 73-5138. *HOWARD v. MARYLAND*. Ct. Sp. App. Md. Certiorari denied.

414 U. S.

October 9, 1973

No. 73-5153. SANDERS *v.* ESTELLE, CORRECTIONS DIRECTOR. C. A. 5th Cir. Certiorari denied. Reported below: 476 F. 2d 1282.

No. 73-5156. LEVENTHAL *v.* FORTE ET AL. C. A. 1st Cir. Certiorari denied.

No. 73-5157. ROOTS *v.* KOON, DEPUTY SHERIFF, ET AL. C. A. 5th Cir. Certiorari denied.

No. 73-5161. WEBB *v.* ARIZONA. Ct. App. Ariz. Certiorari denied. Reported below: 19 Ariz. App. 73, 504 P. 2d 1296.

No. 73-5163. CREASON *v.* NORTH CAROLINA DEPARTMENT OF CORRECTIONS ET AL. C. A. 4th Cir. Certiorari denied.

No. 73-5168. RANDOLPH *v.* ARIZONA BOARD OF REGENTS. Ct. App. Ariz. Certiorari denied. Reported below: 19 Ariz. App. 121, 505 P. 2d 559.

No. 73-5173. HANKS *v.* SLAYTON, PENITENTIARY SUPERINTENDENT. C. A. 4th Cir. Certiorari denied.

No. 73-5178. DOTSEY BY JOHNSON, EXECUTOR *v.* MACIAS ET AL. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 73-5180. STUCK *v.* LASH, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 73-5185. FERGUSON *v.* TUCKER, JUDGE. C. A. 4th Cir. Certiorari denied.

No. 72-1002. CALIFORNIA *v.* TAYLOR. Sup. Ct. Cal. Motion to dispense with printing respondent's brief granted. Certiorari denied. Reported below: 8 Cal. 3d 174, 501 P. 2d 918.

October 9, 1973

414 U. S.

No. 72-1201. 100 ACRES OF LAND, MORE OR LESS, IN MARIN COUNTY, CALIFORNIA, DRAKE'S BEACH ESTATES, INC. *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 468 F. 2d 1261.

No. 72-1213. BUTLER *v.* UNITED STATES;

No. 72-1356. BUTLER *v.* UNITED STATES;

No. 72-6535. RODRIGUEZ *v.* UNITED STATES; and

No. 72-6538. ARIAS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 472 F. 2d 1.

No. 72-1301. SMITH *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari.

No. 72-1307. GERVATO *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 474 F. 2d 40.

No. 72-1333. CORSON ET AL. *v.* SUPERIOR COURT OF LOS ANGELES COUNTY. Ct. App. Cal., 2d App. Dist. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari.

No. 72-1378. CHRISTIAN ECHOES NATIONAL MINISTRY, INC. *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 470 F. 2d 849.

No. 72-1453. BEILENSEN *v.* TREASURER OF THE UNITED STATES. C. A. 8th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 472 F. 2d 1077.

No. 72-1458. CLEMENT ET UX. *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 472 F. 2d 776.

414 U.S.

October 9, 1973

No. 72-1472. *NOOTER CORP. v. WILSON ET AL.* C. A. 1st Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 475 F. 2d 497.

No. 72-1488. *EBERHARDT ET AL. v. MARYLAND.* Ct. Sp. App. Md. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari.

No. 72-1496. *MADERA v. BROOKLYN BAR ASSN.* Ct. App. N. Y. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 31 N. Y. 2d 875.

No. 72-1512. *JOHNSON v. GARTLAN ET UX.* C. A. 4th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 470 F. 2d 1104.

No. 72-1521. *SICILIA v. UNITED STATES.* C. A. 7th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 475 F. 2d 308.

No. 72-1536. *BRUNNER & LAY, INC. v. INGERSOLL-RAND Co.* C. A. 5th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 474 F. 2d 491.

No. 72-1546. *MOORE v. KENTUCKY.* Ct. App. Ky. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 489 S. W. 2d 516.

No. 72-1561. *PARADISE PALMS COMMUNITY ASSN. v. PARADISE HOMES ET AL.* Sup. Ct. Nev. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: — Nev. —, 505 P. 2d 596.

No. 72-1562. *BURAS ET AL. v. UNITED STATES ET AL.* C. A. 5th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 458 F. 2d 346.

October 9, 1973

414 U.S.

No. 72-1584. *DOWDY v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 479 F. 2d 213.

No. 72-1592. *BIDDY v. MISSISSIPPI*. Sup. Ct. Miss. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 277 So. 2d 115.

No. 72-1606. *MICELI v. UNITED STATES ET AL.* C. A. 6th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 474 F. 2d 1234.

No. 72-1615. *BRENNAN, SECRETARY OF LABOR v. ROBERT HALL CLOTHES, INC., ET AL.* C. A. 3d Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 473 F. 2d 589.

No. 72-1625. *ALL ET AL. v. NORTH CAROLINA*. Ct. App. N. C. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 17 N. C. App. 284, 193 S. E. 2d 770.

No. 72-1638. *CRAVEN v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 478 F. 2d 1329.

No. 72-1664. *ABIODUN ET AL. v. MARTIN OIL SERVICE, INC., ET AL.* C. A. 7th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 475 F. 2d 142.

No. 72-1665. *JENKINS v. UNITED STATES POST OFFICE ET AL.* C. A. 9th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 475 F. 2d 1256.

No. 72-1703. *TORTORELLO v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 480 F. 2d 764.

414 U.S.

October 9, 1973

No. 72-1707. *INTERNATIONAL WIRE v. LOCAL 38, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS*. C. A. 6th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 475 F. 2d 1078.

No. 72-1711. *BASSETT v. ALABAMA*. Sup. Ct. Ala. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 290 Ala. 259, 275 So. 2d 720.

No. 72-1712. *IN RE HOROWITZ*. C. A. 2d Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 482 F. 2d 72.

No. 72-1715. *DEAKTOR ET AL. v. FOX GROCERY CO. ET AL.* C. A. 3d Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 475 F. 2d 1112.

No. 72-1717. *RIZZO v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari.

No. 72-1724. *KARNAP v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 477 F. 2d 390.

No. 72-6208. *WRIGHT v. LAVALLEE, CORRECTIONAL SUPERINTENDENT*. C. A. 2d Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 471 F. 2d 123.

No. 72-6342. *HAMBLÉN v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari.

No. 72-6414. *RIDINGS ET AL. v. KERR, CHAIRMAN, CALIFORNIA ADULT AUTHORITY, ET AL.* C. A. 9th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari.

October 9, 1973

414 U.S.

No. 72-6470. *ELLINGBURG v. HENLEY*, CHIEF JUDGE, U. S. DISTRICT COURT. C. A. 8th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari.

No. 72-6475. *GRANT v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 471 F. 2d 648.

No. 72-6500. *LEE v. LOUISIANA*. Sup. Ct. La. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 270 So. 2d 544.

No. 72-6518. *SLABAUGH v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 474 F. 2d 592.

No. 72-6549. *KERR v. UNITED STATES*. C. A. D. C. Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari.

No. 72-6554. *COOK v. BELDEN CONCRETE PRODUCTS, INC., DIVISION OF ROCKWIN CORP.* C. A. 5th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 472 F. 2d 999.

No. 72-6556. *BRUMMEL v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 473 F. 2d 1263.

No. 72-6567. *WILSON v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 472 F. 2d 901.

No. 72-6573. *ELAM ET AL. v. HENDERSON, WARDEN*. C. A. 5th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 472 F. 2d 582.

No. 72-6583. *FARMER v. CALDWELL, WARDEN*. C. A. 5th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 476 F. 2d 22.

414 U. S.

October 9, 1973

No. 72-6586. *RULNICK v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari.

No. 72-6589. *DISBROW v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: See 425 F. 2d 1002.

No. 72-6606. *BRASWELL v. CALIFORNIA*. Ct. App. Cal., 3d App. Dist. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari.

No. 72-6613. *SANDOVAL v. UNITED STATES*. C. A. 1st Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 475 F. 2d 542.

No. 72-6618. *CRISTANCHO-PUERTO v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 475 F. 2d 1025.

No. 72-6619. *PRECIADO v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 474 F. 2d 1346.

No. 72-6630. *BYNUM v. NORTH CAROLINA*. Sup. Ct. N. C. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 282 N. C. 552, 193 S. E. 2d 725.

No. 72-6636. *THOMAS v. UNITED STATES*. C. A. D. C. Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 154 U. S. App. D. C. 308, 475 F. 2d 419.

No. 72-6638. *COX v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 473 F. 2d 334.

No. 72-6642. *KING v. UNITED STATES*. C. A. 1st Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 474 F. 2d 402.

October 9, 1973

414 U.S.

No. 72-6644. *AGNES v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 475 F. 2d 1396.

No. 72-6657. *DUPRE v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 474 F. 2d 1345.

No. 72-6661. *WRIGHT v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 474 F. 2d 853.

No. 72-6668. *PALMA v. CALIFORNIA*. Sup. Ct. Cal. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 8 Cal. 3d 798, 505 P. 2d 1018.

No. 72-6669. *EMMA v. ARMSTRONG ET AL.* C. A. 1st Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 473 F. 2d 656.

No. 72-6677. *ROSS v. CHASE ET AL.* C. A. 4th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari.

No. 72-6679. *SANDERS v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 477 F. 2d 112.

No. 72-6684. *CORREA-NEGRON v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 473 F. 2d 684

No. 72-6688. *PENTA v. UNITED STATES*. C. A. 1st Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 475 F. 2d 92.

No. 72-6711. *HINES v. ESTELLE, CORRECTIONS DIRECTOR*. C. A. 5th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 473 F. 2d 1034.

414 U.S.

October 9, 1973

No. 72-6712. *OLIVER v. THOMS, ACTING PRISON SUPERINTENDENT, ET AL.* C. A. 3d Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari.

No. 72-6713. *MARKS v. UNITED STATES.* C. A. 7th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 475 F. 2d 1405.

No. 72-6714. *MILEY v. DELTA MARINE DRILLING CO.* C. A. 5th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 473 F. 2d 856.

No. 72-6715. *HANNA v. CARDWELL, WARDEN.* C. A. 6th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 474 F. 2d 1349.

No. 72-6721. *BUSSY v. NEW YORK.* Ct. App. N. Y. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 31 N. Y. 916, 292 N. E. 2d 788.

No. 72-6723. *FERRADA v. UNITED STATES.* C. A. 2d Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari.

No. 72-6726. *THOMAS v. ESTELLE, CORRECTIONS DIRECTOR.* C. A. 5th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 474 F. 2d 981.

No. 72-6727. *ORR v. UNITED STATES.* C. A. 2d Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 474 F. 2d 1365.

No. 72-6734. *CHRISTIAN v. OHIO.* Ct. App. Ohio, Cuyahoga County. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari.

No. 72-6738. *PARROTT v. GOVERNMENT OF THE VIRGIN ISLANDS.* C. A. 3d Cir. Certiorari denied. MR. JUSTICE

October 9, 1973

414 U.S.

DOUGLAS would grant certiorari. Reported below: 476 F. 2d 1058.

No. 72-6742. *QUEVEDO v. CALIFORNIA*. Ct. App. Cal., 2d App. Dist. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari.

No. 72-6745. *ARNOLD v. KIRBY ET AL.* C. A. 6th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari.

No. 72-6758. *MCDADE v. ALABAMA*. Ct. Crim. App. Ala. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 49 Ala. App. 533, 274 So. 2d 89.

No. 72-6777. *ROSENBERG v. MARTIN*. C. A. 2d Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 478 F. 2d 520.

No. 72-6787. *WEATHERS v. GAFFNEY, WARDEN*. C. A. 10th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari.

No. 72-6834. *CUNNINGHAM v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari.

No. 72-6856. *DAUGHTERY v. HARRIS, WARDEN*; and

No. 72-6857. *PIPER v. HARRIS, WARDEN*. C. A. 10th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 476 F. 2d 292.

No. 72-6858. *FORD v. UNITED STATES*. C. A. 1st Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 478 F. 2d 169.

No. 72-6871. *BELL v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 476 F. 2d 1046.

414 U.S.

October 9, 1973

No. 72-6872. *CONTE v. CARDWELL, WARDEN*. C. A. 6th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 475 F. 2d 698.

No. 72-6879. *BAILEY v. HOUSTON CHRONICLE PUBLISHING Co.* C. A. 5th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 474 F. 2d 1344.

No. 72-6908. *GASCOIGNE v. NEBRASKA*. Sup. Ct. Neb. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari.

No. 72-6924. *SIMPSON v. UNITED STATES*. C. A. D. C. Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 154 U. S. App. D. C. 350, 475 F. 2d 934.

No. 72-6941. *THUNDER v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 477 F. 2d 1326.

No. 72-6967. *PITMAN v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 475 F. 2d 1335.

No. 73-3. *GOLDSTEIN ET AL. v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 479 F. 2d 1061.

No. 73-11. *ASSOCIATED STUDENTS OF WESTERN KENTUCKY UNIVERSITY ET AL. v. DOWNING ET AL.* C. A. 6th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 475 F. 2d 1132.

No. 73-14. *ARCA ET UX. v. IMMIGRATION AND NATURALIZATION SERVICE*. C. A. 6th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari.

October 9, 1973

414 U.S.

No. 73-16. *MOGULNICKI v. KELLER ET AL.* C. A. 2d Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari.

No. 73-32. *FINANCIAL INDUSTRIAL FUND, INC. v. McDONNELL DOUGLAS CORP.* C. A. 10th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 474 F. 2d 514.

No. 73-41. *FABRYCKI ET AL. v. TRUSTEES OF INDIANA UNIVERSITY ET AL.* C. A. 7th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 475 F. 2d 1405.

No. 73-42. *MUHLETHALER v. ILLINOIS.* App. Ct. Ill., 1st Dist. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 9 Ill. App. 3d 388, 292 N. E. 2d 438.

No. 73-52. *VESTAL v. NORTH CAROLINA.* Sup. Ct. N. C. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 283 N. C. 249, 195 S. E. 2d 297.

No. 73-87. *POTTER v. STATE PERSONNEL BOARD OF REVIEW.* Sup. Ct. Ohio. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari.

No. 73-89. *WACHTEL ET UX. v. WEST ET UX.* C. A. 6th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 476 F. 2d 1062.

No. 73-131. *PENN YAN BOATS, INC. v. SEA LARK BOATS, INC., ET AL.* C. A. 5th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 479 F. 2d 1328.

No. 73-136. *SANTANA v. UNITED STATES.* C. A. 2d Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 477 F. 2d 721.

414 U. S.

October 9, 1973

No. 73-143. *THEODORIES v. PETERSON MARINE SERVICES, INC.* C. A. 5th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 474 F. 2d 1345.

No. 73-144. *LOCAL 7-210, OIL, CHEMICAL & ATOMIC WORKERS INTERNATIONAL UNION, AFL-CIO v. UNION TANK CAR CO.* C. A. 7th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 475 F. 2d 194.

No. 73-195. *ZICARELLI v. NEW JERSEY.* Super. Ct. N. J. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 122 N. J. Super. 225, 300 A. 2d 154.

No. 73-5004. *ESSEX v. ELLIOTT.* C. A. 5th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 474 F. 2d 1344.

No. 73-5015. *GARCIA ET AL. v. JONES, DIRECTOR, STATE DIVISION OF FAMILY SERVICES.* Sup. Ct. Utah. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 29 Utah 2d 409, 510 P. 2d 1099.

No. 73-5023. *LASSITER v. NORTH CAROLINA.* Ct. App. N. C. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 16 N. C. App. 377, 192 S. E. 2d 21.

No. 73-5032. *LOMAX ET AL. v. UNITED STATES.* C. A. 4th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 478 F. 2d 1400.

No. 73-5039. *JOHNSON v. OHIO.* Ct. App. Ohio, Franklin County. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari.

No. 73-5048. *TURK v. MITCHELL.* Ct. App. Ohio, Lucas County. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari.

October 9, 1973

414 U.S.

No. 73-5055. *CAINE ET AL. v. KENTUCKY*. Ct. App. Ky. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 491 S. W. 2d 824.

No. 73-5119. *FARMER ET VIR v. TOLEDO EDISON CO.* Ct. App. Ohio, Ottawa County. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari.

No. 73-5134. *WILLIAMS v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari.

No. 73-5146. *SHEFFIELD v. NEW JERSEY*. Sup. Ct. N. J. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 62 N. J. 441, 303 A. 2d 68.

No. 73-5195. *SLUDER v. TENNESSEE*. Sup. Ct. Tenn. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 493 S. W. 2d 467.

No. 73-5226. *ARCHULETA v. NEW MEXICO*. Ct. App. N. M. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 85 N. M. 146, 509 P. 2d 1341.

No. 73-5259. *MARTIN v. ROSE, WARDEN*. C. A. 6th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 481 F. 2d 658.

No. 72-1386. *ERDOS v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. MR. JUSTICE STEWART would grant certiorari. Reported below: 474 F. 2d 157.

No. 72-1420. *PEPSICO, INC. v. FEDERAL TRADE COMMISSION ET AL.*; and

No. 72-1422. *PEPSI-COLA BOTTLING COMPANY OF CORVALLIS, INC. v. FEDERAL TRADE COMMISSION ET AL.* C. A. 2d Cir. Certiorari denied. MR. JUSTICE STEWART

414 U.S.

October 9, 1973

took no part in the consideration or decision of these petitions. Reported below: 472 F. 2d 179.

No. 72-1504. COCA-COLA Co. ET AL. *v.* FEDERAL TRADE COMMISSION. C. A. 5th Cir. Certiorari denied. MR. JUSTICE STEWART took no part in the consideration or decision of this petition. Reported below: 475 F. 2d 299.

No. 72-1440. OLENZ *v.* MAROVITZ, U. S. DISTRICT JUDGE, ET AL. C. A. 7th. Motion to dispense with printing petition granted. Certiorari denied.

No. 72-1572. BINKLEY *v.* MANUFACTURER'S LIFE INSURANCE Co. C. A. 10th Cir. Motion to dispense with printing petition granted. Certiorari denied. Reported below: 471 F. 2d 889.

No. 72-1604. HEWLETT *v.* HEWLETT. Ct. Civ. App. Tex., 10th Sup. Jud. Dist. Motion to dispense with printing petition granted. Certiorari denied. Reported below: 486 S. W. 2d 107.

No. 72-1642. BROWN *v.* TENNESSEE REAL ESTATE COMMISSION. Ct. App. Tenn. Motion to dispense with printing petition granted. Certiorari denied. Reported below: 494 S. W. 2d 506.

No. 72-1669. CONTINENTAL DEVELOPMENT CORP., INC. *v.* VINES ET AL. Sup. Ct. Ala. Motion to dispense with printing petition granted. Certiorari denied. Reported below: 289 Ala. 648, 270 So. 2d 661.

No. 72-1720. JOHNSON *v.* TEXAS. Ct. Crim. App. Tex. Motion to dispense with printing petition granted. Certiorari denied. Reported below: 492 S. W. 2d 955.

No. 72-1741. RANDOLPH *v.* SCHOOL DISTRICT 201 ET AL. C. A. 7th Cir. Motion to dispense with printing petition granted. Certiorari denied.

October 9, 1973

414 U. S.

No. 73-47. LAMBERT ET VIR *v.* SUPREME COURT OF COLORADO. Sup. Ct. Colo. Motion to dispense with printing petition granted. Certiorari denied. Reported below: — Colo. —, 507 P. 2d 865.

No. 73-183. BRADLEY *v.* DOHERTY ET AL. Ct. App. Cal., 1st App. Dist. Motion to dispense with printing petition granted. Certiorari denied. Reported below: 30 Cal. App. 3d 991, 106 Cal. Rptr. 725.

No. 73-192. PERRELLO *v.* DISCIPLINARY COMMISSION OF THE INDIANA SUPREME COURT. Sup. Ct. Ind. Motion to dispense with printing petition granted. Certiorari denied. Reported below: — Ind. —, 295 N. E. 2d 357.

No. 72-1508. NEW JERSEY ET AL. *v.* THOMAS. C. A. 3d Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 472 F. 2d 735.

No. 72-1614. MACDOUGALL, CORRECTION COMMISSIONER, ET AL. *v.* LAREAU. C. A. 2d Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 473 F. 2d 974.

No. 72-1653. DOOLING, U. S. DISTRICT JUDGE *v.* HILBERT. C. A. 2d Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 476 F. 2d 355.

No. 72-1714. PATTERSON, WARDEN *v.* JOHNSON. C. A. 10th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 475 F. 2d 1066.

No. 73-126. PENNSYLVANIA *v.* PIERCE. Sup. Ct. Pa. Motion of respondent for leave to proceed *in forma pau-*

414 U. S.

October 9, 1973

*peris* granted. Certiorari denied. Reported below: 451 Pa. 190, 303 A. 2d 209.

No. 72-1540. TAYLOR ET VIR *v.* JONES. Sup. Ct. Ala. Motions to dispense with printing petition and respondent's briefs granted. Certiorari denied. Reported below: 290 Ala. 268, 276 So. 2d 130.

No. 72-1621. PELUSO, ADMINISTRATOR, ET AL. *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. MR. JUSTICE DOUGLAS, MR. JUSTICE BRENNAN, and MR. JUSTICE BLACKMUN would grant certiorari. Reported below: 474 F. 2d 605.

No. 72-1622. ANDERSON ET AL. *v.* SALT LAKE CITY CORP. ET AL. C. A. 10th Cir. Certiorari denied. MR. JUSTICE DOUGLAS, MR. JUSTICE BRENNAN, and MR. JUSTICE MARSHALL would grant certiorari. Reported below: 475 F. 2d 29.

No. 72-1631. SOCIALIST WORKERS PARTY *v.* KLASSEN, POSTMASTER GENERAL, ET AL. C. A. D. C. Cir. Certiorari denied. MR. JUSTICE DOUGLAS, MR. JUSTICE BRENNAN, and MR. JUSTICE WHITE would grant certiorari.

No. 72-1679. HACKETT, DIRECTOR, DEPARTMENT OF EMPLOYMENT SECURITY OF RHODE ISLAND, ET AL. *v.* GRINNELL CORP. C. A. 1st Cir. Certiorari denied. MR. JUSTICE BLACKMUN would grant certiorari. Reported below: 475 F. 2d 449.

No. 73-1. FLORIDA *v.* ANDERSEN. Sup. Ct. Fla. Certiorari denied. MR. JUSTICE BLACKMUN would grant certiorari. Reported below: 274 So. 2d 228.

No. 72-1688. IN RE TIME SALES FINANCE CORP. (BLANK, ROME, KLAUS & COMISKY, REAL PARTY IN INTEREST). C. A. 3d Cir. Motion to defer consideration and certiorari denied. Reported below: 475 F. 2d 1396.

October 9, 1973

414 U.S.

No. 72-6576. *DAWN, DBA GAME Co. v. STERLING DRUG, INC., ET AL.* C. A. 9th Cir. Motion to defer consideration and certiorari denied.

No. 73-147. *TECHNOGRAPH PRINTED CIRCUITS, LTD., ET AL. v. MARTIN MARIETTA CORP. ET AL.* C. A. 4th Cir. Motion to defer consideration and certiorari denied. Reported below: 474 F. 2d 798.

No. 72-1716. *IN RE TAYLOR.* Sup. Ct. Ind. Motion to dispense with printing petition granted. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: — Ind. —, 293 N. E. 2d 779.

No. 72-6905. *REID v. WISCONSIN.* C. A. 7th Cir. Motion of petitioner to add County of Milwaukee Civil Service Agency et al. as parties respondent and certiorari denied.

No. 73-74. *HOFFA v. UNITED STATES.* C. A. 6th Cir. Certiorari denied. MR. JUSTICE WHITE and MR. JUSTICE MARSHALL took no part in the consideration or decision of this petition. Reported below: 471 F. 2d 391.

No. 73-112. *MURPHY ET AL. v. SULLIVAN ET AL.* C. A. D. C. Cir. Certiorari denied. MR. JUSTICE REHNQUIST took no part in the consideration or decision of this petition. Reported below: 156 U. S. App. D. C. 28, 478 F. 2d 938.

No. 73-145. *UNION BANK OF LOS ANGELES v. NOLAN;*  
and

No. 73-204. *JUDICIAL COUNCIL OF THE THIRD CIRCUIT v. NOLAN ET AL.* C. A. 3d Cir. Certiorari denied. MR. JUSTICE BRENNAN took no part in the consideration or decision of these petitions. Reported below: 481 F. 2d 41.

414 U.S.

October 9, 1973

No. 73-149. TAYLOR *v.* TENNESSEE ET AL. Sup. Ct. Tenn. Motion to correct errors in petition granted. Certiorari denied.

No. 73-5194. AKULICZ *v.* WOLKE, SHERIFF. Sup. Ct. Wis. Certiorari denied. MR. JUSTICE DOUGLAS and MR. JUSTICE BLACKMUN would grant certiorari.

*Rehearing Denied*

No. 70-35. AUSTIN ET AL. *v.* MEYER ET AL., 413 U. S. 905;

No. 70-43. MILLER ET AL. *v.* UNITED STATES, 413 U. S. 913;

No. 70-73. MILLER *v.* CALIFORNIA, 413 U. S. 15;

No. 71-599. MOTION PICTURE FILM ENTITLED "VIXEN" ET AL. *v.* OHIO EX REL. KEATING, 413 U. S. 905;

No. 71-1051. PARIS ADULT THEATRE I ET AL. *v.* SLATON, DISTRICT ATTORNEY, ET AL., 413 U. S. 49;

No. 71-1315. ALEXANDER ET AL. *v.* VIRGINIA, 413 U. S. 836;

No. 71-1517. MILLER *v.* UNITED STATES, 413 U. S. 913;

No. 72-357. PRICE *v.* VIRGINIA, 413 U. S. 912;

No. 72-419. PITTSBURGH PRESS Co. *v.* PITTSBURGH COMMISSION ON HUMAN RELATIONS ET AL., 413 U. S. 376;

No. 72-459. SLOAN, TREASURER OF PENNSYLVANIA *v.* LEMON ET AL., 413 U. S. 825;

No. 72-649. CORPUS CHRISTI INDEPENDENT SCHOOL DISTRICT ET AL. *v.* CISNEROS ET AL., 413 U. S. 922;

No. 72-1108. MOBIL OIL CORP. *v.* FEDERAL POWER COMMISSION, 412 U. S. 931; and

No. 72-1166. WRIGHT *v.* UNITED STATES, 412 U. S. 938. Petitions for rehearing denied.

October 9, 1973

414 U. S.

No. 72-1187. *COMBS, SUPERINTENDENT, GRAND PRAIRIE INDEPENDENT SCHOOL DISTRICT, ET AL. v. JOHNSON ET AL.*, 413 U. S. 922;

No. 72-1221. *GULF STATES THEATRES OF LOUISIANA, INC., ET AL. v. LOUISIANA ET AL.*, 413 U. S. 913;

No. 72-1235. *WHITMAN CENTER, INC. v. GULF OIL CORP.*, 412 U. S. 938;

No. 72-1247. *TWO v. UNITED STATES ET AL.*, 412 U. S. 931;

No. 72-1313. *SILVERTON v. CALIFORNIA*, 412 U. S. 901;

No. 72-1349. *FREEMAN v. SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA (BAY FARM ISLAND RECLAMATION DISTRICT No. 2105 ET AL., REAL PARTIES IN INTEREST)*, 412 U. S. 909;

No. 72-1376. *PERMIAN CORP. ET AL. v. COFFEE*, 412 U. S. 920;

No. 72-1396. *FAUSNER v. COMMISSIONER OF INTERNAL REVENUE*, 413 U. S. 838;

No. 72-1413. *ITZ ET UX. v. PENICK ET AL.*, 412 U. S. 925;

No. 72-5348. *COOLEY v. STRICKLAND TRANSPORTATION CO. ET AL.*, 413 U. S. 923;

No. 72-6115. *JACKSON v. ZELKER, CORRECTIONAL SUPERINTENDENT*, 412 U. S. 950;

No. 72-6221. *SAYLES v. ALBERT MIRMAN & ASSOCIATES, INC.*, 412 U. S. 925;

No. 72-6224. *BERKLEY v. UNITED STATES*, 412 U. S. 920;

No. 72-6293. *GEMMILL ET AL. v. CALIFORNIA*, 412 U. S. 925;

No. 72-6295. *BOYSAW v. OHIO*, 412 U. S. 920;

No. 72-6468. *LAUGHLIN v. UNITED STATES*, 412 U. S. 941; and

No. 72-6481. *HAMILTON v. UNITED STATES*, 412 U. S. 942. Petitions for rehearing denied.

414 U. S.

October 9, 1973

No. 72-6493. BONAFINI *v.* NEW JERSEY ET AL., 412 U. S. 908;

No. 72-6506. SMITH *v.* CALIFORNIA, 412 U. S. 915;

No. 72-6641. CRENSHAW *v.* JAMES ET AL., 412 U. S. 952; and

No. 72-6673. OAKES *v.* BLACK, REFORMATORY SUPERINTENDENT, 412 U. S. 952. Petitions for rehearing denied.

No. 71-507. KEYES ET AL. *v.* SCHOOL DISTRICT No. 1, DENVER, COLORADO, ET AL., 413 U. S. 189. Petition for rehearing denied. MR. JUSTICE WHITE took no part in the consideration or decision of this petition.

No. 71-1192. GOLDSTEIN ET AL. *v.* CALIFORNIA, 412 U. S. 546. Motion of International Tape Manufacturers Assn. for leave to file a brief as *amicus curiae* out of time granted. Petition for rehearing denied.

No. 71-1422. KAPLAN *v.* CALIFORNIA, 413 U. S. 115. Motions of Association of American Publishers, Inc., et al., American Library Assn., and Authors League of America for leave to file briefs as *amici curiae* in support of rehearing granted. Petitions for rehearing denied.

No. 71-1599. COOK COUNTY COLLEGE TEACHERS UNION, LOCAL 1600, AMERICAN FEDERATION OF TEACHERS, AFL-CIO, ET AL. *v.* BYRD ET AL., 409 U. S. 848;

No. 72-761. UNITED STATES *v.* McGRATH, 412 U. S. 936;

No. 72-1415. RICHTER ET UX. *v.* COMMISSIONER OF INTERNAL REVENUE, 412 U. S. 925;

No. 72-5588. McCRAY *v.* WARDEN, MARYLAND PENITENTIARY, 409 U. S. 1112;

No. 72-6436. SAVAGE *v.* UNITED STATES, 412 U. S. 930; and

No. 72-6543. OLIVER *v.* SHAPP, GOVERNOR OF PENN-

October 9, 10, 1973

414 U.S.

SYLVANIA, ET AL., 412 U. S. 930. Motions for leave to file petitions for rehearing denied.

No. 71-5856. CACAVAS *v.* GENERAL MOTORS CORP., ET AL., 405 U. S. 993. Motion for leave to file petition for rehearing denied. MR. JUSTICE POWELL took no part in the consideration or decision of this motion.

No. 72-549. SCHOOL BOARD OF CITY OF RICHMOND, VIRGINIA, ET AL. *v.* STATE BOARD OF EDUCATION OF VIRGINIA ET AL., 412 U. S. 92; and

No. 72-550. BRADLEY ET AL. *v.* STATE BOARD OF EDUCATION OF VIRGINIA ET AL., 412 U. S. 92. Petitions for rehearing denied. MR. JUSTICE POWELL took no part in the consideration or decision of these petitions.

No. 72-804. FRI, ACTING ADMINISTRATOR, ENVIRONMENTAL PROTECTION AGENCY *v.* SIERRA CLUB ET AL., 412 U. S. 541. Motions of State of Utah and Utah Power & Light Co. for leave to file petitions for rehearing as *amici curiae* denied. MR. JUSTICE POWELL took no part in the consideration or decision of these motions.

No. 72-1259. TEITELBAUM *v.* CALIFORNIA, 412 U. S. 946. Motion to dispense with printing petition for rehearing granted. Petition for rehearing denied.

No. 72-1352. IN RE BAKER, 412 U. S. 919. Motion to dispense with printing petition for rehearing granted. Motion for leave to file petition for rehearing denied.

No. 72-6197. SHOEMAKER *v.* DWYER ET AL., 412 U. S. 902, 963. Motion for leave to file second petition for rehearing denied.

OCTOBER 10, 1973

*Dismissal Under Rule 60*

No. 72-1701. SHAPIRO *v.* FERRANDINA, U. S. MARSHAL. C. A. 2d Cir. Petition for writ of certiorari dismissed under Rule 60 of the Rules of this Court. Reported below: 478 F. 2d 894.

414 U. S.

OCTOBER 15, 1973

*Affirmed on Appeal*

No. 73-94. UNITED STATES STEEL CORP. *v.* TRUSTEES OF PENN CENTRAL TRANSPORTATION Co. Affirmed on appeal from C. A. 3d Cir. MR. JUSTICE DOUGLAS would note probable jurisdiction and set case for oral argument. Reported below: 477 F. 2d 841.

*Appeals Dismissed*

No. 72-1681. HAMPTON *v.* DITTY. Appeal from Ct. App. Ky. It appearing that appellant, who sought to enjoin a state criminal proceeding pending against him, died on January 20, 1973, the appeal is dismissed. *Gersewitz v. New York*, 326 U. S. 687 (1945); *Pennsylvania v. Linde*, 409 U. S. 1031 (1972). See *Durham v. United States*, 401 U. S. 481, 482 (1971). Reported below: 490 S. W. 2d 772.

MR. JUSTICE DOUGLAS, concurring.

If this were a case where appellant had been convicted under a state statute which he claimed to be unconstitutional under the Federal Constitution, our procedure arguably should not be a mere dismissal of the appeal. For that appeal would bring here a federal question as a matter of right and then the appellant would not have had the benefit of the final constitutional adjudication to which he was entitled—a distinction that my Brother BLACKMUN noted in his dissent in *Durham v. United States*, 401 U. S. 481, 484 (1971). In that case the formula of *Durham*—vacating and remanding for dismissal of the judgment—might be the most appropriate remedy in both state and federal cases, saving cases here on certiorari from state courts to be dismissed, since certiorari is in our discretion. But here there was no criminal conviction; the suit in the state court merely involved an attempt to enjoin a criminal prosecution; and there are

October 15, 1973

414 U.S.

no ongoing penalties or disabilities adhering in a judgment entered before the federal question had been finally resolved. Hence I concur in the judgment of this Court.

No. 72-1718. *GASKIN ET AL. v. TENNESSEE*. Appeal from Sup. Ct. Tenn. dismissed for want of substantial federal question. Reported below: 490 S. W. 2d 521.

No. 73-69. *HAULCOMB ET AL. v. SOUTH CAROLINA*. Appeal from Sup. Ct. S. C. dismissed for want of substantial federal question. Reported below: 260 S. C. 260, 195 S. E. 2d 601.

No. 72-1736. *WHITE v. GEORGIA*. Appeal from Sup. Ct. Ga. dismissed for want of substantial federal question. Reported below: 230 Ga. 327, 196 S. E. 2d 849.

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

On the basis of *Turner v. Fouche*, 396 U. S. 346 (1970), I concur in the dismissal of appellant's facial attack on Georgia's jury selection statutes. However, I would treat the jurisdictional statement as a petition for certiorari in respect of the second question presented,\* see 28 U. S. C. § 2103; *Mishkin v. New York*, 383 U. S. 502, 512 (1966), and to that extent set the case for oral argument.

Appellant alleges that the application by the jury commissioners of Coweta County of the Georgia jury selection statutes violated the Fourteenth Amendment in that such application resulted in blacks, women, and

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\*"Does systematic, intentional and discriminatory exclusion of Negroes, women and young adults age 18 to 30, from jury service, violate Appellant's rights of Due Process and Equal Protection under the Fourteenth Amendment and does disproportionate underrepresentation of these groups in the jury pools constitute a prima facie case of discrimination?"

young adults age 18-30 being underrepresented on the venire from which his grand and petit juries were impaneled. The relevant Georgia statutes, Ga. Code Ann. §§ 59-106, 59-201, require the county board of jury commissioners, at least biennially, to compile a jury list of "intelligent and upright citizens," who represent a fair cross section of the county, to serve as petit jurors. From this list, the commissioners are required to select the "most experienced, intelligent, and upright citizens," not exceeding two-fifths of the whole number, to serve as grand jurors.

Appellant, a white male 24 years of age, challenged the array of the grand and petit juries which indicted and convicted him, on the ground that the jury list composing the venire was compiled in an arbitrary and discriminatory manner. The jury commissioners testified that a juror was not selected for either grand or petit jury service unless the juror was known personally by at least one commissioner. Appellant argues that this selection procedure permits the jury commissioners to know the race, sex, and approximate age of every juror before the venire is selected, and that as a consequence, a clear and ready opportunity for discrimination inheres in the selection procedure. Appellant buttresses this conclusion with uncontroverted statistical evidence that the population of Coweta County is composed of 28.3% eligible blacks, 53.3% eligible women, and 26.2% eligible young adults aged 18-30. Yet, the 2,138 names placed on the petit jury list included only 10.85% blacks, 16.23% women, and 3.09% young adults. Of the 400 persons found to be the "most experienced" and placed on the grand jury list, only 14.25% were blacks, 4.5% were women, and 1.25% were young adults.

Nevertheless, the Georgia Supreme Court held that:

"With respect to the contention of de facto dis-

crimination by the jury commissioners in the selection of individuals to be placed on the jury list, it is sufficient to say that appellant did not introduce evidence demanding the conclusion of de facto discrimination." 230 Ga. 327, 331, 196 S. E. 2d 849, 853 (1973).

Although a defendant in a criminal case does not have a constitutional right to grand and petit jury arrays that represent the community in exact, mathematical proportions, the selection procedure employed must provide "a fair possibility for obtaining a representative cross-section of the community." *Williams v. Florida*, 399 U. S. 78, 100 (1970). "[A] State cannot, consistent with due process, subject a defendant to indictment or trial by a jury that has been selected in an arbitrary and discriminatory manner, in violation of the Constitution and laws of the United States." *Peters v. Kiff*, 407 U. S. 493, 502 (1972) (opinion of MARSHALL, J.).

Appellant's challenge to the racial composition of the venire appears to me to require application of the principles that guided our judgment in *Alexander v. Louisiana*, 405 U. S. 625 (1972). In *Alexander* petitioner introduced statistical evidence that blacks composed 21.06% of the population, but only 6.75% of the grand jury panels, demonstrating an underrepresentation of 67.9%. In addition, petitioner introduced evidence that the jury commissioners used information cards which designated the race of each potential juror. We held that petitioner's statistical evidence establishing that blacks were underrepresented, together with the evidence that the selection procedures themselves were not racially neutral, established a prima facie case of invidious racial discrimination, and thus shifted the burden of proof to the State "to rebut the presumption of unconstitutional action by showing that permissible racially neutral se-

lection criteria and procedures have produced the monochromatic result. *Turner v. Fouche*, 396 U. S. 346, 361 (1970); *Eubanks v. Louisiana*, 356 U. S. 584, 587 (1958).” *Id.*, at 632. Since the State failed to meet its burden of proof, we set aside Alexander’s conviction.

Similarly, appellant’s statistics here demonstrate substantial underrepresentation of blacks on the grand and petit jury venires, 49.5% and 61.7% respectively. Furthermore, there inheres in the selection procedures employed by the Coweta County jury commissioners the same fatal defect we found in the procedures employed in *Alexander, i. e.*, the procedures assure that the jury commissioner shall learn the race of every potential juror before the list is compiled. See *Avery v. Georgia*, 345 U. S. 559 (1953); *Whitus v. Georgia*, 385 U. S. 545 (1967). Thus, appellant in this case also seems to have established a prima facie case of racial discrimination, which under *Alexander* shifted to the State the burden of proof to rebut the presumption of unconstitutional action. Under *Alexander* also, the State’s evidence in the form of the testimony of the jury commissioners that they made no conscious effort to exclude anyone on the basis of race, sex, or age would not appear to suffice to rebut the presumption. For in *Alexander* we held that “affirmations of good faith in making individual selections are insufficient to dispel a prima facie case of systematic exclusion. *Turner v. Fouche, supra*, at 361; *Jones v. Georgia*, 389 U. S. 24, 25 (1967); *Sims v. Georgia*, 389 U. S. 404, 407 (1967).” 405 U. S., at 632.

Appellant also contends that women and young adults age 18–30 were systematically and purposefully excluded from the venire from which the grand and petit jury lists were compiled. The statistical evidence indicates that women were underrepresented by 91.6% on the grand jury list, and 70.6% on the petit jury list. Young

October 15, 1973

414 U. S.

adults were underrepresented by 95.2% on the grand jury list, and 88.2% on the petit jury list. Though *Alexander* involved racial discrimination, appellant's contention certainly presents a substantial question whether the principles of that decision should apply where any large, identifiable segment of the community is arbitrarily or discriminatorily underrepresented on the jury venire. Therefore, I would set this case for oral argument to consider both appellant's racial claims and his claims that a selection procedure which enables jury commissioners to know the sex and approximate age of potential jurors also constitutes a prima facie case of sex or age discrimination.

No. 72-6629. THOMPSON ET AL. v. MISSISSIPPI. Appeal from Sup. Ct. Miss. dismissed for want of substantial federal question. Reported below: 269 So. 2d 641.

MR JUSTICE DOUGLAS, dissenting.

Appellants were part of a group of 25 to 60 blacks congregating about the center of a small Mississippi town. A local police officer approached the crowd and asked them to disperse. The crowd was not interfering with traffic; the officer had received no complaints; and the only person he knew to be bothered by the crowd was himself. The officer attempted to arrest appellant A. B. Thompson for disturbing the peace after A. B. cursed and acted "real tough." The officer testified that the crowd "started around" him and he pulled his gun.\*

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\*There was further testimony that he pointed the gun at A. B.'s chest and said: "You don't believe I will shoot you." R. 149, 162. There is a great deal of conflicting testimony, but the record strongly suggests that the officer's provocative conduct engendered the crowd mumbling and "rambling" which the court below held a "riot." This merely underscores the desirability of our hearing appellants' claim.

"Because a claim of constitutionally protected right is involved, it 'remains our duty in a case such as this to make an independent

890

DOUGLAS, J., dissenting

He left the crowd and returned with two more officers, again attempting to arrest A. B. after the youth "hurled a vile obscenity" at him. A. B. resisted and in the resulting scuffle was shot. Along with his brother Leon who entered the scuffle when A. B. was shot and Davis Stewart who was "riling up the crowd," A. B. was convicted of riot under a statute the constitutionality of which is here challenged. Mississippi Code Ann. of 1942, § 2361.5-01, subd. A, provides:

"A 'riot' is any use of force or violence disturbing the public peace, or any threat to use such force and violence, if accompanied by immediate power of execution, by two (2) or more persons acting together and without authority of law."

Appellants complain of the vagueness and overbreadth in the phrase "disturbing the public peace."

According to the court below, the "riot" was underway when the officer returned and attempted to arrest A. B., the officer's actions being referred to as an attempt to "quell a riot that had been instigated and encouraged by this appellant's cursing and using obscene language to excite the crowd." 269 So. 2d 641, 644. Since appellants challenge the facial constitutionality of a statute which, according to the Mississippi Supreme Court, defines the congregation of blacks in this case as a "riot," the fact that A. B. and Leon Thompson forcefully resisted the police intervention does not end the case. The fact that their action might fall within the statute if it were constitutionally narrowed, does not negate their ability to challenge the statute. *Gooding v. Wilson*, 405 U. S. 518, 521.

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examination of the whole record.' *Edwards v. South Carolina*, 372 U. S. 229, 235; *Blackburn v. Alabama*, 361 U. S. 199, 205 n. 5; *Pennekamp v. Florida*, 328 U. S. 331, 335; *Fiske v. Kansas*, 274 U. S. 380, 385-386." *Cox v. Louisiana*, 379 U. S. 536, 545 n. 8.

October 15, 1973

414 U.S.

Any statute which classifies the congregation of blacks in this case as a riot raises serious constitutional questions. The state court places no limiting construction upon the statute. It first notes that the statute is similar to the federal riot control statute, then discusses whether other Mississippi statutes are constitutional, and finally concludes that the challenged statute "sufficiently informed the defendants of the essential elements of the offense." 269 So. 2d, at 644. The challenged statute is *not* like its federal counterpart. Title 18 U. S. C. § 2102, unlike the Mississippi statute, necessitates a clear and present danger of property damage or personal injury. The conclusory statement that these defendants were sufficiently informed of the essential elements, is not an answer to the matter of overbreadth.

I would note probable jurisdiction.

No. 72-6634. SMITH *v.* SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA. Appeal from Ct. App. Cal., 1st App. Dist., dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied.

No. 72-6659. SMITH *v.* SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA, ET AL. Appeal from Ct. App. Cal., 1st App. Dist., dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied.

No. 72-6822. ALERS *v.* SOTO, JUDGE. Appeal from Sup. Ct. P. R. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied. -

No. 73-79. JENNINGS *v.* CANOTT. Appeal from Sup. Ct. Iowa. Motion to dispense with printing jurisdictional statement granted. Appeal dismissed for want of jurisdiction. Treating the papers whereon the appeal

414 U. S.

October 15, 1973

was taken as a petition for writ of certiorari, certiorari denied. Reported below: 202 N. W. 2d 48.

No. 73-5046. *STOKES v. BRUCE ET AL.* Appeal from C. A. 6th Cir. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied. Reported below: 477 F. 2d 600.

MR. JUSTICE DOUGLAS, with whom THE CHIEF JUSTICE concurs, dissenting.

Petitioner,<sup>1</sup> a 50-year-old inmate in the Kentucky prison system, brought a *pro se* action for damages under 42 U. S. C. § 1983, alleging that prison officials had violated his civil rights. Petitioner alleged that on two separate occasions, Kentucky prison officials notified him of a transfer from one institution to another at 2:30 or 3 p. m., and that he was moved later on the same day. On the occasion of the first of these transfers on short notice (apparently on October 8, 1970, from the Kentucky State Reformatory in LaGrange to the Kentucky State Penitentiary in Eddyville), officers allegedly refused to give petitioner time to recover two books on auto mechanics which he had been compiling for two years. On the occasion of the second of these transfers (apparently on August 14, 1972, back to the reformatory), prison officials did not allow petitioner to recover a book in which he had alphabetized legal cases, laboring on weekends for a year.<sup>2</sup>

<sup>1</sup> Since there is no jurisdiction for an appeal, this action should be treated as a petition for certiorari. 28 U. S. C. § 2103.

<sup>2</sup> Apparently also on the occasion of the second transfer, petitioner was required by prison regulations to mail his personal belongings to somebody on the outside, who could then mail the items back to him after his transfer to the new institution. Coupled with a prison regulation which permits inmates to receive books only from publishing houses, this served to work a particular hardship on petitioner. He was forced to mail a book, which he had pur-

Petitioner contends that the First Amendment gives him the right "to read and write. To think and to put it on paper." He argues, also, that the action of the prison officials violated the Fourth, Fifth, and Eighth Amendments, which are applicable to the States through the Fourteenth Amendment.

The District Court dismissed petitioner's action and deemed any appeal "frivolous" on the ground that alleged loss of property could not establish jurisdiction under the Civil Rights Act. We put such reasoning to rest in *Lynch v. Household Finance Corp.*, 405 U. S. 538. The Court of Appeals for the Sixth Circuit affirmed, on the ground that "the petitioner-appellant voluntarily relinquished possession of the personal property in question."

The assertion that petitioner voluntarily abandoned books on which he had labored for two years not only defies belief, but it is also unsupported by the record. The respondent prison officials do not contest petitioner's factual allegations, but rather state lamely that it is "clear from the facts" that petitioner voluntarily gave up his property. And even if he did not, respondents argue that:

"The question presented is whether the administrative policies at the Kentucky State Penitentiary at Eddyville, Kentucky, and the administrative policies at the Kentucky State Reformatory at LaGrange in transferring him on short notice requiring him to abandon, give away, or mail home various personal items . . . are violative of his constitutional rights, or of the rights of inmates generally.

"Allegations made by the appellant in this appeal as heretofore set out utterly fail to state a violation

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chased from a publishing house while at the penitentiary, to a friend on the outside, but the friend was not able to mail it back to him at the reformatory.

414 U. S.

October 15, 1973

of his civil rights. . . . [T]he transferring of appellant from one prison to the other, as well as the fact that in any such move certain procedures must be followed with regard to the transfer of properties, are proper regulatory functions prescribed and administered by the prison officials and not violative of any civil rights."

I cannot agree. This case may to some seem picayune. But basically it presents the substantial question of whether senseless, medieval practices of state officials can be "immunized" from the reach of the Civil Rights Act simply because they occur within the walls of prisons. See *Sostre v. McGinnis*, 442 F. 2d 178 (CA2 1971). I would grant certiorari.

*Vacated and Remanded on Appeal*

No. 72-1519. DUNLAVEY, DEPUTY CORRECTIONS DIRECTOR, ET AL. *v.* BERENGUER ET AL. Appeal from D. C. Del. Judgment vacated and case remanded with directions to dismiss case as moot. Reported below: 352 F. Supp. 444.

*Certiorari Granted—Vacated and Remanded.* (See also No. 72-552, *ante*, p. 1.)

No. 72-1721. WAINWRIGHT, CORRECTIONS DIRECTOR *v.* COTTLE. C. A. 5th 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 *Gagnon v. Scarpelli*, 411 U. S. 778 (1973). Reported below: 477 F. 2d 269.

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

In *Gagnon v. Scarpelli*, 411 U. S. 778, this Court was presented with the question whether an indigent probationer or parolee has a due process right to appointed counsel at revocation hearings. Noting that

October 15, 1973

414 U. S.

"due process is not so rigid as to require that the significant interests in informality, flexibility, and economy must always be sacrificed" by judicializing the revocation process with the presence of attorneys, a case-by-case analysis was held necessary for that determination. *Id.*, at 788. The Court today remands for such an analysis. But the only issue in this case is whether the court below was correct in holding that the Equal Protection Clause requires the right to appointed counsel at parole revocation hearings in cases where, unlike *Gagnon v. Scarpelli*, *supra*, a solvent parolee has a statutory right to the presence of retained counsel. *Gagnon* is inapposite. The State of Florida has already determined by statute that any interest in flexibility and informality derived from the absence of attorneys will *always* be sacrificed when a parolee of means desires the assistance of counsel. Whether in such cases the Equal Protection Clause demands that indigent parolees be afforded the same representation rights was not answered in *Gagnon*. I would take this case in order to decide it here.

No. 72-6566. *CHAMBERS v. UNITED STATES*. C. A. 9th Cir. Motion for leave to proceed *in forma pauperis* and certiorari granted. Judgment vacated and case remanded for further consideration in light of *Almeida-Sanchez v. United States*, 413 U. S. 266 (1973).

No. 73-163. *LUCAS ET AL. v. RIVERS*. C. A. 6th Cir. Motion to dispense with printing respondent's brief and certiorari granted. Judgment vacated and case remanded for consideration of question of mootness in light of *People v. McMiller*, 389 Mich. 425, 208 N. W. 2d 451 (1973). Reported below: 477 F. 2d 199.

No. 73-5028. *MILLER v. UNITED STATES*. C. A. 5th Cir. Motion for leave to proceed *in forma pauperis* and certiorari granted. Judgment vacated and case remanded

414 U. S.

October 15, 1973

for further consideration in light of *Almeida-Sanchez v. United States*, 413 U. S. 266 (1973). Reported below: 477 F. 2d 595.

No. 73-5029. *WILSON v. UNITED STATES*. C. A. 9th Cir. Motion for leave to proceed *in forma pauperis* and certiorari granted. Upon representation of the Solicitor General set forth in his memorandum for the United States filed September 8, 1973, judgment vacated and case remanded to the United States District Court for the Northern District of California for reconsideration in light of the position presently asserted by the Government. Reported below: 473 F. 2d 297.

#### *Certiorari Dismissed*

No. 73-5007. *CONNOLLY v. UNITED STATES*. C. A. 9th Cir. Certiorari dismissed. *Molinero v. New Jersey*, 396 U. S. 365 (1970). Reported below: 479 F. 2d 930.

#### *Miscellaneous Orders*

No. A-228 (73-5213). *FAWCETT ET AL. v. UNITED STATES*. C. A. 7th Cir. Application by petitioner Manuel for stay presented to MR. JUSTICE MARSHALL, and by him referred to the Court, denied. Reported below: 481 F. 2d 1406.

No. A-331 (73-392). *DALY v. UNITED STATES*. C. A. 8th Cir. Application for bail presented to THE CHIEF JUSTICE, and by him referred to the Court, denied. Reported below: 481 F. 2d 28.

No. A-344 (73-640, *sub nom. Geduldig v. Aiello*). *HANSEN, DIRECTOR, DEPARTMENT OF HUMAN RESOURCES DEVELOPMENT v. AIELLO ET AL.* D. C. N. D. Cal. Application for stay presented to MR. JUSTICE BLACKMUN, and by him referred to the Court, granted pending fur-

October 15, 1973

414 U. S.

ther order of the Court. Reported below: 359 F. Supp. 792.

No. A-335. HEUTSCHE *v.* UNITED STATES. C. A. 7th Cir. Application for bail presented to MR. JUSTICE REHNQUIST, and by him referred to the Court, denied.

MR. JUSTICE DOUGLAS, dissenting.

Mr. Justice Holmes in *Olmstead v. United States*, 277 U. S. 438, 470 (dissenting), called wiretapping "dirty business." That decision was rendered in 1928. Since that time "dirty business" has become the apt phrase describing the regime under which we now live. The warrant requirement which this Court imposed as a condition to that kind of surveillance, *Berger v. New York*, 388 U. S. 41, and the Act of Congress which implemented that decision, 18 U. S. C. §§ 2510-2520; *United States v. U. S. District Court*, 407 U. S. 297, have been flouted. We who live in the District of Columbia know that electronic surveillance is commonplace. I am indeed morally certain that the Conference Room of this Court has been "bugged"; and President Johnson during his term in the White House asserted to me that even his phone was tapped.

We deal with a disease that has permeated our society. Certainly Ms. Heutsche is an "aggrieved" person within the meaning of 18 U. S. C. § 3504 (a)(1).<sup>1</sup> That section

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<sup>1</sup> "§ 3504. (a) In any trial, hearing, or other proceeding in or before any court, grand jury, department, officer, agency, regulatory body, or other authority of the United States—

"(1) upon a claim by a party aggrieved that evidence is inadmissible because it is the primary product of an unlawful act or because it was obtained by the exploitation of an unlawful act, the opponent of the claim shall affirm or deny the occurrence of the alleged unlawful act . . . ."

does not restrict its protection to conversations of an accused. It should be liberally construed as it deals with the right of privacy protected by the Fourth Amendment. The conversation of one's lawyer over the telephone may be as helpful to Big Brother as the conversation of the accused herself. The lawyer preparing the defense may in his telephone conversations reveal concessions made by the accused or his trial strategy or clues to the defense which will be proffered that may be extremely helpful to the prosecution. If electronic surveillance were strictly employed by the Executive Branch, we might be chary of enlarging its duties as requested here. But since we live in a regime where the "dirty business" of wiretapping runs rampant, I would apply the statute liberally to check the disease which almost every newspaper tells us has poisoned our body politic.

We are told that in this case the applicant's lawyers did discuss her case with persons other than herself over the telephone. Is Big Brother to have a ringside seat where he can listen to all the confidences of lawyers who defend an accused? If so, what happens to the valued right of counsel protected by the Sixth Amendment?

On June 26, 1972, Margaret Heutsche, the applicant herein, was arrested by the FBI on charges relating to the removal and destruction of Government property from a Selective Service System office. Although a preliminary hearing resulted in a finding of probable cause, she remained free on her own recognizance and heard nothing further on the case until called to testify before a federal grand jury nearly a year later. When she invoked her constitutional right to refrain from testifying, the Government obtained a grant of use immunity pursuant to 18 U. S. C. § 6002 and an order from the District Court compelling the applicant to testify. The

applicant again refused to testify and sought reconsideration of the District Court order, claiming that the subpoena and the questions propounded by the grand jury were the product of illegal electronic surveillance of her and that the Government had not properly affirmed or denied that claim as required by 18 U. S. C. § 3504.<sup>2</sup> She claims that the same barrier extends to her lawyer. The applicant also moved for a disclosure of any electronic surveillance of her attorneys and their consultants, and for an evidentiary hearing on the sufficiency of the disclosure.

In response to the motions, the Government filed the affidavit of a high Justice Department official to the effect that, based on an inquiry addressed to seven federal agencies:<sup>3</sup>

“[T]here has been no electronic surveillance occurring on premises known to have been owned, leased or licensed by Margaret Ann[e] Heutsche.

“The deponent further states that there was no electronic surveillance directed against Margaret Ann[e] Heutsche, *per se*, and there have been no known overhearings by electronic surveillance, at any location, of conversations to which Margaret Ann[e] Heutsche was a party.”

The applicant maintained that the surveillance denial was inadequate for, *inter alia*, failing to deny electronic surveillance of her attorneys and their associates and consultants which may have yielded conversations concerning her case. The applicant submitted affidavits

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<sup>2</sup> See n. 1, *supra*.

<sup>3</sup> The widespread use of electronic surveillance is demonstrated by the list of agencies consulted before making the denial: FBI; Bureau of Narcotics and Dangerous Drugs; Secret Service; IRS; Customs; Bureau of Alcohol, Tobacco and Firearms; and the Postal Service.

from several attorneys and consultants who swore that they discussed her case among themselves over phone lines on which all had been experiencing strange and suspicious problems.<sup>4</sup> On the basis of these affidavits the applicant requested an evidentiary hearing as to illegal electronic surveillance. The District Court denied relief and, upon the applicant's further refusal to testify, the Government moved that she be adjudged in contempt and ordered committed. Applicant submitted further affidavits and moved to cross-examine the Justice Department official who denied the existence of electronic surveillance.

The District Court again denied her motions and held applicant in contempt, ordering her submitted to the custody of the United States Marshal. The Court of Appeals affirmed, finding that the applicant had made no showing which would require the Government to make an investigation of electronic surveillance of her attorneys. The case is before this Court on the application of Ms. Heutsche to be released from custody pending review here of the decision of the Court of Appeals. The applicable standard for the relief sought is found in 28 U. S. C. § 1826 (b), which directs denial only if the issues are frivolous or the appeal is taken for purposes of delay.

I cannot agree that the applicant's showing is not sufficient *at least* to entitle her to an evidentiary hearing. In a country where the Government overhears

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<sup>4</sup> At various times the affiants had difficulty placing calls, heard clicking noises over the lines, and heard strange voices and the sound of tape recorders in the background. In addition, a consultant with a Ph. D. in physics conducted relative field strength tests on the phone line of one of the attorneys and stated his belief that a radio frequency monitoring system had been applied to the line.

over 500,000 conversations a year pursuant to court authorized wiretaps alone,<sup>5</sup> it is difficult to gainsay anyone's fear of the intrusion of Big Brother's ear. The daily news brings fresh evidence to make a reality of Mr. Chief Justice Warren's warning that the "fantastic advances in the field of electronic communication constitute a great danger to the privacy of the individual . . . ." <sup>6</sup> In such circumstances the Govern-

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<sup>5</sup> Administrative Office of the United States Courts, Report on Applications for Orders Authorizing or Approving the Interception of Wire or Oral Communications, Table 4 (1972).

In 1954 I stated that:

"During 1952, there were in New York City alone at least 58,000 orders issued which allowed wiretapping—over 150 a day every day in the year. The New York system has in practice been oppressive; it has been used as the means whereby police have obtained guarded confidences of people and used the information for corrupt purposes." W. Douglas, *An Almanac of Liberty* 355 (1954).

After reading this statement District Attorney Edward Silver of New York attempted to obtain wiretap data from District Attorneys and police. He reported to the House Judiciary Committee that the total was only 480. Hearings on H. R. 762 before Subcommittee No. 5 of the House Committee on the Judiciary, 84th Cong., 1st Sess., 99 (1955). The Committee called Sidney Davis, former Law Clerk for Mr. Justice Black and the New York attorney who had helped me on the study. He testified as to a misunderstanding between us: there were not 58,000 orders but 58,000 taps, including illegal taps. *Id.*, at 203. District Attorney Frank Hogan of New York testified that claims of illegal wiretapping of such magnitude were "the cries of alarmists . . . who are inclined to . . . inflate incidents and conditions in order to sustain their arguments." *Id.*, at 322. But the "cries of alarm" proved realistic. In 1959, Samuel Dash, on the basis of extrapolations from man-hour statistics on policemen admittedly engaged in wiretapping activity, concludes that my estimates of that activity were "closer to the truth than the figures submitted by the police to [Edward Silver]." S. Dash, *The Eavesdroppers* 68-69 (1959).

<sup>6</sup> *Lopez v. United States*, 373 U. S. 427, 441 (1963) (concurring).

ment's claim that it should not be put to the task of searching its files for evidence of specific surveillance cannot be treated lightly. I take cognizance of the fact that the mass of aggregate data on the citizenry yielded in this Orwellian era may indeed make the task a difficult one.

But the difficulty which should concern us is that faced by the victim of illegal surveillance. How is the applicant in this case to establish the existence of such clandestine activity so expertly carried on by the Executive Branch? She has introduced sworn statements that her attorneys—themselves likely subjects of Government surveillance<sup>7</sup>—discussed her case over phone lines fraught with indicia of intrusion. She has introduced further sworn statements that electronic tests reveal a likelihood of such intrusion. Yet the court below held this insufficient even to require the Government to check its records on specific phone lines identified by the applicant.

The victims of illegal governmental surveillance are thus apparently faced with the insurmountable task of proving such surveillance before the Government will be asked to respond to allegations of its existence or participate in an evidentiary hearing to decide the matter. In seeking review of that holding the applicant raises serious issues of constitutional magnitude. She has alleged Government misconduct interfering not only with her right to privacy but with her right to the effec-

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<sup>7</sup> Her attorneys include members of the San Francisco chapter of the National Lawyers Guild and an organization in Chicago known as the "Peoples Law Office." Peoples is a firm almost exclusively devoted to the criminal defense of "militants" and "radicals," including Chairman Fred Hampton of the Black Panther Party and Bernadine Dohrn and Marc Rudd of the Weatherman faction of the SDS.

October 15, 1973

414 U. S.

tive assistance of counsel by destroying her attorneys' ability to discuss her case in confidence. Having shown all anyone will ever be able to show in this area prior to a Government response, she further questions how those constitutional rights have any meaning, when more is required before the victim of illegal surveillance is even entitled to a hearing. These are serious questions of broad impact in an area not yet expounded upon by this Court. In denying the requested interim relief, can the Court possibly hold that the attempt to raise those questions is frivolous? I would grant bail, expedite the grant of certiorari, and put the case down for early argument and decision.

No. 36, Orig. TEXAS *v.* LOUISIANA. Application for temporary restraining order, preliminary injunction, and other relief referred to Special Master. Report of Special Master on Louisiana's motion to enlarge reference to Special Master to include establishment of Louisiana's lateral boundary with Texas in the Gulf of Mexico, including briefing schedule contained therein, received and ordered filed and adopted. [For earlier orders herein, see, *e. g.*, 413 U. S. 918.]

No. 72-397. BONELLI CATTLE CO. ET AL. *v.* ARIZONA ET AL. Sup. Ct. Ariz. [Certiorari granted, 410 U. S. 908.] Motion of Cocopak Tribe of Indians for leave to file an untimely brief as *amicus curiae* granted.

No. 72-403. SAMPSON, ADMINISTRATOR, GENERAL SERVICES ADMINISTRATION, ET AL. *v.* MURRAY. C. A. D. C. Cir. [Certiorari granted, *sub nom. Kunzig v. Murray*, 410 U. S. 981.] Motion of respondent to permit Thomas J. McGrew, Esquire, to argue *pro hac vice* granted.

414 U. S.

October 15, 1973

No. 72-777. CLEVELAND BOARD OF EDUCATION ET AL. v. LAFLEUR ET AL. C. A. 6th Cir.; and

No. 72-1129. COHEN v. CHESTERFIELD COUNTY SCHOOL BOARD ET AL. C. A. 4th Cir. [Certiorari granted, 411 U. S. 947.] Motion of the Chamber of Commerce of the United States for leave to file an untimely brief as *amicus curiae* denied.

No. 72-782. GATEWAY COAL Co. v. UNITED MINE WORKERS OF AMERICA ET AL. C. A. 3d Cir. [Certiorari granted, 410 U. S. 953.] Motion of Frederick McAllister et al. for leave to file an untimely brief as *amicus curiae* denied.

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 participate in oral argument as *amicus curiae* denied.

No. 72-851. ONEIDA INDIAN NATION OF NEW YORK ET AL. v. COUNTY OF ONEIDA, NEW YORK, ET AL. C. A. 2d Cir. [Certiorari granted, 412 U. S. 927.] Motion of State of New York for leave to participate in oral argument as *amicus curiae* in support of respondents granted and State of New York to confine oral argument to questions presented. Motion for additional time to present oral argument denied.

No. 72-1162. FEDERAL POWER COMMISSION v. NEW ENGLAND POWER Co. ET AL. C. A. D. C. Cir. [Certiorari granted, 411 U. S. 981.] Motion of respondents for additional time for oral argument granted and 15 minutes allotted for that purpose. Petitioner also allotted 15 additional minutes for oral argument.

October 15, 1973

414 U. S.

No. 72-1180. OLD DOMINION BRANCH No. 496, NATIONAL ASSOCIATION OF LETTER CARRIERS, AFL-CIO, ET AL. *v.* AUSTIN ET AL. Appeal from Sup. Ct. Va. [Probable jurisdiction noted, 412 U. S. 917.] Motion of appellants for additional time for oral argument denied. Motion of appellees for divided argument granted.

No. 72-1188. SCHLESINGER, SECRETARY OF DEFENSE, ET AL. *v.* RESERVISTS COMMITTEE TO STOP THE WAR ET AL. C. A. D. C. Cir. [Certiorari granted, *sub nom. Richardson v. Reservists Committee to Stop the War*, 411 U. S. 947.] Motion of the Solicitor General for additional time for oral argument granted and 15 additional minutes allotted for that purpose. Respondents also allotted 15 additional minutes for oral argument.

No. 72-1318. KRAUSE, ADMINISTRATOR, ET AL. *v.* RHODES, GOVERNOR OF OHIO, ET AL. C. A. 6th Cir. [Certiorari granted, 413 U. S. 919.] Motion of petitioners for additional time for oral argument denied.

No. 72-5847. ALEXANDER *v.* GARDNER-DENVER Co. C. A. 10th Cir. [Certiorari granted, 410 U. S. 925.] Motion of the Chamber of Commerce of the United States for leave to participate in oral argument as *amicus curiae* denied.

No. 72-6580. OPERATIVE PLASTERERS & CEMENT MASONS INTERNATIONAL UNION LOCAL 685, AFL-CIO *v.* TEXACO INC. C. A. 5th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied without prejudice to file printed petition in conformity with Rule 39 of the Rules of this Court and to pay the Clerk's costs on or before November 14, 1973.

414 U. S.

October 15, 1973

No. 73-40. WALLACE, ACTING WARDEN *v.* SMITH. C. A. 4th Cir. Motion to dispense with printing petition denied with leave to file printed petition in conformity with Rule 39 of the Rules of this Court on or before November 14, 1973.

No. 73-5072. MATTHEWS *v.* UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT. Motion for leave to file petition for writ of mandamus denied.

No. 73-5186. MOORE *v.* UNITED STATES. Motion for leave to file petition for writ of mandamus denied. MR. JUSTICE DOUGLAS would grant the motion.

*Probable Jurisdiction Noted*

No. 73-191. VILLAGE OF BELLE TERRE ET AL. *v.* BORAAS ET AL. Appeal from C. A. 2d Cir. Probable jurisdiction noted. Reported below: 476 F. 2d 806.

No. 73-38. UNITED STATES *v.* MARINE BANCORPORATION, INC., ET AL. Appeal from D. C. W. D. Wash. Motions to advance oral argument denied. Probable jurisdiction noted.

*Certiorari Granted*

No. 72-1517. GILMORE ET AL. *v.* CITY OF MONTGOMERY, ALABAMA, ET AL. C. A. 5th Cir. Certiorari granted. Reported below: 473 F. 2d 832.

No. 72-1597. BEASLEY ET AL. *v.* FOOD FAIR OF NORTH CAROLINA, INC., ET AL. Sup. Ct. N. C. Certiorari granted. Reported below: 282 N. C. 530, 193 S. E. 2d 911.

No. 73-190. BELLIS *v.* UNITED STATES. C. A. 3d Cir. Certiorari granted. Reported below: 483 F. 2d 961.

No. 72-6902. GOODING *v.* UNITED STATES. C. A. D. C. Cir. Motion for leave to proceed *in forma pauperis*

October 15, 1973

414 U. S.

and certiorari granted. Reported below: 155 U. S. App. D. C. 259, 477 F. 2d 428.

No. 73-62. *WHEELER ET AL. v. BARRERA ET AL.* C. A. 8th Cir. Certiorari granted. Reported below: 475 F. 2d 1338.

No. 72-1660. *BLACKLEDGE, WARDEN, ET AL. v. PERRY.* C. A. 4th Cir. Motion to dispense with printing respondent's brief and certiorari granted.

No. 73-203. *EISEN v. CARLISLE & JACQUELIN ET AL.* C. A. 2d Cir. Certiorari granted. Parties requested to brief and argue, in addition to questions presented in petition, jurisdiction of the Court of Appeals. Reported below: 479 F. 2d 1005.

*Certiorari Denied.* (See also Nos. 72-6634, 72-6659, 72-6822, 73-79, and 73-5046, *supra.*)

No. 72-1602. *SLAYTON, PENITENTIARY SUPERINTENDENT v. GARLAND.* C. A. 4th Cir. Certiorari denied. Reported below: 472 F. 2d 875.

No. 72-1616. *BOGUE ELECTRIC MANUFACTURING CORP. ET AL. v. ZELLER ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 476 F. 2d 795.

No. 72-1728. *WILLIAMS v. UNITED STATES.* C. A. 4th Cir. Certiorari denied. Reported below: 477 F. 2d 593.

No. 72-6859. *GOODWIN v. UNITED STATES.* C. A. 9th Cir. Certiorari denied.

No. 72-6956. *HURSE v. UNITED STATES.* C. A. 8th Cir. Certiorari denied. Reported below: 477 F. 2d 31.

No. 72-6991. *SOLOMON v. UNITED STATES.* C. A. 3d Cir. Certiorari denied.

414 U. S.

October 15, 1973

No. 73-33. AIR TERMINAL CAB, INC., ET AL. *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 478 F. 2d 575.

No. 73-51. YELLOWSTONE PARK LINES, INC., ET AL. *v.* BRENNAN, SECRETARY OF LABOR. C. A. 10th Cir. Certiorari denied. Reported below: 478 F. 2d 285.

No. 73-65. DALY *v.* WALDOR, COMMISSIONER OF HIGHWAYS OF MINNESOTA, ET AL. Sup. Ct. Minn. Certiorari denied. Reported below: 296 Minn. 238, 207 N. W. 2d 541.

No. 73-66. SCHOLLE CHEMICAL CORP. ET AL. *v.* NATIONAL LABOR RELATIONS BOARD. C. A. 7th Cir. Certiorari denied.

No. 73-67. IN RE NIBLACK. C. A. D. C. Cir. Certiorari denied. Reported below: 155 U. S. App. D. C. 174, 476 F. 2d 930.

No. 73-75. UNITED STATES STEEL CORP. *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 482 F. 2d 439.

No. 73-80. WHITEN *v.* UNITED STATES;

No. 73-5037. KELLER *v.* UNITED STATES; and

No. 73-5079. WHITTY *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 474 F. 2d 1346.

No. 73-85. BALDWIN COUNTY ELECTRIC MEMBERSHIP CORP. ET AL. *v.* PRICE COMMISSION ET AL. Temp. Emerg. Ct. App. Certiorari denied. Reported below: 481 F. 2d 920.

No. 73-96. WOMACK *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 478 F. 2d 1397.

October 15, 1973

414 U. S.

No. 73-98. *L & A CREATIVE ARTS STUDIO, INC., ET AL. v. REDEVELOPMENT AUTHORITY OF THE CITY OF PHILADELPHIA ET AL.* C. A. 3d Cir. Certiorari denied. Reported below: 478 F. 2d 1398.

No. 73-127. *TOPIK ET AL. v. CATALYST RESEARCH CORP. ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 473 F. 2d 907.

No. 73-133. *OLD DOMINION BOX Co., INC. v. UNITED STATES.* C. A. 4th Cir. Certiorari denied. Reported below: 477 F. 2d 340.

No. 73-151. *FUENTES v. UNITED STATES;*

No. 73-5144. *LARA v. UNITED STATES;* and

No. 73-5162. *ALEMAN ET AL. v. UNITED STATES.* C. A. 5th Cir. Certiorari denied. Reported below: 478 F. 2d 408.

No. 73-152. *FIRST BOSTON CORP. v. CHRIS-CRAFT INDUSTRIES, INC.;*

No. 73-153. *BANGOR PUNTA CORP. ET AL. v. CHRIS-CRAFT INDUSTRIES, INC.;* and

No. 73-154. *PIPER ET AL. v. CHRIS-CRAFT INDUSTRIES, INC.* C. A. 2d Cir. Certiorari denied. Reported below: 480 F. 2d 341.

No. 73-155. *DORAN v. UNITED STATES.* C. A. 3d Cir. Certiorari denied. Reported below: 480 F. 2d 919.

No. 73-171. *BARR ET AL. v. UNITED STATES ET AL.* C. A. 10th Cir. Certiorari denied. Reported below: 478 F. 2d 1152.

No. 73-174. *MONDAY v. UNITED STATES.* C. A. 7th Cir. Certiorari denied. Reported below: 478 F. 2d 1404.

414 U.S.

October 15, 1973

No. 73-180. *GATEWAY CENTER CORP. v. MERRIAM*. C. A. 3d Cir. Certiorari denied. Reported below: 476 F. 2d 1233.

No. 73-181. *STATE ELECTRIC SERVICE, INC. v. NATIONAL LABOR RELATIONS BOARD*. C. A. 5th Cir. Certiorari denied. Reported below: 477 F. 2d 749.

No. 73-182. *BISHOP ET AL. v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 476 F. 2d 977 and 981.

No. 73-250. *HAYNE v. BOEING Co.* C. A. 7th Cir. Certiorari denied. Reported below: 478 F. 2d 1404.

No. 73-5025. *GOETZ v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 478 F. 2d 1404.

No. 73-5040. *KHOURI v. UNITED STATES*. C. A. 2d Cir. Certiorari denied.

No. 73-5041. *CROCKETT v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 478 F. 2d 1400.

No. 73-5042. *MARSHALL v. UNITED STATES*. C. A. 8th Cir. Certiorari denied.

No. 73-5043. *MYLES v. UNITED STATES*. C. A. 8th Cir. Certiorari denied.

No. 73-5045. *TAYLOR, AKA FINDLEY v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 480 F. 2d 618.

No. 73-5049. *STREETER v. UNITED STATES*. C. A. 9th Cir. Certiorari denied.

No. 73-5050. *GUZMAN v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 482 F. 2d 272.

October 15, 1973

414 U. S.

No. 73-5056. *HIGDON v. UNITED STATES*. C. A. 10th Cir. Certiorari denied.

No. 73-5057. *OREE v. NEW YORK ET AL.* C. A. 2d Cir. Certiorari denied.

No. 73-5059. *SAIN v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 477 F. 2d 551.

No. 73-5060. *STAMEY v. UNITED STATES*. C. A. 6th Cir. Certiorari denied.

No. 73-5062. *BLACKMON v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 474 F. 2d 1125.

No. 73-5066. *D'AVANZO v. UNITED STATES*. C. A. 2d Cir. Certiorari denied.

No. 73-5069. *HALL ET AL. v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 475 F. 2d 1403.

No. 73-5073. *THOMAS v. UNITED STATES*. C. A. 6th Cir. Certiorari denied.

No. 73-5074. *MURPHY v. UNITED STATES*. C. A. 1st Cir. Certiorari denied. Reported below: 480 F. 2d 256.

No. 73-5075. *ESTRADA v. UNITED STATES*. C. A. 9th Cir. Certiorari denied.

No. 73-5077. *WALLS v. UNITED STATES*; and

No. 73-5089. *JOHNSON, AKA MOON v. UNITED STATES*. C. A. 3d Cir. Certiorari denied.

No. 73-5078. *CHODOR v. UNITED STATES*. C. A. 1st Cir. Certiorari denied. Reported below: 479 F. 2d 661.

No. 73-5085. *BEASLY v. UNITED STATES*; and

No. 73-5097. *HICKS v. UNITED STATES*. C. A. 3d Cir. Certiorari denied.

414 U.S.

October 15, 1973

No. 73-5092. *FUNGONE v. UNITED STATES*. C. A. 3d Cir. Certiorari denied.

No. 73-5093. *KIRKLAND v. WEINBERGER, SECRETARY OF HEALTH, EDUCATION, AND WELFARE*. C. A. 5th Cir. Certiorari denied. Reported below: 480 F. 2d 46.

No. 73-5094. *MILLER v. UNITED STATES*. C. A. 3d Cir. Certiorari denied.

No. 73-5096. *KELLEY v. UNITED STATES*. C. A. 1st Cir. Certiorari denied. Reported below: 476 F. 2d 211.

No. 73-5100. *ORUM v. UNITED STATES*. C. A. 3d Cir. Certiorari denied.

No. 73-5101. *JENKINS v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 480 F. 2d 1198.

No. 73-5103. *HART v. MISSISSIPPI*. Sup. Ct. Miss. Certiorari denied.

No. 73-5107. *MITCHELL v. CALIFORNIA BLUE SHIELD*. C. A. 9th Cir. Certiorari denied.

No. 73-5113. *HOLMES v. UNITED STATES*. C. A. 2d Cir. Certiorari denied.

No. 73-5118. *LEWIS v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 477 F. 2d 595.

No. 73-5123. *MANNING v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 478 F. 2d 1380.

No. 73-5129. *McGILL v. UNITED STATES*. C. A. 6th Cir. Certiorari denied.

No. 73-5135. *BURKE v. UNITED STATES ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 480 F. 2d 279.

October 15, 1973

414 U.S.

No. 73-5209. *CEDARGREEN v. BETO, CORRECTIONS DIRECTOR*. C. A. 5th Cir. Certiorari denied. Reported below: 469 F. 2d 1405.

No. 73-5211. *HOPKINS v. UNITED STATES*. C. A. 7th Cir. Certiorari denied.

No. 72-1495. *YALE BROADCASTING CO. ET AL. v. FEDERAL COMMUNICATIONS COMMISSION ET AL.* C. A. D. C. Cir. Certiorari denied. MR. JUSTICE BRENNAN would grant certiorari and set case for oral argument. Reported below: 155 U. S. App. D. C. 390, 478 F. 2d 594.

MR. JUSTICE DOUGLAS, dissenting.

In March 1971, the FCC issued a public notice, *Licensee Responsibility to Review Records Before Their Broadcast*, 28 F. C. C. 2d 409, which was interpreted in many quarters as a prohibition on the playing of "drug related" songs by licensees.<sup>1</sup> That belief was strengthened five weeks later when the Commission's Bureau of Complaints and Compliance provided broadcasters with the names of 22 songs labeled "drug oriented" on the basis of their lyrics.<sup>2</sup> The industry widely viewed this as a list of banned songs, and many licensees quickly acted to remove other songs from the air as

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<sup>1</sup> N. Y. Times, Mar. 7, 1971, p. 28, col. 3. In some cases stations stopped playing, regardless of subject or lyric, all the works of particular artists whose views might offend the Commission. 155 U. S. App. D. C. 390, 399 n. 9, 478 F. 2d 594, 603 n. 9 (1973) (Bazelon, C. J., dissenting) (citing petitioners' joint appendix, pp. 87-88).

<sup>2</sup> In its subsequent order in April the Commission reported that the list of 22 songs had been identified by the Department of the Army. 31 F. C. C. 2d 379 (1971). The Commission had not consulted with the Bureau of Narcotics and Dangerous Drugs. New York Times, Mar. 28, 1971, p. 41, col. 1 (reproduced in Joint Appendix in C. A. D. C. Cir., p. 203).

well. Some announcers were fired for playing suspect songs.

In April the Commission denied a petition for reconsideration, but attempted to "clarify" its previous order. 31 F. C. C. 2d 377. But although it repudiated the list of banned songs, it reiterated the basic threat by noting that "the broadcaster could jeopardize his license by failing to exercise licensee responsibility in this area." The nature of that responsibility was unclear. The new statement indicated reaffirmation of the prior decision, yet two concurring commissioners indicated that it restored the status quo to the March notice. It seems clear, however, that the Commission majority intended to coerce broadcasters into refusing to play songs that in the Commission's judgment were somehow "drug related." The April order suggested the prescreening of songs as one method of compliance. And in subsequent testimony before Congress, the Chairman of the Commission stated that if a licensee was playing songs that in the Commission's judgment "promote the use of hard drugs," "I know what I would do, I would probably vote to take the license away."<sup>3</sup>

Still unsure of its responsibilities, but desiring to avoid distorting its artistic judgments by superimposing the Commission's vague sociological ones, petitioner Yale Broadcasting Company drafted its own station policy and submitted it to the Commission, asking for a declaratory ruling on whether it complied with the Commission's orders. The station proposed to fulfill its duties in this area by public service and news pro-

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<sup>3</sup> Hearings on the Effect of Promotion and Advertising of Over-the-counter Drugs on Competition, Small Business, and the Health and Welfare of the Public before the Subcommittee on Monopoly of the Senate Select Committee on Small Business, 92d Cong., 1st Sess., pt. 2, pp. 734-736 (1971).

gramming rather than by censoring its music. It elaborated its policy in a six-page statement. The Commission, finding the proposed policy too "abstract," declined to issue any declaratory ruling. The petitioners then brought this action, challenging the Commission's actions on First Amendment grounds, and arguing that the regulations were impermissibly vague. Petitioners also argued that they should have been the subject of formal rule-making procedures.

In *Columbia Broadcasting System, Inc. v. Democratic National Committee*, 412 U. S. 94, 148 (1973) (concurring in judgment), I indicated my view that TV and radio stand in the same protected position under the First Amendment as do newspapers and magazines. I had not participated in the earlier opinion in *Red Lion Broadcasting Co. v. FCC*, 395 U. S. 367 (1969), which placed broadcasters under a different regime, authorizing governmental regulation to ensure "fairness" of presentation. I explained in *Columbia Broadcasting, supra*, the inevitable danger resulting from placing such powers in governmental hands—a danger appreciated by the Framers of the First Amendment. "The Fairness Doctrine has no place in our First Amendment regime. It puts the head of the camel inside the tent and enables administration after administration to toy with TV or radio in order to serve its sordid or its benevolent ends." 412 U. S., at 154. The instant case well illustrates those dangers.<sup>4</sup>

I doubt that anyone would seriously entertain the notion that consistent with the First Amendment the

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<sup>4</sup>The rationale of *Red Lion, supra*, has now also been applied to newspapers by at least one State. See *Tornillo v. Miami Herald Publishing Co.*, 287 So. 2d 78 (Fla. 1973). While publishers and editors of newspapers would be surprised to learn that they were under a newly created federal bureau, such an event might not be unexpected, given the retrogressive steps that we have witnessed.

Government could force a newspaper out of business if its news stories betrayed too much sympathy with those arrested on marihuana charges, or because it published articles by drug advocates such as Timothy Leary. The proposition is so clear that rarely has the Government ever tried such a thing. See *Near v. Minnesota*, 283 U. S. 697 (1931). If the Government set up a new bureau with the job of reviewing newspaper stories for such "dangerous" tendencies, and with the power to put out of business those publications which failed to conform to the bureau's standards, the publisher would not have to wait until his newspaper had been destroyed to challenge the bureau's authority. The threat of governmental action alone would impose a prohibited restraint upon the press. "[I]nhibition as well as prohibition against the exercise of precious First Amendment rights is a power denied to government." *Lamont v. Postmaster General*, 381 U. S. 301, 309 (1965) (BRENNAN, J., concurring). Cf. *Bantam Books, Inc. v. Sullivan*, 372 U. S. 58 (1963); *Dombrowski v. Pfister*, 380 U. S. 479 (1965).

Yet this is precisely the course taken here by the FCC. The Commission imposes on the licensees a responsibility to analyze the meaning of each song's lyrics and make a judgment as to the social value of the message. The message may be clear or obscure, and careful scrutiny would seem required. This task is to be carried out under the Commission's watchful eye and with the knowledge that repeated errors will be punished by revocation of the license. For now the regulation is applied to song lyrics; next year it may apply to comedy programs, and the following year to news broadcasts.

In *New York Times Co. v. Sullivan*, 376 U. S. 254, 279 (1964), we said that the State could not impose on newspapers the burden, under penalty of civil liability, of checking out every controversial statement for

October 15, 1973

414 U. S.

"truth." "Under such a rule, would-be critics of official conduct may be deterred from voicing their criticism, even though it is believed to be true and even though it is in fact true, because of doubt whether it can be proved in court or fear of the expense of having to do so. They tend to make only statements which 'steer far wider of the unlawful zone.' . . . The rule thus dampens the vigor and limits the variety of public debate. It is inconsistent with the First and Fourteenth Amendments." *Ibid.* Songs play no less a role in public debate, whether they eulogize the John Brown of the abolitionist movement, or the Joe Hill of the union movement, provide a rallying cry such as "We Shall Overcome," or express in music the values of the youthful "counterculture." The Government cannot, consistent with the First Amendment, require a broadcaster to censor its music any more than it can require a newspaper to censor the stories of its reporters. Under our system the Government is not to decide what messages, spoken or in music, are of the proper "social value" to reach the people.

I dissent.

No. 72-1498. THOMPSON *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. MR. JUSTICE STEWART would grant certiorari and set case for oral argument. Reported below: 476 F. 2d 1196.

MR. JUSTICE DOUGLAS, dissenting.

The petitioner here was convicted in District Court of conspiring to transport forged securities in interstate commerce, 18 U. S. C. § 2314, and of aiding and abetting the substantive crime. The trial judge's instruction to the jury did not clearly require that it find that defendant had knowledge of the interstate character of the transaction. Regardless of whether the substantive count requires such knowledge, it seems clear that

414 U. S.

October 15, 1973

the conspiracy offense would. See the opinion of Judge Learned Hand in *United States v. Crimmins*, 123 F. 2d 271, 273 (CA2 1941). Moreover, here as in *Barnes v. United States*, 412 U. S. 837 (1973), we deal with an offense traditionally treated as a local law question; it becomes federal only through the nexus with interstate commerce. See my dissenting opinion in *Barnes v. United States*, *supra*, p. 848. Proof of that nexus is therefore required for conviction. I would grant certiorari.

No. 72-1550. *ALO v. UNITED STATES*. C. A. 2d Cir. Certiorari denied.

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

In 1969 the petitioner was indicted for obstructing an investigation of the Securities and Exchange Commission, and he was convicted by a jury. Both in pretrial motions and on appeal the defendant insisted that the Government had obtained an identical indictment in 1966 but had for some reason kept it secret, and that therefore there was a three-year post-indictment delay which denied the defendant his right to a speedy trial. The Government would not confirm or deny this allegation, and the defendant was unable to produce substantiating evidence. The conviction was affirmed, the Court of Appeals concluding that in any case no prejudice was shown by the defendant. 439 F. 2d 751, 755-756 (CA2 1971). The present proceeding arises from petitioner's motion to vacate sentence, based on newly discovered evidence confirming the petitioner's earlier suspicions and revealing motivations for the delay which the District Court found were "unworthy and discreditable." The motion was denied, however, again for the reason that no prejudice had been shown, and the Court of Appeals again affirmed.

As revealed in part by a Justice Department memorandum made available to the District Court, the Govern-

ment embarked on a conscious mission to conceal the 1966 indictment to prevent disclosure of an illegal wiretap on a member of the Bar. At first the indictment was sealed. Two years later the Chief of the Fraud Section of the Criminal Division wrote a confidential memorandum to the Assistant Attorney General in charge of the Division. He pointed out that the indictment was sealed because of its factual relationship to another indictment returned the same day against a Miami attorney, who had been the subject of the "electronic surveillance." The memorandum continued: "Immediately after the return of the indictments, United States Attorney Morgenthau expressed great concern over the disclosure of these logs, because he did not want to spread on the record that the Department had engaged in electronic surveillance of a member of the bar. Assistant United States Attorney Givens now proposes the dismissal of the indictment as to [the attorney] and the opening of the Alo indictment . . . ." The memorandum then went on to state why it might be possible to prevent disclosure of the wiretap in a prosecution of Alo, the petitioner here, an associate of the overheard attorney.

For reasons still unknown, the Government never did proceed with the 1966 indictment against the petitioner; instead it kept that indictment secret and proceeded with the new indictment, more than three years after the original 1966 indictment. Although the suspicions of the defense were aroused, as indicated above the Government was able to keep the earlier indictment and the embarrassing wiretaps secret throughout petitioner's trial.

In *Barker v. Wingo*, 407 U. S. 514, 533 (1972), we noted that a speedy trial is "a fundamental right of the accused" that is "specifically affirmed in the Constitution." In determining whether that right had been denied, we looked primarily to four factors: "Length

of delay, the reason for the delay, the defendant's assertion of his right, and prejudice to the defendant." *Id.*, at 530. But we cautioned that no one of these four factors is "a necessary or sufficient condition" to finding that the right to speedy trial has been denied. *Id.*, at 533.

There can be no contention that the three-year delay is "*de minimis*," and the defendant here surely cannot be faulted for failing to assert his right. See *id.*, at 525-527. The Government argues that he has made no showing of prejudice however, and on this basis alone his claim should be denied. The petitioner argues that in a case such as this, where the delay, caused by the Government, is not only unjustified but is "unworthy and discreditable," his failure to make a showing of prejudice is not crucial.

In 1963 Mr. Chief Justice Warren warned that the "fantastic advances in the field of electronic communication constitute a great danger to the privacy of the individual . . . [imposing] a heavier responsibility on this Court in its supervision of the fairness of procedures in the federal court system." *Lopez v. United States*, 373 U. S. 427, 441 (concurring). That danger has not abated. In 1972 alone 43,000 people were overheard in 500,000 conversations pursuant to electronic surveillance authorized under Title III of the Omnibus Crime Control and Safe Streets Act of 1968, 18 U. S. C. § 2510 *et seq.* Administrative Office of the United States Courts, Report on Applications for Orders Authorizing or Approving the Interception of Wire or Oral Communications, Table 4, pp. 12-13. (1972). There is no tally available of the electronic surveillance undertaken which does not purport to be authorized by Title III. My views on the constitutionality of electronic surveillance have been expressed before. See, *e. g.* *United States v. White*, 401 U. S. 745, 756 (1971).

October 15, 1973

414 U. S.

Nothing in our opinion in *Barker* suggests that a finding of prejudice is necessary before relief can be granted in denial of a speedy trial; indeed, as pointed out above, the opposite is true. Cf. *Strunk v. United States*, 412 U. S. 434 (1973). The admitted Government misconduct here which led to the three-year delay arguably presents the kind of fact situation in which it is not necessary for the defendant to show prejudice. I would grant certiorari.

No. 72-1641. *AVERY v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. MR. JUSTICE DOUGLAS and MR. JUSTICE STEWART would grant certiorari. Reported below: 475 F. 2d 27.

No. 72-1659. *PATRICK v. FIELD RESEARCH CORP. ET AL.* Ct. App. Cal., 1st App. Dist. Certiorari denied. Reported below: 30 Cal. App. 3d 603, 106 Cal. Rptr. 473.

MR. JUSTICE DOUGLAS, dissenting.

This case involves a libel suit based on statements made in the heat of the vigorous 1966 campaign for the office of Governor of California. Respondents published a poll indicating that, of the candidates in the Republican primary, petitioner was favored by only 1% of the voters. Petitioner responded by saying that he believed, based on reports from a reliable source, that the poll was corrupt, dishonest, and rigged as a result of a bribe paid by one of the other candidates. Respondents instituted a libel action and recovered \$300,000 in damages.

Respondents concede public figure status and the libel award is thus based on the "malice" with which petitioner made the statements. See *Rosenbloom v. Metromedia*, 403 U. S. 29; *Curtis Publishing Co. v. Butts*, 388 U. S. 130; *New York Times Co. v. Sullivan*, 376 U. S. 254. But "[t]he requirement that malice be proved provides

414 U. S.

October 15, 1973

at best an evanescent protection for the right critically to discuss public affairs and certainly does not measure up to the sturdy safeguard embodied in the First Amendment." *New York Times Co. v. Sullivan, supra*, at 293 (Black, J., concurring). In my opinion the First Amendment prohibits the use of civil libel laws to impose damages for the discussion of public affairs or criticism of public figures, and this prohibition is in no way dependent upon the results of uncertain speculation as to the "malicious" mental state of the speaker. Freedom of speech does not admit of differentiation limiting its applicability to those possessed of judicially approved states of mind.

I would grant this petition and reverse the judgment below.

No. 72-1698. *IN RE PENN CENTRAL TRANSPORTATION Co. (BETHLEHEM STEEL CORP.)*. C. A. 3d Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 477 F. 2d 841.

No. 72-6574. *BUMGARNER v. RAINES*, ASSISTANT U. S. ATTORNEY. C. A. 6th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari.

No. 72-6773. *SHAVER v. SANDELL ET AL.* Justice Ct., East Phoenix Precinct No. 2, Maricopa County, Ariz. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari.

No. 73-81. *COX v. ARKANSAS*. Sup. Ct. Ark. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 254 Ark. 1, 491 S. W. 2d 802.

No. 73-102. *WILLIS v. UNITED STATES*. C. A. 10th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari.

October 15, 1973

414 U.S.

No. 73-161. *DeCAMP v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 478 F. 2d 1188.

No. 73-173. *BOARD OF DIRECTORS ET AL., FORBES FEDERAL CREDIT UNION, CHARTER No. 11258, FORBES AIR FORCE BASE, TOPEKA, KANSAS v. NATIONAL CREDIT UNION ADMINISTRATION*. C. A. 10th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 477 F. 2d 777.

No. 73-184. *KILLEBREW v. SECURITY BARGE LINE, INC.* Sup. Ct. Miss. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 278 So. 2d 460.

No. 73-306. *SECURITIES AND EXCHANGE COMMISSION v. BANGOR PUNTA CORP.* C. A. 2d Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari.

No. 73-5058. *BEASLEY v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 479 F. 2d 1124.

No. 73-5082. *GONZALEZ v. VINCENT, CORRECTIONAL SUPERINTENDENT*. C. A. 2d Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 477 F. 2d 797.

No. 73-5098. *GILLON v. TEXAS*. Ct. Crim. App. Tex. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 491 S. W. 2d 893.

No. 73-5104. *LUPINO v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 480 F. 2d 720.

No. 73-5147. *DOTA v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 480 F. 2d 917.

414 U. S.

October 15, 1973

No. 73-5175. *TUBERVILLE v. TEXACO INC. ET AL.* C. A. 5th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 477 F. 2d 595.

No. 72-1706. *HYATT v. ATCHISON, TOPEKA & SANTA FE RAILWAY Co.* Ct. App. Cal., 4th App Dist. Certiorari denied.

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

Petitioner seeks certiorari from the California Court of Appeal, which reversed a \$55,000 jury verdict in his favor in this Federal Employers' Liability Act case. Petitioner suffered serious injuries when struck by a speeding car while crossing a highway separating respondent's yards, which have no food-serving facilities, from a diner on the other side of the highway. The court found that petitioner was acting within the scope of his employment; he was on a paid 20-minute lunch break and was on call. The court also found that there was sufficient evidence of foreseeability and avoidability to take the case to the jury. There were no stop signs on the highway, which had a 40-mile-per-hour speed limit. There was evidence that respondent knew that its employees frequently crossed the highway to the diner and had in fact constructed a path for them to the edge of the highway; that workers at times had to wait up to five minutes to cross the highway; that respondent knew of a previous accident involving one of its employees crossing the highway; but that respondent had taken no steps to mitigate the dangers to its employees.

Nonetheless, the court entered judgment *n. o. v.* for respondent, reasoning that in FELA cases the common law of negligence requires that a "duty" of the employer to the employee has to be shown, and that such

October 15, 1973

414 U. S.

duty was not present in this case. The court, "synthesizing" past cases, found that a "duty" had been found only when (1) an employee was injured on the premises of his employer, or (2) an employee was *required* to be on the premises of a third party in the performance of duties for the employer.

The California court has limited the applicability of the FELA contrary to the purpose of Congress when it amended the Act to wipe out a host of judicially created defenses which had been engrafted on the Act. See *Rogers v. Missouri Pacific R. Co.*, 352 U. S. 500, 508-510; *Tiller v. Atlantic Coast Line R. Co.*, 318 U. S. 54, 64-68. Moreover, lower federal courts have found FELA liability where an employee was injured on the premises of a third party though not required to be there by the employer to conduct the employer's business. See *Carter v. Union R. Co.*, 438 F. 2d 208, 210-211; cf. *Kooker v. Pittsburgh & Lake Erie R. Co.*, 258 F. 2d 876, 878. See also *Smalls v. Atlantic Coast Line R. Co.*, 348 U. S. 946, rev'g 216 F. 2d 842; *Bountiful Brick Co. v. Giles*, 276 U. S. 154.

I would grant certiorari and put the case down for oral argument.

No. 72-1740. SENNOTT ET UX. v. RODMAN & RENSHAW. C. A. 7th Cir. Certiorari denied. Reported below: 474 F. 2d. 32.

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

The petitioners brought this action in district court for securities fraud against Rodman & Renshaw (Rodman), a registered broker-dealer in securities and member firm of the New York Stock Exchange; William Rothbart, a partner in the firm; and Jordan Rothbart (Jordan), William's son. After a bench trial, the District Court found all three defendants liable. Respondent

Rodman then appealed and the Court of Appeals reversed, 474 F. 2d 32 (CA7 1973), finding no basis on which to hold Rodman liable for the concededly illegal and fraudulent scheme.

Both Sennott and Jordan were members of the Chicago Board of Trade, although Sennott had little experience in securities investments. They became acquainted and Jordan urged Sennott to open an account at Rodman through him, saying that his father had made money for other Board of Trade members. Ultimately Sennott agreed and between 1964 and 1966 his trading volume in the accounts at Rodman was more than \$2 million, 70% of which was through accounts opened by Jordan.<sup>1</sup>

Unknown to Sennott during this period, Jordan's employment by Rodman had been terminated because of his questionable integrity, and he had no official connection with the firm after 1958. The Securities and Exchange Commission had held in a 1962 order that between 1955 and 1957 Jordan, while employed by another broker-dealer, had violated various antifraud provisions of the Securities Act. In 1958 his registration as a representative of a member of the National Association of Securities Dealers had been revoked because of deceptive practices.

In early 1964 Jordan induced Sennott to invest in a secondary offering by Skyline Homes, Inc., that Rodman was handling. Soon after, Jordan encouraged him to buy additional shares of Skyline through stock options made available to William, his father, for the father's services in underwriting the secondary offering. Sennott ultimately invested \$142,000 in these options. They did not

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<sup>1</sup> The typical transaction involved Jordan's telling Sennott that his father recommended a particular buy or sell, obtaining Sennott's agreement, and calling in the order on the special Rodman phone at the Board of Trade. The orders were processed by William Rothbart and the firm collected the regular broker's fee on them.

exist and Jordan placed the money in his wife's checking account to use in paying off trading losses. Suspicion did not arise immediately because the options were not due for delivery for seven months. After that, Jordan was able to hold off Sennott's suspicions with various stories.

In October 1964, Sennott was told that Rodman's managing partner, Carroll, wanted to talk to him. William Rothbart told Sennott that the options were none of Carroll's business and that Sennott should not cooperate. William and Jordan accompanied Sennott to his meeting with Carroll, where Carroll revealed that Sennott's checks had been deposited in Jordan's wife's account. But Sennott abided by his agreement with William not to cooperate with Carroll, and Jordan was again able to explain away this suspicious circumstance.<sup>2</sup> William assured Sennott he would receive the options. The truth finally dawned on Sennott in 1966 when he found that another member of the Board of Trade had been the victim of a similar scheme of Jordan's; Sennott also discovered Jordan's past at this time. Jordan was expelled from the Board of Trade.

On the basis of these facts the trial judge found Rodman, as well as Jordan and William, liable. Rodman's liability was based, *inter alia*, on § 20 (a) of the Securities Exchange Act of 1934 (15 U. S. C. § 78t), which is set out below.<sup>3</sup> The Court of Appeals reversed, finding

<sup>2</sup> Jordan had previously told Sennott that he was also buying some of the options. He explained that he had put all the money together so that he could pay for all options in one check.

<sup>3</sup> Section 20 (a) provides: "Every person who, directly or indirectly, controls any person liable under any provision of this chapter or of any rule or regulation thereunder shall also be liable jointly and severally with and to the same extent as such controlled person to any person to whom such controlled person is liable, unless the controlling person acted in good faith and did not directly or indirectly induce the act or acts constituting the violation or cause of action." 15 U. S. C. § 78t.

that there could be no liability under this section because Rodman did not have advance knowledge of the option scheme and was not involved in it.

We have said repeatedly that "the 1934 Act and its companion legislative enactments embrace a 'fundamental purpose . . . to substitute a philosophy of full disclosure for the philosophy of *caveat emptor* and thus to achieve a high standard of business ethics in the securities industry.'" *Affiliated Ute Citizens v. United States*, 406 U. S. 128, 151 (1972), quoting *SEC v. Capital Gains Bureau*, 375 U. S. 180, 186 (1963). "[It is essential] that the highest ethical standards prevail' in every facet of the securities industry." *SEC v. Capital Gains Bureau, supra*, at 186-187, citing *Silver v. New York Stock Exchange*, 373 U. S. 341, 366 (1963).

Section 20 (a) provides that anyone who "controls" a person liable under the 1934 Act is equally liable, subject only to the defense of "good faith." The section "is remedial and is to be construed liberally. It has been interpreted as requiring only some indirect means of discipline or influence short of actual direction to hold a 'controlling person' liable." *Myzel v. Fields*, 386 F. 2d 718, 738 (CA8 1967). See 3 L. Loss, *Securities Regulation 1808-1811*, and cases cited in *Myzel v. Fields, supra*, at 738.

Rodman's liability for the acts of its partner, William Rothbart, are indisputable under § 20 (a), as they are under general principles of agency. But liability cannot be confined to those formally authorized to act in the firm's behalf, for such a rule would constrict the common-law principles of apparent authority, a construction inconsistent with the broad remedial purpose of the legislation.<sup>4</sup> The purpose of the Act is to expand, not restrict, the public's remedies.

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<sup>4</sup>"The Court does not believe that in using the word 'controls' the Congress intended that degree of control or the right to direct

Here Rodman accepted the orders placed through Jordan for over two years, collecting profits on over \$2 million worth of securities transactions. It allowed Jordan to place those orders through its phone on the floor of the Board of Trade, which was under the control of a Rodman employee and was used by only two people besides Jordan—a Rodman partner and a Rodman broker. The District Court found that during this period Jordan solicited orders for Rodman in the same way from at least five others on the floor of the Board of Trade. As the Court of Appeals concedes, Rodman cannot claim lack of knowledge of these activities of Jordan's. Yet in allowing Jordan to hold himself out as an agent of Rodman, with special access because of his association with one of its partners, and accepting the considerable benefits of Jordan's activities, Rodman must be responsible for Jordan's acts even under general agency principles—which do not require even that the principal benefit from the apparent agent's fraud. Restatement (Second) of Agency §§ 261–262. Agency principles have been applied to find liability on facts almost identical to those here. *Blackburn v. Witter*, 201 Cal. App. 2d 518, 19 Cal. Rptr. 842 (1962). It is clear that § 20 (a) compels the same result, *SEC v. First Securities Co. of Chicago*, 463 F. 2d 981 (CA7), cert. denied *sub nom. McKy v. Hochfelder*, 409 U. S. 880 (1972).

Having knowingly acquiesced for two years in Jordan's

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necessary to make out a common law relationship of principal-agent or employer-employee." *Hawkins v. Merrill Lynch, Pierce, Fenner & Beane*, 85 F. Supp. 104, 123 (WD Ark. 1949), quoted in 3 L. Loss, Securities Regulation 1810. "Although the cases holding a controlling person liable usually involve employees . . . the Acts are not limited to this relationship." *Anderson v. Francis I. duPont & Co.*, 291 F. Supp. 705, 710 (Minn. 1968).

414 U. S.

October 15, 1973

usurpation of authority in order to gain the benefits, Rodman cannot suddenly disclaim liability. In the option fraud Jordan purported to act through William, a Rodman partner, just as he purported to act with Rodman's consent in the earlier sales, for which Rodman accepted the profits without complaint. In buying the options Sennott was obviously relying on Rodman's purported association with Skyline.

Nor can Rodman interpose the defense of good faith where it knew of Jordan's history of questionable practices but did nothing to warn Sennott. "[T]o satisfy the requirement of good faith [in order for a controlling person to avoid liability thereby] it is necessary for the [controlling person] to show that some precautionary measures were taken to prevent the injury suffered." *SEC v. First Securities Co. of Chicago, supra*, at 987. See also *Lorenz v. Watson*, 258 F. Supp. 724, 732 (ED Pa. 1966); *Hecht v. Harris, Upham & Co.*, 283 F. Supp. 417, 438 (ND Cal. 1968).

The District Court here found Rodman to be a controlling person under § 20 (a) and therefore liable to Sennott. I cannot see how that determination can be held clearly erroneous. Moreover the decision in the Court of Appeals below appears to conflict with the principles applied in *Myzel v. Fields, supra*; *SEC v. First Securities Co. of Chicago, supra*; *Anderson v. Francis I. duPont & Co.*, 291 F. Supp. 705 (Minn. 1968).

I would grant certiorari.

No. 72-6419. *MONTROYA v. CALIFORNIA*. Ct. App. Cal., 4th App. Dist. Certiorari denied.

MR. JUSTICE DOUGLAS, dissenting.

Petitioner, convicted of arson, bribery, and conspiracy, argues that the introduction of incriminating extra-

October 15, 1973

414 U. S.

judicial statements of a codefendant when the codefendant was unavailable to testify because of his claim of Fifth Amendment privilege constituted a violation of petitioner's Sixth Amendment right to confront the witnesses against him. As in *Dutton v. Evans*, 400 U. S. 74, where this Court rejected a similar claim, I feel that the Sixth Amendment prohibits the State from putting damaging statements before the jury when the defendant has no opportunity to test those statements for truthfulness and meaning through cross-examination of the declarant. See *Dutton v. Evans*, *supra*, at 104 (MARSHALL, J., dissenting).

No. 72-6542. CORPUS ET AL. v. ESTELLE, CORRECTIONS DIRECTOR, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 469 F. 2d 646, 953, 956, and 1075.

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

Petitioner Perales, originally convicted of a drug offense, successfully moved for a new trial. In the first trial the prosecutor had waived the habitual-offender provision for a mandatory life sentence in exchange for the petitioner's agreement to waive his right to jury trial. On retrial, petitioner exercised his right to jury trial and the prosecutor refused to waive the habitual-offender sentence enhancement provisions. As a consequence petitioner received a mandatory life sentence upon conviction. The prosecutor has stipulated that:

"The decision made by the District Attorney of Travis County to waive the 'habitual count' of the indictment in [the first trial] was based *solely* upon the fact that the Defendant waived a jury trial. If the Defendant had waived a jury trial in [the second trial] the District Attorney of Travis County

would have again waived the 'habitual count' . . . ." Record in Ct. Crim. App. in *Perales v. State*, p. 38 (emphasis added).

It is well established that "if the only objective of a state practice is to discourage the assertion of constitutional rights it is "patently unconstitutional."'" *Chaffin v. Stynchcombe*, 412 U. S. 17, 33 n. 20; *Shapiro v. Thompson*, 394 U. S. 618, 631; *United States v. Jackson*, 390 U. S. 570, 581.

We thus held in *United States v. Jackson*, *supra*, that the death penalty clause in the Federal Kidnaping Statute, 18 U. S. C. § 1201 (a), which essentially insulated from the death penalty those defendants who waived the right to jury trial or pleaded guilty, imposed an impermissible burden on the exercise of Sixth Amendment rights.

Such express statutory schemes, however, are not the only mechanism for positing with an accused the necessity of determining whether the risk of greater punishment attending the exercise of constitutional rights makes that exercise too costly. A guilty plea constitutes a waiver of several fundamental rights, among them the right to jury trial. See *Santobello v. New York*, 404 U. S. 257, 264 (DOUGLAS, J., concurring). Plea bargaining, the extreme importance of which was recognized in *Santobello*, leaves with the prosecutor the power to set the price for the exercise of those rights. *Machibroda v. United States*, 368 U. S. 487, held a guilty plea voidable if induced by the prosecutor's threat to bring additional prosecutions. Yet plea bargaining would be eliminated if an accepted plea to a lesser offense was rendered constitutionally vulnerable by the prosecutor's expressed intent to otherwise proceed to trial on the crime charged.

October 15, 1973

414 U. S.

Despite the magnitude of the constitutional issues and the important role of plea bargaining in the administration of criminal justice (see White, A Proposal for Reform of the Plea Bargaining Process, 119 U. Pa. L. Rev. 439 (1971), and Note, The Unconstitutionality of Plea Bargaining, 83 Harv. L. Rev. 1387 (1970)), this Court has never spelled out the constitutional limits of the practice. This case, in which the accused's right to jury trial was expressly burdened with the possibility of a mandatory life sentence (possibly the maximum penalty a State may exact for criminal conduct; see *Furman v. Georgia*, 408 U. S. 238) under the habitual offender provisions, provides an opportunity to delimit its permissible bounds. I would take that opportunity.

No. 72-6595. PUESCHEL *v.* CONNECTICUT. Ct. Common Pleas Conn., App. Div. Certiorari denied.

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

In *Bell v. Burson*, 402 U. S. 535, we struck down a Georgia statute which provided for the suspension of the licenses of drivers involved in accidents who were uninsured and were unable to post security without any presuspension consideration of fault for the accident. Petitioner's license was suspended under an essentially identical statute, and petitioner was arrested for driving without a license, prior to our decision in *Bell*. During his trial, he raised *Bell* as a defense to the criminal charge, but the Connecticut courts rejected the defense because the events complained of, the suspension and subsequent arrest, occurred prior to *Bell*. Refusal to apply *Bell* to petitioner's case on this ground is in error in view of the fact that this Court vacated and remanded for further proceedings in light of *Bell* at least three lower federal court cases challenging license suspensions which had occurred prior to our

414 U. S.

October 15, 1973

decision in *Bell*. See *Gaytan v. Cassidy*, 403 U. S. 902, vacating and remanding 317 F. Supp. 46; *Pollion v. Lewis*, 403 U. S. 902, vacating and remanding 320 F. Supp. 1343; *Latham v. Tynan*, 404 U. S. 807, vacating and remanding 435 F. 2d 1248.

The State also argues that petitioner cannot raise *Bell* as a defense to his criminal charge because he has chosen not to challenge his suspension by seeking available judicial review of the suspension itself, so that he has not raised his contentions in the proper state forum. Since the state court explicitly chose not to reach this argument, we need not reach it in this Court.

Therefore, I dissent from denial of certiorari.

No. 72-6612. *MONTGOMERY v. UNITED STATES*; and  
No. 72-6840. *MONTGOMERY v. UNITED STATES*. C. A.  
9th Cir. Certiorari denied. Reported below: 476 F. 2d  
623.

MR. JUSTICE DOUGLAS, dissenting.

Petitioners are members of the Pit River Indian Nation who, in order to construct Indian-style buildings, felled one ponderosa pine growing on the public lands of the United States, but within the original boundaries of the lands occupied by their ancestors. They were prosecuted under 18 U. S. C. § 1852, which provides in relevant part:

“Whoever cuts . . . timber growing on the public lands of the United States . . .

“Shall be fined not more than \$1,000 or imprisoned not more than one year, or both.

“This section shall not prevent any miner or agriculturist from clearing his land in the ordinary working of his mining claim, or in the preparation of his farm for tillage, or from taking the timber

necessary to support his improvements, or the taking of timber for the use of the United States; *nor shall it interfere with or take away any right or privilege under any existing law of the United States to cut or remove timber from any public lands.*" (Emphasis added.)

In their defense, petitioners claimed that the original "aboriginal title" or "Indian title" to their ancestral tribal lands constituted a right recognized by existing law. The Court of Appeals dismissed this claim, reasoning that the specific exemptions granted miners, farmers, and the United States negated a reading of the "existing law" clause which would include ancestral title, and noting that there was no "relevant authority" for the defense raised by petitioners.

There is, of course, no "relevant authority" for petitioners' claim, because the issue of whether the "existing law" clause of 18 U. S. C. § 1852 reaches aboriginal or Indian title has not been previously litigated.

But this Court has often held that the occupation of property by Indians' ancestors gives rise to Indian title, which, though not a property interest subject to Fifth Amendment protections, encompasses the right to occupancy and use—the right to fish, to hunt, and to cut timber sufficient for use on the land. See, *e. g.*, *Tee-Hit-Ton Indians v. United States*, 348 U. S. 272, 279; *United States v. Santa Fe Pacific R. Co.*, 314 U. S. 339, 345; *United States v. Cook*, 19 Wall. 591, 593–594; *Johnson v. M'Intosh*, 8 Wheat. 543, 574, 584, 591 (Marshall, C. J.). This, I think, is a right recognized by the "existing law" of the United States.

A question strikingly similar to the issue in this case arose in *Cramer v. United States*, 261 U. S. 219, where a land grant by the United States to a railroad excepted lands "reserved . . . or otherwise disposed of." Some

of the land encompassed by the grant was occupied by three individual Indians. The United States, on behalf of the Indians, argued that the words of the exceptions clause, though obviously general, nonetheless encompassed the right of occupancy of the Indians. The Court, finding the occupancy of the individual Indians closely akin to the "original nomadic tribal occupancy" relied on by petitioners in this case, agreed with the United States because "[u]nquestionably it has been the policy of the Federal Government from the beginning to respect the Indian right of occupancy." *Id.*, at 227. The Court held that the "fact that such right of occupancy finds no recognition in any statute or other formal governmental action is not conclusive. The right, under the circumstances here disclosed, flows from a settled governmental policy." *Id.*, at 229.

As the Court stated in 1912,

"[I]n the Government's dealings with the Indians . . . [t]he construction, instead of being strict, is liberal; doubtful expressions, instead of being resolved in favor of the United States, are to be resolved in favor of a weak and defenseless people, who are wards of the nation, and dependent wholly upon its protection and good faith. This rule of construction has been recognized, without exception, for more than a hundred years . . . ." *Choate v. Trapp*, 224 U. S. 665, 675.

I see no reason why, in our time, that rule of construction should be nullified in the absence of any affirmative showing that Congress chose not to recognize aboriginal Indian title as a defense to 18 U. S. C. § 1852. Considering the solicitude of the Federal Government for Indian title in the past, the Court of Appeals arguably was in error in rejecting the claims of the petitioners

October 15, 1973

414 U. S.

when it could find no "relevant authority." I would take the case and put it down for oral argument.

No. 72-6676. *TANT v. NORTH CAROLINA*. Ct. App. N. C. Certiorari denied. MR. JUSTICE DOUGLAS, MR. JUSTICE BRENNAN, and MR. JUSTICE MARSHALL would grant certiorari. Reported below: 16 N. C. App. 113, 191 S. E. 2d 387.

No. 72-6778. *BURT v. NEW JERSEY ET AL.* C. A. 3d Cir. Certiorari denied. Reported below: 475 F. 2d 234.

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

In *Griffin v. California*, 380 U. S. 609 (1965), we held that the Fifth Amendment guarantee against self-incrimination prohibits a prosecutor from commenting to the jury upon the defendant's failure to testify at his trial. Such a practice would place a price on the defendant's invocation of his constitutional privilege—a price that would seriously undermine the value of that privilege. And in *Miranda v. Arizona*, 384 U. S. 436 (1966), we held that the prosecutor may not introduce into evidence statements of the accused taken while he was in police custody, unless those statements were made in compliance with procedures ensuring that the accused had understood and intelligently waived his Fifth Amendment privilege.

Indeed we said in *Miranda*:

"In accord with our decision today, it is impermissible to penalize an individual for exercising his Fifth Amendment privilege when he is under police custodial interrogation. The prosecution may not, therefore, use at trial the fact that he stood mute or claimed his privilege in the face of accusation." *Id.*, at 468 n. 37.

This case presents a situation very much like those found constitutionally wanting in *Miranda* and *Griffin*. Here the accused apparently understood his Fifth Amendment privilege and said nothing while in police custody, and that silence was brought before the jury by the prosecutor, who argued that they could infer guilt from it. Seeking to vindicate his federal constitutional rights, the prisoner ultimately brought an action for habeas corpus in federal court, and the District Court granted the writ. The Court of Appeals reversed.

Petitioner has been convicted of murder. It was uncontested that he shot the deceased while alone with him, but petitioner maintained that the gun went off accidentally during a scuffle which began when the deceased pointed the gun at him. The petitioner was arrested later that night when the police found him asleep inside a tire store where he was once employed. Unaware of the shooting, the police charged him only with breaking and entering. They asked him no questions about the killing earlier that evening, and he volunteered no information. It was this silence—this act of not volunteering incriminating information—that was ultimately used against him.

At trial he testified in his own behalf and told his story of the accidental shooting. On cross-examination the prosecutor brought out that the defendant had not told this story to the police. The defense asked for a curative instruction to the jury, informing it that the defendant had no duty to tell the police that he had just shot someone. This was denied. Apparently encouraged, the prosecutor told the jury in summation:

“He never told the police he accidentally shot Shorty Owens, never, at least up until the time he was lodged in Camden County Jail, and yet he is

October 15, 1973

414 U. S.

here, sitting here today asking you to believe this story.

"If this was an accidental shooting, why didn't he go and say, 'I just accidentally shot somebody.'" *Burt v. Yeager*, 342 F. Supp. 188, 192 (N. J. 1972).

In upholding the conviction the court below found that *Harris v. New York*, 401 U. S. 222 (1971), not *Griffin, supra*, was controlling. In *Harris* the majority held that statements otherwise barred by *Miranda* may be introduced to impeach a defendant with the temerity to testify in his own behalf. It is argued that here, as in *Harris*, the defendant's prior statements are inconsistent. But of course here there are no prior statements; it is the defendant's silence that is used against him. The District Court, after carefully reviewing the record, found that the silence was just as consistent with the defendant's story as with the prosecution's case. In reversing, the Court of Appeals concluded otherwise. We thus seem to have come to the point where the exercise of one's constitutional rights can be offered to the jury as evidence of guilt.

We should grant this petition for certiorari.

No. 72-6906. *MULLIN v. WYOMING*. Sup. Ct. Wyo. Certiorari denied. Reported below: 505 P. 2d 305.

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

Petitioner and three friends observed a case of whiskey being placed into a truck. A short time later petitioner encouraged Richard Anderson, who had not been present to see the case being put into the vehicle, to steal the spirits. Later in the day, Anderson removed the case from the truck and gave eight bottles to one of petitioner's friends, who in turn delivered three bottles to petitioner. Petitioner was arrested and convicted in the

414 U.S.

October 15, 1973

Justice of the Peace Court for Platte County, Wyoming, of the misdemeanor offense of being a minor in possession of alcoholic beverages. A few months later petitioner was charged and convicted in the District Court of Platte County with feloniously counseling and encouraging Anderson to commit grand larceny. The Supreme Court of Wyoming affirmed, rejecting petitioner's claim that the second prosecution violated his constitutional protection against double jeopardy, 505 P. 2d 305 (1973).

Although both the misdemeanor and felony charges arose out of the "same transaction or occurrence," they were prosecuted by the State in separate proceedings. That, in my opinion, requires that we grant the petition for certiorari and reverse, for I adhere to the view that the Double Jeopardy Clause of the Fifth Amendment, which is applicable to the States through the Fourteenth Amendment, *Benton v. Maryland*, 395 U. S. 784 (1969), requires the prosecution, except in most limited circumstances not present here, "to join at one trial all the charges against a defendant that grow out of a single criminal act, occurrence, episode, or transaction." *Ashe v. Swenson*, 397 U. S. 436, at 453-454 (1970) (BRENNAN, J., concurring); see *Miller v. Oregon*, 405 U. S. 1047 (1972) (BRENNAN, J., dissenting); *Harris v. Washington*, 404 U. S. 55, 57 (1971) (separate opinion of DOUGLAS, J.); *Waller v. Florida*, 397 U. S. 387, 395 (1970) (BRENNAN, J., concurring).

No. 72-6950. MASON v. UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 480 F. 2d 563.

MR. JUSTICE DOUGLAS, dissenting.

Petitioner, while attempting to enter the United States at San Ysidro, California, was subjected to a vaginal search which yielded approximately one ounce of heroin.

Subsequently she was convicted of importing the substance. Conceding that the police were justified in causing her to submit to a body cavity search under the present "clear indication" standard,<sup>1</sup> petitioner urges the adoption of a rule that body cavity searches must be authorized by a warrant when time permits. It has long been held that the ordinary necessity for obtaining a warrant prior to a domestic search does not apply with full force to border searches. See *Boyd v. United States*, 116 U. S. 616, 623; *Carroll v. United States*, 267 U. S. 132, 154. But the stark contrast between permitting a minor customs official to make a warrantless search of baggage and permitting that same official to determine the instances in which intrusive and degrading vaginal and rectal searches will be conducted demonstrates the necessity for a delineation by this Court of the exact parameters of the border-search exception.<sup>2</sup> The record in *Thompson v. United States*, 411 F. 2d 946, 948, indicated that 80% to 85% of all those subjected to body cavity searches at the border are innocent of the suspected wrongdoing. This statistic shows the desirability of positing ultimate decisionmaking responsibility for this type of highly intrusive search with a "neutral and detached magistrate" rather than a zealous officer "engaged in the often competitive enterprise of ferreting out crime."<sup>3</sup>

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<sup>1</sup> *Rivas v. United States*, 368 F. 2d 703, 710.

<sup>2</sup> Judges Ely and King indicated acceptance of petitioner's proposition but felt constrained by the existing law in the Ninth Circuit. A number of commentators have also argued for a warrant requirement. Note, Search and Seizure at the Border—The Border Search, 21 Rutgers L. Rev. 513 (1967). Comment, Intrusive Border Searches—Is Judicial Control Desirable?, 115 U. Pa. L. Rev. 276 (1966).

<sup>3</sup> *Johnson v. United States*, 333 U. S. 10, 14.

414 U. S.

October 15, 1973

No. 72-6979. MEINHOLD *v.* TAYLOR ET AL. Sup. Ct. Nev. Certiorari denied. Reported below: 506 P. 2d 420.

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

Petitioner was a public school teacher in Nevada. He had taught in the Clark County School District for seven years, and in his present position at one of the district's junior high schools for five years. He was notified in March 1971 that his contract would not be renewed for the following school year. The dismissal was upheld by a professional review committee after a hearing, and by the school board. In affirming their actions, the Nevada Supreme Court relied on the charge of "unprofessional conduct," which was supported solely by certain allegations concerning petitioner's views on the State's compulsory-attendance laws.

The petitioner does not believe in compulsory-attendance laws, and he did not bend his views in the hearing before the committee. He had been quoted as saying that schools are bad for children. But he never aired those views in his classroom, and he was never charged with encouraging his students to be truant.

We have held that teachers may not "constitutionally be compelled to relinquish the First Amendment rights they would otherwise enjoy as citizens to comment on matters of public interest in connection with the operation of the public schools in which they work." *Pickering v. Board of Education*, 391 U. S. 563, 568 (1968). There we found that the school board's dismissal of a teacher for publishing a letter critical of the board's allocation of funds and its handling of a bond issue, was constitutionally impermissible. See also *Keyishian v. Board of Regents*, 385 U. S. 589 (1967); *Shelton v. Tucker*, 364 U. S. 479 (1960). Just recently we

October 15, 1973

414 U. S.

reaffirmed that principle, pointing out that it did not rely on any contractual duties: "For at least a quarter-century, this Court has made clear that . . . the government . . . may not deny a benefit to a person on a basis that infringes his constitutionally protected interests—especially, his interest in freedom of speech." *Perry v. Sindermann*, 408 U. S. 593, 597 (1972).

The court below does not directly question these principles. Instead, admitting there was no advocacy of truancy in the classroom, it found that "a teacher's right to teach cannot depend solely upon his conduct in the schoolroom." 506 P. 2d 420, 425-426. It then reached into the petitioner's family relationship, justifying the dismissal because of the expression of his views on attendance laws to his children, thereby "encouraging his daughters not to attend school." *Id.*, at 425. In thus "carrying out" his views on compulsory-attendance laws, the court below found that he had forfeited his rights to employment.

May Pickering publish his criticisms in the local newspaper with impunity while the petitioner must keep his views secret from his children, lest they adopt them?

I would grant the petition for certiorari and set the case for argument.

No. 73-93. *STAFOS v. JARVIS, TRUSTEE IN BANKRUPTCY*. C. A. 10th Cir. Motion to amend petition granted. Certiorari denied. Reported below: 477 F. 2d 369.

No. 73-168. *DUROVIC, DBA DUGA LABORATORIES, ET AL. v. WEINBERGER, SECRETARY OF HEALTH, EDUCATION, AND WELFARE, ET AL.* C. A. 7th Cir. Certiorari denied. MR. JUSTICE BLACKMUN took no part in the consideration or decision of this petition. Reported below: 479 F. 2d 242.

414 U. S.

October 15, 1973

No. 73-5102. *WALLER v. FLORIDA*. Dist. Ct. App. Fla., 2d Dist. Certiorari denied. Stay order heretofore entered by the Court on June 18, 1973 [412 U. S. 947], vacated. Reported below: 270 So. 2d 26.

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

Convicted by a St. Petersburg Municipal Court of violating local ordinances, in removing a canvas mural from a wall inside the City Hall of St. Petersburg, Florida, and carrying the mural through the city streets, petitioner was subsequently convicted on a charge of grand larceny for the same conduct. We granted certiorari, vacated the latter judgment, and remanded for further proceedings, holding that the state appellate court erred when it ruled that a State and its municipalities were separate sovereigns for purposes of the double jeopardy provisions of the Fifth Amendment, and for that reason rejected petitioner's double jeopardy claim. *Waller v. Florida*, 397 U. S. 387 (1970). On remand, the Circuit Court of Pinellas County rejected petitioner's assertion of double jeopardy on grounds—not previously reached by the state courts due to their reliance on the dual sovereignty theory—that the violations of the local ordinances and grand larceny were not the “same offense.” The Florida District Court of Appeal, Second District, affirmed the judgment of conviction, 270 So. 2d 26 (1972), and the Florida Supreme Court denied a petition for a writ of certiorari.

At all times it has been conceded that the municipal and state charges arose out of the “same transaction or occurrence.” See *Waller v. Florida*, *supra*, at 388. It is my view that the Double Jeopardy Clause of the Fifth Amendment, which is applicable to the States

October 15, 23, 1973

414 U. S.

through the Fourteenth Amendment, *Benton v. Maryland*, 395 U. S. 784 (1969), requires the prosecution, except in most limited circumstances, not present here, "to join at one trial all the charges against a defendant that grow out of a single criminal act, occurrence, episode, or transaction." *Ashe v. Swenson*, 397 U. S. 436, at 453-454 (1970) (BRENNAN, J., concurring); see *Miller v. Oregon*, 405 U. S. 1047 (1972) (BRENNAN, J., dissenting); *Harris v. Washington*, 404 U. S. 55, 57 (1971) (DOUGLAS, J., concurring); *Waller v. Florida*, *supra*, at 395 (BRENNAN, J., concurring). Under this "same transaction" test, all charges against petitioner should have been brought in a single prosecution, unless this case fell within one of the test's exceptions. See, e. g., *Ashe v. Swenson*, *supra*, at 453 n. 7, 455 n. 11. I would therefore grant the petition for certiorari and remand for further proceedings not inconsistent with the views expressed in my concurrence in *Ashe v. Swenson*, *supra*.

#### *Assignment Order*

The order of THE CHIEF JUSTICE designating and assigning Mr. Justice Clark (retired) to perform judicial duties in the United States Court of Appeals for the Fourth Circuit beginning November 1973, and for such further time as may be required to complete unfinished business, pursuant to 28 U. S. C. § 294 (a), ordered entered on the minutes of this Court pursuant to 28 U. S. C. § 295.

OCTOBER 23, 1973

#### *Affirmed on Appeal*

No. 72-1510. CINEMA CLASSICS, LTD., INC., ET AL. v. BUSCH, DISTRICT ATTORNEY OF LOS ANGELES COUNTY, ET AL. Affirmed on appeal from D. C. C. D. Cal. MR. JUSTICE DOUGLAS, being of the view that the Fourteenth and First Amendments prohibit state obscenity regulation, would vacate so much of the judgment as is the sub-

ject of this appeal and remand for further proceedings consistent with his dissent in *Paris Adult Theatre I v. Slaton*, 413 U. S. 49, 70. Reported below: 339 F. Supp. 43.

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

Appellants appeal from so much of the judgment of the three-judge court as denied them declaratory and permanent injunctive relief in this action challenging the constitutionality of California's statutory search-and-seizure provisions (California Penal Code §§ 1523-1542), as construed and applied, and as aids in the enforcement of the underlying California obscenity statute, California Penal Code § 311.2 (a), which provides as follows:

"Every person who knowingly sends or causes to be sent, or brings or causes to be brought, into this state for sale or distribution, or in this state possesses, prepares, publishes, or prints, with intent to distribute or to exhibit to others, or who offers to distribute, distributes, or exhibits to others, any obscene matter is guilty of a misdemeanor."

It is my view that, "at least in the absence of distribution to juveniles or obtrusive exposure to unconsenting adults, the First and Fourteenth Amendments prohibit the State and Federal Governments from attempting wholly to suppress sexually oriented materials on the basis of their allegedly 'obscene' contents." *Paris Adult Theatre I v. Slaton*, 413 U. S. 49, 113 (1973) (BRENNAN, J., dissenting). It is clear that, tested by that constitutional standard, § 311.2 (a) is constitutionally overbroad and therefore invalid on its face. For the reasons stated in my dissent in *Miller v. California*, 413 U. S. 15, 47 (1973), I would therefore vacate so much of the judgment of the District Court as is the subject of the appeal and remand

October 23, 1973

414 U. S.

for further proceedings consistent with my dissent in *Paris Adult Theatre I*. In that circumstance, I have no occasion to consider whether appellants' challenge to the constitutionality of the application of §§ 1523-1542 merits plenary review. See *Heller v. New York*, 413 U. S. 483, 494 (1973) (BRENNAN, J., dissenting).

No. 73-128. NATIONAL RAILROAD PASSENGER CORP. *v.* MILLER, ATTORNEY GENERAL OF KANSAS, ET AL. Affirmed on appeal from D. C. Kan. Reported below: 358 F. Supp. 1321.

*Appeals Dismissed*

No. 72-1558. STEIN, ADMINISTRATRIX, ET AL. *v.* LEWISVILLE INDEPENDENT SCHOOL DISTRICT ET AL. Appeal from Ct. Civ. App. Tex., 2d Sup. Jud. Dist., dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied. Reported below: 481 S. W. 2d 436.

No. 72-6917. ZWEIG ET AL. *v.* CALIFORNIA. Appeal from App. Dept., Super. Ct. Cal., County of Los Angeles, dismissed for want of substantial federal question. MR. JUSTICE DOUGLAS would note probable jurisdiction and set case for oral argument.

No. 73-5202. FELDER *v.* NEW YORK. Appeal from Ct. App. N. Y. dismissed for want of substantial federal question. MR. JUSTICE DOUGLAS would note probable jurisdiction and set case for oral argument. Reported below: 32 N. Y. 2d 747, 297 N. E. 2d 522.

No. 73-104. KIRKPATRICK ET AL. *v.* NEW YORK. Appeal from Ct. App. N. Y. dismissed for want of substantial federal question. MR. JUSTICE DOUGLAS, being of the view that state obscenity regulation is prohibited by the Fourteenth and First Amendments (see *Paris Adult Theatre I v. Slaton*, 413 U. S. 49, 70 (DOUGLAS, J.,

dissenting)), would note probable jurisdiction in this case and reverse judgment of conviction. Reported below: 32 N. Y. 2d 17, 295 N. E. 2d 753.

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

Appellant booksellers were convicted in the Criminal Court of the City of New York, New York County, of promoting, or possessing with intent to promote, obscene material, knowing its content and character, in violation of N. Y. Penal Law § 235.05. Appellants challenged the constitutionality under the First and Fourteenth Amendments of N. Y. Penal Law § 235.10 (1) (Supp. 1973-1974), which establishes a presumption that a seller of obscene material knows the contents of the material he sells. Section 235.10 (1) provides as follows:

“A person who promotes or wholesale promotes obscene material, or possesses the same with intent to promote or wholesale promote it, in the course of his business is presumed to do so with knowledge of its content and character.”

Obscenity for purposes of §§ 235.05 and 235.10 is defined in § 235.00:

“1. ‘Obscene.’ Any material or performance is ‘obscene’ if (a) considered as a whole, its predominant appeal is to prurient, shameful or morbid interest in nudity, sex, excretion, sadism or masochism, and (b) it goes substantially beyond customary limits of candor in describing or representing such matters, and (c) it is utterly without redeeming social value. Predominant appeal shall be judged with reference to ordinary adults unless it appears from the character of the material or the circumstance of its dissemination to be designed for children

or other specially susceptible audience.” *Id.*, § 235.00 (1967).

The Criminal Court of the City of New York, New York County, rejected appellants’ constitutional attack upon § 235.10. 64 Misc. 2d 1055, 316 N. Y. S. 2d 37 (1970). The Appellate Term of the New York Supreme Court, First Judicial Department, entered an order affirming the judgments of conviction. 69 Misc. 2d 212, 329 N. Y. S. 2d 769 (1971). The New York Court of Appeals, with three judges dissenting, affirmed the order of the Appellate Term. 32 N. Y. 2d 17, 295 N. E. 2d 753 (1973).

It is my view that “at least in the absence of distribution to juveniles or obtrusive exposure to unconsenting adults, the First and Fourteenth Amendments prohibit the State and Federal Governments from attempting wholly to suppress sexually oriented materials on the basis of their allegedly ‘obscene’ contents.” *Paris Adult Theatre I v. Slaton*, 413 U. S. 49, 113 (1973) (BRENNAN, J., dissenting). Since it is clear that, when tested by that constitutional standard, the word “obscene” in §§ 235.05 and 235.10, read as defined in § 235.00, renders §§ 235.05 and 235.10 unconstitutionally overbroad and therefore facially invalid, I disagree with the holding that the appeal does not present a substantial federal question, and therefore dissent from the Court’s dismissal of the appeal.

For the reasons stated in my dissent in *Miller v. California*, 413 U. S. 15, 47 (1973), I would therefore vacate the judgment below and remand for further proceedings not inconsistent with my *Paris Adult Theatre I* dissent. In that circumstance, I have no occasion to consider at this time whether, if § 235.00 were properly narrowed, appellants’ challenge to the constitutionality of § 235.10

414 U. S.

October 23, 1973

would merit plenary review. See *Heller v. New York*, 413 U. S. 483, 494 (1973) (BRENNAN, J., dissenting).

No. 73-212. PROCACCINI ET AL. v. JONES ET AL. Appeal from Ct. Civ. App. Tex., 11th Sup. Jud. Dist., dismissed for want of substantial federal question. MR. JUSTICE DOUGLAS, being of the view that the Fourteenth and First Amendments prohibit state obscenity regulation, would vacate judgment below and remand for further proceedings consistent with his dissent in *Paris Adult Theatre I v. Slaton*, 413 U. S. 49, 70. Reported below: 488 S. W. 2d 543.

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

Appellants sought in the 44th Judicial District Court of Dallas County, Texas, to enjoin pending and future prosecutions under Texas Penal Code, Art. 527, § 3, arising out of the seizure of motion picture films alleged to be "obscene matter" within § 3. All parties agree that Texas law permits equitable intervention in a criminal proceeding if the criminal statute involved is unconstitutional, or otherwise void, and enforcement would result in irreparable injury to property rights. See *State ex rel. Flowers v. Woodruff*, 150 Tex. Crim. 255, 200 S. W. 2d 178 (1947). Appellants challenged the constitutionality under the First, Fifth, and Fourteenth Amendments of Art. 527, § 9 (h) Tex. Penal Code (Supp. 1972-1973), enacted as an aid to the enforcement of § 3, which is Texas' basic criminal obscenity statute. Section 9 (h) provides as follows:

"In the event that a search warrant is issued and matter alleged to be obscene is seized under the provisions of this section, any person alleged to be in possession of the said matter or claiming ownership of the matter at the time of its posses-

sion or seizure may file a notice in writing with the magistrate within 10 days of the date of the seizure alleging that the matter is not obscene and the magistrate shall set a hearing within one day after request therefor, or at such time as the requesting party might agree, and at such hearing evidence may be presented as to the obscenity of the matter seized and at the conclusion of such additional hearing, the magistrate shall make a further determination as to the obscenity or nonobscenity of the matter. If at such hearing the magistrate finds the matter not to be obscene, then it shall be returned to the person or persons from whom it was seized."

Obscenity for purposes of Art. 527 is defined in § 1:

"(A) 'Obscene' material means material (a) the dominant theme of which, taken as a whole, appeals to a prurient interest; (b) which is patently offensive because it affronts contemporary community standards relating to the description or representation of sexual matters; and (c) which is utterly without redeeming social value.

"(B) 'Prurient interest' means a shameful or morbid interest in nudity, sex, or excretion, which goes substantially beyond customary limits of candor in description or representation of such matters. If it appears from the character of the material or the circumstances of its dissemination that the subject matter is designed for a specially susceptible audience, the appeal of the subject matter shall be judged with reference to such audience." *Id.*, § 1.

The 44th Judicial District Court denied appellants' request for relief. The Texas Court of Civil Appeals affirmed, holding that the appellants had failed to establish the unconstitutionality of § 9 (h). 488 S. W. 2d 543

414 U. S.

October 23, 1973

(1972). The Supreme Court of Texas denied a writ of error and overruled a subsequent motion for rehearing.

It is my view that "at least in the absence of distribution to juveniles or obtrusive exposure to unconsenting adults, the First and Fourteenth Amendments prohibit the State and Federal Governments from attempting wholly to suppress sexually oriented materials on the basis of their allegedly 'obscene' contents." *Paris Adult Theatre I v. Slaton*, 413 U. S. 49, 113 (1973) (BRENNAN, J., dissenting). Since it is clear that, when tested by that constitutional standard, the word "obscene" in §§ 3 and 9 (h), read as defined in § 1, renders §§ 3 and 9 (h) unconstitutionally overbroad and therefore facially invalid, I disagree with the holding that the appeal does not present a substantial federal question, and therefore dissent from the Court's dismissal of the appeal.

For the reasons stated in my dissent in *Miller v. California*, 413 U. S. 15, 47 (1973), I would therefore vacate the judgment below and remand for further proceedings not inconsistent with my *Paris Adult Theatre I* dissent. In that circumstance, I have no occasion to consider at this time whether, if § 1 were properly narrowed, appellants' challenge to the constitutionality of § 9 (h) would merit plenary review. See *Heller v. New York*, 413 U. S. 483, 494 (1973) (BRENNAN, J., dissenting).

No. 73-5237. *HOUSE v. ST. AGNES HOSPITAL, INC., ET AL.* Appeal from C. A. 4th Cir. dismissed for want of substantial federal question.

*Certiorari Granted—Reversed.* (See No. 72-1652, *ante*, p. 5.)

*Certiorari Granted—Vacated and Remanded.* (See also No. 72-6449, *ante*, p. 12.)

No. 72-1296. *CARLSON ET AL. v. MINNESOTA.* Sup. Ct. Minn. *Certiorari* granted, judgment vacated, and

case remanded for further consideration in light of *Miller v. California*, 413 U. S. 15 (1973); *Paris Adult Theatre I v. Slaton*, 413 U. S. 49 (1973); *Kaplan v. California*, 413 U. S. 115 (1973); *United States v. 12 200-Ft. Reels of Film*, 413 U. S. 123 (1973); *United States v. Orito*, 413 U. S. 139 (1973); *Heller v. New York*, 413 U. S. 483 (1973); *Roaden v. Kentucky*, 413 U. S. 496 (1973); and *Alexander v. Virginia*, 413 U. S. 836 (1973). Reported below: 294 Minn. 433, 202 N. W. 2d 640.

MR. JUSTICE DOUGLAS, dissenting.

Petitioners in this case were convicted of selling obscene books and distributing obscene motion pictures in violation of a local ordinance. They argue that, in the absence of evidence of pandering, selling to minors, or the affronting of unwilling recipients, their convictions are violative of the First and Fourteenth Amendments. In support of the convictions, respondent relies on *United States v. Reidel*, 402 U. S. 351, and *United States v. Thirty-seven Photographs*, 402 U. S. 363.

In *Stanley v. Georgia*, 394 U. S. 557, this Court laid to rest the notion that a State may, consistent with the First Amendment, enforce an approved reading list delineating what materials the citizenry will be allowed privately to peruse. Wholly aside from my own views on what the Constitution demands with respect to obscenity regulation, I fail to comprehend how the right to possession enunciated in *Stanley* has any meaning when States are allowed to outlaw the commercial transactions which give rise to such possession and to prosecute any merchant who attempts to sell materials to all the Stanleys in this country. I would therefore grant this petition and reverse the convictions on the basis of *Stanley v. Georgia*, *supra*.

414 U. S.

October 23, 1973

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

Petitioners were convicted on charges of selling allegedly obscene books and displaying allegedly obscene motion pictures in violation of St. Paul Legislative Code § 476.01, which provides as follows:

“Any person who shall knowingly exhibit, sell or offer to sell any obscene, lewd, lascivious or filthy book, pamphlet, picture, motion picture, film, paper, letter, writing, print or other matter of indecent character shall be guilty of a misdemeanor.”

It is my view that, “at least in the absence of distribution to juveniles or obtrusive exposure to unconsenting adults, the First and Fourteenth Amendments prohibit the State and Federal Governments from attempting wholly to suppress sexually oriented materials on the basis of their allegedly ‘obscene’ contents.” *Paris Adult Theatre I v. Slaton*, 413 U. S. 49, 113 (1973) (BRENNAN, J., dissenting). It is clear that, tested by that constitutional standard, § 476.01 is constitutionally overbroad and therefore invalid on its face. For the reasons stated in my dissent in *Miller v. California*, 413 U. S. 15, 47 (1973), I would therefore grant certiorari, vacate the judgment of the Minnesota Supreme Court, and remand for further proceedings not inconsistent with my *Paris Adult Theatre I* dissent.

No. 72-1487. TRINKLER *v.* ALABAMA. Ct. App. Ala. Certiorari granted, judgments vacated, and case remanded for further consideration in light of *Miller v. California*, 413 U. S. 15 (1973); *Paris Adult Theatre I v. Slaton*, 413 U. S. 49 (1973); *Kaplan v. California*, 413 U. S. 115 (1973); *United States v. 12 200-Ft. Reels of Film*, 413 U. S. 123 (1973); *United States v. Orito*, 413 U. S. 139

(1973); *Heller v. New York*, 413 U. S. 483 (1973); *Roaden v. Kentucky*, 413 U. S. 496 (1973); and *Alexander v. Virginia*, 413 U. S. 836 (1973). Reported below: 49 Ala. App. 753, 272 So. 2d 282.

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

The Court today remands this case for reconsideration in light of last June's obscenity decisions. The Alabama Court of Criminal Appeals will now decide whether the publications here are obscene in accordance with standards that no one could have predicted at the time that these publications were sold. It must determine whether the sale of these publications, which were never offered to minors and never displayed publicly to unwilling bystanders, and for which purchase was never solicited, could constitutionally be prohibited because they "appeal[ed] to the prurient interest" of the average person applying local community standards, were "patently offensive" under such standards, and lacked "serious" literary, artistic, political, or scientific value. *Miller v. California*, 413 U. S. 15, 24.

Just recently this Court reiterated:

"It is a basic principle of due process that an enactment is void for vagueness if its prohibitions are not clearly defined. Vague laws offend several important values. First, because we assume that man is free to steer between lawful and unlawful conduct, we insist that laws give the person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that he may act accordingly. Vague laws may trap the innocent by not providing fair warning. Second, if arbitrary and discriminatory enforcement is to be prevented, laws must provide explicit standards for those who apply

them. A vague law impermissibly delegates basic policy matters to policemen, judges, and juries for resolution on an *ad hoc* and subjective basis, with the attendant dangers of arbitrary and discriminatory application. Third, but related, where a vague statute abuts upon sensitive areas of basic First Amendment freedoms, it operates to inhibit the exercise of those freedoms. Uncertain meanings inevitably lead citizens to steer far wider of the unlawful zone than if the boundaries of the forbidden areas were clearly marked.”<sup>1</sup>

The exceptions to the First Amendment written into the Constitution by the majority, which we now ask the court below to apply on remand, could not more clearly exhibit these evils of vagueness. Following the old *Roth*<sup>2</sup> standards, the Court adopted the approach in *Redrup*<sup>3</sup> of deciding each case on an *ad hoc* basis without attempting to offer guidance for future adjudications. A new majority of five now tries again, with reworked *Roth* standards which allow much freer reign to the predilections of local authorities. But this greater latitude only exacerbates the problem of vagueness.

Every author, every bookseller, every movie exhibitor, and, perhaps, every librarian is now at the mercy of the local police force's conception of what appeals to the “prurient interest” or is “patently offensive.” The standard can vary from town to town and day to day in an unpredictable fashion.<sup>4</sup> How can an author or book-

<sup>1</sup> *Grayned v. City of Rockford*, 408 U. S. 104, 108-109 (internal citations and quotations omitted). See also the cases cited *id.*, at 108-109, nn. 3-5.

<sup>2</sup> *Roth v. United States*, 354 U. S. 476.

<sup>3</sup> *Redrup v. New York*, 386 U. S. 767. See the dissenting opinion of MR. JUSTICE BRENNAN in *Paris Adult Theatre I v. Slaton*, 413 U. S. 49, 73, at 82-83.

<sup>4</sup> The Dean of the Columbia University School of Library Service predicted that as a result of these vague standards “booksellers as

seller or librarian know whether the community deems his books acceptable until after the jury renders its verdict? The meaning of the standards necessarily varies according to each person's own idiosyncrasies. The standards fail to give adequate notice and invite arbitrary exercise of police power. The evil is multiplied because of the danger to First Amendment values of free expression. "Bookselling should not be a hazardous profession." *Ginsberg v. New York*, 390 U. S. 629, 674 (Fortas, J., dissenting).

If the magazines in question were truly "patently offensive" to the local community, there would be no need to ban them through the exercise of police power; they would be banned by the marketplace which provided no buyers for them. Thus it must be the case that some substantial portion of the public not only found them not offensive, but worthy of purchase. How can the bookseller or librarian be sure which of the publications on his shelves are offensive to the majority? Perhaps he will be safe if he sells only publications with a certified history of broad appeal, thus attempting to "steer wide of the unlawful zone." Yet there are many who deem some magazines offensive and even lingerie advertisements in the Sunday papers. A bookseller or a librarian can never know if some jury will find those views representative of the community. A movie exhibitor in Georgia has just found himself con-

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well as librarians will act as self-censors of their collections—out of fear." Librarians Vote Smut Ruling Fund, *New York Times*, June 25, 1973, p. 46, col. 1. The Executive Secretary of the American Booksellers Association noted that the standards subject the legitimate bookseller to fear of prosecution because he would not know which books the local authorities might deem obscene. *Ibid.* An executive of the American Library Association has reported that thousands of books have been returned to suppliers because of the booksellers' fear of prosecution. *Ibid.*

victed under that State's obscenity laws for showing a film which received much critical acclaim, and an Oscar nomination for the female lead.<sup>5</sup> We deal here with criminal prosecutions under which a man may lose his liberty. Our Constitution requires fair notice so that the law-abiding can conform their conduct to the requirements of the law.

This requirement is not new, and state enactments attempting to proscribe publication of certain content have run afoul of it before. In *Winters v. New York*, 333 U. S. 507, the Court considered a New York law which, after the gloss placed upon it by the New York courts, prohibited as obscene the publication of "collections of criminal deeds of bloodshed or lust . . . so massed as to become vehicles for inciting violent and depraved crimes against the person . . . ." *Id.*, at 513. In affirming the conviction, the New York court noted that "[i]n the nature of things there can be no more precise test of written indecency or obscenity than the continuing and changeable experience of the community as to what types of books are likely to bring about the corruption of public morals . . . ." *Id.*, at 514. The New York court concluded: "[W]hen reasonable men may fairly classify a publication as necessarily or naturally indecent or obscene, a mistaken view by the publisher as to its character or tendency is immaterial." *Ibid.* But this Court disagreed; it did not find the "continuing and changeable experience of

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<sup>5</sup> *Jenkins v. State*, Georgia Supreme Court #27693, July 3, 1973. The movie, *Carnal Knowledge*, received an "R," not an "X" rating from the Motion Picture Association of America. See *No Evil, Time*, July 16, 1973, p. 73. The President of the M. P. A. A., noting that the film is a "serious work," complained that the Court's standards have left motion picture producers "in a no man's land." *What the Court Has Done to Movies*, *New York Times*, Aug. 17, 1973, p. 15, col. 1.

the community” adequate specification to support a criminal conviction, for “‘men of common intelligence’” would have to guess at the meaning of the prohibition against publication of stories “‘so massed as to become vehicles for inciting violent and depraved crimes.’” *Id.*, at 518–519.

The standards of *Miller* are no better. I dissent.

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

Petitioner was convicted on charges of distributing allegedly obscene materials in violation of Title 14, § 374 (4)(1), of the Code of Alabama of 1940, as amended, which provides:

“Every person who, with knowledge of its contents, sends or causes to be sent, or brings or causes to be brought, into this state for sale or commercial distribution, or in this state prepares, sells, exhibits or commercially distributes, or gives away or offers to give away, or has in his possession with intent to sell or commercially distribute, or to give away or offer to give away, any obscene printed or written matter or material, other than mailable matter, or any mailable matter known by such person to have been judicially found to be obscene under this chapter, shall be guilty of a misdemeanor and, upon conviction, shall be imprisoned in the county jail, or sentenced to hard labor for the county, for not more than one year, and may be fined not more than two thousand dollars for each offense, or be both so imprisoned and fined in the discretion of the court.” Ala. Code Tit. 14, § 374 (4)(1) (Cum. Supp. 1971).

It is my view that, “at least in the absence of distribution to juveniles or obtrusive exposure to unconsenting adults, the First and Fourteenth Amendments

414 U. S.

October 23, 1973

prohibit the State and Federal Governments from attempting wholly to suppress sexually oriented materials on the basis of their allegedly 'obscene' contents." *Paris Adult Theatre I v. Slaton*, 413 U. S. 49, 113 (1973) (BRENNAN, J., dissenting). It is clear that, tested by that constitutional standard, § 374 (4) is constitutionally overbroad, and therefore invalid on its face. For the reasons stated in my dissent in *Miller v. California*, 413 U. S. 15, 47 (1973), I would therefore grant certiorari, vacate the judgment of the Alabama Court of Criminal Appeals, and remand for further proceedings not inconsistent with my *Paris Adult Theatre I* dissent. In that circumstance, I have no occasion to consider whether the other questions presented merit plenary review. See *Heller v. New York*, 413 U. S. 494, 495 (1973) (BRENNAN, J., dissenting).

No. 72-1506. *WEST v. TEXAS*. Ct. Crim. App. Tex. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Miller v. California*, 413 U. S. 15 (1973); *Paris Adult Theatre I v. Slaton*, 413 U. S. 49 (1973); *Kaplan v. California*, 413 U. S. 115 (1973); *United States v. 12 200-Ft. Reels of Film*, 413 U. S. 123 (1973); *United States v. Orito*, 413 U. S. 139 (1973); *Heller v. New York*, 413 U. S. 483 (1973); *Roaden v. Kentucky*, 413 U. S. 496 (1973); and *Alexander v. Virginia*, 413 U. S. 836 (1973). MR. JUSTICE DOUGLAS, being of the view that state obscenity regulation is prohibited by the Fourteenth and First Amendments (see *Paris Adult Theatre I v. Slaton*, 413 U. S. 49, 70 (DOUGLAS, J., dissenting)), would grant certiorari and reverse the judgment of conviction. Reported below: 489 S. W. 2d 597.

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

Petitioner was convicted on charges of exhibiting

October 23, 1973

414 U. S.

allegedly obscene matter in violation of Tex. Penal Code, Art. 527, § 3 (Supp. 1972-1973), which provides as follows:

“Every person who knowingly: sends or causes to be sent, or brings or causes to be brought, into this state for sale or distribution, or in this state prepares for distribution, publishes, prints, exhibits, distributes, or offers to distribute, or has in his possession with intent to distribute or to exhibit or offer to distribute, any obscene matter is guilty of a misdemeanor.”

It is my view that, “at least in the absence of distribution to juveniles or obtrusive exposure to unconsenting adults, the First and Fourteenth Amendments prohibit the State and Federal Governments from attempting wholly to suppress sexually oriented materials on the basis of their allegedly ‘obscene’ contents.” *Paris Adult Theatre I v. Slaton*, 413 U. S. 49, 113 (1973) (dissenting opinion). It is clear that, tested by that constitutional standard, Art. 527, § 3, is constitutionally overbroad and therefore invalid on its face. For the reasons stated in my dissent in *Miller v. California*, 413 U. S. 15, 47 (1973), I would therefore grant certiorari, vacate the judgment of the Texas Court of Criminal Appeals, and remand for further proceedings not inconsistent with my dissent in *Paris Adult Theatre I*. In that circumstance, I have no occasion to consider whether the questions presented in the petition merit plenary review. See *Heller v. New York*, 413 U. S. 483, 494 (1973) (BRENNAN, J., dissenting).

No. 72-1524. *ROTH v. NEW JERSEY*. Super. Ct. N. J. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Miller v. California*,

413 U. S. 15 (1973); *Paris Adult Theatre I v. Slaton*, 413 U. S. 49 (1973); *Kaplan v. California*, 413 U. S. 115 (1973); *United States v. 12 200-Ft. Reels of Film*, 413 U. S. 123 (1973); *United States v. Orito*, 413 U. S. 139 (1973); *Heller v. New York*, 413 U. S. 483 (1973); *Roaden v. Kentucky*, 413 U. S. 496 (1973); and *Alexander v. Virginia*, 413 U. S. 836 (1973). MR. JUSTICE DOUGLAS, being of the view that state obscenity regulation is prohibited by the Fourteenth and First Amendments (see *Paris Adult Theatre I v. Slaton*, 413 U. S. 49, 70 (DOUGLAS, J., dissenting)), would grant certiorari and reverse judgment of conviction.

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

Petitioner was convicted on charges of possession and sale of allegedly obscene and indecent publications in violation of New Jersey Stat. Ann. § 2A:115-2 (1969), which provides as follows:

“Any person who, without just cause, utters or exposes to the view or hearing of another, or possesses with intent to utter or expose to the view or hearing of another, any obscene or indecent book, publication, pamphlet, picture, or any mechanical or electronic recording on a record, tape, wire or other device, or other representation however made or any person who shall sell, import, print, publish, loan, give away, or distribute or possess with intent to sell, print, publish, loan, give away, design, prepare, distribute, or offer for sale any obscene or indecent book, publication, pamphlet, picture or other representation, however made, or who in any way advertises the same, or in any manner, whether by recommendation against its use or otherwise, gives any information how or where any of the same may be

October 23, 1973

414 U. S.

had, seen, heard, bought or sold, is guilty of a misdemeanor.”

It is my view that, “at least in the absence of distribution to juveniles or obtrusive exposure to unconsenting adults, the First and Fourteenth Amendments prohibit the State and Federal Governments from attempting wholly to suppress sexually oriented materials on the basis of their allegedly ‘obscene’ contents.” *Paris Adult Theatre I v. Slaton*, 413 U. S. 49, 113 (1973) (BRENNAN, J., dissenting). It is clear that, tested by that constitutional standard, § 2A:115-2 is constitutionally overbroad and therefore invalid on its face. For the reasons stated in my dissent in *Miller v. California*, 413 U. S. 15, 47 (1973), I would therefore grant certiorari, vacate the judgment of the Appellate Division of the Superior Court of New Jersey, and remand for further proceedings not inconsistent with my *Paris Adult Theatre I* dissent. In that circumstance, I have no occasion to consider whether the other questions presented merit plenary review. See *Heller v. New York*, 413 U. S. 483, 494 (1973) (BRENNAN, J., dissenting).

No. 72-1646. *HARDING v. UNITED STATES*. C. A. 10th Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Miller v. California*, 413 U. S. 15 (1973); *Paris Adult Theatre I v. Slaton*, 413 U. S. 49 (1973); *Kaplan v. California*, 413 U. S. 115 (1973); *United States v. 12 200-Ft. Reels of Film*, 413 U. S. 123 (1973); *United States v. Orito*, 413 U. S. 139 (1973); *Heller v. New York*, 413 U. S. 483 (1973); *Roaden v. Kentucky*, 413 U. S. 496 (1973); and *Alexander v. Virginia*, 413 U. S. 836 (1973). MR. JUSTICE DOUGLAS, being of the view that federal obscenity regulation is prohibited by the First Amendment (see *United States v. 12 200-Ft. Reels of Film*, 413 U. S. 123, 130 (DOUGLAS, J., dissenting)), would grant certio-

964

BRENNAN, J., dissenting

rari in this case and reverse judgment of conviction. Reported below: 475 F. 2d 480.

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

Petitioner was convicted in the United States District Court for the District of Colorado on charges of using an express company for carriage of allegedly obscene matter in violation of 18 U. S. C. § 1462, which provides as follows:

“Whoever . . . knowingly uses any express company or other common carrier, for carriage in interstate or foreign commerce—

“(a) any obscene, lewd, lascivious, or filthy book, pamphlet, picture, motion-picture film, paper, letter, writing, print, or other matter of indecent character

“Shall be fined not more than \$5,000 or imprisoned not more than five years, or both . . . .”

I adhere to my dissent in *United States v. Orito*, 413 U. S. 139, 147 (1973), in which, speaking of 18 U. S. C. § 1462, I expressed the view that “[w]hatever the extent of the Federal Government’s power to bar the distribution of allegedly obscene material to juveniles or the offensive exposure of such material to unconsenting adults, the statute before us is clearly overbroad and unconstitutional on its face.” *Id.*, at 147–148. For the reasons stated in my dissent in *Miller v. California*, 413 U. S. 15, 47 (1973), I would therefore grant certiorari, vacate the judgment of the Court of Appeals for the Tenth Circuit, and remand for further proceedings consistent with my dissent in *Paris Adult Theatre I v. Slaton*, 413 U. S. 49, 73 (1973). In that circumstance, I have no occasion to consider whether the other questions presented merit plenary review. See *Heller v. New York*, 413 U. S. 483, 494 (1973) (BRENNAN, J., dissenting).

October 23, 1973

414 U. S.

No. 72-1648. *McCrary v. Oklahoma*. Ct. Crim. App. Okla. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Miller v. California*, 413 U. S. 15 (1973); *Paris Adult Theatre I v. Slaton*, 413 U. S. 49 (1973); *Kaplan v. California*, 413 U. S. 115 (1973); *United States v. 12 200-Ft. Reels of Film*, 413 U. S. 123 (1973); *United States v. Orito*, 413 U. S. 139 (1973); *Heller v. New York*, 413 U. S. 483 (1973); *Roaden v. Kentucky*, 413 U. S. 496 (1973); and *Alexander v. Virginia*, 413 U. S. 836 (1973). MR. JUSTICE DOUGLAS, being of the view that state obscenity regulation is prohibited by the Fourteenth and First Amendments (see *Paris Adult Theatre I v. Slaton*, 413 U. S. 49, 70 (DOUGLAS, J., dissenting)), would grant certiorari and reverse the judgment of conviction. Reported below: 507 P. 2d 924.

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

Petitioner was sentenced to 10 years in prison and fined \$5,000 when convicted for selling allegedly obscene books and magazines in violation of Okla. Stat. Ann., Tit. 21, § 1021 (Supp. 1973-1974), which provides as follows:

"Every person who wilfully . . .

• • • • •  
"(3) writes, composes, stereotypes, prints, photographs, designs, copies, draws, engraves, paints, molds, cuts, or otherwise prepares, publishes, sells, distributes, keeps for sale, or exhibits any obscene or indecent writing, paper, book, picture, photograph, figure or form of any description . . .

• • • • •  
"(4) . . . is guilty of a felony and upon conviction therefor shall be punished by the imposition of a fine not less than One Hundred Dollars (\$100.00)

414 U. S.

October 23, 1973

nor more than Five Thousand Dollars (\$5,000.00) or by imprisonment for not less than thirty (30) days nor more than ten (10) years, or by both such fine and imprisonment."

It is my view that, "at least in the absence of distribution to juveniles or obtrusive exposure to unconsenting adults, the First and Fourteenth Amendments prohibit the State and Federal Governments from attempting wholly to suppress sexually oriented materials on the basis of their allegedly 'obscene' contents." *Paris Adult Theatre I v. Slaton*, 413 U. S. 49, 113 (1973) (BRENNAN, J., dissenting). It is clear that, tested by that constitutional standard, § 1021 is constitutionally overbroad and therefore invalid on its face. For the reasons stated in my *Paris Adult Theatre I* dissent, I would therefore grant certiorari, vacate the judgment of the Court of Criminal Appeals of Oklahoma, and remand for further proceedings not inconsistent with that dissent. *Id.*, at 73.

No. 72-1709. CHEROKEE NEWS & ARCADE, INC., ET AL. v. OKLAHOMA. Ct. Crim. App. Okla. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Miller v. California*, 413 U. S. 15 (1973); *Paris Adult Theatre I v. Slaton*, 413 U. S. 49 (1973); *Kaplan v. California*, 413 U. S. 115 (1973); *United States v. 12 200-Ft. Reels of Film*, 413 U. S. 123 (1973); *United States v. Orito*, 413 U. S. 139 (1973); *Heller v. New York*, 413 U. S. 483 (1973); *Roaden v. Kentucky*, 413 U. S. 496 (1973); and *Alexander v. Virginia*, 413 U. S. 836 (1973). MR. JUSTICE DOUGLAS, being of the view that state obscenity regulation is prohibited by the Fourteenth and First Amendments (see *Paris Adult Theatre I v. Slaton*, 413 U. S. 49, 70 (DOUGLAS, J., dissenting)), would grant certiorari and reverse

the judgment of conviction. Reported below: 509 P. 2d 917.

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

Petitioners were convicted on charges of selling allegedly obscene materials in violation of Okla. Stat. Ann., Tit. 21, §§ 1040.8, 1040.13 (Supp. 1973). Section 1040.8, among other things, makes it "unlawful for any person to knowingly . . . sell . . . or otherwise distribute . . . any obscene book, magazine, . . . or other article which is obscene, filthy, indecent, lascivious, lewd or unfit, as defined in Title 21 of the Oklahoma Statutes, § 1040.12 . . . ." Section 1040.13 provides in relevant part that "[e]very person who, with knowledge of its contents, . . . sells, . . . any obscene, lewd, lascivious, filthy or indecent article . . . is guilty of a misdemeanor . . . ."

It is my view that, "at least in the absence of distribution to juveniles or obtrusive exposure to unconsenting adults, the First and Fourteenth Amendments prohibit the State and Federal Governments from attempting wholly to suppress sexually oriented materials on the basis of their allegedly 'obscene' contents." *Paris Adult Theatre I v. Slaton*, 413 U. S. 49, 113 (1973) (BRENNAN, J., dissenting). It is clear that, tested by that constitutional standard, §§ 1040.8 and 1040.13 are constitutionally overbroad and therefore invalid on their face. For the reasons stated in my dissenting opinion in *Miller v. California*, 413 U. S. 15, 47 (1973), I would therefore grant certiorari, vacate the judgment of the Oklahoma Court of Criminal Appeals, and remand for further proceedings not inconsistent with my *Paris Adult Theatre I* dissent. In that circumstance, I have no occasion to consider at this time whether other questions presented in the petition merit plenary review. See *Heller v.*

414 U. S.

October 23, 1973

*New York*, 413 U. S. 483, 494 (1973) (BRENNAN, J., dissenting).

No. 72-1731. GRONER, DBA LUCKY DISTRIBUTORS *v.* UNITED STATES. C. A. 5th Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Miller v. California*, 413 U. S. 15 (1973); *Paris Adult Theatre I v. Slaton*, 413 U. S. 49 (1973); *Kaplan v. California*, 413 U. S. 115 (1973); *United States v. 12 200-Ft. Reels of Film*, 413 U. S. 123 (1973); *United States v. Orito*, 413 U. S. 139 (1973); *Heller v. New York*, 413 U. S. 483 (1973); *Roaden v. Kentucky*, 413 U. S. 496 (1973); and *Alexander v. Virginia*, 413 U. S. 836 (1973). MR. JUSTICE DOUGLAS, being of the view that federal obscenity regulation is prohibited by the First Amendment (see *United States v. 12 200-Ft. Reels of Film*, 413 U. S. 123, 130 (DOUGLAS, J., dissenting)), would grant certiorari in this case and reverse the judgment of conviction. Reported below: 479 F. 2d 577.

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

Petitioner was convicted in the United States District Court for the Northern District of Texas on charges of using a common carrier for carriage of allegedly obscene matter in violation of 18 U. S. C. § 1462, which provides in pertinent part as follows:

“Whoever . . . knowingly uses any express company or other common carrier, for carriage in interstate or foreign commerce—

“(a) any obscene, lewd, lascivious, or filthy book, pamphlet, picture, motion-picture film, paper, letter, writing, print, or other matter of indecent character

October 23, 1973

414 U. S.

“Shall be fined not more than \$5,000 or imprisoned not more than five years, or both . . . .”

A panel of the Court of Appeals for the Fifth Circuit reversed the conviction. 475 F. 2d 550 (1972). On rehearing en banc, the panel was overruled and petitioner's judgment of conviction was affirmed. 479 F. 2d 577 (1973).

I adhere to my dissent in *United States v. Orito*, 413 U. S. 139, 147 (1973), in which, speaking of 18 U. S. C. § 1462, I expressed the view that “[w]hatever the extent of the Federal Government's power to bar the distribution of allegedly obscene material to juveniles or the offensive exposure of such material to unconsenting adults, the statute before us is clearly overbroad and unconstitutional on its face.” 413 U. S., at 147-148. For the reasons stated in my dissent in *Miller v. California*, 413 U. S. 15, 47 (1973), I would therefore grant certiorari, vacate the judgment of the Court of Appeals for the Fifth Circuit, and remand for further proceedings consistent with my dissent in *Paris Adult Theatre I v. Slaton*, 413 U. S. 49, 73 (1973). In that circumstance, I have no occasion to consider whether the other questions presented merit plenary review. See *Heller v. New York*, 413 U. S. 483, 494 (1973) (BRENNAN, J., dissenting).

No. 72-7000. *CLINE v. ILLINOIS*. App. Ct. Ill., 4th Dist. Motion for leave to proceed *in forma pauperis* and certiorari granted. Judgment vacated and case remanded for further consideration in light of *Wardius v. Oregon*, 412 U. S. 470 (1973). MR. JUSTICE DOUGLAS would grant certiorari and set case for oral argument. Reported below: 8 Ill. App. 3d 917, 290 N. E. 2d 622.

No. 73-259. *EDWIN L. WIEGAND CO. v. JURINKO ET AL.* C. A. 3d Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Mc-*

414 U.S.

October 23, 1973

*Donnell Douglas Corp. v. Green*, 411 U. S. 792 (1973).  
Reported below: 477 F. 2d 1038.

*Miscellaneous Orders*

No. A-323 (73-578). *YASSEN v. UNITED STATES*.  
C. A. 5th Cir. Application for stay presented to Mr.  
JUSTICE DOUGLAS, and by him referred to the Court,  
denied. Reported below: 482 F. 2d 1183.

No. D-11. *IN RE DISBARMENT OF HARTZOG*. It is  
ordered that Benjamin Gerard Hartzog, of Washington,  
D. C., be suspended from the practice of law in this  
Court and that a rule issue, returnable within 40 days,  
requiring him to show cause why he should not be dis-  
barred from the practice of law in this Court.

No. D-12. *IN RE DISBARMENT OF ISAACSON*. It is  
ordered that John T. Isaacson, of St. Louis, Missouri,  
be suspended from the practice of law in this Court and  
that a rule issue, returnable within 40 days, requiring  
him to show cause why he should not be disbarred from  
the practice of law in this Court.

No. D-13. *IN RE DISBARMENT OF LEHRER*. It is  
ordered that Isadore Albert Lehrer, of Washington, D. C.,  
be suspended from the practice of law in this Court and  
that a rule issue, returnable within 40 days, requiring  
him to show cause why he should not be disbarred from  
the practice of law in this Court.

No. D-14. *IN RE DISBARMENT OF MACLEOD*. It is  
ordered that Douglas C. MacLeod, of St. Louis, Missouri,  
be suspended from the practice of law in this Court and  
that a rule issue, returnable within 40 days, requiring  
him to show cause why he should not be disbarred from  
the practice of law in this Court.

No. D-15. *IN RE DISBARMENT OF SEVIN*. It is or-  
dered that Marshall Howard Sevin, of Central City, Cali-

October 23, 1973

414 U. S.

fornia, be suspended from the practice of law in this Court and that a rule issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. 72-887. *AMERICAN PARTY OF TEXAS ET AL. v. WHITE, SECRETARY OF STATE OF TEXAS* [Probable jurisdiction noted, 410 U. S. 965, *sub nom. American Party of Texas v. Bullock*]; and

No. 72-942. *HAINSWORTH v. WHITE, SECRETARY OF STATE OF TEXAS*. [Probable jurisdiction noted, 410 U. S. 965, *sub nom. Hainsworth v. Bullock.*] Appeals from D. C. W. D. Tex. Motion for additional time for oral argument on behalf of appellants granted and 10 additional minutes allotted for that purpose. Appellants in No. 72-887 shall have a total of 20 minutes for oral argument and appellant in No. 72-942 shall likewise have a total of 20 minutes for oral argument. Appellee in these cases also allotted 10 additional minutes for oral argument for a total of 40 minutes. Motions of appellants for divided argument granted and it is ordered that Gloria Tanner Svanas be permitted to present oral argument on behalf of appellants in No. 72-887, and Robert H. Hainsworth, Esquire, be permitted to present oral argument *pro se* in No. 72-942.

No. 72-888. *ZAHN ET AL. v. INTERNATIONAL PAPER Co.* C. A. 2d Cir. [Certiorari granted, 410 U. S. 925.] Motion of Consumers Union of the United States, Inc., for reconsideration of order denying leave to file a brief as *amicus curiae* [*ante*, p. 812] denied.

No. 72-1371. *ALEXANDER, COMMISSIONER OF INTERNAL REVENUE v. "AMERICANS UNITED" INC.* C. A. D. C. Cir. [Certiorari granted, 412 U. S. 927, *sub nom. Walters v. "Americans United" Inc.*] Motion of respondent to permit two counsel to argue orally granted.

414 U. S.

October 23, 1973

No. 72-1465. PROCUNIER, CORRECTIONS DIRECTOR, ET AL. *v.* MARTINEZ ET AL. Appeal from D. C. N. D. Cal. [Probable jurisdiction noted, 412 U. S. 948.] Motion of Boston University Center for Criminal Justice for leave to file its brief as *amicus curiae* in unprinted form denied.

No. 72-5847. ALEXANDER *v.* GARDNER-DENVER Co. C. A. 10th Cir. [Certiorari granted, 410 U. S. 925.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* granted, and a total of 15 minutes allotted for that purpose. Respondent also allotted 15 additional minutes for oral argument.

No. 73-187. KEWANEE OIL Co. *v.* BICRON CORP. ET AL. C. A. 6th Cir. [Certiorari granted, *ante*, p. 818.] Motions of the Bar Association of the District of Columbia and the Chamber of Commerce of the United States for leave to file briefs as *amici curiae* denied.

No. 72-6823. AULT *v.* SWENSON, WARDEN. Motion for leave to file petition for writ of habeas corpus denied.

No. 73-5035. BOTTOS *v.* BEAMER, U. S. DISTRICT JUDGE, ET AL. Motion for leave to file petition for writ of mandamus denied.

*Probable Jurisdiction Noted or Postponed*

No. 73-78. KAHN *v.* SHEVIN, ATTORNEY GENERAL OF FLORIDA, ET AL. Appeal from Sup. Ct. Fla. Probable jurisdiction noted. Reported below: 273 So. 2d 72.

No. 73-206. PARKER, WARDEN, ET AL. *v.* LEVY. Appeal from C. A. 3d Cir. Further consideration of question of jurisdiction postponed to hearing of case on the merits and case set for oral argument with No. 72-1713 [*Secretary of the Navy v. Avrech*], *ante*, p. 816. Reported below: 478 F. 2d 772.

October 23, 1973

414 U. S.

*Certiorari Granted*

No. 72-1570. *DONNELLY v. DECHRISTOFORO*. C. A. 1st Cir. Certiorari granted. Reported below: 473 F. 2d 1236.

*Certiorari Denied.* (See also No. 72-1558, *supra*.)

No. 72-1167. *ALABAMA v. CONGO*. Ct. Crim. App. Ala. Certiorari denied. Reported below: 49 Ala. App. 166, 269 So. 2d 182.

No. 72-6509. *MEADOR v. UNITED STATES*. C. A. 9th Cir. Certiorari denied.

No. 72-6794. *JOHNSON v. ANDERSON, WARDEN*. C. A. 10th Cir. Certiorari denied.

No. 72-6808. *GRIFFIN v. CALIFORNIA*. Ct. App. Cal., 3d App. Dist. Certiorari denied.

No. 72-6865. *BRAUN v. CALIFORNIA*. Ct. App. Cal., 1st App. Dist. Certiorari denied. Reported below: 29 Cal. App. 3d 949, 106 Cal. Rptr. 56.

No. 73-55. *RALPH WILLIAMS FORD, INC. v. CALIFORNIA DEPARTMENT OF MOTOR VEHICLES ET AL.* Ct. App. Cal., 2d App. Dist. Certiorari denied. Reported below: 30 Cal. App. 3d 494, 106 Cal. Rptr. 340.

No. 73-150. *VUCI v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 475 F. 2d 1403.

No. 73-166. *JACKSON v. UNITED STATES*. C. A. 6th Cir. Certiorari denied.

No. 73-169. *MESSINA v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 481 F. 2d 878.

No. 73-177. *GOLDSTEIN, RECEIVER v. UNITED STATES*. Ct. Cl. Certiorari denied.

No. 73-179. *WEST v. UNITED STATES*. C. A. 2d Cir. Certiorari denied.

414 U. S.

October 23, 1973

No. 73-197. *FRANK ET AL. v. WOLF ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 477 F. 2d 467.

No. 73-211. *SHELTON v. NORTH CAROLINA.* Ct. App. N. C. Certiorari denied. Reported below: 17 N. C. App. 694, 195 S. E. 2d 369.

No. 73-222. *RIBLET TRAMWAY CO. v. SIMON.* Ct. App. Wash. Certiorari denied. Reported below: 8 Wash. App. 289, 505 P. 2d 1291.

No. 73-224. *ROSE ET UX. v. COMMISSIONER OF INTERNAL REVENUE.* C. A. 5th Cir. Certiorari denied. Reported below: 472 F. 2d 1406.

No. 73-226. *STARK ET UX. v. UNITED STATES.* C. A. 8th Cir. Certiorari denied. Reported below: 477 F. 2d 131.

No. 73-227. *CONTINENTAL BAKING Co. v. OLD HOMESTEAD BREAD Co. ET AL.* C. A. 10th Cir. Certiorari denied. Reported below: 476 F. 2d 97.

No. 73-228. *NEW JERSEY COUNTY AND MUNICIPAL COUNCIL No. 61 ET AL. v. AMERICAN FEDERATION OF STATE, COUNTY, AND MUNICIPAL EMPLOYEES, AFL-CIO, ET AL.* C. A. 3d Cir. Certiorari denied. Reported below: 478 F. 2d 1156.

No. 73-229. *SAFIR v. BLACKWELL, ASSISTANT SECRETARY OF COMMERCE FOR MARITIME AFFAIRS, ET AL.* C. A. 2d Cir. Certiorari denied.

No. 73-230. *PENNSYLVANIA v. GROCE.* Sup. Ct. Pa. Certiorari denied. Reported below: 452 Pa. 15, 303 A. 2d 917.

No. 73-234. *SAFEGUARD MUTUAL INSURANCE Co. v. PENNSYLVANIA ET AL.* Sup. Ct. Pa. Certiorari denied. Reported below: 455 Pa. 632, 303 A. 2d 822.

October 23, 1973

414 U. S.

No. 73-237. *HENRIKSON v. UNITED STATES*. C. A. 9th Cir. Certiorari denied.

No. 73-238. *MOYNAHAN v. CONNECTICUT*. Sup. Ct. Conn. Certiorari denied.

No. 73-245. *DRASKOVICH ET AL. v. PASALICH ET AL.* Sup. Ct. Ind. Certiorari denied. Reported below: See — Ind. —, 280 N. E. 2d 69.

No. 73-251. *MEILY v. AGRICULTURAL INVESTMENT CORP., S. A., ET AL.* Dist. Ct. App. Fla., 3d Dist. Certiorari denied. Reported below: 258 So. 2d 519.

No. 73-252. *UNITED STATES ET AL. v. SARKISIAN ET AL.* C. A. 10th Cir. Certiorari denied. Reported below: 472 F. 2d 468.

No. 73-253. *LEMAR TOWING Co., INC. v. FIREMAN'S FUND INSURANCE Co.* C. A. 5th Cir. Certiorari denied. Reported below: 471 F. 2d 609.

No. 73-261. *TEXTILE WORKERS UNION OF AMERICA, AFL-CIO v. KAYSER-ROTH CORP.* C. A. 6th Cir. Certiorari denied. Reported below: 479 F. 2d 524.

No. 73-430. *DICKEY ET AL. v. ROBINSON ET AL.* Sup. Ct. N. J. Certiorari denied. Reported below: 62 N. J. 473, 303 A. 2d 273 and 63 N. J. 196, 306 A. 2d 65.

No. 73-5061. *FRYE v. UNITED STATES*. C. A. 4th Cir. Certiorari denied.

No. 73-5068. *CLEMENTS v. UNITED STATES*. C. A. 6th Cir. Certiorari denied.

No. 73-5087. *BOLAR v. UNITED STATES*. C. A. 3d Cir. Certiorari denied.

No. 73-5108. *SPEAKMAN v. UNITED STATES*. C. A. 8th Cir. Certiorari denied.

414 U.S.

October 23, 1973

No. 74-5120. *MARSHALL v. UNITED STATES*; and  
No. 73-5140. *HARMON v. UNITED STATES*. C. A. 9th  
Cir. Certiorari denied. Reported below: — F. 2d —.

No. 73-5131. *ALVAREZ-RODRIGUEZ v. IMMIGRATION  
AND NATURALIZATION SERVICE*. C. A. 9th Cir. Certio-  
rari denied.

No. 73-5136. *DAVIS v. UNITED STATES*. C. A. 4th  
Cir. Certiorari denied. Reported below: 481 F. 2d 425.

No. 73-5141. *GARDNER v. UNITED STATES*. C. A. 10th  
Cir. Certiorari denied. Reported below: 480 F. 2d 929.

No. 73-5142. *EATMON v. UNITED STATES*. C. A. 9th  
Cir. Certiorari denied.

No. 73-5143. *HOUSE v. CLERK, U. S. DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF INDIANA*. C. A. 7th  
Cir. Certiorari denied.

No. 73-5155. *SERMAN v. UNITED STATES*. C. A. 6th  
Cir. Certiorari denied.

No. 73-5171. *HARRIS v. UNITED STATES*. C. A. 6th  
Cir. Certiorari denied. Reported below: 480 F. 2d 601.

No. 73-5172. *GONZALES v. UNITED STATES*. C. A. 5th  
Cir. Certiorari denied. Reported below: 478 F. 2d  
1401.

No. 73-5174. *JOHNSON, AKA ANDERSON, ET AL. v.  
UNITED STATES*. C. A. 4th Cir. Certiorari denied.

No. 73-5187. *GUSTAVE v. UNITED STATES*. C. A. 10th  
Cir. Certiorari denied.

No. 73-5199. *SCOPOLITES v. ALABAMA*. Ct. Crim.  
App. Ala. Certiorari denied. Reported below: 50 Ala.  
App. 115, 277 So. 2d 389.

October 23, 1973

414 U.S.

No. 73-5210. *HALLINAN v. CALIFORNIA*. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 73-5212. *EDWARDS v. UNITED STATES*. C. A. 7th Cir. Certiorari denied.

No. 73-5215. *DUFFY v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 479 F.2d 1038.

No. 73-5219. *BARKLEY v. SLAYTON, PENITENTIARY SUPERINTENDENT*. C. A. 4th Cir. Certiorari denied.

No. 73-5223. *McCRAY v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 482 F.2d 286.

No. 73-5225. *CHANDLER v. MARYLAND*. C. A. 4th Cir. Certiorari denied.

No. 73-5229. *COLE v. CHEVRON CHEMICAL Co., ORONITE DIVISION*. C. A. 5th Cir. Certiorari denied. Reported below: 477 F.2d 361.

No. 73-5231. *PAYNE v. LOWERY, WARDEN*. C. A. 5th Cir. Certiorari denied.

No. 73-5233. *MARSHALL v. YOUNG*. Ct. App. D. C. Certiorari denied.

No. 73-5235. *CLARK v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 480 F.2d 1249.

No. 73-5236. *BARGAR v. OHIO CIVIL RIGHTS COMMISSION ET AL.* Ct. App. Ohio, Franklin County. Certiorari denied.

No. 73-5238. *STEVENSON v. MONTANYE, CORRECTIONAL SUPERINTENDENT*. App. Div., Sup. Ct. N. Y., 4th Jud. Dept. Certiorari denied.

414 U.S.

October 23, 1973

No. 73-5241. *AIKENS v. CALIFORNIA*. Sup. Ct. Cal. Certiorari denied.

No. 73-5243. *ANDERSON v. FRODERMAN ET AL.* C. A. 1st Cir. Certiorari denied.

No. 72-1511. *DICKINSON ET AL. v. UNITED STATES*. C. A. 5th Cir. Motions to dispense with printing *amici curiae* briefs of National Association of Broadcasters and Reporters Committee for Freedom of the Press denied. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 476 F. 2d 373.

No. 72-1543. *DRUMGO v. SUPERIOR COURT OF CALIFORNIA IN AND FOR THE COUNTY OF MARIN ET AL.* Sup. Ct. Cal. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 8 Cal. 3d 930, 506 P. 2d 1007.

No. 72-1684. *SCHU v. VIRGINIA*. Sup. Ct. Va. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari.

No. 73-107. *MANUSZAK v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari.

No. 73-244. *MAIN LINE BOARD OF REALTORS ET AL. v. COLLINS ET AL.* Sup. Ct. Pa. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 452 Pa. 342, 304 A. 2d 493.

No. 73-248. *MCCORD ET UX. v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari.

No. 73-5080. *LEGATO v. UNITED STATES*; and

No. 73-5090. *MIGDALL v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 480 F. 2d 408.

October 23, 1973

414 U. S.

No. 73-5159. *MATUSEWITCH v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 481 F. 2d 174.

No. 73-5166. *MOORE v. UNITED STATES*. C. A. D. C. Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 158 U. S. App. D. C. 375, 486 F. 2d 1139.

No. 73-5193. *COBBS v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 481 F. 2d 196.

No. 73-5244. *RYLES v. MASSACHUSETTS*. Sup. Jud. Ct. Mass. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: — Mass. —, 296 N. E. 2d 816.

No. 72-1568. *NEW JERSEY v. WRIGHT*. C. A. 3d Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 475 F. 2d 1397.

No. 72-1578. *HARTEL, ADMINISTRATRIX v. LONG ISLAND RAILROAD Co.* C. A. 2d Cir. Certiorari denied. Reported below: 476 F. 2d 462.

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

Petitioner's husband, a ticket agent of the respondent railroad, was required to open the ticket office of the Mineola, Long Island, station in the early hours of a Sunday morning. In order to open the steel shutter covering the ticket window it was necessary to leave the security of the ticket office and enter the passenger waiting room. Since there was no peephole in the shutter or in the door leading to the waiting room, there was no way for the agent to view the waiting room from the

ticket office. Upon entering the waiting room, petitioner's husband encountered armed robbers who shot and killed him. Petitioner brought this suit to recover damages under the Federal Employers' Liability Act, 35 Stat. 65, as amended, 45 U. S. C. § 51 *et seq.*

In *Lillie v. Thompson*, 332 U. S. 459, this Court held that the Act provides relief for breach by a railroad of its duty to protect employees from foreseeable third-party assaults. In order to demonstrate foreseeability in this case, petitioner offered to prove 10 robberies or attempted robberies at respondent's stations located between five and 30 miles of the Mineola station. All had occurred within four years, and two occurred in the month immediately preceding the Mineola holdup. Petitioner further offered to prove communications between the ticket agents' union and respondent relating the dangers of armed robbery and requesting the installation of peepholes and silent alarms. Since none of the prior robberies occurred at the Mineola station and none of the union communications made specific reference to the dangers at that particular station, the evidence was excluded.

After finding that petitioner had "introduced no evidence showing that [respondent] should have reasonably foreseen the possibility of a holdup at the Mineola Station," the District Court granted respondent's motion for a directed verdict. 356 F. Supp. 1192, 1194.

As this Court has repeatedly pointed out, Congress expressed a strong preference for jury determinations of actions arising under the Act. See *Rogers v. Missouri Pacific R. Co.*, 352 U. S. 500, 508. When the evidence is viewed in the light most favorable to petitioner, I conclude that a fair-minded juror could well conclude that failure to provide a peephole was negligence and that this negligence played some part in the agent's

October 23, 1973

414 U. S.

death. The District Court thus erred in taking this case from the jury. *Gallick v. B. & O. R. Co.*, 372 U. S. 108; *Rogers v. Missouri Pacific R. Co.*, *supra*.

The District Court also erred in disallowing evidence which tended to establish respondent's knowledge of the hazards which ticket agents faced. Whether it was reasonable for respondent to refrain from implementing safety suggestions at the Mineola station until the wave of robberies reached that station was for the jury to determine. The evidence of robberies at other stations and of union warnings about the dangers of robberies was relevant to that determination.

I would vacate the judgment below and remand for a new trial.

No. 72-6539. *FIORINI v. WAYNE CIRCUIT JUDGE*. Sup. Ct. Mich. Motion to strike respondent's memorandum denied. Certiorari and other relief denied.

No. 72-6931. *LAWRENCE GAY LIBERATION FRONT ET AL. v. UNIVERSITY OF KANSAS ET AL.* C. A. 10th Cir. Motion of petitioners for leave to proceed *in forma pauperis* and certiorari denied.

No. 73-26. *ALBERS, EXECUTOR, ET AL. v. COMMISSIONER OF INTERNAL REVENUE*. C. A. 3d Cir. Certiorari denied.

MR. JUSTICE POWELL, with whom MR. JUSTICE DOUGLAS and MR. JUSTICE BLACKMUN join, dissenting.

The five petitioners in this case own virtually all the outstanding stock of a small corporation, A & S Transportation Co. (A & S). The company operates a barge. The barge fell into such disrepair as to require replacement, but A & S lacked the necessary resources and credit. A & S requested the Federal Maritime Commission to guarantee, as it is empowered by law to do,

a proposed first mortgage loan from a bank. Before the Commission would extend its guarantee, it required of A & S at least \$150,000 of additional private capital. The Commission presented A & S with two options. A & S could resort either to subordinated debt or to the issuance of nonvoting, nondividend paying, noncumulative preferred stock unredeemable until full payment of the desired loan.

A & S chose the latter course. In proportion to their holdings of A & S common, petitioners in 1959 purchased \$150,000 of preferred stock possessing all the attributes required by the Commission. The loan was then consummated with the Commission's guarantee, and A & S purchased a replacement vessel. By 1964 the loan was paid off in full. Having no further need for the \$150,000, and in accord with the wishes of petitioners,<sup>1</sup> A & S redeemed the preferred stock in 1965 and 1966 in two equal installments. No premium was paid, and *petitioners received precisely the amount each had previously invested*. The Commissioner of Internal Revenue treated the redemptions as the receipt of ordinary income, taking the view that they were "essentially equivalent to a dividend" within the meaning of § 302 (b)(1) of the Internal Revenue Code of 1954, 26 U. S. C. § 302 (b)(1). Citing *United States v. Davis*, 397 U. S. 301 (1970), the Tax Court agreed. *Miele v. Commissioner*, 56 T. C. 556 (1971); *La Fera Contracting Co. v. Commissioner*, T. C. Memo 1971-161. The Court of Appeals for the Third Circuit affirmed without published opinions. *Miele v. Commissioner*, 474 F. 2d 1338 (1973); *La Fera Contracting Co. v. Commissioner*, 475 F. 2d 1395 (1973); *Spiniello v. Commissioner*, 475 F. 2d 1396 (1973).

<sup>1</sup> One may understand the desire of petitioners to have their capital contributions returned, as the preferred stock was nondividend paying.

On the above facts it seems plain that the redemption of preferred stock provided petitioners nothing more than a return of the capital they were compelled by the Commission to pay into A & S to obtain the additional financing the corporation needed to remain in business. To tax that return of capital at ordinary income rates is an extraordinary result, yet one that I recognize to be mandated by the full sweep of *United States v. Davis, supra*. Because of strong doubts as to the correctness of any decision that produces such a bizarre result, I would grant certiorari to reconsider *Davis*.<sup>2</sup>

Section 302 (b)(1) of the Code shelters from dividend treatment, and accompanying potential ordinary income consequences, any stock redemption that "is not essentially equivalent to a dividend."<sup>3</sup> A majority of the Court in *Davis* read that provision to mean that a stock redemption by a small, closely held corporation

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<sup>2</sup> I am not unaware of the importance of *stare decisis*, especially with respect to the tax Code. Yet, even in the tax area, the Court has recognized that the policies underlying *stare decisis* do not require "adherence to the latest decision, however recent and questionable, when such adherence involves collision with a prior doctrine more embracing in its scope, intrinsically sounder, and verified by experience." *Helvering v. Hallock*, 309 U. S. 106, 119 (1940).

<sup>3</sup> The section treats such redemptions as tax-recognizable exchanges of stock, which generally means that the capital gains provisions are applicable, to the extent that there is any return above basis. Section 302 provides, in pertinent part:

"Distributions in redemption of stock.

"(a) General Rule. If a corporation redeems its stock . . . , and if paragraph (1) . . . of subsection (b) applies, such redemption shall be treated as a distribution in part or full payment in exchange for the stock.

"(b) Redemptions treated as exchanges.

"(1) Redemptions not equivalent to dividends. Subsection (a) shall apply if the redemption is not essentially equivalent to a dividend."

is "always 'essentially equivalent to a dividend'" where there is no "change in the relative economic interests or rights of the stockholders." 397 U. S., at 307, 313 (emphasis added). Undoubtedly the Court sought to promote ease of administration through adoption of a simplistic, *per se* rule. Yet the Court explicitly recognized that the weight of authority in the lower federal courts was contrary to its mechanical approach. *Id.*, at 303 n. 2. Furthermore, the Court conceded that the "legislative history is certainly not free from doubt." *Id.*, at 311.

In my view, the result produced by *Davis* in this case is justified neither by the language of the Code nor by the legislative history, and certainly not by precedent prior to *Davis*. In these circumstances, ease of administration is too high a price to pay for the presumably unforeseen and undeniably harsh consequences visited on these and similarly situated taxpayers.

The Tax Court noted petitioners' position "that the preferred stock was no longer needed after the loan had been paid in full and that redemption of the stock was consistent with the business purpose for which the stock was issued." *Miele v. Commissioner*, 56 T. C., at 567. The Tax Court did not refute the factual correctness of this position, or consider whether there had been a tax evasion motivation.<sup>4</sup> Rather, that court simply disregarded all factual considerations as immaterial to an application of the *Davis per se* rule:

"We consider [petitioners'] argument as having been foreclosed and the issue determined by the case of *United States v. Davis*, 397 U. S. 301 (1970).

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<sup>4</sup>No finding was made by the Tax Court, for example, that an earned surplus was available from which ordinary dividends could have been paid.

In *Davis*, the United States Supreme Court held that a redemption without a change in the relative economic interests or rights of the stockholders is always essentially equivalent to a dividend under section 302 (b)(1). It is the effect of the redemption and not the purpose behind it which is determinative of dividend equivalence." *Ibid.* (Citations omitted.)

MR. JUSTICE DOUGLAS, dissenting in *Davis* with the concurrence of THE CHIEF JUSTICE and MR. JUSTICE BRENNAN, viewed the majority opinion as reading § 302 (b)(1) out of the Code:

"When the Court holds it [the redemption under consideration in *Davis*] was a dividend, it effectively cancels § 302 (b)(1) from the Code. This result is not a matter of conjecture, for the Court says that in the case of closely held or one-man corporations a redemption of stock is 'always' equivalent to a dividend." 397 U. S., at 314.

The Tax Court's decision in this case abundantly bears out MR. JUSTICE DOUGLAS' view. In light of the deliberate retention of the "essentially equivalent to a dividend" language in the 1954 revision of the Code, most courts prior to *Davis* had assumed that § 302 (b)(1) required a factual determination as to the business purpose of the stock redemption.<sup>5</sup> Had such a factual inquiry been made in this case, it is evident that the result would have been different.

In addition to the presence of a legitimate business purpose and the absence of any evidence of tax evasion, the preferred stock in question here was nondividend paying—a highly unusual provision for a preferred

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<sup>5</sup> See cases cited in *United States v. Davis*, 397 U. S. 301, 303 n. 2 (1972).

stock. Thus petitioners, having been induced by the Commission to advance additional private capital to A & S, found themselves either locked in without income on their investment or compelled, as the price of recouping it, to pay taxes at ordinary income rates on a nonexistent gain. It is difficult to think of a more unjust result, and yet this is the inevitable consequence of the sweeping *Davis* requirement that a redemption "always" be deemed "essentially equivalent to a dividend" in the absence of "a change in the relative economic interests or rights of the stockholders." 397 U. S., at 307, 313.<sup>6</sup>

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<sup>6</sup>This one qualification (namely, a change in the relative economic interests or rights of stockholders) may immunize from *Davis* consequences the larger corporations, where a congruity of interest between common and preferred stockholders is found far less frequently than in the family type of small corporations. But even where it can fairly be said (and often the facts as to this are ambiguous) that there has been no such change, this does not mean that minority stockholders are not severely penalized by the *Davis* rule. In this case, the Tax Court noted that the redemption was made at the insistence of petitioners, who were in the unhappy position of holding nondividend preferred stock. But nothing in *Davis* protects a minority stockholder in a close corporation (and their number is legion) who may have little or no influence as to whether or when preferred stock is redeemed. If the majority shareholders in such a corporation effect a *pro rata* redemption, a minority shareholder has no means to avoid *Davis* consequences. In this connection, the language of the Senate Finance Committee in restoring the "essentially equivalent" language to § 302 of the Code is relevant. The Senate Committee stated that the House bill, which had deleted this language, "appeared unnecessarily restrictive, particularly, in the case of redemptions of preferred stock which might be called by the corporation without the shareholder having any control over when the redemption may take place." S. Rep. No. 1622, 83d Cong., 2d Sess., 44 (1954). See *United States v. Davis, supra*, at 310. The truth is that minority shareholders, even in close corporations, frequently have no such control.

October 23, 1973

414 U. S.

One may recognize the tax-avoidance concern underlying the Court's opinion in *Davis*<sup>7</sup> without concluding that the only remedy with respect to closely held corporations is "always" to tax stock redemptions as dividends without regard to facts and circumstances. It may indeed have been reasonable to create a rebuttable presumption in favor of the Government, but it is difficult to see a justification for a result as harsh and inequitable as that often produced by the *Davis* rule. Moreover, if Congress' purpose was to enact the *Davis per se* rule, it could have been expressed in the simplest language.<sup>8</sup> As the Court notes in *Davis*, the Senate Finance Committee deliberately chose not to take that option. *Id.*, at 310-311.

In my view the *Davis* rule, often a trap for unwary investors in small businesses and facially contrary to the relevant Code provision, should be reconsidered.

No. 73-134. COLE *v.* TENNESSEE. Ct. Crim. App. Tenn. Motion to dispense with printing petition

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<sup>7</sup> See B. Bittker & J. Eustice, *Federal Income Taxation of Corporations and Shareholders* 9-2 (3d ed. 1971).

<sup>8</sup> It has been suggested that since *Davis* was decided March 23, 1970, Congress has had more than three years to repudiate or ameliorate the *Davis per se* rule. With all respect, this suggestion seems unrealistic. Congress has had under consideration during this period a general revision of the Code as well as a broad re-examination of many of the fundamental assumptions underlying the present Code. It is unlikely that piecemeal adjustments would have been made during this period of study and re-examination. Furthermore, the *Davis* rule falls most heavily on small family corporations unlikely to have specialized tax counsel capable of warning that *Davis* has converted § 302 (b) (1) into "a treacherous route to be employed only as a last resort." B. Bittker & J. Eustice, *supra* n. 7, at 9-9. It is these very corporations that are least likely to make their voices heard in Congress, since they have limited "lobbying" capabilities.

414 U. S.

October 23, 29, 1973

granted. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari.

No. 73-142. COLE *v.* TENNESSEE. Ct. Crim. App. Tenn. Motion to dispense with printing petition granted. Certiorari denied.

No. 73-199. ANDRUS ET AL. *v.* CONVOY CO. ET AL. C. A. 9th Cir. Certiorari denied. MR. JUSTICE STEWART would grant certiorari. Reported below: 480 F. 2d 604.

No. 73-236. NEW JERSEY CITIZENS FOR CLEAN AIR, INC., ET AL. *v.* NEW JERSEY SPORTS & EXPOSITION AUTHORITY. Sup. Ct. N. J. Certiorari denied. MR. JUSTICE DOUGLAS and MR. JUSTICE BRENNAN took no part in the consideration or decision of this petition. Reported below: 62 N. J. 248, 300 A. 2d 337.

No. 73-5206. GELB *v.* FEDERAL COMMUNICATIONS COMMISSION ET AL. C. A. D. C. Cir. Certiorari denied. MR. JUSTICE POWELL took no part in the consideration or decision of this petition.

#### *Rehearing Denied*

No. 27, Orig. OHIO *v.* KENTUCKY, 410 U. S. 641. Motion for leave to file petition for rehearing as to denial of State of Ohio for leave to amend its original complaint denied.

No. 71-1270. MCKEE *v.* UNITED STATES, 407 U. S. 910. Motion for leave to file fourth petition for rehearing denied. [For earlier orders herein, see *e. g.*, 412 U. S. 914.]

OCTOBER 29, 1973

#### *Dismissal Under Rule 60*

No. 73-15. COMMUNICATIONS SATELLITE CORP. ET AL. *v.* SHANNON. Sup. Jud. Ct. Me. Petition for writ of

October 29, November 5, 1973

414 U.S.

certiorari dismissed under Rule 60 of the Rules of this Court. Reported below: 302 A. 2d 582.

NOVEMBER 5, 1973

*Dismissal Under Rule 60*

No. 73-5124. *HOLIFIELD v. MISSISSIPPI*. Sup. Ct. Miss. Petition for writ of certiorari dismissed under Rule 60 of the Rules of this Court. Reported below: 275 So. 2d 851.

*Affirmed on Appeal*

No. 73-320. *PIRINCIN ET AL. v. BOARD OF ELECTIONS OF CUYAHOGA COUNTY ET AL.* Affirmed on appeal from D. C. N. D. Ohio. Reported below: 368 F. Supp. 64.

No. 73-336. *CATOOR ET AL. v. BLAIR ET AL.* Affirmed on appeal from D. C. N. D. Ill. Reported below: 358 F. Supp. 815.

*Appeals Dismissed*

No. 72-1582. *JOHNSON v. CITY OF CHEYENNE ET AL.* Appeal from Sup. Ct. Wyo. Motion to dispense with printing jurisdictional statement granted. Appeal dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied. Reported below: 504 P. 2d 1081.

No. 73-10. *JOHNSON v. LARAMIE COUNTY SCHOOL DISTRICT No. 1.* Appeal from Sup. Ct. Wyo. Motion to dispense with printing jurisdictional statement granted. Appeal dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied. Reported below: 506 P. 2d 817.

414 U. S.

November 5, 1973

No. 72-1612. *CONNOR v. ARKANSAS*. Appeal from Sup. Ct. Ark. dismissed for want of substantial federal question. Reported below: 253 Ark. 854, 490 S. W. 2d 114.

No. 72-6799. *CANFIELD v. OKLAHOMA*. Appeal from Ct. Crim. App. Okla. dismissed for want of substantial federal question. Reported below: 506 P. 2d 987.

No. 72-6880. *SMITH ET UX. v. REEDER ET UX*. Appeal from Ct. App. Okla. dismissed for want of substantial federal question.

No. 73-273. *MONTENEGRO ET AL. v. NEW JERSEY ET AL.*; and

No. 73-274. *MEADOWLANDS REGIONAL DEVELOPMENT AGENCY ET AL. v. NEW JERSEY ET AL.* Appeals from Sup. Ct. N. J. dismissed for want of substantial federal question. Reported below: 63 N. J. 35, 304 A. 2d 545.

No. 73-275.\* *ALABAMA GREAT SOUTHERN RAILROAD Co. ET AL. v. LOUISIANA*;

No. 73-335. *ILLINOIS CENTRAL RAILROAD Co., NOW ILLINOIS CENTRAL GULF RAILROAD v. LOUISIANA*;

No. 73-340. *SOUTHERN PACIFIC TRANSPORTATION Co. v. LOUISIANA*;

No. 73-341. *TEXAS PACIFIC-MISSOURI PACIFIC TERMINAL RAILROAD OF NEW ORLEANS v. LOUISIANA*; and

No. 73-342. *LOUISIANA & ARKANSAS RAILWAY Co. v. LOUISIANA*. Appeals from 24th Jud. Dist. Ct. La., Jefferson Parish, dismissed for want of substantial federal question. MR. JUSTICE POWELL took no part in the consideration or decision of these appeals.

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\*[Reporter's Note: This order is reported as amended on November 19, 1973, *post*, p. 1037.]

November 5, 1973

414 U. S.

No. 72-1630. BOARD OF EDUCATION OF TRI-VALLEY CENTRAL SCHOOL DISTRICT NO. 1 OF TOWN OF NEVERSINK ET AL. *v.* BOARD OF COOPERATIVE EDUCATIONAL SERVICES OF THE SOLE SUPERVISORY DISTRICT OF SULLIVAN COUNTY. Appeal from Ct. App. N. Y. dismissed for want of jurisdiction. Reported below: 31 N. Y. 2d 1020, 294 N. E. 2d 657.

No. 73-5303. DUN LEAVAY *v.* LUTZ APPELLATE PRINTERS, INC., ET AL. Appeal from D. C. S. D. N. Y. dismissed for want of jurisdiction.

No. 72-6749. OWENS *v.* GOLD, DISTRICT ATTORNEY OF KINGS COUNTY. Appeal from C. A. 2d Cir. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied.

*Certiorari Granted—Affirmed.* (See No. 72-6915, *ante*, p. 17.)

*Certiorari Granted—Reversed.* (See No. 72-1366, *ante*, p. 14; and No. 73-5245, *ante*, p. 29.)

*Certiorari Granted—Vacated and Remanded.* (See also No. 73-5002, *ante*, p. 25.)

No. 72-1576. LITTLE ART CORP. *v.* NEBRASKA. Sup. Ct. Neb. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Miller v. California*, 413 U. S. 15 (1973); *Paris Adult Theatre I v. Slaton*, 413 U. S. 49 (1973); *Kaplan v. California*, 413 U. S. 115 (1973); *United States v. 12 200-Ft. Reels of Film*, 413 U. S. 123 (1973); *United States v. Orito*, 413 U. S. 139 (1973); *Heller v. New York*, 413 U. S. 483 (1973); *Roaden v. Kentucky*, 413 U. S. 496 (1973); and *Alexander v. Virginia*, 413 U. S. 836. MR. JUSTICE DOUGLAS, being of the view that state obscenity regulation is

prohibited by the Fourteenth and First Amendments (see *Paris Adult Theatre I v. Slaton*, 413 U. S. 49, 70 (DOUGLAS, J., dissenting)), would grant certiorari in this case and reverse the judgment of conviction. Reported below: 189 Neb. 681, 204 N. W. 2d 574.

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

Petitioner was convicted on charges of circulating and publishing allegedly obscene motion pictures in violation of Neb. Rev. Stat. § 28-921, which provides as follows:

“Whoever knowingly sells or offers for sale, or gives to another, or otherwise circulates or publishes or causes to be circulated or published, or has in his possession with intent to sell, loan, or give to another, or to otherwise circulate or publish or cause to be circulated or published, any obscene, lewd, indecent, or lascivious book, pamphlet, paper, movie films, drawing, lithograph, engraving, picture, photograph, model, cast, or any instrument or article of obscene, lewd, indecent or lascivious use, or advertises the same for sale, or writes or prints any letter, circular, handbill, card, book, pamphlet, advertisement, or notice of any kind, giving information, directly or indirectly, when, where, how, or by what means any of the articles or things hereinbefore mentioned can be purchased or otherwise obtained or made, shall, upon conviction thereof, be punished by a fine of not more than one thousand dollars nor less than fifty dollars, or by imprisonment in the county jail not more than one year, or both. . . .”

It is my view that “at least in the absence of distribution to juveniles or obtrusive exposure to unconsenting adults, the First and Fourteenth Amendments prohibit

November 5, 1973

414 U.S.

the State and Federal Governments from attempting wholly to suppress sexually oriented materials on the basis of their allegedly 'obscene' contents." *Paris Adult Theatre I v. Slaton*, 413 U. S. 49, 113 (1973) (dissenting opinion). It is clear that, tested by that constitutional standard, § 28-921 is constitutionally overbroad and therefore invalid on its face. For the reasons stated in my dissent in *Miller v. California*, 413 U. S. 15, 47 (1973), I would therefore grant certiorari, vacate the judgment of the Supreme Court of Nebraska, and remand for further proceedings not inconsistent with my dissent in *Paris Adult Theatre I*. In that circumstance, I have no occasion to consider whether the questions presented in the petition merit plenary review. See *Heller v. New York*, 413 U. S. 483, 494 (1973) (BRENNAN, J., dissenting).

No. 73-4. *GAY TIMES, INC. v. LOUISIANA*. Sup. Ct. La. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Miller v. California*, 413 U. S. 15 (1973); *Paris Adult Theatre I v. Slaton*, 413 U. S. 49 (1973); *Kaplan v. California*, 413 U. S. 115 (1973); *United States v. 12 200-Ft. Reels of Film*, 413 U. S. 123 (1973); *United States v. Orito*, 413 U. S. 139 (1973); *Heller v. New York*, 413 U. S. 483 (1973); *Roaden v. Kentucky*, 413 U. S. 496 (1973); and *Alexander v. Virginia*, 413 U. S. 836. MR. JUSTICE DOUGLAS, being of the view that state obscenity regulation is prohibited by the Fourteenth and First Amendments (see *Paris Adult Theatre I v. Slaton*, 413 U. S. 49, 70 (DOUGLAS, J., dissenting)), would grant certiorari in this case and reverse the judgment of conviction. Reported below: 274 So. 2d 162.

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

Petitioner was convicted on charges of exhibiting

allegedly obscene motion pictures in violation of La. Rev. Stat. Ann. § 14:106 (A)(2) (Supp. 1973), which provides as follows:

“A. Obscenity is the intentional:

“(2) Production, sale, exhibition, gift, or advertisement with the intent to primarily appeal to the prurient interest of the average person, of any lewd, lascivious, filthy or sexually indecent written composition, printed composition, book, magazine, pamphlet, newspaper, story paper, writing, phonograph record, picture, drawing, motion picture film, figure, image, wire or tape recording or any written, printed or recorded matter of sexually indecent character which may or may not require mechanical or other means to be transmitted into auditory, visual or sensory representations of such sexually indecent character.”

It is my view that “at least in the absence of distribution to juveniles or obtrusive exposure to unconsenting adults, the First and Fourteenth Amendments prohibit the State and Federal Governments from attempting wholly to suppress sexually oriented materials on the basis of their allegedly ‘obscene’ contents.” *Paris Adult Theatre I v. Slaton*, 413 U. S. 49, 113 (1973) (dissenting opinion). It is clear that, tested by that constitutional standard, § 14:106 (A)(2) is constitutionally overbroad and therefore invalid on its face. For the reasons stated in my dissent in *Miller v. California*, 413 U. S. 15, 47 (1973), I would therefore grant certiorari, vacate the judgment of the Supreme Court of Louisiana, and remand for further proceedings not inconsistent with my dissent in *Paris Adult Theatre I*. In that circumstance, I have no occasion to consider whether the questions

November 5, 1973

414 U. S.

presented in the petition merit plenary review. See *Heller v. New York*, 413 U. S. 483, 494 (1973) (BRENNAN, J., dissenting).

No. 72-6914. *ROBBINS v. TENNESSEE*. Ct. Crim. App. Tenn. Motion for leave to proceed *in forma pauperis* and certiorari granted. Judgment vacated and case remanded for further consideration in light of the decision of the Supreme Court of Tennessee in *Franklin v. Tennessee*, 496 S. W. 2d 885. MR. JUSTICE DOUGLAS would grant certiorari and set case for oral argument. Reported below: 496 S. W. 2d 524.

#### *Miscellaneous Orders*

No. A-335. *HEUTSCHE v. UNITED STATES*. C. A. 7th Cir. Reapplication for bail presented to MR. JUSTICE REHNQUIST, and by him referred to the Court, denied. MR. JUSTICE DOUGLAS would grant the application.

No. A-352 (73-5426). *O'REILLY v. UNITED STATES*. C. A. 8th Cir. Application for stay presented to MR. JUSTICE MARSHALL, and by him referred to the Court, denied. Reported below: 486 F. 2d 208.

No. A-420. *WARDEN, LEWISBURG PENITENTIARY v. MARRERO*. C. A. 3d Cir. Motion of respondent to vacate stay entered by MR. JUSTICE BRENNAN on October 25, 1973, denied. Reported below: 483 F. 2d 656.

No. A-421. *KAPLAN v. AMALGAMATED LITHOGRAPHERS OF AMERICA, LOCAL ONE, ET AL.* C. A. 3d Cir. Application for stay presented to MR. JUSTICE DOUGLAS, and by him referred to the Court, denied.

No. 64, Orig. *NEW HAMPSHIRE v. MAINE*. [Motion for leave to file bill of complaint granted, *ante*, p. 810.] It is ordered that Mr. Justice Clark (retired) be, and he

414 U. S.

November 5, 1973

is hereby, appointed Special Master in this case with authority to fix the time and conditions for the filing of additional pleadings and to direct subsequent proceedings, and with authority to summon witnesses, issue subpoenas, and take such evidence as may be introduced and such as he may deem it necessary to call for. The Master is directed to submit such reports as he may deem appropriate.

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

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

No. 72-914. SCHEUER, ADMINISTRATRIX *v.* RHODES, GOVERNOR OF OHIO, ET AL.; and

No. 72-1318. KRAUSE, ADMINISTRATOR, ET AL. *v.* RHODES, GOVERNOR OF OHIO, ET AL. C. A. 6th Cir. [Certiorari granted, 413 U. S. 919.] Motion of Mexican American Legal Defense & Educational Fund for leave to file a brief as *amicus curiae* granted.

No. 72-1154. FOLEY ET AL. *v.* BLAIR & Co., INC., ET AL. C. A. 2d Cir. [Certiorari granted, 411 U. S. 930.] Consideration of respondents' suggestion of mootness deferred to hearing of case on the merits.

No. 72-1168. UNITED STATES *v.* MAZE. C. A. 6th Cir. [Certiorari granted, 411 U. S. 963.] Motion of respond-

November 5, 1973

414 U. S.

ent for appointment of counsel granted. It is ordered that William T. Warner, Esquire, of Louisville, Kentucky, a member of the Bar of this Court, be, and he is hereby, appointed to serve as counsel for respondent in this case.

No. 72-1410. EDELMAN, DIRECTOR, DEPARTMENT OF PUBLIC AID OF ILLINOIS *v.* JORDAN. C. A. 7th Cir. [Certiorari granted, 412 U. S. 937.] Motion of NLSP Center on Social Welfare Policy and Law, Inc., for leave to file a brief as *amicus curiae* granted.

No. 72-6520. LAU ET AL. *v.* NICHOLS ET AL. C. A. 9th Cir. [Certiorari granted, 412 U. S. 938.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* in support of petitioners granted and 15 additional minutes allotted for that purpose. Respondents also allotted 15 additional minutes for oral argument.

No. 72-6902. GOODING *v.* UNITED STATES. C. A. D. C. Cir. [Certiorari granted, *ante*, p. 907.] Motion of petitioner for appointment of counsel granted. It is ordered that Herbert A. Rosenthal, Esquire, of Washington, D. C., a member of the Bar of this Court, be, and he is hereby, appointed to serve as counsel for petitioner in this case.

No. 73-187. KEWANEE OIL Co. *v.* BICRON CORP. ET AL. C. A. 6th Cir. [Certiorari granted, *ante*, p. 818.] Motion of petitioner with respect to limited printing of record granted.

No. 73-298. VELA ET AL. *v.* VOWELL, COMMISSIONER OF PUBLIC WELFARE OF TEXAS, ET AL. Appeal from D. C. W. D. Tex. The Solicitor General is invited to file a brief expressing the views of the United States.

414 U. S.

November 5, 1973

No. 75-5340. DIGGS *v.* PALMAN ET AL. Motion for leave to file petition for declaratory and mandatory relief denied.

No. 72-6921. RICHARDSON *v.* UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW MEXICO;

No. 73-5335. CAMPBELL *v.* WALKER, WARDEN; and

No. 73-5343. WILLIAMS *v.* HENDERSON, WARDEN. Motions for leave to file petitions for writs of habeas corpus denied.

*Certiorari Granted*

No. 72-1454. DAVIS *v.* UNITED STATES. C. A. 9th Cir. Certiorari granted. Reported below: 472 F. 2d 596.

No. 73-263. COMMISSIONER OF INTERNAL REVENUE *v.* IDAHO POWER Co. C. A. 9th Cir. Certiorari granted. Reported below: 477 F. 2d 688.

No. 72-1513. SHEA, EXECUTIVE DIRECTOR, DEPARTMENT OF SOCIAL SERVICES OF COLORADO, ET AL. *v.* VIALPANDO. C. A. 10th Cir. Motion of respondent for leave to proceed *in forma pauperis* and certiorari granted. Reported below: 475 F. 2d 731.

*Certiorari Denied.* (See also Nos. 72-1582, 73-10, and 72-6749, *supra.*)

No. 72-1428. ELLER ET AL. *v.* VAUGHNS ET AL.; and

No. 72-1737. BOARD OF EDUCATION OF PRINCE GEORGES COUNTY ET AL. *v.* VAUGHNS ET AL. C. A. 4th Cir. Certiorari denied.

No. 72-1499. TSOI *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied. Reported below: 489 S. W. 2d 103.

No. 72-1619. HARDY *v.* NORTH CAROLINA. Ct. App. N. C. Certiorari denied. Reported below: 17 N. C. App. 169, 193 S. E. 2d 459.

November 5, 1973

414 U.S.

No. 72-6750. *BOYD v. CARDWELL, WARDEN*. C. A. 6th Cir. Certiorari denied. Reported below: 477 F. 2d 597.

No. 72-6756. *BROWN v. WAINWRIGHT, CORRECTIONS DIRECTOR*. C. A. 5th Cir. Certiorari denied.

No. 72-6772. *BELL v. WAINWRIGHT, CORRECTIONS DIRECTOR*. C. A. 5th Cir. Certiorari denied. Reported below: 476 F. 2d 964.

No. 72-6791. *WATKINS v. NORTH CAROLINA*. Sup. Ct. N. C. Certiorari denied. Reported below: 283 N. C. 17, 194 S. E. 2d 800.

No. 72-6820. *REED v. CALDWELL, WARDEN*. C. A. 5th Cir. Certiorari denied.

No. 72-6846. *JARAMILLO v. NEW MEXICO*. Ct. App. N. M. Certiorari denied. Reported below: 85 N. M. 19, 508 P. 2d 1316.

No. 72-6847. *ATTWOOD v. PATTERSON, WARDEN, ET AL.* C. A. 10th Cir. Certiorari denied.

No. 72-6851. *DOVER v. NORTH CAROLINA*. Ct. App. N. C. Certiorari denied. Reported below: 17 N. C. App. 150, 193 S. E. 2d 477.

No. 73-19. *IN RE CROWNE*. Sup. Ct. Fla. Certiorari denied. Reported below: 276 So. 2d 477.

No. 73-156. *TEXAS v. BURKHALTER*. Ct. Crim. App. Tex. Certiorari denied. Reported below: 493 S. W. 2d 214.

No. 73-172. *FOWLER ET AL. v. GEORGIA*. Ct. App. Ga. Certiorari denied. Reported below: 128 Ga. App. 501, 197 S. E. 2d 502.

414 U.S.

November 5, 1973

No. 73-185. *BURNS v. UNITED STATES*;

No. 73-186. *MCCOLLUM ET AL. v. UNITED STATES*;  
and

No. 73-5179. *JENKINS v. UNITED STATES*. C. A. 2d  
Cir. Certiorari denied.

No. 73-193. *JEFFERSON v. UNITED STATES*. C. A. 4th  
Cir. Certiorari denied. Reported below: 480 F. 2d  
1004.

No. 73-198. *ABRAMS v. UNITED STATES*. C. A. 7th  
Cir. Certiorari denied. Reported below: 476 F. 2d  
1067.

No. 73-214. *CARDI v. UNITED STATES*. C. A. 7th Cir.  
Certiorari denied. Reported below: 478 F. 2d 1362.

No. 73-240. *CHRISTOPHER v. UNITED STATES*. C. A.  
6th Cir. Certiorari denied.

No. 73-257. *HAWKINS ET AL. v. NORTH CAROLINA  
BOARD OF DENTAL EXAMINERS*. Ct. App. N. C. Certio-  
rari denied. Reported below: 17 N. C. App. 378, 194  
S. E. 2d 540.

No. 73-264. *AMALGAMATED MEAT CUTTERS & BUTCHER  
WORKMEN OF NORTH AMERICA, AFL-CIO, ET AL. v. SAM  
KANE PACKING CO. ET AL.* C. A. 5th Cir. Certiorari  
denied. Reported below: 477 F. 2d 1128.

No. 73-266. *BORYS v. UNITED STATES*. Ct. Cl. Cer-  
tiorari denied. Reported below: 201 Ct. Cl. 597.

No. 73-268. *POLCOVER v. SECRETARY OF THE TREASURY  
ET AL.* C. A. D. C. Cir. Certiorari denied. Reported  
below: 155 U. S. App. D. C. 338, 477 F. 2d 1223.

November 5, 1973

414 U.S.

No. 73-269. *HEART OF THE BLACK HILLS STATIONS v. FEDERAL COMMUNICATIONS COMMISSION*. C. A. D. C. Cir. Certiorari denied.

No. 73-271. *ALVAREZ v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 476 F. 2d 280.

No. 73-276. *LANDRY v. HEMPHILL, NOYES & Co. ET AL.* C. A. 1st Cir. Certiorari denied. Reported below: 473 F. 2d 365.

No. 73-277. *MISSOURI PACIFIC RAILROAD Co. v. PETERS ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 483 F. 2d 490.

No. 73-278. *WESTINGHOUSE ELECTRIC CORP. v. NATIONAL LABOR RELATIONS BOARD*. C. A. 3d Cir. Certiorari denied.

No. 73-279. *RIZZO ET AL. v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 479 F. 2d 688.

No. 73-280. *CHRISTENSEN ET AL. v. NEW YORK TIMES Co. ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 478 F. 2d 374.

No. 73-282. *CHALONEC v. PRUDENTIAL LINES, INC.* C. A. 2d Cir. Certiorari denied.

No. 73-284. *AMALGAMATED LOCAL UNION 355 v. NATIONAL LABOR RELATIONS BOARD ET AL.* C. A. 3d Cir. Certiorari denied.

No. 73-286. *REESE v. KASSAB, SECRETARY, DEPARTMENT OF TRANSPORTATION OF PENNSYLVANIA, ET AL.* C. A. 3d Cir. Certiorari denied.

No. 73-288. *PRATT v. ALABAMA*. Ct. Crim. App. Ala. Certiorari denied. Reported below: 50 Ala. App. 275, 278 So. 2d 724.

414 U.S.

November 5, 1973

No. 73-290. *DOUGLAS v. ARIZONA*. Ct. App. Ariz. Certiorari denied. Reported below: 19 Ariz. App. 375, 507 P. 2d 987.

No. 73-291. *SPORTS DIVERSIFIED, INC. ET AL. v. NATIONAL BANK OF COMMERCE OF TULSA ET AL.* Ct. App. Okla. Certiorari denied.

No. 73-293. *CITY OF NORTH LAS VEGAS v. COUNTY OF CLARK, NEVADA, ET AL.* Sup. Ct. Nev. Certiorari denied. Reported below: — Nev. —, 504 P. 2d 1326.

No. 73-294. *ZIMMERMAN v. OHIO*. Sup. Ct. Ohio. Certiorari denied.

No. 73-299. *MESA OIL Co. v. BUSINESS MEN'S ASSURANCE COMPANY OF AMERICA*. C. A. 9th Cir. Certiorari denied. Reported below: 476 F. 2d 491.

No. 73-301. *HOWARD, TRUSTEE v. COUNTY OF WELD ET AL.* C. A. 10th Cir. Certiorari denied.

No. 73-302. *DEUTSCHE DAMPFSCHEIFF. GES. "HANSA" v. CUMMINS SALES & SERVICE, INC., ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 476 F. 2d 498.

No. 73-303. *MARTIN, TRUSTEE IN BANKRUPTCY v. MIZRAHI ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 475 F. 2d 801.

No. 73-308. *COTA v. CHANDLER ET AL.* Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 73-310. *ALLEN v. VIRGINIA*. Sup. Ct. Va. Certiorari denied.

No. 73-311. *SMITH v. CALIFORNIA*. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 73-313. *FRASER v. CONTINENTAL REALTY CORP. ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 474 F. 2d 1341.

November 5, 1973

414 U. S.

No. 73-316. NATIONAL ASSOCIATION OF WOMEN'S & CHILDREN'S APPAREL SALESMEN, INC., ET AL. *v.* FEDERAL TRADE COMMISSION. C. A. 5th Cir. Certiorari denied. Reported below: 479 F. 2d 139.

No. 73-319. CLARK ET AL. *v.* UNITED BANK OF DENVER NATIONAL ASSN. ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 480 F. 2d 235.

No. 73-322. BAUM ET AL. *v.* LEFRAK FOREST HILLS CORP. ET AL. Ct. App. N. Y. Certiorari denied. Reported below: 32 N. Y. 2d 796, 298 N. E. 2d 685.

No. 73-323. HEGYES *v.* SOUTH RIVER RESCUE SQUAD. C. A. 6th Cir. Certiorari denied.

No. 73-329. MARRA *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 481 F. 2d 1196.

No. 73-330. RUIZ *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 477 F. 2d 918.

No. 73-331. SALIK ET AL. *v.* UNITED CALIFORNIA BANK. C. A. 9th Cir. Certiorari denied.

No. 73-333. INDIANA REAL ESTATE COMMISSION ET AL. *v.* SATOSKAR. C. A. 7th Cir. Certiorari denied.

No. 73-338. CARR *v.* VANN, COUNTY COMMISSIONER OF THOMAS COUNTY, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 477 F. 2d 594.

No. 73-349. WINEGLASS RANCHES, INC., ET AL. *v.* FEDERAL DEPOSIT INSURANCE CORP. C. A. 9th Cir. Certiorari denied.

No. 73-5009. MEAD *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

414 U. S.

November 5, 1973

No. 73-5013. *HOLTZINGER v. ESTELLE, CORRECTIONS DIRECTOR*. C. A. 5th Cir. Certiorari denied.

No. 73-5016. *SAXON v. WOLFF, WARDEN*. C. A. 8th Cir. Certiorari denied.

No. 73-5021. *HESBETT, AKA McIVER v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 477 F. 2d 566.

No. 73-5044. *CUTHRELL v. DIRECTOR, PATUXENT INSTITUTION*. C. A. 4th Cir. Certiorari denied. Reported below: 475 F. 2d 1364.

No. 73-5065. *MILLS v. ESTELLE, CORRECTIONS DIRECTOR*. C. A. 5th Cir. Certiorari denied. Reported below: 477 F. 2d 124.

No. 73-5091. *PERRY v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 478 F. 2d 1276.

No. 73-5095. *HILL v. CARDWELL, WARDEN*. C. A. 6th Cir. Certiorari denied.

No. 73-5105. *EASLEY v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 475 F. 2d 1401.

No. 73-5110. *WILLIAMSON ET AL. v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 480 F. 2d 927.

No. 73-5111. *SHARPE v. UNITED STATES*. C. A. 6th Cir. Certiorari denied.

No. 73-5117. *BLANK v. UNITED STATES*;

No. 73-5145. *GORNISH v. UNITED STATES*; and

No. 73-5177. *WEINBERG v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 478 F. 2d 1351.

November 5, 1973

414 U.S.

- No. 73-5126. *FLEMMONS v. UNITED STATES*. C. A. 6th Cir. Certiorari denied.
- No. 73-5127. *FLEMMONS v. UNITED STATES*. C. A. 6th Cir. Certiorari denied.
- No. 73-5128. *HARLAN v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 480 F. 2d 515.
- No. 73-5130. *ZWILLICH v. CITY OF NEW YORK ET AL.* C. A. 2d Cir. Certiorari denied.
- No. 73-5132. *DIXON v. UNITED STATES*; and  
No. 73-5191. *FANNING ET AL. v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 477 F. 2d 45.
- No. 73-5137. *RICKUS ET AL. v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 480 F. 2d 919.
- No. 73-5139. *ORAND, AKA BEAR v. UNITED STATES*. C. A. 9th Cir. Certiorari denied.
- No. 73-5148. *HARDISON v. ROSE, WARDEN, ET AL.* C. A. 6th Cir. Certiorari denied.
- No. 73-5149. *BEASLEY v. ESTELLE, CORRECTIONS DIRECTOR*. C. A. 5th Cir. Certiorari denied. Reported below: 480 F. 2d 922.
- No. 73-5150. *O'BRIEN v. CALIFORNIA*. Ct. App. Cal., 2d App. Dist. Certiorari denied.
- No. 73-5154. *BROWN v. UNITED STATES*. C. A. 1st Cir. Certiorari denied.
- No. 73-5167. *ESQUER v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 459 F. 2d 431.
- No. 73-5170. *CHINN v. MISSISSIPPI*. Sup. Ct. Miss. Certiorari denied. Reported below: 276 So. 2d 456.

414 U. S.

November 5, 1973

No. 73-5176. RILEY *v.* LAVALLEE, CORRECTIONAL SUPERINTENDENT. C. A. 2d Cir. Certiorari denied.

No. 73-5182. HOUSDEN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 480 F. 2d 921.

No. 73-5184. ANDERSON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 73-5189. MARTINEZ-RODRIGUEZ ET AL. *v.* IMMIGRATION AND NATURALIZATION SERVICE. C. A. 9th Cir. Certiorari denied.

No. 73-5197. KACZYNSKI *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 73-5200. PETERSON *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 157 U. S. App. D. C. 219, 483 F. 2d 1222.

No. 73-5208. NEWMAN *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 481 F. 2d 222.

No. 73-5213. FAWCETT ET AL. *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 481 F. 2d 1406.

No. 73-5216. BENEDETTO *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 73-5220. CURRY *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 73-5222. WALKER *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 304 A. 2d 290.

No. 73-5224. WALTERS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 477 F. 2d 386.

No. 73-5227. WILCOXSON *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

November 5, 1973

414 U.S.

No. 73-5239. *ABERCROMBIE v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 480 F. 2d 961.

No. 73-5242. *BRUCE v. CACHERIS ET AL.* C. A. 4th Cir. Certiorari denied.

No. 73-5246. *HARRIS v. RHODE ISLAND*. Sup. Ct. R. I. Certiorari denied. Reported below: 111 R. I. 147, 300 A. 2d 267.

No. 73-5247. *MILES v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 480 F. 2d 1217.

No. 73-5248. *PALMER v. UNITED STATES*. C. A. D. C. Cir. Certiorari denied.

No. 73-5249. *MACK v. UNITED STATES*. C. A. D. C. Cir. Certiorari denied.

No. 73-5252. *SWEENEY v. HENDERSON, CORRECTIONAL SUPERINTENDENT*. C. A. 2d Cir. Certiorari denied.

No. 73-5253. *RESNICK v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 483 F. 2d 354.

No. 73-5254. *McKINLEY v. UNITED STATES*. C. A. 9th Cir. Certiorari denied.

No. 73-5255. *BACA v. UNITED STATES*. C. A. 10th Cir. Certiorari denied. Reported below: 480 F. 2d 199.

No. 73-5262. *GIBSON v. ZIEGELE, PRISON SUPERINTENDENT*. C. A. 3d Cir. Certiorari denied. Reported below: 479 F. 2d 773.

No. 73-5263. *MITCHELL ET AL. v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 481 F. 2d 1402.

No. 73-5264. *LEWIS v. JOHNSON ET AL.* C. A. 3d Cir. Certiorari denied. Reported below: 480 F. 2d 920.

414 U. S.

November 5, 1973

No. 73-5266. *IMPSON v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 482 F. 2d 197.

No. 73-5267. *JOHNSON v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 478 F. 2d 1401.

No. 73-5268. *JOHNSON v. DAILEY*. C. A. 8th Cir. Certiorari denied. Reported below: 479 F. 2d 86.

No. 73-5270. *CLAY v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 481 F. 2d 133.

No. 73-5271. *TAYLOR ET AL. v. UNITED STATES*. C. A. 9th Cir. Certiorari denied.

No. 73-5274. *TYRA ET AL. v. TEXAS*. Ct. Crim. App. Tex. Certiorari denied. Reported below: 496 S. W. 2d 75.

No. 73-5275. *GRECO v. NEBRASKA*. Sup. Ct. Neb. Certiorari denied. Reported below: 189 Neb. 817, 205 N. W. 2d 550.

No. 73-5276. *SELLERS v. VANCE, DISTRICT ATTORNEY OF HARRIS COUNTY, ET AL.* C. A. 5th Cir. Certiorari denied.

No. 73-5277. *PATTERSON v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 481 F. 2d 1401.

No. 73-5279. *EVANS v. VINCENT, CORRECTIONAL SUPERINTENDENT*. C. A. 2d Cir. Certiorari denied.

No. 73-5281. *BLOETH v. MONTANYE, CORRECTIONAL SUPERINTENDENT*. App. Div., Sup. Ct. N. Y., 4th Jud. Dept. Certiorari denied.

No. 73-5285. *GRANATO v. TEXAS*. Ct. Crim. App. Tex. Certiorari denied. Reported below: 493 S. W. 2d 822.

November 5, 1973

414 U. S.

No. 73-5286. *CHATMAN ET AL. v. ARIZONA*. Sup. Ct. Ariz. Certiorari denied. Reported below: 109 Ariz. 275, 508 P. 2d 739.

No. 73-5287. *JOHNSON v. UNITED STATES*. C. A. 9th Cir. Certiorari denied.

No. 73-5289. *WILLIAMS v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 481 F. 2d 339.

No. 73-5291. *COLLINS ET AL. v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 478 F. 2d 837.

No. 73-5294. *ESSER v. SCOTT ET AL.* C. A. 3d Cir. Certiorari denied.

No. 73-5295. *GOMORI v. UNITED STATES*. C. A. 4th Cir. Certiorari denied.

No. 73-5298. *SLAUGHTER v. CALIFORNIA*. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 73-5300. *WILLIAMS v. PROCUNIER, CORRECTIONS DIRECTOR*. C. A. 9th Cir. Certiorari denied.

No. 73-5301. *HARRISON v. NEW YORK*. Ct. App. N. Y. Certiorari denied.

No. 73-5307. *HINES v. ALABAMA*. Ct. Crim. App. Ala. Certiorari denied. Reported below: 50 Ala. App. 161, 277 So. 2d 905.

No. 73-5310. *ATONICK v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 481 F. 2d 935.

No. 73-5312. *BEDGOOD v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 477 F. 2d 595.

No. 73-5329. *SORIO v. CALIFORNIA*. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 73-5332. *MONSOUR v. CADY, WARDEN*. C. A. 7th Cir. Certiorari denied.

414 U. S.

November 5, 1973

No. 73-5333. *GRECO v. UNITED STATES*. C. A. 7th Cir. Certiorari denied.

No. 73-5350. *WAHRLICH v. ARIZONA ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 479 F. 2d 1137.

No. 73-5351. *HUNT v. ARIZONA*. C. A. 9th Cir. Certiorari denied.

No. 73-5363. *HARRINGTON v. NORTH CAROLINA*. Sup. Ct. N. C. Certiorari denied. Reported below: 283 N. C. 527, 196 S. E. 2d 742.

No. 72-1624. *CLAYTOR v. RUNGE ET AL.* C. A. 9th Cir. Motion to dispense with printing petition granted. Certiorari denied.

No. 72-6918. *MOORE v. NEW YORK*. Ct. App. N. Y. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 32 N. Y. 2d 67, 295 N. E. 2d 780.

No. 72-6933. *BETHEL v. FLORIDA*. Sup. Ct. Fla. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 275 So. 2d 254.

No. 73-109. *MILLENSON v. NEW HOTEL MONTELEONE, INC.* C. A. 5th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 475 F. 2d 736.

No. 73-325. *BROWN ET UX. v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari.

No. 73-5012. *MAUCH v. SALMON, JUDGE*. Sup. Ct. Mich. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari.

November 5, 1973

414 U. S.

No. 73-5183. *TAYLOR v. INDIANA*. Sup. Ct. Ind. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: — Ind. —, 295 N. E. 2d 600.

No. 73-5207. *HUDSON v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 479 F. 2d 251.

No. 73-5302. *WEBB v. UNITED STATES*. C. A. 10th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 466 F. 2d 190.

No. 73-34. *ROSS ET AL. v. MOBIL OIL CORP. ET AL.* C. A. 5th Cir. Motion for leave to substitute Mrs. John Ross et al. in place of John Ross, deceased, as party petitioners granted. Motion to dispense with printing petition granted. Certiorari denied. Reported below: 474 F. 2d 989.

No. 73-56. *WILLIAMS v. TEXAS*. Ct. Crim App. Tex. Motion to dispense with printing petition granted. Motion of respondent to dispense with printing brief in opposition denied. Certiorari denied. Reported below: 492 S. W. 2d 522.

No. 73-258. *UNITED STATES v. SCAFO*. C. A. 2d Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 480 F. 2d 1312.

No. 73-262. *RAMIREZ ET AL. v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 480 F. 2d 76.

MR. JUSTICE DOUGLAS, dissenting.

I would grant and reverse for the reasons set forth by Judge Hufstедler in the Court of Appeals, 480 F. 2d 76.

414 U. S.

November 5, 1973

The majority had affirmed on *Bradley v. United States*, 410 U. S. 605. Judge Hufstedler said:

“Section 1103 (a) of the Comprehensive Drug Abuse Prevention and Control Act of 1970 provides in pertinent part: ‘Prosecutions for any violation of law occurring prior to the effective date of [the Act] shall not be affected by the repeals . . . made by [it] or abated by reason thereof.’ The keystone of the *Bradley* rationale is its construction of the word ‘prosecutions’ in section 1103 (a) as ‘clearly import[ing] a beginning and an end.’ The ‘end,’ as *Bradley* squarely held, is the conclusion of sentencing. The ‘beginning’ of a prosecution is the return of an indictment. These indictments were returned after section 176a had been repealed. There was no prosecution to be saved by section 1103 (a). *Bradley* means that any prosecution initiated before repeal of the statute carries with it the old section 176a penalty. Conversely, any prosecution under section 176a begun after repeal of section 176a for the substantive offense committed before repeal carries with it the milder penalties of the successor statute.

“The substantive offense was specifically saved. Prosecutions initiated before repeal were ‘not . . . affected’ or ‘abated.’ Prosecutions begun after repeal of section 176a could be neither affected nor abated, because they were nonexistent when the old statute was repealed.” 480 F. 2d, at 79.

That is my view.

No. 73-337. SEVEN-UP CO. *v.* FEDERAL TRADE COMMISSION ET AL. C. A. 8th Cir. Certiorari denied. MR. JUSTICE STEWART took no part in the consideration or decision of this petition. Reported below: 478 F. 2d 755.

November 5, 1973

414 U.S.

No. 73-5201. DELLE ROSE *v.* LAVALLEE, CORRECTIONAL SUPERINTENDENT. C. A. 2d Cir. Certiorari denied.

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

By an earlier *per curiam* opinion in this case, this Court reversed the judgment of the Court of Appeals which had affirmed a District Court judgment granting Delle Rose's petition for a writ of habeas corpus. See *LaVallee v. Delle Rose*, 410 U. S. 690 (1973). In the view of a majority of the Court, the courts below erred in holding that the state courts had not made an "adequate" determination within the meaning of 28 U. S. C. § 2254 (d) that Delle Rose's confession was voluntary. Since an "adequate" state court determination had been made, the District Court was wrong in imposing on the State the burden of showing voluntariness by a preponderance of the evidence. Rather, under the terms of the presumption in § 2254 (d), the burden was on Delle Rose "to establish in the District Court by convincing evidence that the state court's determination was erroneous." 410 U. S., at 695. The Court therefore remanded the case "for further proceedings consistent with this opinion"—presumably referring to a redetermination by the District Court of the voluntariness issue under a corrected allocation of the burden of proof.

Upon receiving the mandate from this Court, however, the Court of Appeals did not remand the case to the District Court for such a redetermination. Instead, without explanation, it remanded with instructions to dismiss the petition. In my view, the Court of Appeals thereby not only misconstrued this Court's opinion, but also deprived petitioner of his constitutional and statutory right to attempt "to establish by convincing evidence

1014

MARSHALL, J., dissenting

that the factual determination by the State court was erroneous." 28 U. S. C. § 2254 (d).

At the outset, it seems clear from a reading of the earlier *per curiam* decision that this Court never even addressed, let alone decided, the question of whether petitioner had satisfied his burden of proving erroneous the state court finding of voluntariness. Nor would it have been proper to have done so. Neither the District Court nor the Court of Appeals had yet confronted the question, having mistakenly placed the burden of proof on the State. As we have said in similar circumstances, "it is not our function to deal with this issue in the first instance." *Swenson v. Stidham*, 409 U. S. 224, 231 (1972).

This case would not be so troublesome but for the fact that the record indicates that the District Court might well find the confession involuntary, even were the burden of proof assigned to petitioner. Indeed, in granting the petition in the first place, the District Court remarked: "Far from satisfying the State's burden of showing voluntariness by a preponderance, the evidence preponderates heavily the other way." *United States ex rel. Delle Rose v. LaVallee*, 342 F. Supp. 567, 574 (SDNY 1972) (citation omitted). And certainly there is ample evidence in the record to support that factual finding. In the words of the District Court, this was

"a case of a man of little education and poor understanding of the language; racked with physical pain and psychological distress; weakened by hunger and lack of sleep; questioned for long hours by teams of vigorous and increasingly hostile officers; not told of his rights to silence, counsel, etc., but given by tone and manner to understand that each questioner 'has a right to, and expects, an

answer'; shoved before television cameras after six hours or so of being moved about and assailed by his questioners in the police station; subjected to the coercion of a reenactment (including the forced placement of his hand into the seat back torn by the lethal pellets and wet with his late wife's blood) which he perceived with powerful reason as compulsory, hostile and ultimately damaging to his claims of innocence; then, finally, overpowered by the macabre—if, fortunately, rare—stunt of a visit to the morgue, with pious explanations thereafter . . . that serve only to highlight the quality of relentless manipulation." *Id.*, at 574–575 (footnotes omitted).

It may be that the Court of Appeals did not feel that petitioner had satisfied his burden of proof. But again, the question was not for that court in the first instance, but rather for the District Judge, to whose "sound discretion must be left in very large part the administration of federal habeas corpus." *Townsend v. Sain*, 372 U. S. 293, 313 (1963). Of course, any factual finding by the District Court would be subject to review by the Court of Appeals under the "clearly erroneous" standard of Fed. Rule Civ. Proc. 52 (a). In the first instance, however, the factual finding belongs to the trier of fact, the court which had an opportunity to hear petitioner's story and observe his demeanor, not a court of appeals.

By preventing the District Court from considering whether petitioner could prove by convincing evidence that the state court determination of voluntariness was erroneous, the Court of Appeals, now with this Court's acquiescence, in effect turned the presumption of correctness in § 2254 (d) into an irrebuttable presumption. In my view, such a result plainly foreclosed petitioner's constitutionally guaranteed opportunity to seek relief

414 U. S.

November 5, 12, 1973

on federal habeas corpus upon proving that his detention violates his fundamental rights. See *Townsend v. Sain, supra*, at 312. I would grant the writ of certiorari, reverse the judgment of the Court of Appeals, and remand the case to the District Court with instructions to reconsider, under the burden of proof set forth in this Court's earlier *per curiam* opinion, whether petitioner's confession was voluntary. I respectfully dissent.

*Rehearing Denied*

No. 72-6798. GERNAND *v.* UNITED STATES, *ante*, p. 844. Petition for rehearing denied.

No. 72-1440. OLENZ *v.* MAROVITZ, U. S. DISTRICT JUDGE, ET AL., *ante*, p. 877. Motion to dispense with printing petition for rehearing granted. Petition for rehearing denied.

NOVEMBER 12, 1973

*Affirmed on Appeal*

No. 73-359. PENNSYLVANIA ET AL. *v.* UNITED STATES ET AL. Affirmed on appeal from D. C. M. D. Pa. Reported below: 361 F. Supp. 208.

*Appeal Dismissed*

No. 73-378. FULD ET AL. *v.* ELLIOTT, CHAIRMAN, CITY PLANNING COMMISSION, ET AL. Appeal from Ct. App. N. Y. dismissed for want of substantial federal question.

*Certiorari Granted—Affirmed.* (See Nos. 72-1733 and 72-6748, *ante*, p. 31.)

*Certiorari Granted—Vacated and Remanded*

No. 73-270. EAKES *v.* SOUTH DAKOTA. Sup. Ct. S. D. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Miller v. California*, 413 U. S. 15 (1973); *Paris Adult Theatre I v. Slaton*, 413 U. S. 49 (1973); *Kaplan v. California*, 413 U. S. 115

(1973); *United States v. 12 200-Ft. Reels of Film*, 413 U. S. 123 (1973); *United States v. Orito*, 413 U. S. 139 (1973); *Heller v. New York*, 413 U. S. 483 (1973); *Roaden v. Kentucky*, 413 U. S. 496 (1973); and *Alexander v. Virginia*, 413 U. S. 836 (1973). MR. JUSTICE DOUGLAS, being of the view that state obscenity regulation is prohibited by the Fourteenth and First Amendments (see *Paris Adult Theatre I v. Slaton*, 413 U. S. 49, 70 (DOUGLAS, J., dissenting)), would grant certiorari in this case and reverse the judgment of conviction. Reported below: — S. D. —, 206 N. W. 2d 272.

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

Petitioner was convicted on charges of possessing with intent to exhibit an obscene film in violation of S. D. Comp. Laws Ann. § 22-24-12 (Supp. 1973), which provides as follows:

“Every person who knowingly sends or causes to be sent, or brings or causes to be brought, by any means, into this state for sale or distribution, or in this state, prepares, writes, composes, stereotypes, prints, publishes, sells, offers to sell, keeps for sale, exhibits, makes, distributes, offers to distribute, or has in his possession with intent to distribute, or to exhibit or to offer to exhibit, any obscene matter, is guilty of a misdemeanor.”

Obscenity for purposes of § 22-24-12 is defined by § 22-24-11 (1) as

“that which, by contemporary standards as hereinafter set forth, considered as a whole, has as its dominant theme or purpose an appeal to prurient interest.”

It is my view that “at least in the absence of distribu-

414 U.S.

November 12, 1973

tion to juveniles or obtrusive exposure to unconsenting adults, the First and Fourteenth Amendments prohibit the State and Federal Governments from attempting wholly to suppress sexually oriented materials on the basis of their allegedly 'obscene' contents." *Paris Adult Theatre I v. Slaton*, 413 U. S. 49, 113 (1973) (BRENNAN, J., dissenting). It is clear that, tested by that constitutional standard, § 22-24-12, in conjunction with § 22-24-11 (1), is constitutionally overbroad and therefore invalid on its face. For the reasons stated in my dissent in *Miller v. California*, 413 U. S. 15, 47 (1973), I would therefore grant certiorari, vacate the judgment of the Supreme Court of South Dakota, and remand for further proceedings not inconsistent with my dissent in *Paris Adult Theatre I*. In that circumstance, I have no occasion to consider whether the questions presented in the petition merit plenary review. See *Heller v. New York*, 413 U. S. 483, 494 (1973) (BRENNAN, J., dissenting).

No. 73-5054. *BUSH v. UNITED STATES*. C. A. 7th Cir. Motion for leave to proceed *in forma pauperis* and petition for writ of certiorari granted. On representation of the Solicitor General set forth in his memorandum for the United States filed October 17, 1973, judgment vacated and case remanded for reconsideration in light of the position presently asserted by the Government. Reported below: 476 F. 2d 1094.

#### *Miscellaneous Orders*

No. A-472. *BANKS v. HOLDER*, U. S. DISTRICT JUDGE. C. A. 7th Cir. Application for acceleration of filing of petitions for writs of certiorari presented to MR JUSTICE REHNQUIST, and by him referred to the Court, denied.

No. D-16. *IN RE DISBARMENT OF MADES*. It is ordered that Herbert S. Mades of Winthrop, Massachusetts, be suspended from the practice of law in this Court

November 12, 1973

414 U. S.

and that a rule issue returnable within 40 days requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D-17. *IN RE DISBARMENT OF ENGLERT*. It is ordered that Charles E. Englert of Boston, Massachusetts, be suspended from the practice of law in this Court and that a rule issue returnable within 40 days requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D-18. *IN RE DISBARMENT OF STANTON*. It is ordered that John J. Stanton of Boston, Massachusetts, be suspended from the practice of law in this Court and that a rule issue returnable within 40 days requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. 72-1125. *ALLEE ET AL. v. MEDRANO ET AL.* Appeal from D. C. S. D. Tex. [Probable jurisdiction noted, 411 U. S. 963.] Motion of Mexican American Legal Defense and Educational Fund for leave to file an untimely brief as *amicus curiae* denied.

No. 72-1660. *BLACKLEDGE, WARDEN, ET AL. v. PERRY*. C. A. 4th Cir. [Certiorari granted, *ante*, p. 908.] Motions of respondent for leave to proceed *in forma pauperis* and for appointment of counsel granted. It is ordered that James E. Keenan, Esquire, of Durham, North Carolina, a member of the Bar of this Court be, and he is hereby, appointed to serve as counsel for respondent in this case.

No. 73-297. *ALLIANCE FOR CONSUMER PROTECTION, HILL DISTRICT BRANCH, ET AL. v. MILK MARKETING BOARD OF PENNSYLVANIA ET AL.* Pa. Commw. Ct. Motion to dispense with printing petition denied with leave to file a printed petition in conformity with Rule 39

414 U.S.

November 12, 1973

of the Rules of this Court on or before December 12, 1973.

No. 73-5121. *BANKSTON v. SALCINES ET AL.* D. C. M. D. Fla. Motion for leave to file petition for writ of certiorari denied.

No. 73-5392. *KOCHEL v. UNITED STATES*;

No. 73-5419. *WION v. ATTORNEY GENERAL OF THE UNITED STATES ET AL.*; and

No. 73-5465. *HIGHTOWER v. MICHIGAN ET AL.* Motions for leave to file petitions for writs of habeas corpus denied.

No. 73-368. *HERNANDEZ v. BROWN, CHIEF JUDGE, U. S. COURT OF APPEALS, ET AL.*;

No. 73-5365. *MAGEE v. NELSON, WARDEN, ET AL.*; and

No. 73-5379. *O'CLAIR v. EDENFIELD, U. S. DISTRICT JUDGE.* Motions for leave to file petitions for writs of mandamus denied.

No. 72-1613. *HUFFMAN ET AL. v. UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OHIO ET AL.*; and

No. 73-5486. *O'CLAIR v. FREEMAN, U. S. DISTRICT JUDGE.* Motions for leave to file petitions for writs of mandamus and/or prohibition denied.

*Certiorari Granted*

No. 73-328. *LEHMAN v. CITY OF SHAKER HEIGHTS ET AL.* Sup. Ct. Ohio. Certiorari granted. Reported below: 34 Ohio St. 2d 143, 296 N. E. 2d 683.

*Certiorari Denied*

No. 72-1388. *SELENBERG v. LOUISIANA STATE BAR ASSN.* Sup. Ct. La. Certiorari denied. Reported below: 270 So. 2d 848.

November 12, 1973

414 U.S.

No. 72-1657. *F. H. McGRAW & Co. v. FELLOWS CORP.* C. A. 3d Cir. Certiorari denied. Reported below: 473 F. 2d 465.

No. 72-1719. *BENDER v. UNITED STATES.* Ct. Cl. Certiorari denied. Reported below: 201 Ct. Cl. 865.

No. 72-6710. *BJERKAN v. UNITED STATES.* C. A. 7th Cir. Certiorari denied. Reported below: 474 F. 2d 1351.

No. 72-6764. *FITZGERALD v. WILLIAMS.* Ct. App. D. C. Certiorari denied.

No. 72-6874. *NICHOLS v. CLANON, PRISON SUPERINTENDENT.* Sup. Ct. Cal. Certiorari denied.

No. 72-6892. *HEBERLING v. WYOMING.* Sup. Ct. Wyo. Certiorari denied. Reported below: 507 P. 2d 1.

No. 73-46. *NEW ORLEANS STEAMSHIP ASSN. v. GENERAL LONGSHORE WORKERS, I. L. A., LOCAL UNION NO. 1418 ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 474 F. 2d 1345.

No. 73-72. *PEERLESS PRESSED METAL CORP. v. INTERNATIONAL UNION OF ELECTRICAL, RADIO & MACHINE WORKERS, AFL-CIO, ET AL.* C. A. 1st Cir. Certiorari denied. Reported below: See 451 F. 2d 19.

No. 73-140. *AGRASHELL, INC. v. HAMMONS PRODUCTS Co.* C. A. 8th Cir. Certiorari denied. Reported below: 479 F. 2d 269.

No. 73-146. *WINN v. FLORIDA STATE BOARD OF NURSING.* Dist. Ct. App. Fla., 1st Dist. Certiorari denied.

No. 73-178. *BOARD OF EDUCATION OF THE CITY OF CHATTANOOGA, TENNESSEE, ET AL. v. MAPP ET AL.;* and

No. 73-188. *BOARD OF COMMISSIONERS OF THE CITY OF CHATTANOOGA ET AL. v. MAPP ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 477 F. 2d 851.

414 U.S.

November 12, 1973

- No. 73-196. *SCLAFANI v. UNITED STATES*; and  
No. 73-351. *ROSS v. UNITED STATES*. C. A. 2d Cir.  
Certiorari denied. Reported below: 487 F. 2d 245.
- No. 73-201. *TRACEY v. JANCO, SHERIFF*. C. A. 4th  
Cir. Certiorari denied.
- No. 73-260. *ANDREWS v. UNITED STATES*. C. A. 5th  
Cir. Certiorari denied. Reported below: 478 F. 2d 1401.
- No. 73-267. *BARAL v. UNITED STATES*. Ct. Cl. Cer-  
tiorari denied. Reported below: 200 Ct. Cl. 741.
- No. 73-304. *CIANCIOTTI ET AL. v. UNITED STATES*.  
C. A. D. C. Cir. Certiorari denied.
- No. 73-305. *HOLLEY v. UNITED STATES ET AL.* C. A.  
6th Cir. Certiorari denied.
- No. 73-309. *LAGATTUTA ET AL. v. UNITED STATES*.  
C. A. 3d Cir. Certiorari denied.
- No. 73-314. *CRAIG, ADMINISTRATRIX v. UNITED  
STATES ET AL.* C. A. 9th Cir. Certiorari denied. Re-  
ported below: 479 F. 2d 35.
- No. 73-315. *BROWN v. UNITED STATES*. C. A. 4th  
Cir. Certiorari denied.
- No. 73-317. *CHAMBERS v. WASHINGTON*. Sup. Ct.  
Wash. Certiorari denied. Reported below: 81 Wash.  
2d 929, 506 P. 2d 311.
- No. 73-321. *MUSGRAVE v. UNITED STATES*. C. A. 5th  
Cir. Certiorari denied. Reported below: 483 F. 2d 327.
- No. 73-332. *SUPERIOR COURT OF NEW JERSEY, LAW  
DIVISION, PASSAIC COUNTY, ET AL. v. RUSSO*. C. A. 3d  
Cir. Certiorari denied. Reported below: 483 F. 2d 7.

November 12, 1973

414 U.S.

No. 73-343. *DONLON ET UX. v. INTERNAL REVENUE SERVICE*. C. A. 3d Cir. Certiorari denied. Reported below: 479 F. 2d 317.

No. 73-350. *WATSON v. NEVADA NATIONAL BANK*. C. A. 9th Cir. Certiorari denied.

No. 73-353. *ABBOTT ET AL. v. UNITED STATES*. Ct. Cl. Certiorari denied. Reported below: 200 Ct. Cl. 384.

No. 73-355. *MAY v. ARKANSAS*. Sup. Ct. Ark. Certiorari denied. Reported below: 254 Ark. 194, 492 S. W. 2d 888.

No. 73-356. *RIVA v. IMMIGRATION AND NATURALIZATION SERVICE*. C. A. 3d Cir. Certiorari denied.

No. 73-357. *2,431.4 ACRES OF LAND, MORE OR LESS, SITUATED IN HANCOCK COUNTY, MISSISSIPPI, ET AL. v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 473 F. 2d 1389.

No. 73-358. *JONES ET UX. v. CREDIT BUREAU OF NASHVILLE*. C. A. 6th Cir. Certiorari denied.

No. 73-363. *NIX v. GRAND LODGE OF THE INTERNATIONAL ASSOCIATION OF MACHINISTS & AEROSPACE WORKERS*. C. A. 5th Cir. Certiorari denied. Reported below: 479 F. 2d 382.

No. 73-365. *O'CONNOR v. O'CONNOR ET AL.* Dist. Ct. App. Fla., 3d Dist. Certiorari denied. Reported below: 274 So. 2d 546.

No. 73-367. *LOSERS, INC., ET AL. v. SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES*. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 73-371. *WELLS v. FLORIDA*. Dist. Ct. App. Fla., 3d Dist. Certiorari denied. Reported below: 270 So. 2d 399.

414 U. S.

November 12, 1973

No. 73-372. *HARVEY v. SAULNIER ET AL.* C. A. 3d Cir. Certiorari denied.

No. 73-373. *ALASKA BARITE CO. v. NATIONAL LABOR RELATIONS BOARD.* C. A. 9th Cir. Certiorari denied.

No. 73-385. *WOMACK v. UNITED STATES.* C. A. 5th Cir. Certiorari denied. Reported below: 483 F. 2d 327.

No. 73-387. *MOBIL OIL CORP. v. WOOLARD ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 479 F. 2d 557.

No. 73-388. *JENNINGS v. BOENNING & Co. ET AL.* C. A. 3d Cir. Certiorari denied. Reported below: 482 F. 2d 1128.

No. 73-5011. *COSTELLO v. WAINWRIGHT, CORRECTIONS DIRECTOR.* Sup. Ct. Fla. Certiorari denied.

No. 73-5024. *RODRIGUEZ v. NEW MEXICO.* C. A. 10th Cir. Certiorari denied.

No. 73-5052. *SMITH v. TEXAS.* Ct. Crim. App. Tex. Certiorari denied. Reported below: 491 S. W. 2d 924.

No. 73-5116. *NORRIS v. ESTELLE, CORRECTIONS DIRECTOR.* C. A. 5th Cir. Certiorari denied. Reported below: 477 F. 2d 595.

No. 73-5164. *BROWN v. CARDWELL, WARDEN.* C. A. 6th Cir. Certiorari denied.

No. 73-5165. *SUMMERVILLE v. BRITTON, REFORMATORY SUPERINTENDENT.* C. A. 8th Cir. Certiorari denied.

No. 73-5196. *BROOKS v. UNITED STATES.* C. A. 6th Cir. Certiorari denied.

No. 73-5218. *WILLIAMS v. UNITED STATES.* C. A. 4th Cir. Certiorari denied. Reported below: 479 F. 2d 1138.

November 12, 1973

414 U.S.

No. 73-5240. *HAMLET v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 480 F. 2d 556.

No. 73-5283. *MAYFIELD v. WEINBERGER, SECRETARY OF HEALTH, EDUCATION, AND WELFARE*. C. A. 5th Cir. Certiorari denied. Reported below: 477 F. 2d 594.

No. 73-5293. *CONNER v. BRIERLEY, CORRECTIONAL SUPERINTENDENT*. C. A. 3d Cir. Certiorari denied.

No. 73-5296. *CASTANEDA-CAMPOS v. UNITED STATES*. C. A. 9th Cir. Certiorari denied.

No. 73-5304. *MADDEN v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 482 F. 2d 850.

No. 73-5306. *WHITMAN v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 480 F. 2d 1028.

No. 73-5309. *McKENNA v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 478 F. 2d 1406.

No. 73-5318. *HARRIS ET AL. v. UNITED STATES*. C. A. 3d Cir. Certiorari denied.

No. 73-5319. *WILLIAMS v. UNITED STATES*. C. A. 8th Cir. Certiorari denied.

No. 73-5320. *OGLESBY v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 482 F. 2d 213.

No. 73-5326. *LYON v. UNITED STATES*; and

No. 73-5330. *IRION v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 482 F. 2d 1240.

No. 73-5328. *DYER v. NELSON, WARDEN*. Sup. Ct. Cal. Certiorari denied.

414 U.S.

November 12, 1973

No. 73-5334. *DURHAM v. MACDONALD*. C. A. 8th Cir. Certiorari denied.

No. 73-5336. *OLDEN v. MCCARTHY*. C. A. 9th Cir. Certiorari denied.

No. 73-5352. *SAILER v. CALIFORNIA ADULT AUTHORITY*. Sup. Ct. Cal. Certiorari denied.

No. 73-5356. *SOLES v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 482 F. 2d 105.

No. 73-5358. *FONTANA v. STATE ROADS COMMISSION OF MARYLAND ET AL.* Ct. App. Md. Certiorari denied.

No. 73-5361. *RENDEL v. GOMES, PRISON SUPERINTENDENT, ET AL.* C. A. 9th Cir. Certiorari denied.

No. 73-5362. *HAMBURG ET UX. v. JONES ET UX*. Sup. Ct. Wyo. Certiorari denied. Reported below: 510 P. 2d 791.

No. 73-5373. *SALLAS v. DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE*. C. A. 9th Cir. Certiorari denied.

No. 73-5374. *HAMMONDS v. MANTIA ET AL.* C. A. 8th Cir. Certiorari denied.

No. 73-5378. *MARTINEZ v. ARIZONA*. Ct. App. Ariz. Certiorari denied. Reported below: 19 Ariz. App. 417, 508 P. 2d 82.

No. 73-5382. *LOMBARDI v. GORDON ET AL.* C. A. 2d Cir. Certiorari denied.

No. 73-5384. *BRINK v. UNITED STATES*. C. A. 8th Cir. Certiorari denied.

No. 73-5395. *McKINNEY v. ALABAMA*. Ct. Crim. App. Ala. Certiorari denied. Reported below: 50 Ala. App. 271, 278 So. 2d 719.

November 12, 1973

414 U.S.

No. 72-1699. *MUSCOLINO v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 478 F. 2d 1404.

No. 72-6934. *SISKE v. VIRGINIA*. Sup. Ct. Va. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari.

No. 72-6988. *NELSON v. RAILSBACK ET AL.* C. A. 7th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari.

No. 73-352. *BRASS v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 478 F. 2d 1405.

No. 73-374. *UNION EQUITY COOPERATIVE EXCHANGE, INC. v. COMMISSIONER OF INTERNAL REVENUE*. C. A. 10th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 481 F. 2d 812.

No. 73-377. *OSSER v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 483 F. 2d 727.

No. 73-5188. *NASIRIDDIN v. MARYLAND*. Ct. Sp. App. Md. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 16 Md. App. 479, 298 A. 2d 490.

No. 73-5381. *ROBERTSON v. STONE, WARDEN*. C. A. 9th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari.

No. 72-6784. *CHASE v. OKLAHOMA*. Ct. Crim. App. Okla. Certiorari denied. Reported below: 509 P. 2d 171.

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

Petitioner was stopped by Deputy Sheriff James Leland Johnston for driving on the wrong side of the highway.

1028

BRENNAN, J., dissenting

Petitioner and the passengers in his car then overpowered the deputy and took his .38-caliber service revolver. Using that gun, petitioner forced the deputy to drive to two different houses where the deputy was kicked and beaten. Petitioner finally released the deputy after taking his wallet. Petitioner was tried and convicted by a jury in Muskegee County, Oklahoma, for the offense of kidnaping for extortion and was sentenced to a term of 35 years' imprisonment. Subsequently, the State brought separate charges against petitioner for his possession of the deputy's service revolver. After a jury trial in Tulsa County, Oklahoma, petitioner was convicted for the offense of carrying a firearm, after former conviction of a felony (the former felonies were other than the kidnaping conviction), and sentenced to a term of 10 years' imprisonment. The Oklahoma Court of Criminal Appeals modified petitioner's term of imprisonment to five years, but otherwise affirmed the conviction, rejecting petitioner's claim that the second prosecution violated his constitutional protection against double jeopardy. See 509 P. 2d 171 (1973).

Although the charges of kidnaping for extortion and carrying a firearm, after former conviction of a felony, both arose out of the same transaction or episode, they were prosecuted by the State in separate proceedings. That, in my opinion, requires that we grant the petition for certiorari and reverse, for I adhere to the view that the Double Jeopardy Clause of the Fifth Amendment, which is applicable to the States through the Fourteenth Amendment, *Benton v. Maryland*, 395 U. S. 784 (1969), requires the prosecution, except in extremely limited circumstances not present here, "to join at one trial all the charges against a defendant that grow out of a single criminal act, occurrence, episode, or transaction." *Ashe v. Swenson*, 397 U. S. 436, 453-454 (1970) (BRENNAN, J., concurring); see *Miller v. Oregon*, 405 U. S. 1047 (1972)

November 12, 1973

414 U. S.

(BRENNAN, J., dissenting); *Harris v. Washington*, 404 U. S. 55, 57 (1971) (statement of DOUGLAS, BRENNAN, and MARSHALL, JJ.); *Waller v. Florida*, 397 U. S. 387, 395 (1970) (BRENNAN, J., concurring).

NO. 72-6785. *HYSAW v. ESTELLE*, CORRECTIONS DIRECTOR. Ct. Crim. App. Tex. Certiorari denied.

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

Petitioner was sentenced to eight years' imprisonment upon his plea of guilty to a charge of burglary. Later on the same day, the same conduct was the basis of a charge of theft, for which he received a consecutive eight-year sentence when he also pleaded guilty to that charge. Although neither conviction was directly appealed, petitioner sought state habeas corpus, claiming that, since both charges arose out of the same criminal transaction, his second conviction for theft violated his constitutional protection against double jeopardy. Petitioner's application was denied by the 179th District Court of Harris County and the Texas Court of Criminal Appeals.

Brief for Respondent in Opposition 2 conceded that the charges of burglary and theft arose out of the same criminal transaction. That, in my opinion, requires that we grant the petition for certiorari and reverse, for I adhere to the view that the Double Jeopardy Clause of the Fifth Amendment, which is applicable to the States through the Fourteenth Amendment, *Benton v. Maryland*, 395 U. S. 784 (1969), requires the prosecution, except in extremely limited circumstances not present here, "to join at one trial all the charges against a defendant that grow out of a single criminal act, occurrence, episode, or transaction." *Ashe v. Swenson*, 397 U. S. 436, 453-454 (1970) (BRENNAN, J., concurring); see *Miller v. Oregon*, 405 U. S. 1047 (1972) (BRENNAN, J., dissenting);

414 U. S.

November 12, 1973

*Harris v. Washington*, 404 U. S. 55, 57 (1971) (statement of DOUGLAS, BRENNAN, and MARSHALL, JJ.); *Waller v. Florida*, 397 U. S. 387, 395 (1970) (BRENNAN, J., concurring).

No. 72-6919. SMITH *v.* MISSOURI. Sup. Ct. Mo. Certiorari denied. Reported below: 491 S. W. 2d 257.

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

After petitioner and one Edward Johnson forcefully entered a St. Louis apartment occupied by Mrs. Hermine Rohs, her son Willy Rohs, and his wife Marilyn Rohs, robbed them, raped both women, and finally stabbed all three to death, petitioner was indicted on three separate charges of murder in the first degree.\* The State proceeded first with the trial of petitioner for the murder of Marilyn Rohs, seeking the death penalty. The jury convicted petitioner of first-degree murder, but assessed punishment at life imprisonment. Subsequently, the State tried petitioner for the murder of Willy Rohs, again seeking the death penalty. Again the jury found petitioner guilty of first-degree murder and assessed life imprisonment. The trial judge specified that the second life sentence would run consecutively to the first and the State thereupon entered a plea of *nolle prosequi* on the third indictment. The Missouri Supreme Court affirmed both convictions, rejecting petitioner's claim that the second prosecution violated his constitutional protection against double jeopardy. See 491 S. W. 2d 257 (1973).

Although both charges of murder clearly arose out of the same transaction or episode, they were prosecuted by the State in separate proceedings. That, in my

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\*Edward Johnson, who was also indicted, tried, and convicted for first-degree murder, has not petitioned this Court to review his conviction.

November 12, 1973

414 U. S.

opinion, requires that we grant the petition for certiorari and reverse, for I adhere to the view that the Double Jeopardy Clause of the Fifth Amendment, which is applicable to the States through the Fourteenth Amendment, *Benton v. Maryland*, 395 U. S. 784 (1969), requires the prosecution, except in extremely limited circumstances not present here, "to join at one trial all the charges against a defendant that grow out of a single criminal act, occurrence, episode or transaction." *Ashe v. Swenson*, 397 U. S. 436, 453-454 (1970) (BRENNAN, J., concurring); see *Miller v. Oregon*, 405 U. S. 1047 (1972) (BRENNAN, J., dissenting); *Harris v. Washington*, 404 U. S. 55, 57 (1971) (statement of DOUGLAS, BRENNAN, and MARSHALL, JJ.); *Waller v. Florida*, 397 U. S. 387, 395 (1970) (BRENNAN, J., concurring).

No. 73-25. *HAMMONS PRODUCTS Co. v. AGRASHELL, INC.* C. A. 8th Cir. Certiorari denied. MR. JUSTICE WHITE would grant certiorari. Reported below: 479 F. 2d 269.

No. 73-369. *FIRCH BAKING Co. v. NATIONAL LABOR RELATIONS BOARD.* C. A. 2d Cir. Certiorari denied. MR. JUSTICE WHITE would grant certiorari. Reported below: 479 F. 2d 732.

No. 73-254. *DORL v. UNITED STATES.* Ct. Cl. Motion to dispense with printing petition granted. Certiorari denied.

No. 73-379. *SULLIVAN ET AL. v. HOUSTON INDEPENDENT SCHOOL DISTRICT ET AL.* C. A. 5th Cir. Certiorari denied. MR. JUSTICE DOUGLAS, MR. JUSTICE BRENNAN, and MR. JUSTICE MARSHALL would grant certiorari. Reported below: 475 F. 2d 1071.

No. 73-5437. *CHANDLER ET AL. v. CENTRAL OF GEORGIA RAILWAY Co.* C. A. 5th Cir. Certiorari denied. MR.

414 U. S.

November 12, 1973

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

No. 73-339. EMPLOYEE-OFFICER JOHN *v.* JOHNSON. C. A. 2d Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 481 F. 2d 1028.

No. 73-442. NEW YORK *v.* FITZPATRICK. Ct. App. N. Y. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 32 N. Y. 2d 499, 300 N. E. 2d 139.

*Rehearing Denied*

No. 72-6535. RODRIGUEZ *v.* UNITED STATES, *ante*, p. 864;

No. 72-6538. ARIAS *v.* UNITED STATES, *ante*, p. 864;

No. 72-6737. RODRIGUES *v.* UNITED STATES, *ante*, p. 841;

No. 72-6787. WEATHERS *v.* GAFFNEY, WARDEN, *ante*, p. 872;

No. 72-6837. JOSEPH *v.* HENDERSON, WARDEN, *ante*, p. 846;

No. 72-6905. REID *v.* WISCONSIN, *ante*, p. 880;

No. 72-6939. JOHNSTON *v.* UNITED STATES, *ante*, p. 850;

No. 73-2. KAEHNI ET AL. *v.* DIFFRACTION CO., *ante*, p. 854; and

No. 73-135. KING NUT CO. *v.* BEER NUTS, INC., *ante*, p. 858. Petitions for rehearing denied.

No. 72-1271. BRUMBAUGH *v.* UNITED STATES, 412 U. S. 918. Motion to dispense with printing petition granted. Motion for leave to file petition for rehearing denied.

No. 72-5462. LEE *v.* TEXAS, 409 U. S. 1046. Motion for leave to file petition for rehearing denied.

November 12, 19, 1973

414 U.S.

*Assignment Orders*

An order of THE CHIEF JUSTICE designating and assigning Mr. Justice Clark (retired) to perform judicial duties in the United States Court of Appeals for the Seventh Circuit during the week of November 26, 1973, and for such additional time as may be required to complete unfinished business, pursuant to 28 U. S. C. § 294 (a), is ordered entered on the minutes of this Court, pursuant to 28 U. S. C. § 295.

An order of THE CHIEF JUSTICE designating and assigning Mr. Justice Clark (retired) to perform judicial duties in the United States District Court for the Eastern District of New York during the month of December 1973, and for such additional time as may be required to complete unfinished business, pursuant to 28 U. S. C. § 294 (a), is ordered entered on the minutes of this Court, pursuant to 28 U. S. C. § 295.

An order of THE CHIEF JUSTICE designating and assigning Mr. Justice Clark (retired) to perform judicial duties in the United States Court of Appeals for the Second Circuit during the period April 15, 1974, to April 19, 1974, and for such additional time as may be required to complete unfinished business, pursuant to 28 U. S. C. § 294 (a), is ordered entered on the minutes of this Court, pursuant to 28 U. S. C. § 295.

NOVEMBER 19, 1973

*Affirmed on Appeal*

No. 73-415. TITUS *v.* SUPREME COURT OF VIRGINIA ET AL.; and

No. 73-416. BROWN *v.* SUPREME COURT OF VIRGINIA ET AL. Affirmed on appeal from D. C. E. D. Va. MR. JUSTICE WHITE would note probable jurisdiction and set cases for oral argument. Reported below: 359 F. Supp. 549.

414 U.S.

November 19, 1973

No. 73-426. DANFORTH, ATTORNEY GENERAL OF MISSOURI *v.* RODGERS ET AL. Affirmed on appeal from D. C. W. D. Mo.

*Appeals Dismissed*

No. 73-382. PORTLAND PIPE LINE CORP. *v.* ENVIRONMENTAL IMPROVEMENT COMMISSION ET AL.; and

No. 73-383. AMERICAN OIL CO. ET AL. *v.* ENVIRONMENTAL IMPROVEMENT COMMISSION ET AL. Appeals from Sup. Jud. Ct. Me. dismissed for want of substantial federal question. MR. JUSTICE STEWART would dismiss appeals for want of properly presented federal question. MR. JUSTICE POWELL took no part in the consideration or decision of these appeals. Reported below: 307 A. 2d 1.

No. 73-404. DEPENDENT SCHOOL DISTRICT No. D-20 OF CADDO COUNTY ET AL. *v.* PARKER, COUNTY SUPERINTENDENT OF SCHOOLS. Appeal from Sup. Ct. Okla. dismissed for want of substantial federal question.

No. 73-5391. WOOD *v.* VIRGINIA. Appeal from Sup. Ct. Va. dismissed for want of substantial federal question. Reported below: 214 Va. 97, 197 S. E. 2d 200.

No. 73-5314. MITCHELL *v.* WORKMEN'S COMPENSATION APPEALS BOARD OF CALIFORNIA ET AL. Appeal from Ct. App. Cal., 2d App. Dist. Motion of California Applicant's Attorneys Assn. for leave to file a brief as *amicus curiae* granted. Appeal dismissed for want of a properly presented federal question.

*Vacated and Remanded on Appeal*

No. 73-399. ABERDEEN & ROCKFISH RAILROAD CO. ET AL. *v.* STUDENTS CHALLENGING REGULATORY AGENCY PROCEDURES (SCRAP) ET AL.; and

No. 73-420. UNITED STATES ET AL. *v.* STUDENTS CHALLENGING REGULATORY AGENCY PROCEDURES (SCRAP) ET

November 19, 1973

414 U. S.

AL. Appeals from D. C. D. C. Judgment vacated and cases remanded for further consideration in light of *Atchison, Topeka & Santa Fe R. Co. v. Wichita Board of Trade*, 412 U. S. 800 (1973). MR. JUSTICE POWELL took no part in the consideration or decision of these appeals.

*Certiorari Granted—Vacated and Remanded*

No. 72-6681. *ELDER v. CASEY ET AL.* C. A. 6th Cir. Motion for leave to proceed *in forma pauperis* and certiorari granted. Judgment vacated and case remanded to the United States District Court for the Middle District of Tennessee for reconsideration in light of suggestion contained in the Solicitor General's memorandum filed October 26, 1973. MR. JUSTICE BLACKMUN would grant certiorari and set case for oral argument.

*Miscellaneous Orders*

No. A-486. *ENVIRONMENTAL DEFENSE FUND ET AL. v. TENNESSEE VALLEY AUTHORITY ET AL.* D. C. E. D. Tenn. Application for stay presented to MR. JUSTICE STEWART, and by him referred to the Court, denied. MR. JUSTICE DOUGLAS took no part in the consideration or decision of this application. Reported below: 371 F. Supp. 1004.

No. A-425 (73-5481). *SAYLES v. MCGUIRE*, U. S. DISTRICT JUDGE. D. C. D. C. Application for injunction presented to MR. JUSTICE MARSHALL, and by him referred to the Court, denied.

No. D-19. *IN RE DISBARMENT OF McWHINNEY*. It is ordered that Robert R. McWhinney, of Greensburg, Pennsylvania, be suspended from the practice of law in this Court and that a rule issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

414 U. S.

November 19, 1973

No. D-20. *IN RE DISBARMENT OF LEVIN*. It is ordered that Robert Bernard Levin, of New York City, New York, be suspended from the practice of law in this Court and that a rule issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D-21. *IN RE DISBARMENT OF LIDDY*. It is ordered that George Gordon Liddy, of Oxon Hill, Maryland, be suspended from the practice of law in this Court and that a rule issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. 73-187. *KEWANEE OIL Co. v. BICRON CORP. ET AL.* C. A. 6th Cir. [Certiorari granted, *ante*, p. 818.] Motion of SCM Corp. for access to totality of appendix denied.

No. 73-275. *ALABAMA GREAT SOUTHERN RAILROAD Co. ET AL. v. LOUISIANA*;

No. 73-335. *ILLINOIS CENTRAL RAILROAD Co. v. LOUISIANA*;

No. 73-340. *SOUTHERN PACIFIC TRANSPORTATION Co. v. LOUISIANA*;

No. 73-341. *TEXAS PACIFIC-MISSOURI PACIFIC TERMINAL RAILROAD OF NEW ORLEANS v. LOUISIANA*; and

No. 73-342. *LOUISIANA & ARKANSAS RAILWAY Co. v. LOUISIANA*. Order of this Court entered November 5, 1973, dismissing appeals for want of substantial federal question is amended by deleting sentence which reads "MR. JUSTICE POWELL took no part in the consideration or decision of No. 73-275" and substituting in lieu thereof "MR. JUSTICE POWELL took no part in the consideration or decision of these appeals."\*

\*[REPORTER'S NOTE: The order of November 5, 1973, is reported as so amended, *ante*, p. 991.]

November 19, 1973

414 U. S.

No. 73-431. *BROCCOLINO, JUDGE v. MARYLAND COMMISSION ON JUDICIAL DISABILITIES ET AL.* Ct. App. Md. Motion to dispense with printing petition denied with leave to file a printed petition in conformity with Rule 39 of the Rules of this Court on or before December 19, 1973.

No. 73-5192. *MAYER v. MOEYKENS.* Motion for leave to file petition for writ of habeas corpus denied.

*Probable Jurisdiction Noted*

No. 73-232. *EXXON CORP. v. PRESTON.* Appeal from Ct. Civ. App. Tex., 9th Sup. Jud. Dist. Probable jurisdiction noted. MR. JUSTICE POWELL took no part in the consideration or decision of this matter. Reported below: 487 S. W. 2d 956.

*Certiorari Granted*

No. 73-235. *DEFUNIS ET AL. v. ODEGAARD ET AL.* Appeal from Sup. Ct. Wash. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari granted. Reported below: 82 Wash. 2d 11, 507 P. 2d 1169.

No. 73-434. *MILLIKEN, GOVERNOR OF MICHIGAN, ET AL. v. BRADLEY ET AL.;*

No. 73-435. *ALLEN PARK PUBLIC SCHOOLS ET AL. v. BRADLEY ET AL.;* and

No. 73-436. *GROSSE POINTE PUBLIC SCHOOL SYSTEM v. BRADLEY ET AL.* C. A. 6th Cir. Certiorari granted. Cases consolidated and a total of one and one half hours allotted for oral argument. Reported below: 484 F. 2d 215.

*Certiorari Denied*

No. 73-326. *BYRD v. UNITED STATES.* C. A. D. C. Cir. Certiorari denied. Reported below: 154 U. S. App. D. C. 307, 475 F. 2d 418.

414 U.S.

November 19, 1973

No. 73-334. *MATANKY v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 482 F. 2d 1319.

No. 73-366. *WOLCOFF ET AL. v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 481 F. 2d 1406.

No. 73-389. *JOHNSON v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 484 F. 2d 309.

No. 73-390. *SHAPIRO ET AL. v. BARRETT, COUNTY CLERK OF COOK COUNTY, ET AL.* Sup. Ct. Ill. Certiorari denied. Reported below: 54 Ill. 2d 237, 296 N. E. 2d 342.

No. 73-391. *BEHRING PROPERTIES, INC., ET AL. v. SUN OIL Co.* C. A. 5th Cir. Certiorari denied. Reported below: 480 F. 2d 310.

No. 73-395. *YUEN SANG LOW ET AL. v. ATTORNEY GENERAL OF THE UNITED STATES ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 479 F. 2d 820.

No. 73-397. *BRAND PLASTICS Co. ET AL. v. DOW CHEMICAL Co.* C. A. 9th Cir. Certiorari denied. Reported below: 475 F. 2d 124.

No. 73-400. *REXACH ET AL. v. UNITED STATES*. C. A. 1st Cir. Certiorari denied. Reported below: 482 F. 2d 10.

No. 73-408. *SANTOS ET AL. v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 483 F. 2d 35.

No. 73-409. *GORDON ET AL., Co-ADMINISTRATORS v. LIGHTENBURGER ET AL.* Sup. Ct. Nev. Certiorari denied. Reported below: — Nev. —, 510 P. 2d 865.

November 19, 1973

414 U. S.

No. 73-410. *SOO LINE RAILROAD CO. v. FULTON, DBA R. H. FULTON, CONTRACTOR*; and

No. 73-577. *FULTON, DBA R. H. FULTON, CONTRACTOR v. SOO LINE RAILROAD CO. ET AL.* C. A. 8th Cir. Certiorari denied. Reported below: 481 F. 2d 326.

No. 73-412. *IANNELLI ET UX. v. LONG, DISTRICT DIRECTOR OF INTERNAL REVENUE, ET AL.* C. A. 3d Cir. Certiorari denied. Reported below: 487 F. 2d 317.

No. 73-417. *HAKIM v. SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES (TWENTIETH CENTURY FOX FILM CORP., REAL PARTY IN INTEREST).* Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 73-418. *HUTUL v. CHICAGO BAR ASSN.* Sup. Ct. Ill. Certiorari denied.

No. 73-419. *BRIGANDI ET AL. v. NEW YORK.* Ct. App. N. Y. Certiorari denied.

No. 73-423. *PENN CENTRAL TRANSPORTATION CO. v. EDSALL.* C. A. 6th Cir. Certiorari denied. Reported below: 479 F. 2d 33.

No. 73-424. *RUSSELL v. CONTINENTAL ILLINOIS NATIONAL BANK & TRUST COMPANY OF CHICAGO.* C. A. 7th Cir. Certiorari denied. Reported below: 479 F. 2d 131.

No. 73-429. *WHITE v. HARRINGTON MANUFACTURING CO., INC.* C. A. 5th Cir. Certiorari denied. Reported below: 475 F. 2d 788.

No. 73-5114. *TRUSDELL v. ALULI ET AL.* Sup. Ct. Hawaii. Certiorari denied. Reported below: 54 Haw. 417, 508 P. 2d 1217.

No. 73-5152. *SCANDRETT v. TURNER, WARDEN.* C. A. 10th Cir. Certiorari denied.

414 U. S.

November 19, 1973

No. 73-5181. *WILLIAMS v. CALIFORNIA*. Sup. Ct. Cal. Certiorari denied.

No. 73-5232. *THOMAS v. ILLINOIS*. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 9 Ill. App. 3d 1080, 293 N. E. 2d 698.

No. 73-5251. *BRYDEN v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 480 F. 2d 921.

No. 73-5299. *ENGLAND v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 480 F. 2d 1266.

No. 73-5315. *NEWLAND v. UNITED STATES*. C. A. 8th Cir. Certiorari denied.

No. 73-5322. *BAMBERGER ET AL. v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 482 F. 2d 166.

No. 73-5323. *MILLER v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 480 F. 2d 1008.

No. 73-5325. *ELEY v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 480 F. 2d 617.

No. 73-5342. *MAYS v. WARNER, SECRETARY OF THE NAVY*. C. A. 4th Cir. Certiorari denied. Reported below: 478 F. 2d 1400.

No. 73-5346. *MABERRY v. UNITED STATES*. C. A. 9th Cir. Certiorari denied.

No. 73-5349. *RUSSO v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 480 F. 2d 923.

No. 73-5355. *ELLSWORTH v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 481 F. 2d 864.

November 19, 1973

414 U.S.

No. 73-5368. *LOCKLEAR v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 478 F. 2d 1400.

No. 73-5369. *BITTORIE, ADMINISTRATRIX v. POTOMAC EDISON Co.* C. A. 4th Cir. Certiorari denied. Reported below: 478 F. 2d 1400.

No. 73-5371. *NIEMSZYK v. MAINE*. Sup. Jud. Ct. Me. Certiorari denied. Reported below: 303 A. 2d 105.

No. 73-5385. *KACZYNSKI v. MICHIGAN*. Sup. Ct. Mich. Certiorari denied.

No. 73-5386. *WOODELL v. PLOWFIELD, SHERIFF*. C. A. 3d Cir. Certiorari denied.

No. 73-5387. *FLETCHER v. SHULTZ, SHERIFF, ET AL.* C. A. 4th Cir. Certiorari denied.

No. 73-5389. *COLE v. TENNESSEE*. Ct. Crim. App. Tenn. Certiorari denied.

No. 73-5401. *SMALL v. NEW JERSEY*. Sup. Ct. N. J. Certiorari denied.

No. 73-5408. *DOCKERY ET AL. v. BOYLE*. C. A. 7th Cir. Certiorari denied.

No. 73-5410. *JACKSON v. TEXAS*. Ct. Crim. App. Tex. Certiorari denied. Reported below: 496 S. W. 2d 93.

No. 73-5418. *SCHRADER v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 477 F. 2d 600.

No. 73-5421. *LEWIS v. OHIO*. Ct. App. Ohio, Cuyahoga County. Certiorari denied.

No. 73-5425. *HUMPHREY v. NORTH CAROLINA*. Sup. Ct. N. C. Certiorari denied. Reported below: 283 N. C. 570, 196 S. E. 2d 516.

414 U.S.

November 19, 1973

No. 73-5426. O'REILLY *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 486 F. 2d 208.

No. 73-5432. CARLTON *v.* ESTELLE, CORRECTIONS DIRECTOR. C. A. 5th Cir. Certiorari denied. Reported below: 480 F. 2d 759.

No. 73-5436. KEARNS *v.* CALIFORNIA. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 73-5442. HULL *v.* ST. ELIZABETHS HOSPITAL ET AL. C. A. D. C. Cir. Certiorari denied.

No. 73-5448. ALDRIDGE *v.* NEW JERSEY. Super. Ct. N. J. Certiorari denied.

No. 73-5452. STEFFES *v.* CUPP, PENITENTIARY SUPERINTENDENT. C. A. 9th Cir. Certiorari denied.

No. 73-5454. ZERBO ET AL. *v.* MICHIGAN DEPARTMENT OF THE TREASURY, REVENUE DIVISION. Ct. App. Mich. Certiorari denied.

No. 73-5460. RUDMAN *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 72-1680. HOUSING AUTHORITY OF NEW HAVEN ET AL. *v.* DORSEY, COMMISSIONER, DEPARTMENT OF COMMUNITY AFFAIRS OF CONNECTICUT, ET AL. Sup. Ct. Conn. Motion of Connecticut State Conference of the National Association for the Advancement of Colored People et al. for leave to file a brief as *amici curiae* granted. MR. JUSTICE MARSHALL took no part in the consideration or decision of this motion. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 164 Conn. 247, 320 A. 2d 820.

No. 72-6800. GOAD *v.* ANDERSON, WARDEN. C. A. 10th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari.

November 19, 1973

414 U.S.

No. 72-6883. *MORRISON v. HAMILTON COUNTY BOARD OF EDUCATION*. Sup. Ct. Tenn. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 494 S. W. 2d 770.

No. 73-403. *PAUL A. RICHTER & ASSOCIATES, INC., DBA BODY SHOP v. SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO (CALIFORNIA DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL, ET AL., REAL PARTIES IN INTEREST)*. Ct. App. Cal., 4th App. Dist. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari.

No. 73-5160. *MUELLER v. ILLINOIS*. Sup. Ct. Ill. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 54 Ill. 2d 189, 295 N. E. 2d 705.

No. 73-5396. *IVERSON v. NORTH DAKOTA*. C. A. 8th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 480 F. 2d 414.

No. 73-5407. *PASCHALL v. OHIO*. Ct. App. Ohio, Summit County. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari.

No. 73-5416. *AUSTIN v. MISSOURI*. Sup. Ct. Mo. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 496 S. W. 2d 799.

No. 73-5435. *DEJARNETTE v. FORD, GOVERNOR OF KENTUCKY, ET AL.* C. A. 6th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari.

No. 73-116. *ROCKS v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. MR. JUSTICE WHITE took no part in the consideration or decision of this petition. Reported below: 481 F. 2d 112.

No. 73-205. *FLOYD ET AL. v. UNITED STATES*. C. A. 10th Cir. Motion of Oklahoma Lawyers Guild for leave

414 U.S.

November 19, 1973

to file a brief as *amicus curiae* granted. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 477 F. 2d 217.

No. 73-345. CASEY, AKA WARD *v.* UNITED STATES. C. A. 5th Cir. Motion to defer consideration and petition for writ of certiorari denied. Reported below: 480 F. 2d 151.

No. 73-394. MORGAN *v.* AUTOMOBILE MANUFACTURERS ASSN., INC., ET AL. C. A. 9th Cir. Certiorari denied. MR. JUSTICE DOUGLAS and MR. JUSTICE WHITE would grant certiorari. MR. JUSTICE POWELL took no part in the consideration or decision of this petition. Reported below: 481 F. 2d 122.

No. 73-402. ROSE ANN COATES TRUST ET AL. *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 9th Cir. Certiorari denied. MR. JUSTICE STEWART would grant certiorari. Reported below: 480 F. 2d 468.

No. 73-427. BERNI ET AL. *v.* LEONARD, EXECUTIVE DIRECTRIX, NASSAU COUNTY CIVIL SERVICE COMMISSION, ET AL. Ct. App. N. Y. Certiorari denied. MR. JUSTICE DOUGLAS and MR. JUSTICE BRENNAN would grant certiorari.

No. 73-5256. LEE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 478 F. 2d 1400.

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

Petitioner was convicted of two counts of distributing heroin in violation of 21 U. S. C. § 841 (a)(1); he later pleaded guilty to a third count. After petitioner's plea on the third count, the District Court sentenced him to concurrent 15-year terms on the three counts, recommending that he be given drug addiction treatment at the Federal Youth Center at Ashland, Kentucky.

It refused, however, to sentence petitioner under the provisions of the Narcotic Addict Rehabilitation Act of 1966 (hereafter NARA), 18 U. S. C. § 4251 *et seq.* Petitioner claims that in the circumstances of this case the trial judge abused his discretion in refusing to sentence him under the NARA.

The three charges against petitioner grew out of three transactions in which he acted as a middleman, purchasing heroin from two different wholesalers for a federal agent. Petitioner received only a total of \$15 from the three sales, which was used to buy heroin for his own personal use. Petitioner also retained some of the drug he had purchased for his own personal use.

The District Court refused to sentence petitioner under the NARA with the possibility of early release to the community because he had "sold" heroin, and was not just a user.<sup>1</sup>

Under 18 U. S. C. § 4251, individuals are generally not "eligible" for NARA sentencing if they have sold narcotics; Congress, however, created an express exception for those who sold primarily to support their own addiction. Section 4252, on which the Court of Appeals relied in affirming the District Court, provides that if a court believes an eligible offender to be an addict, it "may" place him in the custody of the Attorney General to determine whether he is an addict likely to be rehabilitated through treatment. Section 4253 provides that if a court, after this study, finds that an offender is an addict and is likely to be rehabilitated, it "shall" sentence him under the NARA, with exceptions not here relevant.

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<sup>1</sup> Pet. for Cert. 11; Memorandum for United States in Opposition 3 n. 1. Similarly, the Solicitor General argues that discretion was properly exercised because petitioner was an "active conduit" of drugs who knew many drug wholesalers. *Id.*, at 3.

An individual sentenced under the NARA could be released after six months upon a report from the Attorney General and certification from the Surgeon General that he has made sufficient progress to warrant his release under supervision; he can also be held up to 10 years if such progress is not made. 18 U. S. C. §§ 4254, 4253. After release, § 4255 provides for a program of aftercare in the community. This aftercare, consisting of psychiatric, medical, and vocational support, was considered the crucial contribution of the NARA to drug-addiction treatment.<sup>2</sup> It is recognized that without such ongoing aftercare, the overwhelming majority of addicts return to their habits shortly after release from prison or voluntary drug-addiction programs.<sup>3</sup>

Section 4252 undoubtedly preserves the discretion of the sentencing judge to refuse to apply the provisions

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<sup>2</sup> H. R. Rep. No. 1486, 89th Cong., 2d Sess., 12-13, 14; Hearings on the Narcotic [Addict] Rehabilitation Act of 1966 before a Special Subcommittee of the Senate Judiciary Committee, 89th Cong., 2d Sess., 19 (1966) (statement of Attorney General Katzenbach).

<sup>3</sup> "Under our present laws we confront the addict almost solely as a criminal, and though we can effectively remove a relatively few addicts from the streets where they are public menaces, we can do very little to prevent them from returning to society with the cause of their addiction unsolved.

"Physiologically, even a long-term heroin addict can be cured of his physical craving in a relatively short time. His body no longer requires the drug. But obviously, his underlying emotional problems and the more immediate factors like environment and unemployment are as pressing as they ever were.

"Clearly, neither voluntary commitment nor criminal imprisonment are working. Civil commitment of addicts accompanied by a program of aftercare in the community gives us a way out of the dilemma." *Id.*, at 16-17 (statement of Attorney General Katzenbach); see *id.*, at 36 (statements of Attorney General Katzenbach and Myrl Alexander, Director, Federal Bureau of Prisons).

of the NARA even to addicts who are "eligible" under § 4251; the provisions of the NARA are available as an alternative and are not mandatory. See H. R. Rep. No. 1486, 89th Cong., 2d Sess., 8-9, 13.

Nonetheless, it seems that Congress contemplated a more enlightened and less rigid approach to narcotics than was employed by the trial judge in the instant case.

The NARA was the product of extended consideration by the Departments of Justice, Treasury, and Health, Education, and Welfare, which stressed the necessity for flexibility in dealing with the problem of drug addiction:

"These procedures mark a fundamental reorientation toward the problem of addiction. The Attorney General in his testimony before the subcommittee stated that for too long the law had stressed punitive solutions and neglected medical and rehabilitative measures. . . .

". . . [T]he bill provides alternatives which provide a needed flexibility in the law. The practical effect of the implementation of the law provided for in the bill, is that strict punishment can be meted out where required to the hardened criminal, while justice can be tempered with judgment and fairness in those cases where it is to the best interest of society and the individual that such a course be followed.

". . . The testimony presented at the hearings has clearly shown the need for the flexible approaches provided by civil commitment and postconviction commitment which would be made possible by this legislation." *Id.*, at 8-9.

Congress recognized that institutional treatment such as petitioner might receive in this case was ineffective,

1045

DOUGLAS, J., dissenting

without more, in curing drug addiction, and that individuals will generally return to addiction when released from prison even if their physiological habits have been broken. It also explicitly acknowledged that addicts, like petitioner, will engage in criminal activity to support their habits and that they will often spread addiction to others. *Id.*, at 11; S. Rep. No. 1667, 89th Cong., 2d Sess., 13. Weighing these considerations, Congress determined that even those who sold drugs, if they did so primarily to support their own habits, should be eligible for NARA consideration. The exception for addicts who sold to support their own habits was not created casually or without consideration. Civil Commitment and Treatment of Narcotic Addicts, Hearings before Subcommittee No. 2 of the House Committee on the Judiciary, 89th Cong., 1st and 2d Sess., ser. 10, pp. 84-85 (statement of Attorney General Katzenbach). It was felt that the exception did not endanger public safety or allow the NARA to be abused. See Hearings on the Narcotic [Addict] Rehabilitation Act of 1966 before a Special Subcommittee of the Senate Judiciary Committee, 89th Cong., 2d Sess., 18 (1966) (statement of Attorney General Katzenbach).

The District Court Judge in this case effectively wrote this congressional determination out of the NARA, since he apparently refused to extend the benefits of the Act to petitioner because petitioner had "sold" drugs. This was the ineffective and inflexible treatment into which judges were forced before the passage of the NARA and which Congress attempted to cure; it does not seem consonant with the congressional purpose to continue such simplistic treatment of the problem of addiction after the NARA is available. I would grant certiorari, vacate the judgment below, and remand the case for fuller consideration of the advisability of treatment under the NARA.

November 19, 1973

414 U.S.

No. 73-5370. FITZPATRICK *v.* NEW YORK. Ct. App. N. Y. Certiorari denied. Reported below: 32 N. Y. 2d 499, 300 N. E. 2d 139.

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

Petitioner Martin Fitzpatrick was convicted for the first-degree murder of two police officers in Sherrill, New York. The police followed reliable leads and located a house owned by Fitzpatrick in Syracuse. After attempting to get a response from inside, the police entered the house through a door which had been left ajar. As they came to a room on the second floor, petitioner called out from a closet in which he was hiding: "Don't shoot. I give up." The officers seized and handcuffed him, and took him out into the hall. The police then questioned Fitzpatrick about the gun he had used, after advising him of his rights. He stated that it was in the closet where he had been found. The gun was retrieved from the closet and it was subsequently identified as the murder weapon at trial.

At a suppression hearing, the trial judge determined that petitioner had not been sufficiently apprised of his rights under *Miranda v. Arizona*, 384 U. S. 436 (1966), and ruled his oral statements to the police inadmissible. The trial court nevertheless admitted the gun into evidence, rejecting petitioner's contention that it be excluded as fruit of the poisonous tree. *Wong Sun v. United States*, 371 U. S. 471 (1963). The trial court adopted what has been termed the rule of "inevitable discovery," stating "proper police investigation would [in any event] have resulted in a search of that closet and [the gun's] discovery." The New York Court of Appeals affirmed, holding that the search was not inconsistent with *Chimel v. California*, 395 U. S. 752 (1969), and also adopted the inevitable-discovery rule.

414 U. S.

November 19, 1973

*Chimel* held that a warrantless search of premises incident to arrest was justified when limited to "a search of the arrestee's person and the area 'within his immediate control'—construing that phrase to mean the area from within which he might gain possession of a weapon or destructible evidence." *Id.*, at 763. This limitation lends substance to petitioner's claim that this search of a closet in a room while an arrestee is handcuffed in a hall in the presence of police cannot be justified. At the very least, a substantial issue of compliance with *Chimel* is posed and is deserving of this Court's attention.

Of equal importance is the adoption by the New York Court of Appeals of the inevitable-discovery rule. The rejection of that rule by the Second Circuit, *United States v. Paroutian*, 299 F. 2d 486 (1962), where evidence was discovered as the "fruit" of an illegal search, may pose a dilemma for law enforcement officials in the State of New York. Moreover, if the fruits doctrine applies to exclude evidence obtained as a result of statements made after improper *Miranda* warnings, compare *Miranda, supra*, at 476-477, with *Harris v. New York*, 401 U. S. 222 (1971), it is a significant constitutional question whether the "independent source" exception to inadmissibility of fruits, *Wong Sun, supra*, at 487-488, encompasses a hypothetical as well as an actual independent source.

Because in important respects the decision is arguably at odds with decisions of this Court, I would grant the petition for certiorari.

#### *Rehearing Denied*

No. 72-6213. *HUNTER v. GENERAL MOTORS CORP. ET AL.*, 411 U. S. 973. Motion for leave to file petition for rehearing denied. MR. JUSTICE POWELL took no part in the consideration or decision of this motion.

November 19, 21, 1973

414 U.S.

No. 72-1564. *BERNABEI v. UNITED STATES*, *ante*, p. 825;

No. 72-1670. *TEXAD, INC. (TEXAD SPECIALTY CO.) v. PARISH OF ST. MARY SALES AND USE TAX DEPT.*, *ante*, p. 803;

No. 72-1712. *IN RE HOROWITZ*, *ante*, p. 867;

No. 72-6745. *ARNOLD v. KIRBY ET AL.*, *ante*, p. 872;

No. 72-6757. *DUN LEAVAY v. HALLAHAN ET AL.*, *ante*, p. 805;

No. 72-6762. *SMILGUS v. BERGMAN ET AL.*, *ante*, p. 842;

No. 72-6942. *DUN LEAVAY v. LUTZ APPELLATE PRINTERS, INC.*, *ante*, p. 850;

No. 72-6969. *MENDES v. REA EXPRESS, INC.*, *ante*, p. 852;

No. 72-6973. *SOOTS ET UX. v. CONNER*, *ante*, p. 852;

No. 73-229. *SAFIR v. BLACKWELL, ASSISTANT SECRETARY OF COMMERCE FOR MARITIME AFFAIRS, ET AL.*, *ante*, p. 975;

No. 73-5058. *BEASLEY v. UNITED STATES*, *ante*, p. 924;

No. 73-5119. *FARMER ET VIR v. TOLEDO EDISON CO.*, *ante*, p. 876; and

No. 73-5175. *TUBERVILLE v. TEXACO INC. ET AL.*, *ante*, p. 925. Petitions for rehearing denied.

No. 72-1448. *HOWELL v. JONES, SHERIFF*, *ante*, p. 803. Petition for rehearing and other relief denied.

NOVEMBER 21, 1973

*Miscellaneous Order*

No. A-435. *LIFE OF THE LAND ET AL. v. BRINEGAR, SECRETARY OF TRANSPORTATION, ET AL.* C. A. 9th Cir. Motions of the State of Hawaii and of Kalihi-Palama

1052

DOUGLAS, J., dissenting

Community Council et al. to vacate stay and injunction entered by MR. JUSTICE DOUGLAS on November 7, 1973, granted. Reported below: 485 F. 2d 460.

MR. JUSTICE DOUGLAS, dissenting.

This case involves the sufficiency and objectivity of an Environmental Impact Statement (EIS) prepared in connection with the construction of the Reef Runway Project at Honolulu International Airport. The project is a 12,000-foot runway to be built offshore on filled reef-land in the Keehi Lagoon. The construction will involve the dredging of some 14 million cubic yards of coral and silt, consuming over 1,200 acres of ocean coral reef. The EIS, required by the National Environmental Policy Act of 1969,<sup>1</sup> was prepared in this case as a "joint project" by the Federal Aviation Agency, the State of Hawaii, and the Ralph M. Parsons Company.<sup>2</sup> The problem, as the Court of Appeals noted, is that Parsons is a private firm under contract to render management consulting services for the project in the event it is approved and thus has a strong "financial interest in an affirmative decision on the proposed project." 485 F. 2d 460, 467 (CA9 1973). The court, however, found nothing "in either the wording of NEPA or the case law which indicates that, as a matter of law, a firm with a financial interest in the project may not assist with the drafting of the EIS." *Ibid.*

It seems to me a total frustration of the entire purpose of NEPA to entrust evaluation of the environmental factors to a firm with a multimillion-dollar stake in the

<sup>1</sup> 83 Stat. 852, 42 U. S. C. § 4321 *et seq.*

<sup>2</sup> As the court below notes: "[A]n employee of Parsons testified as to the active involvement of the Federal Aviation Agency in the EIS preparation process. The Parsons employee concluded that the EIS 'was more or less a joint effort by Parsons, the State and the F. A. A.'" 485 F. 2d 460, 467 (CA9 1973).

approval of this project. NEPA embodies the belated national recognition that we have been "brought to the brink" by myopic pursuit of technological progress and by a decisionmaking mechanism resting largely on the advice of vested-interest groups.<sup>3</sup> A longstanding policy of listening only to those with enough money to be heard has left our country scarred with a continuum of environmental abscesses. The oil-auto-concrete interests have long urged the necessity of paving over the countryside with highways. The same oil interests which argued the advisability of offshore drilling at Santa Barbara pressed for a trans-Alaska pipeline and obtained a concession in the Trans-Alaska Pipeline Authorization Act that in effect exempted the pipeline from NEPA to the extent that it curtailed judicial review.<sup>4</sup> Other inter-

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<sup>3</sup> "There may be controversy over how close to the brink we stand, but there is none that we are in serious trouble." H. R. Rep. No. 91-378, p. 4 (1969).

"By land, sea, and air, the enemies of man's survival relentlessly press their attack. The most dangerous of all these enemies is man's own undirected technology. The radioactive poisons from nuclear tests, the runoff into rivers of nitrogen fertilizers, the smog from automobiles, the pesticides in the food chains, and the destruction of topsoil by strip mining are examples of the failure to foresee and control the untoward consequences of modern technology." N. Y. Times, May 3, 1969, p. 34, col. 2, quoted in H. R. Rep. No. 91-378, *supra*, at 3.

<sup>4</sup> Section 203 (d) of the Act, 87 Stat. 585, 43 U. S. C. § 1652 (d) (1970 ed., Supp. III), provides in part:

"The actions taken pursuant to this title which relate to the construction and completion of the pipeline system, and to the applications filed in connection therewith necessary to the pipeline's operation at full capacity, as described in the Final Environmental Impact Statement of the Department of the Interior, shall be taken without further action under the National Environmental Policy Act of 1969; and the actions of the Federal officers concerning the issuance of the necessary rights-of-way, permits, leases, and other authorizations for construction and initial operation at full capacity of said pipeline system shall not be subject to judicial

1052

DOUGLAS, J., dissenting

ests, notably those waiting for the great "killing" in nuclear fission, got temporary relief from NEPA.<sup>5</sup> Our congested land and fouled air bear grim testimony to the success of Detroit in making fortunes out of the destruction of elemental parts of our biosphere.

We have listened as the manufacturing-industrial complex advised us on the desirability of fueling "progress" by stripping our land and using our rivers, lakes, and atmosphere as technological sewers. We have allowed commercial recreational interests to determine the advisability of "developing" our dwindling wilderness.<sup>6</sup> NEPA was designed to correct in part the infor-

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review under any law except that claims alleging the invalidity of this section may be brought within sixty days following its enactment, and claims alleging that an action will deny rights under the Constitution of the United States, or that the action is beyond the scope of authority conferred by this title, may be brought within sixty days following the date of such action. A claim shall be barred unless a complaint is filed within the time specified."

<sup>5</sup> Volume 86 Stat. 191, 42 U. S. C. § 2242 (1970 ed., Supp. II), an amendment of the Atomic Energy Act of 1954, grants the Atomic Energy Commission the authority to issue temporary operating licenses for nuclear power reactors and provides that, under certain conditions, reactor operation may begin before environmental impact studies pertinent to full-term operation have been completed. See *The AEC Amendment: Temporary Licensing of Nuclear Reactors*, 10 Harv. J. Legis. 236 (1973).

The recent Pugwash Conference held in Finland August 30-September 4, 1973, which included 100 scientists (20 each from the United States and USSR), reported as follows on nuclear energy:

"The as yet unsolved problem of waste management and the possibly unsolvable (in an absolute sense) problems of catastrophic releases of radioactivity and diversion of bomb-grade material, combine to create grave and justified misgivings about the vast increase in the use of nuclear power that has been widely predicted. The wisdom of such an increase must at the present time be seriously questioned." 17 Cong. Rec. S18727 (Oct. 8, 1973).

<sup>6</sup> See, e. g., the extensive skiing development of the Mineral King Valley in Sequoia National Forest. *Sierra Club v. Morton*, 405 U. S. 727 (1972).

mation void underlying our national decisionmaking mechanism. Congress knew what happens when we heed the counsel only of those who measure national advancement by GNP and the Dow Jones industrial average. Congress knew that we can trust them to supply us with voluminous economic data, but it also knew that we cannot trust them to supply us with an improved quality of life. They are not advocates of the interests of mountains, forests, streams, rivers, oceans, and coral beds, or of the wildlife that inhabit them, or the people who enjoy them. They are not useful when it comes to appraising the values of an unspoiled meadow or glacier or reef, for they think only in terms of dollars. They lack the sensitivity to be entrusted with evaluating what effect dredging will have on our estuaries. These estuaries are essential in part of the life cycle of two-thirds of the marine life. Dredging makes these estuaries biological deserts for years to come. Congress knew that the final say on these environmental matters should not be under the direct or indirect control of those who plan to make millions out of their destruction.

The people have long heard and too long heeded the advice of those with a monetary stake. NEPA was designed to augment that information with an analysis of other factors. Whether that analysis can be undertaken by those whose economic voice is already heard is an issue as yet undecided in this Court.<sup>7</sup> It is an issue worthy of our determination and should be decided before the ongoing construction of the Reef Runway does irreparable injury to the environmental interests here

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<sup>7</sup> Congress noted in enacting NEPA that "[a]n *independent* review of the interrelated problems associated with environmental quality is of critical importance if we are to reverse what seems to be a clear and intensifying trend toward environmental degradation." H. R. Rep. No. 91-378, p. 3 (1969) (emphasis added).

414 U.S. November 21, 26, 28-30, December 3, 1973

involved. These are the considerations that led me to grant the stay. I would maintain the status quo until the termination of this litigation.

NOVEMBER 26, 1973

*Dismissal Under Rule 60*

No. 72-1275. VICENTI *v.* UNITED STATES. C. A. 10th Cir. Petition for writ of certiorari dismissed under Rule 60 of the Rules of this Court. Reported below: 470 F. 2d 845.

NOVEMBER 28, 1973

*Dismissal Under Rule 60*

No. 73-5588. ADAMS *v.* NEBRASKA. Sup. Ct. Neb. Petition for writ of certiorari dismissed under Rule 60 of the Rules of this Court.

NOVEMBER 29, 1973

*Dismissal Under Rule 60*

No. 73-5398. JONES *v.* CALIFORNIA. Sup. Ct. Cal. Petition for writ of certiorari dismissed under Rule 60 of the Rules of this Court.

NOVEMBER 30, 1973

*Dismissal Under Rule 60*

No. 73-828. FILTROL CORP. *v.* UNION CARBIDE CORP. C. A. 9th Cir. Petition for writ of certiorari dismissed under Rule 60 of the Rules of this Court.

DECEMBER 3, 1973

*Affirmed on Appeal*

No. 73-483. STURGIS ET AL. *v.* WASHINGTON ET AL. Appeal from D. C. W. D. Wash. Motion to dispense

December 3, 1973

414 U.S.

with printing jurisdictional statement granted. Judgment affirmed. MR. JUSTICE BRENNAN and MR. JUSTICE MARSHALL would note probable jurisdiction and set case for oral argument. Reported below: 368 F. Supp. 38.

No. 73-498. BURGER ET AL. *v.* JUDGE, GOVERNOR OF MONTANA, ET AL. Affirmed on appeal from D. C. Mont. Reported below: 364 F. Supp. 504.

No. 73-534. HUMAN RIGHTS PARTY OF WASHTENAW COUNTY ET AL. *v.* SECRETARY OF STATE OF MICHIGAN ET AL. Affirmed on appeal from D. C. E. D. Mich. Reported below: 370 F. Supp. 921.

No. 73-545. SPATT *v.* NEW YORK ET AL. Affirmed on appeal from D. C. E. D. N. Y. Reported below: 361 F. Supp. 1048.

No. 73-5467. LEGION ET AL. *v.* WEINBERGER, SECRETARY OF HEALTH, EDUCATION, AND WELFARE, ET AL. Appeal from D. C. S. D. N. Y. Motions of Congress of Racial Equality for leave to file a brief as *amicus curiae* and to dispense with printing denied. Motions of Black Psychiatrists of America, Inc., for leave to file a brief as *amicus curiae* and to dispense with printing denied. Motion to defer consideration denied. Judgment affirmed. MR. JUSTICE BLACKMUN would note probable jurisdiction and set case for oral argument. Reported below: 354 F. Supp. 456.

No. 73-5539. CLINTON *v.* MUNICIPAL COURT OF GIRARD ET AL. Appeal from D. C. N. D. Ohio. Application for stay presented to MR. JUSTICE DOUGLAS, and by him referred to the Court, denied. Judgment affirmed.

#### *Appeals Dismissed*

No. 73-110. ZUKOWSKI *v.* STATE BAR GRIEVANCE BOARD OF MICHIGAN. Appeal from C. A. 6th Cir. dis-

414 U.S.

December 3, 1973

missed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied.

No. 73-165. *BOTENS ET AL. v. ARONAUER ET AL.* Appeal from Ct. App. N. Y. dismissed for want of substantial federal question. Reported below: 32 N. Y. 2d 243, 298 N. E. 2d 73.

No. 73-453. *MANNING v. GILLIGAN, GOVERNOR OF OHIO, ET AL.* Appeal from D. C. N. D. Ohio dismissed for want of substantial federal question.

No. 73-5481. *SAYLES v. MCGUIRE*, U. S. DISTRICT JUDGE. Appeal from D. C. D. C. dismissed for want of jurisdiction.

*Certiorari Granted—Vacated and Remanded*

No. 72-5437. *BENNETT v. DEPARTMENT OF GAME OF WASHINGTON ET AL.* Sup. Ct. Wash. Motion for leave to proceed *in forma pauperis* and certiorari granted. Judgment vacated and case remanded for further proceedings not inconsistent with the opinion of this Court in *Department of Game of Washington v. Puyallup Tribe*, ante, p. 44. Reported below: 80 Wash. 2d 561, 497 P. 2d 171.

*Certiorari Granted—Reversed and Remanded.* (See No. 73-241, ante, p. 113.)

*Miscellaneous Orders*

No. A-412. *STARKEY v. MISSOURI.* Sup. Ct. Mo. Application for bail presented to MR. JUSTICE DOUGLAS, and by him referred to the Court, denied.

No. A-493. *TERRANOVA v. NEW JERSEY STATE PRISON, RAHWAY, ET AL.* C. A. 3d Cir. Application for bail presented to MR. JUSTICE BRENNAN, and by him referred to the Court, denied.

December 3, 1973

414 U.S.

No. A-500 (73-862). *LIMONE v. UNITED STATES*. C. A. 1st Cir. Application for bail presented to Mr. JUSTICE DOUGLAS, and by him referred to the Court, denied.

No. A-437 (73-5696). *KREAGER v. GENERAL ELECTRIC CO. ET AL.* C. A. 2d Cir. Application for stay presented to Mr. JUSTICE DOUGLAS, and by him referred to the Court, denied.

No. 72-700. *HERNANDEZ ET AL. v. VETERANS' ADMINISTRATION ET AL.* C. A. 9th Cir. [Certiorari granted, 411 U. S. 981.] Motion to permit two counsel to argue on behalf of petitioners granted. Motion of petitioners to permit Jack R. Petranker, Esquire, of San Francisco, California, to argue *pro hac vice* granted.

No. 72-1371. *ALEXANDER, COMMISSIONER OF INTERNAL REVENUE v. "AMERICANS UNITED" INC.* C. A. D. C. Cir. [Certiorari granted, *sub nom. Walters v. "Americans United" Inc.*, 412 U. S. 927.] Motion of National Jewish Commission on Law & Public Affairs for leave to file an untimely brief as *amicus curiae* denied.

No. 72-1628. *TELEPROMPTER CORP. ET AL. v. COLUMBIA BROADCASTING SYSTEM, INC., ET AL.*; and

No. 72-1633. *COLUMBIA BROADCASTING SYSTEM, INC., ET AL. v. TELEPROMPTER CORP. ET AL.* C. A. 2d Cir. [Certiorari granted, *ante*, p. 817.] Motion of Columbia Broadcasting System, Inc., et al., for divided argument granted. Motion of American Society of Composers, Authors & Publishers for leave to file a brief as *amicus curiae* in No. 72-1633 granted.

No. 72-5830. *PATTERSON v. WARNER ET AL.* Appeal from D. C. S. D. W. Va. [Probable jurisdiction noted, 411 U. S. 905.] Consideration of appellant's suggestion of mootness postponed to hearing of case on the merits.

414 U. S.

December 3, 1973

No. 73-492. KUNSTSAMMLUNGEN ZU WEIMAR *v.* FEDERAL REPUBLIC OF GERMANY ET AL. C. A. 2d Cir. The Solicitor General is invited to file a brief in this case expressing the views of the United States.

No. 73-5508. BEGUN *v.* WARDEN, McNEIL ISLAND PENITENTIARY, ET AL.;

No. 73-5564. LODDY *v.* WYOMING;

No. 73-5582. BOWLING *v.* COX, WARDEN;

No. 73-5627. MORTON *v.* WYOMING;

No. 73-5630. FOXWORTH *v.* PROCUNIER, CORRECTIONS DIRECTOR, ET AL.;

No. 73-5633. AMMONS *v.* UNITED STATES;

No. 73-5645. HOWARD *v.* NEVADA ET AL.;

No. 73-5656. OAKS *v.* WAINWRIGHT, CORRECTIONS DIRECTOR;

No. 73-5668. DORROUGH *v.* HENDERSON, WARDEN;  
and

No. 73-5674. MORRIS *v.* SUPERIOR COURT OF ALAMEDA COUNTY, CALIFORNIA, ET AL. Motions for leave to file petitions for writs of habeas corpus denied.

No. 72-6994. OAKS *v.* SUPREME COURT OF FLORIDA ET AL.;

No. 73-5106. NEELEY *v.* HAYNSWORTH, CHIEF JUDGE, U. S. COURT OF APPEALS, ET AL.; and

No. 73-5473. DELESPINE *v.* BATES, JUDGE. Motions for leave to file petitions for writs of mandamus denied.

No. 73-508. PFOTZER ET AL., DBA E. & E. J. PFOTZER *v.* NEWMAN, U. S. DISTRICT JUDGE. Motion for leave to file petition for writ of mandamus and/or prohibition denied.

*Probable Jurisdiction Noted*

No. 72-6609. JIMENEZ ET AL. *v.* WEINBERGER, SECRETARY OF HEALTH, EDUCATION, AND WELFARE. Appeal from D. C. N. D. Ill. Motion to dispense with printing

December 3, 1973

414 U.S.

*amicus curiae* brief of Jacqueline Severance et al. granted. Motion of appellants for leave to proceed *in forma pauperis* granted. Probable jurisdiction noted. Reported below: 353 F. Supp. 1356.

*Certiorari Granted*

No. 72-1603. *CARDWELL, WARDEN v. LEWIS*. C. A. 6th Cir. Motion of respondent for leave to proceed *in forma pauperis* and certiorari granted. Reported below: 476 F. 2d 467.

No. 73-477. *GERSTEIN v. PUGH ET AL.* C. A. 5th Cir. Motion of respondents for leave to proceed *in forma pauperis* and certiorari granted. Reported below: 483 F. 2d 778.

No. 73-482. *MICHIGAN v. TUCKER*. C. A. 6th Cir. Motion of respondent for leave to proceed *in forma pauperis* and certiorari granted. Reported below: 480 F. 2d 927.

No. 73-370. *NATIONAL LABOR RELATIONS BOARD v. FOOD STORE EMPLOYEES UNION, LOCAL 347, AMALGAMATED MEAT CUTTERS & BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO*. C. A. D. C. Cir. Certiorari granted. Motion of Heck's Inc., for leave to intervene denied. Reported below: 155 U. S. App. D. C. 101, 476 F. 2d 546.

No. 73-439. *LEHMAN BROTHERS v. SCHEIN ET AL.*;

No. 73-440. *SIMON v. SCHEIN ET AL.*; and

No. 73-495. *INVESTORS DIVERSIFIED SERVICES, INC., ET AL. v. SCHEIN ET AL.* C. A. 2d Cir. Certiorari granted. Cases consolidated and a total of one hour allotted for oral argument limited to the following question: "Did the Court of Appeals for the Second Circuit err in not certifying the question of Florida law to the Florida Supreme Court pursuant to Florida's certification procedure? Fla. Stat. Ann. § 25.032 (1961), Fla. App. Rule 4.61 (1967)." Reported below: 478 F. 2d 817.

414 U. S.

December 3, 1973

No. 73-466. WILLIAM E. ARNOLD CO. *v.* CARPENTERS DISTRICT COUNCIL OF JACKSONVILLE AND VICINITY ET AL. Sup. Ct. Fla. Certiorari granted. The Solicitor General is invited to file a brief in this case expressing the views of the United States. Reported below: 279 So. 2d 300.

No. 73-473. TAYLOR *v.* HAYES, JUDGE. Ct. App. Ky. Certiorari granted limited to Questions 1, 2, and 3 presented by the petition which read as follows:

"1. When a trial judge summarily imposes consecutive sentences on eight counts of contempt aggregating four and one-half years' imprisonment, including sentences of one year's imprisonment on two counts, whether he or the appellate court may subsequently, in order to defeat the alleged contemnor's right to trial by jury, reduce the sentences so that the sentence on no one count exceeds six months' imprisonment and direct that the sentences run concurrently for a total of six months' imprisonment?

"2. When alleged contempts have been committed by an attorney in the presence of the trial judge and the trial judge proceeds summarily to punish for contempt, whether due process requires that the attorney be given some opportunity to be heard in defense or mitigation before he is finally adjudged guilty and sentence is imposed?

"3. Whether, in the circumstances of this case, the trial judge could impartially sit in judgment on multiple contempt charges against the petitioner?"

Reported below: 494 S. W. 2d 737.

No. 73-5615. CODISPOTI ET AL. *v.* PENNSYLVANIA. Sup. Ct. Pa. Motion for leave to proceed *in forma pauperis* granted. Certiorari granted limited to Questions 1 and 2 presented by the petition which read as follows:

1. "Should petitioners receive cumulative sentences for contempt of court imposed at the end of a trial where the total effective sentence received must be used rather

December 3, 1973

414 U. S.

than the individual sentences in order to determine the seriousness of the contempt and thereby determine whether the accused should be afforded the right to a jury trial?"

2. "Should the strong possibility of a substantial term of imprisonment require that an accused be afforded the right to a jury trial?"

Reported below: 453 Pa. 619, 306 A. 2d 294.

*Certiorari Denied.* (See also No. 73-110, *supra*.)

No. 72-6976. *WEAVER v. TEXAS ET AL.* C. A. 5th Cir. *Certiorari denied.* Reported below: 474 F. 2d 1135.

No. 73-50. *SEDA v. BARBOSA ET AL.* Super. Ct. P. R. *Certiorari denied.* Reported below: — P. R. R. —.

No. 73-164. *KANAREK v. SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES, ET AL.* Ct. App. Cal., 4th App. Dist. *Certiorari denied.*

No. 73-220. *PEREZ v. FLORIDA.* Sup. Ct. Fla. *Certiorari denied.* Reported below: 277 So. 2d 778.

No. 73-242. *THAGGARD v. UNITED STATES;* and

No. 73-255. *BEASLEY v. UNITED STATES.* C. A. 5th Cir. *Certiorari denied.* Reported below: 477 F. 2d 626.

No. 73-376. *COCO v. UNITED STATES;* and

No. 73-449. *NAKALADSKI, AKA NASH v. UNITED STATES.* C. A. 5th Cir. *Certiorari denied.* Reported below: 481 F. 2d 289.

No. 73-392. *DALY v. UNITED STATES.* C. A. 8th Cir. *Certiorari denied.* Reported below: 481 F. 2d 28.

No. 73-396. *REED ET AL. v. MORTON, SECRETARY OF THE INTERIOR, ET AL.* C. A. 9th Cir. *Certiorari denied.* Reported below: 480 F. 2d 634.

No. 73-398. *EMALFARB v. UNITED STATES.* C. A. 7th Cir. *Certiorari denied.* Reported below: 484 F. 2d 787.

414 U. S.

December 3, 1973

No. 73-407. *LAUCHLI v. UNITED STATES ET AL.* C. A. 7th Cir. Certiorari denied. Reported below: 478 F. 2d 1405.

No. 73-411. *BERMAN v. UNITED STATES.* C. A. 5th Cir. Certiorari denied. Reported below: 481 F. 2d 896.

No. 73-414. *ANGGELIS v. UNITED STATES.* Ct. Cl. Certiorari denied.

No. 73-441. *HURD-DARBEE, INC. v. UNITED STATES.* C. A. 6th Cir. Certiorari denied. Reported below: 480 F. 2d 926.

No. 73-443. *LOCAL UNION No. 3, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL-CIO v. NATIONAL LABOR RELATIONS BOARD ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 477 F. 2d 260.

No. 73-444. *ANDRESEN v. BAR ASSOCIATION OF MONTGOMERY COUNTY.* Ct. App. Md. Certiorari denied. Reported below: 269 Md. 313, 305 A. 2d 845.

No. 73-445. *HAMILTON v. NEW JERSEY.* Super. Ct. N. J. Certiorari denied. Reported below: See 63 N. J. 324, 307 A. 2d 97.

No. 73-446. *SLEGGERS-FORBES, INC., ET AL. v. NEW JERSEY HIGHWAY AUTHORITY ET AL.* Super. Ct. N. J. Certiorari denied. Reported below: 123 N. J. Super. 291, 302 A. 2d 545.

No. 73-447. *CUTLER v. UNITED STATES.* Ct. Cl. Certiorari denied. Reported below: 202 Ct. Cl. 221.

No. 73-448. *SLACK, AKA BUDSON v. UNITED STATES.* C. A. 9th Cir. Certiorari denied.

No. 73-450. *GROTH v. UNITED STATES.* C. A. 9th Cir. Certiorari denied.

December 3, 1973

414 U.S.

No. 73-451. *WHISTENANT v. ALABAMA*. Ct. Crim. App. Ala. Certiorari denied. Reported below: 50 Ala. App. 182, 278 So. 2d 183.

No. 73-452. *CITY OF TOPEKA STREET DEPARTMENT v. KANSAS COMMISSION ON CIVIL RIGHTS*. Sup. Ct. Kan. Certiorari denied. Reported below: 212 Kan. 398, 511 P. 2d 253.

No. 73-455. *SEE v. LOCAL UNION 417, UNITED AUTOMOBILE AEROSPACE & AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW), ET AL.* C. A. 6th Cir. Certiorari denied.

No. 73-456. *MARTINEZ-MARTINEZ v. IMMIGRATION AND NATURALIZATION SERVICE*. C. A. 5th Cir. Certiorari denied. Reported below: 480 F. 2d 117.

No. 73-460. *TROISE v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 483 F. 2d 615.

No. 73-462. *WEIR v. UNITED STATES*. Ct. Cl. Certiorari denied. Reported below: 200 Ct. Cl. 501, 474 F. 2d 617.

No. 73-465. *TITUS v. KORNFIELD, TRUSTEE IN BANKRUPTCY*. C. A. 9th Cir. Certiorari denied.

No. 73-468. *MILLIMAN v. FRIEDRICH ET AL.* C. A. 8th Cir. Certiorari denied.

No. 73-469. *SIGNER v. TRUSTEES OF PROPERTY OF PENN CENTRAL TRANSPORTATION Co.* C. A. 3d Cir. Certiorari denied.

No. 73-472. *WOODMAN ET AL. v. AMASON ET AL.* Sup. Ct. Tex. Certiorari denied. Reported below: 498 S. W. 2d 142.

No. 73-474. *SMITH v. ROBINSON, WARDEN, ET AL.* C. A. 2d Cir. Certiorari denied.

414 U.S.

December 3, 1973

No. 73-475. *SPILOTRO v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 478 F. 2d 1406.

No. 73-476. *GROSS v. MEDICAL MUTUAL OF CLEVELAND, INC.* C. A. 6th Cir. Certiorari denied.

No. 73-479. *GEORGE BENZ & SONS v. BUTZ, SECRETARY OF AGRICULTURE*. C. A. 8th Cir. Certiorari denied.

No. 73-481. *HOUSTON NATURAL GAS CORP. v. NATIONAL LABOR RELATIONS BOARD*. C. A. 5th Cir. Certiorari denied. Reported below: 478 F. 2d 467.

No. 73-485. *KOVATS v. FIRST NATIONAL BANK OF BROKEN ARROW*. C. A. 10th Cir. Certiorari denied.

No. 73-486. *VIRGIN ISLAND HOTEL ASSN. (U. S.), INC. v. VIRGIN ISLANDS WATER & POWER AUTHORITY*. C. A. 3d Cir. Certiorari denied. Reported below: 476 F. 2d 1263.

No. 73-490. *VAN DE WALLE v. AMERICAN CYANAMID Co.* C. A. 5th Cir. Certiorari denied. Reported below: 477 F. 2d 20.

No. 73-493. *SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION, AFL-CIO, ET AL. v. PIGNOTTI*. C. A. 8th Cir. Certiorari denied. Reported below: 477 F. 2d 825.

No. 73-497. *CANNON v. SOUTH CAROLINA*. Sup. Ct. S. C. Certiorari denied. Reported below: 260 S. C. 537, 197 S. E. 2d 678.

No. 73-502. *STRUMSKIS v. UNITED STATES*. Ct. Cl. Certiorari denied. Reported below: 200 Ct. Cl. 668, 474 F. 2d 623.

No. 73-503. *RAMSEY ET AL. v. UNITED MINE WORKERS OF AMERICA*. C. A. 6th Cir. Certiorari denied. Reported below: 481 F. 2d 742.

December 3, 1973

414 U.S.

No. 73-509. *KING v. BAER, TRUSTEE*. C. A. 10th Cir. Certiorari denied. Reported below: 482 F. 2d 552.

No. 73-510. *WYANDOTTE COUNTY, KANSAS, ET AL. v. UNITED STATES*. C. A. 10th Cir. Certiorari denied. Reported below: 480 F. 2d 969.

No. 73-511. *INDIANA & MICHIGAN ELECTRIC Co. v. ANDERSON POWER & LIGHT OF CITY OF ANDERSON, INDIANA, ET AL.* C. A. D. C. Cir. Certiorari denied. Reported below: 156 U. S. App. D. C. 315, 481 F. 2d 490.

No. 73-514. *PRINCE GEORGES COUNTY v. MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION*. Ct. App. Md. Certiorari denied. Reported below: 269 Md. 202, 306 A. 2d 223.

No. 73-515. *GREEN, ADMINISTRATRIX v. ROSS ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 481 F. 2d 102.

No. 73-520. *TAYLOR v. R. H. MACY & Co., INC.* C. A. 9th Cir. Certiorari denied.

No. 73-522. *GIBSON & PERIN Co. ET AL. v. CITY OF CINCINNATI ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 480 F. 2d 936.

No. 73-523. *ALEXANDER v. ALTON OCHSNER MEDICAL FOUNDATION ET AL.* Ct. App. La., 4th Cir. Certiorari denied. Reported below: 276 So. 2d 794.

No. 73-526. *ALASKA HELICOPTERS, INC., ET AL. v. ANDERSON ET AL.* Super. Ct. Alaska, 3d Jud. Dist. Certiorari denied.

No. 73-530. *CHERUP ET AL. v. PITTSBURGH PLATE GLASS Co.* C. A. 4th Cir. Certiorari denied. Reported below: 480 F. 2d 921.

414 U.S.

December 3, 1973

No. 73-540. *STATHAM v. RIDDLE*. C. A. 9th Cir. Certiorari denied. Reported below: 483 F. 2d 436.

No. 73-548. *HAHN ET UX. v. ROBINSON MEMORIAL HOSPITAL*. Sup. Ct. Ohio. Certiorari denied.

No. 73-551. *SMITH v. MISSISSIPPI*. Sup. Ct. Miss. Certiorari denied. Reported below: 278 So. 2d 454.

No. 73-553. *NEGAARD ET AL. v. DEPARTMENT OF AERONAUTICS OF CALIFORNIA ET AL.* Ct. App. Cal., 2d App. Dist. Certiorari denied. Reported below: 32 Cal. App. 3d 92, 107 Cal. Rptr. 920.

No. 73-554. *PHILIPPINE ACE LINES v. SEATTLE STEVEDORE Co.* C. A. 9th Cir. Certiorari denied.

No. 73-555. *LINDSAY, MAYOR OF NEW YORK, ET AL. v. MAYE ET AL.* Ct. App. N. Y. Certiorari denied. Reported below: 33 N. Y. 2d 552, 301 N. E. 2d 425.

No. 73-559. *HECK'S INC. v. FOOD STORE EMPLOYEES UNION, LOCAL 347, AMALGAMATED MEAT CUTTERS & BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO*. C. A. D. C. Cir. Certiorari denied. Reported below: 155 U. S. App. D. C. 101, 476 F. 2d 546.

No. 73-5063. *BOYD v. MISSOURI*. Sup. Ct. Mo. Certiorari denied. Reported below: 492 S. W. 2d 787.

No. 73-5151. *WATSON v. AULT, WARDEN*. C. A. 5th Cir. Certiorari denied.

No. 73-5169. *MCCRAY v. SCHLITZ, CLERK, U. S. DISTRICT COURT*. C. A. 4th Cir. Certiorari denied.

No. 73-5203. *ROSS v. BLACKLEDGE, WARDEN, ET AL.* C. A. 4th Cir. Certiorari denied.

December 3, 1973

414 U.S.

No. 73-5278. *MASELLI v. UNITED STATES*. C. A. 3d Cir. Certiorari denied.

No. 73-5288. *D'ORSAY v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 478 F. 2d 1403.

No. 73-5316. *DEMPSEY v. UNITED STATES*. C. A. 6th Cir. Certiorari denied.

No. 73-5321. *GOMEZ v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 482 F. 2d 807.

No. 73-5324. *WILLIAMS v. UNITED STATES*; and  
No. 73-5341. *SWANSON v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 484 F. 2d 176.

No. 73-5327. *MINOR v. UNITED STATES*. C. A. 2d Cir. Certiorari denied.

No. 73-5345. *JULIAN v. UNITED STATES ET AL.* C. A. 10th Cir. Certiorari denied. Reported below: 482 F. 2d 405.

No. 73-5364. *LOONEY v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 481 F. 2d 31.

No. 73-5377. *LAWRENCE v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 482 F. 2d 360.

No. 73-5383. *SALCIDO-MEDINA v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 483 F. 2d 162.

No. 73-5390. *WURZINGER v. IMMIGRATION AND NATURALIZATION SERVICE*. C. A. 7th Cir. Certiorari denied. Reported below: 483 F. 2d 1406.

No. 73-5393. *LEWIS v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 484 F. 2d 734.

414 U.S.

December 3, 1973

No. 73-5405. *STOCKMAR v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 480 F. 2d 954.

No. 73-5406. *ZITO v. UNITED STATES*. C. A. 2d Cir. Certiorari denied.

No. 73-5411. *DiTOMMASO v. UNITED STATES*. C. A. 4th Cir. Certiorari denied.

No. 73-5417. *RAMOS v. UNITED STATES*. C. A. 9th Cir. Certiorari denied.

No. 73-5422. *DOTA v. UNITED STATES*. C. A. 10th Cir. Certiorari denied. Reported below: 482 F. 2d 1005.

No. 73-5428. *SNOW v. UNITED STATES*. C. A. 6th Cir. Certiorari denied.

No. 73-5433. *GREEN v. UNITED STATES*. C. A. 10th Cir. Certiorari denied. Reported below: 483 F. 2d 469.

No. 73-5440. *HINES v. SLAYTON, PENITENTIARY SUPERINTENDENT*. C. A. 4th Cir. Certiorari denied.

No. 73-5441. *THIBADOUX v. WARDEN, CLINTON CORRECTIONAL FACILITY*. C. A. 2d Cir. Certiorari denied.

No. 73-5445. *KIMMEL v. WYOMING ET AL.* Sup. Ct. Wyo. Certiorari denied.

No. 73-5453. *NATIONS v. MORRIS ET AL.*; and

No. 73-5458. *KIRKLAND v. SHELL OIL CO. ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: No. 73-5453, 483 F. 2d 577; No. 73-5458, 483 F. 2d 590.

No. 73-5461. *POLESE v. BREMER ET AL.* Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 73-5463. *McNEARY v. STONE, INSTITUTION SUPERINTENDENT*. C. A. 9th Cir. Certiorari denied. Reported below: 482 F. 2d 804.

December 3, 1973

414 U.S.

No. 73-5466. GERARD *v.* WYOMING. Sup. Ct. Wyo. Certiorari denied. Reported below: 511 P. 2d 99.

No. 73-5468. COOPER *v.* TEXAS BOARD OF MEDICAL EXAMINERS. Ct. Civ. App. Tex., 8th Sup. Jud. Dist. Certiorari denied. Reported below: 489 S. W. 2d 129.

No. 73-5471. LASHLEY *v.* FORD MOTOR CO. ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 480 F. 2d 158.

No. 73-5474. PALLER *v.* PALLER. Ct. App. Ohio, Cuyahoga County. Certiorari denied.

No. 73-5477. RING *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 73-5488. AVINA *v.* CALIFORNIA. Ct. App. Cal., 5th App. Dist. Certiorari denied.

No. 73-5491. HANDVERGER ET AL. *v.* HARVILL ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 479 F. 2d 513.

No. 73-5492. CARTER *v.* HILL, ATTORNEY GENERAL OF TEXAS. C. A. 5th Cir. Certiorari denied. Reported below: 480 F. 2d 922.

No. 73-5493. KOVAC *v.* MEACHAM, PENITENTIARY SUPERINTENDENT, ET AL. Sup. Ct. Wyo. Certiorari denied.

No. 73-5495. ALEXANDER *v.* MICHIGAN. C. A. 6th Cir. Certiorari denied.

No. 73-5496. PARSON *v.* ANDERSON, WARDEN. C. A. 3d Cir. Certiorari denied. Reported below: 481 F. 2d 94.

No. 73-5501. JONES *v.* CALIFORNIA. Ct. App. Cal., 1st App. Dist. Certiorari denied.

414 U.S.

December 3, 1973

No. 73-5504. SCOTT, AKA DAVIS *v.* KENTUCKY. Ct. App. Ky. Certiorari denied. Reported below: 495 S. W. 2d 800.

No. 73-5505. PFEIFER *v.* UNITED STATES ET AL. C. A. 7th Cir. Certiorari denied.

No. 73-5506. CORCELLER *v.* BONANZA INTERNATIONAL, INC., ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 480 F. 2d 613.

No. 73-5509. SCOTT *v.* KENTUCKY. Ct. App. Ky. Certiorari denied. Reported below: 497 S. W. 2d 561.

No. 73-5513. FRIST *v.* HAYNSWORTH, CHIEF JUDGE, U. S. COURT OF APPEALS, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 474 F. 2d 1341.

No. 73-5518. EDWARDS *v.* BLACKLEDGE, WARDEN. C. A. 4th Cir. Certiorari denied.

No. 73-5521. HAMPTON *v.* HOCKER, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 73-5522. DAVIS *v.* CROWELL CONSTRUCTION Co., INC. C. A. 4th Cir. Certiorari denied. Reported below: 480 F. 2d 921.

No. 73-5523. WEST *v.* HUNT, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 73-5528. LOWRY *v.* ENOMOTO, CORRECTIONAL SUPERINTENDENT. C. A. 9th Cir. Certiorari denied.

No. 73-5533. HARDEN *v.* LAVALLEE, CORRECTIONAL SUPERINTENDENT, ET AL. C. A. 2d Cir. Certiorari denied.

No. 73-5544. PAPPAS *v.* JWJ WHOLESALE DISTRIBUTORS, INC. Ct. App. Tenn. Certiorari denied.

December 3, 1973

414 U.S.

No. 73-5553. *ARMATO v. CORRECTIONAL SUPERINTENDENT, EASTERN N. Y. CORRECTIONAL FACILITY*. App. Div., Sup. Ct. N. Y., 2d Jud. Dept. Certiorari denied. Reported below: 41 App. Div. 2d 1029, 343 N. Y. S. 2d 798.

No. 73-5554. *SHORTER v. ALLEN SUPERIOR COURT ET AL.* Ct. App. Ind. Certiorari denied. Reported below: — Ind. —, 292 N. E. 2d 286.

No. 73-5555. *GEDVICK v. INTERNATIONAL UNION OF OPERATING ENGINEERS AFFILIATED ET AL.* C. A. D. C. Cir. Certiorari denied.

No. 73-5562. *BROWN v. BALDWIN, TRAINING CENTER SUPERINTENDENT.* C. A. 8th Cir. Certiorari denied.

No. 73-5563. *MCDONALD v. WELLONS ET AL.* Ct. App. Tenn. Certiorari denied.

No. 73-5565. *PARKS v. PENNSYLVANIA.* Sup. Ct. Pa. Certiorari denied. Reported below: 453 Pa. 296, 309 A. 2d 725.

No. 73-5574. *HARDWICK v. GEORGIA.* C. A. 5th Cir. Certiorari denied. Reported below: 481 F. 2d 1402.

No. 73-5576. *CASPERSON v. PENNSYLVANIA.* Sup. Ct. Pa. Certiorari denied.

No. 73-5583. *DEAR v. LOCKE ET AL.* C. A. 7th Cir. Certiorari denied.

No. 73-5589. *ROSS v. MORGAN, ATTORNEY GENERAL OF NORTH CAROLINA, ET AL.* C. A. 4th Cir. Certiorari denied.

No. 73-5596. *GARCIA v. CALIFORNIA.* Ct. App. Cal., 5th App. Dist. Certiorari denied.

414 U. S.

December 3, 1973

No. 73-5597. *SERRANO v. NEW YORK*. Ct. App. N. Y. Certiorari denied. Reported below: 33 N. Y. 2d 623, 301 N. E. 2d 549.

No. 73-5625. *FREED ET AL. v. MICHIGAN DEPARTMENT OF TREASURY, REVENUE DIVISION*. Ct. App. Mich. Certiorari denied.

No. 72-1399. *COAR v. GROSS*. Super. Ct. N. J. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: See 62 N. J. 197, 299 A. 2d 731.

No. 72-6971. *ORTIZ v. FRITZ, CORRECTIONAL SUPERINTENDENT*. C. A. 2d Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 476 F. 2d 37.

No. 73-162. *EDGEcombe v. LOUISIANA*. Sup. Ct. La. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 275 So. 2d 740.

No. 73-225. *HALLER v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 477 F. 2d 453.

No. 73-413. *SHELTON v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 482 F. 2d 848.

No. 73-422. *D'AMBRA ET UX. v. UNITED STATES*. C. A. 1st Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 481 F. 2d 14.

No. 73-458. *RAGUSA v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari.

No. 73-470. *HETRICK v. MARTIN ET AL.* C. A. 6th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 480 F. 2d 705.

December 3, 1973

414 U.S.

No. 73-471. *REID ET AL. v. INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE & AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, UAW, LOCAL UNION 1093*. C. A. 10th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 479 F. 2d 517.

No. 73-484. *BOYLE v. UNITED STATES*. C. A. D. C. Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 157 U. S. App. D. C. 166, 482 F. 2d 755.

No. 73-496. *UNARCO INDUSTRIES, INC. v. SWANSON ET AL.* C. A. 10th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 479 F. 2d 664.

No. 73-506. *DIAMOND CAB COMPANY OF SAN DIEGO COUNTY, INC. v. SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO, ET AL.* Ct. App. Cal., 4th App. Dist. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari.

No. 73-5205. *SMITH v. PENNSYLVANIA*. Sup. Ct. Pa. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 452 Pa. 1, 304 A. 2d 456.

No. 73-5331. *KING v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 482 F. 2d 454.

No. 73-5372. *NUNEZ v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 483 F. 2d 453.

No. 73-5400. *SHERIDAN v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 483 F. 2d 169.

414 U. S.

December 3, 1973

No. 73-5403. *MERRILL v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 484 F. 2d 168.

No. 73-5449. *SHEPHERD v. ROSS ET AL.* C. A. 4th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 478 F. 2d 1400.

No. 73-5502. *PINELL v. SUPERIOR COURT OF CALIFORNIA, COUNTY OF MARIN, ET AL.* Ct. App. Cal., 1st App. Dist. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari.

No. 73-5517. *TINSLEY v. KENTUCKY*. Ct. App. Ky. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 495 S. W. 2d 776.

No. 73-5519. *KARALLA v. MICHIGAN*. C. A. 6th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari.

No. 73-5542. *PUGH ET AL. v. GERSTEIN*. C. A. 5th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 483 F. 2d 778.

No. 72-6930. *EX PARTE KENT*. Sup. Ct. Mo. Certiorari denied. Reported below: 490 S. W. 2d 649.

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

The finality of the judgment in this case, at least with respect to the double jeopardy claim, is squarely decided by *Harris v. Washington*, 404 U. S. 55, 56 (1971). After being found not guilty by reason of insanity and committed, the petitioner sought habeas corpus relief in the Missouri Supreme Court, challenging the statute under which he was committed. That court found that petitioner was indeed improperly confined under the statute, since he should never have been acquitted. The judgment of acquittal was vacated and the case was remanded

with instructions that "[i]f it is determined that petitioner is mentally fit to proceed, the criminal proceedings may be resumed." On June 29, 1973, the trial court found petitioner competent and set the case for trial on October 29, 1973. Petitioner's attorney has informed the clerk's office that a continuance has been granted and trial is currently set for December 3, 1973. The essence of petitioner's double jeopardy claim, raised and rejected below on petition for rehearing, is that he may not again be tried. The decision that he may be so tried is final for purposes of 28 U. S. C. § 1257:

"Since the state courts have finally rejected a claim that the Constitution forbids a second *trial* of the petitioner, a claim separate and apart from the question whether the petitioner may constitutionally be *convicted* of the crimes with which he is charged, our jurisdiction is properly invoked under 28 U. S. C. § 1257." *Harris v. Washington, supra*, at 56.

In *Harris* the Washington Supreme Court denied a writ of prohibition to stay a trial which petitioner claimed was barred by double jeopardy. In this case petitioner, on petition for rehearing, unsuccessfully objected to the Missouri Supreme Court's determination that criminal proceedings be resumed upon a finding of competence, and the St. Louis Circuit Court has ordered petitioner to stand trial in accordance with the Missouri Supreme Court mandate. Although his constitutional objections to the commitment statute may not be properly before us since petitioner is no longer committed under the statute, the double jeopardy claim is properly reviewable at this point since his objection to standing trial has been rejected and petitioner has been ordered to stand trial in accordance with the mandate of the State's highest court.

The issue as posed should at least be set for argument.

414 U. S.

December 3, 1973

No. 73-44. *MORRISON v. FLORIDA*. Dist. Ct. App. Fla., 4th Dist. Motion to dispense with printing petition granted. Certiorari denied. Reported below: 268 So. 2d 207.

No. 73-454. *PHILLIPS PETROLEUM CO. v. ZIEGLER*. C. A. 5th Cir. Certiorari denied. MR. JUSTICE DOUGLAS and MR. JUSTICE WHITE would grant certiorari. Reported below: 486 F. 2d 858.

No. 73-461. *GRABOWSKI v. NORTHERN FISHING & TRADING CO., INC., ET AL.* C. A. 9th Cir. Motion of Association of Trial Lawyers of America for leave to file a brief as *amicus curiae* granted. Certiorari denied. Reported below: 477 F. 2d 1267.

No. 73-463. *BAKER ET AL., TRUSTEES v. MORGAN GUARANTY TRUST COMPANY OF NEW YORK, TRUSTEE, ET AL.* C. A. 3d Cir. Certiorari denied. MR. JUSTICE WHITE, MR. JUSTICE BLACKMUN, and MR. JUSTICE POWELL would grant certiorari. Reported below: 484 F. 2d 323.

No. 73-489. *CLARK COUNTY, NEVADA v. TURNER, GUARDIAN*. Sup. Ct. Nev. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied, it appearing that the judgment below rests upon an adequate state ground. Reported below: — Nev. —, 510 P. 2d 879.

No. 73-538. *SUMBRY ET AL. v. LAND, JUDGE*. Ct. App. Ga. Certiorari denied. MR. JUSTICE DOUGLAS, MR. JUSTICE BRENNAN, and MR. JUSTICE MARSHALL would grant certiorari. Reported below: 127 Ga. App. 786, 195 S. E. 2d 228.

No. 73-552. *SCHWARTZ ET AL. v. DEFENDER ASSOCIATION OF PHILADELPHIA*. Sup. Ct. Pa. Certiorari denied. MR. JUSTICE DOUGLAS, MR. JUSTICE BRENNAN,

December 3, 1973

414 U. S.

and MR. JUSTICE MARSHALL would grant certiorari. Reported below: 453 Pa. 353, 307 A. 2d 906.

No. 73-558. MICHIGAN *v.* McMILLER. Sup. Ct. Mich. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 389 Mich. 425, 208 N. W. 2d 451.

No. 73-595. AMERICAN TELEPHONE & TELEGRAPH CO. ET AL. *v.* UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA. C. A. 9th Cir. Certiorari denied. MR. JUSTICE BLACKMUN and MR. JUSTICE POWELL took no part in the consideration or decision of this petition.

No. 73-5273. ROSS *v.* MASSACHUSETTS. Sup. Jud. Ct. Mass. Certiorari denied. Reported below: — Mass. —, 296 N. E. 2d 810.

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

Petitioner was convicted in state court of armed robbery, assault and battery by means of a dangerous weapon, and assault and battery with intent to murder. Petitioner and his codefendants are young Negroes. Their victim was a white, uniformed security guard employed by Boston University. Petitioner requested the trial judge to direct a specific question concerning racial prejudice to the prospective jurors on voir dire.<sup>1</sup> The trial judge refused; instead, he made only the general inquiry mandated by Massachusetts law, whether members of the array had “expressed or formed an opinion, or [were] sensible of any bias or prejudice.” The Supreme Judicial Court of Massachusetts affirmed the conviction. — Mass. —, 282 N. E. 2d 70 (1972).

<sup>1</sup> The specific question requested was, “Are there any of you who believe that a white person is more likely to be telling the truth than a black person?”

1080

MARSHALL, J., dissenting

Petitioner sought certiorari on the ground that he had been denied the opportunity to have the jurors examined as to racial bias, a right this Court guaranteed in *Aldridge v. United States*, 283 U. S. 308 (1931). We granted certiorari and remanded for reconsideration in light of *Ham v. South Carolina*, 409 U. S. 524 (1973). On remand, the Supreme Judicial Court of Massachusetts again upheld the conviction. — Mass. —, 296 N. E. 2d 810 (1973).

The importance of the right at issue here—the opportunity to ascertain the racial bias of the veniremen—can hardly be gainsaid. The right to trial by an “impartial jury” is a cornerstone of our system of justice.<sup>2</sup>

“[T]he right to jury trial guarantees to the criminally accused a fair trial by a panel of impartial, ‘indifferent’ jurors. The failure to accord an accused a fair hearing violates even the minimal standards of due process. . . . In the language of Lord Coke, a juror must be as ‘indifferent as he stands unsworne.’ Co. Litt. 155b. His verdict must be based upon the evidence developed at the trial. Cf. *Thompson v. City of Louisville*, 362 U. S. 199. This is true, regardless of the heinousness of the crime charged, the apparent guilt of the offender or the station in life which he occupies. It was so written into our law as early as 1807 by Chief Justice Marshall in *1 Burr’s Trial* 416 (1807). ‘The theory of the law is that a juror who has formed an opinion cannot be impartial.’ *Reynolds v. United States*, 98 U. S. 145, 155.” *Irvin v. Dowd*, 366 U. S. 717, 722 (1961) (footnote omitted).

<sup>2</sup> See *Peters v. Kiff*, 407 U. S. 493 (1972); *Witherspoon v. Illinois*, 391 U. S. 510 (1968); *Swain v. Alabama*, 380 U. S. 202 (1965); *Irvin v. Dowd*, 366 U. S. 717 (1961); *Dennis v. United States*, 341 U. S. 494 (1951); *Lewis v. United States*, 146 U. S. 370 (1892); *Pointer v. United States*, 151 U. S. 396 (1894).

Accordingly, in *Ham v. South Carolina, supra*, MR. JUSTICE REHNQUIST, writing for a unanimous Court,<sup>3</sup> found constitutional error in a state court trial judge's refusal to propound a specific question on racial prejudice to the veniremen in the trial of a Negro for possession of marihuana.<sup>4</sup>

"The State having created [the] statutory framework for the selection of juries, the essential fairness required by the Due Process Clause of the Fourteenth Amendment requires that under the facts shown by this record the petitioner be permitted to have the jurors interrogated on the issue of racial bias." 409 U. S., at 527.

Nonetheless, on remand, the Massachusetts court read our decision in *Ham* as limited by the particular circumstances of that case—the trial of a civil rights worker in the South. The State court found that petitioner, unlike *Ham*, was not likely to be a "special target for racial prejudice" and, therefore, that the trial judge did not err in refusing to make the requested inquiry.

This distinction is supported by neither logic nor precedent. MR. JUSTICE REHNQUIST explained the basis for the Court's decision in *Ham* as follows:

"The inquiry as to racial prejudice derives its constitutional stature from the firmly established precedent of *Aldridge* [v. *United States*] and the numer-

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<sup>3</sup> Although the Court was unanimous on this issue, the author and MR. JUSTICE DOUGLAS dissented on another ground.

<sup>4</sup> In *Ham*, as in the case before us, the trial judge asked only the general questions about bias provided for by statute. This Court observed that while a trial judge is not required to put the question about racial prejudice in the exact form suggested by the defendant, the question must be "sufficient to focus the attention of prospective jurors on any racial prejudice they might entertain." 409 U. S., at 527. The Court found the general questions propounded by the trial court insufficient for that purpose.

ous state cases upon which it relied, and from a principal purpose as well as from the language of those who adopted the Fourteenth Amendment." *Id.*, at 528.

In *Aldridge v. United States*, 283 U. S. 308 (1931), Mr. Chief Justice Hughes, writing for the Court, found that the "essential demands of fairness" required the trial judge to interrogate veniremen as to racial prejudice in the trial of a Negro for murdering a white policeman. The Court observed that "[n]o surer way could be devised to bring the processes of justice into disrepute" than to "permit it to be thought that persons entertaining a disqualifying prejudice were allowed to serve as jurors and that inquiries designed to elicit the fact of disqualification were barred." *Id.*, at 315.

The *Aldridge* Court was not concerned with whether petitioner was unpopular in the community—a special target of prejudice—but rather with the potential racial "bias of the particular jurors who are to try the accused." *Id.*, at 314. The Court did not rely on any particular circumstances to justify its requirements other than the fact that "the possibility of such prejudice [against Negroes] is [not] so remote as to justify the risk in forbidding the inquiry." *Ibid.*<sup>5</sup> (Footnote omitted.) Nor did the Court purport to limit its holding to any region because the "question is not . . . the dominant sentiment of the community . . ." *Ibid.*

In *Ham*, this Court reaffirmed its commitment to the holding of *Aldridge* and clarified its constitutional underpinnings. The Court emphasized the compelling nature of an inquiry into racial prejudice—the principal target of the Fourteenth Amendment. The Court also indi-

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<sup>5</sup> Cf. H. Kalven & H. Zeisel, *The American Jury* 210, 339-344 (1966).

cated the importance of the state cases, of which the *Aldridge* Court said:

“The practice of permitting questions as to racial prejudice is not confined to any section of the country, and this fact attests the widespread sentiment that fairness demands that such inquiries be allowed.” *Id.*, at 313.

The principle that fairness demands such inquiry is, if anything, far more pervasive today than it was when *Aldridge* was decided, in both federal and state courts.<sup>6</sup>

Yet, the Massachusetts court, by its holding, requires a Negro defendant to establish that he is a special target for racial prejudice before being entitled to an inquiry on racial bias during the voir dire of the jury. In *Aldridge*, this Court weighed the Government's interests in refusing such a question, where it observed that:

“If in fact [the jurors] were found to be impartial, no harm would be done in permitting the question; but if any one of them was shown to entertain a

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<sup>6</sup> See *United States v. Carter*, 440 F. 2d 1132 (CA6 1971); *United States v. Gore*, 435 F. 2d 1110 (CA4 1970); *Silverthorne v. United States*, 400 F. 2d 627 (CA9 1968); *King v. United States*, 124 U. S. App. D. C. 138, 362 F. 2d 968 (1966); *Frasier v. United States*, 267 F. 2d 62 (CA1 1959); *Smith v. United States*, 262 F. 2d 50 (CA4 1958); *United States v. Dennis*, 183 F. 2d 201 (CA2 1950), aff'd, 341 U. S. 494 (1951); *Gholston v. State*, 221 Ala. 556, 130 So. 69 (1930); *State v. Higgs*, 143 Conn. 138, 120 A. 2d 152 (1956); *Pinder v. State*, 27 Fla. 370, 8 So. 837 (1891); *Herndon v. State*, 178 Ga. 832, 174 S. E. 597 (1934); *State v. Jones*, 175 La. 1014, 144 So. 899 (1932); *Giles v. State*, 229 Md. 370, 183 A. 2d 359 (1962); *Owen v. State*, 177 Miss. 488, 171 So. 345 (1936); *State v. Pyle*, 343 Mo. 876, 123 S. W. 2d 166 (1938); *Johnson v. State*, 88 Neb. 565, 130 N. W. 282 (1911); *People v. Decker*, 157 N. Y. 186, 51 N. E. 1018 (1898); *State v. McAfee*, 64 N. C. 339 (1870); *Fendrick v. State*, 39 Tex. Cr. 147, 45 S. W. 589 (1898).

1080

MARSHALL, J., dissenting

prejudice which would preclude his rendering a fair verdict, a gross injustice would be perpetrated in allowing him to sit." *Id.*, at 314.

The state court should not be permitted to restrike that balance.

Finally, to say that petitioner is not a potential target of racial prejudice would be to ignore as judges what we must all know as men. That petitioner was tried in Boston, Massachusetts, while Gene Ham was tried in Florence, South Carolina, is of no consequence. Racial prejudice is a cultural malady that has shaped our history as a nation. It is a cancer of the mind and spirit which breeds as prolifically in the industrial cities of the North as in the rural towns of the South.<sup>7</sup> And where, as here and in the strikingly similar circumstances of the *Aldridge* case, a Negro is being accused of an attack on a white policeman, it would be disingenuous at best to assert that he is not apt to be a particular target of racial prejudice.

To deny this petition for certiorari is to see our decision in *Ham v. South Carolina* stillborn and to write an epitaph for those "essential demands of fairness" recognized by this Court 40 years ago in *Aldridge*. I fear that we "bring the processes of justice into disrepute" not only by sanctioning the denial of a right required by "essential demands of fairness" but also in failing to compel compliance by the court below with a precedent of this Court barely a year since decided. I would grant the petition.

<sup>7</sup> Cf. *Keyes v. School District No. 1, Denver, Colo.*, 413 U. S. 189 (1973) (desegregation of the Denver, Colo., school system); *Bradley v. Milliken*, 484 F. 2d 215 (CA6), cert. granted, *ante*, p. 1038 (desegregation of the Detroit, Mich., school system). See generally Report of the National Advisory Commission on Civil Disorders (1968).

December 3, 1973

414 U. S.

No. 73-5503. SMITH *v.* ALASKA. Sup. Ct. Alaska. Certiorari denied. MR. JUSTICE BRENNAN would grant certiorari. Reported below: 510 P. 2d 793.

No. 73-5512. NELSON *v.* JOHNSON, WARDEN. C. A. 6th Cir. Motion to defer consideration of petition and certiorari denied.

*Rehearing Denied*

- No. 72-1531. NASH *v.* UNITED STATES, *ante*, p. 823;  
No. 72-1537. KERSHAW *v.* BROOKS ET AL., *ante*, p. 824;  
No. 72-1546. MOORE *v.* KENTUCKY, *ante*, p. 865;  
No. 72-1618. GIMELSTOB *v.* UNITED STATES, *ante*, p. 828;  
No. 72-1625. ALL ET AL. *v.* NORTH CAROLINA, *ante*, p. 866;  
No. 72-1638. CRAVEN *v.* UNITED STATES, *ante*, p. 866;  
No. 72-1685. OWEN *v.* OWEN, *ante*, p. 830;  
No. 72-1687. MILLER *v.* UNITED STATES, *ante*, p. 830;  
No. 72-1721. WAINWRIGHT, CORRECTIONS DIRECTOR *v.* COTTLE, *ante*, p. 895;  
No. 72-1736. WHITE *v.* GEORGIA, *ante*, p. 886;  
No. 72-6281. McMASTER *v.* CONNETT, WARDEN, *ante*, p. 814;  
No. 72-6533. BEESON *v.* KASSOS ET AL., *ante*, p. 833;  
No. 72-6589. DISBROW *v.* UNITED STATES, *ante*, p. 869;  
No. 72-6596. DAPPER *v.* O'CONNOR ET AL., *ante*, p. 835;  
No. 72-6822. ALERS *v.* SOTO, JUDGE, *ante*, p. 892;  
No. 72-6832. LONG *v.* GAMMILL ET AL., *ante*, p. 805;  
No. 72-6867. HARRELSON *v.* UNITED STATES, *ante*, p. 847; and  
No. 72-6875. OLDEN *v.* McCARTHY, MEN'S COLONY SUPERINTENDENT, *ante*, p. 847. Petitions for rehearing denied.

414 U. S.

December 3, 1973

No. 72-6879. BAILEY *v.* HOUSTON CHRONICLE PUBLISHING Co., *ante*, p. 873;

No. 73-82. CARDEN *v.* BROOKS ET AL., *ante*, p. 824;

No. 73-101. HUNTER *v.* UNITED STATES, *ante*, p. 857;

No. 73-148. SHAPIRO *v.* CITY OF NEW YORK ET AL., *ante*, p. 804;

No. 73-167. GRAFF VENDING CO. ET AL. *v.* HAMPTON, DBA HAMPTON VENDING SUPPLY, *ante*, p. 859;

No. 73-177. GOLDSTEIN, RECEIVER *v.* UNITED STATES, *ante*, p. 974;

No. 73-209. DESMARAIS ET AL. *v.* WACHUSETT REGIONAL SCHOOL DISTRICT ET AL., *ante*, p. 859;

No. 73-224. ROSE ET UX. *v.* COMMISSIONER OF INTERNAL REVENUE, *ante*, p. 975; and

No. 73-5046. STOKES *v.* BRUCE ET AL., *ante*, p. 893. Petitions for rehearing denied.

No. 72-1545. BARRETT *v.* UNITED STATES, *ante*, p. 824;

No. 72-1553. MULLIGAN ET AL. *v.* UNITED STATES, *ante*, p. 825; and

No. 72-1592. BIDDY *v.* MISSISSIPPI, *ante*, p. 866. Motions to dispense with printing petitions for rehearing granted. Motions for leave to file petitions for rehearing denied.

No. 72-1574. BOB LAWRENCE REALTY, INC., ET AL. *v.* UNITED STATES, *ante*, p. 826;

No. 72-1705. CARINI *v.* ZONING BOARD OF APPEALS OF THE TOWN OF WEST HARTFORD, *ante*, p. 831;

No. 72-6549. KERR *v.* UNITED STATES, *ante*, p. 868;

No. 72-6782. HARPER *v.* TEGTMEYER, ACTING COMMISSIONER OF PATENTS, ET AL., *ante*, p. 843; and

No. 73-5158. HAWKINS *v.* MEACHAM, WARDEN, ET AL., *ante*, p. 814. Motions for leave to file petitions for rehearing denied.

December 3, 10, 1973

414 U.S.

No. 72-1604. HEWLETT *v.* HEWLETT, *ante*, p. 877;

No. 73-215. FALKNER ET UX. *v.* FERGUSON, JUDGE, ET AL., *ante*, p. 806; and

No. 73-216. FALKNER ET UX. *v.* FERGUSON, JUDGE, ET AL., *ante*, p. 806. Motions to dispense with printing petitions for rehearing granted. Petitions for rehearing denied.

No. 72-5082. WOCHER *v.* LOS ANGELES CITY SCHOOL DISTRICT ET AL., 409 U. S. 1042, 1131. Motion for leave to file second petition for rehearing denied.

No. 73-168. DUROVIC, DBA DUGA LABORATORIES, ET AL. *v.* WEINBERGER, SECRETARY OF HEALTH, EDUCATION, AND WELFARE, ET AL., *ante*, p. 944. Petition for rehearing denied. MR. JUSTICE BLACKMUN took no part in the consideration or decision of this petition.

DECEMBER 10, 1973

*Affirmed on Appeal*

No. 73-623. YOUNG LORDS PARTY ET AL. *v.* SUPREME COURT OF NEW YORK, APPELLATE DIVISION, FIRST DEPARTMENT, ET AL. Affirmed on appeal from D. C. S. D. N. Y. Reported below: 360 F. Supp. 581.

*Appeals Dismissed*

No. 73-579. STATE TAX COMMISSION OF ARIZONA ET AL. *v.* PRUDENTIAL INSURANCE COMPANY OF AMERICA. Appeal from Sup. Ct. Ariz. dismissed for want of substantial federal question. MR. JUSTICE POWELL took no part in the consideration or decision of this appeal. Reported below: 109 Ariz. 429, 510 P. 2d 745.

No. 73-621. UNION PACIFIC RAILROAD CO. ET AL. *v.* CITY AND COUNTY OF DENVER ET AL. Appeal from Sup. Ct. Colo. dismissed for want of substantial federal ques-

414 U.S.

December 10, 1973

tion. MR. JUSTICE DOUGLAS would note probable jurisdiction and set case for oral argument. Reported below: — Colo. —, 511 P. 2d 497.

*Miscellaneous Orders*

No. A-363 (73-5691). NORWOODS *v.* CALIFORNIA. Application for stay of execution of judgment and remittitur of the Court of Appeal of California, Fourth District, presented to MR. JUSTICE MARSHALL, and by him referred to the Court, denied.

No. A-517. KAPLAN *v.* CONTINENTAL CAN CO., INC., ET AL. C. A. 3d Cir. Application for writ of mandamus and other relief presented to MR. JUSTICE DOUGLAS, and by him referred to the Court, denied.

No. A-535. EPIFANIA *v.* UNITED STATES. C. A. 2d Cir. Application for stay of execution and enforcement of judgment of conviction presented to MR. JUSTICE DOUGLAS, and by him referred to the Court, denied.

No. 72-1490. FEDERAL POWER COMMISSION *v.* TEXACO INC. ET AL.; and

No. 72-1491. DOUGHERTY, EXECUTOR, ET AL. *v.* TEXACO INC. ET AL. C. A. D. C. Cir. [Certiorari granted, *ante*, p. 817.] Motion of Independent Petroleum Association of America for leave to file a brief as *amicus curiae* granted.

No. 72-1598. NATIONAL LABOR RELATIONS BOARD *v.* BELL AEROSPACE COMPANY, DIVISION OF TEXTRON, INC. C. A. 2d Cir. [Certiorari granted, *ante*, p. 816.] Motion of International Union, United Automobile, Aerospace & Agricultural Implement Workers of America (UAW) for leave to file a brief as *amicus curiae* granted.

No. 72-5830. PATTERSON *v.* WARNER ET AL. Appeal from D. C. S. D. W. Va. [Probable jurisdiction noted,

December 10, 1973

414 U.S.

411 U. S. 905.] Motion of Cletus B. Hanley to permit Phillip D. Gaujot, Esquire, to present oral argument *pro hac vice* granted.

No. 73-203. EISEN *v.* CARLISLE & JACQUELIN ET AL. C. A. 2d Cir. [Certiorari granted, *ante*, p. 908.] Motions of New York State Trial Lawyers Assn., NAACP Legal Defense & Educational Fund, Inc., California Trial Lawyers Assn., and Public Citizen & Consumers Union of United States, Inc., for leave to file briefs as *amici curiae* granted.

No. 73-406. BURNS, COMMISSIONER, DEPARTMENT OF SOCIAL SERVICES OF IOWA, ET AL. *v.* DOE ET AL.; and

No. 73-5650. DOE ET AL. *v.* BURNS, COMMISSIONER, DEPARTMENT OF SOCIAL SERVICES OF IOWA, ET AL. C. A. 8th Cir. The Solicitor General is invited to file a brief in these cases expressing the views of the United States.

No. 73-615. PRUDHOMME *v.* AL JOHNSON CONSTRUCTION Co.-MASSMAN CONSTRUCTION Co. ET AL. C. A. 5th Cir. Motion to dispense with printing petition denied with leave to file printed petition in conformity with Rule 39 of the Rules of this Court on or before December 27, 1973. MR. JUSTICE DOUGLAS would grant the motion.

No. 73-5747. TURNER *v.* BLACK, WARDEN. Motion for leave to file petition for writ of habeas corpus denied.

*Probable Jurisdiction Noted*

No. 73-557. JENKINS *v.* GEORGIA. Appeal from Sup. Ct. Ga. Motions of Authors League of America, Inc., National Association of Theatre Owners, and Association of American Publishers, Inc., et al. for leave to file briefs as *amici curiae* granted. Probable jurisdiction noted. Reported below: 230 Ga. 726, 199 S. E. 2d 183.

414 U.S.

December 10, 1973

*Certiorari Granted*

No. 73-346. *ANDERSON ET AL. v. UNITED STATES*. C. A. 4th Cir. Certiorari granted. Reported below: 481 F. 2d 685.

No. 73-631. *HOWARD JOHNSON CO., INC. v. DETROIT LOCAL JOINT EXECUTIVE BOARD, HOTEL & RESTAURANT EMPLOYEES & BARTENDERS INTERNATIONAL UNION, AFL-CIO*. C. A. 6th Cir. Certiorari granted. Reported below: 482 F. 2d 489.

No. 73-5265. *KOKOSZKA v. BELFORD, TRUSTEE IN BANKRUPTCY*. C. A. 2d Cir. Motion for leave to proceed *in forma pauperis* and certiorari granted. Reported below: 479 F. 2d 990.

No. 73-5284. *DORSZYNSKI v. UNITED STATES*. C. A. 7th Cir. Motion for leave to proceed *in forma pauperis* and certiorari granted. Reported below: 484 F. 2d 849.

*Certiorari Denied*

No. 72-6580. *OPERATIVE PLASTERERS & CEMENT MASON'S INTERNATIONAL UNION LOCAL 685, AFL-CIO v. TEXACO INC.* C. A. 5th Cir. Certiorari denied. Reported below: 472 F. 2d 594.

No. 72-6720. *TRAMMELL v. LAVALLEE, CORRECTIONAL SUPERINTENDENT*. C. A. 2d Cir. Certiorari denied.

No. 73-210. *FROMMHAGEN v. SCOTT*. Ct. App. D. C. Certiorari denied.

No. 73-292. *HENDRICKSON v. UNITED STATES*. C. A. 6th Cir. Certiorari denied.

No. 73-361. *RICORD v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 478 F. 2d 1397.

December 10, 1973

414 U.S.

No. 73-512. ALAN F. HUGHES, INC., ET AL. *v.* SECURITIES AND EXCHANGE COMMISSION ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 481 F. 2d 401.

No. 73-517. VEST ET UX. *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 5th Cir. Certiorari denied. Reported below: 481 F. 2d 238.

No. 73-533. SIGNER *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 482 F. 2d 394.

No. 73-524. SCHENNAULT, AKA ALVAREZ, ET AL. *v.* UNITED STATES ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 478 F. 2d 1406.

No. 73-562. PATLOGAN ET AL. *v.* DICKSTEIN, SHAPIRO & GALLIGAN, NOW COLSON & SHAPIRO, ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 481 F. 2d 1045.

No. 73-563. LOCAL UNION NO. 11, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL-CIO *v.* BOLDT ET AL. Temp. Emerg. Ct. App. Certiorari denied. Reported below: 481 F. 2d 1392.

No. 73-564. SHALLER *v.* UNITED STATES. Ct. Cl. Certiorari denied. Reported below: 202 Ct. Cl. 571.

No. 73-567. STEIN *v.* CITY OF NEW BERLIN. Sup. Ct. Wis. Certiorari denied. Reported below: 58 Wis. 2d 417, 206 N. W. 2d 207.

No. 73-570. SOUTHWIRE Co. ET AL. *v.* METAL EQUIPMENT Co. Ct. App. Ga. Certiorari denied. Reported below: 129 Ga. App. 49, 198 S. E. 2d 687.

No. 73-572. FARHA ET AL. *v.* UNIFIED SCHOOL DISTRICT No. 259, WICHITA, KANSAS, ET AL. C. A. 10th Cir. Certiorari denied.

414 U. S.

December 10, 1973

No. 73-580. *RICHARDS v. CROWN POINT COMMUNITY SCHOOL CORP. ET AL.* Ct. App. Ind. Certiorari denied. Reported below: — Ind. App. —, 290 N. E. 2d 449.

No. 73-581. *NEW YORK v. BERCK.* Ct. App. N. Y. Certiorari denied. Reported below: 32 N. Y. 2d 567, 300 N. E. 2d 411.

No. 73-588. *CALIFORNIA STATE EMPLOYEES' ASSN. ET AL. v. FLOURNOY ET AL.* Ct. App. Cal., 2d App. Dist. Certiorari denied. Reported below: 32 Cal. App. 3d 219, 32 Cal. Rptr. 251.

No. 73-589. *UNION OIL COMPANY OF CALIFORNIA v. DUGAS ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 481 F. 2d 773.

No. 73-597. *PARKER v. LOUISIANA ET AL.* Sup. Ct. La. Certiorari denied. Reported below: 282 So. 2d 483.

No. 73-602. *TRAVELERS INSURANCE CO. v. BLUE CROSS OF WESTERN PENNSYLVANIA.* C. A. 3d Cir. Certiorari denied. Reported below: 481 F. 2d 80.

No. 73-609. *ELLS v. COUNTY OF WELD ET AL.* C. A. 10th Cir. Certiorari denied.

No. 73-626. *MITSUMI O. S. K. LINES, LTD. v. STRACHAN SHIPPING CO.* C. A. 5th Cir. Certiorari denied. Reported below: 479 F. 2d 432.

No. 73-633. *CELANESE CORP. ET AL. v. HEMPHILL, U. S. DISTRICT JUDGE.* C. A. 4th Cir. Certiorari denied.

No. 73-634. *MEYER v. SEAMANS, SECRETARY OF THE AIR FORCE.* C. A. 7th Cir. Certiorari denied. Reported below: 478 F. 2d 1406.

No. 73-635. *FOUST v. NORTH CAROLINA.* Ct. App. N. C. Certiorari denied. Reported below: 18 N. C. App. 133, 196 S. E. 2d 374.

December 10, 1973

414 U.S.

No. 73-642. *EMPIRE CONSTRUCTION, INC. v. CITY OF TULSA, OKLAHOMA*. Sup. Ct. Okla. Certiorari denied. Reported below: 512 P. 2d 119.

No. 73-643. *BOURNS, INC., ET AL. v. ALLEN-BRADLEY Co. ET AL.*; and

No. 73-644. *ALLEN-BRADLEY Co. ET AL. v. BOURNS, INC., ET AL.* C. A. 7th Cir. Certiorari denied. Reported below: 480 F. 2d 123.

No. 73-5047. *FALCONER v. PATE, WARDEN*. C. A. 7th Cir. Certiorari denied. Reported below: 478 F. 2d 1405.

No. 73-5051. *GUSTAV, AKA FERRICK v. WASHINGTON*. Sup. Ct. Wash. Certiorari denied. Reported below: 81 Wash. 2d 942, 506 P. 2d 860.

No. 73-5204. *REGALADO v. CALIFORNIA*. Ct. App. Cal., 3d App. Dist. Certiorari denied.

No. 73-5217. *DAVIS v. PENNSYLVANIA*. Sup. Ct. Pa. Certiorari denied. Reported below: 452 Pa. 604, 303 A. 2d 823.

No. 73-5221. *RICE v. COINER, WARDEN*. C. A. 4th Cir. Certiorari denied.

No. 73-5250. *ROTH v. UNITED STATES*. C. A. 2d Cir. Certiorari denied.

No. 73-5257. *HARRISON v. SLAYTON, PENITENTIARY SUPERINTENDENT*. C. A. 4th Cir. Certiorari denied.

No. 73-5258. *KISH v. WAINWRIGHT, CORRECTIONS DIRECTOR*. C. A. 5th Cir. Certiorari denied. Reported below: 477 F. 2d 594.

No. 73-5338. *CARTER ET AL. v. BUTZ, SECRETARY OF AGRICULTURE, ET AL.* C. A. 3d Cir. Certiorari denied. Reported below: 479 F. 2d 1084.

414 U.S.

December 10, 1973

No. 73-5357. *CORREA-NEGRON v. UNITED STATES*. C. A. 9th Cir. Certiorari denied.

No. 73-5402. *OSORIO v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 482 F. 2d 1343.

No. 73-5415. *NOAH v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 475 F. 2d 688.

No. 73-5431. *MORALES v. UNITED STATES*. C. A. 2d Cir. Certiorari denied.

No. 73-5434. *SIMPSON v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 481 F. 2d 582.

No. 73-5443. *SPROUSE ET AL. v. FEDERAL PRISON INDUSTRIES, INC.* C. A. 5th Cir. Certiorari denied. Reported below: 480 F. 2d 1.

No. 73-5446. *BUCHHOLZ ET AL. v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 483 F. 2d 65.

No. 73-5470. *ISAAC v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 466 F. 2d 502.

No. 73-5475. *RIVERA v. UNITED STATES*. C. A. 2d Cir. Certiorari denied.

No. 73-5511. *SCHERER v. NEVADA SUPREME COURT ET AL.* C. A. 9th Cir. Certiorari denied.

No. 73-5534. *LUCCHETTI v. UNITED STATES*. C. A. 2d Cir. Certiorari denied.

No. 73-5594. *DELEVAY v. DOWNS*. C. A. 4th Cir. Certiorari denied. Reported below: 473 F. 2d 907.

No. 73-5601. *DICKEY v. SUPERIOR COURT OF CALIFORNIA, COUNTY OF RIVERSIDE*. Ct. App. Cal., 4th App. Dist. Certiorari denied.

December 10, 1973

414 U.S.

No. 73-5602. *WILSON ET AL. v. FLORIDA*. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 280 So. 2d 480.

No. 73-5605. *COOPER v. LOUISIANA*. C. A. 5th Cir. Certiorari denied. Reported below: 478 F. 2d 1401.

No. 73-5606. *LATHAN v. PERINI, CORRECTIONAL SUPERINTENDENT*. C. A. 6th Cir. Certiorari denied.

No. 73-5614. *TARLTON v. TEXAS*. Ct. Crim. App. Tex. Certiorari denied.

No. 73-5616. *SCOTT v. CALIFORNIA*. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 73-5617. *POLAND v. CALIFORNIA*. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 73-5619. *LAWTON v. CALIFORNIA*. Sup. Ct. Cal. Certiorari denied.

No. 73-5623. *CROTHERS v. LOUISIANA*. Sup. Ct. La. Certiorari denied. Reported below: 278 So. 2d 12.

No. 73-5632. *LYONS v. INDIANA*. C. A. 7th Cir. Certiorari denied.

No. 73-5646. *BARBARITO v. VINCENT, CORRECTIONAL SUPERINTENDENT*. C. A. 2d Cir. Certiorari denied.

No. 73-5662. *GARDNER ET AL. v. JOYCE, SHERIFF, ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 482 F. 2d 283.

No. 73-5671. *PACE v. GALLAGHER ET AL.* C. A. 1st Cir. Certiorari denied.

No. 73-295. *DOE ET AL. v. BRENNAN, SECRETARY OF LABOR, ET AL.* C. A. 2d Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 478 F. 2d 537.

414 U. S.

December 10, 1973

No. 73-531. *MOODY v. UNITED STATES ET AL.* C. A. 5th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 479 F. 2d 1327.

No. 73-625. *STARR v. NEW JERSEY.* Sup. Ct. N. J. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 63 N. J. 553, 310 A. 2d 468.

No. 73-5038. *GREEN v. ESTELLE, CORRECTIONS DIRECTOR.* C. A. 5th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 476 F. 2d 601.

No. 73-5214. *CONNER v. HENDERSON, WARDEN, ET AL.* C. A. 5th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 480 F. 2d 922.

No. 73-5230. *FARMER v. UNITED STATES.* C. A. 9th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 480 F. 2d 119.

No. 73-5579. *GULLAGE v. SOUTH CAROLINA ET AL.* C. A. 4th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 480 F. 2d 1219.

No. 73-459. *NEW RIDER ET AL. v. BOARD OF EDUCATION OF INDEPENDENT SCHOOL DISTRICT No. 1, PAWNEE COUNTY, OKLAHOMA, ET AL.* C. A. 10th Cir. Certiorari denied. Reported below: 480 F. 2d 693.

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

Petitioners are male Pawnee Indians who are students at Pawnee Junior High School, a public school in Oklahoma. They sought to wear their hair parted in the middle with a long braid on each side so that, in their words, they could follow the "old traditional ways"

and because such a hairstyle was "one way of telling people that I am proud [to be an Indian]." Others testified that young Indians sought to wear braided hair because of a new-found pride in their heritage, in an attempt to "regain their tradition, to learn their culture."

These youths were suspended from school indefinitely on April 24, 1972,<sup>1</sup> for being in violation of a school hair-length regulation, which forbids hair reaching the shirt collar or ears. The Court of Appeals justified the suspension on the ground that the regulation was rational in that it sought to achieve the objective of "instilling pride and initiative among the students leading to scholarship attainment and high school spirit and morale." The court stressed testimony from one school superintendent that a school system cannot countenance different groups and still remain one organization.

Petitioners claim, *inter alia*, that the school hair-length restriction unjustifiably impinges on the freedom of expression guaranteed them by the First and Fourteenth Amendments. This Court has consistently, over my dissents, refused to review lower court decisions passing on the constitutionality of school hair-length regulations, whether such regulations have been upheld or struck down, and regardless of the grounds on which the lower courts have reached their conclusions. I have noted the deep division among the Circuits on this issue, and have thought that it is an issue of particular personal interest to many and of considerable constitutional importance. See *Freeman v. Flake*, 405 U. S. 1032; *Olf v. East Side Union High School District*, 404 U. S. 1042.

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<sup>1</sup> The suspension was stayed by a preliminary injunction of the District Court which apparently ran from May 1, 1972, to June 5, 1972, and apparently also by a stay entered by the Court of Appeals which ran from July 6, 1973, to September 4, 1973. Respondents claim that the suspension of petitioners was not permanent, but this is contradicted by the Court of Appeals' opinion.

1097

DOUGLAS, J., dissenting

Petitioners were not wearing their hair in a desired style simply because it was the fashionable or accepted style, or because they somehow felt the need to register an inchoate discontent with the general malaise they might have perceived in our society. They were in fact attempting to broadcast a clear and specific message to their fellow students and others—their pride in being Indian. This, I believe, should clearly bring this case within the ambit of *Tinker v. Des Moines School District*, 393 U. S. 503, where we struck down a school policy which refused to allow students to wear black armbands in protest of the Vietnam war. We recognized that such armbands were closely akin to pure speech and were entitled to First Amendment protection, *id.*, at 505–506, at least where, as here,<sup>2</sup> there was no finding that the operation of the school was substantially endangered by the symbolic speech:

“In order for the State in the person of school officials to justify prohibition of a particular expression of opinion, it must be able to show that its action was caused by something more than a mere desire to avoid the discomfort and unpleasantness that always accompany an unpopular viewpoint. Certainly where there is no finding and no showing that engaging in the forbidden conduct would ‘materially and substantially interfere with the requirements of appropriate discipline in the

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<sup>2</sup> Petitioners claim that “[r]espondents admitted that petitioners’ traditional hairstyle has never caused any disruption in the school.” Respondents do not contradict this statement, but only assert that the regulation on length of hair “bears a rational relationship to a legitimate state objective, i. e., that of instilling pride and initiative among the students leading to scholarship attainment and school spirit and morale.”

operation of the school,' the prohibition cannot be sustained." *Id.*, at 509.

As previously noted, there was an opinion voiced by school officials that allowing petitioners to wear their hair in an Indian manner while restricting the hair length of white students would somehow be "disruptive," in that an "integrated school system cannot countenance *different groups* and remain *one organization*." But as we noted in *Tinker*, this Court long ago recognized that our constitutional system repudiates the idea that a State may conduct its schools to "foster a homogeneous people.'" *Id.*, at 511. In *Meyer v. Nebraska*, 262 U. S. 390, 402, the Court said:

"In order to submerge the individual and develop ideal citizens, Sparta assembled the males at seven into barracks and intrusted their subsequent education and training to official guardians. Although such measures have been deliberately approved by men of great genius, their ideas touching the relation between individual and State were wholly different from those upon which our institutions rest; and it hardly will be affirmed that any legislature could impose such restrictions upon the people of a State without doing violence to both letter and spirit of the Constitution."

And in *Keyishian v. Board of Regents*, 385 U. S. 589, 603, we stated:

"The vigilant protection of constitutional freedoms is nowhere more vital than in the community of American schools.' *Shelton v. Tucker*, [364 U. S. 479,] 487. The classroom is peculiarly the 'marketplace of ideas.' The Nation's future depends upon leaders trained through wide exposure to that robust exchange of ideas which discovers truth 'out

1097

DOUGLAS, J., dissenting

of a multitude of tongues, [rather] than through any kind of authoritative selection.'"

The effort to impose uniformity on petitioners is especially repugnant in view of the history of white treatment of the education of the American Indian. In the late 1800's, at about the same time that the Dawes Severalty Act of 1887 fragmented Indian tribal land holdings and allotted land to individual Indians with the effect of breaking up tribal structures,<sup>3</sup> the Bureau of Indian Affairs (BIA) began operating a system of boarding schools with the express policy of stripping the Indian child of his cultural heritage and identity:

"Such schools were run in a rigid military fashion, with heavy emphasis on rustic vocational education. They were designed to separate a child from his reservation and family, strip him of his tribal lore and mores, force the complete abandonment of his native language, and prepare him for never again returning to his people."<sup>4</sup>

Again in 1944, a House Select Committee on Indian Affairs offered the same recommendation for achieving the "final solution of the Indian problem": "The goal of Indian education should be to make the Indian child a better American rather than to equip him simply to be a better Indian."<sup>5</sup>

A massive study by the Senate Special Subcommittee on Indian Education, "Indian Education: A National Tragedy—A National Challenge," S. Rep. No. 91-501, reviewed this policy, which it found rooted in a "self-righteous intolerance of tribal communities and cultural

<sup>3</sup> See S. Rep. No. 91-501, p. 12; cf. Special Education Subcommittee of the National Council on Indian Opportunity, *Between Two Milestones* 69 (1972).

<sup>4</sup> S. Rep. No. 91-501, p. 12.

<sup>5</sup> See *id.*, at 13-14.

differences." *Id.*, at 21. The Subcommittee found that many teachers in BIA schools

"still see their role as that of 'civilizing the native.' . . . One consequence of the unfortunate situation is a serious communications breakdown between student and staff and a serious lack of productive student-staff interactions.

". . . BIA administrators and teachers believe that Indians can choose only between total 'Indian-ness'—whatever that is—and complete assimilation into the dominant society. There seems to be little if any understanding of acculturation processes or the desirability of 'combining a firm cultural identity with occupational success and consequent self-esteem.'" *Id.*, at 61-62.

The same study found that similar attitudes often exist in public schools which educate Indian students.<sup>6</sup>

The results of such a policy, mirrored in the policy of the school in this case to force all students into one

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<sup>6</sup> "Many school administrators and teachers consider Indian pupils inferior to white students, and thus expect them to fail, both in school and in life.

"A. An anti-Indian attitude is often prevalent in white communities in which Indians receive public school education.

"B. Many school districts relegate Indians to the lowest level in their tracking systems.

"C. Some administrators refuse to cooperate with the Indian community in their school district and discourage or do not permit Indian participation in decisionmaking.

"D. Indians are often promoted each year regardless of grades just so they can be kept in school, thus assuring the local district of receiving Federal aid because of the presence of Indian students. One public school district goes so far as to falsify Indian achievement-test results because the students were so far behind national norms that 'it just wouldn't look good.'

"E. Teachers and administrators are often insensitive to Indian values and ignorant of Indian culture." *Id.*, at 53.

414 U.S.

December 10, 1973

homogeneous mold even when it impinges on their racial and cultural values, have been disastrous for the young Indian child who is taught in school that the culture in which he has been reared is not important or valid. The Subcommittee recognized that such a coercive assimilation policy, denigrating and seeking to abolish cultural differences, frustrates Indian children and leads "[t]he community and child [to] retaliate by treating the school as an alien institution." *Id.*, at 21. At least in part as a result of such alienation, American Indians in both public and federal schools have a dropout rate twice the national average. *Id.*, at ix. Only 33% of Indians over the age of 25 have completed high school, and the median number of school years completed by this group is only 9.8.<sup>7</sup> Even when an Indian youth nominally remains in school, his achievement level is generally 2 to 3 years below that of white students in the same grade, and the Indian child falls progressively further behind the longer he remains in school.<sup>8</sup>

The issues in this case are far from trivial. I would grant certiorari.

No. 73-542. *JULEO, INC. v. COMMISSIONER OF INTERNAL REVENUE*. C. A. 3d Cir. Certiorari denied. MR. JUSTICE WHITE and MR. JUSTICE BLACKMUN would grant certiorari. Reported below: 483 F. 2d 47.

No. 73-546. *BUTZ, SECRETARY OF AGRICULTURE v. CARTER ET AL.* C. A. 3d Cir. Motion of respondents for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 479 F. 2d 1084.

<sup>7</sup> Bureau of the Census, Subject Report: American Indians, PC (2)-1F, p. 18 (Table 3) (1973).

<sup>8</sup> S. Rep. No. 91-501, p. ix; see Comptroller General of the United States, Report to the Congress: Opportunity to Improve Indian Education in Schools Operated by the Bureau of Indian Affairs 10 (1972).

December 10, 1973

414 U.S.

No. 73-712. BUTZ, SECRETARY OF AGRICULTURE, ET AL. v. BERMUDEZ ET AL. C. A. D. C. Cir. Motion of respondents for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 160 U. S. App. D. C. 150, 490 F. 2d 718.

No. 73-575. BRODY v. CHEMICAL BANK ET AL. C. A. 2d Cir. Certiorari denied. MR. JUSTICE BLACKMUN took no part in the consideration or decision of this petition. Reported below: 482 F. 2d 1111.

No. 73-587. S. WALLACH Co., INC. v. INTERNATIONAL BUSINESS MACHINES CORP. App. Div., Sup. Ct. N. Y., 2d Jud. Dept. Certiorari denied. MR. JUSTICE BLACKMUN and MR. JUSTICE POWELL took no part in the consideration or decision of this petition. Reported below: 41 App. Div. 2d 704, 340 N. Y. S. 2d 616.

No. 73-5611. PENN v. SLAYTON, PENITENTIARY SUPERINTENDENT. C. A. 4th Cir. Certiorari denied. MR. JUSTICE POWELL took no part in the consideration or decision of this petition. Reported below: 480 F. 2d 921.

#### *Rehearing Denied*

No. 72-1652. UNITED STATES IMMIGRATION AND NATURALIZATION SERVICE v. HIBI, *ante*, p. 5;

No. 73-26. ALBERS, EXECUTOR, ET AL. v. COMMISSIONER OF INTERNAL REVENUE, *ante*, p. 982;

No. 73-197. FRANK ET AL. v. WOLF ET AL., *ante*, p. 975; and

No. 73-5303. DUN LEAVAY v. LUTZ APPELLATE PRINTERS, INC., ET AL., *ante*, p. 992. Petitions for rehearing denied.

No. 72-6661. WRIGHT v. UNITED STATES, *ante*, p. 870; and

No. 73-5018. DE LEON v. UNITED STATES, *ante*, p. 853. Motions to file petitions for rehearing denied.

414 U. S.

DECEMBER 17, 1973

*Affirmed on Appeal*

No. 73-519. *TURNER ET AL. v. EGAN ET AL.* Affirmed on appeal from D. C. Alaska. MR. JUSTICE DOUGLAS would postpone question of jurisdiction to hearing of case on the merits. Reported below: 358 F. Supp. 560.

No. 73-583. *LOUISVILLE & NASHVILLE RAILROAD Co. v. UNITED STATES ET AL.* Affirmed on appeal from D. C. W. D. Ky. MR. JUSTICE POWELL took no part in the consideration or decision of this appeal. Reported below: 369 F. Supp. 621.

No. 73-599. *OUTPOST DEVELOPMENT CORP., DBA LYDIA FELDMAN METHODS v. UNITED STATES ET AL.* Affirmed on appeal from D. C. C. D. Cal. Reported below: 369 F. Supp. 399.

No. 73-601. *AMERICAN TRUCKING ASSNS., INC., ET AL. v. UNITED STATES ET AL.* Affirmed on appeal from D. C. W. D. Tex. Reported below: 373 F. Supp. 252.

No. 73-639. *TEXAS-OKLAHOMA EXPRESS, INC., ET AL. v. UNITED STATES ET AL.* Affirmed on appeal from D. C. N. D. Tex. Reported below: 369 F. Supp. 957.

No. 73-658. *SEEHAWER ET AL. v. SCHMIDT, SECRETARY, DEPARTMENT OF HEALTH AND SOCIAL SERVICES OF WISCONSIN ET AL.* Affirmed on appeal from D. C. E. D. Wis. Reported below: 363 F. Supp. 635.

*Appeals Dismissed*

No. 73-656. *VIRDEN ET UX., DBA CHILLED FRESH FRUIT Co. v. SCHAFFNER, DIRECTOR OF REVENUE OF MISSOURI.* Appeal from Sup. Ct. Mo. dismissed for want of substantial federal question. Reported below: 496 S. W. 2d 846.

No. 73-569. *PETTY ET AL. v. McDONALD, EXECUTRIX.* Appeal from Sup. Ct. Ark. dismissed for want of sub-

December 17, 1973

414 U. S.

stantial federal question. Reported below: 254 Ark. 705, 496 S. W. 2d 365.

No. 73-685. *LEVINE v. BUSICK ET AL.* Appeal from Sup. Ct. N. J. dismissed for want of substantial federal question. Reported below: 63 N. J. 351, 307 A. 2d 571.

No. 73-682. *PUBLIC UTILITY DISTRICT No. 2 OF GRANT COUNTY ET AL. v. WASHINGTON.* Appeal from Sup. Ct. Wash. dismissed for want of substantial federal question. MR. JUSTICE DOUGLAS, MR. JUSTICE WHITE, and MR. JUSTICE BLACKMUN would note probable jurisdiction and set case for oral argument. Reported below: 82 Wash. 2d 232, 510 P. 2d 206.

*Certiorari Granted—Vacated and Remanded*

No. 73-202. *MARGRAF v. UNITED STATES.* C. A. 3d Cir. Certiorari granted. Upon representation of the Solicitor General set forth in his memorandum for the United States filed November 20, 1973, judgment vacated and case remanded for reconsideration in light of position presently asserted by the Government. Reported below: 483 F. 2d 708.

*Miscellaneous Orders*

No. ———. *BOWMAN TRANSPORTATION, INC., ET AL. v. ARKANSAS-BEST FREIGHT SYSTEM ET AL.* Appeal from D. C. W. D. Ark. Motion of appellants to waive Rule 39 as to preparation of appendix to jurisdictional statement granted.

No. A-527. *DISTRICT 65, NATIONAL COUNCIL OF DISTRIBUTIVE WORKERS OF AMERICA v. EISENBERG.* C. A. 3d Cir. Application for stay of preliminary injunction presented to MR. JUSTICE DOUGLAS, and by him referred to the Court, denied.

414 U. S.

December 17, 1973

No. A-533. *BASS v. TEXAS*. Application for stay of execution and enforcement of mandate of Court of Criminal Appeals of Texas presented to MR. JUSTICE DOUGLAS, and by him referred to the Court, denied.

No. A-544. *UNITED STATES BOARD OF PAROLE v. AMAYA*. C. A. 5th Cir. Motion of respondent to vacate stay heretofore granted by MR. JUSTICE POWELL, denied.

No. A-545. *MILLICAN, DBA HIP MAGAZINE v. UNITED STATES*. C. A. 5th Cir. Application for stay and continuance of bond presented to MR. JUSTICE POWELL, and by him referred to the Court, denied. MR. JUSTICE DOUGLAS, MR. JUSTICE BRENNAN, MR. JUSTICE STEWART, and MR. JUSTICE MARSHALL would grant the application.

No. 36, Orig. *TEXAS v. LOUISIANA*. Motion of the United States for leave to intervene granted. [For earlier orders herein, see, *e. g., ante*, p. 904.]

No. 72-1490. *FEDERAL POWER COMMISSION v. TEXACO INC. ET AL.*; and

No. 72-1491. *DOUGHERTY, EXECUTOR, ET AL. v. TEXACO INC. ET AL.* C. A. D. C. Cir. [Certiorari granted, *ante*, p. 817.] Motion of Small Producers Group for leave to file a brief as *amicus curiae* granted.

No. 72-1554. *SUPER TIRE ENGINEERING CO. ET AL. v. McCORKLE ET AL.* C. A. 3d Cir. [Certiorari granted, *ante*, p. 817.] Motion of Chamber of Commerce of the United States for leave to present oral argument as *amicus curiae* in support of petitioners denied.

No. 72-1589. *RICHARDSON, COUNTY CLERK AND REGISTRAR OF VOTERS OF MENDOCINO COUNTY v. RAMIREZ ET AL.* Sup. Ct. Cal. [Certiorari granted, *ante*, p. 816.] Motion of the Attorney General of California to present oral argument as *amicus curiae* in support of petitioner granted.

December 17, 1973

414 U.S.

No. 72-1637. NATIONAL LABOR RELATIONS BOARD *v.* MAGNAVOX COMPANY OF TENNESSEE. C. A. 6th Cir. [Certiorari granted, *ante*, p. 817.] Motion of International Union of Electrical, Radio & Machine Workers, AFL-CIO-CLC, to present oral argument in support of petitioner denied.

No. 73-203. EISEN *v.* CARLISLE & JACQUELIN ET AL. C. A. 2d Cir. [Certiorari granted, *ante*, p. 908.] Motion of American Civil Liberties Union for leave to file a brief as *amicus curiae* granted.

No. 73-208. COLLINS ET AL. *v.* ROCKEFELLER, GOVERNOR OF NEW YORK, ET AL.; and

No. 73-219. SANFORD ET AL. *v.* ROCKEFELLER, GOVERNOR OF NEW YORK, ET AL. Appeals from Ct. App. N. Y. Parties requested to file supplemental memoranda addressed to question whether these cases are moot or inappropriate for review at this time.

No. 73-327. WOODBURY ET AL. *v.* SPITLER. Sup. Ct. Ohio. Motion for leave to dispense with printing petition denied with leave to file printed petition in conformity with Rule 39 of the Rules of this Court on or before January 15, 1974. MR. JUSTICE STEWART would grant the motion.

No. 73-619. SAVE OUR CUMBERLAND MOUNTAINS, INC., ET AL. *v.* TENNESSEE VALLEY AUTHORITY ET AL. C. A. 6th Cir. Motion for leave to dispense with printing petition denied with leave to file printed petition in conformity with Rule 39 of the Rules of this Court on or before January 15, 1974. MR. JUSTICE STEWART would grant the motion.

No. 73-612. DEVORE ET AL. *v.* WEYERHAEUSER CO. Sup. Ct. Ore. Motion for leave to dispense with print-

414 U.S.

December 17, 1973

ing petition denied with leave to file printed petition in conformity with Rule 39 of the Rules of this Court on or before January 15, 1974. MR. JUSTICE STEWART would grant the motion.

No. 73-686. TELEPHONE USERS ASSN., INC. *v.* PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA ET AL.; and

No. 73-687. TELEPHONE USERS ASSN., INC. *v.* PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA ET AL. Ct. App. D. C. Motions for leave to dispense with printing petitions denied with leave to file printed petitions in conformity with Rule 39 of the Rules of this Court on or before January 15, 1974. MR. JUSTICE STEWART would grant the motions. MR. JUSTICE BLACKMUN and MR. JUSTICE POWELL took no part in the consideration or decision of these motions.

No. 73-761. CHIPPAS *v.* UNITED STATES. C. A. 5th Cir. Motion for leave to dispense with printing petition denied with leave to file printed petition in conformity with Rule 39 of the Rules of this Court on or before January 15, 1974. MR. JUSTICE STEWART would grant the motion.

No. 73-763. HIGHTOWER *v.* INDIANA. Sup. Ct. Ind. Motion for leave to dispense with printing petition denied with leave to file printed petition in conformity with Rule 39 of the Rules of this Court on or before January 15, 1974. MR. JUSTICE STEWART would grant the motion.

No. 73-628. ALLENBERG COTTON CO., INC. *v.* PITTMAN. Appeal from Sup. Ct. Miss. Consideration of jurisdictional statement deferred to accord counsel for appellant opportunity to secure a certificate from the Supreme

December 17, 1973

414 U.S.

Court of Mississippi as to whether the judgment herein was intended to rest on an adequate and independent state ground or on federal grounds. *Charleston Federal Savings & Loan Assn. v. Alderson*, 324 U. S. 182, 186 n. 1 (1945).

No. 73-5429. *GRISSOM v. PHILLIPS*, CHIEF JUDGE, U. S. COURT OF APPEALS, ET AL. Motion for leave to file petition for writ of mandamus denied.

No. 73-5558. *McCray v. Lewis*, 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. 73-640. *Geduldig, Director, Department of Human Resources Development v. Aiello et al.* Appeal from D. C. N. D. Cal. Probable jurisdiction noted. Reported below: 359 F. Supp. 792.

No. 73-5412. *Dillard et al. v. Industrial Commission of Virginia et al.* Appeal from D. C. E. D. Va. Motion of appellants for leave to proceed *in forma pauperis* granted. Probable jurisdiction noted. Reported below: 347 F. Supp. 71.

*Certiorari Granted*

No. 73-29. *Corning Glass Works v. Brennan, Secretary of Labor*. C. A. 2d Cir.; and

No. 73-695. *Brennan, Secretary of Labor v. Corning Glass Works*. C. A. 3d Cir. Certiorari granted. Cases consolidated and a total of one hour allotted for oral argument. Reported below: No. 73-29, 474 F. 2d 226; No. 73-695, 480 F. 2d 1254.

No. 73-532. *American Postal Workers Union, AFL-CIO, Detroit Local v. Independent Postal System of America, Inc., et al.* C. A. 6th Cir. Certiorari granted. Reported below: 481 F. 2d 90.

414 U.S.

December 17, 1973

No. 73-593. CENTRAL TABLET MANUFACTURING CO. *v.* UNITED STATES. C. A. 6th Cir. Certiorari granted. Reported below: 481 F. 2d 954.

No. 73-662. SCHLESINGER, SECRETARY OF DEFENSE, ET AL. *v.* COUNCILMAN. C. A. 10th Cir. Certiorari granted. Reported below: 481 F. 2d 613.

No. 73-629. KOSYDAR, TAX COMMISSIONER OF OHIO *v.* NATIONAL CASH REGISTER CO. Appeal from Sup. Ct. Ohio dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari granted. Reported below: 35 Ohio St. 2d 166, 298 N. E. 2d 559.

No. 73-5280. FULLER *v.* OREGON. Ct. App. Ore. Motion for leave to proceed *in forma pauperis* and certiorari granted. Reported below: 12 Ore. App. 152, 504 P. 2d 1393.

*Certiorari Denied*

No. 72-6699. JONES *v.* GILMORE. C. A. 5th Cir. Certiorari denied.

No. 73-115. SCHLESINGER ET AL. *v.* TEITELBAUM, U. S. DISTRICT JUDGE, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 475 F. 2d 137.

No. 73-433. HARNEY ET AL. *v.* GRINER ET AL. C. A. D. C. Cir. Certiorari denied.

No. 73-491. LIVINGSTON *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 73-501. EARLEY *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 482 F. 2d 53.

No. 73-516. SELIGSOHN *v.* SECURITIES AND EXCHANGE COMMISSION ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 480 F. 2d 1121.

December 17, 1973

414 U.S.

No. 73-518. *WILLIS v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 482 F. 2d 1034.

No. 73-536. *SANCHEZ v. UNITED STATES*. C. A. 9th Cir. Certiorari denied.

No. 73-539. *AVONSIDE NURSING HOME, INC. v. WEINBERGER, SECRETARY OF HEALTH, EDUCATION, AND WELFARE*. C. A. 6th Cir. Certiorari denied.

No. 73-543. *FIRESTONE TIRE & RUBBER CO. v. FEDERAL TRADE COMMISSION*. C. A. 6th Cir. Certiorari denied. Reported below: 481 F. 2d 246.

No. 73-614. *CAMERARTS PUBLISHING CO., INC., ET AL. v. PRATHER*. C. A. 7th Cir. Certiorari denied. Reported below: 481 F. 2d 1406.

No. 73-620. *GOVERNING BOARD OF TORRANCE UNIFIED SCHOOL DISTRICT v. LINDROS*. Sup. Ct. Cal. Certiorari denied. Reported below: 9 Cal. 3d 524, 510 P. 2d 361.

No. 73-632. *JOHNSON v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 484 F. 2d 165.

No. 73-647. *JENSEN v. GANT*. Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 73-652. *DARNELL v. WASHINGTON*. Ct. App. Wash. Certiorari denied. Reported below: 8 Wash. App. 627, 508 P. 2d 613.

No. 73-655. *EDWARDS ET AL. v. CITY OF COLUMBUS*. Sup. Ct. Ohio. Certiorari denied.

No. 73-663. *WESSON v. LEVIN ET AL.* C. A. 2d Cir. Certiorari denied.

No. 73-667. *McLENNAN v. TENNESSEE*. Sup. Ct. Tenn. Certiorari denied.

414 U.S.

December 17, 1973

No. 73-669. ADMIRAL-MERCHANTS MOTOR FREIGHT, INC., ET AL. *v.* ALUMINUM COMPANY OF AMERICA. C. A. 7th Cir. Certiorari denied. Reported below: 486 F. 2d 717.

No. 73-670. TRIAX CO. *v.* HARTMAN METAL FABRICATORS, INC. C. A. 2d Cir. Certiorari denied. Reported below: 479 F. 2d 951.

No. 73-674. SAFE FLIGHT INSTRUMENT CORP. *v.* McDONNELL DOUGLAS CORP. ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 482 F. 2d 1086.

No. 73-680. SECHLER *v.* TRANS WORLD AIRLINES, INC. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 73-684. GANEM *v.* GANEM DE ISSA ET AL. Dist. Ct. App. Fla., 3d Dist. Certiorari denied. Reported below: 269 So. 2d 740.

No. 73-692. MARTIN *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 9 Cal. 3d 687, 511 P. 2d 1161.

No. 73-713. CONTINENTAL CAN Co., INC. *v.* L. L. BREWTON LUMBER Co., INC. C. A. 5th Cir. Certiorari denied. Reported below: 480 F. 2d 923.

No. 73-5198. CARLSEN *v.* UTAH. Sup. Ct. Utah. Certiorari denied.

No. 73-5228. SMITH *v.* MISSISSIPPI. C. A. 5th Cir. Certiorari denied. Reported below: 478 F. 2d 88.

No. 73-5305. OLDS *v.* NEIL, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 482 F. 2d 301.

No. 73-5313. MURPHY *v.* CARDWELL, WARDEN. C. A. 6th Cir. Certiorari denied.

December 17, 1973

414 U.S.

No. 73-5367. *RAMIREZ-VILLANUEVA v. DISTRICT DIRECTOR, IMMIGRATION AND NATURALIZATION SERVICE*. C. A. 9th Cir. Certiorari denied.

No. 73-5380. *KIMBROUGH v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 481 F. 2d 421.

No. 73-5447. *HAGY ET AL. v. UNITED STATES*. C. A. 6th Cir. Certiorari denied.

No. 73-5455. *MCCARTHY v. UNITED STATES*. C. A. 9th Cir. Certiorari denied.

No. 73-5469. *PINKETT v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 483 F. 2d 1401.

No. 73-5472. *SMITH v. UNITED STATES*. Ct. App. D. C. Certiorari denied. Reported below: 304 A. 2d 28.

No. 73-5476. *MURZYN v. UNITED STATES*. C. A. 7th Cir. Certiorari denied.

No. 73-5482. *PHILLIPS v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 482 F. 2d 191.

No. 73-5485. *PEDLAR v. UNITED STATES*. C. A. 2d Cir. Certiorari denied.

No. 73-5490. *FOSTER v. UNITED STATES*. C. A. 7th Cir. Certiorari denied.

No. 73-5494. *WOLCOTT v. NORTON, CORRECTIONAL SUPERINTENDENT*. C. A. 2d Cir. Certiorari denied. Reported below: 487 F. 2d 513.

No. 73-5499. *THERIAULT v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 481 F. 2d 1193.

414 U. S.

December 17, 1973

No. 73-5507. HILL *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 73-5535. THERIAULT *v.* MOBILE CITY JAIL. C. A. 5th Cir. Certiorari denied. Reported below: 481 F. 2d 1193.

No. 73-5603. JACKSON *v.* MISSOURI. Sup. Ct. Mo. Certiorari denied. Reported below: 496 S. W. 2d 1.

No. 73-5638. MILAM *v.* LOCKHART, CORRECTIONAL SUPERINTENDENT. C. A. 8th Cir. Certiorari denied.

No. 73-5640. ANTWINE *v.* ESTELLE, CORRECTIONS DIRECTOR. C. A. 5th Cir. Certiorari denied. Reported below: 486 F. 2d 189.

No. 73-5652. WHITTINGTON *v.* SLAYTON, PENITENTIARY SUPERINTENDENT. C. A. 4th Cir. Certiorari denied.

No. 73-5655. METTER ET AL. *v.* JANSSEN. Ct. App. Mo., St. Louis Dist. Certiorari denied. Reported below: 498 S. W. 2d 581.

No. 73-5663. FLORES *v.* ESTELLE, CORRECTIONS DIRECTOR. C. A. 5th Cir. Certiorari denied.

No. 73-5664. SERZYSKO *v.* CHASE MANHATTAN BANK. C. A. 2d Cir. Certiorari denied.

No. 73-5667. LOVE ET AL. *v.* DECARLO HOMES, INC., ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 482 F. 2d 613.

No. 73-40. WALLACE, ACTING WARDEN *v.* SMITH. C. A. 4th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 473 F. 2d 877.

December 17, 1973

414 U.S.

No. 73-256. *PARRA v. CALIFORNIA*. Ct. App. Cal., 4th App. Dist. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 30 Cal. App. 3d 729, 106 Cal. Rptr. 531.

No. 73-648. *WOLFE v. METROPOLITAN DADE COUNTY ET AL.* Dist. Ct. App. Fla., 3d Dist. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 274 So. 2d 584.

No. 73-657. *COX ET AL. v. INTERNATIONAL LONGSHOREMEN'S ASSN., LOCAL 1273, ET AL.* C. A. 5th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 476 F. 2d 1287.

No. 73-688. *LITTLEJOHN v. SHELL OIL CO. ET AL.* C. A. 5th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 483 F. 2d 1140.

No. 73-5456. *HOWARD v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 483 F. 2d 229.

No. 73-5637. *WRIGHT v. BENNETT, JUDGE, ET AL.* C. A. 3d Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari.

No. 73-5748. *HOLMES v. BURR, SHERIFF*. C. A. 9th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 486 F. 2d 55.

No. 73-691. *HYDE PARK MEDICAL LABORATORY, INC., ET AL. v. ILLINOIS DEPARTMENT OF PUBLIC AID ET AL.* C. A. 7th Cir. Motion for fees, costs, and damages for delay under Rule 56 (4) of the Rules of this Court denied. Certiorari denied.

No. 73-348. *BAGGETT v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. MR. JUSTICE WHITE took no

414 U.S. December 17, 20, 1973, January 7, 1974

part in the consideration or decision of this petition.  
Reported below: 481 F. 2d 114.

*Rehearing Denied*

No. 72-1529. UNITED STATES *v.* DOWDY, *ante*, p. 823;  
No. 72-1584. DOWDY *v.* UNITED STATES, *ante*, p. 866;  
No. 73-5091. PERRY *v.* UNITED STATES, *ante*, p. 1005;  
No. 73-5184. ANDERSON *v.* UNITED STATES, *ante*, p.  
1007;

No. 73-5298. SLAUGHTER *v.* CALIFORNIA, *ante*, p. 1010;  
No. 73-5334. DURHAM *v.* MACDONALD, *ante*, p. 1027;  
No. 73-5361. RENDEL *v.* GOMES, PRISON SUPERIN-  
TENDENT, ET AL., *ante*, p. 1027; and

No. 73-5362. HAMBURG ET UX. *v.* JONES ET UX., *ante*,  
p. 1027. Petitions for rehearing denied.

No. 72-6810. DULLES ET AL. *v.* FIDUCIARY TRUST Co.,  
*ante*, p. 844. Motion for leave to file petition for re-  
hearing denied.

DECEMBER 20, 1973

*Miscellaneous Order*

No. A-608. FEDERAL POWER COMMISSION *v.* CON-  
SUMER FEDERATION OF AMERICA ET AL. Application to  
vacate stay entered by the United States Court of Ap-  
peals for the District of Columbia Circuit presented to  
THE CHIEF JUSTICE, and by him referred to the Court,  
granted. MR. JUSTICE DOUGLAS dissents from vacating  
stay. MR. JUSTICE STEWART and MR. JUSTICE POWELL  
took no part in the consideration or decision of this  
application.

JANUARY 7, 1974

*Affirmed on Appeal*

No. 73-736. KISTER ET AL. *v.* OHIO BOARD OF REGENTS  
ET AL. Affirmed on appeal from D. C. S. D. Ohio. Re-  
ported below: 365 F. Supp. 27.

January 7, 1974

414 U. S.

*Appeals Dismissed*

No. 73-360. *MOORE, GOVERNOR OF WEST VIRGINIA v. KELLY, TREASURER OF WEST VIRGINIA*. Appeal from Sup. Ct. App. W. Va. dismissed for want of substantial federal question. Reported below: — W. Va. —, 197 S. E. 2d 106.

No. 73-384. *HANDLER ET AL. v. SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES*. Appeal from Ct. App. Cal., 2d App. Dist., dismissed for want of substantial federal question.

No. 73-630. *TOWER PLAZA INVESTMENTS, LTD., ET AL. v. DEWITT ET AL.* Appeal from Sup. Ct. Ariz. dismissed for want of substantial federal question. Reported below: 109 Ariz. 248, 508 P. 2d 324.

No. 73-5360. *NEWTON v. VIRGINIA*. Appeal from Sup. Ct. Va. dismissed for want of substantial federal question.

No. 73-5261. *BOSWELL v. ALABAMA*. Appeal from Sup. Ct. Ala. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied. Reported below: 290 Ala. 349, 276 So. 2d 592.

*Vacated and Remanded on Appeal*

No. 73-386. *SHARP v. TEXAS*. Appeal from Ct. Crim. App. Tex. Judgment vacated and case remanded for further consideration in light of *Miller v. California*, 413 U. S. 15 (1973); *Paris Adult Theatre I v. Slaton*, 413 U. S. 49 (1973); *Kaplan v. California*, 413 U. S. 115 (1973); *United States v. 12 200-Ft. Reels of Film*, 413 U. S. 123 (1973); *United States v. Orito*, 413 U. S. 139 (1973); *Heller v. New York*, 413 U. S. 483 (1973); *Roaden v. Kentucky*, 413 U. S. 496 (1973); and *Alexander v. Virginia*, 413 U. S. 836 (1973). MR. JUSTICE

1118

BRENNAN, J., dissenting

DOUGLAS, being of the view that state obscenity regulation is prohibited by the Fourteenth and First Amendments (see *Paris Adult Theatre I v. Slaton*, 413 U. S. 49, 70 (DOUGLAS, J., dissenting)), would grant certiorari and reverse the judgment of conviction. Reported below: 495 S. W. 2d 906.

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

Appellant was convicted for exhibiting an obscene motion picture in violation of Texas Penal Code, Art. 527, § 3 (Supp. 1973), which provides:

“Every person who knowingly: sends or causes to be sent, or brings or causes to be brought, into this state for sale or distribution, or in this state prepares for distribution, publishes, prints, exhibits, distributes, or offers to distribute, or has in his possession with intent to distribute or to exhibit or offer to distribute, any obscene matter is guilty of a misdemeanor.”

Obscenity for purposes of Art. 527 is defined in § 1:

“(A) ‘Obscene’ material means material (a) the dominant theme of which, taken as a whole, appeals to a prurient interest; (b) which is patently offensive because it affronts contemporary community standards relating to the description or representation of sexual matters; and (c) which is utterly without redeeming social value.

“(B) ‘Prurient interest’ means a shameful or morbid interest in nudity, sex, or excretion, which goes substantially beyond customary limits of candor in description or representation of such matters. If it appears from the character of the material or the circumstances of its dissemination that the subject matter is designed for a specially susceptible

January 7, 1974

414 U. S.

audience, the appeal of the subject matter shall be judged with reference to such audience."

It is my view that, "at least in the absence of distribution to juveniles or obtrusive exposure to unconsenting adults, the First and Fourteenth Amendments prohibit the State and Federal Governments from attempting wholly to suppress sexually oriented materials on the basis of their allegedly 'obscene' contents." *Paris Adult Theatre I v. Slaton*, 413 U. S. 49, 113 (1973) (BRENNAN, J., dissenting). It is clear that, when tested by that constitutional standard, the word "obscene" in § 3, read as defined in § 1, renders § 3 unconstitutionally overbroad and therefore facially invalid.

For the reasons stated in my dissent in *Miller v. California*, 413 U. S. 15, 47 (1973), I would therefore vacate the judgment below and remand for further proceedings not inconsistent with my *Paris Adult Theatre I* dissent. In that circumstance, I have no occasion to consider at this time whether, if § 1 were properly narrowed, appellant's challenge to the constitutionality of § 9 of Art. 527, pursuant to which the subject film was seized, would merit plenary review. See *Heller v. New York*, 413 U. S. 483, 495 (1973) (BRENNAN, J., dissenting).

No. 73-715. WAINWRIGHT, CORRECTIONS DIRECTOR v. MAYO. C. A. 5th Cir. Motion of appellee for leave to proceed *in forma pauperis* granted. Judgment vacated and case remanded for further consideration in light of *Wainwright v. Stone*, *ante*, p. 21.

*Certiorari Granted—Vacated and Remanded*

No. 73-200. SPLAWN v. CALIFORNIA. Ct. App. Cal., 1st App. Dist. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Miller v. California*, 413 U. S. 15 (1973); *Paris Adult Theatre I v. Slaton*, 413 U. S. 49 (1973); *Kaplan v.*

1120

BRENNAN, J., dissenting

*California*, 413 U. S. 115 (1973); *United States v. 12 200-Ft. Reels of Film*, 413 U. S. 123 (1973); *United States v. Orito*, 413 U. S. 139 (1973); *Heller v. New York*, 413 U. S. 483 (1973); *Roaden v. Kentucky*, 413 U. S. 496 (1973); and *Alexander v. Virginia*, 413 U. S. 836 (1973). MR. JUSTICE DOUGLAS, being of the view that state obscenity regulation is prohibited by the Fourteenth and First Amendments (see *Paris Adult Theatre I v. Slaton*, 413 U. S. 49, 70 (DOUGLAS, J., dissenting)), would grant certiorari and reverse the judgment of conviction.

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

Petitioner was convicted on charges of selling obscene motion pictures in violation of § 311.2 (a) of the California Penal Code (1970), which provides as follows:

“Every person who knowingly sends or causes to be sent, or brings or causes to be brought, into this state for sale or distribution, or in this state possesses, prepares, publishes, or prints, with intent to distribute or to exhibit to others, or who offers to distribute, distributes, or exhibits to others, any obscene matter is guilty of a misdemeanor.”

It is my view that “at least in the absence of distribution to juveniles or obtrusive exposure to unconsenting adults, the First and Fourteenth Amendments prohibit the State and Federal Governments from attempting wholly to suppress sexually oriented materials on the basis of their allegedly ‘obscene’ contents.” *Paris Adult Theatre I v. Slaton*, 413 U. S. 49, 113 (1973) (BRENNAN, J., dissenting). It is clear that, tested by that constitutional standard, § 311.2 (a) is constitutionally overbroad and therefore invalid on its face. For the reasons stated in my dissent in *Miller v. California*, 413 U. S. 15, 47 (1973), I would therefore grant certiorari, vacate the

January 7, 1974

414 U. S.

judgment of the Court of Appeal of California, and remand for further proceedings not inconsistent with my dissent in *Paris Adult Theatre I*. In that circumstance, I have no occasion to consider whether the questions presented in the petition merit plenary review. See *Heller v. New York*, 413 U. S. 483, 495 (1973) (BRENNAN, J., dissenting).

No. 73-318. *NISSINOFF ET AL. v. CALIFORNIA*. App. Dept., Super. Ct. Cal., County of Alameda. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Miller v. California*, 413 U. S. 15 (1973); *Paris Adult Theatre I v. Slaton*, 413 U. S. 49 (1973); *Kaplan v. California*, 413 U. S. 115 (1973); *United States v. 12 200-Ft. Reels of Film*, 413 U. S. 123 (1973); *United States v. Orito*, 413 U. S. 139 (1973); *Heller v. New York*, 413 U. S. 483 (1973); *Roaden v. Kentucky*, 413 U. S. 496 (1973); and *Alexander v. Virginia*, 413 U. S. 836 (1973). MR. JUSTICE DOUGLAS, being of the view that state obscenity regulation is prohibited by the Fourteenth and First Amendments (see *Paris Adult Theatre I v. Slaton*, 413 U. S. 49, 70 (DOUGLAS, J., dissenting)), would grant certiorari and reverse the judgment of conviction.

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

Petitioners were convicted on charges of exhibiting obscene motion pictures in violation of the California Penal Code § 311.2 (a) (1970), which provides as follows:

“Every person who knowingly sends or causes to be sent, or brings or causes to be brought, into this state for sale or distribution, or in this state possesses, prepares, publishes, or prints, with intent to distribute or to exhibit to others, or who offers to

414 U. S.

January 7, 1974

distribute, distributes, or exhibits to others, any obscene matter is guilty of a misdemeanor.”

It is my view that, “at least in the absence of distribution to juveniles or obtrusive exposure to unconsenting adults, the First and Fourteenth Amendments prohibit the State and Federal Governments from attempting wholly to suppress sexually oriented materials on the basis of their allegedly ‘obscene’ contents.” *Paris Adult Theatre I v. Slaton*, 413 U. S. 49, 113 (1973) (BRENNAN, J., dissenting). It is clear that, tested by that constitutional standard, § 311.2 (a) is unconstitutionally overbroad and therefore invalid on its face. For the reasons stated in my dissent in *Miller v. California*, 413 U. S. 15, 47 (1973), I would therefore grant certiorari, vacate the judgment of the Appellate Department of the Superior Court of the State of California, in and for the County of Alameda, and remand for further proceedings not inconsistent with my *Paris Adult Theatre I* dissent.

#### *Miscellaneous Orders*

No. A-587 (73-921). *GROSSMAN v. STATE BAR GRIEVANCE BOARD ET AL.* Sup. Ct. Mich. Application for stay of order of the Supreme Court of Michigan presented to MR. JUSTICE DOUGLAS, and by him referred to the Court, denied. Reported below: 390 Mich. 157, 211 N. W. 2d 21.

No. A-635. *FRANKS v. WILSON, JUDGE, ET AL.* Application for stay of execution and enforcement of judgment of the United States District Court for the District of Colorado presented to MR. JUSTICE STEWART, and by him referred to the Court, denied.

No. D-12. *IN RE DISBARMENT OF ISAACSON.* It having been reported to this Court that John T. Isaacson,

January 7, 1974

414 U.S.

of St. Louis, Missouri, has been disbarred from the practice of law in all of the courts of the State of Missouri, and this Court by order of October 23, 1973 [*ante*, p. 971], having suspended the said John T. Isaacson from the practice of law in this Court and directed that a rule issue requiring him to show cause why he should not be disbarred;

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

It is ordered that the said John T. Isaacson be, and he is hereby, disbarred from the practice of law in this Court and that his name be stricken from the roll of attorneys admitted to practice before the Bar of this Court.

No. D-13. *IN RE DISBARMENT OF LEHRER.* It having been reported to this Court that Isadore Albert Lehrer, of Washington, D. C., has been disbarred from the practice of law in all of the courts of the District of Columbia, and this Court by order of October 23, 1973 [*ante*, p. 971], having suspended the said Isadore Albert Lehrer 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 upon the respondent and that the time within which to file a return to the rule has expired;

It is ordered that the said Isadore Albert Lehrer be, and he is hereby, disbarred from the practice of law in this Court and that his name be stricken from the roll of attorneys admitted to practice before the Bar of this Court.

No. D-18. *IN RE DISBARMENT OF STANTON.* John J. Stanton, of Boston, Massachusetts, having requested

414 U.S.

January 7, 1974

to resign as a member of the Bar of this Court, it is ordered that his name be stricken from the roll of attorneys admitted to practice before the Bar of this Court. The rule to show cause heretofore issued on November 12, 1973 [*ante*, p. 1020], is hereby discharged.

No. 72-1554. SUPER TIRE ENGINEERING CO. ET AL. *v.* McCORKLE ET AL. C. A. 3d Cir. [Certiorari granted, *ante*, p. 817.] Motion of respondent Teamsters Local 676 for divided argument granted. Motion of Southern California District Council of Laborers for leave to file a brief as *amicus curiae* granted.

No. 72-1598. NATIONAL LABOR RELATIONS BOARD *v.* BELL AEROSPACE Co., DIVISION OF TEXTRON, INC. C. A. 2d Cir. [Certiorari granted, *ante*, p. 816.] Motion of Chamber of Commerce of the United States for leave to file a brief as *amicus curiae* granted.

No. 72-1628. TELEPROMPTER CORP. ET AL. *v.* COLUMBIA BROADCASTING SYSTEM, INC., ET AL. C. A. 2d Cir. [Certiorari granted, *ante*, p. 817.] Motions of National Broadcasting Co., Inc., Writers Guild of America et al., and Authors League of America, Inc., for leave to file briefs as *amici curiae* granted.

No. 72-6160. MITCHELL *v.* W. T. GRANT Co. Sup. Ct. La. [Certiorari granted, 411 U. S. 981.] Motion of M. Truman Woodward, Jr., et al. for leave to file a brief as *amici curiae* denied.

No. 73-38. UNITED STATES *v.* MARINE BANCORPORATION, INC., ET AL. Appeal from D. C. W. D. Wash. [Probable jurisdiction noted, *ante*, p. 907.] Joint motion of appellees to dismiss appeal denied.

No. 73-88. UNITED STATES *v.* EDWARDS ET AL. C. A. 6th Cir. [Certiorari granted, *ante*, p. 818.] Motion of

January 7, 1974

414 U. S.

respondents for appointment of counsel granted. It is ordered that Thomas R. Smith, Esquire, of Cincinnati, Ohio, be, and he is hereby, appointed to serve as counsel for respondents in this case.

No. 73-203. *EISEN v. CARLISLE & JACQUELIN ET AL.* C. A. 2d Cir. [Certiorari granted, *ante*, p. 908.] Motions of Southern California Edison Co. and American College of Trial Lawyers for leave to file briefs as *amici curiae* granted.

No. 73-312. *LIBERTY MUTUAL INSURANCE CO. v. DREW.* C. A. 5th Cir. The Solicitor General is invited to file a brief expressing the views of the United States.

No. 73-434. *MILLIKEN, GOVERNOR OF MICHIGAN, ET AL. v. BRADLEY ET AL.*;

No. 73-435. *ALLEN PARK PUBLIC SCHOOLS ET AL. v. BRADLEY ET AL.*; and

No. 73-436. *GROSSE POINTE PUBLIC SCHOOL SYSTEM v. BRADLEY ET AL.* C. A. 6th Cir. [Certiorari granted, *ante*, p. 1038.] Motions of Bloomfield Hills School District et al., School Town of Speedway, Indiana, et al., and Jewish Rights Council for leave to file briefs as *amici curiae* granted.

No. 73-487. *BREWER v. UNITED STATES.* C. A. 10th Cir. Motion to dispense with printing petition denied with leave to file printed petition in conformity with Rule 39 of the Rules of this Court on or before January 22, 1974.

No. 73-705. *BARON v. SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES.* Ct. App. Cal., 2d App. Dist. Motion to dispense with printing petition denied with leave to file printed petition in conformity with Rule 39 of the Rules of this Court on or before January 22, 1974.

414 U.S.

January 7, 1974

No. 73-714. IMEL ET AL. *v.* ZOHN MANUFACTURING Co. ET AL. C. A. 10th Cir. Motion to dispense with printing petition denied with leave to file printed petition in conformity with Rule 39 of the Rules of this Court on or before January 22, 1974.

No. 73-5726. THOMAS *v.* HENDERSON, CORRECTIONAL SUPERINTENDENT. Motion for leave to file petition for writ of certiorari denied.

No. 73-5780. KOCHER *v.* O'DONNELL, JUDGE. Motion for leave to file petition for writ of habeas corpus denied.

*Probable Jurisdiction Noted*

No. 73-754. PROCUNIER, CORRECTIONS DIRECTOR *v.* HILLERY ET AL. Appeal from D. C. N. D. Cal. Motion of appellees for leave to proceed *in forma pauperis* granted. Probable jurisdiction noted. Reported below: 364 F. Supp. 196.

No. 73-767. UNITED STATES *v.* CONNECTICUT NATIONAL BANK ET AL. Appeal from D. C. Conn. Probable jurisdiction noted and case set for oral argument with No. 73-38 [*United States v. Marine Bancorporation, Inc.*, probable jurisdiction noted, *ante*, p. 907]. Reported below: 362 F. Supp. 240.

*Certiorari Granted*

No. 73-582. CITY OF PITTSBURGH *v.* ALCO PARKING CORP. ET AL. Sup. Ct. Pa. Certiorari granted. Reported below: 453 Pa. 245, 307 A. 2d 851.

No. 73-718. BANGOR PUNTA OPERATIONS, INC., ET AL. *v.* BANGOR & AROOSTOOK RAILROAD Co. ET AL. C. A. 1st Cir. Certiorari granted. Reported below: 482 F. 2d 865.

No. 73-726. COOPER STEVEDORING Co., INC. *v.* FRITZ KOPKE, INC., ET AL. C. A. 5th Cir. Certiorari granted. Reported below: 479 F. 2d 1041.

January 7, 1974

414 U.S.

No. 73-604. *CASS v. UNITED STATES*; and

No. 73-5661. *ADAMS ET AL. v. SECRETARY OF THE NAVY ET AL.* C. A. 9th Cir. Motion of petitioners in No. 73-5661 for leave to proceed *in forma pauperis* granted. Certiorari granted, cases consolidated, and a total of one hour allotted for oral argument. Reported below: 483 F. 2d 220.

No. 73-641. *SNOW ET UX. v. COMMISSIONER OF INTERNAL REVENUE.* C. A. 6th Cir. Certiorari granted. MR. JUSTICE STEWART took no part in the consideration or decision of this petition. Reported below: 482 F. 2d 1029.

No. 73-786. *ROSS ET AL. v. MOFFITT.* C. A. 4th Cir. Motion of respondent to dispense with printing brief in opposition and certiorari granted. Reported below: 483 F. 2d 650.

No. 73-831. *WARDEN, LEWISBURG PENITENTIARY v. MARRERO.* C. A. 3d Cir. Certiorari granted. The Solicitor General is invited to file a response to respondent's motion for leave to proceed *in forma pauperis* on or before January 16, 1974. Respondent's reapplication to vacate stay heretofore granted by MR. JUSTICE BRENNAN denied. MR. JUSTICE DOUGLAS would vacate stay. Reported below: 483 F. 2d 656.

*Certiorari Denied.* (See also No. 73-5261, *supra.*)

No. 73-283. *ZAPATA v. TEXAS.* Ct. Crim. App. Tex. Certiorari denied. Reported below: 493 S. W. 2d 801.

No. 73-478. *FREEDMAN v. MORRISSEY ET AL.*;

No. 73-611. *MORRISSEY ET AL. v. CURRAN ET AL.*; and

No. 73-5689. *PERRY v. MORRISSEY ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 483 F. 2d 480.

414 U. S.

January 7, 1974

No. 73-504. BRADLEY ET AL., DBA BRADLEY BROTHERS CLEANERS & LAUNDERERS *v.* BRENNAN, SECRETARY OF LABOR. C. A. 4th Cir. Certiorari denied.

No. 73-513. TORRALVO *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 73-527. CASTRO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 478 F. 2d 1401.

No. 73-535. SALAZAR *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied.

No. 73-541. BAILEY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 480 F. 2d 921.

No. 73-578. YASSEN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 482 F. 2d 1183.

No. 73-590. VARIO *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 484 F. 2d 1052.

No. 73-591. EPPS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 483 F. 2d 1401.

No. 73-594. LOCAL 365, CEMETERY WORKERS GREEN ATTENDANTS BUILDING SERVICE UNION EMPLOYEES INTERNATIONAL, AFL-CIO, ET AL. *v.* NEW YORK. Ct. App. N. Y. Certiorari denied. Reported below: 33 N. Y. 2d 582, 301 N. E. 2d 434.

No. 73-598. MARCHIO *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 483 F. 2d 1406.

No. 73-603. TRAMUNTI *v.* BAUMAN, U. S. DISTRICT JUDGE, ET AL. C. A. 2d Cir. Certiorari denied.

No. 73-608. HOUSTON CHRONICLE PUBLISHING Co. *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 481 F. 2d 1240.

January 7, 1974

414 U. S.

No. 73-617. *CHOTIN, EXECUTOR v. UNITED STATES*. Ct. Cl. Certiorari denied. Reported below: 201 Ct. Cl. 882.

No. 73-618. *HARRISON PROPERTY MANAGEMENT Co., INC., ET AL. v. UNITED STATES*. Ct. Cl. Certiorari denied. Reported below: 201 Ct. Cl. 77, 475 F. 2d 623.

No. 73-636. *COKER ET UX. v. COMMISSIONER OF INTERNAL REVENUE*. C. A. 2d Cir. Certiorari denied. Reported below: 487 F. 2d 593.

No. 73-646. *KROWCZYK v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 483 F. 2d 1406.

No. 73-653. *WASHINGTON v. FOX ET AL.* Sup. Ct. Wash. Certiorari denied. Reported below: 82 Wash. 2d 289, 510 P. 2d 230.

No. 73-654. *TRI-STATE STORES, INC. v. NATIONAL LABOR RELATIONS BOARD*. C. A. 9th Cir. Certiorari denied. Reported below: 477 F. 2d 204.

No. 73-693. *PENNSYLVANIA ET AL. v. COUNTY OF BUCKS ET AL.* Sup. Ct. Pa. Certiorari denied.

No. 73-699. *LEE v. SECURITIES AND EXCHANGE COMMISSION*. C. A. 6th Cir. Certiorari denied. Reported below: 482 F. 2d 1040.

No. 73-706. *PEUSCH v. CITY OF JACKSON*. Sup. Ct. Miss. Certiorari denied. Reported below: 280 So. 2d 837.

No. 73-725. *CONCORD COMMUNITY SCHOOLS, ELKHART COUNTY v. SCHOOL CITY OF ELKHART ET AL.* Sup. Ct. Ind. Certiorari denied. Reported below: — Ind. —, 299 N. E. 2d 829.

414 U.S.

January 7, 1974

No. 73-728. *CITY OF MIAMI v. SPICY*. Sup. Ct. Fla. Certiorari denied. Reported below: 280 So. 2d 419.

No. 73-738. *ARISON SHIPPING CO. ET AL. v. KLOSTERS REDERI A/S, DBA NORWEGIAN SHIPPING LINES*. Sup. Ct. Fla. Certiorari denied. Reported below: 280 So. 2d 678.

No. 73-740. *CHICAGO & SUBURBAN REFUSE DISPOSAL ASSN. ET AL. v. A. CHERNEY DISPOSAL CO. ET AL.* C. A. 7th Cir. Certiorari denied. Reported below: 484 F. 2d 751.

No. 73-742. *TIMPANY, TRUSTEE IN REORGANIZATION v. NEW JERSEY ET AL.* C. A. 3d Cir. Certiorari denied. Reported below: 485 F. 2d 208.

No. 73-749. *ADLER v. MONTEFIORE HOSPITAL ASSOCIATION OF WESTERN PENNSYLVANIA*. Sup. Ct. Pa. Certiorari denied. Reported below: 453 Pa. 60, 311 A. 2d 634.

No. 73-750. *BLAZ, DIRECTOR OF REVENUE AND TAXATION OF GUAM v. MANNING ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 479 F. 2d 333.

No. 73-756. *WOODALL INDUSTRIES, INC. v. MASSACHUSETTS MUTUAL LIFE INSURANCE Co.* C. A. 6th Cir. Certiorari denied. Reported below: 483 F. 2d 986.

No. 73-771. *ANDERSON, T/A ANDERSON'S TEXACO SERVICE STATION, ET AL. v. DUNLOP ET AL.* Temp. Emerg. Ct. App. Certiorari denied. Reported below: 485 F. 2d 666.

No. 73-827. *COLORADO CORP. ET AL. v. BAER, TRUSTEE IN BANKRUPTCY*. C. A. 10th Cir. Certiorari denied. Reported below: 482 F. 2d 552.

No. 73-5234. *CORBETT v. TEXAS*. Ct. Crim. App. Tex. Certiorari denied. Reported below: 493 S. W. 2d 940.

January 7, 1974

414 U. S.

No. 73-5282. *BLOETH v. MONTANYE, CORRECTIONAL SUPERINTENDENT*. C. A. 2d Cir. Certiorari denied.

No. 73-5308. *SCHNEIDER v. CALIFORNIA*. Ct. App. Cal., 3d App. Dist. Certiorari denied.

No. 73-5311. *NEWKIRK v. NEW YORK*. App. Div., Sup. Ct. N. Y., 2d Jud. Dept. Certiorari denied.

No. 73-5317. *GATHERRIGHT v. ILLINOIS*. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 9 Ill. App. 3d 1058, 293 N. E. 2d 734.

No. 73-5344. *DUPREE v. CALIFORNIA*. Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 73-5366. *COLLINS v. NEW YORK*. Ct. App. N. Y. Certiorari denied. Reported below: 32 N. Y. 2d 916, 300 N. E. 2d 436.

No. 73-5376. *BROWN v. CULLEY ET AL.* C. A. 3d Cir. Certiorari denied.

No. 73-5388. *FITZGERALD ET AL. v. NEBRASKA*. Sup. Ct. Neb. Certiorari denied. Reported below: 190 Neb. 436, 208 N. W. 2d 688.

No. 73-5394. *BECK ET AL. v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 483 F. 2d 203.

No. 73-5399. *WHITE v. UNITED STATES*. C. A. D. C. Cir. Certiorari denied.

No. 73-5404. *JONES v. TEXAS*. Ct. Crim. App. Tex. Certiorari denied. Reported below: 496 S. W. 2d 566.

No. 73-5424. *WASHINGTON v. NORTH CAROLINA*. Sup. Ct. N. C. Certiorari denied. Reported below: 283 N. C. 175, 195 S. E. 2d 534.

414 U.S.

January 7, 1974

No. 73-5438. *MATHERS v. RHAY, PENITENTIARY SUPERINTENDENT, ET AL.* C. A. 9th Cir. Certiorari denied.

No. 73-5464. *THOMAS v. TWOMEY, WARDEN, ET AL.* C. A. 7th Cir. Certiorari denied. Reported below: 478 F. 2d 1406.

No. 73-5478. *BROWN v. UNITED STATES.* C. A. 9th Cir. Certiorari denied.

No. 73-5479. *LAWSON v. UNITED STATES.* C. A. 8th Cir. Certiorari denied. Reported below: 483 F. 2d 535.

No. 73-5480. *HARRIS v. UNITED STATES.* C. A. D. C. Cir. Certiorari denied.

No. 73-5497. *KAPPAS v. UNITED STATES.* C. A. 6th Cir. Certiorari denied.

No. 73-5500. *HALL v. UNITED STATES.* C. A. 4th Cir. Certiorari denied.

No. 73-5515. *FAULKNER v. UNITED STATES.* C. A. 3d Cir. Certiorari denied.

No. 73-5516. *MCINTYRE v. UNITED STATES.* C. A. 9th Cir. Certiorari denied.

No. 73-5525. *ZUMBERGE v. UNITED STATES.* C. A. 8th Cir. Certiorari denied.

No. 73-5527. *HERNANDEZ v. UNITED STATES.* C. A. 5th Cir. Certiorari denied. Reported below: 481 F. 2d 1402.

No. 73-5531. *DIANA v. UNITED STATES.* C. A. 3d Cir. Certiorari denied.

No. 73-5543. *DIXON v. LEVINE, INDUSTRIAL COMMISSIONER OF NEW YORK.* App. Div., Sup. Ct. N. Y., 3d Jud. Dept. Certiorari denied.

January 7, 1974

414 U. S.

No. 73-5578. *ELLINGBURG v. UNITED STATES ET AL.* C. A. 5th Cir. Certiorari denied.

No. 73-5581. *SCOTT v. CROCKER*, U. S. DISTRICT JUDGE. C. A. 9th Cir. Certiorari denied.

No. 73-5618. *WHITE v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 471 F. 2d 652.

No. 73-5624. *HAZZARD v. SOCIAL SECURITY ADMINISTRATION ET AL.* C. A. 2d Cir. Certiorari denied.

No. 73-5683. *WILLIAMS v. NELSON, WARDEN*. C. A. 9th Cir. Certiorari denied.

No. 73-5696. *KREAGER v. GENERAL ELECTRIC CO. ET AL.* C. A. 2d Cir. Certiorari denied.

No. 73-5697. *SCHENK v. GRAY, WARDEN*. C. A. 7th Cir. Certiorari denied. Reported below: 483 F. 2d 1406.

No. 73-5698. *LETBEDDER v. GEORGIA*. Ct. App. Ga. Certiorari denied. Reported below: 129 Ga. App. 196, 199 S. E. 2d 270.

No. 73-5706. *WATKINS v. CALIFORNIA*. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 73-5707. *OLIVER v. HARRISON COUNTY CLERK, MARSHALL, TEXAS, ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 483 F. 2d 1403.

No. 73-5712. *CHAVEZ v. MCCARTHY, WARDEN*. C. A. 9th Cir. Certiorari denied. Reported below: 485 F. 2d 90.

No. 73-5718. *LODDY v. WYOMING*. Sup. Ct. Wyo. Certiorari denied.

No. 73-5738. *BLAIR v. ARKANSAS*. Sup. Ct. Ark. Certiorari denied.

414 U. S.

January 7, 1974

No. 73-5741. *OLDEN v. MCCARTHY, WARDEN*. Sup. Ct. Cal. Certiorari denied.

No. 73-5743. *CARUSO v. IOWA*. Sup. Ct. Iowa. Certiorari denied. Reported below: 211 N. W. 2d 133.

No. 73-5749. *ROSE v. VINCENT, CORRECTIONAL SUPERINTENDENT*. C. A. 2d Cir. Certiorari denied.

No. 73-5765. *TILLEY v. NORTH CAROLINA*. C. A. 4th Cir. Certiorari denied.

No. 73-247. *HOLZMAN, TRUSTEE IN BANKRUPTCY v. L. H. J. ENTERPRISES, INC.* C. A. 9th Cir. Motion of respondent to dispense with printing brief in opposition granted. Certiorari denied. Reported below: 476 F. 2d 949.

No. 73-421. *VEED v. SCHWARTZKOPF ET AL.* C. A. 8th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari.

No. 73-432. *ESPOSITO v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 492 F. 2d 6.

No. 73-561. *DIAS v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari.

No. 73-571. *GRAVITT v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 484 F. 2d 375.

No. 73-681. *WALLACE ET AL. v. KERN ET AL.* C. A. 2d Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 481 F. 2d 621.

No. 72-753. *CAPUTO ET AL. v. NEW YORK*. App. Div., Sup. Ct. N. Y., 3d Jud. Dept. Certiorari denied. MR.

January 7, 1974

414 U. S.

JUSTICE DOUGLAS would grant certiorari. Reported below: 41 App. Div. 2d 165, 341 N. Y. S. 2d 920.

No. 73-769. HANSON, DBA HANSON PAINT & GLASS Co. *v.* PITTSBURGH PLATE GLASS INDUSTRIES, INC. C. A. 5th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 482 F. 2d 220.

No. 73-5260. GILBERT *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari.

No. 72-5354. FORD *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari.

No. 73-5420. BROWN *v.* SLAYTON, PENITENTIARY SUPERINTENDENT. C. A. 4th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 481 F. 2d 622.

No. 73-5423. BUGARIN-CASAS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 484 F. 2d 853.

No. 73-5427. VUCCI ET AL. *v.* BOSLOW, INSTITUTION DIRECTOR. Ct. App. Md. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 269 Md. 331, 305 A. 2d 833.

No. 73-5524. ELIAS-DOJAQUEZ *v.* UNITED STATES; and

No. 73-5541. RIVERA-CASTRO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari.

No. 73-5526. ACKERMAN ET AL. *v.* BOGUE, U. S. DISTRICT JUDGE. C. A. 8th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari.

414 U.S.

January 7, 1974

No. 73-5549. POLLARD *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 483 F. 2d 929.

No. 73-5628. HENDERSON *v.* HALBERT, U. S. DISTRICT JUDGE. C. A. 5th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari.

No. 73-5665. GUERRERO ET AL. *v.* SWOAP, DIRECTOR, DEPARTMENT OF SOCIAL WELFARE, ET AL. Sup. Ct. Cal. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 9 Cal. 3d 808, 512 P. 2d 833.

No. 73-5733. FITTS *v.* WAINWRIGHT, CORRECTIONS DIRECTOR. C. A. 5th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 481 F. 2d 1401.

No. 73-760. TOMOW ET AL. *v.* MENOMINEE ENTERPRISES, INC., ET AL. Sup. Ct. Wis. Motions of National Congress of American Indians et al. and Association on American Indian Affairs, Inc., for leave to file briefs as *amici curiae* granted. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 60 Wis. 2d 1, 208 N. W. 2d 824.

No. 73-772. DALY ET AL. *v.* NATURAL RESOURCES BOARD. Sup. Ct. Wis. Motion of National Congress of American Indians et al. for leave to file a brief as *amici curiae* granted. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 60 Wis. 2d 208, 208 N. W. 2d 839.

*Rehearing Denied*

No. 72-1558. STEIN, ADMINISTRATRIX, ET AL. *v.* LEWISVILLE INDEPENDENT SCHOOL DISTRICT ET AL., *ante*, p. 948. Motion for leave to file petition for rehearing denied.

January 7, 1974

414 U.S.

No. 72-922. *PASCHALL ET AL. v. CHRISTIE-STEWART, INC., ET AL.*, *ante*, p. 100;

No. 72-1612. *CONNOR v. ARKANSAS*, *ante*, p. 991;

No. 72-1733. *MUSSER v. UNITED STATES*, *ante*, p. 31;

No. 72-6799. *CANFIELD v. OKLAHOMA*, *ante*, p. 991;

No. 72-6880. *SMITH ET UX. v. REEDER ET UX.*, *ante*, p. 991;

No. 72-6936. *FARKAS v. LING-TEMCO-VOUGHT, INC.*, *ante*, p. 850;

No. 73-334. *MATANKY v. UNITED STATES*, *ante*, p. 1039;

No. 73-353. *ABBOTT ET AL. v. UNITED STATES*, *ante*, p. 1024;

No. 73-363. *NIX v. GRAND LODGE OF THE INTERNATIONAL ASSOCIATION OF MACHINISTS & AEROSPACE WORKERS*, *ante*, p. 1024;

No. 73-368. *HERNANDEZ v. BROWN, CHIEF JUDGE, U. S. COURT OF APPEALS, ET AL.*, *ante*, p. 1021;

No. 73-372. *HARVEY v. SAULNIER ET AL.*, *ante*, p. 1025;

No. 73-391. *BEHRING PROPERTIES, INC., ET AL. v. SUN OIL Co.*, *ante*, p. 1039;

No. 73-415. *TITUS v. SUPREME COURT OF VIRGINIA ET AL.*, *ante*, p. 1034;

No. 73-5307. *HINES v. ALABAMA*, *ante*, p. 1010;

No. 73-5342. *MAYS v. WARNER, SECRETARY OF THE NAVY*, *ante*, p. 1041; and

No. 73-5442. *HULL v. ST. ELIZABETHS HOSPITAL ET AL.*, *ante*, p. 1043. Petitions for rehearing denied.

No. 72-1532. *PETERSON v. STANCZAK ET AL.*, *ante*, p. 823; and

No. 73-79. *JENNINGS v. CANOTT*, *ante*, p. 892. Motions to dispense with printing granted. Motions for leave to file petitions for rehearing denied.

414 U.S.

January 7, 8, 14, 1974

No. 72-1582. JOHNSON *v.* CITY OF CHEYENNE ET AL., *ante*, p. 990;

No. 73-10. JOHNSON *v.* LARAMIE COUNTY SCHOOL DISTRICT No. 1, *ante*, p. 990; and

No. 73-308. COTA *v.* CHANDLER ET AL., *ante*, p. 1003. Motions to dispense with printing granted. Petitions for rehearing denied.

JANUARY 8, 1974

*Dismissal Under Rule 60*

No. 73-774. MERCANTILE NATIONAL BANK *v.* BARCLAYS BANK D. C. O. C. A. 5th Cir. Petition for writ of certiorari dismissed under Rule 60 of the Rules of this Court. Reported below: 481 F. 2d 1224.

JANUARY 14, 1974

*Affirmed on Appeal*

No. 73-5776. NEWTON *v.* BURGIN ET AL. Affirmed on appeal from D. C. W. D. N. C. MR. JUSTICE DOUGLAS dissents from affirmance. Reported below: 363 F. Supp. 782.

*Appeal Dismissed*

No. 73-5337. PAYNE *v.* FOX, JUDGE. Appeal from Sup. Ct. Va. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied. MR. JUSTICE DOUGLAS dissents from dismissal of appeal and denial of certiorari.

*Certiorari Granted—Vacated and Remanded*

No. 72-1462. MULLANEY ET AL. *v.* WILBUR. C. A. 1st Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *State v. Lafferty*, 309 A. 2d 647 (Me. 1973). Reported below: 473 F. 2d 943.

January 14, 1974

414 U. S.

*Miscellaneous Orders*

No. A-627. *LIVIERI ET AL. v. UNITED STATES ET AL.* Application for stay of execution and enforcement of judgment of the United States District Court for the District of Connecticut (Civil No. 15,741), presented to MR. JUSTICE MARSHALL, and by him referred to the Court, denied.

No. D-15. *IN RE DISBARMENT OF SEVIN.* Marshall Howard Sevin, of Century City, California, having requested to resign as a member of the Bar of this Court, it is ordered that his name be stricken from the roll of attorneys admitted to practice before the Bar of this Court. The rule to show cause heretofore issued on October 23, 1973 [*ante*, p. 971], is hereby discharged.

No. 72-1035. *CURTIS v. LOETHER ET AL.* C. A. 7th Cir. [Certiorari granted, 412 U. S. 937.] Motion of petitioner to change name of petitioner from Julia Rogers to Julia Rogers Curtis granted.

No. 72-1570. *DONNELLY v. DECHRISTOFORO.* C. A. 1st Cir. [Certiorari granted, *ante*, p. 974.] Motion of National Association of Criminal Defense Lawyers for leave to file a brief as *amicus curiae* granted.

No. 72-1603. *CARDWELL, WARDEN v. LEWIS.* C. A. 6th Cir. [Certiorari granted, *ante*, p. 1062.] Motion of respondent for appointment of counsel granted. It is ordered that Bruce A. Campbell, Esquire, of Columbus, Ohio, be, and he is hereby, appointed to serve as counsel for respondent in this case.

No. 73-62. *WHEELER ET AL. v. BARRERA ET AL.* C. A. 8th Cir. [Certiorari granted, *ante*, p. 908.] Motion of American Civil Liberties Union et al. for leave to file a brief as *amici curiae* granted. Motion of the United States for leave to participate in oral argument as *amicus*

414 U.S.

January 14, 1974

*curiae* in support of respondents granted and 15 additional minutes allotted for that purpose. Petitioners allotted 15 additional minutes for oral argument.

No. 73-203. *EISEN v. CARLISLE & JACQUELIN ET AL.* C. A. 2d Cir. [Certiorari granted, *ante*, p. 908.] Motion of respondents for additional time for oral argument granted and 15 additional minutes allotted for that purpose. Petitioners also allotted 15 additional minutes for oral argument.

No. 73-364. *AMERIND v. MANCARI ET AL.* Appeal from D. C. N. M. Motion to dispense with printing jurisdictional statement denied with leave to file printed jurisdictional statement in conformity with Rule 39 of the Rules of this Court on or before January 29, 1974. Reported below: 359 F. Supp. 585.

No. 73-773. *MCNEILL v. FISHER ET AL.* Ct. App. D. C. Motion to dispense with printing petition denied with leave to file printed petition in conformity with Rule 39 of the Rules of this Court on or before January 29, 1974.

No. 73-570. *SOUTHWIRE Co. ET AL. v. METAL EQUIPMENT Co.*, *ante*, p. 1092. Motion of respondent for damages for delay caused by petition for certiorari denied.

No. 73-899. *MOODY ET AL. v. ALBEMARLE PAPER Co. ET AL.*; AND *WILLIAMS v. ALBEMARLE CITY BOARD OF EDUCATION.* Parties granted leave and are invited to file briefs on or before February 13, 1974, in form specified by Rule 39 of the Rules of this Court, in response to question certified by the United States Court of Appeals for the Fourth Circuit. Reported below: See 474 F. 2d 134 and 485 F. 2d 232.

January 14, 1974

414 U.S.

No. 73-5284. *DORSZYNSKI v. UNITED STATES*. C. A. 7th Cir. [Certiorari granted, *ante*, p. 1091.] Motion of petitioner for appointment of counsel granted. It is ordered that Robert H. Friebert, Esquire, of Milwaukee, Wisconsin, be, and he is hereby, appointed to serve as counsel for petitioner in this case.

No. 73-5615. *CODISPOTI ET AL. v. PENNSYLVANIA*. Sup. Ct. Pa. [Certiorari granted, *ante*, p. 1063.] Motion of Robert L. Eberhardt, Esquire, for leave to present oral argument *pro hac vice* on behalf of respondent granted.

No. 73-5781. *MADDEN v. CIRCUIT COURT FOR DODGE COUNTY ET AL.* Motion for leave to file petition for writ of prohibition denied.

*Probable Jurisdiction Noted or Postponed.*

No. 73-362. *MORTON, SECRETARY OF THE INTERIOR, ET AL. v. MANCARI ET AL.* Appeal from D. C. N. M. Motion to dispense with printing motion to dismiss or affirm denied. Probable jurisdiction noted. Reported below: 359 F. Supp. 585.

No. 73-797. *MIAMI HERALD PUBLISHING Co., DIVISION OF KNIGHT NEWSPAPERS, INC. v. TORNILLO*. Appeal from Sup. Ct. Fla. Further consideration of question of jurisdiction postponed to hearing of case on the merits. Reported below: 287 So. 2d 78.

*Certiorari Granted*

No. 73-437. *MOBIL OIL CORP. v. FEDERAL POWER COMMISSION ET AL.*;

No. 73-457. *PUBLIC SERVICE COMMISSION OF NEW YORK v. FEDERAL POWER COMMISSION ET AL.*; and

No. 73-464. *MUNICIPAL DISTRIBUTORS GROUP v. FEDERAL POWER COMMISSION ET AL.* C. A. 5th Cir. Certio-

414 U.S.

January 14, 1974

rari granted. Cases consolidated and a total of one hour allotted for oral argument. MR. JUSTICE POWELL took no part in the consideration or decision of these petitions. Reported below: 483 F. 2d 880.

No. 73-300. SAXBE, ATTORNEY GENERAL, ET AL. v. BUSTOS ET AL.; and

No. 73-480. CARDONA ET AL. v. SAXBE, ATTORNEY GENERAL, ET AL. C. A. D. C. Cir. Certiorari granted. Cases consolidated and a total of one hour allotted for oral argument. Reported below: 156 U. S. App. D. C. 304, 481 F. 2d 479.

No. 73-507. HAMLING ET AL. v. UNITED STATES. C. A. 9th Cir. Certiorari granted. Case set for oral argument with No. 73-557 [*Jenkins v. Georgia*, probable jurisdiction noted, *ante*, p. 1090]. Reported below: 481 F. 2d 307.

*Certiorari Denied.* (See also No. 73-5337, *supra*.)

No. 72-1107. BERBLING ET AL. v. LITTLETON ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 468 F. 2d 389.

No. 73-560. CHINESE MARITIME TRUST, LTD. v. PANAMA CANAL Co. C. A. 2d Cir. Certiorari denied. Reported below: 478 F. 2d 1357.

No. 73-566. BAUER v. NEW YORK. Ct. App. N. Y. Certiorari denied.

No. 73-676. INDUSTRIAL LIFE INSURANCE Co. v. UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 481 F. 2d 609.

No. 73-683. BRASWELL MOTOR FREIGHT LINES, INC. v. UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 477 F. 2d 594.

January 14, 1974

414 U.S.

No. 73-783. *LICHTENSTEIN v. LICHTENSTEIN ET AL.* C. A. 3d Cir. Certiorari denied. Reported below: 481 F. 2d 682.

No. 73-784. *CITY OF CHICAGO ET AL. v. GAUTREAUX ET AL.*; and

No. 73-785. *CHICAGO HOUSING AUTHORITY v. GAUTREAUX ET AL.* C. A. 7th Cir. Certiorari denied. Reported below: 480 F. 2d 210.

No. 73-789. *HOISTING & PORTABLE ENGINEERS, LOCAL 450, INTERNATIONAL UNION OF OPERATING ENGINEERS, AFL-CIO v. PENCE CONSTRUCTION CORP.* C. A. 5th Cir. Certiorari denied. Reported below: 484 F. 2d 398.

No. 73-790. *LEAS v. SHERER.* C. A. 7th Cir. Certiorari denied. Reported below: 481 F. 2d 1406.

No. 73-792. *BROTHERHOOD OF RAILWAY, AIRLINE & STEAMSHIP CLERKS ET AL. v. ROTA ET AL.* C. A. 7th Cir. Certiorari denied. Reported below: 489 F. 2d 998.

No. 73-5297. *JONES v. SLAYTON, PENITENTIARY SUPERINTENDENT.* C. A. 4th Cir. Certiorari denied.

No. 73-5353. *THOMPSON v. UNITED STATES.* C. A. 1st Cir. Certiorari denied. Reported below: 481 F. 2d 650.

No. 73-5375. *GILL v. ILLINOIS.* Sup. Ct. Ill. Certiorari denied. Reported below: 54 Ill. 2d 357, 297 N. E. 2d 135.

No. 73-5413. *RODRIGUEZ v. WAINWRIGHT, CORRECTIONS DIRECTOR.* C. A. 5th Cir. Certiorari denied. Reported below: 481 F. 2d 1402.

No. 73-5414. *ROOTS v. AIRTH.* C. A. 5th Cir. Certiorari denied.

414 U.S.

January 14, 1974

No. 73-5536. *NEWKIRK v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 481 F. 2d 881.

No. 73-5538. *DAVIS v. UNITED STATES*. C. A. 9th Cir. Certiorari denied.

No. 73-5546. *KEEGAN v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 480 F. 2d 923.

No. 73-5548. *BENSON v. AMERICAN EXPORT ISBRANDTSEN LINES, INC.* C. A. 3d Cir. Certiorari denied. Reported below: 478 F. 2d 152.

No. 73-5758. *LUZAICH v. PENNSYLVANIA*. Super. Ct. Pa. Certiorari denied. Reported below: 224 Pa. Super. 748, 301 A. 2d 904.

No. 73-5775. *PATRICK v. RUSSELL, CORRECTIONAL SUPERINTENDENT*. C. A. 3d Cir. Certiorari denied.

No. 73-5782. *GIBSON v. COINER, WARDEN*. C. A. 4th Cir. Certiorari denied.

No. 73-5786. *TINSLEY v. KENTUCKY*. Ct. App. Ky. Certiorari denied. Reported below: 495 S. W. 2d 776.

No. 73-5792. *PATE v. ARIZONA*. Sup. Ct. Ariz. Certiorari denied. Reported below: 109 Ariz. 506, 513 P. 2d 935.

No. 73-5794. *ALLISON v. GEORGIA*. Ct. App. Ga. Certiorari denied. Reported below: 129 Ga. App. 364, 199 S. E. 2d 587.

No. 73-5795. *SASO v. MCCARTHY, MEN'S COLONY SUPERINTENDENT*. C. A. 9th Cir. Certiorari denied.

No. 73-5797. *CHAMBERLAIN v. JOHNSON, WARDEN*. C. A. 6th Cir. Certiorari denied. Reported below: 486 F. 2d 1404.

January 14, 1974

414 U.S.

No. 73-5800. *BIES v. GRAY, WARDEN*. C. A. 7th Cir. Certiorari denied. Reported below: 483 F. 2d 1407.

No. 72-1416. *AGUAYO ET AL. v. WEINBERGER, SECRETARY OF HEALTH, EDUCATION, AND WELFARE, ET AL.* C. A. 2d Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 473 F. 2d 1090.

No. 72-6951. *LEBLANC v. HENDERSON, WARDEN*. C. A. 5th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 478 F. 2d 481.

No. 73-637. *DENTON v. SEAMANS, SECRETARY OF THE AIR FORCE*. C. A. 9th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 483 F. 2d 21.

No. 73-671. *MAYER PAVING & ASPHALT CO. ET AL. v. GENERAL DYNAMICS CORP. ET AL.* C. A. 7th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 486 F. 2d 763.

No. 73-5269. *GUTIERREZ v. DEPARTMENT OF PUBLIC SAFETY OF ILLINOIS ET AL.* C. A. 7th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 479 F. 2d 701.

No. 73-5644. *McCHESNEY v. HENDERSON, WARDEN*. C. A. 5th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 482 F. 2d 1101.

No. 73-91. *CHEVRON OIL COMPANY, WESTERN DIVISION, ET AL. v. FEDERAL POWER COMMISSION ET AL.* C. A. 10th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. MR. JUSTICE POWELL took no part in the consideration or decision of this petition. Reported below: 475 F. 2d 842.

No. 73-751. *PALM BEACH NEWSPAPERS, INC., ET AL. v. EARLY*. Cir. Ct. Fla., Broward County. Motions of

414 U. S.

January 14, 1974

Miami Herald Publishing Co., a Division of Knight Newspapers, Inc., et al., and American Newspaper Publishers Assn. for leave to file briefs as *amici curiae* granted. Certiorari denied. Reported below: See 274 So. 2d 890.

*Rehearing Denied*

No. 72-6748. WALDRON *v.* UNITED STATES, *ante*, p. 31;

No. 72-6800. GOAD *v.* ANDERSON, WARDEN, *ante*, p. 1043;

No. 73-404. DEPENDENT SCHOOL DISTRICT NO. D-20 OF CADDO COUNTY ET AL. *v.* PARKER, COUNTY SUPERINTENDENT OF SCHOOLS, *ante*, p. 1035;

No. 73-418. HUTUL *v.* CHICAGO BAR ASSN., *ante*, p. 1040;

No. 73-502. STRUMSKIS *v.* UNITED STATES, *ante*, p. 1067;

No. 73-5151. WATSON *v.* AULT, WARDEN, *ante*, p. 1069;

No. 73-5181. WILLIAMS *v.* CALIFORNIA, *ante*, p. 1041;

No. 73-5441. THIBADOUX *v.* WARDEN, CLINTON CORRECTIONAL FACILITY, *ante*, p. 1071;

No. 73-5474. PALLER *v.* PALLER, *ante*, p. 1072; and

No. 73-5481. SAYLES *v.* MCGUIRE, U. S. DISTRICT JUDGE, *ante*, p. 1059. Petitions for rehearing denied.

No. 73-275. ALABAMA GREAT SOUTHERN RAILROAD CO. ET AL. *v.* LOUISIANA;

No. 73-335. ILLINOIS CENTRAL RAILROAD CO., NOW ILLINOIS CENTRAL GULF RAILROAD *v.* LOUISIANA;

No. 73-340. SOUTHERN PACIFIC TRANSPORTATION CO. *v.* LOUISIANA;

No. 73-341. TEXAS PACIFIC-MISSOURI PACIFIC TERMINAL RAILROAD OF NEW ORLEANS *v.* LOUISIANA; and

No. 73-342. LOUISIANA & ARKANSAS RAILWAY CO. *v.* LOUISIANA, *ante*, p. 991. Motion of Association of

January 14, 21, 1974

414 U. S.

American Railroads for leave to file a brief as *amicus curiae* in support of petition for rehearing in No. 73-275 granted. Petitions for rehearing denied. MR. JUSTICE POWELL took no part in the consideration or decision of this motion and these petitions.

No. 73-116. *ROCKS v. UNITED STATES*, *ante*, p. 1044. Petition for rehearing denied. MR. JUSTICE WHITE took no part in the consideration or decision of this petition.

No. 73-394. *MORGAN v. AUTOMOBILE MANUFACTURERS ASSN., INC., ET AL.*, *ante*, p. 1045. Petition for rehearing denied. MR. JUSTICE POWELL took no part in the consideration or decision of this petition.

JANUARY 21, 1974

*Appeals Dismissed*

No. 73-668. *FIELDS v. ASKEW, GOVERNOR OF FLORIDA, ET AL.* Appeal from Sup. Ct. Fla. dismissed for want of substantial federal question. MR. JUSTICE DOUGLAS dissents from dismissal of appeal. MR. JUSTICE BRENNAN and MR. JUSTICE MARSHALL would note probable jurisdiction. Reported below: 279 So. 2d 822.

No. 73-5359. *IN RE GOALEN*. Appeal from Sup. Ct. Utah dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied. Reported below: 30 Utah 2d 27, 512 P. 2d 1028.

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

Ronald Easthope, currently an inmate in the Utah State Prison, and appellant Ann Goalen desire to marry. Both are of legal age and are competent to enter into

1148

STEWART, J., dissenting

marriage under state law. Section 76-1-36, Utah Code Ann. (1953), provides:

“A sentence of imprisonment in the state prison for any term less than for life suspends all civil rights of the person so sentenced during such imprisonment, and forfeits all private trusts and all public offices, authority or power.”

In implementation of this statute, the Utah State Board of Corrections promulgated Policy No. 36:

“It shall be the policy of the Board of Corrections that the Warden may, upon the recommendation of the treatment team, authorize inmates nearing their release dates to marry.”

This policy has been interpreted and applied by the state corrections officials to permit marriage by an inmate only when he is within six months of release if the marriage is recommended by the treatment team. Easthope and appellant conveyed their desire to marry to the warden of the Utah State Prison, who determined that Easthope was not within the terms of the policy and denied permission for the marriage to take place. Appellant then brought this action for mandamus in the state courts to require the warden to sanction the marriage.

Appellant contends that the freedom to marry is constitutionally protected and that the State of Utah cannot prohibit her marriage to Easthope in the absence of some compelling state interest. The interest that the State has asserted in support of its policy is that the denial of such civil rights, in conjunction with their gradual return to the convict, “acts as an incentive for the convict to aid in his own rehabilitation.” The Utah courts have denied the appellant any relief, and the State Supreme Court explicitly rejected the appellant’s constitutional claim.

January 21, 1974

414 U. S.

In *Loving v. Virginia*, 388 U. S. 1 (1967), the Court expressly recognized that the right to marry is one of the fundamental liberties embodied in the Due Process Clause of the Fourteenth Amendment. See also *Skinner v. Oklahoma*, 316 U. S. 535, 541 (1942). Just last Term, the Court reaffirmed the principle of those cases. *Roe v. Wade*, 410 U. S. 113 (1973). The extent to which this right may be diluted for one in prison is something the Court has never decided. In this case the State asserts no security or discipline problems that would arise by permitting the marriage. The State's only interest appears to be to utilize the wholesale denial and subsequent "gradual return" of prisoners' civil rights as an incentive to encourage their cooperation in corrective programs. While this may or may not constitute good psychology and sound corrections policy, I think there is a serious question whether this state policy is sufficient to overcome the appellant's constitutional claim.

I would not, however, note probable jurisdiction and set this case for oral argument. The State has suggested that the issue presented may well have been mooted when Utah Code Ann. § 76-1-36 (1953), on which Policy No. 36 was predicated, was recently repealed by the legislature. Accordingly, I would vacate the judgment of the Utah Supreme Court and remand the case to that court to consider whether the repeal of the statute has operated to nullify the Board of Corrections' Policy No. 36.

No. 73-5675. *TARLTON v. TEXAS*. Appeal from Ct. Crim. App. Tex. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied.

*Certiorari Granted—Vacated and Remanded*

No. 72-930. *UNITED STATES STEEL CORP. v. UNITED MINE WORKERS OF AMERICA ET AL.* C. A. 3d Cir. Certi-

414 U. S.

January 21, 1974

orari granted, judgment vacated, and case remanded for further consideration in light of *Gateway Coal Co. v. United Mine Workers of America*, ante, p. 368. MR. JUSTICE DOUGLAS dissents from vacation and remand. Reported below: 469 F. 2d 729.

No. 72-6155. *CIOTTI v. UNITED STATES*. C. A. 3d Cir. Motion for leave to proceed *in forma pauperis* and certiorari granted. Judgment vacated and case remanded for further consideration in light of *United States v. Maze*, ante, p. 395. Reported below: 469 F. 2d 1204.

No. 73-354. *LITTLE ART CORP., DBA ART 16 THEATRE v. NEBRASKA*. Sup. Ct. Neb. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Miller v. California*, 413 U. S. 15 (1973); *Paris Adult Theatre I v. Slaton*, 413 U. S. 49 (1973); *Kaplan v. California*, 413 U. S. 115 (1973); *United States v. 12 200-Ft. Reels of Film*, 413 U. S. 123 (1973); *United States v. Orito*, 413 U. S. 139 (1973); *Heller v. New York*, 413 U. S. 483 (1973); *Roaden v. Kentucky*, 413 U. S. 496 (1973); and *Alexander v. Virginia*, 413 U. S. 836 (1973). MR. JUSTICE DOUGLAS, being of the view that state obscenity regulation is prohibited by the Fourteenth and First Amendments (see *Paris Adult Theatre I v. Slaton*, 413 U. S. 49, 70 (DOUGLAS, J., dissenting)), would grant certiorari and reverse the judgment of conviction. Reported below: 190 Neb. 289, 207 N. W. 2d 527.

MR. JUSTICE BRENNAN, whom MR. JUSTICE STEWART and MR. JUSTICE MARSHALL join, dissenting.

Petitioner was convicted on charges of circulating and publishing allegedly obscene motion pictures in violation of § 28-921 of the Nebraska Revised Statutes (Supp. 1972), which provides as follows:

“Whoever knowingly sells or offers for sale, or gives to another, or otherwise circulates or publishes or

causes to be circulated or published, or has in his possession with intent to sell, loan, or give to another, or to otherwise circulate or publish or cause to be circulated or published, any obscene, lewd, indecent, or lascivious book, pamphlet, paper, movie films, drawing, lithograph, engraving, picture, photograph, model, cast, or any instrument or article of obscene, lewd, indecent or lascivious use, or advertises the same for sale, or writes or prints any letter, circular, handbill, card, book, pamphlet, advertisement, or notice of any kind, giving information, directly or indirectly, when, where, how, or by what means any of the articles or things hereinbefore mentioned can be purchased or otherwise obtained or made, shall, upon conviction thereof, be punished by a fine of not more than one thousand dollars nor less than fifty dollars, or by imprisonment in the county jail not more than one year, or both . . . .”

The “standard for judging obscenity” in prosecutions brought under § 28-921, set out in § 28-926.07 (1964), is “whether to the average person the dominant theme of said material or conduct which is at issue in such . . . criminal proceedings, taken as a whole, appeals to the prurient interest, which is to excite lustful thoughts, or a shameful or morbid interest in nudity, sex, or excretion which goes substantially beyond the customary limits of candor.”

It is my view that “at least in the absence of distribution to juveniles or obtrusive exposure to unconsenting adults, the First and Fourteenth Amendments prohibit the State and Federal Governments from attempting wholly to suppress sexually oriented materials on the basis of their allegedly ‘obscene’ contents.” *Paris Adult Theatre I v. Slaton*, 413 U. S. 49, 113 (1973) (dissent-

414 U. S.

January 21, 1974

ing opinion). It is clear that, tested by that constitutional standard, § 28-921 is constitutionally overbroad and therefore invalid on its face. For the reasons stated in my dissent in *Miller v. California*, 413 U. S. 15, 47 (1973), I would therefore grant certiorari, vacate the judgment of the Supreme Court of Nebraska, and remand for further proceedings not inconsistent with my dissent in *Paris Adult Theatre I*. In that circumstance, I have no occasion to consider whether the questions presented in the petition merit plenary review. See *Heller v. New York*, 413 U. S. 483, 494 (1973) (BRENNAN, J., dissenting).

*Miscellaneous Orders*

No. 73-1315. MORNINGSIDE RENEWAL COUNCIL, INC., ET AL. v. UNITED STATES ATOMIC ENERGY COMMISSION ET AL. C. A. 2d Cir. Motion of petitioners for leave to proceed *in forma pauperis* denied.

No. D-14. IN RE DISBARMENT OF MACLEOD. It having been reported to this Court that Douglas C. MacLeod, of St. Louis, Missouri, has been indefinitely suspended from the practice of law in all of the courts of the State of Missouri, and this Court by order of October 23, 1973 [*ante*, p. 971], having suspended the said Douglas C. MacLeod from the practice of law in this Court and directed that a rule issue requiring him to show cause why he should not be disbarred;

And it appearing that the said rule was duly issued and served upon the respondent and that a response thereto has been filed;

It is ordered that the said Douglas C. MacLeod 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.

January 21, 1974

414 U. S.

No. D-16. *IN RE DISBARMENT OF MADES.* It having been reported to this Court that Herbert S. Mades, of Winthrop, Massachusetts, has been suspended from the practice of law in all of the courts of the State of Massachusetts, and this Court by order of November 12, 1973 [*ante*, p. 1019], having suspended the said Herbert S. Mades from the practice of law in this Court and directed that a rule issue requiring him to show cause why he should not be disbarred;

And it appearing that the said rule was duly issued and served upon the respondent and that a response thereto has been filed;

It is ordered that the said Herbert S. Mades 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. 72-1490. *FEDERAL POWER COMMISSION v. TEXACO INC. ET AL.*; and

No. 72-1491. *DOUGHERTY, EXECUTOR, ET AL. v. TEXACO INC. ET AL.* C. A. D. C. Cir. [Certiorari granted, *ante*, p. 817.] Motion of respondent Interstate Natural Gas Association of America for divided argument granted.

No. 72-1597. *BEASLEY ET AL. v. FOOD FAIR OF NORTH CAROLINA, INC., ET AL.* Sup. Ct. N. C. [Certiorari granted, *ante*, p. 907.] Motion of Associated Industries, Inc., et al. for leave to file a brief as *amici curiae* granted.

No. 73-298. *VELA ET AL. v. VOWELL, COMMISSIONER OF PUBLIC WELFARE OF TEXAS, ET AL.* Appeal from D. C. W. D. Tex. Motion of appellants to dispense with printing jurisdictional statement denied with leave to file a printed jurisdictional statement in conformity with Rule 39 of the Rules of this Court, or, if applicable, file

414 U.S.

January 21, 1974

a motion for leave to proceed *in forma pauperis*, with supporting affidavits, pursuant to Rule 53 of the Rules of this Court, on or before February 11, 1974.

No. 73-434. MILLIKEN, GOVERNOR OF MICHIGAN, ET AL. *v.* BRADLEY ET AL.;

No. 73-435. ALLEN PARK PUBLIC SCHOOLS ET AL. *v.* BRADLEY ET AL.; and

No. 73-436. GROSSE POINTE PUBLIC SCHOOL SYSTEM *v.* BRADLEY ET AL. C. A. 6th Cir. [Certiorari granted, *ante*, p. 1038.] Motion of Metropolitan School Districts of Lawrence Township et al., Marion County, Indiana, for leave to file a brief as *amici curiae* granted.

No. 73-547. GUERRA *v.* TEXAS. Ct. Crim. App. Tex.;

No. 73-697. GETTELMAN *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 7th Cir.;

No. 73-732. SUTTER *v.* UNITED STATES. C. A. 9th Cir.; and

No. 73-891. PURIN, AKA MOREIRA *v.* UNITED STATES. C. A. 2d Cir. Motions to dispense with printing petitions denied with leave to file printed petitions in each of these cases in conformity with Rule 39 of the Rules of this Court on or before February 11, 1974.

No. 73-662. SCHLESINGER, SECRETARY OF DEFENSE, ET AL. *v.* COUNCILMAN. C. A. 10th Cir. [Certiorari granted, *ante*, p. 1111.] Motion for leave to proceed on original record granted.

No. 73-5409. CARTER *v.* UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT. Motion for leave to file petition for writ of mandamus denied.

*Probable Jurisdiction Noted*

No. 73-918. PELL ET AL. *v.* PROCUNIER, CORRECTIONS DIRECTOR, ET AL. Appeal from D. C. N. D. Cal. Probable jurisdiction noted. Case consolidated with No.

January 21, 1974

414 U. S.

73-754 [*Procunier, Corrections Director, et al. v. Hillery et al.*, probable jurisdiction noted, *ante*, p. 1127] and a total of one hour allotted for oral argument. Reported below: 364 F. Supp. 196.

*Certiorari Granted*

No. 73-375. OTTE, TRUSTEE IN BANKRUPTCY *v.* UNITED STATES ET AL. C. A. 2d Cir. Certiorari granted. Reported below: 480 F. 2d 184.

No. 73-690. AIR POLLUTION VARIANCE BOARD OF COLORADO *v.* WESTERN ALFALFA CORP. Ct. App. Colo. Certiorari granted. Reported below: 510 P. 2d 907.

No. 73-781. SCHERK *v.* ALBERTO-CULVER CO. C. A. 7th Cir. Certiorari granted. Reported below: 484 F. 2d 611.

No. 73-804. BAKER ET AL., TRUSTEES IN REORGANIZATION *v.* GOLD SEAL LIQUORS, INC. C. A. 7th Cir. Certiorari granted. Reported below: 484 F. 2d 950.

No. 73-556. FLORIDA POWER & LIGHT CO. *v.* INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 641, ET AL.; and

No. 73-795. NATIONAL LABOR RELATIONS BOARD *v.* INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL-CIO, ET AL. C. A. D. C. Cir. Certiorari granted. Cases consolidated and a total of one hour allotted for oral argument. Reported below: 159 U. S. App. D. C. 272, 487 F. 2d 1143.

No. 73-679. WOLFF, WARDEN, ET AL. *v.* McDONNELL. C. A. 8th Cir. Motion of respondent for leave to proceed *in forma pauperis* and certiorari granted. Reported below: 483 F. 2d 1059.

No. 73-841. HOLDER, U. S. DISTRICT JUDGE *v.* BANKS. C. A. 7th Cir. Motion of respondent for leave to proceed *in forma pauperis* and certiorari granted.

414 U.S.

January 21, 1974

No. 73-846. WINGO, WARDEN *v.* WEDDING. C. A. 6th Cir. Motion of respondent for leave to proceed *in forma pauperis* and certiorari granted. Reported below: 483 F. 2d 1131.

*Certiorari Denied.* (See also Nos. 73-5359 and 73-5675, *supra.*)

No. 73-405. McARTHUR *v.* CALIFORNIA. App. Dept., Super. Ct. Cal., County of Los Angeles. Certiorari denied.

No. 73-494. INTERNATIONAL PHOTOGRAPHERS OF THE MOTION PICTURE INDUSTRIES, LOCAL 659, INTERNATIONAL ALLIANCE OF THEATRICAL STAGE EMPLOYEES & MOVING PICTURE MACHINE OPERATORS OF THE UNITED STATES AND CANADA *v.* NATIONAL LABOR RELATIONS BOARD. C. A. D. C. Cir. Certiorari denied. Reported below: 155 U. S. App. D. C. 281, 447 F. 2d 450.

No. 73-500. NEWTON ET UX. *v.* FLORIDA. Dist. Ct. App. Fla., 3d Dist. Certiorari denied. Reported below: 272 So. 2d 15.

No. 73-592. GUIDO *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 481 F. 2d 1406.

No. 73-600. RUSSO *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 480 F. 2d 1228.

No. 73-605. BOBROW *v.* MUNICIPAL COURT OF THE LOS ANGELES JUDICIAL DISTRICT, COUNTY OF LOS ANGELES. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 73-606. LANGLEY ET AL. *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 483 F. 2d 1406.

No. 73-610. CADE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 483 F. 2d 1401.

January 21, 1974

414 U.S.

No. 73-758. *VROOM v. IRWIN ET AL.* C. A. 10th Cir. Certiorari denied. Reported below: 481 F. 2d 34.

No. 73-791. *GOLDEN TRIANGLE BROADCASTING, INC. v. FIELD.* Sup. Ct. Pa. Certiorari denied. Reported below: 451 Pa. 410, 305 A. 2d 689.

No. 73-796. *UNITED STATES v. GRAY.* C. A. 6th Cir. Certiorari denied. Reported below: 484 F. 2d 352.

No. 73-800. *HERSKOWITZ v. HERSKOWITZ.* Dist. Ct. App. Fla., 3d Dist. Certiorari denied. Reported below: 281 So. 2d 595.

No. 73-808. *MILLER v. BROWN ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 481 F. 2d 1405.

No. 73-814. *HOOPES v. STATE TAX COMMISSION OF UTAH.* Sup. Ct. Utah. Certiorari denied. Reported below: 30 Utah 2d 107, 514 P. 2d 221.

No. 73-823. *WALKER v. INDIANA.* Ct. App. Ind. Certiorari denied. Reported below: — Ind. App. —, 293 N. E. 2d 35.

No. 73-825. *AMERICAN HOME PRODUCTS CORP. v. LOCKWOOD MANUFACTURING CO.* C. A. 6th Cir. Certiorari denied. Reported below: 483 F. 2d 1120.

No. 73-834. *OGDEN CORP. ET AL. v. LURIA STEEL & TRADING CORP. ET AL.* C. A. 3d Cir. Certiorari denied. Reported below: 484 F. 2d 1016.

No. 73-843. *LYKES BROTHERS STEAMSHIP Co., INC. v. BROWN.* C. A. 5th Cir. Certiorari denied. Reported below: 484 F. 2d 61.

No. 73-845. *MCDONALD, MAYOR OF EVANSVILLE, ET AL. v. MILLER ET AL.* Sup. Ct. Ind. Certiorari denied. Reported below: — Ind. —, 297 N. E. 2d 826.

414 U. S.

January 21, 1974

No. 73-887. HOLDREGE COOPERATIVE EQUITY EXCHANGE *v.* CHICAGO, BURLINGTON & QUINCY RAILROAD. C. A. 8th Cir. Certiorari denied. Reported below: 483 F. 2d 29.

No. 73-5339. CHARLES *v.* WAINWRIGHT, CORRECTIONS DIRECTOR. C. A. 5th Cir. Certiorari denied. Reported below: 478 F. 2d 754.

No. 73-5439. HART *v.* BORDENKIRCHER, WARDEN. C. A. 4th Cir. Certiorari denied.

No. 73-5451. TORRIENTE *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 73-5459. TAYLOR *v.* ESTELLE, CORRECTIONS DIRECTOR. C. A. 5th Cir. Certiorari denied. Reported below: 478 F. 2d 1401.

No. 73-5462. JOHNSON *v.* LOUISIANA. Sup. Ct. La. Certiorari denied.

No. 73-5487. PRICE ET AL. *v.* UNITED STATES; and

No. 73-5540. JACKSON *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 482 F. 2d 1167.

No. 73-5510. HERSHIPS *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 73-5514. RAMSEY *v.* VINCENT, CORRECTIONAL SUPERINTENDENT. C. A. 2d Cir. Certiorari denied.

No. 73-5530. ALLEN *v.* GEORGIA. Sup. Ct. Ga. Certiorari denied. Reported below: 231 Ga. 17, 200 S. E. 2d 106.

No. 73-5545. REED *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 73-5550. MILLER *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

January 21, 1974

414 U. S.

No. 73-5551. *SULLIVAN v. ILLINOIS DEPARTMENT OF CORRECTIONS ET AL.* C. A. 7th Cir. Certiorari denied.

No. 73-5552. *SHUMAKE v. UNITED STATES.* C. A. 9th Cir. Certiorari denied.

No. 73-5556. *HARVEY v. UNITED STATES.* C. A. 5th Cir. Certiorari denied. Reported below: 483 F. 2d 448.

No. 73-5568. *DENNIS v. PENNSYLVANIA.* Super. Ct. Pa. Certiorari denied.

No. 73-5587. *HUDSON v. NORTH CAROLINA.* Sup. Ct. N. C. Certiorari denied.

No. 73-5600. *PETERSON v. MISSOURI.* C. A. 8th Cir. Certiorari denied.

No. 73-5604. *WRAGGS v. MISSOURI.* Ct. App. Mo., St. Louis Dist. Certiorari denied. Reported below: 496 S. W. 2d 38.

No. 73-5608. *KROLL v. UNITED STATES.* C. A. 5th Cir. Certiorari denied. Reported below: 478 F. 2d 1401.

No. 73-5609. *MARTIN v. DIRECTOR, PATUXENT INSTITUTION.* Ct. Sp. App. Md. Certiorari denied. Reported below: 18 Md. App. 505, 308 A. 2d 212.

No. 73-5647. *BOTHELL v. WASHINGTON.* Ct. App. Wash. Certiorari denied. Reported below: 8 Wash. App. 1013.

No. 73-5680. *GRCICH v. ADMINISTRATOR OF VETERANS' AFFAIRS.* C. A. D. C. Cir. Certiorari denied.

No. 73-5682. *SEASHOLTZ v. UNITED STATES.* C. A. 10th Cir. Certiorari denied.

No. 73-5687. *CUNNINGHAM v. ESTELLE, CORRECTIONS DIRECTOR.* C. A. 5th Cir. Certiorari denied. Reported below: 480 F. 2d 922.

414 U. S.

January 21, 1974

No. 73-5715. *PERRY v. DIRECTOR, NASA-LEWIS RESEARCH CENTER, ET AL.* C. A. 6th Cir. Certiorari denied.

No. 73-5802. *CARMICHAEL v. OHIO.* Sup. Ct. Ohio. Certiorari denied. Reported below: 35 Ohio St. 2d 1, 298 N. E. 2d 568.

No. 73-5805. *BOAG v. CRAVEN, WARDEN*; and

No. 73-5834. *BOAG v. CRAVEN, WARDEN.* C. A. 9th Cir. Certiorari denied.

No. 73-5809. *MEMS v. BLACKLEDGE, WARDEN, ET AL.* C. A. 4th Cir. Certiorari denied.

No. 73-5810. *LAMPKIN v. WOLFF, WARDEN.* C. A. 8th Cir. Certiorari denied.

No. 73-5811. *FINLEY v. GUNN, WARDEN.* C. A. 9th Cir. Certiorari denied.

No. 73-5817. *MILBURN v. VINCENT.* C. A. 2d Cir. Certiorari denied.

No. 73-5818. *HARRIS v. NORTH CAROLINA.* Ct. App. N. C. Certiorari denied. Reported below: 19 N. C. App. 48, 198 S. E. 2d 108.

No. 73-5822. *FIELDS v. TENNESSEE.* Ct. Crim. App. Tenn. Certiorari denied.

No. 73-5823. *ACUNA v. STONE.* C. A. 9th Cir. Certiorari denied.

No. 73-5829. *LOMBARDI v. TUBMAN, DEPUTY WARDEN.* C. A. 2d Cir. Certiorari denied.

No. 73-5833. *MOFFETT v. ALABAMA.* Sup. Ct. Ala. Certiorari denied. Reported below: 291 Ala. 382, 281 So. 2d 630.

No. 73-5852. *WEISS v. BURR, SHERIFF.* C. A. 9th Cir. Certiorari denied. Reported below: 484 F. 2d 973.

January 21, 1974

414 U. S.

No. 73-5906. *PARKS v. REGAN, PRISON SUPERINTENDENT*. C. A. 3d Cir. Certiorari denied.

No. 72-1649. *WESTERBERG v. DISTRICT COURT IN AND FOR THE SECOND JUDICIAL DISTRICT OF COLORADO ET AL.* Sup. Ct. Colo. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: — Colo. —, 506 P. 2d 746.

No. 72-5539. *MACIAS v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 464 F. 2d 1292.

No. 72-6744. *TURNER v. UNITED STATES*. C. A. D. C. Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari.

No. 72-6952. *SIMMONS v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari.

No. 73-393. *TAGER v. UNITED STATES*. C. A. 10th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 479 F. 2d 120.

No. 73-505. *BETTA ET AL. v. CALIFORNIA*. Ct. App. Cal., 1st App. Dist. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari.

No. 73-802. *LUCK ET AL. v. UNION OIL COMPANY OF CALIFORNIA ET AL.* C. A. 9th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari.

No. 73-811. *SELB MANUFACTURING CO., A DIVISION OF WESTERN, INC., ET AL. v. GENERAL DYNAMICS CORP.* C. A. 8th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 481 F. 2d 1204.

414 U. S.

January 21, 1974

No. 73-852. *JABLON v. TRUSTEES OF CALIFORNIA STATE COLLEGES ET AL.* C. A. 9th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 482 F. 2d 997.

No. 73-5397. *JONES v. NELSON, WARDEN.* C. A. 9th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari.

No. 73-5484. *HOOKS v. ROBERTS, WARDEN.* C. A. 5th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 480 F. 2d 1196.

No. 73-5849. *MANNING v. OHIO.* Ct. App. Ohio, Franklin County. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari.

No. 72-1694. *NEW YORK v. NEWMAN.* Ct. App. N. Y. Certiorari denied. MR. JUSTICE WHITE and MR. JUSTICE BLACKMUN would grant certiorari. Reported below: 32 N. Y. 2d 379, 298 N. E. 2d 651.

No. 73-401. *MITCHELL v. TEXAS.* Ct. Crim. App. Tex. Certiorari denied. MR. JUSTICE DOUGLAS and MR. JUSTICE WHITE would grant certiorari. Reported below: 494 S. W. 2d 865.

No. 73-488. *McMULLEN v. VIRGINIA.* Sup. Ct. Va. Motion of respondent to dispense with printing brief in opposition and certiorari denied.

No. 73-607. *RICHARDSON v. IDAHO.* Sup. Ct. Idaho. It appearing that petitioner has complied substantially with Rule 39 of the Rules of this Court, motion to dispense with printing petition denied as unnecessary. Certiorari denied. Reported below: 95 Idaho 446, 511 P. 2d 263.

No. 73-649. *REYNOLDS v. TENNESSEE.* Sup. Ct.

Tenn. Certiorari denied. MR. JUSTICE BRENNAN and MR. JUSTICE MARSHALL would grant the petition.

MR. JUSTICE DOUGLAS, dissenting.

This case involves a demonstration occasioned by the appearance of President Nixon at a week-long Billy Graham East Tennessee Crusade held at a football stadium in Knoxville. The petitioner, an ordained Methodist minister and a professor of religious studies, was convicted under a Tennessee statute which in relevant part proscribes "willfully disturb[ing] or disquiet[ing] any assemblage of persons met for religious worship . . . by noise, profane discourse, rude or indecent behavior, or any other act."<sup>1</sup> Disruption of the meeting is not an element of the crime under the statute, and the jury was instructed that "if you find from the evidence that the defendants indulged in any indecent or improper conduct, so near the worshipping assembly, if you find that there was a worshipping assembly present on this occasion, as to attract the notice and attention of persons who were present as a part of the assembly—then, under such a state of facts, if they exist, the defendants would be guilty; and this would be so, whether witnesses say they were disturbed or not." (Bill of Exceptions 518.) No evidence was introduced at trial that

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<sup>1</sup> "If any person willfully disturb or disquiet any assemblage of persons met for religious worship, or for educational or literary purposes, or as a lodge or for the purpose of engaging in or promoting the cause of temperance, by noise, profane discourse, rude or indecent behavior, or any other act, at or near the place of meeting, he shall be fined not less than twenty dollars (\$20.00) nor more than two hundred dollars (\$200), and may also be imprisoned not exceeding six (6) months in the county jail." Tenn. Code Ann. § 39-1204 (1955).

The jury imposed a fine of \$20 upon petitioner; no prison sentence was imposed.

1163

DOUGLAS, J., dissenting

the meeting was disrupted, in the sense that speakers were shouted down, or that petitioner's group prevented, or sought to prevent, the meeting from proceeding as planned. Nor did the state appellate courts make any such findings in affirming the conviction. Although there were findings that some members of the protest group engaged in obscene chants, it is uncontested that petitioner did not. The undisturbed findings of the State Court of Criminal Appeals were that petitioner "did not chant obscenities and that his intent was for a peaceful demonstration." Petitioner's contentions that the statute was unconstitutionally vague and overbroad were rejected by the state courts.

Petitioner's involvement in the demonstration began the day before when he learned of the President's planned appearance. In consultation with administration officials of the University of Tennessee he participated in planning the demonstration and urged the group to make their protest silently through hand-held signs. On the night of the protest the stadium was filled to capacity with about 75,000 persons; there were approximately 300 demonstrators. Despite earlier plans, the group did engage in a number of chants, and petitioner joined in some of them. The only violence occurring during the evening was the knocking of a collection plate from an usher's hands. Many members of the group, including petitioner, joined in retrieving the money and placing it back in the plate.

Petitioner contends that the part of the meeting relevant to this case—the portion during which Dr. Graham introduced President Nixon, and the President spoke—was political rather than religious. He points out that the platform included prominent state Republican figures but no Democrats and contends that the content of the

President's message was primarily political.<sup>2</sup> We are bound, however, by the state court's determination that for purpose of the state statute the meeting was religious, and that the statute reached petitioner's conduct. We must then consider petitioner's contentions that, given this construction, the statute as applied here was either unconstitutionally vague or overbroad.<sup>3</sup>

The statute in relevant part proscribes "willfully disturb[ing] or disquiet[ing] any assemblage of persons met for religious worship . . . by noise, profane discourse, rude or indecent behavior, or any other act." Since it is uncontested that petitioner did not engage in "profane discourse" or "indecent behavior"<sup>4</sup> the only proscriptions applicable here are those against "noise," "rude behavior" or "any other acts" disturbing the meeting. We have frequently passed upon statutes with similar language. In *Coates v. City of Cincinnati*, 402 U. S. 611, we considered an ordinance proscribing assemblies of three or more persons conducting themselves in a manner "annoying" to passersby, and concluded that the term "annoy" without further clarification specified "no standard of conduct . . . at all." *Id.*, at 614. In *Ashton v. Kentucky*, 384 U. S. 195, we found fatally vague a criminal prohibition on "writing calculated to create

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<sup>2</sup> In addition to President Nixon, the podium included Congressman Brock, a Republican then running for the Senate seat held by Democrat Albert Gore, and Republican Congressmen Kuykendall and Duncan. Bill of Exceptions 348. No prominent Democrats were included.

<sup>3</sup> Neither the court below nor the petition here distinguished between facial and as-applied claims of vagueness or overbreadth.

<sup>4</sup> There was behavior by others in the group which might have fallen within these proscriptions. Among the chants which petitioner did *not* engage in were "Bullshit, bullshit" during the President's speech, and "One, two, three, four, we don't want your fucking war." One isolated member of the group rose during a minister's prayer and screamed an obscenity.

disturbances of the peace' because such a standard "involves calculations as to the boiling point of a particular person or a particular group." *Id.*, at 200. Cf. *Terminiello v. Chicago*, 337 U. S. 1.<sup>5</sup>

The addition of "willful" to the statutory prohibition on disturbing the meeting adds no greater precision, since this element of intent is not proved separately but was inferred from the conduct constituting the violation. Indeed, all the direct evidence of petitioner's intent was to the contrary.<sup>6</sup> Nor is the specification of "noise" or "rude behavior" helpful under the facts of this case. We may assume that a State can constitutionally protect religious congregations from unwanted and disruptive intrusions, and it seems probable that men of common intelligence would understand the statute to proscribe organized political chants in the midst of a Sunday morning service at a neighborhood church. But societal norms of appropriate conduct vary with the nature of the meeting in question. Thus what constitutes "rude behavior" or sufficient noise to disturb the assembled group depends upon calculations of the expectations of other members of the group, much as was the case in *Ashton v. Kentucky*, *supra*. Cf. *In re Kay*, 1 Cal. 3d 930, 464 P. 2d 142 (1970). This imprecision in the statute is highlighted by the facts of this case.

The meeting in question here was widely advertised and all were invited, and the attendance the night of President Nixon's appearance was apparently considerably above the number present other nights. Thus

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<sup>5</sup> In *Colten v. Kentucky*, 407 U. S. 104, the Court affirmed a conviction under a disorderly conduct statute against claims of vagueness and overbreadth. But *Colten*, unlike the present case, did not involve expression protected under the First Amendment, and in *Colten* the petitioner disobeyed a lawful police order to move on.

<sup>6</sup> See Bill of Exceptions 29, 58, 69, 73, 231, 241, 249, 299, 391, 490.

there can be no question that petitioner had a right to be present. Vendors roamed the audience of 75,000 selling refreshments and there was a general noise level created by the crowd throughout the proceedings.<sup>7</sup> People came and went regularly. And at least during the period relevant here—Dr. Graham's introduction and the President's speech—the crowd frequently interrupted the proceedings with applause to indicate their approval of the speaker.<sup>8</sup> It was in this context that the petitioner was required to gauge what conduct would be appropriate, and he made a conscientious effort to do so. Although before the meeting he had argued vigorously for keeping the protest silent, as the content of the speeches became political he joined several chants of the crowd.<sup>9</sup> During Dr. Graham's introduction he joined the chant "Politics, politics" to show his disapproval of what he considered to be a political intrusion into a meeting that was supposed to be religious. And during the President's talk he chanted "Peace now" and "Stop the War." But clearly he considered obscene chants inappropriate, and not only refrained from joining those but spent some effort in attempting to persuade others in the crowd to refrain also. And it must be remembered that during this period others in the crowd were applauding the speakers, and that none of the activities of the petitioner or of his group were violent or disruptive of the meeting in the sense that they prevented it, or sought to prevent it, from proceeding as planned.

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<sup>7</sup> *Id.*, at 117.

<sup>8</sup> *Id.*, at 272.

<sup>9</sup> There was evidence that others clearly sympathetic to the Graham religious cause joined the protest because they were offended by the political overtones of this part of the meeting. Two other ministers, who had been converted at previous Graham crusades and who were then attending a Graham training school, testified that they joined in the protest. *Id.*, at 299-320.

1163

DOUGLAS, J., dissenting

Such facts would, of course, present a different case. Here it would seem we have no more than that the petitioner's expression of his views was found disturbing by others.

I find it difficult to conclude that the petitioner was given fair notice under the statute that his conduct was proscribed. Petitioner had to guess not only as to the conduct proscribed by the statute at the meeting in question, but whether the statute applied at all to this portion of the meeting, which could be characterized as political as well as religious. "No one may be required at peril of life, liberty or property to speculate as to the meaning of penal statutes. All are entitled to be informed as to what the State commands or forbids." *Lanzetta v. New Jersey*, 306 U. S. 451, 453. And here, where the statute is capable of interpretation reaching expression protected by the First Amendment, the greatest precision is required. *Ashton v. Kentucky*, 384 U. S., at 200-201; *Grayned v. City of Rockford*, 408 U. S. 104, 109. Moreover this statute as applied here exhibits the twin defect of inviting "arbitrary and discriminatory enforcement" and of inviting prosecutors and juries to proceed on their prejudices, because of its failure to specify sufficiently what is proscribed. *Grayned, supra*, at 108. Those disturbing the meeting with applause were not prosecuted, although the applause of the much larger group presumably disturbed those in the audience who did not support the President. Thus it appears that the statute allows for arbitrary enforcement on the basis of who is disturbed.

Moreover, because disruption of the meeting is not an element of the offense, the statute poses substantial problems of overbreadth. Under the instructions given by the trial judge, the jury was allowed to convict petitioner for "improper conduct" attracting the notice of persons present. This would appear to sanction conviction by the jury for doing no more than expressing views

unpopular with the assembled crowd, if the jury found that such expression was improper to the occasion, and thus disturbed others. Such a conviction cannot stand under the First Amendment, any more than the conviction in *Terminiello v. Chicago*, 337 U. S. 1, where the jury was allowed to convict the defendant for speech which "stirs the public to anger, invites dispute, brings about a condition of unrest, or creates a disturbance." *Id.*, at 4.

The theory under which the intermediate state appellate court affirmed the conviction poses further problems under the First Amendment. Apparently concluding that petitioner did nothing at the meeting itself which was violative of the statute, the State Court of Criminal Appeals sustained the conviction on the theory that petitioner was an aider and abettor because he "admits to protesting the appearance of the President, and he admits to participating in the organizing of the protest." On this basis the court held that "the obscenities from the group and the chanting by the group . . . are also [petitioner's] acts by his participation in the group." The court concluded that petitioner "cannot escape responsibility for his participation in planning the demonstration by relating he personally himself did not do the unlawful acts, which arose during the event." The State Supreme Court, in affirming, rejected the aider-and-abettor reasoning of the lower court because under state law there can be no conviction for aiding and abetting a misdemeanor. The conviction was affirmed, however, because "the conduct of [petitioner] cited by the Court of Criminal Appeals as amounting to aiding and abetting, actually makes [petitioner] guilty as a principal offender." This is followed by citations to state court decisions holding that as to misdemeanors evidence showing aiding and abetting supports conviction as a principal. It thus appears

414 U. S.

January 21, 1974

that petitioner's conviction was affirmed because of his association with other members of the group whose behavior was found violative of the statute.

By grounding petitioner's conviction on his participation in the planning of the protest the state appellate courts place criminal liability on freedom of expression in its most pristine form. Petitioner's role was not contested. He attended the meetings and voiced his approval of some form of protest against the President's appearance, but it appears that at virtually every opportunity he urged the group to keep its protest peaceful and silent. He cannot be held liable because some members of the group chose to express their views in an illegal manner, *United States v. Robel*, 389 U. S. 258, particularly when, as here, there is no evidence that the group ever agreed to conduct its protest unlawfully or that petitioner ever acquiesced in such a decision.<sup>10</sup> Nor was petitioner charged with conspiracy.

I would grant the petition for certiorari.

No. 73-661. *GOSS ET AL. v. BOARD OF EDUCATION OF CITY OF KNOXVILLE, TENNESSEE, ET AL.* C. A. 6th Cir. Certiorari denied. MR. JUSTICE WHITE and MR. JUSTICE POWELL would grant certiorari. MR. JUSTICE MARSHALL took no part in the consideration or decision of this petition. Reported below: 482 F. 2d 1044.

No. 73-698. *FRIENDS OF THE EARTH ET AL. v. STAMM, COMMISSIONER, BUREAU OF RECLAMATION, ET AL.* C. A. 10th Cir. Motion of Sierra Club et al. for leave to file

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<sup>10</sup> There was evidence that at least one member of the group announced at the meetings that he would not remain silent during the President's speech, but other evidence showed that the group consensus at these meetings was for a silent protest. I do not see how petitioner's right to attend the Graham Crusade could be curtailed because one member of the protest group declined to follow his advice to remain silent.

January 21, 1974

414 U. S.

a brief as *amici curiae* granted. Certiorari denied. MR. JUSTICE DOUGLAS, MR. JUSTICE WHITE, and MR. JUSTICE BLACKMUN would grant certiorari. Reported below: 485 F. 2d 1.

No. 73-707. SCHOOL BOARD OF THE CITY OF DANVILLE, VIRGINIA, ET AL. *v.* MEDLEY ET AL. C. A. 4th Cir. Certiorari denied. MR. JUSTICE WHITE and MR. JUSTICE POWELL would grant certiorari. Reported below: 482 F. 2d 1061.

*Rehearing Denied*

No. 72-1541. SCHOOL DISTRICT OF THE CITY OF FERNDALE, MICHIGAN *v.* DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE, *ante*, p. 824;

No. 73-336. CATOOR ET AL. *v.* BLAIR ET AL., *ante*, p. 990;

No. 73-474. SMITH *v.* ROBINSON, WARDEN, ET AL., *ante*, p. 1066;

No. 73-5191. FANNING ET AL. *v.* UNITED STATES, *ante*, p. 1006;

No. 73-5248. PALMER *v.* UNITED STATES, *ante*, p. 1008;

No. 73-5278. MASELLI *v.* UNITED STATES, *ante*, p. 1070;

No. 73-5468. COOPER *v.* TEXAS BOARD OF MEDICAL EXAMINERS, *ante*, p. 1072;

No. 73-5576. CASPERSON *v.* PENNSYLVANIA, *ante*, p. 1074; and

No. 73-5614. TARLTON *v.* TEXAS, *ante*, p. 1096. Petitions for rehearing denied.

No. 73-5236. BARGAR *v.* OHIO CIVIL RIGHTS COMMISSION ET AL., *ante*, p. 978; and

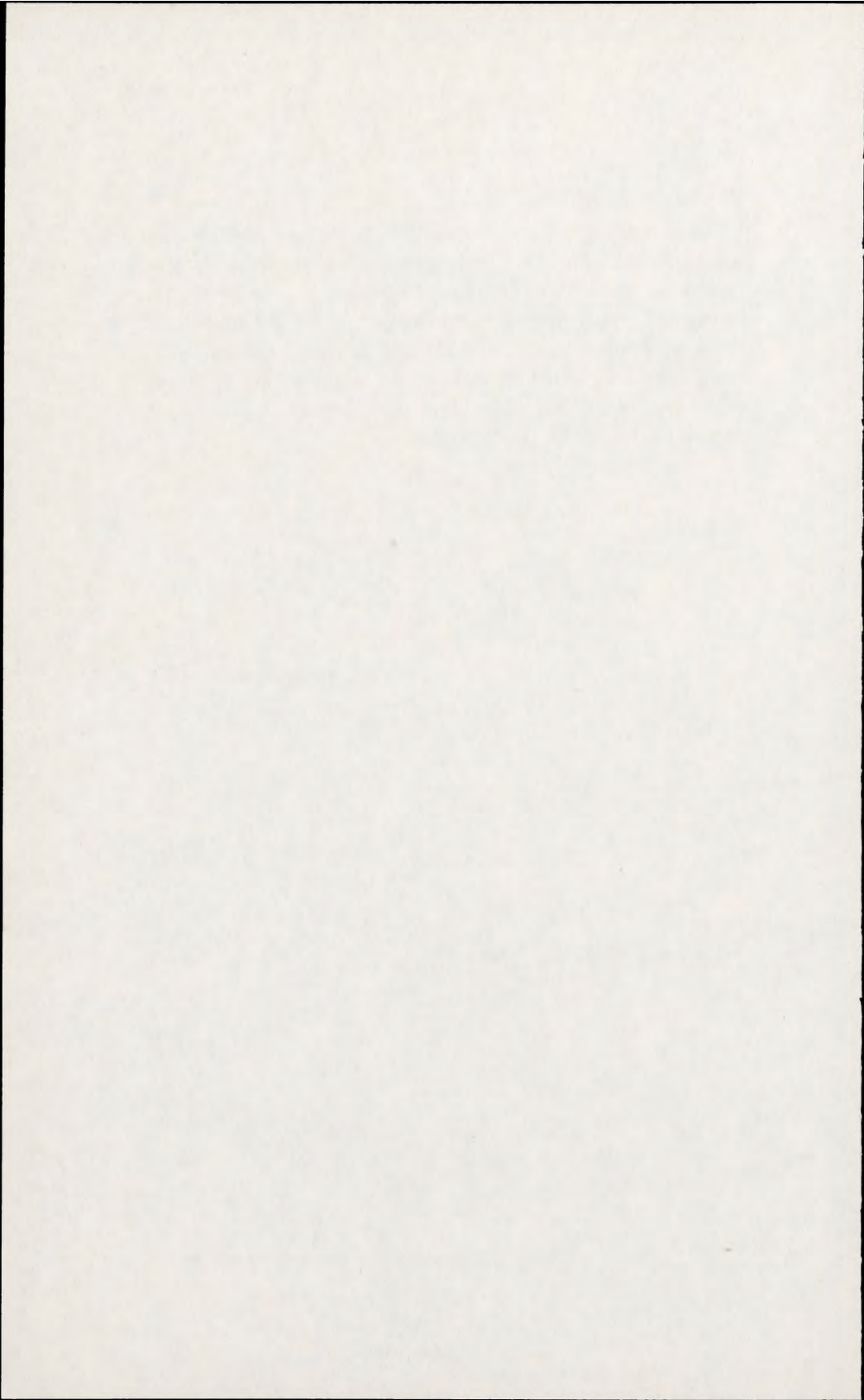
No. 73-5358. FONTANA *v.* STATE ROADS COMMISSION OF MARYLAND ET AL., *ante*, p. 1027. Motions for leave to file petitions for rehearing denied.

414 U. S.

January 21, 1974

*Assignment Order*

An order of THE CHIEF JUSTICE designating and assigning Mr. Justice Clark (retired) to perform judicial duties in the United States Court of Appeals for the Seventh Circuit during the weeks of May 27 and June 3, 1974, and for such additional time as may be required to complete unfinished business, pursuant to 28 U. S. C. § 294 (a), is ordered entered on the minutes of this Court, pursuant to 28 U. S. C. § 295.



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REPORTER'S NOTE

The next page is purposely numbered 1301. The numbers between 1173 and 1301 were intentionally omitted, in order to make it possible to publish in-chambers opinions in the current preliminary print of the United States Reports with *permanent* page numbers, thus making the official citations immediately available.

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