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2. *Employment discrimination—Election of remedies.*—The doctrine of election of remedies is inapplicable in present context, which involves statutory rights under Title VII distinctly separate from employee's contractual rights under a collective-bargaining agreement, regardless of fact that violation of both rights may have resulted from same factual occurrence. Alexander v. Gardner-Denver Co., p. 36.

3. *Employment discrimination—Federal courts—Arbitration—"Deferral rule" as against "preclusion rule."*—A policy of deferral by federal courts to arbitral decisions (as opposed to adoption of a preclusion rule) would not comport with congressional objective that federal courts should exercise final responsibility for enforcement of Title VII and would lead to: arbitrator's emphasis on law of the shop rather than law of the land; factfinding and other procedures less complete than those followed in a judicial forum; and perhaps employees bypassing arbitration in favor of litigation. Alexander v. Gardner-Denver Co., p. 36.

4. *Employment discrimination—Trial de novo—Effect of arbitration.*—An employee's statutory right to trial *de novo* under Title VII of Act is not foreclosed by prior submission of his claim to final arbitration under nondiscrimination clause of a collective-bargaining agreement. Alexander v. Gardner-Denver Co., p. 36.

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I. Case or Controversy.

Threatened prosecution—Handbilling.—An action for injunctive and declaratory relief by petitioner, who had been twice warned to stop handbilling at shopping center against American involvement in Vietnam and threatened with arrest for violation of Georgia criminal trespass law if he failed to do so, presents an "actual controversy" under Art. III of Constitution and Federal Declaratory Judgment Act. Alleged threats of prosecution in circumstances were not "imaginary or speculative," and it was unnecessary for petitioner to expose himself to actual arrest or prosecution to make his constitutional challenge. Whether controversy remains substantial and continuing in light of effect of recent reduction of Nation's involvement in Vietnam on petitioner's desire to engage in the handbilling at shopping center must be resolved by District Court on remand. Steffel v. Thompson, p. 452.

II. Due Process.

1. *Contempt conviction—Isolated use of street vernacular.*—Single isolated usage of street vernacular by petitioner in referring to his alleged assailant on cross-examination at his trial for violating ordinance, not directed at judge or any officer of court, cannot constitutionally support contempt conviction, since under circumstances it did not "constitute an imminent . . . threat to the administration of justice." Eaton v. City of Tulsa, p. 697.

2. *Contempt conviction—Use of expletive.*—Where trial court's judgment and sentence for criminal contempt disclosed that conviction rested on petitioner's use of expletive only in referring to his

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alleged assailant on cross-examination at his trial for violating ordinance, Oklahoma Court of Criminal Appeals, in relying on petitioner's additional "discourteous responses" to trial judge, denied petitioner constitutional due process in sustaining trial court by treating conviction as one upon a charge not made. Eaton v. City of Tulsa, p. 697.

3. *Massachusetts flag-misuse statute—Vagueness.*—The challenged language of Massachusetts flag-misuse statute that subjects to criminal liability anyone who "publicly . . . treats contemptuously the flag of the United States . . . ," which had received no narrowing state court interpretation, is void for vagueness under Due Process Clause of Fourteenth Amendment, since by failing to draw reasonably clear lines between kinds of nonceremonial treatment of flag that are criminal and those that are not it does not provide adequate warning of forbidden conduct and sets forth a standard so indefinite that police, court, and jury are free to react to nothing more than their own preferences for treatment of flag. Smith v. Goguen, p. 566.

4. *Massachusetts flag-misuse statute—Vagueness.*—Even if, as appellant contends, Massachusetts flag-misuse statute could be said to deal only with "actual" flags of United States, this would not resolve central vagueness deficiency of failing to define contemptuous treatment. Smith v. Goguen, p. 566.

5. *Massachusetts flag-misuse statute—Vagueness.*—That other words of desecration and contempt portion of Massachusetts flag-misuse statute address more specific conduct (mutilation, trampling, and defacing of flag) does not assist appellant, since appellee was tried solely under "treats contemptuously" phrase, and highest state court in this case did not construe challenged phrase as taking color from more specific accompanying language. Smith v. Goguen, p. 566.

6. *Massachusetts flag-misuse statute—Vagueness.*—Regardless of whether restriction by highest state court of scope of challenged phrase of Massachusetts flag-misuse statute to intentional contempt may be held against appellee, such an interpretation nevertheless does not clarify what conduct constitutes contempt of flag, whether intentional or inadvertent. Smith v. Goguen, p. 566.

III. Eleventh Amendment.

1. *Aid to Aged, Blind, and Disabled benefits—Retroactive award.*—Court of Appeals erred in holding that *Ex parte Young,* 209 U. S. 123, which awarded only prospective relief, did not preclude retroactive monetary award of AABD benefits here on ground that it

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was an "equitable restitution," since that award, though on its face directed against state official individually, as a practical matter could be satisfied only from general revenues of State and was indistinguishable from an award of damages against State. *Shapiro* v. *Thompson,* 394 U. S. 168; *State Dept. of Health and Rehabilitation Services* v. *Zarate,* 407 U. S. 918; *Sterrett* v. *Mothers' & Children's Rights Organization,* 409 U. S. 809; *Wyman* v. *Bowens,* 397 U. S. 49, disapproved to extent that their holdings do not comport with the holding in instant case on Eleventh Amendment issue. Edelman v. Jordan, p. 651.

2. *Aid to Aged, Blind, and Disabled benefits—Retroactive payments.*—The Eleventh Amendment bars that portion of District Court's decree that ordered retroactive payment of AABD benefits in action charging Illinois AABD officials with violating federal law and denying equal protection of laws by following state regulations which conflicted with federal regulations. Edelman v. Jordan, p. 651.

3. *Defense—Jurisdictional bar.*—The Court of Appeals properly considered Eleventh Amendment defense, which state officials did not assert in District Court, since that defense partakes of nature of a jurisdictional bar. Edelman v. Jordan, p. 651.

4. *Public funds—Nonliability.*—A suit by private parties seeking to impose a liability payable from public funds in the state treasury is foreclosed by the Eleventh Amendment if the State does not consent to suit. Edelman v. Jordan, p. 651.

5. *Suit challenging state Aid to Aged, Blind, and Disabled regulations—Waiver of immunity.*—Illinois did not waive its Eleventh Amendment immunity and consent to bringing of respondent's suit challenging validity of state AABD regulations by participating in federal AABD program. Nor does mere fact that a State participates in a program partially funded by Federal Government manifest consent by State to be sued in federal courts. Edelman v. Jordan, p. 651.

IV. Equal Protection of the Laws.

1. *Independent candidates—Access to ballot.*—The percentage provisions of Arts. 13.50 and 13.51 of Texas Election Code, under which an independent candidate, regardless of office sought, can qualify by filing within prescribed time a petition signed by a certain percentage of voters for governor at last preceding general election in specified locality, percentages varying with offices sought and in no event more than 500 signatures being required, are not

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unduly burdensome. Requiring independent candidates to evidence a "significant modicum of support" is not unconstitutional, and record here is devoid of any proof to support claims of appellant independent candidates (who relied solely on minimal 500-vote-signature requirement) that these requirements were impermissibly onerous. American Party of Texas v. White, p. 767.

2. *Independent candidates—Ballot position—Nonaffiliation requirement.*—Section 6830 (d) of California Election Code (Supp. 1974), which forbids ballot position to independent candidate if he had registered affiliation with qualified political party within one year prior to immediately preceding primary election, is not unconstitutional, and appellants Storer and Frommhagen (who were affiliated with qualified party no more than six months before primary) were properly barred from ballot as result of its application. Storer v. Brown, p. 724.

3. *Indigent candidates—Access to ballot—Filing fees.*—Absent reasonable alternative means of ballot access, a State may not, consistent with constitutional standards, require from an indigent candidate filing fees that he cannot pay; denying a person right to file as a candidate solely because of an inability to pay a fixed fee, without providing any alternative means, is not reasonably necessary to accomplishment of State's legitimate interest of maintaining integrity of elections. Lubin v. Panish, p. 709.

4. *Medical care for indigents—Residence requirements—Right to travel.*—The one-year durational residence requirement for an indigent to receive free hospitalization or medical care, in violation of Equal Protection Clause, creates an "invidious classification" that impinges on right of interstate travel by denying newcomers "basic necessities of life." Memorial Hospital v. Maricopa County, p. 250.

5. *Minority political parties—Access to ballot.*—Article 13.45 (2) of Texas Election Code (Supp. 1973) (providing that precinct convention can nominate candidates if party is able, by notarized signatures, to evidence support by at least 1% of total gubernatorial vote at last preceding general election or, by a certain other process, can produce sufficient supplemental petitions with notarized signatures to make up a combined total of 1%), which does not freeze status quo but affords minority parties a real and essentially equal opportunity for ballot qualification, does not contravene First and Fourteenth Amendments and is in furtherance of a compelling state interest. American Party of Texas v. White, p. 767.

6. *Small political parties—Conventions—Access to ballot.*—The Equal Protection Clause does not forbid the requirement that small

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parties proceed by convention rather than primary election. The convention process has not been shown here to be invidiously more burdensome than the primary election, followed by a runoff election where necessary. American Party of Texas v. White, p. 767.

7. *Small political parties—Financing primaries—Access to ballot.*—The McKool-Stroud Primary Law of 1972 (Texas), which provided for public financing from state revenues for primary elections of political parties casting 200,000 or more votes in last preceding general election for governor, is not unconstitutional, since it was designed to compensate for primary election expenses to which major parties alone are subject; and, as District Court correctly found, "the convention and petition procedure available for small and new parties carries with it none of the expensive election requirements burdening those parties required to conduct primaries." Moreover, the State is not obliged to finance efforts of every nascent political group seeking ballot placement, like appellant American Party, which failed to qualify for general election ballot. American Party of Texas v. White, p. 767.

8. *Veterans' Readjustment Benefits Act of 1966—Denial of benefits—Conscientious objectors performing civilian service.*—The challenged sections of Act making Class I–O conscientious objectors who performed required alternative civilian service ineligible for educational benefits under Act, do not create an arbitrary classification in violation of appellee's right to equal protection of the laws. The quantitative and qualitative distinctions between the disruption caused by military service and that caused by alternative civilian service—military service involving a six-year commitment and far greater loss of personal freedom, and alternative civilian service involving only a two-year obligation and no requirement to leave civilian life—form a rational basis for Congress' classification limiting educational benefits to military service veterans as a means of helping them to readjust to civilian life. The statutory classification also bears a rational relationship to the Act's objective of making military service more attractive. Johnson v. Robison, p. 361.

V. First Amendment.

1. *Associational rights—Minority political parties—Access to ballot.*—Article 13.45 (2) of Texas Election Code (Supp. 1973) (providing that precinct conventions can nominate candidates if party is able, by notarized signatures, to evidence support by at least 1% of total gubernatorial vote at last preceding general election or, by a certain other process, can produce sufficient supplemental petitions with notarized signatures to make up a combined total of

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1%), which does not freeze status quo but affords minority parties a real and essentially equal opportunity for ballot qualification, does not contravene First and Fourteenth Amendments and is in furtherance of a compelling state interest. American Party of Texas v. White, p. 767.

2. *Freedom of religion—Veterans' Readjustment Benefits Act of 1966—Conscientious objectors performing civilian service.*—The Act does not violate right of free exercise of religion of appellee conscientious objector who performed required alternative civilian service. The withholding of educational benefits to appellee and his class involves only an incidental burden, if any burden at all, upon their free exercise of religion. Appellee and his class were not included as beneficiaries, not because of any legislative design to interfere with their free exercise of religion, but because to include them would not rationally promote Act's purposes. The Government's substantial interest in raising and supporting armies, Art. I, § 8, is of "a kind and weight" clearly sufficient to sustain the challenged legislation. Johnson v. Robison, p. 361.

3. *Freedom of speech—New Orleans ordinance—"Opprobrious language" toward policeman—"Fighting words"—Overbreadth.*—New Orleans ordinance making it unlawful to use "opprobious language" toward police officer in performance of his duties, as construed by Louisiana Supreme Court, is susceptible of application to protected speech, and therefore is overbroad in violation of First and Fourteenth Amendments and facially invalid. Ordinance plainly has a broader sweep than constitutional definition of "fighting words" as being words "which by their very utterance inflict injury or tend to incite an immediate breach of the peace," since, at the least, "opprobrious language" embraces words that do not fall under that definition, the word "opprobrious" embracing words "conveying or intended to convey disgrace." It is immaterial whether words appellant used might be punishable under a properly limited ordinance. Lewis v. New Orleans, p. 130.

VI. Fourth Amendment.

1. *Warrantless search—Third party's consent.*—When prosecution seeks to justify a warrantless search by proof of voluntary consent it is not limited to proof that consent was given by defendant, but may show that permission to search was obtained from a third party who possessed common authority over or other sufficient relationship to premises or effects sought to be inspected. United States v. Matlock, p. 164.

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2. *Warrantless search and seizure—Jailed suspect.*—Warrantless search and seizure of respondent's clothing in morning after he had been arrested about 11 p. m. the previous night and taken to jail, did not violate Fourth Amendment. At time respondent was placed in his cell, normal processes incident to arrest and custody had not been completed, and delay in seizing clothing was not unreasonable, since at that late hour no substitute clothing was available, and when next morning police were able to supply substitute clothing and took respondent's clothing for laboratory analysis, they did no more than they were entitled to do incident to usual arrest and incarceration. United States v. Edwards, p. 800.

3. *Warrantless search and seizure—Place of detention.*—Once an accused has been lawfully arrested and is in custody, effects in his possession at place of detention that were subject to search at time and place of arrest may lawfully be searched and seized without a warrant even after a substantial time lapse between arrest and later administrative processing, on one hand, and taking of property for use as evidence, on other. United States v. Edwards, p. 800.

VII. Right to Travel.

Indigents—Medical care—Residence requirements—Compelling state interest.—The one-year durational residence requirement for an indigent to receive free hospitalization and medical care, since it operates to penalize indigents for exercising their constitutional right of interstate migration, must be justified by a compelling state interest. The State has not shown that such requirement is "legitimately defensible" in that it furthers a compelling state interest, and none of the purposes asserted as justification for the requirement—fiscal savings, inhibiting migration of indigents generally, deterring indigents from taking up residence in county solely to utilize medical facilities, protection of longtime residents who have contributed to community particularly by paying taxes, maintaining public support of county hospital, administrative convenience in determining bona fide residents, prevention of fraud, and budget predictability—satisfies State's burden of justification and insures that State, in pursuing its asserted objectives, has chosen means that do not unnecessarily impinge on constitutionally protected interests. Memorial Hospital v. Maricopa County, p. 250.

VIII. Seventh Amendment.

Jury trial—Action under Civil Rights Act of 1968.—The Seventh Amendment entitles either party to demand a jury trial in an action for damages in federal courts under § 812 of Civil Rights Act of

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1968, which authorizes private plaintiffs to bring civil actions to redress violations of Act's fair housing provisions. Curtis v. Loether, p. 189.

IX. Sixth Amendment.

Right of confrontation—Protective order—Cross-examination.—Petitioner, who was convicted of grand larceny and burglary, was denied his right of confrontation of witnesses under Sixth and Fourteenth Amendments by a protective order prohibiting questioning Green, a key prosecution witness, concerning Green's adjudication as a juvenile delinquent relating to burglary and his probation status at time of events as to which he was to testify. The defense was entitled to attempt to show that Green was biased because of his vulnerable status as a probationer and his concern that he might be a suspect in burglary charged against petitioner, and limiting cross-examination of Green precluded defense from showing Green's possible bias. Petitioner's right of confrontation is paramount to State's policy of protecting juvenile offenders and any temporary embarrassment to Green by disclosure of his juvenile court record and probation status is outweighed by petitioner's right effectively to cross-examine a witness. Davis v. Alaska, p. 308.

CONSTRUCTION OF STATUTES. See **Gun Control Act of 1968; Independent Offices Appropriation Act, 1952; Indians,** 2–3; **Omnibus Crime Control and Safe Streets Act of 1968,** 1; **Removal,** 1.

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CONTRACTUAL RIGHTS. See **Civil Rights Act of 1964,** 1–2, 4; **Evidence,** 1.

COPYRIGHT ACT OF 1909.

1. *Community antenna television systems—Broadcasters' copyrighted materials—Infringement.*—The development and implementation, since the decision in *Fortnightly Corp.* v. *United Artists Television,* 392 U. S. 390, of new functions of CATV systems—program origination, sale of commercials, and interconnection with other CATV systems—even though they may allow the systems to compete more effectively with broadcasters for the television market, do not convert the entire CATV operation, regardless of distance from the broadcasting station, into a "broadcast function," thus subjecting

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CATV operators to copyright infringement liability, but are extraneous to a determination of such liability, since in none of these functions is there any nexus with the CATV operators' reception and rechanneling of the broadcasters' copyrighted materials. Teleprompter Corp. v. CBS, p. 394.

2. *Community antenna television systems—"Distant" signals—Infringement.*—The fact that there have been shifts in current business and commercial relationships in the communications industry as a result of the CATV systems' importation of "distant" signals, does not entail copyright infringement liability, since by extending the range of viewability of a broadcast program, the CATV systems do not interfere in any traditional sense with the copyright holders' means of extracting recompense for their creativity or labor from advertisers on the basis of all viewers who watch the particular program. Teleprompter Corp. v. CBS, p. 394.

3. *Community antenna television systems—"Distant" signals—"Performance."*—The importation by CATV systems of "distant" signals from one community into another does not constitute a "performance" under the Act. Teleprompter Corp. v. CBS, p. 394.

4. *Community antenna television systems—"Distant" signals—"Selection" of signals—Release to public.*—Even in exercising its limited freedom to choose among various "distant" broadcasting stations, a CATV operator cannot be viewed as "selecting" broadcast signals, since when it chooses which broadcast signals to rechannel, its creative function is then extinguished and it thereafter "simply carr[ies], without editing, whatever programs [it] receive[s]." Nor does a CATV system importing "distant" signals procure and propagate them to the public, since it is not engaged in converting the sights and sounds of an event or a program into electronic signals available to the public, the signals it receives and rechannels having already been "released to the public" even though not normally available to the specific segment of the public served by the CATV system. Teleprompter Corp. v. CBS, p. 394.

5. *Community antenna television systems—"Distant" signals—Viewer function.*—By importing signals that could not normally be received with current technology in community it serves, a CATV system does not, for copyright purposes, alter function it performs for its subscribers, as reception and rechanneling of these signals for simultaneous viewing is essentially a viewer function, irrespective of distance between broadcasting station and ultimate viewer. Teleprompter Corp. v. CBS, p. 394.

COPYRIGHTED TELEVISION PROGRAMS. See **Copyright Act of 1909**, 1–2.

COUNTY SUPERVISORS. See **Constitutional Law**, IV, 3.

COURT OF CLAIMS. See **Judicial Review**, 2.

CRIMINAL CONTEMPT. See **Constitutional Law**, II, 1–2; **Injunctions**, 5; **Removal**, 2.

CRIMINAL LAW. See **Constitutional Law**, I; II, 3; V, 3; VI; IX; **Declaratory Judgments**; **District Courts**; **Evidence**, 2, 6–7; **Federal-State Relations**, 2; **Gun Control Act of 1968**; **Habeas Corpus**; **Omnibus Crime Control and Safe Streets Act of 1968**; **Procedure**, 4.

CRIMINAL TRESPASS. See **Constitutional Law**, I; **Declaratory Judgments.**

CROSS-EXAMINATION. See **Constitutional Law**, II, 1–2; IX.

DAMAGES ACTIONS. See **Constitutional Law**, VIII.

DAMAGE TO REPUTATION. See **Injunctions**, 2; **Judicial Review**, 1.

DECLARATORY JUDGMENTS. See also **Federal-State Relations**, 1–2.

Case or controversy—Threatened prosecution—Handbilling.—An action for injunctive and declaratory relief by petitioner, who had been twice warned to stop handbilling at shopping center against American involvement in Vietnam and threatened with arrest for violation of Georgia criminal trespass law if he failed to do so, presents an "actual controversy" under Art. III of Constitution and Federal Declaratory Judgment Act. Alleged threats of prosecution in circumstances were not "imaginary or speculative" and it was unnecessary for petitioner to expose himself to actual arrest or prosecution to make his constitutional challenge. Whether controversy remains substantial and continuing in light of effect of recent reduction of Nation's involvement in Vietnam on petitioner's desire to engage in handbilling at shopping center must be resolved by District Court on remand. Steffel v. Thompson, p. 452.

DEEP-MINING COAL PRODUCERS. See **Antitrust Acts**, 1.

DEFENSE CONTRACTS. See **Judicial Review**, 2–4; **Jurisdiction**, 5.

DEFERRAL RULE. See **Civil Rights Act of 1964**, 3.

DE NOVO PROCEEDINGS. See **Civil Rights Act of 1964**, 4; **Evidence**, 1; **Judicial Review**, 2.

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE. See **Constitutional Law,** III, 2, 5; **Jurisdiction,** 4.

DISCHARGE OF EMPLOYEES. See **Civil Rights Act of 1964; Evidence,** 1; **Injunctions,** 2–4; **Judicial Review,** 1.

DISCOVERY. See **Judicial Review,** 2; **Jurisdiction,** 5.

DISCRETION. See **District Courts.**

DISCRETIONARY APPOINTMENT POWERS. See **Procedure,** 3.

DISCRIMINATION. See **Appeals,** 2; **Civil Rights Act of 1964; Constitutional Law,** IV, 8; VIII; **Evidence,** 1; **Injunctions,** 1; **Procedure,** 1, 3.

DISMISSAL OF INDICTMENT. See **District Courts.**

DISMISSALS. See **Jurisdiction,** 2, 4.

DISSOLUTION OF RESTRAINING ORDERS. See **Injunctions,** 7; **Removal,** 2.

"DISTANT" SIGNALS. See **Copyright Act of 1909,** 2–5.

DISTRIBUTION OF EMPLOYEE LITERATURE. See **National Labor Relations Act.**

DISTRICT COURTS. See also **Judicial Review,** 1; **Jurisdiction,** 1–5.

Indictments—Pre-arraignment dismissal—Court's discretion.—Motion for leave to file petition for writ of mandamus or prohibition to require District Court to rule on petitioners' motion to dismiss indictment against them prior to arraignment, is denied, since whether latter motion should be disposed of prior to arraignment rests in District Court's sound discretion. Hughes v. Thompson (DOUGLAS, J., in chambers), p. 1301.

DOUBLE APPEAL BONDS. See **Procedure,** 2.

DRAFTEES. See **Constitutional Law,** IV, 8; V, 2.

DUE PROCESS. See **Constitutional Law,** II; **Habeas Corpus; Procedure,** 2.

DURATIONAL RESIDENCE REQUIREMENTS. See **Constitutional Law,** IV, 4; VII.

EDUCATIONAL BENEFITS. See **Constitutional Law,** IV, 8; V, 2; **Judicial Review,** 5–6.

ELECTION OF REMEDIES. See **Civil Rights Act of 1964,** 2.

ELECTIONS. See also **Constitutional Law,** IV, 1–3, 5–7; V, 1; **Procedure,** 6; **Stays.**

Absentee ballot—Minority parties—Erroneous exclusion.—District Court erred in sustaining exclusion of minority parties from absentee ballot. No justification was offered by appellees for not giving absentee ballot placement to appellant Socialist Workers Party, which satisfied statutory requirement for demonstrating necessary community support needed to win general ballot position for its candidates. American Party of Texas v. White, p. 767.

ELECTRIC UTILITIES. See **Independent Offices Appropriation Act, 1952,** 1, 4.

ELECTRONIC SURVEILLANCE. See **Omnibus Crime Control and Safe Streets Act of 1968.**

ELEVENTH AMENDMENT. See **Constitutional Law,** III.

EMPLOYER AND EMPLOYEES. See **Civil Rights Act of 1964; Evidence,** 1; **Injunctions,** 2–4; **Judicial Review,** 1; **National Labor Relations Act; Removal,** 2.

EMPLOYMENT DISCRIMINATION. See **Civil Rights Act of 1964; Evidence,** 1.

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION. See **Civil Rights Act of 1964· Evidence,** 1.

EQUAL PROTECTION OF THE LAWS. See **Appeals,** 2; **Constitutional Law,** IV; VII; **Injunctions,** 1; **Judicial Review,** 6; **Jurisdiction,** 1–4; **Procedure,** 1–3, 6.

EQUITABLE JURISDICTION. See **Judicial Review,** 4; **Jurisdiction,** 5.

EQUITABLE RELIEF. See **Injunctions,** 1–4; **Judicial Review,** 1, 4; **Procedure,** 5.

EQUITY. See **Injunctions,** 2–4; **Judicial Review,** 1, 3–4; **Jurisdiction,** 5.

EVIDENCE. See also **Antitrust Acts,** 1, 3–4; **Appeals; Civil Rights Act of 1964,** 3; **Constitutional Law,** VI, 2; **Omnibus Crime Control and Safe Streets Act of 1968; Procedure,** 3–4.

1. *Arbitral decision—Employment discrimination.*—In considering an employee's claim of employment discrimination under Title VII of Civil Rights Act 1964, the federal court may admit the arbitral decision involving same claim as evidence and accord it such weight

EVIDENCE—Continued.

as may be appropriate under the facts and circumstances of each case. Alexander v. Gardner-Denver Co., p. 36.

2. *False pretrial statements—Admissibility at trial.*—Where respondent's false statements as to lack of funds at his arraignment for improperly receiving gratuities for official acts and for perjury before grand jury, were admitted at his trial, use of pretrial testimony at trial to prove its incriminating content is not involved, since incriminating component of statements derives, not from their content, but from respondent's knowledge of their falsity, truth of matter being that he was not indigent and did not have right to appointment of counsel under Sixth Amendment. Nor is there involved what was "believed" by claimant to be a "valid" constitutional claim, and hence respondent was not faced with intolerable choice of having to surrender one constitutional right in order to assert another. United States v. Kahan, p. 239.

3. *Suppression hearings—Hearsay evidence—Admissibility.*—There is no automatic rule against receiving hearsay evidence in suppression hearings (where trial court itself can accord such evidence such weight as it deems desirable), and under circumstances here, where District Court was satisfied that Mrs. Graff's out-of-court statements had in fact been made and nothing in record raised doubts about their truthfulness, there was no apparent reason to exclude declarations in course of resolving issues raised at suppression hearings. United States v. Matlock, p. 164.

4. *Suppression hearings—Out-of-court statements—Admissibility.*—It was error to exclude from evidence at suppression hearings Mrs. Graff's out-of-court statements respecting joint occupancy with respondent of bedroom, which was subjected to warrantless search, as well as the evidence that both respondent and Mrs. Graff had represented themselves as husband and wife. United States v. Matlock, p. 164.

5. *Suppression hearings—Out-of-court statements—Admissibility—Sufficiency.*—Although, given admissibility of excluded out-of-court statements at suppression hearings, Government apparently sustained its burden of proof as to Mrs. Graff's authority to consent to warrantless search of respondent's bedroom, District Court should reconsider sufficiency of evidence in light of this Court's opinion. United States v. Matlock, p. 164.

6. *Suppression hearings—Statements against penal interest—Admissibility.*—Mrs. Graff's statements as to her joint occupancy of a

EVIDENCE—Continued.

bedroom with respondent were against her penal interest, since extramarital cohabitation is a state crime. Thus they carried their own indicia of reliability and should have been admitted as evidence at suppression hearings, even if they would not have been admissible at respondent's trial. United States v. Matlock, p. 164.

7. *Warrantless search—Proof of consent—Third party.*—When prosecution seeks to justify a warrantless search by proof of voluntary consent it is not limited to proof that consent was given by defendant, but may show that permission to search was obtained from a third party who possessed common authority over or other sufficient relationship to premises or effects sought to be inspected. United States v. Matlock, p. 164.

EXCESSIVE PROFITS. See **Judicial Review**, 2; **Jurisdiction**, 5.

EXEMPTIONS. See **Constitutional Law, IV**, 8; **Judicial Review**, 5–6.

EXHAUSTION OF REMEDIES. See **Habeas Corpus.**

EX PARTE RESTRAINING ORDERS. See **Injunctions**, 5–7; **Removal.**

EXPIRATION OF RESTRAINING ORDERS. See **Injunctions**, 5–6; **Removal**, 2.

EXPLETIVES. See **Constitutional Law**, II, 1–2.

EXTRAJUDICIAL STATEMENTS. See **Evidence**, 3–5.

EXTRAMARITAL COHABITATION. See **Evidence**, 4, 6.

FACIAL UNCONSTITUTIONALITY. See **Constitutional Law**, V, 3.

"FAILING COMPANY" DEFENSE. See **Antitrust Acts**, 2.

FAIR HOUSING. See **Constitutional Law**, VIII.

FALSE STATEMENTS. See **Evidence**, 2.

FEDERAL AGENCIES. See **Independent Offices Appropriation Act, 1952.**

FEDERAL CAUSE OF ACTION. See **Jurisdiction**, 6.

FEDERAL COMMUNICATIONS COMMISSION. See **Independent Offices Appropriation Act, 1952**, 2–3.

FEDERAL DECLARATORY JUDGMENT ACT. See **Constitutional Law**, I; **Declaratory Judgments**; **Federal-State Relations**, 1–2.

FEDERAL POWER COMMISSION. See **Independent Offices Appropriation Act, 1952,** 1, 4; **Jurisdiction,** 6.

FEDERAL QUESTIONS. See **Jurisdiction,** 6; **Stays.**

FEDERAL RULES OF CIVIL PROCEDURE. See **Appeals,** 1; **Injunctions,** 5–6; **Judicial Review,** 1; **Removal.**

FEDERAL RULES OF CRIMINAL PROCEDURE. See **District Courts.**

FEDERAL-STATE RELATIONS. See also **Constitutional Law,** I; III, 2, 5; **Declaratory Judgments; Habeas Corpus; Injunctions,** 5–7; **Jurisdiction,** 1–4, 6; **Procedure,** 1–3, 5; **Removal.**

1. *Federal declaratory relief—Threatened prosecution—Unconstitutional state statute.*—Federal declaratory relief is not precluded when a prosecution based upon an assertedly unconstitutional state statute has been threatened, but is not pending, even if a showing of bad-faith enforcement or other special circumstances has not been made. When no state criminal proceeding is pending at time federal complaint is filed, considerations of equity, comity, and federalism on which *Younger* v. *Harris,* 401 U. S. 37, and *Samuels* v. *Mackell,* 401 U. S. 66, were based, have little vitality: federal intervention does not result in duplicative legal proceedings or disruption of state criminal justice system; nor can federal intervention, in that circumstance, be interpreted as reflecting negatively upon state courts' ability to enforce constitutional principles. Even if Court of Appeals correctly viewed injunctive relief as inappropriate (a question not reached here, petitioner having abandoned his request for that remedy), court erred in treating requests for injunctive and declaratory relief as a single issue and in holding that a failure to demonstrate irreparable injury precluded granting of declaratory relief. Steffel v. Thompson, p. 452.

2. *Federal declaratory relief—Threatened prosecution—Unconstitutional state statute.*—In determining whether it is appropriate to grant declaratory relief when no state criminal proceeding is pending, it is immaterial whether the attack is made on the constitutionality of a state criminal statute on its face or as applied. Steffel v. Thompson, p. 452.

3. *Picketing of foreign ships—Labor Management Relations Act—Non-pre-emption of state-court jurisdiction.*—Respondents' picketing activities, which did not involve wages paid within this country but were designed to force foreign vessels to raise their operating costs to levels comparable to those of American shippers, would have materially affected foreign ships' "maritime operations" and precipitated responses by foreign shipowners in field of international rela-

FEDERAL-STATE RELATIONS—Continued.

tions transcending domestic wage-cost decision that LMRA was designed to regulate. Respondents' picketing was consequently not activity "affecting commerce" as defined in §§ 2 (6) and (7) of LMRA, and Texas courts erred in holding that they were prevented by LMRA from entertaining petitioners' injunction suit. Windward Shipping v. American Radio Assn., p. 104.

FEES OF JUSTICES OF THE PEACE. See **Procedure**, 2.

FEES ON CATV SYSTEMS. See **Independent Offices Appropriation Act, 1952**, 2–3.

FEES ON ELECTRIC UTILITIES OR NATURAL GAS COMPANIES. See **Independent Offices Appropriation Act, 1952**, 1, 4.

FIFTH AMENDMENT. See **Constitutional Law**, IV, 8; **Evidence**, 2, 4–6; **Judicial Review**, 6.

"FIGHTING WORDS." See **Constitutional Law**, V, 3.

FILING FEES. See **Constitutional Law**, IV, 3.

FIREARMS DEALERS. See **Gun Control Act of 1968.**

FIRST AMENDMENT. See **Constitutional Law**, IV, 8; V; **Judicial Review**, 6.

FLAG CONTEMPT OR MISUSE. See **Constitutional Law**, II, 3–6; **Habeas Corpus.**

FOREIGN COMMERCE. See **Federal-State Relations**, 3.

FOREIGN-FLAG SHIPS. See **Federal-State Relations**, 3.

FOURTEENTH AMENDMENT. See **Appeals**, 2; **Constitutional Law**, II, 3–6; IV, 1–3, 5–7; V, 1, 3; IX; **Habeas Corpus**; **Injunctions**, 1; **Jurisdiction**, 1–4; **Procedure**, 1, 3, 6.

FOURTH AMENDMENT. See **Constitutional Law**, VI; **Evidence**, 7.

FREEDOM OF ASSOCIATION. See **Constitutional Law**, IV, 5; V, 1.

FREEDOM OF INFORMATION ACT. See **Judicial Review**, 3–4; **Jurisdiction**, 5.

FREEDOM OF RELIGION. See **Constitutional Law**, V, 2; **Judicial Review**, 6.

FREEDOM OF SPEECH. See **Constitutional Law**, V, 3.

FREE HOSPITALIZATION OR MEDICAL CARE. See **Constitutional Law**, IV, 4; VII.

GAMBLING ACTIVITIES. See **Omnibus Crime Control and Safe Streets Act of 1968.**

GENERAL SERVICES ADMINISTRATION. See **Injunctions**, 2–4; **Judicial Review**, 1.

GEORGIA. See **Constitutional Law**, I; **Declaratory Judgments; Procedure**, 5.

GOVERNMENT CONTRACTS. See **Judicial Review**, 2–4; **Jurisdiction**, 5.

GOVERNMENT EMPLOYEES. See **Injunctions**, 2–4; **Judicial Review**, 1.

GRAND JURY. See **Evidence**, 2.

GRAND LARCENY. See **Constitutional Law**, IX.

GRATUITIES FOR OFFICIAL ACTS. See **Evidence**, 2.

GRIEVANCE-ARBITRATION CLAUSES. See **Civil Rights Act of 1964; Evidence**, 1.

GRIEVANCES OF EMPLOYEES. See **Civil Rights Act of 1964; Evidence**, 1.

GUN CONTROL ACT OF 1968.

Pawnshop firearms redemptions—18 U. S. C. § 922 (a) (6)—Applicability—"Acquisition."—Section 922 (a) (6), making it offense knowingly to make false statement "in connection with the acquisition . . . of any firearm . . . from a . . . licensed dealer" and "intended or likely to deceive such . . . dealer . . . with respect to any fact material to the lawfulness of the sale or other disposition of such firearm . . . ," applies to redemption of a firearm from a pawnshop. Petitioner's contention that statute covers only a sale-like transaction is without merit, since "acquisition" as used in § 922 (a) (6) clearly includes any person, by definition, who "comes into possession, control, or power of disposal" of a firearm. Moreover, statutory terms "acquisition" and "sale or other disposition" are correlatives. Huddleston v. United States, p. 814.

HABEAS CORPUS. See also **Constitutional Law**, II, 3–6.

Due process claim—Challenge in state court—Preservation of claim—Federal habeas corpus jurisdiction.—By challenging in state courts vagueness of "treats contemptuously" phrase of Massachusetts flag-misuse statute as applied to him, appellee preserved his due

HABEAS CORPUS—Continued.

process claim for purposes of federal habeas corpus jurisdiction, since challenged language is void for vagueness as applied to appellee or to anyone else. A "hard-core" violator concept has little meaning with regard to challenged language, because phrase at issue is vague, not in the sense of requiring a person to conform his conduct to an imprecise but comprehensible standard, but in sense of not specifying any ascertainable standard of conduct at all. Smith v. Goguen, p. 566.

HANDBILLING. See **Constitutional Law,** I; **Declaratory Judgments.**

HEALTH, EDUCATION, AND WELFARE DEPARTMENT. See **Constitutional Law,** III, 1–2, 5; **Jurisdiction,** 4.

HEARSAY EVIDENCE. See **Evidence,** 3–6.

HELIUM ACT AMENDMENTS OF 1960. See **Jurisdiction,** 6.

HELIUM CONSERVATION ACT. See **Jurisdiction,** 6.

HOSPITALS. See **Constitutional Law,** IV, 4; VII.

ILLINOIS. See **Constitutional Law,** III.

IMMINENT THREAT TO ADMINISTRATION OF JUSTICE. See **Constitutional Law,** II, 1–2.

IMMUNITY OF STATE FROM SUIT. See **Constitutional Law,** III.

INDEPENDENT CANDIDATES. See **Constitutional Law,** IV, 1–2, 5–7; V, 1; **Elections; Procedure,** 6.

INDEPENDENT OFFICES APPROPRIATION ACT, 1952.

1. *Fees—Application for agency's services—Receipt of specific services.*—While the Act includes services rendered "to or for any person (including groups . . .)," since the Act is to be construed to cover only "fees" and not "taxes," the "fee" presupposes an application for the agency's services, whether by a single company or group of companies or the receipt of a specific beneficial service. FPC v. New England Power Co., p. 345.

2. *Fees—Federal Communications Commission—Community antenna television systems.*—The Act authorizes imposition of a "fee," which connotes a "benefit" of "value to the recipient." The latter phrase is proper measure of authorized charge, not "public policy or interest served" phraseology which, *if read literally,* would enable agency to make assessments or tax levies whereby CATV's and other broadcasters would be paying not only for benefits they received

INDEPENDENT OFFICES APPROPRIATION ACT, 1952— Continued.

but, contrary to Act's objectives, would also be paying for protective services FCC renders to the public. National Cable Television Assn. v. United States, p. 336.

3. *Fees—Federal Communications Commission—Community antenna television systems.*—The FCC should reappraise annual fee imposed upon CATV's. It is not enough to figure total cost (direct and indirect) to FCC for operating a CATV supervision unit and then to contrive a formula reimbursing FCC for that amount, since some of such costs certainly inured to public's benefit and should not have been included in fee imposed upon CATV's. National Cable Television Assn. v. United States, p. 336.

4. *Reasonable charge—Identifiable recipient.*—The Act is to be construed as authorizing a reasonable charge to "each *identifiable recipient* for a measurable unit or amount of government service or property from which he derives a special benefit," and as precluding a charge for services rendered "when the identification of the ultimate beneficiary is obscure and the services can be primarily considered as benefitting broadly the general public." FPC v. New England Power Co., p. 345.

INDEPENDENT STATE GROUNDS. See **Stays.**

INDIAN RESERVATIONS. See **Administrative Procedure; Indians.**

INDIANS. See also **Administrative Procedure.**

1. *Bureau of Indian Affairs assistance program—Indians living near reservation.*—Congress did not intend to exclude from BIA general assistance program these respondents and their class, who are full-blooded, unassimilated Indians living in an Indian community near their native reservation, and who maintain close economic and social ties with that reservation. Morton v. Ruiz, p. 199.

2. *Snyder Act—Appropriation hearings—Welfare service—Indians living near reservation.*—The legislative history of subcommittee hearings regarding appropriations under Snyder Act showing that Bureau of Indian Affairs' usual practice has been to represent to Congress that "on or near" reservations is equivalent of "on" for purposes of welfare service eligibility, and that successive budget requests were for Indians living "on or near" and not just for those living directly "on," clearly shows that Congress was led to believe that programs were being made available to those nonassimilated Indians living *near* reservation as well as to those living "on," and a fair reading of such history can lead only to conclusion that Indians

INDIANS—Continued.

situated near reservation, such as respondents, were covered by authorization. Morton v. Ruiz, p. 199.

3. *Welfare assistance—"On reservations" limitation—Bureau of Indian Affairs Manual.*—The fact that Congress made appropriations during time "on reservations" limitation for welfare assistance to Indians appeared in BIA Manual does not mean that Congress implicitly ratified BIA policy, where such limitation had not been published in Federal Register or in Code of Federal Regulations, and there is nothing in legislative history to show that limitation was brought to appropriation subcommittees' attention, let alone to entire Congress. But, even assuming that Congress knew of limitation when making appropriations, there is no reason to assume that it did not equate "on reservations" language with "on or near" category that continuously was described as service area. Morton v. Ruiz, p. 199.

INDICTMENTS. See **District Courts.**

INDIGENT CANDIDATES. See **Constitutional Law,** IV, 3.

INDIGENTS. See **Constitutional Law,** IV, 3–4; VII; **Evidence,** 2.

INFRINGEMENT SUITS. See **Copyright Act of 1909,** 1–2.

INJUNCTIONS. See also **Appeals,** 2; **Constitutional Law,** I; **Declaratory Judgments; Judicial Review,** 1, 4; **Jurisdiction,** 5; **Procedure,** 3, 5; **Removal.**

1. *Appointments to school board nominating panel—Racial discrimination—No relief against current mayor.*—Court of Appeals, in action charging Mayor with racial discrimination in appointing members of 1971 Nominating Panel for School Board, erred in ordering injunctive relief against Mayor with regard to 1973 Panel and future Panels since record speaks solely to appointment practices of his predecessor, who left office in 1972. Mayor v. Educational Equality League, p. 605.

2. *Discharged Government employee—Preliminary injunction—Irreparable injury.*—Viewing order at issue against respondent probationary employee's dismissal pending appeal to Civil Service Commission as a preliminary injunction, Court of Appeals erred in suggesting that at this stage of proceeding District Court need not have concluded that there was actually irreparable injury, and in intimating that, as alleged in respondent's unverified complaint, either loss of earnings or damage to reputation might afford a basis for a finding of irreparable injury. Sampson v. Murray, p. 61.

3. *Discharged Government employee—Temporary relief—Standards.*—While District Court is not totally without authority to grant

INJUNCTIONS—Continued.

interim injunctive relief to a discharged Government employee, nevertheless under standards that must govern issuance of such relief District Court's issuance of temporary injunctive relief here against respondent probationary employee's dismissal pending appeal to Civil Service Commission cannot be sustained. Sampson v. Murray, p. 61.

4. *Discharged Government employee—Temporary relief—Standards—Irreparable injury.*—Considering disruptive effect that grant of temporary relief here against respondent probationary employee's dismissal pending appeal to Civil Service Commission was likely to have on administrative process, and in view of historical denial of all equitable relief by federal courts in disputes involving discharge of Government employees; well-established rule that Government be granted widest latitude in handling its own internal affairs; and traditional unwillingness of equity courts to enforce personal service contracts, Court of Appeals erred in routinely applying traditional standards governing more orthodox "stays," and respondent at very least must show irreparable injury sufficient in kind and degree to override foregoing factors. Sampson v. Murray, p. 61.

5. *Restraining order—Expiration—Fed. Rule Civ. Proc. 65 (b).*—Where a court intends to supplant a temporary restraining order, which under Rule 65 (b) expires by its own terms within 10 days of issuance, with a preliminary injunction of unlimited duration pending a final decision on merits or further order of court, it should issue an order clearly saying so, and where it has not done so, a party against whom a temporary restraining order has issued may reasonably assume that order has expired within Rule 65 (b)'s time limits. Here, since only orders entered were a temporary restraining order and an order denying a motion to dissolve temporary order, Union had no reason to believe that a preliminary injunction of unlimited duration had been issued. Granny Goose Foods, Inc. v. Teamsters, p. 423.

6. *Restraining order—Expiration—State law—Fed. Rule Civ. Proc. 65 (b).*—Whether state law or Rule 65 (b) is controlling, the restraining order issued on May 18, 1970, expired long before the date of the alleged contempt on November 30, 1970, since under the State Code of Civil Procedure a temporary restraining order is returnable no later than 15 days from its date, 20 days if good cause is shown, and must be dissolved unless the party obtaining it proceeds to submit its case for a preliminary injunction, and similarly, under Rule 65 (b), such an order must expire by its own terms within 10 days after entry, 20 days if good cause is shown. Granny Goose Foods, Inc. v. Teamsters, p. 423.

INJUNCTIONS—Continued.

7. *State court preremoval restraining order—Motion to dissolve—Denial—Preliminary injunction.*—The District Court's denial of Union's motion to dissolve state court preremoval restraining order did not effectively convert order into a preliminary injunction of unlimited duration. That Union may have had opportunity to be heard on merits of preliminary injunction when it moved to dissolve restraining order is not controlling factor, since under Fed. Rule Civ. Proc. 65 (b) burden was on petitioner employers to show that they were entitled to preliminary injunction, not on Union to show that they were not. Granny Goose Foods, Inc. v. Teamsters, p. 423.

INTERCEPTED CONVERSATIONS. See **Omnibus Crime Control and Safe Streets Act of 1968.**

INTERIM INJUNCTIVE RELIEF. See **Injunctions,** 2–7; **Judicial Review,** 1.

INTERNATIONAL RELATIONS. See **Federal-State Relations,** 3.

INTERSTATE COMMERCE. See **Federal-State Relations,** 3.

INTERSTATE TRAVEL. See **Constitutional Law,** IV, 4; VII.

INTERVENING DECISIONS. See **Procedure,** 2, 5.

INVIDIOUS DISCRIMINATION. See **Constitutional Law,** IV, 4, 8.

IRREPARABLE INJURY. See **Constitutional Law,** I; **Declaratory Judgments; Federal-State Relations,** 1; **Injunctions,** 2, 4; **Judicial Review,** 1; **Procedure,** 5.

JAILS. See **Constitutional Law,** VI, 2–3.

JUDICIAL INTERFERENCE. See **Judicial Review,** 3–4; **Jurisdiction,** 5.

JUDICIAL REVIEW. See also **Constitutional Law,** IV, 8; **Injunctions,** 2–4; **Jurisdiction,** 5.

1. *Discharge of Government employee—District Court's review authority—Final administrative action.*—District Court's authority to review agency action does not come into play until it may be authoritatively said that administrative decision to discharge an employee does in fact fail to conform to applicable regulations, and until administrative action has become final, no court is in a position to say that such action did or did not conform to regulations. Here District Court authorized, on an interim basis, relief that the Civil Service Commission had neither considered nor authorized—the mandatory reinstatement of respondent in her Government position. Sampson v. Murray, p. 61.

JUDICIAL REVIEW—Continued.

2. *Renegotiation—Excessive profits—De novo proceeding—Court of Claims.*—The contractor, after Renegotiation Board's determination of excessive profits, through a *de novo* proceeding in the Court of Claims, where discovery procedures are available, is not limited in exercising its normal litigation rights. Renegotiation Board v. Bannercraft Co., p. 1.

3. *Renegotiation—Freedom of Information Act claim—Judicial interference.*—In a *renegotiation* case a contractor must pursue its administrative remedy under Renegotiation Act and cannot through resort to preliminary litigation over an FOIA claim obtain judicial interference with procedures set forth in Renegotiation Act. Renegotiation Board v. Bannercraft Co., p. 1.

4. *Renegotiation Act—Injunctive relief—Freedom of Information Act.*—It would contravene Renegotiation Act's legislative purpose if judicial review by way of injunctive relief under FOIA were allowed to interrupt process of bargaining that inheres in statutory renegotiation scheme and would delay Government's recovery of excessive profits. Renegotiation Board v. Bannercraft Co., p. 1.

5. *Veterans' benefits legislation—Constitutionality.*—Section 211 (a) of Title 38 U. S. C. does not bar judicial consideration of constitutional challenges to veterans' benefits legislation. Hernandez v. Veterans' Adminstration, p. 391.

6. *Veterans' benefits legislation—Constitutionality.*—Section 211 (a) of Title 38 U. S. C. does not extend to actions challenging the constitutionality of veterans' benefits legislation but is aimed at prohibiting review only of those decisions of law or fact arising in the *administration* of a *statute* providing for veterans' benefits, and hence is inapplicable to class action by Class I–O conscientious objector who performed required alternative civilian service, for declaratory judgment that provisions of Veterans' Readjustment Benefits Act of 1966 making him and his class ineligible for educational benefits under Act was unconstitutional on First and Fifth Amendment grounds, neither the text of § 211 (a) nor its legislative history showing a contrary intent. Johnson v. Robison, p. 361.

JURISDICTION. See also **Habeas Corpus; Judicial Review,** 3–5.

1. *District Court—Constitutional question—"Statutory" claim.*—Given a constitutional question over which District Court had jurisdiction, it also had jurisdiction over "statutory" claim. Latter claim was to be decided first and could be decided by single district judge, while constitutional claim could be adjudicated only by a three-judge court and only if statutory claim was previously rejected. Hagans v. Lavine, p. 528.

JURISDICTION—Continued.

2. *District court—Pendent claims—Supremacy Clause.*—State law claims pendent to federal constitutional claims conferring jurisdiction on a district court generally are not to be dismissed. Given advantages of economy and convenience and no unfairness to litigants, they are to be adjudicated, particularly where they may be dispositive and their decison would avoid adjudication of federal constitutional questions. There are special reasons to adjudicate pendent claim where, as here, claim, although called "statutory," is in reality a constitutional claim arising under Supremacy Clause, since "federal courts are particularly appropriate bodies for the application of pre-emption principles." Hagans v. Lavine, p. 528.

3. *District Court—28 U. S. C. § 1343 (3)—42 U. S. C. § 1983—Substantiality doctrine.*—Within accepted substantiality doctrine, petitioners' complaint alleged a constitutional claim sufficient to confer jurisdiction on District Court to pass on controversy, since (1) complaint alleged a deprivation, under color of state law, of constitutional rights within meaning of §§ 1343 (3) and 1983; (2) equal protection issue was neither frivolous nor so insubstantial as to be beyond District Court's jurisdiction, and challenged regulation was not so clearly rational as to require no meaningful consideration; and (3) cause of action alleged was not so patently without merit as to justify a dismissal for want of jurisdiction, whatever may be ultimate resolution of federal issues on merits. Hagans v. Lavine, p. 528.

4. *District Court—28 U. S. C. § 1343 (3)—New York regulation—Equal protection—Conflict with federal laws—Pendent jurisdiction.*—District Court had jurisdiction under § 1343 (3) of action by recipients of public assistance under federal-state Aid to Families with Dependent Children (AFDC) program challenging New York regulation permitting State to recoup prior unscheduled payments for rent from subsequent grants under AFDC program, on ground that regulation violated Equal Protection Clause of Fourteenth Amendment and conflicted with Social Security Act and implementing regulations of Department of Health, Education, and Welfare. Section 1343 (3) conferred jurisdiction to entertain constitutional claim if it was of sufficient substance to support federal jurisdiction, in which case, District Court could hear as a matter of pendent jurisdiction claim of conflict between federal and state law, without determining that latter claim in its own right was encompassed within § 1343. Hagans v. Lavine, p. 528.

5. *Freedom of Information Act—Equitable jurisdiction.*—FOIA does not limit inherent powers of an equity court to grant relief, as

JURISDICTION—Continued.

is manifest from broad statutory language that Congress used, with its emphasis on disclosure, its carefully delineated exemptions, and fact that 5 U. S. C. § 552 (a) vests equitable jurisdiction in district courts. Renegotiation Board v. Bannercraft Co., p. 1.

6. *Suit for reasonable value of helium—Absence of federal jurisdiction.*—Respondent's suit for reasonable value of helium beyond what petitioner had already paid respondent for natural gas under sales contract, is in effect an action in *quantum meruit,* whose source is state not federal law. Under *Northern Natural Gas Co.* v. *Grounds,* 441 F. 2d 704, provisions in Helium Act Amendments of 1960 and Natural Gas Act do not create federal right of recovery but only preclude interposition of plea of payment to defeat quasi-contractual suit for helium constituent, which is insufficient to support federal jurisdiction under 28 U. S. C. § 1331 (a). Phillips Petroleum Co. v. Texaco Inc., p. 125.

JURY TRIALS. See **Constitutional Law,** VIII.

JUSTICES OF THE PEACE. See **Procedure,** 2.

JUSTICIABILITY. See **Constitutional Law,** I; **Declaratory Judgments.**

JUVENILE DELINQUENTS. See **Constitutional Law,** IX.

KNOWLEDGE OF FALSITY. See **Evidence,** 2.

LABOR See **Civil Rights Act of 1964; Evidence,** 1; **Federal-State Relations,** 3; **Injunctions,** 2–7; **National Labor Relations Act; Removal.**

LABOR DISPUTES. See **Federal-State Relations,** 3.

LABOR MANAGEMENT RELATIONS ACT. See **Federal-State Relations,** 3.

LABOR UNIONS. See **Injunctions,** 5–7; **National Labor Relations Act; Removal.**

LACK OF FUNDS FOR COUNSEL. See **Evidence,** 2.

LEGISLATIVE HISTORY. See **Indians,** 2–3.

LESSENING OF COMPETITION. See **Antitrust Acts,** 3–4.

LICENSED FIREARMS DEALERS. See **Gun Control Act of 1968.**

LONG-TERM CONTRACTS. See **Antitrust Acts,** 1–3.

LOSS OF EARNINGS. See **Injunctions,** 2; **Judicial Review,** 1.

LUNA BAR. See **Accretion.**

MANDAMUS. See **District Courts; Stays.**

MARITIME OPERATIONS. See **Federal-State Relations,** 3.

MASSACHUSETTS. See **Constitutional Law,** II, 3–6; **Habeas Corpus.**

McKOOL-STROUD PRIMARY LAW OF 1972. See **Constitutional Law,** IV, 7.

MEDICAL CARE. See **Constitutional Law,** IV, 4; VII.

MERCHANT SEAMEN. See **Federal-State Relations,** 3.

MERGERS. See **Antitrust Acts.**

MILITARY SERVICE. See **Constitutional Law,** IV, 8; V, 2; **Judicial Review,** 5–6.

MINORITY PARTIES. See **Constitutional Law,** IV, 5–7; V, 1; **Elections.**

MISSISSIPPI RIVER. See **Accretion.**

MISUSE OF FLAG. See **Constitutional Law,** II, 3–6; **Habeas Corpus.**

MOOTNESS. See **Procedure,** 2.

NATIONAL LABOR RELATIONS ACT. See also **Federal-State Relations,** 3.

Employees' distribution of literature—Prohibition—Interference with employees' rights.—Respondent's blanket rule against employees' distribution of literature on company property might interfere with employees' rights under § 7 of Act "to form, join, or assist labor organizations," or to refrain from such activities, and such rights, unlike those in economic area, cannot be waived by employees' collective-bargaining representative. The bulletin-board provision for union notices did not afford an adequate alternative, since it did not give union's adversaries equal access of communications with their fellow employees. NLRB v. Magnavox Co., p. 322.

NATIONAL LABOR RELATIONS BOARD. See **Federal-State Relations,** 3.

NATURAL GAS ACT. See **Jurisdiction,** 6.

NATURAL GAS COMPANIES. See **Independent Offices Appropriation Act, 1952,** 1, 4.

NEGROES. See **Appeals,** 2; **Civil Rights Act of 1964; Constitutional Law,** VIII; **Evidence,** 1; **Injunctions,** 1; **Procedure,** 1, 3.

NEW YORK. See **Jurisdiction,** 1–4.

NOMINATING PANELS. See **Appeals**, 2; **Injunctions**, 1; **Procedure**, 1, 3.

NOMINATING PETITIONS. See **Constitutional Law**, IV, 1, 5, 7; V, 1; **Elections**; **Procedure**, 6; **Stays.**

NOMINATIONS. See **Constitutional Law**, IV, 3, 5; V, 1; **Elections**; **Procedure**, 6.

NONDISCRIMINATION CLAUSES. See **Civil Rights Act of 1964**, 2; **Evidence**, 1.

NUISANCES. See **Procedure**, 5.

OBSCENITY. See **Procedure**, 5.

OFF-RESERVATION INDIAN ASSISTANCE. See **Administrative Procedure**; **Indians.**

OMNIBUS CRIME CONTROL AND SAFE STREETS ACT OF 1968. See also **Gun Control Act of 1968.**

1. *Wiretapping—Application or interception order—Naming of suspect—Persons "as yet unknown."*—Title III of Act requires naming of a person in application or interception order only when law enforcement authorities have probable cause to believe that that individual is "committing the offense" for which wiretap is sought, and since it is undisputed, where Government sought wiretap of home telephones of respondent suspected bookmaker, Mr. Kahn, that Government had no reason to suspect respondent Mrs. Kahn of complicity in gambling business before wiretapping began, it follows that under statute she was among class of persons "as yet unknown" covered by wiretap order. United States v. Kahn, p. 143.

2. *Wiretapping—Conversations to which accused not party.*—Neither language of wiretap order nor that of Title III of Act requires suppression of legally intercepted conversations to which respondent Mr. Kahn was not himself a party. United States v. Kahn, p. 143.

ON-PREMISES DISTRIBUTION OF EMPLOYEE LITERATURE. See **National Labor Relations Act.**

ON-RESERVATIONS LIMITATION FOR INDIAN ASSISTANCE. See **Administrative Procedure**; **Indians.**

OPPROBRIOUS LANGUAGE TOWARD POLICE OFFICER. See **Constitutional Law**, V, 3.

"OTHERS AS YET UNKNOWN." See **Omnibus Crime Control and Safe Streets Act of 1968**, 1.

OUT-OF-COURT STATEMENTS. See **Evidence**, 3–5.

OVERBREADTH. See **Constitutional Law**, V, 3.

PAPAGO INDIANS. See **Administrative Procedure**; **Indians.**

PAWNSHOP FIREARMS REDEMPTIONS. See **Gun Control Act of 1968.**

PECUNIARY INTEREST IN CASE'S OUTCOME. See **Procedure**, 2.

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PENDENT CLAIMS. See **Jurisdiction**, 1–2.

PENDENT JURISDICTION. See **Procedure**, 1, 3.

"PERFORMANCE." See **Copyright Act of 1909**, 3.

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PLACES OF DETENTION. See **Constitutional Law**, VI, 2–3.

PLEA BARGAINING. See **Procedure**, 4.

POLICE OFFICERS. See **Constitutional Law**, II, 3; V, 3.

POLITICAL CANDIDATES. See **Constitutional Law**, IV, 1–3; **Procedure**, 6.

POLITICAL PARTIES. See **Constitutional Law**, IV, 5–7; V, 1; **Elections**; **Procedure**, 6; **Stays.**

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PRECINCT NOMINATING CONVENTIONS. See **Constitutional Law**, IV, 6–7.

PRECLUSION RULE. See **Civil Rights Act of 1964**, 3.

PRE-EMPTION. See **Federal-State Relations**, 3; **Jurisdiction**, 2, 4.

PRELIMINARY INJUNCTIONS. See **Injunctions**, 2–5; **Judicial Review**, 1; **Removal**, 1.

PRETRIAL STATEMENTS. See **Evidence**, 2.

PRIMARY ELECTIONS. See **Constitutional Law**, IV, 3, 6–7; **Elections**; **Procedure**, 6.

PRIVILEGE AGAINST SELF-INCRIMINATION. See **Evidence,** 2.

PROBATIONARY GOVERNMENT EMPLOYEES. See **Injunctions,** 2–4; **Judicial Review,** 1.

PROCEDURE. See also **Appeals; Injunctions,** 1, 5–7; **Stays.**

1. *Appointments to school board nominating panel—Racial discrimination—Fourteenth Amendment—Remand—Pendent jurisdiction—Abstention.*—The principal issue throughout this litigation charging Mayor with racial discrimination in appointing members of Nominating Panel for School Board has been whether Mayor violated Fourteenth Amendment. There is no basis for remanding case to District Court for resolution of peripheral state law issues under that court's pendent jurisdiction or, alternatively, for abstention so that case may be tried anew in a state court. Mayor v. Educational Equality League, p. 605.

2. *Double appeal-bond statute—Constitutionality—Intervening decision—Vacation and remand.*—District Court's judgment upholding, against due process and equal protection challenges, a West Virginia statute requiring a double bond as a condition for appeal from justice of peace's judgment in civil case, is vacated and case is remanded to District Court so that that court, in first instance, may evaluate effect of intervening state court decision in another case upholding such statute but also holding that justice of peace judgment against defendant violated due process and was "void" on ground that because justice of peace's fee was enhanced when he ruled in plaintiff's favor, he had pecuniary interest in case's outcome. Patterson v. Warner, p. 303.

3. *Federal courts—Interference with executive appointments—Racial discrimination.*—Mayor's principal argument, in action charging that he had discriminated against Negroes in appointing members of Nominating Panel for School Board, that federal courts may not interfere with discretionary appointment powers of an elected executive officer, is of greater importance than was accorded it by Court of Appeals which found that Negroes had been unlawfully excluded from Panel, but argument need not be addressed here since record is devoid of reliable proof of racial discrimination. Mayor v. Educational Equality League, p. 605.

4. *Government witness—Time of plea bargain—Factual issue—Remand.*—Had there been a promise to Government witness, who had been indicted with petitioner, regarding disposition of witness' case before he testified at petitioner's trial that no promise had been made, reversal of petitioner's conviction would be required, and

PROCEDURE—Continued.

factual issue of whether plea bargain that was made with witness preceded or followed petitioner's trial should have been resolved by District Court after evidentiary hearing. DeMarco v. United States, p. 449.

5. *Intervening state decision—Effect on federal injunctive relief—Reconsideration.*—Since appellants may secure dismissal of state proceeding to enjoin operation of bookstore as violative of "public nuisance" statute by selling obscene materials, on basis of intervening decision in *Sanders* v. *State,* 231 Ga. 608, 203 S. E. 2d 153, which held statute unconstitutional as applied in similar case, thus precluding irreparable injury, without which federal injunctive relief would be barred, judgment below should be reconsidered in light of *Sanders* decision. Speight v. Slaton, p. 333.

6. *Remand—Additional findings—Independent candidates—Access to ballot.*—Further proceedings should be had in District Court to permit additional findings concerning extent of burden imposed on independent candidates for President and Vice President under California law, particularly with respect to whether Election Code § 6831 (1961) (requiring independent candidate's nominating papers to be signed by no less than 5% nor more than 6% of entire vote cast in preceding general election) and § 6833 (Supp. 1974) (requiring all such signatures to be obtained during 24-day period following primary and ending 60 days prior to general election), place unconstitutional restriction on access by appellants Hall and Tyner to ballot. Storer v. Brown, p. 724.

PRODUCTION OF DOCUMENTS. See **Judicial Review,** 2–4; **Jurisdiction,** 5.

PROHIBITION. See **District Courts.**

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PROTECTION OF JUVENILE OFFENDERS. See **Constitutional Law,** IX.

PROTECTIVE ORDERS. See **Constitutional Law,** IX.

PUBLIC ASSISTANCE. See **Constitutional Law,** III, 1–2, 5; **Jurisdiction,** 4.

PUBLIC BUILDINGS SERVICE. See **Injunctions,** 2–4; **Judicial Review,** 1.

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PUBLIC NUISANCES. See **Procedure**, 5.

"PUBLIC POLICY OR INTEREST SERVED." See **Independent Offices Appropriation Act, 1952**, 2.

QUALITATIVE OR QUANTITATIVE DISTINCTIONS. See **Constitutional Law**, IV, 8.

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RACIAL DISCRIMINATION. See **Appeals**, 2; **Civil Rights Act of 1964**; **Constitutional Law**, VIII; **Evidence**, 1; **Injunctions**, 1; **Procedure**, 1, 3.

RADIO COMMUNICATIONS. See **Independent Offices Appropriation Act, 1952**, 2–3.

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REDEMPTION OF FIREARMS FROM PAWNSHOP. See **Gun Control Act of 1968.**

REGULATIONS OF HEALTH, EDUCATION, AND WELFARE DEPARTMENT. See **Constitutional Law**, III, 2, 5.

RELIGIOUS FREEDOM. See **Constitutional Law**, V, 2; **Judicial Review**, 6.

REMAND. See **Procedure**, 1–2, 4, 6.

REMOVAL. See also **Injunctions**, 7.

1. *State court injunction—Effect—Time limitations.*—Section 1450 of Title 28 U. S. C. was not intended to give state court injunctions greater effect after removal to federal court than they would have had if the case had remained in state court, and it should be construed in a manner consistent with the time limitations of Fed. Rule Civ. Proc. 65 (b). Granny Goose Foods, Inc. v. Teamsters, p. 423.

2. *State court restraining order—Expiration—Fed. Rule Civ. Proc. 65 (b).*—Once a case has been removed to federal court, federal law, including Federal Rules of Civil Procedure, controls future course of proceedings, notwithstanding state court orders issued prior to

REMOVAL—Continued.

removal. The underlying purpose of 28 U. S. C. § 1450 (to ensure that no lapse in state court temporary restraining order will occur simply by removing case to federal court) and policies reflected in time limitations of Rule 65 (b) (stringent restrictions on availability of *ex parte* restraining orders) can be accommodated by applying rule that such a state court preremoval order remains in force after removal no longer than it would have remained in effect under state law, but in no event longer than Rule 65 (b) time limitations, measured from date of removal. Accordingly, order issued May 18, 1970, expired by its terms on May 30, under the 10-day limitation of Rule 65 (b) applied from date of removal; hence no order was in effect on November 30, 1970, and Union violated no order when it resumed its strike at that time. Granny Goose Foods, Inc. v. Teamsters, p. 423.

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RIGHT OF CONFRONTATION. See **Constitutional Law**, IX.

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RULES OF CRIMINAL PROCEDURE. See **District Courts.**

SCHOOL BOARDS. See **Appeals**, 2; **Injunctions**, 1; **Procedure**, 1, 3.

SEARCHES AND SEIZURES. See **Constitutional Law**, VI; **Evidence**, 7.

SELECTIVE SERVICE REGULATIONS. See **Constitutional Law**, IV, 8; V, 2; **Judicial Review**, 5–6.

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STATUTORY RIGHTS. See **Civil Rights Act of 1964**, 1–2; **Evidence**, 1.

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State court order—Lack of independent state ground—Denial of stay.—Application for stay of California Supreme Court's order denying mandamus to require state officials to accept applicant's nomination papers as candidate for United States Senate, and for order restraining officials from refusing to accept papers, is denied, where application does not disclose whether state court's denial of mandamus rested on independent state, rather than federal, ground. Hayakawa v. Brown (DOUGLAS, J., in chambers), p. 1304.

STOCK MANIPULATION. See **District Courts.**

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2. Bankruptcy Rules and Official Bankruptcy Forms, p. 1003.
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3. *"Perform."* §§ 1 (c) and (d), Copyright Act of 1909, 17 U. S. C. §§ 1 (c) and (d). Teleprompter Corp. v. CBS, p. 394.

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