

ORDERS FROM APRIL 1 THROUGH
MAY 13, 1974

APRIL 1, 1974

Dismissal Under Rule 60

No. 72-1704. PRUITT ET AL. *v.* SOUTH GWINNETT VENTURE ET AL. C. A. 5th Cir. Petition for writ of certiorari dismissed under Rule 60 of the Rules of this Court. Reported below: 482 F. 2d 389.

Affirmed on Appeal

No. 73-1188. WOHLGEMUTH, SECRETARY, DEPARTMENT OF PUBLIC WELFARE OF PENNSYLVANIA, ET AL. *v.* WILLIAMS ET AL. Appeal from D. C. W. D. Pa. Motion of appellees for leave to proceed *in forma pauperis* granted. Judgment affirmed. Reported below: 366 F. Supp. 541.

Appeals Dismissed

No. 73-985. WOOD *v.* ATKINSON. Appeal from Sup. Ct. Ga. dismissed for want of substantial federal question. Reported below: 231 Ga. 271, 201 S. E. 2d 394.

No. 73-1218. PFEIFER ET AL. *v.* BOARD OF EDUCATION OF UPPER SANDUSKY EXEMPTED VILLAGE SCHOOL DISTRICT. Appeal from Ct. App. Ohio, Wyandot County, dismissed for want of substantial federal question.

No. 73-1252. NATIONAL UNION OF HOSPITAL & NURSING HOME EMPLOYEES, AFL-CIO, RWDSU, LOCAL 1199-W. VA., ET AL. *v.* BLUEFIELD SANITARIUM, INC. 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.

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No. 73-5943. *CARUTHERS v. CALIFORNIA*. 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. 73-6022. *DIGGS v. ROSS ET AL.* Appeal from Ct. App. D. C. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied.

Miscellaneous Orders

No. A-875 (73-6430). *BEKENY v. UNITED STATES*. Application for stay of execution and enforcement of judgment of the United States Court of Appeals for the Second Circuit, presented to MR. JUSTICE WHITE, and by him referred to the Court, denied.

No. A-881. *SAPERE v. UNITED STATES*. Application for stay of execution and enforcement of judgment of the United States Court of Appeals for the Second Circuit, presented to MR. JUSTICE DOUGLAS, and by him referred to the Court, denied.

No. A-882. *DOE (DYMAN) ET AL. v. UNITED STATES*. Application for stay of execution and enforcement of judgment of the United States Court of Appeals for the Second Circuit, presented to MR. JUSTICE DOUGLAS, and by him referred to the Court, denied.

No. D-20. *IN RE DISBARMENT OF LEVIN*. It having been reported to the Court that Robert Bernard Levin, of New York City, New York, has been disbarred from the practice of law in all of the courts of the State of New York, and this Court by order of November 19, 1973 [414 U. S. 1037], having suspended the said Robert Bernard Levin 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;

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And it appearing that the said rule was duly issued and served upon the respondent, and that the time within which to file a return has expired;

It is ordered that the said Robert Bernard Levin be, and he is hereby, disbarred from the practice of law in this Court and that his name be stricken from the roll of attorneys admitted to practice before the Bar of this Court.

No. 36, Orig. TEXAS *v.* LOUISIANA. Motion of the United States for leave to amend complaint granted. [For earlier orders herein, see, *e. g.*, 414 U. S. 1107.]

No. 72-1554. SUPER TIRE ENGINEERING CO. ET AL. *v.* McCORKLE ET AL. C. A. 3d Cir. [Certiorari granted, 414 U. S. 817.] Motion of petitioners for leave to file supplemental brief after argument granted.

No. 73-375. OTTE, TRUSTEE IN BANKRUPTCY *v.* UNITED STATES ET AL. C. A. 2d Cir. [Certiorari granted, 414 U. S. 1156.] Motion of respondent city of New York for divided argument granted.

No. 73-582. CITY OF PITTSBURGH *v.* ALCO PARKING CORP. ET AL. Sup. Ct. Pa. [Certiorari granted, 414 U. S. 1127.] Motion of Council for Private Enterprise et al. for leave to file a brief as *amici curiae* granted.

No. 73-696. EMPORIUM CAPWELL CO. *v.* WESTERN ADDITION COMMUNITY ORGANIZATION ET AL.; and

No. 73-830. NATIONAL LABOR RELATIONS BOARD *v.* WESTERN ADDITION COMMUNITY ORGANIZATION ET AL. C. A. D. C. Cir. [Certiorari granted, 415 U. S. 912.] Motion of Department Store Employees Union for leave to file a brief as *amicus curiae* granted.

No. 73-6363. WALDEN ET AL. *v.* UNITED STATES. Motion for leave to file petition for writ of habeas corpus and other relief denied.

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No. 73-6214. *WHITE v. UNITED STATES*. Motion for leave to file petition for writ of mandamus denied.

Certiorari Denied. (See also Nos. 73-1252, 73-5943, and 73-6022, *supra*.)

No. 72-5866. *BEEBE v. UNITED STATES*. C. A. 10th Cir. *Certiorari* denied. Reported below: 467 F. 2d 222.

No. 73-826. *KING v. UNITED STATES*. C. A. 10th Cir. *Certiorari* denied. Reported below: 484 F. 2d 924.

No. 73-927. *WHITE v. UNITED STATES*. C. A. 7th Cir. *Certiorari* denied. Reported below: 487 F. 2d 1404.

No. 73-936. *HON KEUNG KUNG v. DISTRICT DIRECTOR, IMMIGRATION AND NATURALIZATION SERVICE*. C. A. 8th Cir. *Certiorari* denied.

No. 73-958. *UNIVERSAL UNDERWRITERS INSURANCE Co. v. GRIFFIN*. Sup. Ct. La. *Certiorari* denied. Reported below: 283 So. 2d 748.

No. 73-965. *MORAN SHIPPING CO. ET AL. v. BLANCO*. C. A. 5th Cir. *Certiorari* denied. Reported below: 483 F. 2d 63.

No. 73-1026. *ILLINOIS v. NUNN*. Sup. Ct. Ill. *Certiorari* denied. Reported below: 55 Ill. 2d 344, 304 N. E. 2d 81.

No. 73-1035. *PITCHER ET VIR v. IBERIA PARISH SCHOOL BOARD*. Ct. App. La., 3d Cir. *Certiorari* denied. Reported below: 280 So. 2d 603.

No. 73-1100. *BURDEN v. UNITED STATES*. C. A. 10th Cir. *Certiorari* denied. Reported below: 486 F. 2d 302.

No. 73-1101. *SHEET METAL WORKERS' INTERNATIONAL ASSN., LOCAL No. 17, AFL-CIO v. NATIONAL LABOR RELATIONS BOARD ET AL.* C. A. 1st Cir. *Certiorari* denied.

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No. 73-1112. *ACUNA ET AL. v. UNITED STATES*. Ct. Cl. Certiorari denied. Reported below: 202 Ct. Cl. 206, 479 F. 2d 1356.

No. 73-1124. *NORMAN v. UNITED STATES*. C. A. 10th Cir. Certiorari denied.

No. 73-1127. *VICTORY v. NEW YORK*. Ct. App. N. Y. Certiorari denied. Reported below: 33 N. Y. 2d 75, 305 N. E. 2d 461.

No. 73-1142. *BANK OF COMMERCE OF LAREDO v. CITY NATIONAL BANK OF LAREDO ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 484 F. 2d 284.

No. 73-1172. *AMERICAN FAMILY LIFE ASSURANCE COMPANY OF COLUMBUS v. BLUE CROSS OF FLORIDA, INC., ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 486 F. 2d 225.

No. 73-1178. *POBLINER v. NEW YORK*. Ct. App. N. Y. Certiorari denied. Reported below: 32 N. Y. 2d 356, 298 N. E. 2d 637.

No. 73-1208. *OLDENDORFF v. PARKER ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 483 F. 2d 375.

No. 73-1211. *CARTER ET AL. v. ARKANSAS*. Sup. Ct. Ark. Certiorari denied. Reported below: 255 Ark. 225, 500 S. W. 2d 368.

No. 73-1213. *GRACE ET AL. v. LUDWIG ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 484 F. 2d 1262.

No. 73-1219. *BUXTON v. AERO MAYFLOWER TRANSIT Co., Inc.* C. A. 4th Cir. Certiorari denied. Reported below: 489 F. 2d 754.

No. 73-1223. *BRIZARD v. NEW JERSEY*. Super. Ct. N. J. Certiorari denied. Reported below: See 64 N. J. 156, 313 A. 2d 216.

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No. 73-1226. *SINCLAIR v. BOUGHTON, AKA SINCLAIR*. C. A. 6th Cir. Certiorari denied.

No. 73-1228. *HANSEN v. AHLGRIMM ET AL.* C. A. 7th Cir. Certiorari denied.

No. 73-1235. *AMERICAN INVESTORS ASSURANCE CO. ET AL. v. FIRST NATIONAL BANK OF ALBUQUERQUE ET AL.* C. A. 10th Cir. Certiorari denied.

No. 73-1236. *MILLS v. SUPERIOR COURT OF ALAMEDA COUNTY ET AL.* Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 73-1268. *SKAAR ET UX. v. WISCONSIN DEPARTMENT OF REVENUE*. Sup. Ct. Wis. Certiorari denied. Reported below: 61 Wis. 2d 93, 211 N. W. 2d 642.

No. 73-1269. *LOMBARDI v. NEW YORK*. Ct. App. N. Y. Certiorari denied. Reported below: 33 N. Y. 2d 658, 303 N. E. 2d 705.

No. 73-1278. *TANG v. APPELLATE DIVISION OF NEW YORK SUPREME COURT, FIRST DEPARTMENT, ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 487 F. 2d 138.

No. 73-1328. *LAVALLEE, CORRECTIONAL SUPERINTENDENT v. MOSHER*. C. A. 2d Cir. Certiorari denied. Reported below: 491 F. 2d 1346.

No. 73-5681. *DORAN v. UNITED STATES*. C. A. 1st Cir. Certiorari denied. Reported below: 483 F. 2d 369.

No. 73-5728. *EHRENBERG v. UNITED STATES*. C. A. 3d Cir. Certiorari denied.

No. 73-5832. *THOMPSON v. CALIFORNIA*. Sup. Ct. Cal. Certiorari denied.

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No. 73-5867. *MASON ET AL. v. MARYLAND*. Ct. Sp. App. Md. Certiorari denied. Reported below: 18 Md. App. 130, 305 A. 2d 492.

No. 73-5884. *OWENS v. CALIFORNIA*. Sup. Ct. Cal. Certiorari denied.

No. 73-5941. *HENRY v. UNITED STATES*. C. A. D. C. Cir. Certiorari denied.

No. 73-5955. *STEWART v. UNITED STATES*. C. A. 10th Cir. Certiorari denied.

No. 73-6007. *CARRION v. UNITED STATES*. C. A. 1st Cir. Certiorari denied. Reported below: 488 F. 2d 12.

No. 73-6024. *VALDEZ v. UNITED STATES*. C. A. 10th Cir. Certiorari denied.

No. 73-6025. *GORHAM v. FLORIDA*. Sup. Ct. Fla. Certiorari denied. Reported below: 282 So. 2d 874.

No. 73-6026. *ALEXANDER v. WEINBERGER, SECRETARY OF HEALTH, EDUCATION, AND WELFARE*. C. A. 7th Cir. Certiorari denied.

No. 73-6063. *GALLINGTON ET AL. v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 488 F. 2d 637.

No. 73-6067. *HAWK v. CITY OF DETROIT ET AL.* C. A. 6th Cir. Certiorari denied.

No. 73-6069. *SPIERS v. UNITED STATES*. C. A. 6th Cir. Certiorari denied.

No. 73-6102. *HORNBECK v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 489 F. 2d 1325.

No. 73-6110. *GOODELL v. UNITED STATES*. C. A. 9th Cir. Certiorari denied.

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No. 73-6132. *RAMOS ET AL. v. CALIFORNIA*. App. Dept., Super. Ct. Cal., County of Los Angeles. Certiorari denied.

No. 73-6134. *EDWARDS v. UNITED STATES*. C. A. 8th Cir. Certiorari denied.

No. 73-6142. *RADUE v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 486 F. 2d 220.

No. 73-6164. *FRANCIS v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 487 F. 2d 968.

No. 73-6177. *McCOY v. CALIFORNIA*. Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 73-6205. *HELMFORTH v. UNITED STATES*. C. A. 9th Cir. Certiorari denied.

No. 73-6216. *NELSON v. HENDERSON, WARDEN, ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 488 F. 2d 551.

No. 73-6219. *COLEMAN v. KENTUCKY*. Ct. App. Ky. Certiorari denied. Reported below: 501 S. W. 2d 583.

No. 73-6231. *SMILGUS v. KENT, JUDGE*. C. A. 6th Cir. Certiorari denied.

No. 73-6236. *YEAGER v. ESTELLE, CORRECTIONS DIRECTOR*. C. A. 5th Cir. Certiorari denied. Reported below: 489 F. 2d 276.

No. 73-6244. *FREEMAN v. BLACKLEDGE, WARDEN*. C. A. 4th Cir. Certiorari denied.

No. 73-6245. *DAYE v. COOPER ET AL.* C. A. 4th Cir. Certiorari denied.

No. 73-6248. *WALLACE v. HOFFMAN ET AL.* C. A. 8th Cir. Certiorari denied.

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No. 73-6253. *HARRISH v. CITY OF PARMA*. Ct. App. Ohio, Cuyahoga County. Certiorari denied.

No. 72-637. *KENNECOTT COPPER CORP. v. FEDERAL TRADE COMMISSION*. C. A. 10th Cir. Certiorari denied. MR. JUSTICE STEWART would grant certiorari. MR. JUSTICE DOUGLAS took no part in the consideration or decision of this petition. Reported below: 467 F. 2d 67.

No. 73-627. *MAYES v. TEXAS*. County Ct. at Law No. 4, Harris County. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari.

No. 73-922. *BROWN ET AL. v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 487 F. 2d 208.

No. 73-1255. *INTERNATIONAL UNION, UNITED MINE WORKERS OF AMERICA, ET AL. v. SOLAR FUEL CO. ET AL.* C. A. 3d Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 481 F. 2d 1399.

No. 73-6011. *MCCALVIN ET AL. v. ILLINOIS*. Sup. Ct. Ill. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 55 Ill. 2d 161, 302 N. E. 2d 342.

No. 73-996. *ERCKMAN v. UNITED STATES*. C. A. 7th Cir. Certiorari denied.

MR. JUSTICE MARSHALL, with whom MR. JUSTICE BRENNAN joins, dissenting.

Petitioner was convicted after a jury trial of three counts of willfully filing false income tax returns in violation of § 7206 (1) of the Internal Revenue Code, 26 U. S. C. § 7206 (1). An important prosecution witness at trial was Internal Revenue Special Agent Eugene Konrad, who had interviewed petitioner about his tax returns before the prosecution was instituted and whose

testimony played a major role in establishing the willfulness of petitioner's acts. To facilitate his cross-examination of Konrad, petitioner moved under the Jencks Act, 18 U. S. C. § 3500, for production of Konrad's report to the Chief of the Intelligence Division of the Internal Revenue Service in Chicago concerning the interview. Following the *in camera* examination mandated by § 3500 (c), the District Court refused to order production of the report on the ground that "there is no material . . . in the special agent's report . . . that is reasonably necessary for the defendant's use in making adequate trial preparation."

The Court of Appeals correctly held that "this was an improper test" to apply to determine whether a statement must be produced under § 3500. The court, following its recent decision in *United States v. Cleveland*, 477 F. 2d 310, 315-316 (CA7 1973), found that the agent's report was a "statement" within the meaning of the Jencks Act, § 3500 (e), see also *Clancy v. United States*, 365 U. S. 312 (1961), and that it therefore must be produced if it "relates to the subject matter as to which the witness has testified." § 3500 (b). Since the Court of Appeals found that "some of it clearly relates to the subject matter of his testimony," it held that Konrad's report should have been produced for the petitioner's use in cross-examination.

But the Court of Appeals then went on to conclude, on the basis of its own examination of the report and without permitting petitioner's counsel to see it, that "the report would have been of no assistance to defendant" and that "there was no inconsistency between Konrad's report and his testimony at trial." It therefore held the failure to produce the report to be harmless error. As to this point, Judge Fairchild disagreed, saying that he would "give defense counsel an opportunity

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to see the material erroneously withheld and to attempt to persuade the court that the error was not harmless before the court decides that it was."

In my view, Judge Fairchild was clearly correct. I believe that the procedure employed by the Court of Appeals improperly denied petitioner the opportunity to examine the agent's report and to argue to the court that the error was not harmless.¹ This result is compelled by the rationale of our *Jencks* decision and the statute which followed it. In *Jencks*, this Court held that relevant and material statements of Government witnesses *must* be turned over to the defense regardless of the trial judge's view as to their usefulness in cross-

¹The Solicitor General, in his Memorandum in Opposition, p. 2 n. 1, claims that petitioner has raised the contention that he should have been permitted to see the *Jencks* Act materials to enable him to argue that the error was not harmless "for the first time" in this Court, and argues that "petitioner's failure to make that claim below precludes its assertion here." While the principle is of course sound, the Solicitor General has misapprehended the record in this case. True, petitioner did not raise this argument in his brief before the Court of Appeals, obviously because at that time he had no reason to do so; petitioner was then arguing that the trial judge had erred in failing to order the agent's report disclosed to him, and had no reason to anticipate that the Court of Appeals would accept this argument but hold the error to be harmless, particularly since the Government never contended that the error was harmless. But petitioner did raise this argument at the first opportunity, in his petition for rehearing in the Court of Appeals. At p. 3, petitioner argued:

"In the alternative, it is respectfully requested that the defendant be granted a rehearing after 'defense counsel is given an opportunity to see the material erroneously withheld' and then be permitted 'to attempt to persuade the court that the error was not harmless.' (Order, Page 8)."

The next two pages of the petition for rehearing were devoted to argument in support of this contention. Clearly, petitioner has adequately preserved the point for our review.

examination. This Court expressly disapproved of the practice of submitting such statements to the trial judge for an *in camera* examination because "only the defense is adequately equipped to determine the[ir] effective use for purpose of discrediting the Government's witness and thereby furthering the accused's defense." *Jencks v. United States*, 353 U. S. 657, 668-669 (1957). The Jencks Act expressly reaffirmed this aspect of our decision, see S. Rep. No. 569, 85th Cong., 1st Sess., 3 (1957); *Campbell v. United States*, 365 U. S. 85, 92 (1961), and on its face gives the defendant the right to examine any relevant statements of Government witnesses to make his own determination of their usefulness. The Act makes clear that it is not ordinarily part of the business of the federal judiciary to determine whether the defense could effectively utilize a producible statement.

The Act thus recognizes that it is impossible for a judge to be fully aware of all the possibilities for impeachment inhering in a prior statement of a Government witness. Of course, it may not be difficult to lay the witness' testimony and his prior statement side by side to compare them for any obvious inconsistencies. This is apparently what the Court of Appeals did here, in view of its conclusions that there was "no inconsistency between Konrad's report and his testimony at trial." But, as we have said before, this hardly exhausts the utility of the statement for purposes of cross-examination:

"'Flat contradiction between the witness' testimony and the version of the events given in his report is not the only test of inconsistency. The omission from the reports of facts related at the trial, or a contrast in emphasis upon the same facts, even a different order of treatment, are also relevant to the cross-examining process.'" *Clancy v. United States*,

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supra, at 316, quoting *Jencks v. United States, supra*, at 667.

A judge—especially an appellate judge whose only contact with a case is through an examination of a cold record—simply does not have the familiarity with the intimate details of a case necessary to make an adequate determination of the full impeachment value of a witness' prior statement.

“An apparently innocent phrase, a chance remark, a reference to what appears to be a neutral person or event . . . may have special significance to one who knows the more intimate facts of an accused's life. And yet that information may be wholly colorless and devoid of meaning to one less well acquainted with all relevant circumstances.” *Alderman v. United States*, 394 U. S. 165, 182 (1969).

Thus, we have held in a closely related context that:

“[It is not] realistic to assume that the trial court's judgment as to the utility of the material for impeachment or other legitimate purposes, however conscientiously made, would exhaust the possibilities. In our adversary system, it is enough for judges to judge. The determination of what may be useful to the defense can properly and effectively be made only by an advocate.” *Dennis v. United States*, 384 U. S. 855, 874–875 (1966).

Of course, whenever an appellate court considers whether a Jencks Act error is harmless, it must of necessity move into the usually forbidden territory of speculation about the utility to the defense of the witness' prior statement. But in view of these considerations, we have held that the harmless-error doctrine should be employed with restraint in Jencks Act cases. *Rosenberg v. United States*, 360 U. S. 367 (1959). We warned in

Rosenberg that “[a]n appellate court should not confidently guess what defendant’s attorney might have found useful for impeachment purposes in withheld documents to which the defense is entitled.” *Id.*, at 371.² And we rejected the Government’s harmless-error argument in *Clancy v. United States*, *supra*, at 316, saying: “Since the production of at least some of the statements withheld was a right of the defense, it is not for us to speculate whether they could have been utilized effectively.”

These same considerations require that the petitioner have the opportunity to examine the agent’s report and to attempt to demonstrate to the court that the error was not harmless. Affording the petitioner such an opportunity will minimize to the extent possible the dangers of permitting judicial speculation as to the utility of a statement to the defense. “Adversary proceedings will not magically eliminate all error, but they will substantially reduce its incidence by guarding against the possibility that the . . . judge, through lack of time or unfamiliarity with the information contained in and suggested by the materials, will be unable to provide the scrutiny . . . demand[ed].” *Alderman v. United States*, *supra*, at 184.

Our judicial system is designed to function in the context of adversary proceedings. We are therefore reluctant to authorize *ex parte*, *in camera* determinations unless they are truly necessary to protect important

² In *Rosenberg*, we held that the failure to turn over the statement of a Government witness to the defense was harmless error only because “the very same information was possessed by defendant’s counsel as would have been available were error not committed.” 360 U. S., at 371. The Court of Appeals in this case acknowledged that *Rosenberg* did not dispose of this case because of the presence of other relevant information in the agent’s report which the petitioner did not already have available.

governmental interests. Indeed, in *Dennis* and *Alderman* the Court, in order to avoid *in camera* determinations akin to those approved by the Court of Appeals here, ordered disclosure of the testimony and conversations involved despite substantial countervailing interests—in *Dennis*, the interest in grand jury secrecy, and in *Alderman*, the interest in national security. In sharp contrast, there is no justification here for not disclosing the agent's statement to the defense, and thus no necessity for the *in camera* determination engaged in by the Court of Appeals. The court had already determined that the Jencks Act gave petitioner the right to examine the agent's report in the first place; at that point, no substantial governmental interest in refusing disclosure of the report remained.³ Yet disclosure of the report is essential to permit the defense to make an informed

³ In *Palermo v. United States*, 360 U. S. 343 (1959), we upheld use of an *in camera* procedure for determining whether a witness' statement is required to be produced under the Jencks Act because such a procedure was necessary to protect one of the Act's major purposes. As Mr. Justice Frankfurter put it:

"The Act's major concern is with limiting and regulating defense access to government papers, and it is designed to deny such access to those statements which do not satisfy the requirements of [subsection] (e), or do not relate to the subject matter of the witness' testimony. It would indeed defeat this design to hold that the defense may see statements in order to argue whether it should be allowed to see them." *Id.*, at 354.

Palermo's approval of an *in camera* procedure with respect to the issue involved in that case is surely not determinative here. The issue involved in *Palermo*, whether the statement met the Act's definition of a producible statement, is one that is much more within the traditional competence of the judiciary than is speculation about the utility of a statement to the defense. More important, the witness' statement in this case concededly does come within the definition of those that Congress has ordered to be produced to the defense, and thus there is no substantial governmental interest requiring protection through *in camera* proceedings.

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presentation of the uses to which he might have put the report. And without consideration of such a presentation by counsel, the Court of Appeals could not make a truly informed decision on the harmless-error question.

I would grant the petition for certiorari, vacate the judgment of the Court of Appeals, and remand this case for further proceedings consistent with this opinion.

No. 73-1093. CALIFORNIA *v.* PASCHALL. Ct. App. Cal., 2d App. Dist. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied.

No. 73-1227. LAVALLEE, CORRECTIONAL SUPERINTENDENT *v.* WILLIAMS. C. A. 2d Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 487 F. 2d 1006.

No. 73-1166. HUTTON ET AL. *v.* JOHNS HOPKINS UNIVERSITY; and

No. 73-1249. JOHNS HOPKINS UNIVERSITY *v.* HUTTON ET AL. C. A. 4th Cir. Certiorari denied. MR. JUSTICE STEWART took no part in the consideration or decision of these petitions. Reported below: 488 F. 2d 912.

No. 73-1246. VIRGINIA ELECTRIC & POWER Co. *v.* HADEN, TAX COMMISSIONER. Sup. Ct. App. W. Va. Certiorari denied. MR. JUSTICE POWELL took no part in the consideration or decision of this petition. Reported below: — W. Va. —, 200 S. E. 2d 848.

No. 73-6252. JIMENEZ *v.* UNITED STATES. C. A. 5th Cir. Petition for certiorari denied as untimely filed. 28 U. S. C. 2101 (c). Reported below: 487 F. 2d 212.

Rehearing Denied

No. 73-5688. HART *v.* COINER, WARDEN, 415 U. S. 938;

No. 73-5846. DULLES *v.* DULLES, 415 U. S. 926; and

No. 73-5983. WHATLEY *v.* ANDERSON, WARDEN, ET AL., 415 U. S. 929. Petitions for rehearing denied.

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No. 72-619. FARAH MANUFACTURING Co., INC. v. EL PASO JOINT BOARD, AMALGAMATED CLOTHING WORKERS OF AMERICA, ET AL. C. A. 5th Cir. Petition for writ of certiorari dismissed under Rule 60 of the Rules of this Court. Reported below: 465 F. 2d 1402.

No. 73-6357. ALLEN v. UNITED STATES. C. A. 4th Cir. Petition for writ of certiorari dismissed under Rule 60 of the Rules of this Court. Reported below: 487 F. 2d 1398.

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No. 73-909. SMALDONE ET AL. v. UNITED STATES. C. A. 10th Cir. Petition for writ of certiorari as to petitioner Michael J. Valley dismissed under Rule 60 of the Rules of this Court. Reported below: 485 F. 2d 1333.

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No. 73-1337. COTLER v. UNITED STATES. C. A. 2d Cir. Petition for writ of certiorari dismissed under Rule 60 of the Rules of this Court. Reported below: 490 F. 2d 1406.

No. 73-6082. OLVERA v. UNITED STATES. C. A. 5th Cir. Petition for writ of certiorari dismissed under Rule 60 of the Rules of this Court. Reported below: 488 F. 2d 607.

APRIL 12, 1974

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No. 73-1415. PHILLIPS PETROLEUM Co. v. STUDIENGESELLSCHAFT KOHLE M. B. H. C. A. 5th Cir. Petition for writ of certiorari dismissed under Rule 60 of the Rules of this Court.

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Vacated and Remanded on Appeal

No. 70-120. MAILLIARD ET AL. *v.* GONZALEZ ET AL. Appeal from D. C. N. D. Cal. Motion of appellees for leave to proceed *in forma pauperis* granted. Judgment vacated and case remanded for reconsideration of the injunction in light of *Steffel v. Thompson*, 415 U. S. 452 (1974), and *Zwickler v. Koota*, 389 U. S. 241 (1967). MR. JUSTICE DOUGLAS would affirm the judgment.

No. 71-1511. NORVELL, ATTORNEY GENERAL OF NEW MEXICO *v.* APODACA. Appeal from Sup. Ct. N. M. Judgment vacated and case remanded for further consideration in light of *Lubin v. Panish*, 415 U. S. 709 (1974). Reported below: 83 N. M. 663, 495 P. 2d 1379.

No. 72-193. FOWLER ET AL. *v.* CULBERTSON. Appeal from D. C. S. C. Judgment vacated and case remanded for further consideration in light of *Lubin v. Panish*, 415 U. S. 709 (1974).

No. 72-455. BUSH *v.* SEBESTA ET AL.; and

No. 72-5187. FAIR *v.* TAYLOR ET AL. Appeals from D. C. M. D. Fla. Motion of appellant in No. 72-5187 for leave to proceed *in forma pauperis* granted. Judgment vacated and cases remanded for further consideration in light of *Lubin v. Panish*, 415 U. S. 709 (1974); *Storer v. Brown*, 415 U. S. 724 (1974); and *American Party of Texas v. White*, 415 U. S. 767 (1974).

No. 72-1734. SAMKOWSKI, ACTING DIRECTOR, MARION COUNTY DEPARTMENT OF PUBLIC WELFARE *v.* CARTER ET AL.; and

No. 73-37. STANTON, DIRECTOR, INDIANA DEPARTMENT OF PUBLIC WELFARE, ET AL. *v.* CARTER ET AL. Appeals from D. C. S. D. Ind. Motion of appellees for leave to proceed *in forma pauperis* granted. Judgment vacated and cases remanded for further consideration in

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light of *Edelman v. Jordan*, 415 U. S. 651 (1974). MR. JUSTICE DOUGLAS would affirm the judgment for the reasons set forth in his dissent in *Edelman v. Jordan*, 415 U. S. 651, 678 (1974). MR. JUSTICE BRENNAN would affirm the judgment.

No. 73-544. LUCAS ET AL. *v.* ARKANSAS. Appeal from Sup. Ct. Ark. Judgment vacated and case remanded for further consideration in light of *Lewis v. City of New Orleans*, 415 U. S. 130 (1974). [For dissenting opinion of MR. JUSTICE DOUGLAS, see *infra*, p. 924.] Reported below: 254 Ark. 584, 494 S. W. 2d 705.

MR. JUSTICE BLACKMUN, with whom THE CHIEF JUSTICE and MR. JUSTICE REHNQUIST join, dissenting.

A North Little Rock policeman on routine patrol drove his car at midnight through a parking lot adjacent to a motel and restaurant. He heard loud language and thought a fight was in progress. He rolled the window down and heard one of the appellants say, "Well, there goes the big, bad mother fucking cops." He ignored this and slowly drove on. The language grew louder. He pulled over behind a large parking sign. An appellant said, "Look at the chicken shit mother fucker hide over there behind that sign." He drove back. An appellant then said, "Now the sorry son-of-a-bitch is going to come back over here." Appellants were arrested and convicted of breaching the peace, in violation of Arkansas law.¹ The Supreme Court of Arkansas affirmed the convictions. 254 Ark. 584, 494 S. W. 2d 705 (1973).

¹ Ark. Stat. Ann. § 41-1412 (1964) provides:

"If any person shall make use of any profane, violent, vulgar, abusive or insulting language toward or about any other person in his presence or hearing, which language in its common acceptation is calculated to arouse to anger the person about or to whom it is spoken or addressed, or to cause a breach of the peace or an assault, [he] shall be deemed guilty of a breach of the peace"

The Court today vacates the state court judgment and remands for further consideration in light of *Lewis v. City of New Orleans*, 415 U. S. 130 (1974). I dissent.

The Arkansas Court has already clearly construed § 41-1412 to apply only to "fighting words," as defined in *Chaplinsky v. New Hampshire*, 315 U. S. 568, 572 (1942), in *Gooding v. Wilson*, 405 U. S. 518, 523-525 (1972), and in *Lewis, supra*, at 132. That court, in *Holmes v. State*, 135 Ark. 187, 204 S. W. 846 (1918), held that the statute was narrow in its scope. "It is not sufficient that the language used gives offense to the person to whom or about whom it is addressed, but it must be that which in its ordinary acceptation is calculated to give offense and to arouse to anger." 135 Ark., at 189, 204 S. W., at 847. In its opinion in this case, the Arkansas Court reaffirmed its prior interpretation of the statute:

"As we construe § 41-1412 it is narrowed to 'fighting words' addressed to, toward, or about another person in his presence or hearing, which language in its common acceptation is calculated to arouse to anger the person about or to whom it is spoken or addressed, or to cause a breach of the peace or an assault. We can conceive of no stronger 'fighting words' than those employed by the appellants in this case, and there is substantial evidence they were calculated to arouse to anger the officer to whom they were spoken or addressed. As a matter of fact the appellant, Fred Lucas, admits that if the mildest of the epithets employed by him, were directed to or about him, it would arouse him to anger." 254 Ark., at 589-590, 494 S. W. 2d, at 708.

I am at a loss to understand what this Court further requires in a narrowing interpretation under its version of the *Chaplinsky* standard espoused in *Gooding*.² Ap-

² The standard of responsibility is not left open as the Court said

parently, not only must every statute regulating speech in the 50 States parrot the wording the Court desires, but a state court must play the role of a ventriloquist's dummy mouthing ceremonial phrases in order to obtain the seal of this Court's approval. There can be no question whatsoever that the Arkansas Court, in this case and in its earlier opinion in *Holmes*, narrowed the statute within the confines of the Court's *Gooding* doctrine,³ and there is therefore nothing more for that court

it was in *Gooding* and in *Ashton v. Kentucky*, 384 U. S. 195 (1966). The statute punishes language which in its ordinary acceptance is calculated to cause a breach of the peace. The statute on its face does not permit or require an inquiry into the respective boiling points of the particular individuals or groups involved in each case, but restricts the factfinder to language that would, in its common or ordinary acceptance, be calculated to cause a breach of the peace.

In *Chaplinsky*, the Court accepted a limiting construction which held that the statute was "not to be defined in terms of what a particular addressee thinks. . . . The test is what men of common intelligence would understand would be words likely to cause an average addressee to fight." 315 U. S., at 573. In its *Holmes* case, the Arkansas Supreme Court pronounced exactly the same standard: "It is not sufficient that the language used gives offense to the person to whom or about whom it is addressed, but it must be that which in its ordinary acceptance is calculated to give offense and to arouse to anger." 135 Ark., at 189, 204 S. W., at 847.

³ My Brother DOUGLAS asserts that the principle enunciated in *Gooding* and *Lewis* is not "new." It hardly needs stating, however, that the speech at issue in *Cantwell v. Connecticut*, 310 U. S. 296 (1940), and in *Terminiello v. Chicago*, 337 U. S. 1 (1949), and the manner and place of delivery, are not at all similar to the speech at issue in *Chaplinsky*, *Gooding*, and *Lewis*.

Cantwell was a case where the State sought to punish Jehovah's Witnesses, who claimed to be ordained ministers, for a message which attacked the Catholic religion. This the State could not do. But we expressly noted that the case involved "no assault or threatening of bodily harm, no truculent bearing, no intentional discourtesy, no personal abuse." 310 U. S., at 310. In *Terminiello* the petitioner was arrested for an address made under the auspices of the Christian Veterans of America. Our concern there was the protection of

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to do. I disagree with this roughshod treatment of the opinions of the Supreme Court of the State of Arkansas. I would affirm, and not vacate, the court's judgment.

No. 73-893. COMMUNIST PARTY ET AL. *v.* AUSTIN, SECRETARY OF STATE OF MICHIGAN, ET AL. Appeal from D. C. E. D. Mich. Judgment vacated and case remanded for further consideration in light of *American Party of Texas v. White*, 415 U. S. 767 (1974). Reported below: 362 F. Supp. 27.

Affirmed on Appeal

No. 73-1184. SCHWEGMANN BROTHERS GIANT SUPER MARKETS *v.* LOUISIANA MILK COMMISSION; and

No. 73-1259. LOUISIANA MILK COMMISSION *v.* SCHWEGMANN BROTHERS GIANT SUPER MARKETS. Affirmed on appeal from D. C. M. D. La. Reported below: 365 F. Supp. 1144.

No. 73-5954. DOE ET AL. *v.* FLOWERS, COMMISSIONER, DEPARTMENT OF WELFARE. Appeal from D. C. N. D. W. Va. Motion of appellants for leave to proceed *in forma pauperis* granted. Judgment affirmed. MR. JUSTICE DOUGLAS would reverse the judgment for the reasons set forth in his dissent in *Edelman v. Jordan*, 415

ideas, manifestly a part of an informed and free public discourse, and essential to the preservation of responsive government and peaceful, orderly change. We expressly did *not* reach the question "whether the content of petitioner's speech was composed of derisive, fighting words which carried it outside the scope of the constitutional guarantees." 337 U. S., at 3.

Before we rush headlong into scrapping legislative enactments that on their face, or as applied, appear to interfere with some form of speech, we should pause long enough to inquire into "the nature of the speech in question, the possible effect the statute or ordinance has upon such speech, the importance of the speech in relation to the exposition of ideas, [and] the purported or asserted community interest in preventing that speech." *Lewis v. City of New Orleans*, 415 U. S. 130, 136-137 (1974) (dissenting opinion).

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U. S. 651, 678 (1974). MR. JUSTICE BRENNAN dissents and would reverse the judgment for the reasons set forth in his dissent in *Edelman v. Jordan*, 415 U. S. 651, 687 (1974).

Appeals Dismissed

No. 73-955. *CEJA v. STATE POLICE MERIT BOARD OF ILLINOIS ET AL.* Appeal from App. Ct. Ill., 1st 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: 12 Ill. App. 3d 52, 298 N. E. 2d 378.

No. 73-1292. *ZANES-EWALT WAREHOUSE, INC. v. CALVERT, COMPTROLLER OF PUBLIC ACCOUNTS, ET AL.* Appeal from Sup. Ct. Tex. dismissed for want of substantial federal question. Reported below: 502 S. W. 2d 689.

No. 73-1302. *COMMUNITY CONSOLIDATED SCHOOL DISTRICT No. 210, LASALLE COUNTY, ET AL. v. MINI, SUPERINTENDENT OF SCHOOLS OF LASALLE COUNTY, ET AL.* Appeal from Sup. Ct. Ill. dismissed for want of substantial federal question. Reported below: 55 Ill. 2d 382, 304 N. E. 2d 75.

No. 73-1297. *EVERSON EVANGELICAL CHURCH OF NORTH AMERICA ET AL. v. WESTERN PENNSYLVANIA CONFERENCE OF UNITED METHODIST CHURCH.* Appeal from Sup. Ct. Pa. dismissed for want of substantial federal question. MR. JUSTICE BLACKMUN took no part in the consideration or decision of this case. Reported below: 454 Pa. 434, 312 A. 2d 35.

Certiorari Granted—Vacated and Remanded

No. 72-1379. *KELLY v. OHIO.* Ct. App. Ohio, Portage County. Certiorari granted, judgment vacated, and case remanded for further consideration in light of

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Lewis v. City of New Orleans, 415 U. S. 130 (1974). [For dissenting opinion of MR. JUSTICE DOUGLAS, see *infra*, this page.]

No. 72-1738. *ROSEN v. CALIFORNIA*. App. Dept., Super. Ct. Cal., County of Los Angeles. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Lewis v. City of New Orleans*, 415 U. S. 130 (1974). [For dissenting opinion of MR. JUSTICE DOUGLAS, see *infra*, this page.]

No. 73-537. *KARLAN v. CITY OF CINCINNATI*. Sup. Ct. Ohio. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Lewis v. City of New Orleans*, 415 U. S. 130 (1974). Reported below: 35 Ohio St. 2d 34, 298 N. E. 2d 573.

MR. JUSTICE DOUGLAS, dissenting.*

These cases all involve convictions under ordinances and statutes which punish the mere utterance of words variously described as "abusive," "vulgar," "insulting," "profane," "indecent," "boisterous," and the like.¹ The provisions are challenged as being unconstitutionally vague and overbroad. The "void for vagueness" doctrine is, of course, a due process concept implementing principles of fair warning and nondiscriminatory enforcement. Vague laws may trap those who desire to be law abiding by not providing fair notice of what is prohibited. *Papachristou v. City of Jacksonville*, 405 U. S. 156, 162 (1972); *United States v. Harriss*, 347 U. S. 612, 617 (1954). They also provide opportunity for arbitrary and discriminatory enforcement since those

*This opinion applies also to No. 73-544, *Lucas v. Arkansas*, *supra*, p. 919; No. 72-1379, *Kelly v. Ohio*, *supra*, p. 923; and No. 72-1738, *Rosen v. California*, *supra*, this page.

¹ The statutes and respective authoritative constructions are set forth in the Appendix to this opinion, *infra*, p. 929.

who apply the laws have no clear and explicit standards to guide them. *Coates v. City of Cincinnati*, 402 U. S. 611, 614 (1971); *Shuttlesworth v. Birmingham*, 382 U. S. 87, 90-91 (1965). Further, when a vague statute " 'abut[s] upon sensitive areas of 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.'" *Grayned v. City of Rockford*, 408 U. S. 104, 109 (1972), quoting *Baggett v. Bullitt*, 377 U. S. 360, 372 (1964), and *Speiser v. Randall*, 357 U. S. 513, 526 (1958).

Overbreadth, on the other hand, "offends the constitutional principle that 'a governmental purpose to control or prevent activities constitutionally subject to state regulation may not be achieved by means which sweep unnecessarily broadly and thereby invade the area of protected freedoms.'" *Zwickler v. Koota*, 389 U. S. 241, 250 (1967), quoting *NAACP v. Alabama*, 377 U. S. 288, 307 (1964). A vague statute may be overbroad if its uncertain boundaries leave open the possibility of punishment for protected conduct and thus lead citizens to avoid such protected activity in order to steer clear of the uncertain proscriptions. *Grayned v. City of Rockford*, *supra*, at 109; *Dombrowski v. Pfister*, 380 U. S. 479, 486 (1965). A statute is also overbroad, however, if, even though it is clear and precise, it prohibits constitutionally protected conduct. *Aptheker v. Secretary of State*, 378 U. S. 500, 508-509 (1964); *Shelton v. Tucker*, 364 U. S. 479, 488 (1960).

The statutes before us punish the mere utterance of words. They thus attempt to regulate the delicate area of speech and they are all overbroad since "as authoritatively construed [they are] susceptible of application to speech, although vulgar or offensive, that is protected by

the First and Fourteenth Amendments.” *Gooding v. Wilson*, 405 U. S. 518, 520 (1972). We have consistently held that “[i]t matters not that the words [the speaker] used might have been constitutionally prohibited under a narrowly and precisely drawn statute.” *Ibid.* In the area of free speech, the value of protected expression is deemed to justify “attacks on overly broad statutes with no requirement that the person making the attack demonstrate that his own conduct could not be regulated by a statute drawn with the requisite narrow specificity.” *Dombrowski v. Pfister*, *supra*, at 486. The specific conduct involved is thus not relevant. “It is the ordinance on its face that sets the standard of conduct and warns against transgression. The details of the offense could no more serve to validate this ordinance than could the details of an offense charged under an ordinance suspending unconditionally the right of assembly and free speech.” *Coates v. City of Cincinnati*, *supra*, at 616.

The landmark case in the area is *Chaplinsky v. New Hampshire*, 315 U. S. 568 (1942), which involved the conviction of a Jehovah’s Witness for violation of a statute prohibiting “offensive or derisive” speech. There the State Supreme Court had narrowed the statute by construing it as applicable only to what were referred to as “fighting words”²—words which “by their very utterance inflict injury or tend to incite an immediate breach of the peace.” *Id.*, at 572. We held that the statute, as thus “narrowly drawn and limited,”³ *id.*, at 573, was constitutional.

We explained the rationale of *Chaplinsky’s* fighting-words limitation in *Terminiello v. Chicago*, 337 U. S. 1 (1949), which involved a conviction under a Chicago disorderly conduct ordinance. The case grew out of a

² See, e. g., *State v. Brown*, 68 N. H. 200, 38 A. 731 (1895).

³ See *Cantwell v. Connecticut*, 310 U. S. 296, 311 (1940).

disturbance following a public address by Terminiello under the auspices of the Christian Veterans of America. In reversing the conviction, we explained:

“The right to speak freely and to promote diversity of ideas and programs is therefore one of the chief distinctions that sets us apart from totalitarian regimes.

“Accordingly a function of free speech under our system of government is to invite dispute Speech is often provocative and challenging. . . . That is why freedom of speech, though not absolute, *Chaplinsky v. New Hampshire* . . . is nevertheless protected against censorship or punishment, unless shown likely to produce a clear and present danger of a serious substantive evil that rises far above public inconvenience, annoyance, or unrest.”
Id., at 4.

The constitutional necessity of limiting this type of statute to words which “by their very utterance inflict injury or tend to incite an immediate breach of the peace” was expressly reaffirmed in *Gooding v. Wilson, supra*, at 522, where we held facially unconstitutional a Georgia statute which proscribed “opprobrious” or “abusive” language and which had been held by state courts to apply to utterances which were “not ‘fighting’ words as *Chaplinsky* defines them.” *Id.*, at 525.

This principle was again enunciated in *Lewis v. City of New Orleans*, 415 U. S. 130 (1974), and four cases are today remanded for reconsideration in light of *Lewis*. If the principle announced in *Lewis* were new, I would agree with this disposition. Only state courts can construe these statutes since “we lack jurisdiction authoritatively to construe state legislation.” *United States v. Thirty-seven Photographs*, 402 U. S. 363, 369 (1971). Before we strike down a statute as facially unconstitutional,

the state courts should have the opportunity to construe the statute, if possible, as within our constitutional pronouncements. Under our constitutional scheme, federal courts were not designed as the only protectors of federal rights. Article VI, cl. 2, expressly directs that the "Constitution, and the Laws of the United States . . . shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding." Thus "[s]tate courts are bound equally with the federal courts" to protect federal rights. *Public Service Comm'n v. Wycoff Co.*, 344 U. S. 237, 247 (1952). The decisions of this Court are to guide state courts in the exercise of this duty.

But experience has shown that such guidance is often unheeded. The duty of the States in this area has long been clear. After *Chaplinsky*, federal intervention in *Terminiello* should have been unnecessary. After *Chaplinsky* and *Terminiello*, *Gooding* should have been unnecessary. Yet after them all, the State Supreme Court in *Lewis*, on reconsideration in light of *Gooding*, again failed to narrow the ordinance and affirmed a conviction which we found necessary to reverse. The principle in *Lewis* was not new; it was not new in *Gooding*, or in *Terminiello*, or even in *Chaplinsky*.⁴ State courts, however, have consistently shown either inability or unwillingness to apply its teaching. I thus see nothing to be gained by state court reconsideration in light of *Lewis*. I would reverse these judgments out of hand.

⁴ See, e. g., *Cantwell v. Connecticut*, *supra*. Nor were *Gooding* and *Lewis* the only recent instances of its reaffirmance. See, e. g., *Cohen v. California*, 403 U. S. 15, 20 (1971); *Bachellar v. Maryland*, 397 U. S. 564, 567 (1970); *Street v. New York*, 394 U. S. 576, 592 (1969).

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APPENDIX TO OPINION OF DOUGLAS, J.,
DISSENTING

Karlan v. City of Cincinnati, No. 73-537, involves a violation of Cincinnati Municipal Code § 901-D4, which provides:

“No person shall wilfully conduct himself or herself in a noisy, boisterous, rude, insulting or other disorderly manner, with the intent to abuse or annoy any person or the citizens of the city or any portion thereof”

The ordinance was held by the court below, 35 Ohio St. 2d 34, 298 N. E. 2d 573 (1973), to withstand facial constitutional attack on the authority of *Cincinnati v. Hoffman*, 31 Ohio St. 2d 163, 168, 285 N. E. 2d 714, 718-719 (1972), which, rather than limit the ordinance in *Chaplinsky* terms, gave it blanket approval: “As reasonably construed, the ordinance neither prohibits the lawful exercise of any constitutional right nor escapes the understanding of any person of ‘common intelligence’ who desires to obey it.” The ordinance thus remains unconstitutionally overbroad since it prohibits words which are merely “rude” and has not been limited to words which “by their very utterance inflict injury or tend to incite an immediate breach of the peace.”

Lucas v. Arkansas, No. 73-544, involves a violation of Ark. Stat. Ann. § 41-1412 (1964), which provides:

“If any person shall make use of any profane, violent, vulgar, abusive or insulting language toward or about any other person in his presence or hearing, which language in its common acceptation is calculated to arouse to anger the person about or to whom it is spoken or addressed, or to

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cause a breach of the peace or assault, [he] shall be deemed guilty of a breach of the peace”

In purporting to limit the statute, the court below held:

“As we construe §41-1412 it is narrowed to ‘fighting words’ addressed to, toward, or about another person in his presence or hearing, *which language in its common acceptation is calculated to arouse to anger the person about or to whom it is spoken or addressed or to cause a breach of the peace or an assault.*” 254 Ark. 584, 589, 494 S. W. 2d 705, 708 (1973). (Emphasis added.)

This construction leaves the statute overbroad since it permits punishment for words which, though not likely to cause a breach of the peace, are “calculated” to do so. In striking down a similar construction in *Gooding v. Wilson*, we said: “[T]o make an offense of conduct which is “calculated to create disturbances of the peace” leaves wide open the standard of responsibility.’” 405 U. S. 518, 527, quoting *Ashton v. Kentucky*, 384 U. S. 195, 200 (1966). The construction here does not even require that the words be calculated to cause a breach of the peace; it is enough that they are calculated to arouse anger in the addressee.

Kelly v. Ohio, No. 72-1379, involves a violation of Codified Ordinances of the City of Kent § 509.02 (A) which provides:

“[N]o person shall willfully conduct himself in a noisy, boisterous or other disorderly manner by either words or acts which disturb the good order and quiet of the Municipality.”

While finding that petitioner’s language constituted “fighting words,” the court below did not construe the ordinance as limited to such words. The court below

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merely held that petitioner's words could constitutionally be proscribed:

"Defendant, maintaining freedom of speech is constitutionally protected, declares the ordinance is unconstitutional because it punishes both protected and unprotected conduct (i. e., by words or acts). We do not find the ordinance overbroad as to the words used herein, nor constitutionally protected premised on the evidence before the Court, hence neither the words nor acts herein are found to be constitutionally protected." Ohio Ct. App., No. 466 (July 31, 1972).

But, "[i]t matters not that the words [petitioner] used might have been constitutionally prohibited under a narrowly and precisely drawn statute," for petitioner may attack an overly broad statute without demonstrating that his own conduct could not be regulated by a more precisely drawn act. *Gooding v. Wilson*, 405 U. S., at 520.

Rosen v. California, No. 72-1738, involves Calif. Penal Code § 415, which provides:

"Every person who maliciously and willfully disturbs the peace or quiet of any neighborhood or person, by loud or unusual noise, or by tumultuous or offensive conduct . . . or use[s] any vulgar, profane, or indecent language within the presence or hearing of women or children, in a loud and boisterous manner, is guilty of a misdemeanor . . ."

There has been no limiting construction of the "vulgar" language component of the provision. The jury here was instructed that: "Vulgar means coarse, ill-bred, ill-mannered, rude Profane means serving to debase or defile that which is holy or worthy of reverence"

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Indecent means . . . hardly suitable." See L. A. Super. Ct. App. Dept., No. CR A 11557 (Jan. 2, 1973). It hardly needs stating that States are not free to penalize speech merely because it is "coarse," "ill-bred," or "hardly suitable."

No. 72-1671. McCONNELL, DISTRICT ATTORNEY OF WAUKESHA COUNTY, WISCONSIN *v.* UNITARIAN CHURCH WEST ET AL. C. A. 7th Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Steffel v. Thompson*, 415 U. S. 452 (1974). MR. JUSTICE DOUGLAS dissents from the remand. Reported below: 474 F. 2d 1351.

Certiorari Granted—Reversed and Remanded. (See No. 73-1131, *ante*, p. 100.)

Miscellaneous Orders

No. 31, Orig. UTAH *v.* UNITED STATES. Report of Special Master received and ordered filed. Exceptions, if any, with supporting briefs, may be filed by the parties on or before May 15, 1974. Reply briefs, if any, may be filed on or before May 29, 1974. [For earlier orders herein, see, *e. g.*, 406 U. S. 940.]

No. 73-362. MORTON, SECRETARY OF THE INTERIOR, ET AL. *v.* MANCARI ET AL. [Probable jurisdiction noted, 414 U. S. 1142]; and

No. 73-364. AMERIND *v.* MANCARI ET AL. [Probable jurisdiction noted, 415 U. S. 946.] Appeals from D. C. N. M. Motion of appellants for additional time for oral argument and for divided argument granted and 15 additional minutes allotted for that purpose. Appellees also allotted 15 additional minutes for oral argument. Motion of Mexican American Legal Defense & Educational Fund for leave to file a brief as *amicus curiae* granted.

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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. [Certiorari granted, 414 U. S. 1142.] Motion of petitioners for divided argument granted. MR. JUSTICE POWELL took no part in the consideration or decision of this motion.

No. 73-477. GERSTEIN *v.* PUGH ET AL. C. A. 5th Cir. [Certiorari granted, 414 U. S. 1062.] Case restored to calendar for reargument.

No. 73-596. PEARSON ET AL. *v.* ECOLOGICAL SCIENCE CORP. ET AL. C. A. 5th Cir. Application for stay and injunction presented to MR. JUSTICE DOUGLAS, and by him referred to the Court, denied. Motion of Thomas G. Jenny for leave to intervene denied.

No. 73-679. WOLFF, WARDEN, ET AL. *v.* McDONNELL. C. A. 8th Cir. [Certiorari granted, 414 U. S. 1156.] Motion of respondent to vacate order allowing the Solicitor General to participate in oral argument as *amicus curiae* denied. Motions of Guadalupe Guajardo, Jr., for leave to proceed *in forma pauperis* and for leave to file a brief as *amicus curiae* denied.

No. 73-831. WARDEN, LEWISBURG PENITENTIARY *v.* MARRERO. C. A. 3d Cir. [Certiorari granted, 414 U. S. 1128.] Motion of Harry C. Batchelder, Jr., to permit John J. Witmeyer III to present oral argument *pro hac vice* on behalf of respondent granted. Consideration of respondent's suggestion of mootness deferred to hearing of case on the merits.

No. 73-841. HOLDER, U. S. DISTRICT JUDGE *v.* BANKS. C. A. 7th Cir. [Certiorari granted, 414 U. S. 1156.] Motion of petitioner to dispense with printing appendix

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and to proceed on original record granted. Motion of American Civil Liberties Union et al. for leave to file a brief as *amici curiae* granted. Motion of petitioner for divided argument denied. MR. JUSTICE POWELL took no part in the consideration or decision of these motions.

No. 73-846. WINGO, WARDEN *v.* WEDDING. C. A. 6th Cir. [Certiorari granted, 414 U. S. 1157.] Motion of the Attorney General of California for leave to participate in oral argument as *amicus curiae* denied.

No. 73-5661. ADAMS ET AL. *v.* SECRETARY OF THE NAVY ET AL. C. A. 9th Cir. [Certiorari granted, 414 U. S. 1128.] Motion for appointment of counsel granted. It is ordered that William A. Dougherty, Esquire, of Tustin, California, a member of the Bar of this Court, be, and he is hereby, appointed to serve as counsel for petitioners in this case.

No. 73-5845. JACKSON *v.* METROPOLITAN EDISON Co. C. A. 3d Cir. [Certiorari granted, 415 U. S. 912.] Motion of Public Service Commission of New York for leave to file a brief as *amicus curiae* granted.

No. 73-5740. BARKER *v.* UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF TEXAS;

No. 73-6195. SAYLES *v.* GESELL, U. S. DISTRICT JUDGE; and

No. 73-6290. COZZETTI *v.* FOLEY, U. S. DISTRICT JUDGE. Motions for leave to file petitions for writs of mandamus denied.

Certiorari Granted

No. 73-689. MANESS *v.* MEYERS, JUDGE. 169th Jud. Dist. Ct. Tex., Bell County. Certiorari granted.

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No. 73-1245. UNITED STATES ET AL. *v.* BISCEGLIA. C. A. 6th Cir. Certiorari granted. Reported below: 486 F. 2d 706.

No. 73-1270. KELLEY *v.* SOUTHERN PACIFIC Co. C. A. 9th Cir. Certiorari granted. Reported below: 486 F. 2d 1084.

No. 73-1285. WOOD ET AL. *v.* STRICKLAND ET AL. C. A. 8th Cir. Certiorari granted. Reported below: 485 F. 2d 186.

No. 73-1123. UNITED STATES *v.* FEOLA. C. A. 2d Cir. Motion of respondent for leave to proceed *in forma pauperis* and certiorari granted. Reported below: 486 F. 2d 1339.

Certiorari Denied. (See also No. 73-955, *supra.*)

No. 71-1512. BROWN ET AL. *v.* APODACA ET AL. Sup. Ct. N. M. Certiorari denied.

No. 73-704. TARIN *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 73-716. GARNER *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 73-829. TOLBERT *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 73-833. DOYLE *v.* COMMISSIONER OF PATENTS. C. C. P. A. (Pat.) Certiorari denied. Reported below: 482 F. 2d 1385.

No. 73-850. RON *v.* UNITED STATES;

No. 73-5825. GARNER *v.* UNITED STATES; and

No. 73-5891. LEE *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 485 F. 2d 677.

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No. 73-886. *BROWDALE INTERNATIONAL, LTD. v. BOARD OF ADJUSTMENT FOR DANE COUNTY ET AL.* Sup. Ct. Wis. Certiorari denied. Reported below: 60 Wis. 2d 182, 208 N. W. 2d 121.

No. 73-909. *SMALDONE ET AL. v. UNITED STATES*; No. 73-5735. *GARCEO v. UNITED STATES*; and No. 73-5863. *VALLEY v. UNITED STATES.* C. A. 10th Cir. Certiorari denied. Reported below: 485 F. 2d 1333.

No. 73-913. *HANLY ET AL. v. SAXBE, ATTORNEY GENERAL, ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 484 F. 2d 448.

No. 73-941. *HOLTZMAN ET AL. v. SCHLESINGER, SECRETARY OF DEFENSE, ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 484 F. 2d 1307.

No. 73-943. *CITIZENS ENVIRONMENTAL COUNCIL ET AL. v. BRINEGAR, SECRETARY OF TRANSPORTATION, ET AL.* C. A. 10th Cir. Certiorari denied. Reported below: 484 F. 2d 870.

No. 73-944. *PELZER REALTY Co., INC., ET AL. v. UNITED STATES.* C. A. 5th Cir. Certiorari denied. Reported below: 484 F. 2d 438.

No. 73-975. *MOTOROLA, INC. v. McLAIN, REGIONAL DIRECTOR, EQUAL EMPLOYMENT OPPORTUNITY COMMISSION.* C. A. 7th Cir. Certiorari denied. Reported below: 484 F. 2d 1339.

No. 73-984. *WICHITA INDIAN TRIBE OF OKLAHOMA ET AL. v. UNITED STATES ET AL.* Ct. Cl. Certiorari denied. Reported below: 202 Ct. Cl. 29, 479 F. 2d 1369.

No. 73-994. *MINTON v. UNITED STATES.* C. A. 4th Cir. Certiorari denied.

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No. 73-1002. *DRESSER OFFSHORE SERVICES, INC., ET AL. v. RICHARD*. C. A. 5th Cir. Certiorari denied. Reported below: 481 F. 2d 1402.

No. 73-1011. *DATRONICS ENGINEERS, INC. v. SECURITIES AND EXCHANGE COMMISSION*. C. A. 4th Cir. Certiorari denied. Reported below: 490 F. 2d 250.

No. 73-1022. *CARTER v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 486 F. 2d 1027.

No. 73-1031. *ROBINSON v. CALIFORNIA*. Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 73-1032. *SLUTSKY ET AL., DBA "THE NEVELE" v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 487 F. 2d 832.

No. 73-1044. *PETRUCCI v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 486 F. 2d 329.

No. 73-1049. *FERRARO v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 491 F. 2d 749.

No. 73-1050. *BIGHEART v. PAPPAN ET AL.* C. A. 10th Cir. Certiorari denied. Reported below: 482 F. 2d 1066.

No. 73-1061. *W. T. GRANT Co. v. COMMISSIONER OF INTERNAL REVENUE*. C. A. 2d Cir. Certiorari denied. Reported below: 483 F. 2d 1115.

No. 73-1074. *ROGERS MANUFACTURING Co. v. NATIONAL LABOR RELATIONS BOARD*. C. A. 6th Cir. Certiorari denied. Reported below: 486 F. 2d 644.

No. 73-1079. *BUILDING & CONSTRUCTION TRADES COUNCIL OF PHILADELPHIA AND VICINITY v. NATIONAL LABOR RELATIONS BOARD ET AL.* C. A. 3d Cir. Certiorari denied.

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No. 73-1092. CALDWELL, ADMINISTRATRIX, ET AL. *v.* UNITED STATES. Ct. Cl. Certiorari denied. Reported below: 202 Ct. Cl. 423, 481 F. 2d 898.

No. 73-1117. DIAPULSE CORPORATION OF AMERICA *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 485 F. 2d 677.

No. 73-1118. FEHRS FINANCE CO. *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 8th Cir. Certiorari denied. Reported below: 487 F. 2d 184.

No. 73-1143. BOOKBINDERS LOCAL NO. 60, INTERNATIONAL BROTHERHOOD OF BOOKBINDERS, AFL-CIO *v.* NATIONAL LABOR RELATIONS BOARD ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 486 F. 2d 837.

No. 73-1152. FOX RIVER PATTERN, INC. *v.* NATIONAL LABOR RELATIONS BOARD. C. A. 7th Cir. Certiorari denied. Reported below: 483 F. 2d 1406.

No. 73-1155. HICKS *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 486 F. 2d 325.

No. 73-1185. DUFFY ET UX. *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 487 F. 2d 282.

No. 73-1190. HYDROMETALS, INC. *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 5th Cir. Certiorari denied. Reported below: 485 F. 2d 1236.

No. 73-1200. PENNSYLVANIA ET AL. *v.* UNITED STATES ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 486 F. 2d 1124.

No. 73-1232. CLEARY *v.* CHALK ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 159 U. S. App. D. C. 415, 488 F. 2d 1315.

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No. 73-1242. *BATES v. ALABAMA*. Ct. Crim. App. Ala. Certiorari denied. Reported below: 51 Ala. App. 338, 285 So. 2d 501.

No. 73-1253. *MURPHY ET AL., DBA UTAH OIL LAND Co. v. LANDSBURG, TRUSTEE*. C. A. 3d Cir. Certiorari denied. Reported below: 490 F. 2d 319.

No. 73-1262. *JENKS v. JUDD*. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 73-1263. *PEARSON BROS. Co. v. NATIONAL LABOR RELATIONS BOARD*. C. A. 7th Cir. Certiorari denied. Reported below: 486 F. 2d 1406.

No. 73-1264. *ALLEN, AKA MINDER, ET VIR v. 1901 WYOMING AVENUE COOPERATIVE ASSN.* Ct. App. D. C. Certiorari denied.

No. 73-1272. *G. I. DISTRIBUTORS, INC., ET AL. v. MURPHY ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 490 F. 2d 1167.

No. 73-1276. *TROXEL MANUFACTURING Co. v. SCHWINN BICYCLE Co.* C. A. 6th Cir. Certiorari denied. Reported below: 489 F. 2d 968.

No. 73-1282. *FOUNTAIN ET AL. v. FOUNTAIN ET AL.* Sup. Ct. Va. Certiorari denied. Reported below: 214 Va. 347 and 351, 200 S. E. 2d 513 and 515.

No. 73-1296. *SHREVES v. SHREVES*. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 73-1299. *PASCOE STEEL CORP. v. WIEMAN-SLECHTA Co.* C. A. 8th Cir. Certiorari denied. Reported below: 489 F. 2d 760.

No. 73-1300. *KOZEMCHAK ET AL. v. UKRAINIAN ORTHODOX CHURCH OF AMERICA ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 487 F. 2d 1330.

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No. 73-1301. *BORDEN ET AL. v. DIRECTOR, DEPARTMENT OF ASSESSMENTS AND TAXATION OF MARYLAND, ET AL.* Ct. App. Md. Certiorari denied. Reported below: See 19 Md. App. 112, 309 A. 2d 773.

No. 73-1306. *STARNES v. NORFOLK & WESTERN RAILWAY Co.* C. A. 4th Cir. Certiorari denied. Reported below: 487 F. 2d 1398.

No. 73-1312. *BARR ET AL. v. OHIO.* Ct. App. Ohio, Summit County. Certiorari denied. Reported below: 37 Ohio App. 2d 51, 306 N. E. 2d 425.

No. 73-1331. *SIMMONS v. BUDDS ET AL.* Sup. Ct. Conn. Certiorari denied.

No. 73-1384. *ARDAC, INC. ET AL. v. MICRO-MAGNETIC INDUSTRIES, INC.* C. A. 9th Cir. Certiorari denied. Reported below: 488 F. 2d 770.

No. 73-5660. *GARCIA v. UNITED STATES.* C. A. 2d Cir. Certiorari denied.

No. 73-5699. *WATSON v. UNITED STATES.* C. A. 5th Cir. Certiorari denied. Reported below: 484 F. 2d 34.

No. 73-5710. *ENRIQUEZ v. UNITED STATES;*

No. 73-5853. *BARRERA ET AL. v. UNITED STATES;* and

No. 73-5874. *PINTO, AKA BEN SADOUN v. UNITED STATES.* C. A. 2d Cir. Certiorari denied. Reported below: 486 F. 2d 333.

No. 73-5720. *WHIPPLE v. UNITED STATES.* C. A. 3d Cir. Certiorari denied. Reported below: 482 F. 2d 616.

No. 73-5752. *BAXTER ET AL. v. UNITED STATES;* and

No. 73-5769. *HARRIS v. UNITED STATES.* C. A. 9th Cir. Certiorari denied. Reported below: 492 F. 2d 150 and 199.

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No. 73-5739. *MAZZARINO v. UNITED STATES*. C. A. 9th Cir. Certiorari denied.

No. 73-5757. *HOGAN v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 486 F. 2d 222.

No. 73-5767. *TABAREZ v. UNITED STATES*. C. A. 9th Cir. Certiorari denied.

No. 73-5770. *OWEN v. UNITED STATES*. C. A. 9th Cir. Certiorari denied.

No. 73-5777. *GLASSEL v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 488 F. 2d 143.

No. 73-5779. *SCOTT v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 485 F. 2d 576.

No. 73-5784. *GREEN v. UNITED STATES*;

No. 73-5796. *JONES v. UNITED STATES*; and

No. 73-5803. *BEASLEY ET AL. v. UNITED STATES*. C. A. 10th Cir. Certiorari denied. Reported below: 485 F. 2d 60.

No. 73-5785. *GANT v. UNITED STATES*. C. A. 10th Cir. Certiorari denied. Reported below: 487 F. 2d 30.

No. 73-5793. *WILSON, AKA STURGIS v. UNITED STATES*. C. A. 10th Cir. Certiorari denied.

No. 73-5836. *WILLIAMS v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 486 F. 2d 983.

No. 73-5838. *BRADLEY ET AL. v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 486 F. 2d 1405.

No. 73-5865. *WILLIAMS v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 485 F. 2d 1383.

No. 73-5883. *PICKARD v. NEVADA*. C. A. 9th Cir. Certiorari denied.

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No. 73-5894. *BRYANT v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 486 F. 2d 1407.

No. 73-5903. *BROWN ET AL. v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: See 432 F. 2d 552.

No. 73-5911. *ROBINSON v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 484 F. 2d 959.

No. 73-5921. *CASTANEDA v. UNITED STATES*. C. A. 9th Cir. Certiorari denied.

No. 73-5930. *JONES v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 487 F. 2d 214.

No. 73-5949. *WEEKS v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 487 F. 2d 342.

No. 73-5950. *TAYLOR v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 485 F. 2d 686.

No. 73-5952. *BATY v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 486 F. 2d 240.

No. 73-5956. *NEITZEL v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 487 F. 2d 1399.

No. 73-5958. *OLGUIN v. UNITED STATES*. C. A. 9th Cir. Certiorari denied.

No. 73-5968. *WAGNER v. UNITED STATES*. C. A. 9th Cir. Certiorari denied.

No. 73-5969. *WILLIAMS v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 487 F. 2d 215.

No. 73-5974. *WINGFIELD v. GEORGIA*. Sup. Ct. Ga. Certiorari denied. Reported below: 231 Ga. 92, 200 S. E. 2d 708.

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No. 73-6006. *ARBUCKLE v. SCOTT, ATTORNEY GENERAL OF ILLINOIS, ET AL.* C. A. 7th Cir. Certiorari denied. Reported below: 486 F. 2d 1406.

No. 73-6034. *ALVAREZ v. UNITED STATES.* C. A. 3d Cir. Certiorari denied. Reported below: 491 F. 2d 751.

No. 73-6039. *HUTCHINSON v. WARDEN, MARYLAND PENITENTIARY.* C. A. 4th Cir. Certiorari denied.

No. 73-6046. *ETCHISON v. NEBRASKA.* Sup. Ct. Neb. Certiorari denied. Reported below: 190 Neb. 629, 211 N. W. 2d 405.

No. 73-6047. *HUNTER v. FLORIDA.* Sup. Ct. Fla. Certiorari denied. Reported below: 283 So. 2d 1.

No. 73-6075. *BOOKER v. JOHNSON, CORRECTIONAL SUPERINTENDENT.* C. A. 3d Cir. Certiorari denied. Reported below: 488 F. 2d 229.

No. 73-6084. *NORTHERN v. PROCUNIER, CORRECTIONS DIRECTOR, ET AL.* C. A. 9th Cir. Certiorari denied.

No. 73-6086. *HADSELL v. WASHINGTON BOARD OF PRISON TERMS AND PAROLES.* Sup. Ct. Wash. Certiorari denied.

No. 73-6095. *HORTON v. UNITED STATES.* C. A. 8th Cir. Certiorari denied. Reported below: 488 F. 2d 1086.

No. 73-6125. *RAY v. UNITED STATES.* C. A. 8th Cir. Certiorari denied. Reported below: 456 F. 2d 1006.

No. 73-6166. *DIXON v. UNITED STATES.* C. A. 4th Cir. Certiorari denied. Reported below: 487 F. 2d 1398.

No. 73-6172. *LOY v. UNITED STATES.* C. A. 7th Cir. Certiorari denied. Reported below: 487 F. 2d 1405.

No. 73-6187. *FRANKLIN v. UNITED STATES.* C. A. 4th Cir. Certiorari denied. Reported below: 487 F. 2d 1398.

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No. 73-6188. *URBANIS v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 490 F. 2d 384.

No. 73-6193. *TOMPKINS v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 487 F. 2d 146.

No. 73-6249. *BROWN v. SWENSON, WARDEN, ET AL.* C. A. 8th Cir. Certiorari denied. Reported below: 487 F. 2d 1236.

No. 73-6257. *SMITH v. ESTELLE, CORRECTIONS DIRECTOR*. C. A. 5th Cir. Certiorari denied.

No. 73-6260. *COLLINS v. DALLAS COUNTY JAIL SHERIFFS DEPARTMENT ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 488 F. 2d 1056.

No. 73-6262. *LANDRY v. CALIFORNIA*. App. Dept., Super. Ct. Cal., County of Los Angeles. Certiorari denied.

No. 73-6265. *O'BERRY v. JORANDBY ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 485 F. 2d 686.

No. 73-6266. *LINDSEY v. TEXAS*. Ct. Crim. App. Tex. Certiorari denied. Reported below: 501 S. W. 2d 647.

No. 73-6270. *HINTON v. VINCENT, CORRECTIONAL SUPERINTENDENT*. C. A. 2d Cir. Certiorari denied. Reported below: 486 F. 2d 1398.

No. 73-6273. *SIMS v. ARKANSAS*. Sup. Ct. Ark. Certiorari denied. Reported below: 499 S. W. 2d 54.

No. 73-6275. *MAGEE v. GEARY, SHERIFF*. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 73-6278. *BATES v. ESTELLE, CORRECTIONS DIRECTOR*. C. A. 5th Cir. Certiorari denied.

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No. 73-6283. *GRATTON v. CALIFORNIA ADULT AUTHORITY ET AL.* Sup. Ct. Cal. Certiorari denied.

No. 73-6289. *SHEARER v. OHIO.* Ct. App. Ohio, Fairfield County. Certiorari denied.

No. 73-6291. *BLAIR v. ARIYOSHI, LIEUTENANT GOVERNOR OF HAWAII, ET AL.* Sup. Ct. Hawaii. Certiorari denied. Reported below: 55 Haw. 85, 515 P. 2d 1253.

No. 73-6293. *EASTER v. CALIFORNIA.* Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 73-6295. *THOMAS v. ESTELLE, CORRECTIONS DIRECTOR.* C. A. 5th Cir. Certiorari denied.

No. 73-6299. *FULGHUM v. NORTH CAROLINA.* Gen. Ct. Justice, Super Ct. Div., Wake County, N. C. Certiorari denied.

No. 73-6306. *KAPEWA v. CALIFORNIA.* Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 73-6311. *HOHENSEE v. GRIER.* C. A. 3d Cir. Certiorari denied. Reported below: 481 F. 2d 1398.

No. 73-6318. *LEM v. UNITED STATES.* C. A. 6th Cir. Certiorari denied. Reported below: 489 F. 2d 756.

No. 73-6327. *WALLACE ET VIR v. SCHULIMSON, DIRECTOR, DIVISION OF WELFARE OF MISSOURI, ET AL.* C. A. 8th Cir. Certiorari denied.

No. 73-6335. *TAYLOR v. ALABAMA.* Sup. Ct. Ala. Certiorari denied. Reported below: 291 Ala. 756, 287 So. 2d 901.

No. 73-6394. *FALKNER ET UX. v. GOODHART, JUDGE.* C. A. 5th Cir. Certiorari denied.

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No. 73-721. MEYERS ET AL. v. PENNSYLVANIA ET AL. C. A. 3d Cir. Certiorari denied. MR. JUSTICE BRENNAN and MR. JUSTICE MARSHALL would grant certiorari. Reported below: 483 F. 2d 294.

MR. JUSTICE DOUGLAS, dissenting.

The petitioners seek damages from the State of Pennsylvania arising from a bus accident allegedly caused by the improper design, construction, and maintenance of the highway. Seven children were fatally injured when the bus, carrying a group of young people, rotated 180 degrees on wet pavement and went through the guardrail and over the embankment. A study by the National Transportation Safety Board suggested that the accident was caused in part by the "low basic skid resistance of the pavement in wet weather, and the probable presence of water draining across the pavement in an abnormal manner." It also suggested that the fatalities and injuries resulted in part from an "ineffective highway guardrail which failed to prevent the bus from rolling down an embankment."¹ In bringing the action in Federal District Court petitioners contended that the State was liable because it had failed to make the road conform to applicable federal highway regulations which were binding upon Pennsylvania because of its acceptance of federal highway funds. The District Court dismissed the action, 344 F. Supp. 1337, and the Court of Appeals affirmed, 483 F. 2d 294, finding that petitioners had no private right of action for the State's failure to conform to the federal regulations and that the State was immune from the suit in federal court because of the Eleventh Amendment.²

¹The District Court accepted these conclusions of the National Transportation Board as correct for the purpose of considering respondents' motions to dismiss. 344 F. Supp. 1337, 1340 n. 5

²"The Judicial power of the United States shall not be construed

As the District Court noted, the State here was "performing its traditional state governmental function in designing, constructing, and maintaining highways within its own boundaries." 344 F. Supp., at 1345. But in recent years States have voluntarily subjected themselves to federal regulations in this area in order to achieve the benefits of federal funding, and thus to a significant extent the traditional state autonomy has been displaced by the federal role. Under the Federal Aid-Highway Act, 23 U. S. C. § 101 *et seq.*, the Secretary of Transportation must approve each state project, § 106 (a), and he is to withhold his approval of the plans and specifications if they are not conducive to safety, § 109 (a). Section 109 (e) requires conformance to certain safety regulations for funds to be allowed, and § 114 (a) provides that state highway construction is subject to the inspection and approval of the Secretary. Section 116 provides that the Secretary may withhold his approval of further projects if the State has not fulfilled its duty to properly maintain its highways.

The Congress has enlarged the federal role in ensuring highway safety since passage of the Federal Aid-Highway Act. In 1965 Congress added 23 U. S. C. § 135, 79 Stat. 578, requiring each State to have a federally approved highway safety program "designed to reduce traffic accidents and deaths." And because of the absence of effective state action, the following year the Congress passed the Highway Safety Act, 23 U. S. C. § 401 *et seq.*, which repealed the former § 135 (see 80 Stat. 734). Section 402 (a) provides that the Secretary promulgate regulations for the state highway safety program. Pursuant to this provision the Secretary has promulgated

to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State."

regulations regarding highway skid resistance and guard-railings. 344 F. Supp., at 1348 n. 14. Congress increased the federal role because state highway safety programs had "generally been missing."³ As in the Federal Aid-Highway Program, the Secretary is to withhold federal funds from States which do not comply with the federal regulations. See 23 U. S. C. §§ 116 (c), 402 (b).

The court below recognized that the State may waive its immunity under the Eleventh Amendment when "it leaves the sphere that is exclusively its own and enters into activities subject to congressional regulation." *Parden v. Terminal R. Co.*, 377 U. S. 184, 196. In *Parden*, the Court found that Alabama, "when it began operation of an interstate railroad approximately 20 years after enactment of the FELA, necessarily consented to such suit as was authorized by that Act." *Id.*, at 192. But the court below distinguished *Parden* by finding that there was no indication that Congress intended to condition the receipt of federal funds upon the State's submission to liability for violation of the accompanying regulations. Yet even respondents here concede that the State is bound by the federal regulations because the State has accepted federal funds. But, respondents argue, the federal regulations are not mandatory because "[t]he State has the option at any time to ignore the Federal Aid Highway Act and its progeny, the only result being the cessation of Federal Aid."

The fact is, however, that Pennsylvania has not exer-

³ H. R. Rep. No. 681, 89th Cong., 1st Sess. (1965). Although the highway involved here was initially constructed before passage of the Highway Safety Act, petitioners contended in the District Court that under the legislation the State was required to maintain the highway in accordance with the new standards and that it had failed to meet this obligation. This contention, of course, goes to the merits of petitioners' claim and need not be resolved in determining whether the action was properly dismissed.

cised that option. To the contrary, the state legislature has required the Secretary of Highways to enter "into all necessary contracts and agreements with the proper agencies of the government of the United States, and shall do all other things necessary and proper in order to obtain the benefits afforded under . . . [the Federal Aid Highway programs] or any other act of Congress providing Federal aid for highway purposes." Pa. Stat. Ann., Tit. 36, § 670-1004.

"Where a State has consented to join a federal-state cooperative project, it is realistic to conclude that the State has agreed to assume its obligations under that legislation." *Edelman v. Jordan*, 415 U. S. 651, 685. (DOUGLAS, J., dissenting). Here the State has made that explicit by its own legislation. It has continued to seek and accept all of the federal funding available to it since the adoption of the statutes and regulations which petitioners here contend the State has violated. It would thus appear that the State is subject to whatever remedies are available when it is contended that a State has not conformed to the federal requirements.

The explicit statutory remedy, noted above, is that the Secretary may terminate federal highway aid under the appropriate legislation. The District Court concluded that since this was the only sanction expressly authorized by the statute, "the Highway Safety Act creates no duty on behalf of the states running toward these plaintiffs and creates no private action for breach thereof." 344 F. Supp., at 1348. The Court of Appeals, affirming, found no private right of action implied by the Act. The court relied on its prior decision in *Mahler v. United States*, 306 F. 2d 713, which found that the purpose of the federal regulations was to protect the federal investment in the roads, not to assure travelers that the roads were safely constructed and maintained. But the High-

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way Safety Act was enacted subsequent to the *Mahler* decision and, as noted above, it makes clear the federal concern for highway safety. It is well established that a federal statute may by implication create a private action for its violation, maintainable by one in the class of persons for whose protection the statute was enacted. *J. I. Case Co. v. Borak*, 377 U. S. 426. And the fact that the statute provides explicitly for administrative action to accomplish its purpose does not alone negate the inference that a private action has also been created, even though the administrative regulation appears comprehensive. *Id.*, at 432-433; *Bivens v. Six Unknown Federal Narcotics Agents*, 403 U. S. 388, 402 n. 4 (Harlan, J., concurring). The question is whether "damages are necessary to effectuate the congressional policy underpinning the substantive provisions of the statute." *Bivens, supra*, at 402. The congressional policy involved here was to coerce the States to adopt "coordinated, State action programs of highway safety . . . if one life is saved, the establishment of coordinated action programs will be a success."⁴

By voluntarily entering into the federal highway program the State has waived any immunity from suit charging it with failure to perform its obligations under that program. See my dissent in *Edelman v. Jordan, supra*. Because I believe that the right of private action under the federal highway program is an important question, and that the Eleventh Amendment issue was wrongly decided below, I would grant certiorari.

No. 73-931. CALIFORNIA *v.* BROWN ET AL. Sup. Ct. Cal. Motion of respondents for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 9 Cal. 3d 612, 510 P. 2d 1017.

⁴ H. R. Rep. No. 681, *supra*, n. 3, at 8.

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No. 73-1356. ROSE, WARDEN *v.* MORELOCK. C. A. 6th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 487 F. 2d 1402.

No. 73-963. DRAVO CORP. ET AL. *v.* ILLINOIS ET AL. App. Ct. Ill., 5th Dist. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 10 Ill. App. 3d 944, 295 N. E. 2d 284.

No. 73-1063. HANNERS *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 485 F. 2d 1333.

No. 73-5945. JOHNSON, AKA THOMAS *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 309 A. 2d 497.

No. 73-6144. WILLIAMS *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 502 S. W. 2d 130.

No. 73-1109. CANALES ET AL. *v.* CITY OF ALVISO ET AL. Ct. App. Cal., 1st App. Dist. Motion of Alviso Ad Hoc Committee for leave to file a brief as *amicus curiae* granted. Certiorari denied.

No. 73-1191. HOURIHAN *v.* DAKIN ET AL. C. A. 1st Cir. Petition for writ of certiorari denied as untimely filed. 28 U. S. C. § 2101 (c).

No. 73-1261. ALBRIGHT, ADMINISTRATOR *v.* R. J. REYNOLDS TOBACCO CO. C. A. 3d Cir. Motion to substitute Charles M. Albright in place of Mary Albright, Administratrix of Estate of Charles Albright, as party petitioner granted. Certiorari denied. Reported below: 485 F. 2d 678.

No. 73-1295. OXNARD SCHOOL DISTRICT BOARD OF TRUSTEES *v.* SORIA ET AL. C. A. 9th Cir. Application

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for stay presented to MR. JUSTICE REHNQUIST, and by him referred to the Court, denied. Certiorari denied. Reported below: 488 F. 2d 579.

Rehearing Denied

No. 72-1637. NATIONAL LABOR RELATIONS BOARD *v.* MAGNAVOX COMPANY OF TENNESSEE, 415 U. S. 322;

No. 72-5830. PATTERSON *v.* WARNER ET AL., 415 U. S. 303;

No. 73-393. TAGER *v.* UNITED STATES, 414 U. S. 1162;

No. 73-492. KUNSTSAMMLUNGEN ZU WEIMAR *v.* FEDERAL REPUBLIC OF GERMANY ET AL., 415 U. S. 931;

No. 73-694. TAGER *v.* UNITED STATES, 415 U. S. 914;

No. 73-878. PACIFIC TRANSPORT CO. ET AL. *v.* COMMISSIONER OF INTERNAL REVENUE, 415 U. S. 948;

No. 73-5573. FLETCHER *v.* UNITED STATES, 415 U. S. 922;

No. 73-5621. THROWER *v.* UNITED STATES, 415 U. S. 933;

No. 73-5755. SHARROW *v.* ABZUG ET AL., 415 U. S. 958;

No. 73-5812. WOLF *v.* HOLLOWELL, PENITENTIARY SUPERINTENDENT, 415 U. S. 946; and

No. 73-6036. FISCHLER *v.* ITT FEDERAL ELECTRIC CORP. ET AL., 415 U. S. 943. Petitions for rehearing denied.

No. 73-698. FRIENDS OF THE EARTH ET AL. *v.* STAMM, COMMISSIONER, BUREAU OF RECLAMATION, ET AL., 414 U. S. 1171. Motion of Shonto Chapter of the Navajo Nation et al. for leave to file a brief as *amici curiae* in support of rehearing granted. Petition for rehearing denied.

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Dismissal Under Rule 60

No. 73-596. PEARSON ET AL. *v.* ECOLOGICAL SCIENCE CORP. ET AL. C. A. 5th Cir. Petition for writ of certiorari dismissed under Rule 60 of the Rules of this Court.

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Affirmed on Appeal

No. 73-6355. *KLEIN v. MAYO ET AL.* Affirmed on appeal from D. C. Mass. Reported below: 367 F. Supp. 583.

Appeal Dismissed

No. 73-6346. *TOLAND v. NEW JERSEY.* Appeal from Super. Ct. N. J. dismissed for want of substantial federal question. Reported below: 123 N. J. Super. 286, 302 A. 2d 543.

Vacated and Remanded on Appeal

No. 73-1217. *CHICAGO, ROCK ISLAND & PACIFIC RAILROAD CO. ET AL. v. NUECES COUNTY NAVIGATION DISTRICT ET AL.* Appeal from D. C. N. D. Tex. Judgment vacated and case remanded with directions to dismiss case as moot.

*Miscellaneous Orders**

No. ————. *ELLIS v. HARADA ET AL.* Motion of petitioner for leave to dispense with printing petition denied.

No. ————. *PITT RIVER TRIBE v. UNITED STATES.* Ct. Cl. Motion of petitioner to waive type-size requirement of Rule 39 of the Rules of this Court denied. Reported below: 202 Ct. Cl. 988, 485 F. 2d 660.

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, 414 U. S. 1156.] Motion of United States Chamber of Commerce for leave to file a brief as *amicus curiae* denied.

*For Court's order prescribing amendments to the Federal Rules of Criminal Procedure, see *post*, p. 1003.

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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, 414 U. S. 1091.] Motion of respondent for leave to file supplemental brief after argument granted.

No. 73-690. AIR POLLUTION VARIANCE BOARD OF COLORADO *v.* WESTERN ALFALFA CORP. Ct. App. Colo. [Certiorari granted, 414 U. S. 1156.] Motion of Attorney General of California for leave to participate in oral argument as *amicus curiae* denied.

No. 73-781. SCHERK *v.* ALBERTO-CULVER CO. C. A. 7th Cir. [Certiorari granted, 414 U. S. 1156.] Motion of American Arbitration Assn. for leave to participate in oral argument as *amicus curiae* granted.

No. 73-1018. UNITED STATES *v.* MAZURIE ET AL. C. A. 10th Cir. [Certiorari granted, 415 U. S. 947.] Motion of Shoshone and Arapahoe Tribes of Wind River Indian Reservation, Wyoming, for leave to file a brief as *amici curiae* granted.

No. 73-1281. TONASKET ET AL. *v.* THOMPSON ET AL. C. A. 9th Cir. The Solicitor General is invited to file a brief expressing the views of the United States.

Probable Jurisdiction Noted

No. 73-711. CRYAN, SHERIFF, ET AL. *v.* HAMAR THEATRES, INC., ET AL. Appeal from D. C. N. J. Probable jurisdiction noted. Reported below: 365 F. Supp. 1312.

Certiorari Granted

No. 73-130. ELLIS ET AL. *v.* DYSON ET AL. C. A. 5th Cir. Certiorari granted. Reported below: 475 F. 2d 1402.

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No. 73-1424. SERFASS *v.* UNITED STATES. C. A. 3d Cir. Certiorari granted. Reported below: 492 F. 2d 388.

No. 73-1231. LINDEN LUMBER DIVISION, SUMMER & Co. *v.* NATIONAL LABOR RELATIONS BOARD ET AL.; and

No. 73-1234. NATIONAL LABOR RELATIONS BOARD *v.* TRUCK DRIVERS UNION LOCAL NO. 413 ET AL. C. A. D. C. Cir. Motion of the Chamber of Commerce of the United States for leave to file a brief as *amicus curiae* and certiorari granted. Cases consolidated and a total of one hour allotted for oral argument. Reported below: 159 U. S. App. D. C. 228, 487 F. 2d 1099.

No. 73-5677. SCHICK *v.* REED, CHAIRMAN, UNITED STATES BOARD OF PAROLE, ET AL. C. A. D. C. Cir. Motion for leave to proceed *in forma pauperis* and certiorari granted. Reported below: 157 U. S. App. D. C. 263, 483 F. 2d 1266.

Certiorari Denied

No. 73-977. JOBE *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 487 F. 2d 268.

No. 73-978. BLAIR, MAYOR OF FALLS CHURCH, VIRGINIA, ET AL. *v.* JOSEPH ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 482 F. 2d 575.

No. 73-1029. WEST *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 486 F. 2d 468.

No. 73-1057. EDIN *v.* UNITED STATES; and

No. 73-1058. ASTALOS ET AL. *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 487 F. 2d 275.

No. 73-1078. ELROD ET AL. *v.* WESTERN CONFERENCE OF TEAMSTERS ET AL. C. A. 9th Cir. Certiorari denied.

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No. 73-1096. *NOVELLI v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 486 F. 2d 1402.

No. 73-1115. *PRICE, DBA PRICE'S LIVESTOCK MARKETING CO. v. BRENNAN, SECRETARY OF LABOR*. C. A. 7th Cir. Certiorari denied.

No. 73-1116. *LA GIOIA v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 486 F. 2d 1402.

No. 73-1135. *SAHLEY v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 487 F. 2d 1403.

No. 73-1205. *MCGINNIS v. UNITED STATES*. C. A. 10th Cir. Certiorari denied.

No. 73-1206. *VALENTI v. UNITED STATES*. C. A. 2d Cir. Certiorari denied.

No. 73-1212. *DEANGELIS v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 490 F. 2d 1004.

No. 73-1238. *INTERNATIONAL ORGANIZATION OF MASTERS, MATES & PILOTS, INTERNATIONAL MARINE DIVISION, ILA, AFL-CIO, ET AL. v. NATIONAL LABOR RELATIONS BOARD ET AL.* C. A. D. C. Cir. Certiorari denied. Reported below: 159 U. S. App. D. C. 11, 486 F. 2d 1271.

No. 73-1250. *TANN ET AL. v. HUMPHREYS, ADMINISTRATOR*. C. A. 6th Cir. Certiorari denied. Reported below: 487 F. 2d 666.

No. 73-1277. *RANDONO v. SHERIFF OF CLARK COUNTY*. Sup. Ct. Nev. Certiorari denied. Reported below: 89 Nev. 521, 515 P. 2d 1267.

No. 73-1317. *ROCHFORD ET AL. v. CONFEDERATION OF POLICE ET AL.* C. A. 7th Cir. Certiorari denied.

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No. 73-1324. ASSOCIATED GENERAL CONTRACTORS OF MASSACHUSETTS, INC., ET AL. *v.* ALTSHULER ET AL. C. A. 1st Cir. Certiorari denied. Reported below: 490 F. 2d 9.

No. 73-1330. GLYNN *v.* DONNELLY. C. A. 1st Cir. Certiorari denied. Reported below: 485 F. 2d 692.

No. 73-1336. HARDY ET AL. *v.* OHIO. Sup. Ct. Ohio. Certiorari denied. Reported below: 36 Ohio St. 2d 108, 304 N. E. 2d 374.

No. 73-1344. MAY, ADMINISTRATRIX *v.* GOLDMAN ET AL. Sup. Ct. Va. Certiorari denied.

No. 73-1345. GABALDON ET AL. *v.* UNITED FARM WORKERS ORGANIZING COMMITTEE ET AL. Ct. App. Cal., 5th App. Dist. Certiorari denied. Reported below: 35 Cal. App. 3d 757, 111 Cal. Rptr. 203.

No. 73-1350. HILLCREST PRESBYTERIAN CHURCH OF SEATTLE *v.* PRESBYTERY OF SEATTLE, INC., ET AL. Ct. App. Wash. Certiorari denied.

No. 73-1376. SPELLERS ET UX. *v.* STEUART MOTOR CO., T/A TRIANGLE MOTORS. Ct. App. D. C. Certiorari denied.

No. 73-1381. ATKINSON-DAUKSCH AGENCIES, INC. *v.* JOHN HANCOCK MUTUAL LIFE INSURANCE Co. C. A. 6th Cir. Certiorari denied. Reported below: 488 F. 2d 179.

No. 73-1382. KLEMMER *v.* ALABAMA. Ct. Crim. App. Ala. Certiorari denied. Reported below: 51 Ala. App. 383, 286 So. 2d 58.

No. 73-5841. REINGOLD *v.* CURTIN ET AL. C. A. 2d Cir. Certiorari denied.

No. 73-5848. ROWLETTE *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied.

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No. 73-5854. *MONTOYA v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 486 F. 2d 1351.

No. 73-5855. *WILLIAMS v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 487 F. 2d 210.

No. 73-5857. *HERNANDEZ-PADILLA v. UNITED STATES*. C. A. 9th Cir. Certiorari denied.

No. 73-5895. *HUBBARD v. ILLINOIS*. Sup. Ct. Ill. Certiorari denied. Reported below: 54 Ill. 2d 546, 301 N. E. 2d 290.

No. 73-5973. *FARNSWORTH v. UNITED STATES*. C. A. 8th Cir. Certiorari denied.

No. 73-5989. *ZOGBY v. UNITED STATES*. C. A. 2d Cir. Certiorari denied.

No. 73-5990. *WALLACE v. UNITED STATES*. C. A. 3d Cir. Certiorari denied.

No. 73-5991. *KING ET AL. v. UNITED STATES*. C. A. 2d Cir. Certiorari denied.

No. 73-6008. *McGANN v. UNITED STATES BOARD OF PAROLE ET AL.* C. A. 3d Cir. Certiorari denied.

No. 73-6012. *FLETCHER v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 487 F. 2d 22.

No. 73-6020. *McGANN ET AL. v. UNITED STATES BOARD OF PAROLE*. C. A. 3d Cir. Certiorari denied.

No. 73-6035. *KNOX v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 486 F. 2d 1399.

No. 73-6074. *GORE v. LEEKE, CORRECTIONS DIRECTOR*. Sup. Ct. S. C. Certiorari denied. Reported below: 261 S. C. 308, 199 S. E. 2d 755.

No. 73-6077. *STANLEY v. SLAYTON, PENITENTIARY SUPERINTENDENT*. C. A. 4th Cir. Certiorari denied. Reported below: 486 F. 2d 48.

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No. 73-6141. ZANE, AKA LOGAN ET AL. *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 489 F. 2d 269.

No. 73-6149. SOKYRNYK *v.* WEINBERGER, SECRETARY OF HEALTH, EDUCATION, AND WELFARE. C. A. 6th Cir. Certiorari denied.

No. 73-6199. COGWELL ET AL. *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 486 F. 2d 823.

No. 73-6226. TATE *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 73-6227. KENNEDY *v.* GRAY, CORRECTIONAL SUPERINTENDENT. C. A. 6th Cir. Certiorari denied. Reported below: 487 F. 2d 101.

No. 73-6233. ALFORD *v.* UNITED STATES CIVIL SERVICE COMMISSION ET AL. C. A. 9th Cir. Certiorari denied.

No. 73-6320. JOHN *v.* CASSCLES, CORRECTIONAL SUPERINTENDENT. C. A. 2d Cir. Certiorari denied. Reported below: 489 F. 2d 20.

No. 73-6322. HAMM *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 490 F. 2d 1407.

No. 73-6326. BARNARD ET AL. *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 490 F. 2d 907.

No. 73-6329. MORRISON *v.* WAINWRIGHT, CORRECTIONS DIRECTOR. C. A. 5th Cir. Certiorari denied.

No. 73-6330. SATTERFIELD *v.* WAINWRIGHT, CORRECTIONS DIRECTOR. C. A. 5th Cir. Certiorari denied. Reported below: 489 F. 2d 1311.

No. 73-6331. BUNN *v.* NORTH CAROLINA. Ct. App. N. C. Certiorari denied. Reported below: 19 N. C. App. 582, 199 S. E. 2d 487.

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No. 73-6334. *ADAMS v. SOUTH CAROLINA*. Sup. Ct. S. C. Certiorari denied. Reported below: 261 S. C. 517, 201 S. E. 2d 129.

No. 73-6337. *WATSON ET AL. v. CONNECTICUT*. Sup. Ct. Conn. Certiorari denied.

No. 73-6338. *LAYTON v. COMMITTEE OF BAR EXAMINERS OF CALIFORNIA STATE BAR*. Sup. Ct. Cal. Certiorari denied.

No. 73-6342. *CODY v. INDIANA*. Sup. Ct. Ind. Certiorari denied. Reported below: — Ind. —, 290 N. E. 2d 38.

No. 73-6345. *DAWSON v. BACON, JUDGE*. Ct. App. D. C. Certiorari denied.

No. 73-6347. *UMBAUGH v. HUTTO, CORRECTIONS COMMISSIONER*. C. A. 8th Cir. Certiorari denied. Reported below: 486 F. 2d 904.

No. 73-6408. *TULIPANO v. UNITED STATES*. C. A. 7th Cir. Certiorari denied.

No. 73-6477. *COZZOLINO v. TENNESSEE*. C. A. 6th Cir. Certiorari denied.

No. 73-819. *LANDY ET AL. v. FEDERAL DEPOSIT INSURANCE CORP., RECEIVER, ET AL.* C. A. 3d Cir. Certiorari denied. *THE CHIEF JUSTICE, MR. JUSTICE DOUGLAS, and MR. JUSTICE WHITE* would grant certiorari. Reported below: 486 F. 2d 139.

No. 73-1323. *GENERAL MOTORS ACCEPTANCE CORP. ET AL. v. EASON ET AL.* C. A. 7th Cir. Certiorari denied. *THE CHIEF JUSTICE, 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: 490 F. 2d 654.

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No. 73-6354. *STICKNEY, EXECUTRIX v. E. R. SQUIBB & SONS, INC.* Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 274 So. 2d 898.

No. 73-873. *HALPERIN v. UNITED STATES.* C. A. 5th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 483 F. 2d 1403.

No. 73-1088. *LIFE OF THE LAND ET AL. v. BRINEGAR, SECRETARY OF TRANSPORTATION, ET AL.* C. A. 9th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 485 F. 2d 460.

No. 73-1111. *QUINAULT ALLOTTEES ASSN. ET AL. v. UNITED STATES.* Ct. Cl. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 202 Ct. Cl. 625, 485 F. 2d 1391.

No. 73-1332. *CHANEY v. MICHIGAN.* Sup. Ct. Mich. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari.

No. 73-1362. *WESTMINSTER PRESBYTERIAN CHURCH OF ENID ET AL. v. PRESBYTERY OF CIMARRON.* Sup. Ct. Okla. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 515 P. 2d 211.

No. 73-6056. *TURNER ET AL. v. HAYNES, WARDEN.* C. A. 4th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 485 F. 2d 183.

No. 73-6360. *WELLMAN ET UX. v. PACER OIL Co.* Sup. Ct. Mo. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 504 S. W. 2d 55.

No. 73-1104. *HOOPA VALLEY TRIBE v. SHORT ET AL.;*
and

No. 73-1244. *UNITED STATES v. SHORT ET AL.* Ct. Cl. Motions of the following for leave to file briefs as *amici*

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curiae in Nos. 73-1104 granted: Salt River Pima-Mari-copa Indian Community of the Salt River Indian Res-ervation, Arizona; National Tribal Chairmen's Assn.; National Congress of American Indians; Colorado River Indian Tribes; Colville Confederated Tribes of Colville Indian Reservation, Washington; Assiniboine and Sioux Tribes of Fort Peck Indian Reservation, Montana, et al.; Fort Mojave Indian Tribes of Arizona, California, and Nevada, et al.; and Quinault Tribe of Indians of Quinault Reservation, Washington. Certiorari denied. MR. JUSTICE DOUGLAS and MR. JUSTICE STEWART would grant certiorari. Reported below: 202 Ct. Cl. 870, 486 F. 2d 561.

No. 73-1310. BOARD OF SCHOOL COMMISSIONERS OF INDIANAPOLIS ET AL. *v.* GARDNER ET AL. C. A. 7th Cir. Motion of respondents for leave to proceed *in forma pauperis* granted. Certiorari denied.

No. 73-1338. NORTHCROSS ET AL. *v.* BOARD OF EDUCA-TION OF THE MEMPHIS CITY SCHOOLS ET AL. C. A. 6th Cir. Certiorari denied. MR. JUSTICE MARSHALL took no part in the consideration or decision of this petition. Re-ported below: 489 F. 2d 15, 18, and 19.

No. 73-1342. SILVESTRI CORP. *v.* MARSHALL FIELD & Co. ET AL. C. A. 7th Cir. Certiorari denied. MR. JUSTICE BLACKMUN took no part in the consideration or deci-sion of this petition. Reported below: 487 F. 2d 1404.

No. 73-6106. CANNON *v.* SMITH, CORRECTIONAL SU-PERINTENDENT. C. A. 2d Cir. Certiorari denied. MR. JUSTICE DOUGLAS, MR. JUSTICE BRENNAN, and MR. JUSTICE MARSHALL would grant certiorari. Reported below: 486 F. 2d 263.

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Rehearing Denied

No. 73-849. TUNNELL *v.* UNITED STATES, 415 U. S. 948;

No. 73-1009. HAYDEN, STONE INC. ET AL. *v.* PIANTES ET AL., 415 U. S. 995;

No. 73-1154. WOLF *v.* WOLF, 415 U. S. 958;

No. 73-6118. KEIL *v.* GLOVER, AKA EDGAR, 415 U. S. 959; and

No. 73-6186. SMILGUS *v.* KIMMEL ET AL., 415 U. S. 993. Petitions for rehearing denied.

No. 72-637. KENNECOTT COPPER CORP. *v.* FEDERAL TRADE COMMISSION, *ante*, p. 909. Petition for rehearing denied. MR. JUSTICE DOUGLAS took no part in the consideration or decision of this petition.

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Miscellaneous Order

No. A-986. HILL, ATTORNEY GENERAL OF TEXAS *v.* STONE ET AL. D. C. N. D. Tex. Application for partial stay, presented to MR. JUSTICE POWELL, and by him referred to the Court, granted. It is ordered that the judgment be stayed to the extent that it prohibits the use of dual-box election procedure. Stay order is to remain in effect pending timely filing and disposition of an appeal in this Court. If the appeal is timely filed, this stay shall remain in effect pending issuance of judgment of this Court. THE CHIEF JUSTICE took no part in the consideration or decision of this application. Reported below: 377 F. Supp. 1016.

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Dismissal Under Rule 60

No. 73-6430. BEKENY *v.* UNITED STATES. C. A. 2d Cir. Petition for writ of certiorari dismissed under Rule 60 of the Rules of this Court.

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Affirmed on Appeal

No. 73-1077. *BERRY TRANSPORT, INC. v. UNITED STATES ET AL.* Affirmed on appeal from D. C. Ore.

Appeals Dismissed

No. 73-1126. *WILSON ET UX. v. DEPARTMENT OF REVENUE OF OREGON.* Appeal from Sup. Ct. Ore. dismissed for want of substantial federal question. Reported below: 267 Ore. 103, 514 P. 2d 1334.

No. 73-6391. *SCHEFFEL ET AL. v. WASHINGTON.* Appeal from Sup. Ct. Wash. dismissed for want of substantial federal question. Reported below: 82 Wash. 2d 872, 514 P. 2d 1052.

No. 73-6404. *SMITH v. ASKINS.* Appeal from Ct. App. Okla. dismissed for want of substantial federal question.

No. 73-6054. *COLE ET AL. v. CALIFORNIA.* Appeal from Sup. Ct. Cal. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied.

No. 73-6313. *SIMPKINS, DBA COSMIC CULTURAL Co. v. UNITED STATES.* Appeal from Ct. Cl. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied.

No. 73-6099. *WARD ET AL. v. NIXON, PRESIDENT OF THE UNITED STATES, ET AL.* Appeal from D. C. N. D. Ill. dismissed for want of jurisdiction.

No. 73-6459. *WASHINGTON ET AL. v. WHITE, SECRETARY OF STATE OF TEXAS, ET AL.* Appeal from D. C. N. D. Tex. dismissed for want of appealable order.

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Certiorari Granted—Vacated and Remanded

No. 73-5694. *ANDRADE-GAMIZ v. IMMIGRATION AND NATURALIZATION SERVICE*. C. A. 9th Cir. Motion for leave to proceed *in forma pauperis* and certiorari granted. Judgment vacated and case remanded with directions to dismiss cause as moot.

Miscellaneous Orders

No. A-928. *OHMERT v. YOUNG ET AL.* Sup. Ct. Cal. Application for stay presented to MR. JUSTICE STEWART, and by him referred to the Court, denied.

No. A-1026. *BELLI v. STATE BAR OF CALIFORNIA*. Sup. Ct. Cal. Application for stay of judgment, presented to MR. JUSTICE DOUGLAS, and by him referred to the Court, denied. THE CHIEF JUSTICE took no part in the consideration or decision of this application. Reported below: 10 Cal. 3d 824, 519 P. 2d 575.

No. 27, Orig. *OHIO v. KENTUCKY*, 410 U. S. 641, 414 U. S. 989. Second motion of State of Ohio for reconsideration of order of March 5, 1973, denied.

No. 36, Orig. *TEXAS v. LOUISIANA*. Motion of City of Port Arthur, Texas, for leave to intervene granted, and motion for a more definite statement denied. [For earlier orders herein, see, *e. g.*, *ante*, p. 903.]

No. 73-187. *KEWANEE OIL CO. v. BICRON CORP. ET AL.* C. A. 6th Cir. [Certiorari granted, 414 U. S. 818.] Motion of SCM Corp. for leave to file supplemental brief as *amicus curiae* after argument denied.

No. 73-296. *HUFFMAN ET AL. v. PURSUE, LTD.* Appeal from D. C. N. D. Ohio. [Probable jurisdiction noted, 415 U. S. 974.] Motion of appellants for leave to utilize portions of record printed for use as an appendix to jurisdictional statement in preparing single appendix as required by Rule 17 of the Rules of this Court denied.

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No. 73-362. MORTON, SECRETARY OF THE INTERIOR, ET AL. *v.* MANCARI ET AL. Appeal from D. C. N. M. [Probable jurisdiction noted, 414 U. S. 1142.] Motion of National Federation of Federal Employees for leave to file a brief as *amicus curiae* denied.

No. 73-679. WOLFF, WARDEN, ET AL. *v.* McDONNELL. C. A. 8th Cir. [Certiorari granted, 414 U. S. 1156.] Motion of Ohio State University College of Law Clinical Programs for leave to file an untimely brief as *amicus curiae* denied.

No. 73-1148. DECOTEAU *v.* DISTRICT COUNTY COURT FOR THE TENTH JUDICIAL DISTRICT. Sup. Ct. S. D. The Solicitor General is invited to file a brief in this case expressing the views of the United States on or before May 14, 1974.

No. 73-5845. JACKSON *v.* METROPOLITAN EDISON CO. C. A. 3d Cir. [Certiorari granted, 415 U. S. 912.] Motion of Legal Aid Foundation of Long Beach et al. for leave to file a brief as *amici curiae* granted.

No. 73-1294. GOLDBERG *v.* COMMISSIONER OF INTERNAL REVENUE ET AL. Motion for leave to file petition for writ of mandamus denied.

Probable Jurisdiction Noted

No. 73-1406. CHAPMAN ET AL. *v.* MEIER, SECRETARY OF STATE OF NORTH DAKOTA. Appeal for D. C. N. D. Probable jurisdiction noted. Reported below: 372 F. Supp. 363 and 371.

No. 73-1055. BOWMAN TRANSPORTATION, INC. *v.* ARKANSAS-BEST FREIGHT SYSTEM, INC., ET AL.;

No. 73-1069. JOHNSON MOTOR LINES, INC. *v.* ARKANSAS-BEST FREIGHT SYSTEM, INC., ET AL.;

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No. 73-1070. RED BALL MOTOR FREIGHT, INC. *v.* ARKANSAS-BEST FREIGHT SYSTEM, INC., ET AL.;

No. 73-1071. LORCH-WESTWAY CORP. ET AL. *v.* ARKANSAS-BEST FREIGHT SYSTEM, INC., ET AL.; and

No. 73-1072. UNITED STATES ET AL. *v.* ARKANSAS-BEST FREIGHT SYSTEM, INC., ET AL. Appeals from D. C. W. D. Ark.

In No. 73-1055, probable jurisdiction is noted limited to Questions 2 and 4 presented by the jurisdictional statement which read as follows:

"2. Can a Three-Judge District Court lawfully set aside and enjoin an order of the Interstate Commerce Commission granting an extension of a motor carrier certificate on the ground the Court does not agree with the order or may consider the evidence would warrant a different conclusion?"

"4. Whether Commission order issued following extensive hearings, involving a voluminous record, admittedly concluded within all time limitations and commission rules can be judicially determined to be so stale 'as a matter of law' to prohibit any required findings or further consideration. If so, when does such an administrative action reach that point?"

In No. 73-1069, probable jurisdiction is noted limited to Question 2 presented by the jurisdictional statement which reads as follows:

"2. Whether in reversing the Commission's decision awarding certificates of public convenience and necessity the District Court employed erroneous standards of judicial review and improperly substituted its judgment for that of the agency."

In No. 73-1070, probable jurisdiction is noted limited to subsections (3) and (5) of the question presented by the jurisdictional statement which read as follows:

"Whether the three-judge court, in setting aside the

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administrative agency decision, abdicated or abandoned its judicial function by

“(3) failing to give independent judicial consideration and review to the separate grants of authority to the intervening defendant motor carriers;

“(5) rejecting Supreme Court precedent limiting the Court’s scope of review and thereby substituting its judgment for that of the agency charged with the responsibility therefor.”

In No. 73-1071, probable jurisdiction is noted limited to Question 2 presented by the jurisdictional statement which reads as follows:

“2. Whether the Three-Judge District Court improperly adopted a novel and unwarranted concept of *de novo* review of Commission decisions and changed the statutory relationship between hearing examiners and their agency with respect to recommended and final decisions.”

In No. 73-1072, probable jurisdiction noted. Cases are consolidated and a total of one and one-half hours allotted for oral argument. Reported below: 364 F. Supp. 1239.

No. 73-1210. INTERSTATE COMMERCE COMMISSION *v.* OREGON PACIFIC INDUSTRIES, INC., ET AL. Appeal from D. C. Ore. Motion of Western Railroad Traffic Assn. for leave to file a brief as *amicus curiae* granted. Probable jurisdiction noted. Reported below: 365 F. Supp. 609.

Certiorari Granted

No. 73-1290. UNITED STATES *v.* ITT CONTINENTAL BAKING Co. C. A. 10th Cir. Certiorari granted. Reported below: 485 F. 2d 16.

No. 73-765. INTERNATIONAL LADIES’ GARMENT WORKERS’ UNION, UPPER SOUTH DEPARTMENT, AFL-

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CIO *v.* QUALITY MANUFACTURING CO. ET AL. C. A. 4th Cir. Certiorari granted and case set for oral argument with No. 73-1363, immediately *infra*. Reported below: 481 F. 2d 1018.

No. 73-1363. NATIONAL LABOR RELATIONS BOARD *v.* J. WEINGARTEN, INC. C. A. 5th Cir. Certiorari granted and case set for oral argument with No. 73-765, immediately *supra*. Reported below: 485 F. 2d 1135.

No. 73-1377. TRAIN, ADMINISTRATOR, ENVIRONMENTAL PROTECTION AGENCY *v.* CITY OF NEW YORK ET AL. C. A. D. C. Cir.; and

No. 73-1378. TRAIN, ADMINISTRATOR, ENVIRONMENTAL PROTECTION AGENCY *v.* CAMPAIGN CLEAN WATER, INC. C. A. 4th Cir. Certiorari granted, cases consolidated, and a total of one hour allotted for oral argument. Reported below: No. 73-1377, 161 U. S. App. D. C. 114, 494 F. 2d 1033; No. 73-1378, 489 F. 2d 492.

Certiorari Denied. (See also Nos. 73-6054 and 73-6313.)

No. 73-989. DEMET *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 486 F. 2d 816.

No. 73-1038. APPALACHIAN POWER CO. ET AL. *v.* ENVIRONMENTAL PROTECTION AGENCY. C. A. D. C. Cir. Certiorari denied. Reported below: 158 U. S. App. D. C. 360, 486 F. 2d 427.

No. 73-1113. CHICOT LAND Co., INC. *v.* KELLY ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 485 F. 2d 520 and 486 F. 2d 1403.

No. 73-1134. PBW STOCK EXCHANGE, INC., ET AL. *v.* SECURITIES AND EXCHANGE COMMISSION. C. A. 3d Cir. Certiorari denied. Reported below: 485 F. 2d 718.

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No. 73-1156. *EVANGELINE PARISH SCHOOL BOARD ET AL. v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 484 F. 2d 649.

No. 73-1186. *MOXEY v. SEELY ET AL.* C. A. 3d Cir. Certiorari denied. Reported below: 485 F. 2d 680.

No. 73-1193. *CONSIDINE v. UNITED STATES*. C. A. 9th Cir. Certiorari denied.

No. 73-1197. *FLANDERS v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 488 F. 2d 551.

No. 73-1207. *BERKLEY, DBA BERKLEY ASSOCIATES v. UNITED STATES*. C. A. 9th Cir. Certiorari denied.

No. 73-1214. *BUXTON v. UNITED STATES*. C. A. D. C. Cir. Certiorari denied.

No. 73-1225. *NATIONAL MARITIME UNION OF AMERICA, AFL-CIO v. NATIONAL LABOR RELATIONS BOARD ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 486 F. 2d 907.

No. 73-1357. *COOKE COUNTY ELECTRIC COOPERATIVE ASSN. v. TOWN OF LINDSAY*. Sup. Ct. Tex. Certiorari denied. Reported below: 502 S. W. 2d 117.

No. 73-1358. *PACIFIC HANDY CUTTER, INC., ET AL. v. CITY OF SOUTH EL MONTE ET AL.* Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 73-1368. *NATIONAL CASH REGISTER Co. v. NCR EMPLOYEES' INDEPENDENT UNION ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 489 F. 2d 716.

No. 73-5787. *BUSTAMANTE-GAMEZ ET AL. v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 488 F. 2d 4.

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No. 73-5859. VALDIVIESO ET AL. *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 486 F. 2d 545.

No. 73-5873. WEST *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 486 F. 2d 1404.

No. 73-5876. LUFKINS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 471 F. 2d 656.

No. 73-5877. HOLLAND, AKA TAYLOR *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 487 F. 2d 1395.

No. 73-5896. TULIPANO *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 487 F. 2d 1404.

No. 73-5909. STERN *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 487 F. 2d 1404.

No. 73-5914. CARTER *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 73-5916. YOUNG *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 485 F. 2d 292.

No. 73-5923. TYERS *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 487 F. 2d 828.

No. 73-5963. JONES *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 73-6027. ROGERS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 485 F. 2d 688.

No. 73-6040. WALKER *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 451 F. 2d 1325.

No. 73-6043. KELLEY *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

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No. 73-6045. *MACKAY v. UNITED STATES*. C. A. 10th Cir. Certiorari denied. Reported below: 491 F. 2d 616.

No. 73-6055. *COLE ET AL. v. CALIFORNIA*. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 73-6070. *WATKINS v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 487 F. 2d 1393.

No. 73-6076. *WILLIAMS v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 486 F. 2d 1402.

No. 73-6089. *CAMPANELLA v. UNITED STATES*. C. A. 9th Cir. Certiorari denied.

No. 73-6100. *WILSON v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 487 F. 2d 510.

No. 73-6103. *RUTH v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 491 F. 2d 752.

No. 73-6145. *MORGAN v. CALIFORNIA PERSONNEL BOARD (SANTA BARBARA COUNTY WELFARE DEPARTMENT, REAL PARTY IN INTEREST)*. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 73-6148. *PHILLIPS v. VIRGINIA*. Sup. Ct. Va. Certiorari denied.

No. 73-6169. *CAIN v. BRITTON, WARDEN*. C. A. 10th Cir. Certiorari denied.

No. 73-6183. *BROOKS v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 487 F. 2d 1398.

No. 73-6218. *CAIN v. U. S. BOARD OF PAROLE ET AL.* C. A. 7th Cir. Certiorari denied. Reported below: 486 F. 2d 1406.

No. 73-6321. *GREEN v. CALIFORNIA*. Ct. App. Cal., 1st App. Dist. Certiorari denied.

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No. 73-6367. *CARTER v. CALIFORNIA*. Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 73-6370. *PFEIFER v. BELL & HOWELL Co.* C. A. 7th Cir. Certiorari denied.

No. 73-6371. *EDGERTON v. LEWIS, INSTITUTION SUPERINTENDENT*. C. A. 4th Cir. Certiorari denied.

No. 73-6372. *McKINNEY v. WAINWRIGHT, CORRECTIONS DIRECTOR*. C. A. 5th Cir. Certiorari denied. Reported below: 488 F. 2d 28.

No. 73-6376. *BROWN v. MISSOURI*. Sup. Ct. Mo. Certiorari denied. Reported below: 502 S. W. 2d 295.

No. 73-6378. *GRIFFITH v. NEBRASKA*. Sup. Ct. Neb. Certiorari denied. Reported below: 191 Neb. 39, 213 N. W. 2d 735.

No. 73-6382. *DAVIS v. NEW YORK*. Ct. App. N. Y. Certiorari denied. Reported below: 33 N. Y. 2d 221, 306 N. E. 2d 787.

No. 73-6383. *DEDMON v. GUNN, WARDEN*. C. A. 9th Cir. Certiorari denied.

No. 73-6384. *TERRY v. GRAY, WARDEN*. C. A. 7th Cir. Certiorari denied. Reported below: 487 F. 2d 1404.

No. 73-6387. *HILL v. MICHIGAN ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 488 F. 2d 609.

No. 73-6390. *TRESSLER v. MISSOURI*. Sup. Ct. Mo. Certiorari denied. Reported below: 503 S. W. 2d 13.

No. 73-6392. *WILLIAMS v. GUNN, WARDEN*. Sup. Ct. Cal. Certiorari denied.

No. 73-6393. *BROWN v. OHIO*. Ct. App. Ohio, Cuyahoga County. Certiorari denied.

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No. 73-6395. *TERRY v. GRAY, WARDEN*. C. A. 7th Cir. Certiorari denied. Reported below: 487 F. 2d 1405.

No. 73-6396. *F.R.W. v. WISCONSIN*. Sup. Ct. Wis. Certiorari denied. Reported below: 61 Wis. 2d 193, 212 N. W. 2d 130.

No. 73-6401. *CARBONE v. VUKCEVICH, PRISON SUPERINTENDENT*. C. A. 3d Cir. Certiorari denied.

No. 73-550. *TEXASGULF INC. v. FEDERAL POWER COMMISSION*;

No. 73-867. *LOUISIANA POWER & LIGHT CO. v. FEDERAL POWER COMMISSION*;

No. 73-868. *LOUISIANA GAS SERVICE CO. v. FEDERAL POWER COMMISSION*;

No. 73-871. *EXXON CORP. ET AL. v. FEDERAL POWER COMMISSION*;

No. 73-872. *LOUISIANA ET AL. v. FEDERAL POWER COMMISSION*; and

No. 73-874. *NEW ORLEANS PUBLIC SERVICE, INC. v. FEDERAL POWER COMMISSION*. C. A. 5th Cir. Certiorari denied. MR. JUSTICE POWELL took no part in the consideration or decision of these petitions. Reported below: 483 F. 2d 623 and 1404.

No. 73-1179. *ENVIRONMENTAL DEFENSE FUND, INC., ET AL. v. STAMM, COMMISSIONER, BUREAU OF RECLAMATION, ET AL.* C. A. 9th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 487 F. 2d 814.

No. 73-5870. *WELDON v. UNITED STATES*. C. A. D. C. Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari.

No. 73-6158. *GRAY v. LOUISIANA*. Sup. Ct. La. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 285 So. 2d 199.

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No. 73-6325. KING *v.* MARYLAND. Ct. App. Md. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 270 Md. 76, 310 A. 2d 803.

No. 73-6373. FIELDS *v.* NEW JERSEY. Super. Ct. N. J. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari.

No. 73-1271. COWAN, PENITENTIARY SUPERINTENDENT *v.* OLIVER. C. A. 6th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. MR. JUSTICE BLACKMUN would grant certiorari. Reported below: 487 F. 2d 895.

No. 73-1372. KENTNER *v.* SEABOARD COAST LINE RAILROAD CO. ET AL. Dist. Ct. App. Fla., 2d Dist. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. MR. JUSTICE POWELL took no part in the consideration or decision of this petition. Reported below: 278 So. 2d 637.

No. 73-6388. McDONALD *v.* TENNESSEE ET AL. C. A. 6th Cir. Motion to amend petition granted. Certiorari denied.

Rehearing Denied

No. 73-924. SHELTON *v.* UNITED STATES, 415 U. S. 976;

No. 73-1139. FRANKS *v.* WILSON, JUDGE, ET AL., 415 U. S. 986;

No. 73-5959. FLETCHER *v.* UNITED STATES, 415 U. S. 981;

No. 73-6156. OLSEN *v.* UNITED STATES, 415 U. S. 993;
and

No. 73-6248. WALLACE *v.* HOFFMAN ET AL., *ante*, p. 908. Petitions for rehearing denied.

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Affirmed on Appeal

No. 73-90. *SHELTON v. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION ET AL.* Affirmed on appeal from D. C. W. D. Wash. Reported below: 357 F. Supp. 3.

No. 73-865. *MORGAN DRIVE AWAY, INC. v. UNITED STATES ET AL.* Affirmed on appeal from D. C. N. D. Okla.

No. 73-1273. *FLORIDA TEXAS FREIGHT, INC. v. UNITED STATES ET AL.* Affirmed on appeal from D. C. S. D. Fla. Reported below: 373 F. Supp. 479.

Appeals Dismissed

No. 72-1173. *INTERNATIONAL BUSINESS MACHINES CORP. v. UNITED STATES.* Appeal from D. C. S. D. N. Y. dismissed for want of jurisdiction. MR. JUSTICE DOUGLAS would postpone jurisdiction to a hearing of case on the merits. MR. JUSTICE BLACKMUN and MR. JUSTICE POWELL took no part in the consideration or decision of this case.

No. 73-1066. *CRAVATH, SWAINE & MOORE v. UNITED STATES.* Appeal from D. C. S. D. N. Y. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied. Motion to treat jurisdictional statement as a motion for leave to file petition for writ of mandamus and/or certiorari denied. MR. JUSTICE BLACKMUN and MR. JUSTICE POWELL took no part in the consideration or decision of this case and motion.

No. 73-1130. *LILLY v. LILLY.* Appeal from Sup. Ct. Va. dismissed for want of substantial federal question.

No. 73-1419. *STUART v. STUART.* Appeal from Ct. App. Cal., 1st App. Dist., dismissed for want of substantial federal question.

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No. 73-6182. *JOHNSON v. MARYLAND*. Appeal from Ct. Sp. App. Md. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied. MR. JUSTICE DOUGLAS would note probable jurisdiction and set case for oral argument.

No. 73-6207. *POPE v. NEBRASKA*. Appeal from Sup. Ct. Neb. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied. MR. JUSTICE DOUGLAS would dismiss appeal for want of jurisdiction, treat the papers submitted as a petition for writ of certiorari, and set case for oral argument on issue of double jeopardy in light of the dissents in which he joined in *Bartkus v. Illinois*, 359 U. S. 121, 150, 164. MR. JUSTICE BLACKMUN took no part in the consideration or decision of this case. Reported below: 190 Neb. 689, 211 N. W. 2d 923.

Vacated and Remanded on Appeal

No. 72-1617. *CIVIL SERVICE COMMISSION OF NEW YORK ET AL. v. SNEAD*; and

No. 72-1691. *DEPARTMENT OF SOCIAL SERVICES OF THE CITY OF NEW YORK ET AL. v. SNEAD*. Appeals from D. C. S. D. N. Y. Judgment vacated and cases remanded for further consideration in light of *Arnett v. Kennedy*, *ante*, p. 134. Reported below: 355 F. Supp. 764.

No. 73-208. *COLLINS ET AL. v. WILSON, GOVERNOR OF NEW YORK, ET AL.* Appeal from Ct. App. N. Y. Judgment vacated and case remanded for further consideration in light of *Arnett v. Kennedy*, *ante*, p. 134. Reported below: 32 N. Y. 2d 788, 298 N. E. 2d 681.

No. 73-219. *SANFORD ET AL. v. WILSON, GOVERNOR OF NEW YORK, ET AL.* Appeal from Ct. App. N. Y. Judgment vacated and case remanded for further considera-

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tion in light of *Arnett v. Kennedy*, *ante*, p. 134. Reported below: 32 N. Y. 2d 788, 298 N. E. 2d 681.

Miscellaneous Orders

No. A-925. *IN RE M. A. C.* Application for release pending trial in Superior Court of the District of Columbia presented to MR. JUSTICE DOUGLAS, and by him referred to the Court, denied.

No. A-987. *WALDEN v. McLUCAS, UNDER SECRETARY OF THE AIR FORCE, ET AL.* Reapplication for injunction pending appeal to the United States Court of Appeals for the Ninth Circuit presented to MR. JUSTICE DOUGLAS, and by him referred to the Court, denied.

No. A-1058. *BUCK ET AL. v. IMPEACH NIXON COMMITTEE ET AL.* Application for stay of mandate of the United States Court of Appeals for the Seventh Circuit presented to THE CHIEF JUSTICE, and by him referred to the Court, granted. Motion to vacate stay heretofore granted by THE CHIEF JUSTICE denied. MR. JUSTICE BRENNAN, MR. JUSTICE STEWART, MR. JUSTICE MARSHALL, and MR. JUSTICE POWELL would discontinue the stay.

No. A-1065. *LOCAL 391, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA ET AL. v. PILOT FREIGHT CARRIERS, INC.* Application for stay of mandate of the United States Court of Appeals for the Fourth Circuit presented to THE CHIEF JUSTICE, and by him referred to the Court, denied.

No. D-11. *IN RE DISBARMENT OF HARTZOG.* It having been reported to the Court that Benjamin Gerard Hartzog 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 [414 U. S. 971], having sus-

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pended the said Benjamin Gerard Hartzog 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 rule was duly issued and served upon the respondent, who has filed a return; now, upon consideration of the rule to show cause and return aforesaid;

It is ordered that the said Benjamin Gerard Hartzog 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. 73-203. *EISEN v. CARLISLE & JACQUELIN ET AL.* C. A. 2d Cir. [Certiorari granted, 414 U. S. 908.] Motion of petitioner for leave to file supplemental brief after argument granted.

No. 73-671. *MAYER PAVING & ASPHALT CO. ET AL. v. GENERAL DYNAMICS CORP. ET AL.*, 414 U. S. 1146. Respondents are requested to file response to motion for leave to file petition for rehearing within 30 days.

No. 73-831. *WARDEN, LEWISBURG PENITENTIARY v. MARRERO.* C. A. 3d Cir. [Certiorari granted, 414 U. S. 1128.] Motion of respondent for appointment of counsel *nunc pro tunc* granted. It is ordered that John J. Witmeyer III, Esquire, of New York, New York, be, and he is hereby, appointed to serve as counsel for respondent in this case.

No. 73-5845. *JACKSON v. METROPOLITAN EDISON CO.* C. A. 3d Cir. [Certiorari granted, 415 U. S. 913.] Motion of National Consumer Law Center for leave to file a brief as *amicus curiae* granted.

No. 72-1662. *INTERNATIONAL BUSINESS MACHINES CORP. v. EDELSTEIN, CHIEF JUDGE, U. S. DISTRICT COURT, ET AL.* C. A. 2d Cir. Motion for leave to file petition for

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writ of certiorari denied. MR. JUSTICE BLACKMUN and MR. JUSTICE POWELL took no part in the consideration or decision of this motion. Reported below: See 471 F. 2d 507 and 480 F. 2d 293.

No. 73-6534. BLACK *v.* ATTORNEY GENERAL OF THE UNITED STATES ET AL. Motion for leave to file petition for writ of habeas corpus denied.

No. 73-6304. HOFFMAN ET AL. *v.* UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS ET AL.; and

No. 73-6416. BRADY *v.* NIELSEN, U. S. DISTRICT JUDGE (STATE BAR OF CALIFORNIA ET AL., REAL PARTIES IN INTEREST). Motions for leave to file petitions for writs of mandamus denied.

No. 72-1661. INTERNATIONAL BUSINESS MACHINES CORP. *v.* UNITED STATES ET AL. Motion for leave to file petition for writ of mandamus and/or prohibition and/or certiorari denied. MR. JUSTICE BLACKMUN and MR. JUSTICE POWELL took no part in the consideration or decision of this motion. Reported below: 471 F. 2d 507 and 480 F. 2d 293.

No. 73-1064. INTERNATIONAL BUSINESS MACHINES CORP. *v.* UNITED STATES ET AL. Motion for leave to file petition for writ of mandamus and other relief denied. MR. JUSTICE BLACKMUN and MR. JUSTICE POWELL took no part in the consideration or decision of this motion.

No. 73-6296. THERIAULT *v.* UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT ET AL. Motion for leave to file petition for writ of mandamus and/or prohibition denied.

Probable Jurisdiction Noted

No. 73-1046. WEINBERGER, SECRETARY OF HEALTH, EDUCATION, and WELFARE *v.* DIAZ ET AL. Appeal from

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D. C. S. D. Fla. Motion of appellees for leave to proceed *in forma pauperis* granted. Probable jurisdiction noted. Reported below: 361 F. Supp. 1.

Certiorari Granted

No. 73-1256. CONNELL CONSTRUCTION Co., INC. *v.* PLUMBERS & STEAMFITTERS LOCAL UNION No. 100, UNITED ASSOCIATION OF JOURNEYMEN & APPRENTICES OF THE PLUMBING & PIPEFITTING INDUSTRY OF THE UNITED STATES AND CANADA, AFL-CIO. C. A. 5th Cir. Certiorari granted. Reported below: 483 F. 2d 1154.

No. 73-1313. INTERNATIONAL TELEPHONE & TELEGRAPH CORP., COMMUNICATIONS EQUIPMENT & SYSTEMS DIVISION *v.* LOCAL 134, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL-CIO, ET AL. C. A. 7th Cir. Certiorari granted. Reported below: 486 F. 2d 863.

No. 73-1162. UNITED STATES *v.* WILSON ET AL. C. A. 2d Cir. Motion of respondents for leave to proceed *in forma pauperis* and certiorari granted. Reported below: 488 F. 2d 1231.

No. 73-1288. ALFRED DUNHILL OF LONDON, INC. *v.* REPUBLIC OF CUBA ET AL. C. A. 2d Cir. Certiorari granted. Counsel in this case are directed to brief and argue the following questions:

1. Can statements by counsel for the Republic of Cuba, that petitioner's unjust enrichment counterclaim would not be honored, constitute an act of state?

2. If so, is an exception to the act of state doctrine created, under *First National City Bank v. Banco Nacional de Cuba*, 406 U. S. 759 (1972), where petitioner's counterclaim does not exceed the net balance owed to Cuba on its claims by petitioner's codefendants, and where all claims and counterclaims arise out of the subject matter in litigation in this case?

Reported below: 485 F. 2d 1355.

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No. 73-6038. *DROPE v. MISSOURI*. Ct. App. Mo., St. Louis Dist. Motion for leave to proceed *in forma pauperis* and certiorari granted. Reported below: 498 S. W. 2d 838.

Certiorari Denied. (See also Nos. 73-1066, 73-6182, and 73-6207, *supra.*)

No. 73-221. *ROBINSON v. BOARD OF REGENTS OF EASTERN KENTUCKY UNIVERSITY ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 475 F. 2d 707.

No. 73-701. *NATIONAL LABOR RELATIONS BOARD v. WICHITA EAGLE & BEACON PUBLISHING CO., INC., ET AL.*; and

No. 73-708. *THE NEWSPAPER GUILD v. WICHITA EAGLE & BEACON PUBLISHING CO., INC.* C. A. 10th Cir. Certiorari denied. Reported below: 480 F. 2d 52.

No. 73-817. *GAMBINO v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 483 F. 2d 1399.

No. 73-905. *TALBERT v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 485 F. 2d 684.

No. 73-925. *ALLISON ET AL. v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 487 F. 2d 339.

No. 73-1033. *VOYAGER 1000 ET AL. v. CIVIL AERONAUTICS BOARD*. C. A. 7th Cir. Certiorari denied. Reported below: 489 F. 2d 792.

No. 73-1054. *RAYMOND ET AL. v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 487 F. 2d 1404.

No. 73-1090. *NELSON v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 485 F. 2d 686.

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No. 73-1145. TECHNICAL DEVELOPMENT CORP. ET AL. *v.* UNITED STATES. Ct. Cl. Certiorari denied. Reported below: 202 Ct. Cl. 237.

No. 73-1149. JOSSEFIDES ET AL. *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 486 F. 2d 1401.

No. 73-1150. WEEDON *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied. Reported below: 501 S. W. 2d 336.

No. 73-1163. WALLS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 486 F. 2d 1405.

No. 73-1165. FRIED *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 486 F. 2d 201.

No. 73-1177. HENDERSON, WARDEN *v.* RECASNER. C. A. 5th Cir. Certiorari denied. Reported below: 486 F. 2d 1403.

No. 73-1181. DAVIS *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied.

No. 73-1187. PARKMAN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 488 F. 2d 1392.

No. 73-1189. CHURCH *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 490 F. 2d 353.

No. 73-1216. WALDEN ET VIR *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 490 F. 2d 372.

No. 73-1254. UNITED STATES STEEL CORP. ET AL. *v.* NATIONAL LABOR RELATIONS BOARD ET AL. C. A. D. C. Cir. Certiorari denied.

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No. 73-1303. *ROSENTHAL ET UX. v. COMMISSIONER OF INTERNAL REVENUE*. C. A. 9th Cir. Certiorari denied.

No. 73-1307. *RANGEL ET AL. v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 488 F. 2d 871.

No. 73-1318. *STANLEY v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 487 F. 2d 1399.

No. 73-1319. *VILLA v. UNITED STATES*. C. A. 10th Cir. Certiorari denied.

No. 73-1325. *MONTELLO ET AL. v. UNITED STATES*. C. A. 2d Cir. Certiorari denied.

No. 73-1327. *HAMILTON v. UNITED STATES*. C. A. 9th Cir. Certiorari denied.

No. 73-1340. *GERSTENSLAGER Co. v. NATIONAL LABOR RELATIONS BOARD*. C. A. 6th Cir. Certiorari denied. Reported below: 487 F. 2d 1332.

No. 73-1341. *DI VOSTA RENTALS, INC. v. LEE ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 488 F. 2d 674.

No. 73-1343. *BROBECK v. UNITED STATES ET AL.* C. A. 3d Cir. Certiorari denied. Reported below: 491 F. 2d 751.

No. 73-1352. *WALDEN ET UX. v. SMALL BUSINESS ADMINISTRATION*. C. A. 9th Cir. Certiorari denied.

No. 73-1354. *BUSINESS ROUNDTABLE v. CONSUMERS UNION OF UNITED STATES, INC., ET AL.* Temp. Emerg. Ct. App. Certiorari denied. Reported below: 491 F. 2d 1396.

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No. 73-1359. HENRY I. SIEGEL Co., INC. *v.* NATIONAL LABOR RELATIONS BOARD. C. A. 6th Cir. Certiorari denied. Reported below: 487 F. 2d 518.

No. 73-1388. MEAD ET AL. *v.* HORVITZ PUBLISHING Co. ET AL. Ct. App. Ohio, Lorain County. Certiorari denied.

No. 73-1389. TRADEWELL *v.* WASHINGTON. Ct. App. Wash. Certiorari denied. Reported below: 9 Wash. App. 821, 515 P. 2d 172.

No. 73-1401. BECKER ET AL. *v.* LEVITT, COMPTROLLER OF NEW YORK, ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 489 F. 2d 1087.

No. 73-1408. BOARD OF EDUCATION OF AURORA PUBLIC SCHOOL DISTRICT No. 131 OF KANE COUNTY, ILLINOIS, ET AL. *v.* AURORA EDUCATION ASSOCIATION EAST ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 490 F. 2d 431.

No. 73-1411. PADEREWSKI FOUNDATION, INC., ET AL. *v.* SUSKI ET AL. App. Div., Sup. Ct. N. Y., 1st Jud. Dept. Certiorari denied. Reported below: 40 App. Div. 2d 663, 336 N. Y. S. 2d 994.

No. 73-1421. SMITH *v.* ILLINOIS CENTRAL RAILROAD Co. ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 486 F. 2d 943.

No. 73-1426. UNITED TRANSPORTATION UNION ET AL. *v.* SOUTHERN PACIFIC TRANSPORTATION Co. C. A. 9th Cir. Certiorari denied. Reported below: 491 F. 2d 830.

No. 73-1434. CARY *v.* FLORIDA. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 269 So. 2d 374.

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No. 73-1438. *SOLITRON DEVICES, INC. v. ISLAND TERRITORY OF CURACAO*. C. A. 2d Cir. Certiorari denied. Reported below: 489 F. 2d 1313.

No. 73-1453. *AD HOC COMMITTEE ON JUDICIAL ADMINISTRATION ET AL. v. MASSACHUSETTS ET AL.* C. A. 1st Cir. Certiorari denied. Reported below: 488 F. 2d 1241.

No. 73-1467. *AMERICAN BASKETBALL ASSN. v. AMF VOIT, INC., ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 487 F. 2d 1393.

No. 73-1479. *JEFFRESS v. KRAMER ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 490 F. 2d 611.

No. 73-1489. *CHARM PROMOTIONS, LTD. v. TRAVELERS INDEMNITY Co.* C. A. 7th Cir. Certiorari denied. Reported below: 489 F. 2d 1092.

No. 73-1505. *BALLENGER ET AL. v. MOBIL OIL CORP.* C. A. 5th Cir. Certiorari denied. Reported below: 488 F. 2d 707.

No. 73-1506. *HARLAN #4 COAL Co. v. NATIONAL LABOR RELATIONS BOARD*. C. A. 6th Cir. Certiorari denied. Reported below: 490 F. 2d 117.

No. 73-1519. *CROSBY & Co., INC. v. COMPAGNIE NATIONALE AIR FRANCE, AKA AIR FRANCE*. App. Div., Sup. Ct. N. Y., 1st Jud. Dept. Certiorari denied. Reported below: 42 App. Div. 2d 1050, 348 N. Y. S. 2d 957.

No. 73-5732. *SHRIVER v. UNITED STATES*; and

No. 73-5893. *MARX v. UNITED STATES*. C. A. 10th Cir. Certiorari denied. Reported below: 485 F. 2d 1179.

No. 73-5789. *MCGONAGLE v. UNITED STATES*; and
No. 73-5996. *FERREIRA v. UNITED STATES*. C. A. 1st Cir. Certiorari denied.

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No. 73-5807. *OGDEN v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 484 F. 2d 1274.

No. 73-5889. *BANKS ET AL. v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 485 F. 2d 545.

No. 73-5918. *WESTBROOK v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 486 F. 2d 1399.

No. 73-5948. *DA SILVA v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 486 F. 2d 1363.

No. 73-5960. *HARGRAVES v. UNITED STATES*. C. A. 4th Cir. Certiorari denied.

No. 73-5970. *OGDEN v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 485 F. 2d 536.

No. 73-5995. *SHARPE ET AL. v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 487 F. 2d 1399.

No. 73-6005. *CARTER v. UNITED STATES*. C. A. 9th Cir. Certiorari denied.

No. 73-6017. *CAVENAUGH v. UNITED STATES*. C. A. 9th Cir. Certiorari denied.

No. 73-6018. *GOMEZ v. UNITED STATES*. C. A. 9th Cir. Certiorari denied.

No. 73-6021. *TYLER v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 487 F. 2d 1405.

No. 73-6023. *KOPACSI v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 488 F. 2d 900.

No. 73-6037. *BROWN v. UNITED STATES*. C. A. D. C. Cir. Certiorari denied. Reported below: 159 U. S. App. D. C. 55, 486 F. 2d 1315.

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No. 73-6041. *MERCER v. WINSTON*. Sup. Ct. Va. Certiorari denied. Reported below: 214 Va. 281, 199 S. E. 2d 724.

No. 73-6052. *TORRES v. CALIFORNIA ET AL.* C. A. 9th Cir. Certiorari denied.

No. 73-6059. *RALSTON v. UNITED STATES*. C. A. 9th Cir. Certiorari denied.

No. 73-6062. *SCHWARTZ v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 487 F. 2d 1393.

No. 73-6088. *INMAN v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 483 F. 2d 738.

No. 73-6093. *NAVARETTE v. CALIFORNIA*. Sup. Ct. Cal. Certiorari denied.

No. 73-6096. *COLWELL v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 487 F. 2d 1393.

No. 73-6107. *GRIGGS v. UNITED STATES*. Ct. Cl. Certiorari denied.

No. 73-6108. *STOCKER, AKA LANCE v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 491 F. 2d 751.

No. 73-6114. *HUFFMAN v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 490 F. 2d 412.

No. 73-6121. *REYNOLDS v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 489 F. 2d 4.

No. 73-6126. *ECKLEY v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 487 F. 2d 1403.

No. 73-6128. *SCHULTZ v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 446 F. 2d 9.

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No. 73-6129. *BURTON v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 487 F.2d 1398.

No. 73-6150. *VERSE v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 490 F.2d 280.

No. 73-6152. *FRANCIS v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 487 F.2d 1403.

No. 73-6157. *GRILL v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 484 F.2d 990.

No. 73-6162. *DAULTON v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 488 F.2d 524.

No. 73-6167. *PARKER v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 491 F.2d 517.

No. 73-6171. *SMITH ET AL. v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 487 F.2d 329.

No. 73-6176. *BRADBY v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 491 F.2d 748.

No. 73-6180. *MORGAN v. WILLINGHAM ET AL.* C. A. 10th Cir. Certiorari denied.

No. 73-6181. *WILSON ET AL. v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 488 F.2d 400.

No. 73-6185. *RODDY v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 489 F.2d 757.

No. 73-6194. *ROGERS v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 487 F.2d 1403.

No. 73-6196. *JONES v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 490 F.2d 207.

No. 73-6204. *PLEASANT v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 489 F.2d 1028.

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No. 73-6222. *WAGNER v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 492 F. 2d 211.

No. 73-6234. *LOPEZ v. UNITED STATES*; and

No. 73-6246. *OREYANA v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 489 F. 2d 753.

No. 73-6238. *WARD v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 460 F. 2d 275; 486 F. 2d 305.

No. 73-6241. *THORPE v. CITY OF KANSAS CITY*. Sup. Ct. Mo. Certiorari denied: Reported below: 499 S. W. 2d 454.

No. 73-6247. *WALKER v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 489 F. 2d 714.

No. 73-6258. *DORMAN v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 489 F. 2d 756.

No. 73-6259. *BREWER v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 491 F. 2d 751.

No. 73-6263. *RIZZO ET AL. v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 491 F. 2d 215.

No. 73-6264. *WALKER v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 491 F. 2d 236.

No. 73-6285. *WHITLEY v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 491 F. 2d 1248.

No. 73-6292. *EDWARDS v. UNITED STATES*. C. A. 9th Cir. Certiorari denied.

No. 73-6298. *FRAZIER v. COMMISSIONER OF INTERNAL REVENUE*. C. A. 2d Cir. Certiorari denied.

No. 73-6303. *BURCH v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 490 F. 2d 1300.

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No. 73-6309. *GRAY v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 489 F. 2d 756.

No. 73-6343. *RESNICK v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 488 F. 2d 1165.

No. 73-6369. *DOE, AKA JONES v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 488 F. 2d 93.

No. 73-6386. *DAVIS v. JOHNSON, CORRECTIONAL SUPERINTENDENT*. C. A. 3d Cir. Certiorari denied. Reported below: 491 F. 2d 752.

No. 73-6389. *COHRAN v. DEYTON, SHERIFF*. C. A. 5th Cir. Certiorari denied. Reported below: 488 F. 2d 1056.

No. 73-6410. *GONZALEZ v. LAVALLEE, CORRECTIONAL SUPERINTENDENT*. C. A. 2d Cir. Certiorari denied.

No. 73-6412. *COLLINS v. WARDEN, NEVADA STATE PRISON*. C. A. 9th Cir. Certiorari denied. Reported below: 487 F. 2d 950.

No. 73-6417. *BURNS v. DECKER ET AL.* Sup. Ct. Minn. Certiorari denied. Reported below: 298 Minn. 7, 212 N. W. 2d 886.

No. 73-6420. *BLUM v. CALIFORNIA*. Ct. App. Cal., 1st App. Dist. Certiorari denied. Reported below: 35 Cal. App. 3d 515, 110 Cal. Rptr. 833.

No. 73-6422. *PINEDO v. CALIFORNIA*. Super. Ct. Cal., County of Orange. Certiorari denied.

No. 73-6424. *CADOGAN v. MONTANYE, CORRECTIONAL SUPERINTENDENT*. App. Div., Sup. Ct. N. Y., 4th Jud. Dept. Certiorari denied.

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No. 73-6436. *HUGHES v. CARSON, SHERIFF*. C. A. 5th Cir. Certiorari denied.

No. 73-6437. *NELSON v. NORTH CAROLINA*. Gen. Ct. Justice, Super. Ct. Div., Wake County. Certiorari denied.

No. 73-6438. *COLLINS v. MARYLAND*. Ct. Spec. App. Md. Certiorari denied.

No. 73-6441. *DEAVERS v. VAN NESS ET AL.* C. A. 3d Cir. Certiorari denied. Reported below: 492 F. 2d 1238.

No. 73-6442. *DANIELS v. MCCARTHY, WARDEN*. C. A. 9th Cir. Certiorari denied.

No. 73-6444. *BRADLEY v. ESTELLE, CORRECTIONS DIRECTOR*. Ct. Crim. App. Tex. Certiorari denied.

No. 73-6448. *STARKEY v. WYRICK, WARDEN*. C. A. 8th Cir. Certiorari denied.

No. 73-6455. *GAINNEY v. CALIFORNIA*. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 73-6465. *GUAJARDO v. ESTELLE, CORRECTIONS DIRECTOR, ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 491 F. 2d 417.

No. 73-6473. *BENNETT v. UTAH*. Sup. Ct. Utah. Certiorari denied. Reported below: 30 Utah 2d 343, 517 P. 2d 1029.

No. 73-793. *CHALKER v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 485 F. 2d 686.

No. 73-824. *BECKER v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 485 F. 2d 51.

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No. 73-840. *RIELY v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 484 F. 2d 661.

No. 73-853. *FORBICETTA v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 486 F. 2d 1403.

No. 73-870. *MARKS ET AL. v. CITY OF NEWPORT*. Ct. App. Ky. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari.

No. 73-1120. *NATIONAL HELIUM CORP. ET AL. v. MORTON, SECRETARY OF THE INTERIOR, ET AL.* C. A. 10th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 486 F. 2d 995.

No. 73-1138. *WEISBERG v. UNITED STATES DEPARTMENT OF JUSTICE*. C. A. D. C. Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 160 U. S. App. D. C. 71, 489 F. 2d 1195.

No. 73-1173. *HORTON v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 488 F. 2d 552.

No. 73-1220. *FORT SILL APACHE TRIBE OF OKLAHOMA ET AL. v. UNITED STATES*. Ct. Cl. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 201 Ct. Cl. 630, 477 F. 2d 1360.

No. 73-1229. *ISRAEL, ATTORNEY GENERAL OF RHODE ISLAND, ET AL. v. DOE ET AL.* C. A. 1st Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari.

No. 73-1240. *AIR LINE STEWARDS & STEWARDESSES ASSN., LOCAL No. 550, TWU, AFL-CIO v. ZIPES ET AL.*; and

No. 73-1416. *TRANS WORLD AIRLINES, INC., ET AL. v. ZIPES ET AL.* C. A. 7th Cir. Certiorari denied. MR.

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JUSTICE DOUGLAS would grant certiorari. Reported below: 490 F. 2d 636.

No. 73-1409. *WASNOWIC ET AL. v. CHICAGO BOARD OF TRADE ET AL.* C. A. 3d Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari.

No. 73-6010. *SMITH v. UNITED STATES.* C. A. 7th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 489 F. 2d 1330.

No. 73-6115. *HARRIS v. UNITED STATES.* C. A. 10th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari.

No. 73-6122. *MORALES-JARAMILLO v. UNITED STATES.* C. A. 9th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari.

No. 73-6221. *WANSLEY v. SLAYTON, PENITENTIARY SUPERINTENDENT.* C. A. 4th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 487 F. 2d 90.

No. 73-6243. *STRONG v. GEORGIA.* Sup. Ct. Ga. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 231 Ga. 514, 202 S. E. 2d 428.

No. 73-6250. *SMITH v. TWOMEY, WARDEN.* C. A. 7th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 486 F. 2d 736.

No. 73-6406. *KRAFT v. MARYLAND.* Ct. App. Md. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: See 269 Md. 583, 307 A. 2d 683.

No. 73-6421. *LANGS, GUARDIAN v. HARDER, COMMISSIONER OF WELFARE.* Sup. Ct. Conn. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari.

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No. 73-1065. INTERNATIONAL BUSINESS MACHINES CORP. *v.* UNITED STATES ET AL. C. A. 2d Cir. Certiorari denied. MR. JUSTICE BLACKMUN and MR. JUSTICE POWELL took no part in the consideration or decision of this petition. Reported below: 493 F. 2d 112.

No. 73-1144. FORTUNE ET AL. *v.* BAZAAR ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 476 F. 2d 570 and 489 F. 2d 225.

THE CHIEF JUSTICE, concurring.

I join in the denial of certiorari on my reading of the temporary restraining order of the District Court as not requiring the University to continue to make available to the respondents, at public expense, facilities of the University for the production of any future publication. Those attending a state university have a right to be free from official censorship in their speech and writings, but this right does not require the University to commit its faculty or financial resources to any activity which it considers to be of substandard or marginal quality.

No. 73-1394. SMITH ET AL. *v.* CURTIS. C. A. 3d Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 489 F. 2d 516.

No. 73-1403. GRAZIANI *v.* COMMITTEE ON LEGAL ETHICS OF WEST VIRGINIA STATE BAR. Sup. Ct. App. W. Va. Certiorari denied. MR. JUSTICE DOUGLAS adheres to his dissent in *Ullmann v. United States*, 350 U. S. 422, 440, and would reverse judgment of lower court. Reported below: — W. Va. —, 200 S. E. 2d 353.

No. 73-5842. CIUZIO *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 487 F. 2d 492.

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

Successive prosecutions of petitioner and one Cioffi

resulted from an alleged agreement to sell an undercover agent \$500,000 worth of counterfeit 6-cent stamps and an alleged delivery to the agent of a sample sheet of four hundred of the stamps. The first prosecution was upon a two-count indictment that charged the pair in the first count with having attempted to sell stamps known to be falsely made, forged, and counterfeited, in violation of 18 U. S. C. § 472, and, in the second count, with conspiracy to violate the same section. The trial on that indictment ended with a directed verdict of acquittal on the first count as to Cioffi, a dismissal of the first count as to petitioner and a mistrial on the second count when the jury could not agree upon a verdict.

Instead of proceeding to a retrial on the second count, the Government abandoned its efforts under § 472 and procured a second indictment under 18 U. S. C. § 501 based upon the very same course of conduct. The second indictment was also a two-count indictment, the first count charging that the pair "knowingly did possess with intent to use and sell, approximately four hundred forged and counterfeited postage stamps," in violation of § 501, and the second count charging conspiracy to violate that section. The overt acts alleged were the same as in the first indictment and the evidence at the trials was much the same.

I

Petitioner and Cioffi unsuccessfully claimed that, since the second prosecution grew out of the same transaction, the Double Jeopardy Clause of the Fifth Amendment barred the second prosecution. In my view the rejection of this claim was error. I adhere to the position that the Double Jeopardy Clause 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,

448, 453-454 (1970) (BRENNAN, J., concurring); see *Mullin v. Wyoming*, 414 U. S. 940 (1973) (BRENNAN, J., dissenting); *Grubb v. Oklahoma*, 409 U. S. 1017 (1972) (BRENNAN, J., dissenting); *Miller v. Oregon*, 405 U. S. 1047 (1972) (BRENNAN, J., dissenting); *Harris v. Washington*, 404 U. S. 55, 57 (1971) (DOUGLAS, J., concurring).

II

I would grant certiorari in any event to decide another Double Jeopardy claim argued by petitioner based upon the action of the Court of Appeals for the Second Circuit in remanding for a new trial after reversing the conviction of petitioner and Cioffi under the second indictment, 487 F. 2d 492 (1973).

The substantive § 501 first count alleged possession of the stamps "with intent to use and sell." Shortly before submission of the case to the jury, the indictment was redacted to delete all references to "sell." The redaction was acquiesced in by the prosecution when sought by the defense, apparently because the Government's evidence was insufficient to support the charge of possession with intent to "sell." The case thus went to the jury under instructions limited to the charge of possession with intent to "use." The Court of Appeals held, however, that the instructions defining "use" were erroneous because not confined to use for postal purposes. Instead of remanding for a new trial limited to the "use" charge, as was proper, although the Government's evidence at the § 472 trial may have been insufficient, *Bryan v. United States*, 338 U. S. 552 (1950), the Court of Appeals remanded for a trial on the "sell" charge, finding that the Government's evidence on that charge was sufficient to present a jury question of possession with intent to "sell." The Court of Appeals stated:

"There was no evidence in this case that defendants had any intention to use the counterfeited

stamps for large scale mailing of letters; the evidence was rather that they were intent on a sale. In short, when the judge redacted the indictment, he cut out the wrong word; the case should have been submitted to the jury on the basis of possession with intent to sell rather than possession with intent to use. If the judge's action was based on a belief of insufficiency of the evidence to show possession with intent to sell, he was mistaken. From the evidence presented at trial, the jury could permissibly infer that defendants intended to sell the sheet of 400 counterfeit stamps" 487 F. 2d, at 500.

The Court of Appeals recognized that a double jeopardy question was raised by the remand for a trial of the "sell" charge:

"There remains the question whether defendants can be tried again under the same indictment, with the jury this time instructed that it can convict on proof of intent to sell, a charge which the judge erroneously removed from the indictment at the defendants' request and which we direct him to restore. Plainly they can be. It is settled that when a defendant has his conviction reversed on appeal, the double jeopardy clause does not prevent his retrial for the same offense. . . . We see no tenable distinction between a case like this where defendants have procured a reversal because the judge submitted the indictment to the jury on a wrong theory and one where they procured reversal because the judge submitted a defective indictment." *Id.*, at 501.

The question, however, is whether the trial judge's redaction of the "sell" charge was a directed verdict of acquittal on that charge. The lack of a formal direction

of acquittal is not determinative. *United States v. Sisson*, 399 U. S. 267, 279 n. 7 (1970). “[T]he trial judge’s disposition is an ‘acquittal’ if it is ‘a legal determination on the basis of facts adduced at the trial relating to the general issue of the case’” *United States v. Jorn*, 400 U. S. 470, 478 n. 7 (1971); cf. *United States v. Oppenheimer*, 242 U. S. 85 (1916); *Downum v. United States*, 372 U. S. 734 (1963). If it was an acquittal, petitioner did not forgo his constitutional defense of former jeopardy on that charge by successfully appealing his erroneous conviction on the “use” charge. “Conditioning an appeal of one offense on a coerced surrender of a valid plea of former jeopardy on another offense exacts a forfeiture in plain conflict with the constitutional bar against double jeopardy.” *Green v. United States*, 355 U. S. 184, 193–194 (1957). See also *Price v. Georgia*, 398 U. S. 323 (1970); *Benton v. Maryland*, 395 U. S. 784, 796–797 (1969).

The Court of Appeals held this principle inapplicable in denying a petition for rehearing. It based its decision on a reading of § 501 as establishing a single offense, 487 F. 2d, at 501. This conclusion itself presents an important question even under Justice Gray’s formulation in *Morey v. Commonwealth*, 108 Mass. 433, 434 (1871), that the test of a single offense is whether “the evidence required to support a conviction upon one of [the charges] would have been sufficient to warrant conviction upon the other.” See, e. g., *Gavieres v. United States*, 220 U. S. 338, 342 (1911); *Blockburger v. United States*, 284 U. S. 299, 304 (1932). Under that test, there is clearly a question whether the evidence required to support a conviction upon one of the charges would have been sufficient to warrant conviction upon the other, since proof of possession with intent to sell seems to require

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proof of a different element from possession with intent to use.

I would grant the petition for certiorari and set the case for oral argument.

No. 73-6494. JACKSON *v.* NORTON-CHILDREN'S HOSPITAL, INC., ET AL. C. A. 6th Cir. Motion of petitioner for leave to proceed *in forma pauperis* and certiorari denied. Reported below: 487 F. 2d 502.

Rehearing Denied

No. 72-887. AMERICAN PARTY OF TEXAS ET AL. *v.* WHITE, SECRETARY OF STATE OF TEXAS, 415 U. S. 767;

No. 72-1410. EDELMAN, DIRECTOR, DEPARTMENT OF PUBLIC AID OF ILLINOIS *v.* JORDAN, 415 U. S. 651;

No. 73-1032. SLUTSKY ET AL., DBA "THE NEVELE" *v.* UNITED STATES, *ante*, p. 937;

No. 73-1063. HANNERS *v.* UNITED STATES, *ante*, p. 951;

No. 73-6084. NORTHERN *v.* PROCUNIER, CORRECTIONS DIRECTOR, ET AL., *ante*, p. 943;

No. 73-6119. SAYLES *v.* SIRICA, U. S. DISTRICT JUDGE, 415 U. S. 988;

No. 73-6231. SMILGUS *v.* KENT, JUDGE, *ante*, p. 908;

No. 73-6252. JIMENEZ *v.* UNITED STATES, *ante*, p. 916;
and

No. 73-6327. WALLACE ET VIR *v.* SCHULIMSON, DIRECTOR, DIVISION OF WELFARE OF MISSOURI, ET AL., *ante*, p. 945. Petitions for rehearing denied.

No. 73-809. ROSSI ET AL. *v.* UNITED STATES, 415 U. S. 994. Motion for leave to file petition for rehearing denied.