

ORDERS FROM MAY 28 THROUGH
JUNE 17, 1974

MAY 28, 1974

Affirmed on Appeal

No. 73-777. OTTER TAIL POWER CO. *v.* UNITED STATES. Affirmed on appeal from D. C. Minn. MR. JUSTICE BLACKMUN and MR. JUSTICE POWELL took no part in the consideration or decision of this case. Reported below: 360 F. Supp. 451.

No. 73-1349. FLORIDA EAST COAST RAILWAY CO. ET AL. *v.* UNITED STATES ET AL. Affirmed on appeal from D. C. M. D. Fla. MR. JUSTICE POWELL took no part in the consideration or decision of this case. Reported below: 368 F. Supp. 1009.

No. 73-1391. SPIELMAN-FOND, INC., ET AL. *v.* HANSON'S, INC., ET AL. Affirmed on appeal from D. C. Ariz. Reported below: 379 F. Supp. 997.

No. 73-6446. AUGUST *v.* BRONSTEIN, CHAIRMAN, CIVIL SERVICE COMMISSION OF THE CITY OF NEW YORK, ET AL. Affirmed on appeal from D. C. S. D. N. Y. Reported below: 369 F. Supp. 190.

No. 73-1491. HAINES *v.* ASKEW, GOVERNOR OF FLORIDA, ET AL. Affirmed on appeal from D. C. M. D. Fla. MR. JUSTICE DOUGLAS would note probable jurisdiction and set case for oral argument. Reported below: 368 F. Supp. 369.

Appeals Dismissed

No. 72-1369. CARMACK ET AL. *v.* BUCKNER. Appeal from Sup. Ct. La. Motion of Federal National Mortgage

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Assn. for leave to file a brief as *amicus curiae* granted. Appeal dismissed for want of substantial federal question. Reported below: 272 So. 2d 326.

No. 73-960. MARSHALL *v.* TEXAS. Appeal from Ct. Civ. App. Tex., 14th Sup. Jud. Dist., dismissed for want of substantial federal question.

No. 73-1517. BALTIMORE COUNTY ET AL. *v.* CHURCHILL, LTD., ET AL. Appeal from Ct. App. Md. dismissed for want of substantial federal question. Reported below: 271 Md. 1, 313 A. 2d 829.

No. 73-6518. CRANDALL *v.* TEXAS. Appeal from Ct. Crim. App. Tex. dismissed for want of substantial federal question.

No. 73-6519. WINKFIELD *v.* OHIO. Appeal from Ct. App. Ohio, Franklin County, dismissed for want of substantial federal question.

No. 73-1483. SIMMONS ET AL. *v.* GORTON, ATTORNEY GENERAL OF WASHINGTON, ET AL.; and

No. 73-1484. FRITZ ET AL. *v.* GORTON, ATTORNEY GENERAL OF WASHINGTON, ET AL. Appeals from Sup. Ct. Wash. Motion of Association of Washington Business, Inc., for substitution of representative of class party or in the alternative for leave to intervene in No. 73-1484 denied. Appeals dismissed for want of substantial federal question. Reported below: 83 Wash. 2d 275, 517 P. 2d 911.

No. 73-6220. DIGGS *v.* BERZAK, CHAIRMAN, BOARD OF APPEALS AND REVIEW, U. S. CIVIL SERVICE COMMISSION, ET AL. Appeal from C. A. D. C. Cir. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied.

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No. 73-6483. *NIVAL v. NEW YORK*. Appeal from Ct. App. N. Y. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied. Reported below: 33 N. Y. 2d 391, 308 N. E. 2d 883.

Vacated and Remanded on Appeal

No. 73-1305. *NEW HAMPSHIRE DEPARTMENT OF EMPLOYMENT SECURITY ET AL. v. PREGENT*. Appeal from D. C. N. H. Judgment vacated and case remanded to consider question of mootness. Reported below: 361 F. Supp. 782.

Certiorari Granted—Vacated and Remanded

No. 71-1410. *PISACANO ET AL. v. UNITED STATES*. C. A. 2d Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *United States v. Giordano*, 416 U. S. 505 (1974). Reported below: 459 F. 2d 259.

No. 72-158. *BECKER ET AL. v. UNITED STATES*. C. A. 2d Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *United States v. Giordano*, 416 U. S. 505 (1974). Reported below: 461 F. 2d 230.

No. 72-1729. *SIMONS v. UNITED STATES*;

No. 72-6992. *FAVANO v. UNITED STATES*; and

No. 73-13. *ROMANELLO ET AL. v. UNITED STATES*. C. A. 2d Cir. Motion of petitioner in No. 72-6992 for leave to proceed *in forma pauperis* granted. Certiorari granted, judgments vacated, and cases remanded for further consideration in light of *United States v. Giordano*, 416 U. S. 505 (1974). Reported below: 478 F. 2d 1397.

No. 73-856. *BYNUM ET AL. v. UNITED STATES*. C. A. 2d Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *United*

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States v. Giordano, 416 U. S. 505 (1974). MR. JUSTICE DOUGLAS would reverse the judgment. *United States v. Giordano*, 416 U. S. 505, 580 (1974) (DOUGLAS, J., concurring), and *United States v. Chavez*, 416 U. S. 562, 580 (1974) (DOUGLAS, J., concurring in part and dissenting in part). Reported below: 485 F. 2d 490.

Miscellaneous Orders

No. 32, Orig. MISSOURI *v.* NEBRASKA. Motion to dismiss per stipulation denied without prejudice to parties' filing proper motion under Rule 60 of the Rules of this Court. *Kansas v. Colorado*, 382 U. S. 801 (1965); see *Washington v. Northern Securities Co.*, 201 U. S. 651 (1906). [For earlier orders herein, see, *e. g.*, 390 U. S. 993.]

No. A-1044. HOFFMAN ET UX. *v.* DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT ET AL. C. A. 5th Cir. Application for stay and continuation of injunction presented to MR. JUSTICE STEWART, and by him referred to the Court, denied.

No. A-1058. BUCK, DIRECTOR, COMMUNICATIONS AND MARKETING, CHICAGO TRANSIT AUTHORITY, ET AL. *v.* IMPEACH NIXON COMMITTEE ET AL. C. A. 7th Cir. Motion of respondents to shorten time in which to file petition for writ of certiorari denied.

No. A-1075 (73-1681). GEORGE STEINBERG & SON, INC. *v.* BUTZ, SECRETARY OF AGRICULTURE, ET AL. Application for stay of mandate of United States Court of Appeals for the Second Circuit presented to MR. JUSTICE DOUGLAS, and by him referred to the Court, denied. Reported below: 491 F. 2d 988.

No. A-1081. MARRIOTT CORP. ET AL. *v.* DISTRICT OF COLUMBIA MINIMUM WAGE AND INDUSTRIAL SAFETY BOARD. Ct. App. D. C. Application for stay of enforce-

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ment of the Wage Order of the District of Columbia Minimum Wage and Industrial Safety Board presented to THE CHIEF JUSTICE, and by him referred to the Court, denied. The order of THE CHIEF JUSTICE heretofore entered May 13, 1974, is hereby vacated.

No. A-1093. McDONALD ET AL. *v.* McLUCAS, ACTING SECRETARY OF THE AIR FORCE, ET AL. D. C. S. D. N. Y. Application for stay of judgment and other relief presented to MR. JUSTICE DOUGLAS, and by him referred to the Court, denied. Reported below: 371 F. Supp. 831 and 837.

No. A-1124 (73-1745). HUME *v.* CAREY. C. A. D. C. Cir. Application for stay of judgment presented to THE CHIEF JUSTICE, and by him referred to the Court, denied. MR. JUSTICE DOUGLAS, MR. JUSTICE BRENNAN, and MR. JUSTICE MARSHALL would grant the stay. Reported below: 492 F. 2d 631.

No. 73-203. EISEN *v.* CARLISLE & JACQUELIN ET AL. C. A. 2d Cir. [Certiorari granted, 414 U. S. 908.] Motion of respondents for leave to file supplemental brief after argument granted.

No. 73-477. GERSTEIN *v.* PUGH ET AL. C. A. 5th Cir. [Certiorari granted, 414 U. S. 1062.] The Solicitor General is invited to file a brief in this case expressing the views of the United States.

No. 73-1575. CALLAHAN ET AL. *v.* KIMBALL ET AL. C. A. 9th Cir. The Solicitor General is invited to file a brief in this case expressing the views of the United States.

No. 73-631. HOWARD JOHNSON CO., INC. *v.* DETROIT LOCAL, JOINT EXECUTIVE BOARD, HOTEL & RESTAURANT EMPLOYEES & BARTENDERS INTERNATIONAL UNION, AFL-

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CIO. C. A. 6th Cir. [Certiorari granted, 414 U. S. 1091.] Motion of petitioner for leave to file supplemental brief after argument granted.

No. 73-5772. *FARETTA v. CALIFORNIA*. Ct. App. Cal., 2d App. Dist. [Certiorari granted, 415 U. S. 975.] Motion of petitioner for appointment of counsel granted. It is ordered that Jerome B. Falk, Jr., Esquire, of San Francisco, California, a member of the Bar of this Court, be, and he is hereby, appointed to serve as counsel for petitioner in this case.

No. 73-1470. *JONES ET AL. v. MEANS ET AL., EXECUTORS*. Motion for leave to file petition for writ of certiorari denied.

No. 73-6339. *GARNER v. DAGGETT, WARDEN, ET AL.*; and

No. 73-6633. *SCHWARTZ v. NEVADA ET AL.* Motions for leave to file petitions for writs of habeas corpus denied.

No. 73-6476. *KELLY v. STRUBBE, CLERK, U. S. COURT OF APPEALS*;

No. 73-6513. *CAMPBELL v. WADSWORTH, CLERK, U. S. COURT OF APPEALS, ET AL.*; and

No. 73-6557. *CAGLE v. DAGGETT, WARDEN, ET AL.* Motions for leave to file petitions for writs of mandamus denied.

Probable Jurisdiction Noted

No. 73-1462. *WHITE, SECRETARY OF STATE OF TEXAS, ET AL. v. REGISTER ET AL.* Appeal from D. C. W. D. Tex. Probable jurisdiction noted. MR. JUSTICE DOUGLAS would affirm the judgment. Reported below: 378 F. Supp. 640.

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Certiorari Granted

No. 73-1121. NORTH GEORGIA FINISHING, INC. *v.* DICHEM, INC. Sup. Ct. Ga. Certiorari granted. Reported below: 231 Ga. 260, 201 S. E. 2d 321.

No. 73-1446. ROE ET AL. *v.* DOE. Ct. App. N. Y. Certiorari granted. Reported below: 33 N. Y. 2d 902, 307 N. E. 2d 823.

No. 73-64. IANNELLI ET AL. *v.* UNITED STATES. C. A. 3d Cir. Certiorari granted limited to Question 2 presented by the petition which reads as follows: "Whether petitioners' convictions of conspiracy represent a duplication of their convictions of violating 18 U. S. C. § 1955 and require that the conspiracy convictions be reversed." Reported below: 477 F. 2d 999.

No. 73-1233. NATIONAL LABOR RELATIONS BOARD ET AL. *v.* SEARS, ROEBUCK & Co. C. A. D. C. Cir. Certiorari granted and set for oral argument with No. 73-1316 [immediately *infra*]. MR. JUSTICE POWELL took no part in the consideration or decision of this petition. Reported below: 156 U. S. App. D. C. 303, 480 F. 2d 1195.

No. 73-1316. RENEGOTIATION BOARD *v.* GRUMMAN AIRCRAFT ENGINEERING CORP. C. A. D. C. Cir. Certiorari granted and case set for oral argument with No. 73-1233 [immediately *supra*]. MR. JUSTICE POWELL took no part in the consideration or decision of this petition. Reported below: 157 U. S. App. D. C. 121, 482 F. 2d 710.

No. 73-1279. WILLIAMS & WILKINS Co. *v.* UNITED STATES. Ct. Cl. Certiorari granted. MR. JUSTICE BRENNAN and MR. JUSTICE BLACKMUN took no part in the consideration or decision of this petition. Reported below: 203 Ct. Cl. 74, 487 F. 2d 1345.

No. 73-1471. UNITED STATES ET AL. *v.* NEW JERSEY STATE LOTTERY COMMISSION. C. A. 3d Cir. Motion of

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National Association of Broadcasters for leave to file a brief as *amicus curiae* and certiorari granted. Reported below: 491 F. 2d 219.

No. 73-1395. UNITED STATES *v.* WILSON. C. A. 3d Cir. Certiorari granted and case set for oral argument with No. 73-1513 [immediately *infra*]. Reported below: 492 F. 2d 1345.

No. 73-1513. UNITED STATES *v.* JENKINS. C. A. 2d Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari granted and case set for oral argument with No. 73-1395 [immediately *supra*]. Reported below: 490 F. 2d 868.

Certiorari Denied. (See also Nos. 73-6220 and 73-6483, *supra*.)

No. 72-1404. CAPERS ET AL. *v.* CUYAHOGA COUNTY BOARD OF ELECTIONS ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 472 F. 2d 1225.

No. 72-1475. UNITED STATES *v.* ROBERTS ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 477 F. 2d 57.

No. 73-170. CRENSHAW COUNTY PRIVATE SCHOOL FOUNDATION, DBA CRENSHAW CHRISTIAN ACADEMY *v.* SIMON, SECRETARY OF THE TREASURY, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 474 F. 2d 1185 and 475 F. 2d 1404.

No. 73-801. SMITH *v.* LOSEE ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 485 F. 2d 334.

No. 73-888. SELLERS ET AL. *v.* UNITED STATES; and
No. 73-889. CARR *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 483 F. 2d 37.

No. 73-933. PARSONS ET AL. *v.* KNOPP ET UX. Sup. Ct. App. W. Va. Certiorari denied.

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No. 73-972. *CARFORA v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 489 F. 2d 354.

No. 73-1006. *MARTIN-TRIGONA v. SUPREME COURT OF ILLINOIS*. Sup. Ct. Ill. Certiorari denied. Reported below: 55 Ill. 2d 301, 302 N. E. 2d 68.

No. 73-1021. *STATES v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 488 F. 2d 761.

No. 73-1085. *WALKER v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 485 F. 2d 686.

No. 73-1086. *MASCOLO ET AL. v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 486 F. 2d 1397.

No. 73-1103. *MEMMOLO v. UNITED STATES*. C. A. 1st Cir. Certiorari denied.

No. 73-1147. *VOGT v. OSWALD, CORRECTION COMMISSIONER, ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 486 F. 2d 1398.

No. 73-1153. *UNITED STATES v. WILLIAM GREEN CONSTRUCTION Co., INC., ET AL.; and*

No. 73-1314. *WILLIAM GREEN CONSTRUCTION Co., INC., ET AL. v. UNITED STATES*. Ct. Cl. Certiorari denied. Reported below: 201 Ct. Cl. 616, 477 F. 2d 930.

No. 73-1204. *SQUIRE v. VIRGINIA*. Sup. Ct. Va. Certiorari denied. Reported below: 214 Va. 260, 199 S. E. 2d 534.

No. 73-1230. *LASALLE EXTENSION UNIVERSITY v. FEDERAL TRADE COMMISSION*. C. A. 7th Cir. Certiorari denied. Reported below: 486 F. 2d 1406.

No. 73-1237. *MEANS, JUDGE v. OKLAHOMA EX REL. FALLIS, DISTRICT ATTORNEY OF TULSA COUNTY*. Ct. Crim. App. Okla. Certiorari denied.

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No. 73-1243. *BRIN ET AL. v. UNITED STATES ET AL.* C. A. 7th Cir. Certiorari denied. Reported below: 489 F. 2d 757.

No. 73-1251. *FELTON, WARDEN v. SAIKEN.* C. A. 7th Cir. Certiorari denied. Reported below: 489 F. 2d 865.

No. 73-1258. *TANNER ET AL. v. UNITED STATES.* C. A. 7th Cir. Certiorari denied. Reported below: 486 F. 2d 1406.

No. 73-1266. *KENNEBEC LOG DRIVING CO. ET AL. v. UNITED STATES.* C. A. 1st Cir. Certiorari denied. Reported below: 491 F. 2d 562.

No. 73-1298. *CHERRY ET AL. v. SMITH ET AL.* C. A. 7th Cir. Certiorari denied. Reported below: 489 F. 2d 1098.

No. 73-1304. *DENTE v. INTERNATIONAL ORGANIZATION OF MASTERS, MATES & PILOTS, LOCAL 90.* C. A. 9th Cir. Certiorari denied. Reported below: 492 F. 2d 10.

No. 73-1326. *ELGIN, JOLIET & EASTERN RAILWAY CO. v. FERAK, SPECIAL ADMINISTRATOR.* Sup. Ct. Ill. Certiorari denied. Reported below: 55 Ill. 2d 596, 304 N. E. 2d 619.

No. 73-1355. *KUNTZWEILER v. UNITED STATES.* C. A. 9th Cir. Certiorari denied. Reported below: 487 F. 2d 426.

No. 73-1361. *BALDRIDGE ET AL. v. HADLEY ET AL.* C. A. 10th Cir. Certiorari denied. Reported below: 491 F. 2d 859.

No. 73-1365. *PALO ALTO TENANTS' UNION ET AL. v. PALO ALTO CITY MANAGER ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 487 F. 2d 883.

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No. 73-1373. SHEPARD ET UX. *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 3d Cir. Certiorari denied. Reported below: 481 F. 2d 1399.

No. 73-1374. GARLOCK INC. *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 2d Cir. Certiorari denied. Reported below: 489 F. 2d 197.

No. 73-1383. GINGERICH ET AL. *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 73-1385. KNAPP *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 489 F. 2d 758.

No. 73-1393. WHETSTONE *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 492 F. 2d 1244.

No. 73-1449. CARNEY *v.* CENTRAL NEW YORK FREIGHTWAYS ET AL. Super. Ct. N. J. Certiorari denied.

No. 73-1450. IN RE COREY. Sup. Ct. Hawaii. Certiorari denied. Reported below: 55 Haw. 47 and 64, 515 P. 2d 400.

No. 73-1455. EVANS ET AL. *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied. Reported below: 34 Cal. App. 3d 175, 109 Cal. Rptr. 719.

No. 73-1458. LOUISIANA ET AL. *v.* GULF STATES THEATRES OF LOUISIANA, INC., ET AL. Sup. Ct. La. Certiorari denied. Reported below: 270 So. 2d 547.

No. 73-1460. KIRBY, DBA QUIK CHEK OF INDIANA, ET AL. *v.* P. R. MALLORY & Co., INC. C. A. 7th Cir. Certiorari denied. Reported below: 489 F. 2d 904.

No. 73-1469. LOHF, TRUSTEE IN BANKRUPTCY *v.* TRAVELERS INDEMNITY Co. C. A. 10th Cir. Certiorari denied.

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No. 73-1472. *MIGLIORINI v. NEW YORK*. App. Div., Sup. Ct. N. Y., 2d Jud. Dept. Certiorari denied. Reported below: 43 App. Div. 2d 731, 351 N. Y. S. 2d 369.

No. 73-1480. *UMPHREY ET AL. v. MCGRAW-EDISON Co.* C. A. 7th Cir. Certiorari denied. Reported below: 489 F. 2d 757.

No. 73-1482. *MANZARDO ET AL. v. PULLMAN CO. ET AL.* C. A. 7th Cir. Certiorari denied. Reported below: 489 F. 2d 757.

No. 73-1493. *ALLEN v. HOWARD*. C. A. 4th Cir. Certiorari denied. Reported below: 487 F. 2d 1397.

No. 73-1497. *INTERNATIONAL LONGSHOREMEN'S & WAREHOUSEMEN'S UNION, LOCAL 21 v. REYNOLDS METALS Co.* C. A. 9th Cir. Certiorari denied. Reported below: 487 F. 2d 696.

No. 73-1498. *LEE v. TEXAS*. Ct. Crim. App. Tex. Certiorari denied. Reported below: 503 S. W. 2d 244.

No. 73-1499. *LONGSHORE ET AL. v. SALUDA COUNTY SCHOOL DISTRICT No. 1 OF SALUDA COUNTY, SOUTH CAROLINA, ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 488 F. 2d 804.

No. 73-1514. *BRYAN v. FLORIDA*. Sup. Ct. Fla. Certiorari denied. Reported below: 287 So. 2d 73.

No. 73-1550. *HEARD v. AMERICAN UNIVERSITY*. C. A. D. C. Cir. Certiorari denied. Reported below: 159 U. S. App. D. C. 342, 487 F. 2d 1213.

No. 73-1597. *LANSING v. NEW YORK STOCK EXCHANGE*. C. A. 2d Cir. Certiorari denied. Reported below: 490 F. 2d 1406.

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No. 73-1607. *HAWAIIAN AIRLINES, INC. v. ALOHA AIRLINES, INC.* C. A. 9th Cir. Certiorari denied. Reported below: 489 F. 2d 203.

No. 73-6080. *PERKINS v. UNITED STATES.* C. A. 1st Cir. Certiorari denied. Reported below: 488 F. 2d 652.

No. 73-6094. *NELSON v. UNITED STATES;* and

No. 73-6368. *HENDERSON v. UNITED STATES.* C. A. 5th Cir. Certiorari denied. Reported below: 489 F. 2d 802.

No. 73-6135. *WALLACE v. WEINBERGER, SECRETARY OF HEALTH, EDUCATION, AND WELFARE.* C. A. 9th Cir. Certiorari denied. Reported below: 488 F. 2d 606.

No. 73-6170. *MASON v. GOLLMAR, JUDGE.* Sup. Ct. Wis. Certiorari denied.

No. 73-6223. *CURTIS v. UNITED STATES.* C. A. 3d Cir. Certiorari denied. Reported below: 491 F. 2d 749.

No. 73-6225. *ISAAC v. UNITED STATES.* C. A. 2d Cir. Certiorari denied. Reported below: 489 F. 2d 753.

No. 73-6228. *LOTT v. FLORIDA.* Sup. Ct. Fla. Certiorari denied. Reported below: 286 So. 2d 565.

No. 73-6232. *WASHABAUGH v. UNITED STATES.* C. A. 9th Cir. Certiorari denied.

No. 73-6235. *ZAVALA v. CALIFORNIA.* Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 73-6237. *JENNINGS v. WAINWRIGHT, CORRECTIONS DIRECTOR.* C. A. 5th Cir. Certiorari denied. Reported below: 486 F. 2d 1041.

No. 73-6242. *KALMBACH v. JONES, SHERIFF.* C. A. 5th Cir. Certiorari denied. Reported below: 488 F. 2d 134.

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No. 73-6254. *FAULKNER v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 488 F. 2d 328.

No. 73-6268. *BACCARI ET AL. v. UNITED STATES*. C. A. 10th Cir. Certiorari denied. Reported below: 489 F. 2d 274.

No. 73-6276. *SWEENEY v. NEW YORK*. App. Div., Sup. Ct. N. Y., 2d Jud. Dept. Certiorari denied. Reported below: 43 App. Div. 2d 564, 349 N. Y. S. 2d 63.

No. 73-6279. *DAY v. WISCONSIN*. Sup. Ct. Wis. Certiorari denied. Reported below: 61 Wis. 2d 236, 212 N. W. 2d 489.

No. 73-6282. *WINDHAM v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 487 F. 2d 67.

No. 73-6286. *WILLIAMS v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 489 F. 2d 755.

No. 73-6287. *BATTEN v. VIRGINIA*. Sup. Ct. Va. Certiorari denied.

No. 73-6288. *WALKER v. UNITED STATES*; and

No. 73-6356. *HOLLAND v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 489 F. 2d 754.

No. 73-6312. *DICKSON v. ESTELLE, CORRECTIONS DIRECTOR*. C. A. 5th Cir. Certiorari denied.

No. 73-6314. *BUTLER v. CALIFORNIA*. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 73-6351. *MOORE ET AL. v. UNITED STATES*. C. A. 10th Cir. Certiorari denied.

No. 73-6359. *GARRETT v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 489 F. 2d 756.

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No. 73-6362. *MILLER v. UNITED STATES*. C. A. 5th Cir. Certiorari denied.

No. 73-6380. *ENNIS v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 488 F. 2d 484.

No. 73-6398. *SMITH v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 485 F. 2d 686.

No. 73-6400. *CAMP v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 486 F. 2d 1405.

No. 73-6405. *PEREZ v. UNITED STATES*. C. A. 9th Cir. Certiorari denied.

No. 73-6409. *ROBERTSON v. UNITED STATES*. C. A. D. C. Cir. Certiorari denied. Reported below: 159 U. S. App. D. C. 343, 487 F. 2d 1214.

No. 73-6411. *WALLACE v. SECRETARY, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE*. C. A. 8th Cir. Certiorari denied.

No. 73-6415. *KALE v. UNITED STATES ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 489 F. 2d 449.

No. 73-6418. *SARTIN v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 487 F. 2d 1404.

No. 73-6423. *BRUCE v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 492 F. 2d 1239.

No. 73-6429. *HEAD v. UNITED STATES*. C. A. 9th Cir. Certiorari denied.

No. 73-6431. *WILLIAMS v. RICHMOND GUANO CO. ET AL.* Sup. Ct. Va. Certiorari denied.

No. 73-6433. *SALVO v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 493 F. 2d 1402.

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No. 73-6439. *SIN NAGH FONG v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 490 F. 2d 527 and 491 F. 2d 1391.

No. 73-6468. *CULPEPPER v. NEW YORK*. Ct. App. N. Y. Certiorari denied. Reported below: 33 N. Y. 2d 837, 307 N. E. 2d 48.

No. 73-6471. *AL-KANANI v. NEW YORK*. Ct. App. N. Y. Certiorari denied. Reported below: 33 N. Y. 2d 260, 307 N. E. 2d 43.

No. 73-6482. *WALLACE ET VIR v. DIXON ET AL.* C. A. 8th Cir. Certiorari denied.

No. 73-6486. *PUGACH v. NEW YORK*. Sup. Ct. N. Y., Bronx County. Certiorari denied.

No. 73-6491. *WOODS v. TODD ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 490 F. 2d 990.

No. 73-6495. *MURGUIA v. INDUSTRIAL COMMISSION OF ARIZONA ET AL.* Ct. App. Ariz. Certiorari denied.

No. 73-6496. *SLOCUM v. HOPPER, WARDEN*. C. A. 5th Cir. Certiorari denied.

No. 73-6502. *CHATMAN v. CALIFORNIA*. Ct. App. Cal., 5th App. Dist. Certiorari denied.

No. 73-6503. *COLE v. TENNESSEE*. Ct. Crim. App. Tenn. Certiorari denied.

No. 73-6515. *ARTIS v. VIRGINIA*. Sup. Ct. Va. Certiorari denied.

No. 73-6525. *MENDES v. RAILWAY EXPRESS AGENCY, INC., ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 489 F. 2d 752.

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No. 73-6526. *GEIGER v. WAINWRIGHT, CORRECTIONS DIRECTOR*. C. A. 5th Cir. Certiorari denied. Reported below: 490 F. 2d 990.

No. 73-6528. *JENKINS v. WAINWRIGHT, CORRECTIONS DIRECTOR*. C. A. 5th Cir. Certiorari denied. Reported below: 488 F. 2d 136.

No. 73-6529. *COCKSHUTT v. MCCARTHY, MEN'S COLONY SUPERINTENDENT*. C. A. 9th Cir. Certiorari denied.

No. 73-6539. *MORGAN v. TEXAS*. Ct. Crim. App. Tex. Certiorari denied. Reported below: 502 S. W. 2d 722.

No. 73-6542. *GAUSE v. ARIZONA*. Sup. Ct. Ariz. Certiorari denied.

No. 73-6546. *CALIA v. OREGON*. Sup. Ct. Ore. Certiorari denied. Reported below: See 15 Ore. App. 110, 514 P. 2d 1354.

No. 73-6547. *IMESON v. COMMISSIONER OF INTERNAL REVENUE*. C. A. 9th Cir. Certiorari denied. Reported below: 487 F. 2d 319.

No. 73-6559. *MAHONEY v. CARDWELL, WARDEN*. C. A. 9th Cir. Certiorari denied.

No. 73-6570. *HALL v. ALABAMA*. Ct. Crim. App. Ala. Certiorari denied.

No. 72-863. *FIGIELLA ET AL. v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 468 F. 2d 688.

No. 72-1267. *CUZZO v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 472 F. 2d 1404.

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No. 72-1304. *CAFERO ET AL. v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 473 F. 2d 489.

No. 72-1484. *POSNER v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 477 F. 2d 57.

No. 72-1588. *DELVECCHIO ET AL. v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 475 F. 2d 1396.

No. 72-1605. *FINO ET AL. v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 478 F. 2d 35.

No. 72-5278. *COX ET AL. v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 462 F. 2d 1293.

No. 73-103. *IANNELLI v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 480 F. 2d 919.

No. 73-903. *CONSIGLIO ET AL. v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 486 F. 2d 1397.

No. 73-999. *KOHNE ET AL. v. UNITED STATES*;

No. 73-5819. *DENHAM ET UX. v. UNITED STATES*; and

No. 73-6015. *TABELLA v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 487 F. 2d 1395.

No. 73-1105. *MERHIGE ET AL., U. S. DISTRICT JUDGES v. UNITED STATES BOARD OF PAROLE*. C. A. 4th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 487 F. 2d 25.

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No. 73-1146. *TESTA v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 486 F. 2d 1013.

No. 73-1192. *PFINGST v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 490 F. 2d 262.

No. 73-1239. *DUROVIC v. COMMISSIONER OF INTERNAL REVENUE*. C. A. 7th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 487 F. 2d 36.

No. 73-1257. *KIRBY v. UNITED STATES*. Ct. Cl. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 201 Ct. Cl. 527.

No. 73-1311. *PAPADOPOULOS v. OREGON STATE BOARD OF HIGHER EDUCATION*. Ct. App. Ore. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 14 Ore. App. 130, 511 P. 2d 854.

No. 73-5730. *DIPIETRO v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 486 F. 2d 1397.

No. 73-6256. *NUCCIO v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 487 F. 2d 462.

No. 73-6274. *BRADSHAW v. FLORIDA*. Sup. Ct. Fla. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 286 So. 2d 4.

No. 73-6284. *SPRIGGS v. UNITED STATES*. C. A. D. C. Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 159 U. S. App. D. C. 57, 486 F. 2d 1317.

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No. 73-6300. LUTON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 486 F. 2d 1021.

No. 73-6301. LUTON *v.* MISSISSIPPI. Sup. Ct. Miss. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 287 So. 2d 269.

No. 73-6310. CARTER *v.* SLAYTON, PENITENTIARY SUPERINTENDENT. C. A. 4th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 485 F. 2d 684.

No. 73-6316. PETER *v.* ILLINOIS. Sup. Ct. Ill. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 55 Ill. 2d 443, 303 N. E. 2d 398.

No. 73-6402. CAIN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 483 F. 2d 1401.

No. 73-6478. JEFFRIES *v.* ARKANSAS. Sup. Ct. Ark. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 255 Ark. 501, 501 S. W. 2d 600.

No. 73-1320. UNITED STATES *v.* KING ET AL. C. A. 9th Cir. Motion of respondent Olson for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 478 F. 2d 494.

No. 72-1476. UNITED STATES *v.* MANTELLO ET AL. C. A. D. C. Cir. Motion of respondents Berman et al. for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 156 U. S. App. D. C. 2, 478 F. 2d 671.

No. 73-1003. NATIONAL INDIAN YOUTH COUNCIL ET AL. *v.* BRUCE ET AL. C. A. 10th Cir. Motion of peti-

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tioners to strike brief of respondents and certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 485 F. 2d 97.

No. 73-1008. PORTLAND CEMENT CORP. *v.* ADMINISTRATOR, ENVIRONMENTAL PROTECTION AGENCY. C. A. D. C. Cir. Certiorari denied. MR. JUSTICE POWELL took no part in the consideration or decision of this petition. Reported below: 158 U. S. App. D. C. 308, 486 F. 2d 375.

No. 73-1275. NATURAL GAS PIPELINE COMPANY OF AMERICA *v.* TRANSCONTINENTAL GAS PIPE LINE CORP. ET AL. C. A. D. C. Cir. Certiorari denied. MR. JUSTICE POWELL took no part in the consideration or decision of this petition. Reported below: 160 U. S. App. D. C. 1, 488 F. 2d 1325.

No. 73-1180. THIDEE PRODUCTS, INC. *v.* NATIONAL LABOR RELATIONS BOARD ET AL.; and

No. 73-1423. INTERNATIONAL UNION OF ELECTRICAL, RADIO & MACHINE WORKERS, AFL-CIO *v.* NATIONAL LABOR RELATIONS BOARD ET AL. Petition for certiorari before judgment by C. A. D. C. Cir. Motion of the Chamber of Commerce of the United States for leave to file a brief as *amicus curiae* in No. 73-1180 granted. Certiorari denied.

No. 73-1507. PARKER, JAIL SUPERINTENDENT *v.* GLINSEY ET AL. C. A. 6th Cir. Motion of respondents for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 491 F. 2d 337.

No. 73-6230. BRESCIA *v.* NEW JERSEY. Super Ct. N. J. Certiorari denied.

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

Petitioner was convicted in state court of assault and battery on a police officer. Because petitioner

was indigent, the court had appointed a member of the local Public Defender's office to represent him. On the morning of the first day of trial, this appointed attorney informed the court that he was not sufficiently prepared to go to trial, and that, in any case, he did not feel that he should continue as defense counsel because he had a close personal association with the State's key witness. The judge agreed that the attorney should be replaced but insisted the trial begin that day. Another member of the Public Defender's office, who happened to be in the courtroom at the time, was appointed as substitute counsel. The new attorney vigorously protested that he was totally unprepared and sought a continuance, but to no avail. The trial judge gave him just the noon recess to review his predecessor's inadequate files and to prepare for trial. When the attorney returned to the courtroom barely more than an hour later, he again protested his lack of preparation. The judge responded:

"Lack of investigation lays at the doorstep of the Public Defender, not you. . . . The Public Defender's office should have done all of these things."

The trial thereupon began.

At the end of the first day, the lawyer complained that he had not even seen relevant material in the hands of the prosecution. The trial judge asked the District Attorney to provide defense counsel with a copy of a police report to look at overnight. On the morning of the second day of trial, defense counsel, still seriously concerned about his lack of familiarity with the case, moved for a mistrial. He cited his "lack of opportunity for any adequate investigation, interview of witnesses, review of the Grand Jury minutes and other necessary investigation" Terming defendant's trial a "mockery," counsel argued that he was simply unprepared

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and could not render adequate assistance of counsel to his client. The judge responded:

“Your office is charged with the responsibility of making the investigation. . . . Notice is served on the Public Defender’s office that when they receive notices from my secretary and receive notices from the Prosecutor [of the trial date], they are not coming in here and asking at the last moment for an adjournment on the basis they are not prepared.”

The motion for a mistrial was denied and the trial continued subject to counsel’s protests. Defense counsel’s lack of preparation manifested itself throughout the trial. At one point, he advised the court that his consultations with his client indicated that the defense would have to call several witnesses. The trial judge allowed counsel to notify his office in this regard. Once the witnesses were subpoenaed and in court, the judge granted defense counsel a few moments to interview them for the first and only time before they took the stand.

Petitioner was convicted and sentenced to serve three to five years in state prison. The Appellate Division of the Superior Court affirmed the conviction and the New Jersey Supreme Court denied a petition for certification.

Petitioner asserts that by forcing him to trial with a woefully unprepared attorney, the court denied him his constitutionally guaranteed right to the effective assistance of counsel. The centrality of the right to counsel among the rights accorded a criminal defendant is self-evident:

“Of all of the rights that an accused person has, the right to be represented by counsel is by far the most pervasive, for it affects his ability to assert any other rights he may have.”¹

¹Schaefer, *Federalism and State Criminal Procedure*, 70 Harv. L. Rev. 1, 8 (1956).

And this Court has repeatedly recognized that the right to counsel is the right to his effective assistance.² In the seminal right-to-counsel case, *Powell v. Alabama*, 287 U. S. 45 (1932), the Court warned that the State's obligation to provide counsel is "not discharged by an assignment at such a time or under such circumstances as to preclude the giving of effective aid in the preparation and trial of the case." *Id.*, at 71. Accordingly, the Court has found it "a denial of the accused's constitutional right to a fair trial to force him to trial with such expedition as to deprive him of the effective aid and assistance of counsel." *White v. Ragen*, 324 U. S. 760, 764 (1945).

Timely appointment and opportunity for adequate preparation are absolute prerequisites for counsel to fulfill his constitutionally assigned role of seeing to it that available defenses are raised and the prosecution put to its proof. Cf. *United States v. Ash*, 413 U. S. 300, 312-313 (1973); *Powell v. Alabama*, *supra*, at 71.

"Adequate preparation for trial often may be a more important element in the effective assistance of counsel to which a defendant is entitled than the forensic skill exhibited in the courtroom. The careful investigation of a case and the thoughtful analysis of the information it yields may disclose evidence of which even the defendant is unaware and may suggest issues and tactics at trial which would otherwise not emerge." *Moore v. United States*, 432 F. 2d 730, 735 (CA3 1970) (en banc).³

² See, e. g., *McMann v. Richardson*, 397 U. S. 759, 771 n. 14 (1970).

³ See *United States v. DeCoster*, 159 U. S. App. D. C. 326, 487 F. 2d 1197 (1973); *Coles v. Peyton*, 389 F. 2d 224 (CA4 1968). See generally American Bar Association Project on Standards for Criminal Justice, Prosecution and Defense Function § 4.1 (Approved Draft 1971), and Providing Defense Services § 5.1 (Approved Draft 1971); Bazelon, *The Defective Assistance of Counsel*, 42 U. Cinn. L. Rev. 1 (1973).

This Court has refused to adopt a *per se* rule as to when a late appointment renders representation ineffective and has held that the circumstances of each case must be examined to determine what constitutes a reasonable amount of time in which to prepare a case. *Chambers v. Maroney*, 399 U. S. 42 (1970). But the Court long ago cautioned that "the denial of opportunity for appointed counsel to confer, to consult with the accused and to prepare his defense, could convert the appointment of counsel into a sham and nothing more than a formal compliance with the Constitution's requirement that an accused be given the assistance of counsel." *Avery v. Alabama*, 308 U. S. 444, 446 (1940). It is inconceivable that the noon recess afforded petitioner's new attorney an ample opportunity to adequately prepare for the four-day trial that followed. When he went to trial, counsel had barely met his own client, had interviewed none of the ten other witnesses called, had not obtained any of the grand jury minutes, had no opportunity for pretrial discovery or even to secure a bill of particulars, had never had access to information in the prosecutor's file, and clearly had no time to develop a trial strategy.

This is not a case where counsel had ample opportunity to prepare a defense but failed to do so because his client was uncooperative or for some other reason. This case does not involve a trial judge's power to set a trial date which affords counsel adequate time to prepare and then insist that, absent unusual circumstances, counsel commence trial on that date. If petitioner had gone to trial with his original attorney this would be a different case. But that attorney was relieved, and counsel who was appointed in his stead had likely never seen or heard of petitioner's case until little more than an hour before the trial began. Cf. *Ungar v. Sarafite*, 376 U. S. 575, 589 (1964).

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The State argues that both petitioner's original and his substitute attorney were from the same Public Defender agency, and that the agency had sufficient time to prepare. The trial judge repeatedly indicated that he was going to continue the trial because "[l]ack of investigation lays at the doorstep of the Public Defender, not [the substitute attorney]." The issue in determining whether a defendant has been deprived of the effective assistance of counsel is not whether the defense attorney is culpable for the failure but only whether, for whatever reason, he has failed to fulfill the essential role imposed on him by the Sixth Amendment. No matter upon whose doorstep the judge cared to lay blame for counsel's lack of preparation, the cost of the failure should not have been visited upon the defendant—who was without responsibility.

It is axiomatic that "[t]he defendant needs counsel and counsel needs time." *Hawk v. Olson*, 326 U. S. 271, 278 (1945). Here, counsel did not have "time" and as a result defendant may well have been deprived of his right to the adequate assistance of counsel guaranteed by the Constitution.

I would grant certiorari and set this case for argument.

No. 73-6579. *MAYER v. MOEYKENS*. C. A. 2d Cir. Certiorari denied. THE CHIEF JUSTICE and MR. JUSTICE BLACKMUN, upon suggestion of petitioner's death prior to filing of petition for certiorari, would dismiss petition. Reported below: 494 F. 2d 855.

Rehearing Denied

No. 72-5187. *FAIR v. TAYLOR ET AL.*, 416 U. S. 918;

No. 72-6050. *FROMMHAGEN v. BROWN, SECRETARY OF STATE OF CALIFORNIA, ET AL.*, 415 U. S. 724; and

No. 73-909. *SMALDONE ET AL. v. UNITED STATES*, 416 U. S. 936. Petitions for rehearing denied.

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- No. 73-5784. GREEN *v.* UNITED STATES, 416 U. S. 941;
No. 73-5863. VALLEY *v.* UNITED STATES, 416 U. S. 936;
No. 73-6008. MCGANN *v.* UNITED STATES BOARD OF
PAROLE ET AL., 416 U. S. 958;
No. 73-6020. MCGANN ET AL. *v.* UNITED STATES
BOARD OF PAROLE, 416 U. S. 958;
No. 73-6293. EASTER *v.* CALIFORNIA, 416 U. S. 945;
No. 73-6295. THOMAS *v.* ESTELLE, CORRECTIONS DI-
RECTOR, 416 U. S. 945; and
No. 73-6388. McDONALD *v.* TENNESSEE ET AL., 416
U. S. 975. Petitions for rehearing denied.

No. 73-1282. FOUNTAIN ET AL. *v.* FOUNTAIN ET AL.,
416 U. S. 939. Motion of Cheryl Y. Conway et al. for
leave to file a brief as *amici curiae* in support of rehearing
granted. Petition for rehearing denied.

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Certiorari Granted

No. 73-1766. UNITED STATES *v.* NIXON, PRESIDENT OF
THE UNITED STATES, ET AL. Petition for certiorari before
judgment to C. A. D. C. Cir. Certiorari and motion for
expedited schedule granted. Parties shall exchange and
file briefs by 1 p. m. on June 21 and any responsive brief
shall be filed by July 1, 1974. Oral argument set for
July 8, 1974, at 10 a. m. Each party allowed one hour
for argument. MR. JUSTICE REHNQUIST took no part in
the consideration or decision of this motion and petition.

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Appeals Dismissed

No. 73-1568. ORRELL'S MUTUAL BURIAL ASSN., INC. *v.*
ADAIR. Appeal from Sup. Ct. N. C. dismissed for want of
substantial federal question. Reported below: 284 N. C.
534, 201 S. E. 2d 905.

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No. 73-6272. *ALMEIDA v. MASSACHUSETTS*. Appeal from Dist. Ct. W. Norfolk County, Mass., dismissed for want of jurisdiction. 28 U. S. C. § 1257.

No. 73-6366. *BRAY, DBA ROCKY MOUNTAIN MINT & DEPOSITORY v. UNITED STATES ET AL.* Appeal from D. C. Utah dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied.

No. 73-6565. *HAAS v. HAAS ET AL.* Appeal from Sup. Ct. Mo. dismissed for want of substantial federal question. MR. JUSTICE DOUGLAS, MR. JUSTICE WHITE, and MR. JUSTICE BLACKMUN would note probable jurisdiction and set case for oral argument. Reported below: 504 S. W. 2d 44.

Miscellaneous Orders

No. A-1154. *CAMPBELL ET AL. v. BEAUGHLER ET AL.* Application for stay of judgment of dismissal by the United States District Court for the District of Arizona 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. 73-6573. *HUNTER v. PHILLIPS, CHIEF JUDGE, U. S. COURT OF APPEALS, ET AL.*; and

No. 73-6580. *GELLIS v. UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF GEORGIA ET AL.* Motions for leave to file petitions for writs of mandamus denied.

Probable Jurisdiction Noted

No. 73-1475. *HARRIS COUNTY COMMISSIONERS COURT ET AL. v. MOORE ET AL.* Appeal from D. C. S. D. Tex. Probable jurisdiction noted. Reported below: 378 F. Supp. 1006.

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Certiorari Granted

No. 73-1347. BOARD OF SCHOOL COMMISSIONERS OF INDIANAPOLIS ET AL. *v.* JACOBS ET AL. C. A. 7th Cir. Certiorari granted. Reported below: 490 F. 2d 601.

No. 73-1148. DECOTEAU, NATURAL MOTHER AND NEXT FRIEND OF FEATHER ET AL. *v.* DISTRICT COUNTY COURT FOR THE TENTH JUDICIAL DISTRICT. Sup. Ct. S. D. Certiorari granted and case set for oral argument with No. 73-1500 [immediately *infra*]. Reported below: — S. D. —, 211 N. W. 2d 843.

No. 73-1500. ERICKSON, WARDEN *v.* UNITED STATES EX REL. FEATHER ET AL. C. A. 8th Cir. Motions of respondents for leave to proceed *in forma pauperis* granted. Certiorari granted and case set for oral argument with No. 73-1148 [immediately *supra*]. Reported below: 489 F. 2d 99.

No. 73-1543. JOHNSON *v.* RAILWAY EXPRESS AGENCY, INC., ET AL. C. A. 6th Cir. Certiorari granted limited to Question 1 presented by the petition which reads as follows: "Whether the timely filing of a charge of employment discrimination with the Equal Employment Opportunity Commission pursuant to Section 706 of Title VII of the Civil Rights Act of 1964, 42 U. S. C. § 2000e-5, tolls the running of the period of limitation applicable to an action based on the same facts brought under the Civil Rights Act of 1866, 42 U. S. C. § 1981?" The Solicitor General is invited to file a brief as *amicus curiae* expressing the views of the United States. Reported below: 489 F. 2d 525.

Certiorari Denied. (See also No. 73-1157, *ante*, p. 279; and No. 73-6366, *supra*.)

No. 72-1245. ST. LOUIS-SAN FRANCISCO RAILWAY CO. *v.* UNITED STATES. Ct. Cl. Certiorari denied. Reported below: 200 Ct. Cl. 50, 470 F. 2d 523.

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No. 73-73. *AMF INC. v. UNITED STATES*. Ct. Cl. Certiorari denied. Reported below: 201 Ct. Cl. 338, 476 F. 2d 1351.

No. 73-307. *LUPIA v. STELLA D'ORO BISCUIT Co., INC.*; and

No. 73-381. *WINOKUR ET AL. v. BELL FEDERAL SAVINGS & LOAN ASSN. ET AL.* C. A. 7th Cir. Certiorari denied.

No. 73-891. *PURIN, AKA MOREIRA v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 486 F. 2d 1363.

No. 73-912. *MULLIGAN ET AL. v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 488 F. 2d 732.

No. 73-939. *CHAMBERS v. CHAMBERS*. Sup. Ct. N. J. Certiorari denied.

No. 73-1274. *DELTA AIR LINES, INC. v. CIVIL AERONAUTICS BOARD ET AL.* C. A. D. C. Cir. Certiorari denied. Reported below: 162 U. S. App. D. C. 21, 497 F. 2d 608.

No. 73-1284. *MERVIN v. FEDERAL TRADE COMMISSION*. C. A. D. C. Cir. Certiorari denied. Reported below: 160 U. S. App. D. C. 148, 489 F. 2d 1272.

No. 73-1333. *GENERAL TIRE & RUBBER Co. v. UNITED STATES*. C. A. D. C. Cir. Certiorari denied. Reported below: 159 U. S. App. D. C. 343, 487 F. 2d 1214.

No. 73-1334. *PEELE v. JONES, YOUTH CENTER SUPERINTENDENT*. C. A. 4th Cir. Certiorari denied.

No. 73-1402. *KEKOA, A MINOR, BY ENOMOTO, ET AL. v. RICHARDSON, JUSTICE, ET AL.* Sup. Ct. Hawaii. Certio-

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rari denied. Reported below: 55 Haw. 104, 516 P. 2d 1239.

No. 73-1417. *SUSQUEHANNA COAL CO. v. COMMISSIONER OF INTERNAL REVENUE*. C. A. 3d Cir. Certiorari denied. Reported below: 487 F. 2d 1395.

No. 73-1422. *MARTINO v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 490 F. 2d 990.

No. 73-1427. *DOSS v. UNITED STATES*. C. A. 6th Cir. Certiorari denied.

No. 73-1428. *FENCL v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 489 F. 2d 759.

No. 73-1429. *LOWE ET AL. v. UNION OIL CO. OF CALIFORNIA ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 487 F. 2d 477.

No. 73-1435. *SADLER ET AL. v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 488 F. 2d 190 and 434.

No. 73-1439. *GREENBANK v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 491 F. 2d 184.

No. 73-1443. *UNIVERSITY OF HOUSTON ET AL. v. WURZER ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 488 F. 2d 552.

No. 73-1457. *BISHOP v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 485 F. 2d 248.

No. 73-1463. *KONIGSBERG ET AL. v. NIXON*. C. A. 9th Cir. Certiorari denied.

No. 73-1481. *UNION CAMP CORP. v. GYPSUM CARRIER, INC., ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 489 F. 2d 152.

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No. 73-1524. *HALLMARK INDUSTRY v. REYNOLDS METALS Co. ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 489 F. 2d 8.

No. 73-1528. *NEWMAN v. SOUTH CAROLINA.* Sup. Ct. S. C. Certiorari denied. Reported below: 261 S. C. 352, 200 S. E. 2d 82.

No. 73-1529. *GENERAL TIRE & RUBBER Co. v. FIRESTONE TIRE & RUBBER Co.* C. A. 6th Cir. Certiorari denied. Reported below: 489 F. 2d 1105.

No. 73-1532. *GEILER, JUDGE v. COMMISSION ON JUDICIAL QUALIFICATIONS.* Sup. Ct. Cal. Certiorari denied. Reported below: 10 Cal. 3d 270, 515 P. 2d 1.

No. 73-1534. *HARRIS v. NEW YORK. County Ct. BROOME COUNTY, N. Y.* Certiorari denied.

No. 73-1535. *TROLL, EXECUTOR v. BORUT.* C. A. 2d Cir. Certiorari denied. Reported below: 490 F. 2d 1406.

No. 73-1537. *KING v. SHELBY RURAL ELECTRIC CO-OPERATIVE CORP.* Ct. App. Ky. Certiorari denied. Reported below: 502 S. W. 2d 659.

No. 73-1539. *ART NEON Co. ET AL. v. CITY AND COUNTY OF DENVER ET AL.* C. A. 10th Cir. Certiorari denied. Reported below: 488 F. 2d 118.

No. 73-1542. *VESCO & Co., INC. v. INTERNATIONAL CONTROLS CORP.* C. A. 2d Cir. Certiorari denied. Reported below: 490 F. 2d 1334.

No. 73-1545. *STATE BOARD OF EDUCATION OF OHIO ET AL. v. AKRON BOARD OF EDUCATION ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 490 F. 2d 1285.

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No. 73-1546. *MANZELLA v. ILLINOIS*. Sup. Ct. Ill. Certiorari denied. Reported below: 56 Ill. 2d 187, 306 N. E. 2d 16.

No. 73-1551. *TRANS WORLD AIRLINES, INC. v. DELTA AIR LINES, INC.* C. A. 6th Cir. Certiorari denied. Reported below: 490 F. 2d 1036.

No. 73-1567. *DART INDUSTRIES, INC. v. E. I. DU PONT DE NEMOURS & Co.* C. A. 7th Cir. Certiorari denied. Reported below: 489 F. 2d 1359.

No. 73-1637. *TRICO PRODUCTS CORP. v. ROBERK Co.* C. A. 2d Cir. Certiorari denied. Reported below: 490 F. 2d 1280.

No. 73-5569. *DAVIS v. CRAVEN, WARDEN*. C. A. 9th Cir. Certiorari denied. Reported below: 485 F. 2d 1138.

No. 73-5938. *HARRISON v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 487 F. 2d 389.

No. 73-6239. *MILLER, AKA TAYLOR v. RICHERT ET AL.* C. A. 9th Cir. Certiorari denied.

No. 73-6267. *SMITH v. VIRGINIA*. Sup. Ct. Va. Certiorari denied.

No. 73-6294. *SOUZA v. MULLEN, WARDEN*. C. A. 1st Cir. Certiorari denied. Reported below: 488 F. 2d 462.

No. 73-6297. *TYLER v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 491 F. 2d 752.

No. 73-6307. *TORSKE ET AL. v. WEINBERGER, SECRETARY OF HEALTH, EDUCATION, AND WELFARE*. C. A. 9th Cir. Certiorari denied. Reported below: 484 F. 2d 59.

No. 73-6315. *CARTER v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 490 F. 2d 1407.

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No. 73-6324. *PERNA v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 491 F. 2d 253.

No. 73-6344. *JONES v. KEEMAN ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 488 F. 2d 1406.

No. 73-6440. *CUNNINGHAM v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 490 F. 2d 991.

No. 73-6447. *McKERNIE v. UNITED STATES*. C. A. 9th Cir. Certiorari denied.

No. 73-6449. *SHACKELFORD v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 494 F. 2d 67.

No. 73-6452. *GOLDER v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 490 F. 2d 1407.

No. 73-6453. *SIMON v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 488 F. 2d 1094.

No. 73-6454. *MOORE v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 477 F. 2d 538.

No. 73-6456. *GARNER v. UNITED STATES*. C. A. D. C. Cir. Certiorari denied. Reported below: 160 U. S. App. D. C. 149, 489 F. 2d 1273.

No. 73-6457. *DAVIS v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 491 F. 2d 1271.

No. 73-6461. *EPPS v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 490 F. 2d 1407.

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No. 73-6469. *SAPP v. HASKINS, PENITENTIARY SUPERINTENDENT*. C. A. 6th Cir. Certiorari denied. Reported below: 492 F. 2d 1244.

No. 73-6474. *TORRES v. UNITED STATES*. C. A. 1st Cir. Certiorari denied.

No. 73-6479. *O'CLAIR v. UNITED STATES*. C. A. 1st Cir. Certiorari denied.

No. 73-6481. *PAIGE v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 493 F. 2d 22.

No. 73-6484. *CRUZ ET AL. v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 492 F. 2d 217.

No. 73-6485. *REVIRA, AKA PEREZ v. UNITED STATES*. C. A. 7th Cir. Certiorari denied.

No. 73-6553. *PUGH v. PADERICK, PENITENTIARY SUPERINTENDENT*. C. A. 4th Cir. Certiorari denied.

No. 73-6558. *MOORE v. FLORIDA PAROLE AND PROBATION COMMISSION*. Sup. Ct. Fla. Certiorari denied. Reported below: 289 So. 2d 719.

No. 73-6560. *SPRINKLE ET AL. v. ILLINOIS*. Sup. Ct. Ill. Certiorari denied. Reported below: 56 Ill. 2d 257, 307 N. E. 2d 161.

No. 73-6574. *HOLLAND v. MARYLAND ET AL.* C. A. 4th Cir. Certiorari denied.

No. 73-6575. *MCCRACKEN v. ROSE, WARDEN*. C. A. 6th Cir. Certiorari denied. Reported below: 493 F. 2d 1406.

No. 73-312. *LIBERTY MUTUAL INSURANCE CO. v. DREW*. C. A. 5th Cir. Motion of respondent for leave

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to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 480 F. 2d 924.

No. 73-1525. ROSE, WARDEN *v.* RAY. C. A. 6th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 491 F. 2d 285.

No. 73-1215. LACOSA ET AL. *v.* UNITED STATES;
No. 73-1364. MANFREDI *v.* UNITED STATES; and
No. 73-6224. MAYO *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 488 F. 2d 588.

No. 73-5933. GALES *v.* VINCENT, CORRECTIONAL SUPERINTENDENT. C. A. 2d Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari.

No. 73-6049. MARSTON *v.* STATE FARM SUPERINTENDENT. C. A. 4th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 485 F. 2d 705.

No. 73-6305. O'BRIEN *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari.

No. 73-6328. O'KELLY *v.* IOWA. Sup. Ct. Iowa. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 211 N. W. 2d 589.

No. 73-6333. GARRETT *v.* PUCKETT, JAIL SUPERINTENDENT. C. A. 4th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari.

No. 73-6352. GALVAN ET AL. *v.* LEVINE, INDUSTRIAL COMMISSIONER OF NEW YORK. C. A. 2d Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 490 F. 2d 1255.

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No. 73-6450. *BROWN v. UNITED STATES*; and

No. 73-6480. *BROWN v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 491 F. 2d 748.

No. 73-1286. *WADLEIGH-MAURICE, LTD., ET AL. v. TAGGART*. C. A. 3d Cir. Motions of Motion Picture Association of America, Inc., and Authors League of America, Inc., for leave to file briefs as *amici curiae* granted. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 489 F. 2d 434.

Rehearing Denied

No. 73-5803. *BEASLEY ET AL. v. UNITED STATES*, 416 U. S. 941;

No. 73-6195. *SAYLES v. GESELL*, U. S. DISTRICT JUDGE, 416 U. S. 934; and

No. 73-6233. *ALFORD v. UNITED STATES CIVIL SERVICE COMMISSION ET AL.*, 416 U. S. 959. Petitions for rehearing denied.

No. 73-988. *CARLSON v. CALIFORNIA*, 415 U. S. 985. Motion for leave to file petition for rehearing denied.

Assignment Order

An order of THE CHIEF JUSTICE designating and assigning Mr. Justice Clark (retired) to perform judicial duties in the United States Court of Appeals for the Eighth Circuit during the week of November 11, 1974, and for such additional time as may be required to prepare for the holding of such court or to complete unfinished business, pursuant to 28 U. S. C. § 294 (a), is ordered entered on the minutes of this Court, pursuant to 28 U. S. C. § 295.

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Dismissal Under Rule 60

No. 73-1464. LIROCCHI, DBA CABLE CLIMBERS SALES Co., ET AL. v. OHIO HOIST MANUFACTURING Co. C. A. 6th Cir. Petition for writ of certiorari dismissed under Rule 60 of the Rules of this Court. Reported below: 490 F. 2d 105.

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Dismissal Under Rule 60

No. 73-1745. HUME v. CAREY. C. A. D. C. Cir. Petition for writ of certiorari dismissed under Rule 60 of the Rules of this Court. Reported below: 160 U. S. App. D. C. 365, 492 F. 2d 631.

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Affirmed on Appeal

No. 73-1437. INDIANA REAL ESTATE COMMISSION ET AL. v. SATOSKAR. Affirmed on appeal from D. C. S. D. Ind. *In re Griffiths*, 413 U. S. 717 (1973). MR. JUSTICE REHNQUIST dissents.

Appeals Dismissed

No. 73-1322. ALONSO ET AL. v. GEORGIA. Appeal from Sup. Ct. Ga. dismissed for want of substantial federal question. Reported below: 231 Ga. 444, 202 S. E. 2d 37.

No. 73-1554. RAMSAY v. SANTA ROSA MEDICAL CENTER ET AL. Appeal from Ct. Civ. App. Tex., 4th Sup. Jud. Dist., dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied. Reported below: 498 S. W. 2d 741.

No. 73-1585. WATERS v. HENDERSON ET AL. Appeal from Ct. App. Tenn. dismissed for want of jurisdic-

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tion. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied.

No. 73-6271. MICHAELS *v.* ARIZONA. Appeal from Sup. Ct. Ariz. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied. Reported below: 110 Ariz. 98, 515 P. 2d 600.

MR. JUSTICE DOUGLAS, dissenting.

In March 1971, the appellant, a juvenile, was arrested in connection with a series of robberies of other juveniles in the vicinity of a local elementary school. The appellant was subsequently charged in Pima County, Arizona, Juvenile Court with delinquency by reason of law violations including five counts of armed robbery, one count of assault with a deadly weapon, and one count of theft. In April 1971, appellant was declared a delinquent; the court dismissed the theft count, reduced a count of robbery to attempted robbery, reduced the assault count to simple assault, and found the charges, as so modified, to have been established. At a dispositional hearing the appellant was placed on probation for an indefinite period. On appeal, the Arizona Supreme Court struck down a number of the charges as based upon identification testimony tainted by an illegal arrest of the appellant. But the court found that, after "[s]triking the charges which may have rested on tainted identifications, one count of attempted robbery still remains. Finding no clear error on this charge, we affirm that adjudication and the disposition order entered by the juvenile court." *In re Appeal of Pima County Anonymous*, 110 Ariz. 98, 103, 515 P. 2d 600, 605 (1973).

In the juvenile proceedings appellant was denied the right to a jury trial by Rule 7 of the Rules of Procedure

of the Juvenile Court. His case was heard by a Juvenile Court Judge who, pursuant to Ariz. Rev. Stat. Ann. §§ 8-202 to 8-205 (1956) and various Juvenile Court Rules, appoints and supervises the Juvenile Courts' prosecutorial staff. The appellant challenges the constitutionality of these statutes and rules.

Other aspects of this same juvenile court system were before the Court in *In re Gault*, 387 U. S. 1 (1967). There Gerald Gault had been adjudicated a delinquent and ordered confined until he reached majority, a sentence of more than five years, "in what is in all but name a penitentiary or jail." *Id.*, at 61 (Black, J., concurring). We held the juvenile process involving such harsh consequences was constitutionally deficient in not providing adequate written notice, advice as to appointed or retained counsel, the right to confrontation, and the privilege against self-incrimination.

Mr. Justice Black noted:

"Where a person, infant or adult, can be seized by the State, charged, and convicted for violating a state criminal law, and then ordered by the State to be confined for six years, I think the Constitution requires that he be tried in accordance with the guarantees of all the provisions of the Bill of Rights made applicable to the States by the Fourteenth Amendment. Undoubtedly this would be true of an adult defendant, and it would be a plain denial of equal protection of the laws—an invidious discrimination—to hold that others subject to heavier punishment could, because they are children, be denied these same constitutional safeguards." *Ibid.*

Appellant faced the same possibility of confinement until he reached majority. Though his precise age is not disclosed, he faced at least three years of possible con-

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finement since he was proceeded against as "a person under the age of eighteen years." Jurisdictional Statement App. xxii. As I stated in *McKeiver v. Pennsylvania*, 403 U. S. 528 (1971):

"No adult could be denied a jury trial in those circumstances. *Duncan v. Louisiana*, 391 U. S. 145, 162. The Fourteenth Amendment, which makes trial by jury provided in the Sixth Amendment applicable to the States, speaks of denial of rights to 'any person,' not a denial of rights to 'any adult person.'" *Id.*, at 560 (dissenting opinion).

When the appellant here was denied the right to trial by jury, he was not even afforded the alternative available to an adult charged with the same offenses—trial before a judge not involved in the prosecutorial process. Juvenile Court judges, unlike the judges in the State's adult criminal courts, are responsible for the appointment and supervision of the prosecutorial staff responsible for proceeding against juveniles. The court assigns juvenile officers to receive complaints alleging delinquent conduct, directs what dispositional investigations the officers shall make, appoints the chief officer who then serves at the judge's pleasure, and controls through power of approval the appointment of all other prosecuting personnel.

The appellant was denied the right to jury trial and forced to trial before a judge with the duty of supervising the prosecutorial staff solely because he is a juvenile and subject to the jurisdiction of the Juvenile Courts. Since I continue to believe that "neither the Fourteenth Amendment nor the Bill of Rights is for adults alone," *In re Gault*, *supra*, at 13, I can find no justification for this discrimination in the treatment of juveniles charged with criminal conduct.

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Certiorari Granted—Vacated and Remanded

No. 73-1396. *MARCUS v. UNITED STATES*. C. A. 1st Cir. Certiorari granted. Upon representation of the Solicitor General set forth in his memorandum for the United States filed May 31, 1974, judgment vacated and case remanded for further consideration in light of position presently asserted by the Government. Reported below: 491 F. 2d 901.

Miscellaneous Orders

No. ————. *IN RE RESIGNATION OF DYE*. Request of Stuart F. Dye, of Knoxville, Tennessee, that his name be stricken from the roll of attorneys admitted to practice in this Court granted.

No. A-1053. *ANDERSON v. SOUTH CAROLINA*. C. A. 4th Cir. Application for bail pending appeal presented to MR. JUSTICE DOUGLAS, and by him referred to the Court, denied.

No. A-1103 (73-1748). *BISHOP ET AL. v. UNITED STATES*. Application for stay of mandate of the United States Court of Appeals for the Eighth Circuit and for release pending disposition of petition for writ of certiorari, presented to MR. JUSTICE MARSHALL, and by him referred to the Court, denied. Reported below: 492 F. 2d 1361.

No. A-1120 (73-1742). *TRAIN, ADMINISTRATOR, ENVIRONMENTAL PROTECTION AGENCY, ET AL. v. NATURAL RESOURCES DEFENSE COUNCIL, INC., ET AL.* Application for stay of Part III of order of the United States Court of Appeals for the Fifth Circuit presented to MR. JUSTICE POWELL, and by him referred to the Court, granted pending final disposition of petition for writ of certiorari. MR. JUSTICE DOUGLAS dissents from granting stay. Reported below: 489 F. 2d 390.

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No. A-1140. HART, A MINOR, BY HART, ET AL. *v.* COMMUNITY SCHOOL BOARD OF BROOKLYN, NEW YORK, SCHOOL DISTRICT 21, ET AL. Application to vacate order of the United States Court of Appeals for the Second Circuit and to reinstate judgment of the United States District Court for the Eastern District of New York, presented to MR. JUSTICE MARSHALL, and by him referred to the Court, denied.

No. A-1157. SEVERSON ET AL. *v.* ROEMER, COMMISSIONER OF TAXATION OF MINNESOTA, ET AL. Sup. Ct. Minn. Application for stay of implementation of Minnesota Tax Credit-Payment Act, Minn. Stat. §§ 290.086 and 290.087 (Supp. 1974), presented to MR. JUSTICE BLACKMUN, and by him referred to the Court, denied. MR. JUSTICE DOUGLAS would grant the stay.

No. 73-6033. ROE ET AL. *v.* NORTON, COMMISSIONER OF WELFARE. Appeal from D. C. Conn. [Probable jurisdiction noted, 415 U. S. 912.] Motion of children of appellants for leave to proceed further herein *in forma pauperis* granted.

No. 73-6589. SAYLES *v.* SIRICA, U. S. DISTRICT JUDGE, ET AL. Motion for leave to file petition for writ of mandamus and other relief denied.

Probable Jurisdiction Noted

No. 73-1573. WITHROW ET AL. *v.* LARKIN. Appeal from D. C. E. D. Wis. Probable jurisdiction noted. Reported below: 368 F. Supp. 796.

No. 73-1016. LASCARIS, COMMISSIONER, DEPARTMENT OF SOCIAL SERVICES OF ONONDAGA COUNTY *v.* SHIRLEY ET AL.; and

No. 73-1095. LAVINE, COMMISSIONER, DEPARTMENT OF SOCIAL SERVICES OF NEW YORK *v.* SHIRLEY ET AL. Ap-

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peals from D. C. N. D. N. Y. Motion of appellee Stuck for leave to proceed *in forma pauperis* granted. Probable jurisdiction noted, cases consolidated, and a total of one hour allotted for oral argument. Reported below: 365 F. Supp. 818.

No. 73-1413. STAATS, COMPTROLLER GENERAL, ET AL. *v.* AMERICAN CIVIL LIBERTIES UNION, INC., ET AL. Appeal from D. C. D. C. Motion of National Association of Broadcasters for leave to file a brief as *amicus curiae* granted. Probable jurisdiction noted. Reported below: 366 F. Supp. 1041.

Certiorari Granted

No. 73-1380. CHEMEHUEVI TRIBE OF INDIANS ET AL. *v.* FEDERAL POWER COMMISSION ET AL.;

No. 73-1666. ARIZONA PUBLIC SERVICE CO. ET AL. *v.* CHEMEHUEVI TRIBE OF INDIANS ET AL.; and

No. 73-1667. FEDERAL POWER COMMISSION *v.* CHEMEHUEVI TRIBE OF INDIANS ET AL. C. A. D. C. Cir. Certiorari granted, cases consolidated, and a total of one hour allotted for oral argument. Reported below: 160 U. S. App. D. C. 83, 489 F. 2d 1207.

No. 73-1596. HAMPTON, CHAIRMAN, U. S. CIVIL SERVICE COMMISSION, ET AL. *v.* MOW SUN WONG ET AL. C. A. 9th Cir. Motion of respondents for leave to proceed *in forma pauperis* and certiorari granted. Reported below: 500 F. 2d 1031.

Certiorari Denied. (See also Nos. 73-1554, 73-1585, and 73-6271, *supra*.)

No. 73-1451. DILORENZO *v.* UNITED STATES;

No. 73-6361. SALLI *v.* UNITED STATES; and

No. 73-6377. RIZZO *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 492 F. 2d 443.

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- No. 73-1170. HAMILTON ET AL. *v.* UNITED STATES;
No. 73-6092. DEVILLE *v.* UNITED STATES;
No. 73-6154. PEREZ *v.* UNITED STATES;
No. 73-6197. PRUDHOMME *v.* UNITED STATES;
No. 73-6210. TRAHAM *v.* UNITED STATES;
No. 73-6464. LORIDANS *v.* UNITED STATES; and
No. 73-6498. TUNIS *v.* UNITED STATES. C. A. 5th
Cir. Certiorari denied. Reported below: 489 F. 2d 51.
- No. 73-1293. GOAD ET AL. *v.* UNITED STATES. C. A.
8th Cir. Certiorari denied. Reported below: 490 F. 2d
1158.
- No. 73-1367. ADAM *v.* ELROD, SHERIFF. C. A. 7th
Cir. Certiorari denied. Reported below: 489 F. 2d 758.
- No. 73-1405. BAKER *v.* CALLAWAY, SECRETARY OF THE
ARMY. C. A. 5th Cir. Certiorari denied. Reported
below: 487 F. 2d 1401.
- No. 73-1432. GEORATOR CORP. *v.* UNITED STATES.
C. A. 4th Cir. Certiorari denied. Reported below: 485
F. 2d 283.
- No. 73-1444. MILLER BOX, INC., ET AL. *v.* UNITED
STATES. C. A. 5th Cir. Certiorari denied. Reported
below: 488 F. 2d 695.
- No. 73-1456. PRIDE ET UX. *v.* UNITED STATES ET AL.
C. A. 6th Cir. Certiorari denied. Reported below: 487
F. 2d 1403.
- No. 73-1465. G. L. GIBBONS TRUCKING SERVICE, INC.
v. NATIONAL LABOR RELATIONS BOARD. C. A. 9th Cir.
Certiorari denied.
- No. 73-1474. FERMONT DIVISION, DYNAMICS CORPO-
RATION OF AMERICA *v.* UNITED STATES. Ct. Cl. Certio-
rari denied.

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No. 73-1476. *STEBBINS v. ALLSTATE INSURANCE COMPANIES ET AL.* C. A. D. C. Cir. Certiorari denied. Reported below: 160 U. S. App. D. C. 403, 492 F. 2d 669.

No. 73-1485. *CHOCTAW NATION ET AL. v. OKLAHOMA ET AL.* C. A. 10th Cir. Certiorari denied. Reported below: 490 F. 2d 521.

No. 73-1502. *COLON v. DIVISION OF HUMAN RIGHTS OF NEW YORK ET AL.* C. A. 2d Cir. Certiorari denied.

No. 73-1518. *GORDON ET UX. v. DU PONT GLORE, FORGAN, INC.* C. A. 5th Cir. Certiorari denied. Reported below: 487 F. 2d 1260.

No. 73-1556. *CULINARY ALLIANCE & BARTENDERS UNION LOCAL 703, AFL-CIO v. NATIONAL LABOR RELATIONS BOARD.* C. A. 9th Cir. Certiorari denied. Reported below: 488 F. 2d 664.

No. 73-1564. *WATERS ET AL. v. BENSINGER, CORRECTIONS DIRECTOR.* C. A. 7th Cir. Certiorari denied. Reported below: 489 F. 2d 759.

No. 73-1566. *TENNECO INC. ET AL. v. PUBLIC SERVICE COMMISSION OF WEST VIRGINIA ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 489 F. 2d 334.

No. 73-1569. *GALEY CONSTRUCTION Co. ET AL. v. UTAH MORTGAGE LOAN CORP.* C. A. 9th Cir. Certiorari denied.

No. 73-1572. *ARIZONA v. WHITTINGHAM ET VIR.* Ct. App. Ariz. Certiorari denied. Reported below: 19 Ariz. App. 27, 504 P. 2d 950.

No. 73-1580. *WELLS v. HENNESSEY, JUDGE.* Sup. Ct. Ohio. Certiorari denied. Reported below: 37 Ohio St. 2d 37, 306 N. E. 2d 421.

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No. 73-1581. *EKBERG SHIPPING CORP. v. MONCADA*. C. A. 2d Cir. Certiorari denied. Reported below: 491 F. 2d 470.

No. 73-1586. *ILLINOIS EDUCATION ASSN. ET AL. v. WALKER, GOVERNOR OF ILLINOIS, ET AL.* Sup. Ct. Ill. Certiorari denied.

No. 73-1602. *TIME OIL CO. v. WOLVERTON ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 491 F. 2d 361.

No. 73-1610. *RÔMANO ET AL. v. DEPARTMENT OF PUBLIC WORKS AND BUILDINGS OF ILLINOIS*. Sup. Ct. Ill. Certiorari denied. Reported below: 56 Ill. 2d 121, 306 N. E. 2d 1.

No. 73-1634. *CHICAGO, ROCK ISLAND & PACIFIC RAILROAD Co. v. PETERMAN*. C. A. 8th Cir. Certiorari denied. Reported below: 493 F. 2d 88.

No. 73-1647. *MOBIL CHEMICAL CORP. v. DEVERS*. C. A. 5th Cir. Certiorari denied. Reported below: 488 F. 2d 258.

No. 73-1686. *BLOOMFIELD-MESPO LOCAL SCHOOL DISTRICT ET AL. v. STATE BOARD OF EDUCATION*. Ct. App. Ohio, Trumbull County. Certiorari denied.

No. 73-1711. *NAPOLI v. NEW YORK ET AL.* Ct. App. N. Y. Certiorari denied. Reported below: 33 N. Y. 2d 980, 309 N. E. 2d 137.

No. 73-5650. *DOE ET AL. v. BURNS, COMMISSIONER, DEPARTMENT OF SOCIAL SERVICES OF IOWA, ET AL.* C. A. 8th Cir. Certiorari denied. Reported below: 479 F. 2d 646.

No. 73-6098. *LYONS v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 487 F. 2d 1398.

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No. 73-6109. *MARTIN v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 489 F. 2d 674.

No. 73-6112. *FOX v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 488 F. 2d 1093.

No. 73-6117. *McNALLY v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 491 F. 2d 751.

No. 73-6127. *MOULDEN, AKA NELSON v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 487 F. 2d 1399.

No. 73-6131. *TAYLOR v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 489 F. 2d 284.

No. 73-6137. *GOODWIN v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 487 F. 2d 1400.

No. 73-6192. *MERIWETHER v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 486 F. 2d 498.

No. 73-6209. *GODFREY v. UNITED STATES*. C. A. D. C. Cir. Certiorari denied. Reported below: 159 U. S. App. D. C. 343, 487 F. 2d 1214.

No. 73-6211. *CHRISTMAN v. JOHNSON, CORRECTIONAL SUPERINTENDENT*. C. A. 3d Cir. Certiorari denied.

No. 73-6281. *FARMER v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 489 F. 2d 754.

No. 73-6323. *JAYA-BALCAZAR ET AL. v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 490 F. 2d 1406.

No. 73-6364. *DOBBS v. UNITED STATES*. C. A. 5th Cir. Certiorari denied.

No. 73-6381. *BELL v. UNITED STATES*. C. A. 10th Cir. Certiorari denied.

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No. 73-6385. *NASIRIDDIN, AKA GILL v. UNITED STATES*. C. A. D. C. Cir. Certiorari denied.

No. 73-6419. *BLAKE v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 484 F. 2d 50.

No. 73-6434. *BALLARD ET AL. v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 487 F. 2d 1403.

No. 73-6460. *CARWELL v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 491 F. 2d 1334.

No. 73-6475. *HARRIS v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 493 F. 2d 1213.

No. 73-6489. *GONZALES v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 491 F. 2d 440.

No. 73-6497. *BARBARISI v. UNITED STATES*. C. A. 9th Cir. Certiorari denied.

No. 73-6499. *SEARS v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 490 F. 2d 150.

No. 73-6500. *BROWN v. WAINWRIGHT, CORRECTIONS DIRECTOR*. C. A. 5th Cir. Certiorari denied.

No. 73-6504. *BUNNER v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 488 F. 2d 781.

No. 73-6505. *KANDIS v. UNITED STATES*. C. A. 10th Cir. Certiorari denied. Reported below: 491 F. 2d 713.

No. 73-6506. *BRODY ET AL. v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 486 F. 2d 291.

No. 73-6537. *STEWART v. PENNSYLVANIA*. Sup. Ct. Pa. Certiorari denied. Reported below: 456 Pa. 447, 317 A. 2d 616.

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No. 73-6562. *PERRIN v. OREGON STATE BOARD OF HIGHER EDUCATION*. Ct. App. Ore. Certiorari denied. Reported below: 15 Ore. App. 268, 515 P. 2d 409.

No. 73-6582. *BERARD v. VERMONT*. Sup. Ct. Vt. Certiorari denied. Reported below: 132 Vt. 138, 315 A. 2d 501.

No. 73-6584. *LUCIEN v. ILLINOIS*. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 14 Ill. App. 3d 289, 302 N. E. 2d 371.

No. 73-6585. *NICHOLS v. CLANON, PENITENTIARY SUPERINTENDENT*. C. A. 9th Cir. Certiorari denied.

No. 73-6590. *McCOY ET AL. v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 488 F. 2d 761.

No. 73-6620. *KING v. UNITED STATES*. C. A. 9th Cir. Certiorari denied.

No. 73-6644. *JOHNSON v. COX, WARDEN*. C. A. 6th Cir. Certiorari denied.

No. 73-6647. *RANKIN v. OHIO*. Sup. Ct. Ohio. Certiorari denied.

No. 73-6652. *McCROSSEN ET AL. v. UNITED STATES*. C. A. 10th Cir. Certiorari denied.

No. 73-6654. *SANGSTER v. UNITED STATES*. C. A. 7th Cir. Certiorari denied.

No. 73-6688. *KAPLAN v. ASSOCIATED-EAST MORTGAGE Co.* Sup. Ct. N. J. Certiorari denied.

No. 73-1062. *ROSNER v. UNITED STATES*. C. A. 2d Cir. Certiorari denied without prejudice for the United States District Court for the Southern District of New York to consider a motion for a new trial. Reported below: 485 F. 2d 1213.

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No. 73-1315. MORNINGSIDE RENEWAL COUNCIL, INC., ET AL. v. UNITED STATES ATOMIC ENERGY COMMISSION ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 482 F. 2d 234.

MR. JUSTICE DOUGLAS, dissenting.

The Atomic Energy Commission's Safety and Licensing Appeal Board, reversing the decision of the Atomic Safety and Licensing Board, granted respondent Columbia University authorization to operate a Triga Mark II nuclear reactor on the university campus in Manhattan. Petitioners, who had intervened in the proceedings before the Commission, then brought a petition for review in the Court of Appeals. That court denied the petition and sustained the granting of the license in a split decision. 482 F. 2d 234. Petitioners claim that the Commission's failure to establish safety standards through rulemaking procedures requires reversal. They also contend that the agency's determination that no environmental impact statement was necessary* should be reversed under the proper standard of appellate review.

The Safety and Licensing Board had denied the license because it would not answer the questions raised about the reactor's possible effect on public health and safety without the benefit of general accident safety standards applicable to Triga reactors, but the Commission has never promulgated any such standards. Rather than proceeding through this rulemaking route the Commission has adjudicated safety questions on an individual, *ad hoc* basis, and the Commission's own licensing board found this procedure unsatisfactory:

"The absence of applicable substantive criteria of the Commission and of convincing objective stand-

*An impact statement is required whenever there is a "major Federal action significantly affecting the quality of the human environment." 42 U. S. C. § 4332 (2)(C).

ards of the regulatory staff . . . prompts the Licensing Board to decline answering the question of whether the health and safety of the public would be endangered upon the occurrence of a postulated accident to the applicant's reactor. The Licensing Board considers it inappropriate to enforce an answer derived from the narrow confines of a single proceeding and its own personal views about the degree to which the health and safety of the public ought to be protected against accident consequences."

The seeds of the present controversy were laid in *Power Reactor v. Electricians*, 367 U. S. 396, where we reversed a Court of Appeals holding that the Commission may not authorize the construction of a reactor near a large population center without "compelling reasons" for doing so, *id.*, at 414. There the Commission, "despite a report of its Advisory Committee on Reactor Safeguards, which was at best noncommittal about the probable safety of the proposed reactor in operation, issued a provisional construction permit without having held public hearings . . .," *id.*, at 400, but our holding allowed the construction of the reactor to go forward. After the reactor was constructed and went into operation, an accident occurred on October 5, 1966. The reactor was shut down and has never been in regular operation since; it is currently being decommissioned. *In re Power Reactor Development Co.*, No. 50-16, Jan. 16, 1973 (Atomic Safety and Licensing Board); letter from Harold L. Price, Director of Regulation, to Sen. Philip A. Hart, Aug. 13, 1970.

Our decision in *Power Reactor* allowed construction to go forward with the principal inquiry into safety deferred until a subsequent application for a license to operate. "But when that point is reached, when millions have been invested, the momentum is on the side

of the applicant, not on the side of the public. The momentum is not only generated by the desire to salvage an investment. No agency wants to be the architect of a 'white elephant.'" *Power Reactor, supra*, at 417 (DOUGLAS, J., dissenting).

In regard to nuclear power generating plants, in fact, "conversion from construction permit to operating license has been automatic," Bronstein, *The AEC Decision-Making Process and the Environment: a Case Study of the Calvert Cliffs Nuclear Power Plant*, 1 Ecology L. Q. 689, 702 (1971). This may well be the problem lurking in the background here, as these petitioners were not on the scene to contest the issuance of the original construction permit for this reactor in 1963, and no judicial review was sought at that time. And in any event intervenors seeking to represent the public interest in an AEC construction permit contest have found themselves confronted with a "no-win" situation, in part because of "the fear or reluctance of qualified scientists and technicians to testify against a project recommended by the AEC." Like, *Multi-Media Confrontation—The Environmentalists' Strategy for a "No-Win" Agency Proceeding*, 1 Ecology L. Q. 495, 502 (1971).

This only goes to highlight the need here for the Commission to develop the relevant safety standards before passing on this application to authorize operation of a reactor in the midst of the Nation's largest metropolis.

The benefits of a rulemaking proceeding are clear; they give notice to affected persons and allow them to be heard, and the result is that "[a]gencies discover that they are not always repositories of ultimate wisdom; they learn from the suggestions of outsiders and often benefit from that advice." *NLRB v. Wyman-Gordon Co.*, 394 U. S. 759, 777-778 (DOUGLAS, J., dissenting).

The need would seem particularly great here because of the Commission's dual role as regulator and promoter of atomic energy. As Judge Oakes, dissenting below, pointed out: "The AEC . . . has an interest in seeing this reactor licensed to promote its Nuclear Education Training Program; to this end it has entered into an agreement with Columbia to provide post-license funds for the operation of the reactor and to waive charges for Commission-owned special nuclear material involved in its operation. My concern is so much the greater where, as here, the independent Safety and Licensing Board has denied the license, but was overruled by the three-member Appeal Board, consisting of two AEC staff members. Moreover, the safety tests relied upon by the Appeal Board here were conducted by the most interested party, the manufacturer of the reactor, following an exchange of correspondence between 'Ralph' (Mr. Peters of Gulf Oil) and 'Pete' (Dr. Peter A. Morris, Director of the AEC Division of Reactor Licensing) in which Gulf advised the Commission that 'We hope to have you or members of your staff participate fully in these experiments so that they will be deemed to have been done "under the auspices of the Regulatory Staff."'" 482 F. 2d, at 241.

For the same reasons it seems necessary to look more closely at the Commission's determination that no environmental impact statement need be prepared than did the court below, which was content to conclude that the agency's determination was not "arbitrary or capricious." Indeed there appears to be a conflict between the standard employed here by the Second Circuit and that employed by the Fifth Circuit in such cases as *Save Our Ten Acres v. Kreger*, 472 F. 2d 463, and *Hiram Clarke Civic Club, Inc. v. Lynn*, 476 F. 2d 421; the Fifth Circuit applies a more stringent standard of "reasonableness."

I would grant the petition for certiorari, both to resolve this conflict and to consider the propriety of the agency's

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practice of licensing Triga reactors in the absence of rules establishing safety standards.

No. 73-1320. *BOWMAN v. FLORIDA*. Dist. Ct. App. Fla., 1st Dist. Stay of mandate of the Supreme Court of Florida and continuance of bond heretofore granted by MR. JUSTICE POWELL on January 17, 1974, vacated. Certiorari denied. Reported below: 281 So. 2d 35 and 286 So. 2d 9.

No. 73-1369. *COCA COLA BOTTLING COMPANY OF NEW YORK, INC. v. PALMAROZZO*. C. A. 2d Cir. Certiorari denied. MR. JUSTICE STEWART took no part in the consideration or decision of this petition. Reported below: 490 F. 2d 586.

No. 73-1410. *THOMAS, SHERIFF v. BEASLEY*. C. A. 6th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 491 F. 2d 507.

No. 73-1571. *NEW JERSEY DEPARTMENT OF INSTITUTIONS AND AGENCIES, DIVISION OF PUBLIC WELFARE, ET AL. v. HAUSMAN*. Sup. Ct. N. J. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 64 N. J. 202, 314 A. 2d 362.

No. 73-1590. *DYNEX INDUSTRIAL PLASTICS CORP. v. ANCHOR PLASTICS Co., INC.* C. A. 3d Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 492 F. 2d 1238.

No. 73-1600. *BAKER ET AL., TRUSTEES v. GÖTZ ET AL.* C. A. 3d Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari.

No. 73-6130. *CAUGHMAN v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 483 F. 2d 1401.

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No. 73-6173. *PLAZOLA ET AL. v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: See 487 F. 2d 157.

No. 73-6487. *MARTINEZ-MARTINEZ v. UNITED STATES*. C. A. 1st Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari.

No. 73-6340. *TIJERINA v. NEW MEXICO*. Sup. Ct. N. M. Certiorari denied. THE CHIEF JUSTICE took no part in the consideration or decision of this petition. Reported below: 86 N. M. 31, 519 P. 2d 127.

MR. JUSTICE BRENNAN, with whom MR. JUSTICE DOUGLAS and MR. JUSTICE MARSHALL join, dissenting.

Petitioner's participation in a serious disturbance at the courthouse in Tierra Amarilla, New Mexico, on June 5, 1967, resulted in his being charged with having both kidnaped and falsely imprisoned a deputy sheriff, as well as having assaulted the courthouse and jail. After a jury trial, he was acquitted of all charges. Subsequently, over petitioner's objection that his double jeopardy protections were being violated, he was tried on charges of having assaulted three persons with intent to commit violent felonies, as well as having falsely imprisoned another deputy sheriff, all of which arose out of the same incident on June 5, 1967. Petitioner was convicted on one of the assault charges and on the false imprisonment charge. The Court of Appeals of New Mexico certified petitioner's appeal to the New Mexico Supreme Court, 84 N. M. 432, 504 P. 2d 642 (1972), and the Supreme Court affirmed the convictions. 86 N. M. 31, 519 P. 2d 127 (1973).

Although all of the charges leveled against petitioner at the two trials arose out of the same transaction or episode, they were prosecuted by the State in separate proceedings. That, in my opinion,

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requires that we grant the petition for certiorari and reverse, for I adhere to the view that the Double Jeopardy Clause of the Fifth Amendment, which is applicable to the States through the Fourteenth Amendment, *Benton v. Maryland*, 395 U. S. 784 (1969), requires the prosecution, except in extremely limited circumstances not present here, "to join at one trial all the charges against a defendant that grow out of a single criminal act, occurrence, episode, or transaction." *Ashe v. Swenson*, 397 U. S. 436, 453-454 (1970) (BRENNAN, J., concurring); see *Smith v. Missouri*, 414 U. S. 1031 (1973) (BRENNAN, J., dissenting); *Miller v. Oregon*, 405 U. S. 1047 (1972) (BRENNAN, J., dissenting); *Harris v. Washington*, 404 U. S. 55, 57 (1971) (statement of DOUGLAS, BRENNAN, and MARSHALL, JJ.); *Waller v. Florida*, 397 U. S. 387, 395 (1970) (BRENNAN, J., concurring). See also *People v. White*, 390 Mich. 245, 212 N. W. 2d 222 (1973); *State v. Brown*, 262 Ore. 442, 497 P. 2d 1191 (1972); *Commonwealth v. Campana*, 452 Pa. 233, 304 A. 2d 432, vacated and remanded, 414 U. S. 808 (1973), adhered to on remand, 455 Pa. 622, 314 A. 2d 854 (1974).

No. 73-6350. *MOTON v. SWENSON*, WARDEN. C. A. 8th Cir. Certiorari denied. Reported below: 488 F. 2d 1060.

MR. JUSTICE BRENNAN, with whom MR. JUSTICE DOUGLAS and MR. JUSTICE MARSHALL join, dissenting.

Petitioner and a companion entered a gas station in St. Louis, Missouri. While his companion held two station attendants at gunpoint, petitioner demanded and obtained money from one attendant; his companion demanded and obtained money from the second. Petitioner was charged in an information with aiding and abetting his companion in the robbery of the second attendant, tried and convicted by a jury in the Circuit Court of the city of St. Louis of robbery in the first

degree by means of a dangerous and deadly weapon, and sentenced to 12 years' imprisonment. Subsequently, petitioner was charged in a separate information with the robbery of the other attendant. He was again tried in the Circuit Court of the city of St. Louis, found guilty of robbery in the first degree by means of a dangerous and deadly weapon, and sentenced to 15 years' imprisonment. In a consolidated appeal, the Supreme Court of Missouri affirmed both convictions. 476 S. W. 2d 785 (1972). Petitioner then sought a writ of habeas corpus in the United States District Court for the Eastern District of Missouri. The District Court, in an unreported decision, dismissed the petition, rejecting the claim that the second prosecution violated petitioner's constitutional protection against double jeopardy. The Court of Appeals for the Eighth Circuit affirmed the dismissal. 488 F. 2d 1060 (1973).

Although both robbery charges clearly arose out of the same transaction or episode, they were prosecuted by the State in separate proceedings. That, in my opinion, requires that we grant the petition for certiorari and reverse, for I adhere to the view that the Double Jeopardy Clause of the Fifth Amendment, which is applicable to the States through the Fourteenth Amendment, *Benton v. Maryland*, 395 U. S. 784 (1969), requires the prosecution, except in extremely limited circumstances not present here, "to join at one trial all the charges against a defendant that grow out of a single criminal act, occurrence, episode, or transaction." *Ashe v. Swenson*, 397 U. S. 436, 453-454 (1970) (BRENNAN, J., concurring); see *Smith v. Missouri*, 414 U. S. 1031 (1973) (BRENNAN, J., dissenting); *Miller v. Oregon*, 405 U. S. 1047 (1972) (BRENNAN, J., dissenting); *Harris v. Washington*, 404 U. S. 55, 57 (1971) (statement of DOUGLAS, BRENNAN, and MARSHALL, JJ.); *Waller v. Florida*, 397

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U. S. 387, 395 (1970) (BRENNAN, J., concurring). See also *People v. White*, 390 Mich. 245, 212 N. W. 2d 222 (1973); *State v. Brown*, 262 Ore. 442, 497 P. 2d 1191 (1972); *Commonwealth v. Campana*, 452 Pa. 233, 304 A. 2d 432, vacated and remanded, 414 U. S. 808 (1973), adhered to on remand, 455 Pa. 622, 314 A. 2d 854 (1974).

Rehearing Denied

- No. 73-716. *GARNER v. UNITED STATES*, 416 U. S. 935;
 No. 73-853. *FORBICETTA v. UNITED STATES*, 416 U. S. 993;
 No. 73-1104. *HOOPA VALLEY TRIBE v. SHORT ET AL.*, 416 U. S. 961;
 No. 73-1382. *KLEMMER v. ALABAMA*, 416 U. S. 957;
 No. 73-1421. *SMITH v. ILLINOIS CENTRAL RAILROAD CO. ET AL.*, 416 U. S. 985;
 No. 73-5876. *LUFKINS v. UNITED STATES*, 416 U. S. 971;
 No. 73-6054. *COLE ET AL. v. CALIFORNIA*, 416 U. S. 964;
 No. 73-6055. *COLE ET AL. v. CALIFORNIA*, 416 U. S. 972;
 No. 73-6145. *MORGAN v. CALIFORNIA STATE PERSONNEL BOARD ET AL.*, 416 U. S. 972;
 No. 73-6250. *SMITH v. TWOMEY, WARDEN*, 416 U. S. 994;
 No. 73-6404. *SMITH v. ASKINS*, 416 U. S. 964; and
 No. 73-6448. *STARKEY v. WYRICK, WARDEN*, 416 U. S. 992. Petitions for rehearing denied.

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Dismissal Under Rule 60

No. 32, Orig. *MISSOURI v. NEBRASKA*. Bill of complaint dismissed under Rule 60 of the Rules of this Court. [For earlier orders herein, see, *e. g.*, *ante*, p. 904.]

JUNE 15, 1974

Certiorari Granted

No. 73-1834. NIXON, PRESIDENT OF THE UNITED STATES *v.* UNITED STATES. Petition for certiorari before judgment to C. A. D. C. Cir. Certiorari granted and case consolidated with No. 73-1766 [*United States v. Nixon, President of the United States*, certiorari granted, *ante*, p. 927]. Parties shall exchange and file briefs by 1 p. m. on June 21, 1974, and any responsive briefs shall be filed by July 1, 1974. Oral argument set for July 8, 1974, at 10 a.m. MR. JUSTICE REHNQUIST took no part in the consideration or decision of this petition.

Miscellaneous Order

No. 73-1766. UNITED STATES *v.* NIXON, PRESIDENT OF THE UNITED STATES, ET AL.; and

No. 73-1834. NIXON, PRESIDENT OF THE UNITED STATES *v.* UNITED STATES. Petitions for certiorari before judgment to C. A. D. C. Cir.

1. Joint motion of the Special Prosecutor and counsel for the President to unseal those portions of the record ordered sealed by the District Court on May 13, 1974, denied except for the following extract from the sealed record:

“On February 25, 1974, in the course of its consideration of the indictment in the instant case, the June 5, 1972, Grand Jury, by a vote of 19-0, determined that there is probable cause to believe that Richard M. Nixon (among others) was a member of the conspiracy to defraud the United States and to obstruct justice charged in Count I of the instant indictment, and the Grand Jury authorized the Special Prosecutor to identify Richard M. Nixon (among others) as an unindicted coconspirator in connection with subsequent legal proceedings in this case.”

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Other than this disclosure, the sealed record shall remain sealed.

2. In addition to questions designated by the parties in the petition for certiorari, the cross-petition for certiorari, and the petition for writ of mandamus filed in the Court of Appeals (CA No. 74-1532), the parties are requested to brief and argue the following questions:

(a) Is the District Court order of May 20, 1974, an appealable order?

(b) Does this Court have jurisdiction to entertain and decide the petition for mandamus transmitted by the Court of Appeals to this Court?

3. Printing of any portions of the record that have been filed in this Court under seal shall be dispensed with. Any portions of the briefs that counsel deem necessary to keep confidential in order to conform with the provisions of paragraph 1 above shall be submitted under seal to this Court, and counsel in oral argument shall refrain from disclosing any portions of the record that are under seal.

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

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Affirmed on Appeal

No. 73-120. MARBURGER, COMMISSIONER OF EDUCATION OF NEW JERSEY, ET AL. *v.* PUBLIC FUNDS FOR PUBLIC SCHOOLS OF NEW JERSEY ET AL.; and

No. 73-121. GRIGGS ET AL. *v.* PUBLIC FUNDS FOR PUBLIC SCHOOLS OF NEW JERSEY ET AL. Appeals from D. C. N. J. Motion of EDL-New Jersey, Inc., for leave to file a brief as *amicus curiae* in No. 73-120 granted. Judgment affirmed. THE CHIEF JUSTICE, MR. JUSTICE WHITE, and MR. JUSTICE REHNQUIST would note probable juris-

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diction and set cases for oral argument. Reported below: 358 F. Supp. 29.

Appeals Dismissed

No. 73-1321. *OHLEY v. ILLINOIS*. Appeal from App. Ct. Ill., 5th 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: 15 Ill. App. 3d 125, 303 N. E. 2d 761.

No. 73-1440. *McBRYDE SUGAR Co., LTD., ET AL. v. HAWAII ET AL.* Appeal from Sup. Ct. Hawaii dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied. Reported below: 54 Haw. 174, 504 P. 2d 1330.

No. 73-1570. *DOWELL ET UX. v. UTAH*. Appeal from Sup. Ct. Utah dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied. Reported below: 30 Utah 323, 517 P. 2d 1016.

No. 73-1386. *CHICAGO WELFARE RIGHTS ORGANIZATION ET AL. v. EDELMAN, DIRECTOR, DEPARTMENT OF PUBLIC AID OF ILLINOIS, ET AL.* Appeal from Sup. Ct. Ill. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied. MR. JUSTICE DOUGLAS would note probable jurisdiction and set case for oral argument. Reported below: 56 Ill. 2d 33, 305 N. E. 2d 140.

No. 73-1606. *MURPHY NURSING HOME, INC., ET AL. v. RATE SETTING COMMISSION ET AL.* Appeal from Sup. Jud. Ct. Mass. dismissed for want of substantial federal question. Reported below: — Mass. —, 305 N. E. 2d 837.

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No. 73-1623. MALITO ET AL. *v.* MARCIN ET AL. Appeal from App. Ct. Ill., 1st Dist., dismissed for want of substantial federal question. Reported below: 14 Ill. App. 3d 658, 303 N. E. 2d 262.

No. 73-6621. SCHOOS *v.* ILLINOIS. Appeal from App. Ct. Ill., 1st Dist., dismissed for want of substantial federal question. Reported below: 15 Ill. App. 3d 964, 305 N. E. 2d 560.

No. 73-1609. RUBENSTEIN ET AL. *v.* TOWNSHIP OF CHERRY HILL ET AL. Appeal from Sup. Ct. N. J. dismissed for want of substantial federal question. MR. JUSTICE DOUGLAS would note probable jurisdiction and set case for oral argument.

Vacated and Remanded on Appeal

No. 73-1436. DANIEL ET AL. *v.* WATERS ET AL. Appeal from D. C. M. D. Tenn. Judgment vacated and case remanded to the District Court so that it may enter a fresh judgment from which a timely appeal may be taken to the Court of Appeals.

No. 73-6353. WEBSTER, A MINOR, BY WEBSTER, ET AL. *v.* PERRY, CHAIRMAN, BOARD OF EDUCATION OF WINSTON-SALEM/FORSYTH COUNTY SCHOOL SYSTEM, ET AL. Appeal from D. C. W. D. N. C. Judgment vacated and case remanded to the District Court so that it may enter a fresh judgment from which a timely appeal may be taken to the Court of Appeals. Reported below: 367 F. Supp. 666.

Certiorari Granted—Vacated and Remanded

No. 73-1516. GLOVER ET AL. *v.* McMURRAY, COMMISSIONER, AGENCY FOR CHILD DEVELOPMENT OF THE CITY OF NEW YORK, ET AL. C. A. 2d Cir. Certiorari granted, judgment vacated, and case remanded for further con-

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sideration in light of *Hagans v. Lavine*, 415 U. S. 528 (1974). Reported below: 487 F. 2d 403.

No. 73-966. SHELL OIL CO. *v.* PUBLIC SERVICE COMMISSION OF NEW YORK ET AL.;

No. 73-967. MOBIL OIL CORP. *v.* FEDERAL POWER COMMISSION;

No. 73-968. FEDERAL POWER COMMISSION *v.* PUBLIC SERVICE COMMISSION OF NEW YORK; and

No. 73-969. UNITED DISTRIBUTION COMPANIES *v.* PUBLIC SERVICE COMMISSION OF NEW YORK. C. A. D. C. Cir. Certiorari granted, judgment vacated, and cases remanded for further consideration in light of *Mobil Oil Corp. v. Federal Power Commission*, *ante*, p. 283. MR. JUSTICE STEWART and MR. JUSTICE POWELL took no part in the consideration or decisions of these cases. Reported below: 159 U. S. App. D. C. 172, 487 F. 2d 1043.

No. 73-1399. PENNSYLVANIA *v.* ROMBERGER. Sup. Ct. Pa. Motion of respondent for leave to proceed *in forma pauperis* and certiorari granted. Judgment vacated and case remanded for further consideration in light of *Michigan v. Tucker*, *ante*, p. 433.

Miscellaneous Orders

No. A-1175. TRAIN, ADMINISTRATOR, ENVIRONMENTAL PROTECTION AGENCY *v.* TEXAS ET AL. Application for stay of orders of the United States District Court for the Western District of Texas pending appeal in the United States Court of Appeals for the Fifth Circuit presented to MR. JUSTICE POWELL, and by him referred to the Court, granted.

No. A-1179. COWN ET AL. *v.* VANDERHOOF, GOVERNOR OF COLORADO. Application for writ of habeas corpus or in the alternative to transfer the cause to the appropriate United States District Court for a hearing (28 U. S. C.

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§ 2241 (b)) presented to MR. JUSTICE WHITE, and by him referred to the Court, denied.

No. A-1185 (73-1838). CRISLER, COMMISSIONER OF PUBLIC SAFETY OF MISSISSIPPI, ET AL. *v.* MORROW ET AL. Application for recall and stay of the mandate of the United States Court of Appeals for the Fifth Circuit presented to MR. JUSTICE POWELL, and by him referred to the Court, denied. Reported below: 491 F. 2d 1053.

No. D-23. IN RE DISBARMENT OF LEE. It having been reported to the Court that Clifford Taylor Lee, of Washington, D. C., has been disbarred from the practice of law by the United States Court of Appeals for the District of Columbia Circuit, and this Court by order of March 18, 1974 [415 U. S. 972], having suspended the said Clifford Taylor Lee from the practice of law in this Court and directed that a rule issue requiring him to show cause why he should not be disbarred;

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

It is ordered that the said Clifford Taylor Lee 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. 73-1626. WEAVER, DIRECTOR, DEPARTMENT OF PUBLIC AID OF ILLINOIS, ET AL. *v.* RANDLE ET AL. Appeal from D. C. N. D. Ill. The Solicitor General is invited to file a brief expressing the views of the United States.

No. 73-6618. SELLERS *v.* ESTELLE, CORRECTIONS DIRECTOR;

No. 73-6708. POVEY *v.* WARDEN, NEVADA STATE PRISON; and

No. 73-6767. DOGGETT *v.* NEVADA ET AL. Motions for leave to file petitions for writs of habeas corpus denied.

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No. 73-6566. PROFFITT *v.* TUCKER, CLERK, U. S. COURT OF APPEALS, ET AL.; and

No. 73-6597. CARTER *v.* ESTELLE, CORRECTIONS DIRECTOR, ET AL. Motions for leave to file petitions for writs of habeas corpus and other relief denied.

No. 73-6524. CARTER *v.* UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT;

No. 73-6608. REIERSON *v.* PROCUNIER, CORRECTIONS DIRECTOR, ET AL.; and

No. 73-6619. HUNTER *v.* APPELLATE COURT OF ILLINOIS, FIRST DISTRICT, FOURTH DIVISION, ET AL. Motions for leave to file petitions for writs of mandamus denied.

No. 73-6277. CASTLE *v.* UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT. Motion for leave to file petition for writ of mandamus denied. MR. JUSTICE DOUGLAS would grant the motion.

No. 73-6613. PARKER *v.* UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT. Motion for leave to file petition for writ of mandamus denied. THE CHIEF JUSTICE took no part in the consideration or decision of this motion.

Probable Jurisdiction Noted

No. 73-717. ANTOINE ET UX. *v.* WASHINGTON. Appeal from Sup. Ct. Wash. Probable jurisdiction noted. Reported below: 82 Wash. 2d 440, 511 P. 2d 1351.

No. 73-1595. COLONIAL PIPELINE Co. *v.* AGERTON, COLLECTOR OF REVENUE OF LOUISIANA. Appeal from Sup. Ct. La. Probable jurisdiction noted. Reported below: 289 So. 2d 93.

No. 73-1697. STANDARD PRESSED STEEL Co. *v.* DEPARTMENT OF REVENUE OF WASHINGTON. Appeal from Ct. App. Wash. Probable jurisdiction noted. Reported below: 10 Wash. App. 45, 516 P. 2d 1043.

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Certiorari Granted

No. 73-820. UNITED STATES *v.* GUANA-SANCHEZ. C. A. 7th Cir. Motion of respondent for leave to proceed *in forma pauperis* and certiorari granted. Reported below: 484 F. 2d 590.

No. 73-1627. LEFKOWITZ, ATTORNEY GENERAL OF NEW YORK *v.* NEWSOME. C. A. 2d Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari granted limited to Question 1 presented by the petition, which reads as follows: "Does a state defendant's plea of guilty waive federal habeas corpus review of his conviction, even though under state law he has been permitted review in the state appellate courts of the denial of his motion, on constitutional grounds, to suppress the evidence that would have been offered against him had there been a trial?" Reported below: 492 F. 2d 1166.

No. 73-5993. TEST *v.* UNITED STATES. C. A. 10th Cir. Motion for leave to proceed *in forma pauperis* granted. Certiorari granted limited to Question 1 presented by the petition, which reads as follows: "Does the Jury Selection and Service Act of 1968, 28 U. S. C. § 1861 *et seq.*, require that a defendant be provided access to jury lists and other jury records upon the filing of a sworn statement in compliance with 28 U. S. C. § 1867 (d) in support of a motion to quash the jury and upon the presentation of a *prima facie* claim of constitutional dimension, i. e., the systematic exclusion of Mexican-Americans from the jury array?" Reported below: 486 F. 2d 922.

Certiorari Denied. (See also Nos. 73-1321, 73-1440, 73-1570, and 73-1386, *supra.*)

No. 73-1351. ANGEL ET AL. *v.* BUTZ, SECRETARY OF

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AGRICULTURE. C. A. 10th Cir. Certiorari denied. Reported below: 487 F. 2d 260.

No. 73-1360. BRAMSON ET AL. *v.* BUTZ, SECRETARY OF AGRICULTURE, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 485 F. 2d 1125.

No. 73-1375. CALIFORNIA HIGHWAY COMMISSION ET AL. *v.* LA RAZA UNIDA OF SOUTHERN ALAMEDA COUNTY ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 488 F. 2d 559.

No. 73-1466. HOPKINSON ET AL. *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 492 F. 2d 1041.

No. 73-1478. SANTELISES *v.* IMMIGRATION AND NATURALIZATION SERVICE. C. A. 2d Cir. Certiorari denied. Reported below: 491 F. 2d 1254.

No. 73-1487. DEMICHELE ET UX. *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 2d Cir. Certiorari denied. Reported below: 489 F. 2d 752.

No. 73-1492. GILL ET AL. *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 490 F. 2d 233.

No. 73-1515. SCHAEF ET AL. *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 73-1563. GRANT *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied. Reported below: 505 S. W. 2d 279.

No. 73-1587. SWAFFORD *v.* ZINNAMON ASSOCIATES ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 487 F. 2d 1400 and 488 F. 2d 863.

No. 73-1591. RODWAY *v.* AMOCO SHIPPING CO. ET AL. C. A. 1st Cir. Certiorari denied. Reported below: 491 F. 2d 265.

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No. 73-1592. *NICKELLS ET AL. v. WASHINGTON*. Ct. App. Wash. Certiorari denied. Reported below: 9 Wash. App. 1017.

No. 73-1598. *PENNSYLVANIA v. CAMPANA ET AL.* Sup. Ct. Pa. Certiorari denied. Reported below: 455 Pa. 622, 314 A. 2d 854.

No. 73-1601. *CHRISTENSEN v. BOARD OF EDUCATION OF TOWNSHIP HIGH SCHOOL DISTRICT NO. 203 ET AL.* C. A. 7th Cir. Certiorari denied. Reported below: 489 F. 2d 758.

No. 73-1608. *THIBADEAU v. HENLEY*. C. A. 5th Cir. Certiorari denied. Reported below: 489 F. 2d 1311.

No. 73-1618. *DAVENPORT v. ALTMAN ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 492 F. 2d 1237.

No. 73-1620. *BROWN v. HOUSTON INDEPENDENT SCHOOL DISTRICT ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 486 F. 2d 137.

No. 73-1622. *ST. LOUIS-SAN FRANCISCO RAILWAY Co. v. ARMCO STEEL CORP. ET AL.* C. A. 8th Cir. Certiorari denied. Reported below: 490 F. 2d 367.

No. 73-1628. *OIL, CHEMICAL & ATOMIC WORKERS INTERNATIONAL UNION, AFL-CIO, ET AL. v. AMERICAN MAIZE-PRODUCTS Co.* C. A. 7th Cir. Certiorari denied. Reported below: 492 F. 2d 409.

No. 73-1629. *SCHEELHAASE v. WOODBURY CENTRAL COMMUNITY SCHOOL DISTRICT ET AL.* C. A. 8th Cir. Certiorari denied. Reported below: 488 F. 2d 237.

No. 73-1630. *TRALICK v. PARK CHEMICAL Co. ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 492 F. 2d 1244.

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No. 73-1640. *WORLEY v. COLUMBIA GAS OF KENTUCKY, INC., ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 491 F. 2d 256.

No. 73-5642. *THOMAS v. UNITED STATES.* C. A. 2d Cir. Certiorari denied.

No. 73-6165. *HOULE v. UNITED STATES.* C. A. 2d Cir. Certiorari denied. Reported below: 490 F. 2d 167.

No. 73-6175. *JONES v. UNITED STATES.* C. A. 8th Cir. Certiorari denied. Reported below: 491 F. 2d 526 and 529.

No. 73-6201. *PEDERSON v. UNITED STATES.* C. A. 8th Cir. Certiorari denied.

No. 73-6397. *SIMS v. UTAH.* Sup. Ct. Utah. Certiorari denied. Reported below: 30 Utah 2d 251 and 357, 516 P. 2d 354 and 517 P. 2d 1315.

No. 73-6399. *MASELLI v. MANCUSI, CORRECTIONAL SUPERINTENDENT.* C. A. 2d Cir. Certiorari denied. Reported below: 485 F. 2d 677.

No. 73-6427. *COOKSEY, AKA MONTAGUE v. UNITED STATES.* C. A. D. C. Cir. Certiorari denied. Reported below: 159 U. S. App. D. C. 55, 486 F. 2d 1315.

No. 73-6432. *DEHERRERA v. UNITED STATES.* C. A. 9th Cir. Certiorari denied. Reported below: 492 F. 2d 265.

No. 73-6451. *TEPLITSKY v. BUREAU OF EMPLOYEES' COMPENSATION, U. S. DEPARTMENT OF LABOR.* C. A. 2d Cir. Certiorari denied.

No. 73-6508. *BARRIGA-COVARRUBIAS v. UNITED STATES.* C. A. 9th Cir. Certiorari denied.

No. 73-6509. *SUAREZ v. UNITED STATES.* C. A. 2d Cir. Certiorari denied.

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No. 73-6511. *TASBY v. UNITED STATES*. C. A. 8th Cir. Certiorari denied.

No. 73-6512. *McGHEE v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 488 F. 2d 781.

No. 73-6514. *TRANQUILLI v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 491 F. 2d 1272.

No. 73-6516. *FEATHERSTON v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 491 F. 2d 96.

No. 73-6520. *OWENS v. UNITED STATES*. C. A. 3d Cir. Certiorari denied.

No. 73-6523. *BAGLEY v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 493 F. 2d 1401.

No. 73-6530. *MYERS v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 490 F. 2d 991.

No. 73-6531. *JOHNSON v. UNITED STATES*. C. A. 10th Cir. Certiorari denied.

No. 73-6532. *ADAMS v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 492 F. 2d 1246.

No. 73-6533. *FRAZIER v. UNITED STATES*. C. A. 6th Cir. Certiorari denied.

No. 73-6538. *KENDRICKS v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 488 F. 2d 781.

No. 73-6540. *BECKWITH v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 492 F. 2d 1237.

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No. 73-6543. *JAIME-BARRIOS v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 494 F. 2d 455.

No. 73-6602. *SANDERS v. ILLINOIS*. Sup. Ct. Ill. Certiorari denied. Reported below: 56 Ill. 2d 241, 306 N. E. 2d 865.

No. 73-6603. *AGEE v. HICKMAN ET AL.* C. A. 8th Cir. Certiorari denied. Reported below: 490 F. 2d 210.

No. 73-6615. *LANE v. KERN, SHERIFF*. C. A. 5th Cir. Certiorari denied. Reported below: 488 F. 2d 978.

No. 73-6626. *NAVARRO v. TEXAS*. Ct. Crim. App. Tex. Certiorari denied.

No. 73-6627. *McPHERSON v. MICHIGAN*. Ct. App. Mich. Certiorari denied. Reported below: 38 Mich. App. 534, 197 N. W. 2d 173.

No. 73-6630. *GREEN v. ILLINOIS*. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 14 Ill. App. 3d 972, 304 N. E. 2d 32.

No. 73-6637. *HERRON v. MISSISSIPPI*. Sup. Ct. Miss. Certiorari denied. Reported below: 287 So. 2d 759.

No. 73-6641. *ALVES ET UX. v. QUEEN'S MEDICAL CENTER ET AL.* Sup. Ct. Hawaii. Certiorari denied.

No. 73-6645. *WALKER v. HENDERSON, CORRECTIONAL SUPERINTENDENT*. C. A. 2d Cir. Certiorari denied. Reported below: 492 F. 2d 1311.

No. 73-6646. *BYRD v. ILLINOIS*. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 15 Ill. App. 3d 556, 304 N. E. 2d 671.

No. 73-6649. *CARROLL v. ILLINOIS*. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 12 Ill. App. 3d 869, 299 N. E. 2d 134.

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No. 73-6653. *BARTOS v. BRIGHAM YOUNG UNIVERSITY ET AL.* C. A. 9th Cir. Certiorari denied.

No. 73-438. *MOBIL OIL CORP. v. FEDERAL POWER COMMISSION.* C. A. 5th Cir. Certiorari denied. MR. JUSTICE STEWART and MR. JUSTICE POWELL took no part in the consideration or decision of this petition. Reported below: 484 F. 2d 469.

No. 73-1174. *NORTH CAROLINA v. WRENN.* C. A. 4th Cir. Certiorari denied. Reported below: 486 F. 2d 1399.

MR. JUSTICE WHITE, with whom THE CHIEF JUSTICE joins, dissenting from the denial of certiorari.

Respondent was convicted in a North Carolina state court of a narcotics violation. Evidence used against him at trial was seized under a search warrant issued by a magistrate on an affidavit which was sustained at trial after an evidentiary hearing out of the presence of a jury. The conviction was affirmed on direct appeal, and this Court denied certiorari, 405 U. S. 1064 (1972), but the conviction was invalidated by the United States District Court when it granted respondent's petition for a writ of habeas corpus. The District Court took no further evidence and was "in complete agreement with the conclusion reached [by the state court] that on the face of it the affidavit supporting the issuance of the search warrant satisfied the provisions of the [applicable North Carolina] statute and was constitutionally adequate." But after examining the state court record of the suppression hearing, the District Court issued the writ. Saying that the "majority rule in the state courts seems to preclude impeachment of the factual averments in the affidavit"; that North Carolina appeared to follow that rule; and that the question had not been finally settled by this Court, see *Rugendorf v. United*

States, 376 U. S. 528, 531-532 (1964), the District Court nevertheless was of the view that it should not hesitate "to rule out the erroneous averments in the affidavit and proceed to test the validity of the warrant in the light of the remaining uncontested averments." When so tested, the affidavit was found insufficient. The court also ruled that the officer who made the affidavit could not rehabilitate the warrant by sworn testimony at the suppression hearing as to facts which were known when the warrant issued and which would have been sufficient cause for issuance of the warrant had they been included in the affidavit. This was true even though these additional facts had actually been presented to the magistrate, for the supplemental information had not been sworn.

The Court of Appeals affirmed *per curiam*, approving the District Court's review of the search warrant affidavit in light of the affiant's testimony in the state court hearing. This ruling is consistent with prior law of the Circuit permitting subsequent impeachment of a warrant affidavit. *King v. United States*, 282 F. 2d 398 (CA4 1960). Other federal courts are in apparent agreement, *e. g.*, *United States v. Dunnings*, 425 F. 2d 836 (CA2 1969), cert. denied, 397 U. S. 1002 (1970); *United States v. Upshaw*, 448 F. 2d 1218, 1220-1222 (CA5 1971), cert. denied, 405 U. S. 934 (1972); *United States v. Roth*, 391 F. 2d 507 (CA7 1967). Still other cases in other circuits, mostly older ones, but apparently still of precedential importance, have announced a different rule. *E. g.*, *Kenney v. United States*, 81 U. S. App. D. C. 259, 157 F. 2d 442 (1946); *Gracie v. United States*, 15 F. 2d 644 (CA1 1926), cert. denied, 273 U. S. 748 (1927); *Schiller v. United States*, 35 F. 2d 865 (CA9 1929). But see *United States v. Thornton*, 147 U. S. App. D. C. 114, 454 F. 2d 957, 966-967 (1971); *United States v. Wong*, 470 F. 2d 129, 132 (CA9 1972). The issue is current and is

obviously not simple. See *United States v. Upshaw*, *supra*, at 1221 n. 3.

Of equal or perhaps even greater importance in the context of this grant of federal habeas relief to a state prisoner is the conflict between the decision of the Court of Appeals and the rule followed in a majority of state court decisions considering the issue precluding challenges to the truthfulness of the factual statements contained in a warrant affidavit at a hearing subsequent to the issuance of the warrant.* Indeed, the District Court speculated in this case that the North Carolina courts may have followed the majority rule in the other States on respondent's direct appeal, and there is some indication that North Carolina is in accord with the majority

*At least 15 States appear to prohibit subsequent impeachment of the affidavit supporting a warrant. *Liberto v. State*, 248 Ark. 350, 451 S. W. 2d 464 (1970) (alternative holding); *State v. Anonymous*, 30 Conn. Supp. 211, 309 A. 2d 135 (1973); *People v. Stansberry*, 47 Ill. 2d 541, 268 N. E. 2d 431, cert. denied, 404 U. S. 873 (1971); *Seager v. State*, 200 Ind. 579, 164 N. E. 274 (1928); *State v. Lamb*, 209 Kan. 453, 497 P. 2d 275 (1972); *Bowen v. Commonwealth*, 199 Ky. 400, 251 S. W. 625 (1923); *State v. Anselmo*, 260 La. 306, 256 So. 2d 98 (1971), cert. denied, 407 U. S. 911 (1972); *Tucker v. State*, 244 Md. 488, 224 A. 2d 111 (1966), cert. denied, 386 U. S. 1024 (1967); *State v. Brugioni*, 320 Mo. 202, 7 S. W. 2d 262 (1928); *State v. English*, 71 Mont. 343, 229 P. 727 (1924); *State v. Petillo*, 61 N. J. 165, 293 A. 2d 649 (1972), cert. denied, 410 U. S. 945 (1973); *Doyle v. State*, 317 P. 2d 289 (Okla. Crim. App. 1957); *State v. Seymour*, 46 R. I. 257, 126 A. 755 (1924), partially overruled on other grounds, *State v. LeBlanc*, 100 R. I. 523, 217 A. 2d 471 (1966); *Owens v. State*, 217 Tenn. 544, 399 S. W. 2d 507 (1965); *Griffey v. State*, 168 Tex. Cr. R. 338, 327 S. W. 2d 585 (1959).

A few state courts do permit impeachment. *McConnell v. State*, 48 Ala. App. 523, 266 So. 2d 328, cert. denied, 289 Ala. 746, 266 So. 2d 334 (1972); *Theodor v. Superior Court of Orange County*, 8 Cal. 3d 77, 501 P. 2d 234 (1972); *People v. Alfinito*, 16 N. Y. 2d 181, 211 N. E. 2d 644 (1965); *Commonwealth v. Hall*, 451 Pa. 201, 302 A. 2d 342 (1973).

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rule, see *State v. McKoy*, 16 N. C. App. 349, 191 S. E. 2d 897 (1972).

Whether a search warrant and its supporting affidavit, adequate on their face, may later be impeached, is squarely presented here. "The time is ripe for a decision on this question, for the courts are in conflict and the question is important to the proper administration of criminal justice." Kipperman, *Inaccurate Search Warrant Affidavits as a Ground for Suppressing Evidence*, 84 Harv. L. Rev. 825 (1971). (Footnotes omitted.)

No. 73-1353. *IRA S. BUSHEY & SONS, INC., ET AL. v. UNITED STATES*. C. A. 2d Cir. Motion of American Waterways Operators, Inc., for leave to file brief as *amicus curiae* granted. Certiorari denied. Reported below: 487 F. 2d 1393.

No. 73-1425. *PENNSYLVANIA v. PLATOU*. Sup. Ct. Pa. Certiorari denied, it appearing that judgment below rests upon an adequate state ground. Reported below: 455 Pa. 258, 312 A. 2d 29.

No. 73-1441. *ROBINSON ET AL. v. HAWAII ET AL.*; and
No. 73-1442. *ALBARADO ET AL. v. HAWAII ET AL.* Sup. Ct. Hawaii. Motion of Hawaiian Sugar Planters Assn. for leave to file brief as *amicus curiae* granted. Certiorari denied. Reported below: 54 Haw. 174, 504 P. 2d 1330 and 55 Haw. 260, 517 P. 2d 26.

No. 73-1635. *HEYNE, COMMISSIONER OF CORRECTION OF INDIANA, ET AL. v. NELSON, A MINOR, BY NELSON, ET AL.* C. A. 7th Cir. Motion of respondents for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 491 F. 2d 352.

No. 73-1650. *KERNER v. UNITED STATES*; and
No. 73-1651. *ISAACS v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. MR. JUSTICE MARSHALL took no

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part in the consideration or decision of these petitions. Reported below: 493 F. 2d 1124.

No. 73-1673. *COX v. CHESAPEAKE & OHIO RAILROAD Co.* C. A. 6th Cir. Certiorari denied. MR. JUSTICE POWELL took no part in the consideration or decision of this petition. Reported below: 494 F. 2d 349.

No. 73-6332. *REESE ET AL. v. CALIFORNIA.* Ct. App. Cal., 3d App. Dist. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari.

No. 73-6341. *HAINES v. UNITED STATES.* C. A. 7th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 485 F. 2d 564.

No. 73-6403. *COLES v. CALIFORNIA.* Ct. App. Cal., 5th App. Dist. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari.

No. 73-6426. *HERRELL v. CALIFORNIA.* Ct. App. Cal., 2d App. Dist. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari.

Rehearing Denied

No. 72-1118. *ARNETT, DIRECTOR, OFFICE OF ECONOMIC OPPORTUNITY, ET AL. v. KENNEDY ET AL.,* 416 U. S. 134;

No. 73-157. *CALERO-TOLEDO ET AL. v. PEARSON YACHT LEASING Co.,* 416 U. S. 663;

No. 73-817. *GAMBINO v. UNITED STATES,* 416 U. S. 982;

No. 73-1050. *BIGHEART v. PAPPAN,* 416 U. S. 937;

No. 73-1163. *WALLS v. UNITED STATES,* 416 U. S. 983;

No. 73-1216. *WALDEN ET VIR v. UNITED STATES,* 416 U. S. 983; and

No. 73-1218. *PFEIFER ET AL. v. BOARD OF EDUCATION OF THE UPPER SANDUSKY EXEMPTED VILLAGE SCHOOL DISTRICT,* 416 U. S. 901. Petitions for rehearing denied.

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No. 73-1303. *ROSENTHAL ET UX. v. COMMISSIONER OF INTERNAL REVENUE*, 416 U. S. 984;

No. 73-5842. *CIUZIO v. UNITED STATES*, 416 U. S. 995;

No. 73-6296. *THERIAULT v. UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT ET AL.*, 416 U. S. 980;

No. 73-6416. *BRADY v. NIELSEN*, U. S. DISTRICT JUDGE, 416 U. S. 980;

No. 73-6417. *BURNS v. DECKER ET AL.*, 416 U. S. 991;

No. 73-6442. *DANIELS v. MCCARTHY, WARDEN*, 416 U. S. 992;

No. 73-6494. *JACKSON v. NORTON-CHILDREN'S HOSPITALS, INC., ET AL.*, 416 U. S. 1000; and

No. 73-6633. *SCHWARTZ v. NEVADA ET AL.*, *ante*, p. 906. Petitions for rehearing denied.

No. 73-671. *MAYER PAVING & ASPHALT CO. ET AL. v. GENERAL DYNAMICS CORP. ET AL.*, 414 U. S. 1146. Motion for leave to file petition for rehearing denied.

No. 73-872. *LOUISIANA ET AL. v. FEDERAL POWER COMMISSION*, 416 U. S. 974. Petition for rehearing denied. MR. JUSTICE POWELL took no part in the consideration or decision of this petition.