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poses in action alleging that Fairfax County Bar Association's minimum-fee schedule for lawyers, as applied to fees for legal services relating to residential real estate transactions, constitutes price fixing in violation of § 1 of Sherman Act. This is so notwithstanding that there is no showing that prospective purchasers were discouraged from buying homes in Fairfax County by challenged activities, and no showing that fee schedule resulted in raising fees. *Goldfarb v. Virginia State Bar*, p. 773.

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**CIVIL RIGHTS ACT OF 1968.** See also Removal.

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2. *Title I—Effect on state prosecutions.*—Viewed in context of Title I's being directed at crimes of racial violence, a state prosecution, proceeding as it does in a court of law, cannot be characterized as an application of "force or threat of force" within meaning of Title I, and whatever "rights" Title I may confer, none of them is

**CIVIL RIGHTS ACT OF 1968**—Continued. denied by a state criminal prosecution for conspiracy or boycott, there being no "federal statutory right that no State should even attempt to prosecute [petitioners] for their conduct." *Johnson v. Mississippi*, p. 213.

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**CLEAN AIR AMENDMENTS OF 1970.**

*Environmental Protection Agency's construction of Act—Individual variances—Reasonableness.*—EPA's construction of Clean Air Act permitting treatment of individual variances from state requirements as "revisions," under § 110 (a) (3), of state implementation plans if they will not interfere with timely attainment and subsequent maintenance of national air quality standards, rather than as "postponements" under § 110 (f), was sufficiently reasonable to preclude Court of Appeals, in proceedings to review EPA's approval of Georgia's plan, from substituting its judgment for that of EPA. *Train v. Natural Resources Defense Council*, p. 60.

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### I. Commerce Clause.

1. *Corporation franchise tax—Interstate carrier.*—Louisiana's fairly apportioned and nondiscriminatory corporation franchise tax upon "incident" of "qualification to carry on or do business in this state or the actual doing of business within this state in a corporate form" does not violate Commerce Clause as applied to appellant, an interstate carrier of liquefied petroleum products incorporated in Delaware with its principal place of business in Atlanta, Ga., which does no intrastate business in petroleum products in Louisiana but has employees there to inspect and maintain its pipeline, pumping stations, and related facilities in that State. *Colonial Pipeline Co. v. Traigle*, p. 100.

2. *Economic Stabilization Act of 1970—Application to state employees.*—Act was constitutional as applied to state employees. General raises to state employees, even though purely intrastate in character, could significantly affect interstate commerce, and thus could be validly regulated by Congress under Commerce Clause. States are not immune from all federal regulation under Commerce Clause merely because of their sovereign status. Here, where Act did not appreciably intrude on state sovereignty but was an emergency measure to counter severe inflation, effectiveness of federal action would have been drastically impaired if wage increases to state and local government employees (who at time wage freeze was activated composed 14% of Nation's work force) were left outside Act's reach. *Fry v. United States*, p. 542.

### II. Due Process.

1. *Art. 134, Uniform Code of Military Justice—Vagueness—Insubstantial claim.*—Under this Court's decisions in *Parker v. Levy*, 417 U. S. 733, and *Secretary of the Navy v. Avrech*, 418 U. S. 676, holding that Art. 134 of UCMJ is not unconstitutionally vague, appellee's constitutional claim as to Art. 134 is clearly insubstantial and must be dismissed. *McLucas v. DeChamplain*, p. 21.

2. *Findings as to physician's probable professional misconduct.*—Fact that state examining board, when prevented by District Court from going forward with contested hearing to determine whether

**CONSTITUTIONAL LAW**—Continued.

appellee physician's license should be temporarily suspended, proceeded to issue formal findings of fact and conclusions of law that there was probable cause to believe appellee had engaged in various prohibited acts, does not show prejudice and prejudgment, and board stayed within accepted bounds of due process by issuing such findings and conclusions after investigation. Initial charge or determination of probable cause and ultimate adjudication have different bases and purposes, and fact that same agency makes them in tandem and that they relate to same issues does not result in a procedural due process violation. *Withrow v. Larkin*, p. 35.

3. *Juror exposure to defendant's prior convictions or to news of crime charged.*—Juror exposure to information about a state defendant's prior convictions or to news accounts of crime with which he is charged does not alone presumptively deprive defendant of due process. *Murphy v. Florida*, p. 794.

4. *Murder prosecution—Burden of proof—Heat of passion on sudden provocation.*—Maine rule requiring a defendant charged with murder to prove that he acted in heat of passion on sudden provocation in order to reduce homicide to manslaughter, does not comport with requirement of Due Process Clause of Fourteenth Amendment that prosecution must prove beyond a reasonable doubt every fact necessary to constitute crime charged. To satisfy that requirement prosecution in a homicide case in Maine must prove beyond a reasonable doubt absence of heat of passion on sudden provocation when issue is properly presented. *Mullaney v. Wilbur*, p. 684.

5. *Sales tax on "gross proceeds"—Denial of deduction of state and federal gasoline excise taxes.*—Denial of deduction of Mississippi and federal gasoline excise taxes in computing gross proceeds of retail sales of gasoline for purposes of Mississippi sales tax is not unconstitutional. As reflected by language of 26 U. S. C. §§ 4081 and 4082, and their legislative history, legal incidence of federal excise tax is on statutory "producer," such as petitioner service station operator, and not on his purchaser-consumer. Mississippi Supreme Court's holding that legal incidence of state excise tax falls on petitioner, being consistent with a reasonable interpretation of statute, is conclusive. *Gurley v. Rhoden*, p. 200.

6. *Voir dire—Lack of juror hostility.*—*Voir dire* in state robbery prosecution of petitioner indicates no such juror hostility to petitioner as to suggest a partiality that could not be set aside. Though some jurors vaguely recalled robbery and each had some knowledge

**CONSTITUTIONAL LAW**—Continued.

of petitioner's past crimes, none betrayed any belief in relevance to robbery case of petitioner's past, and there was no indication from circumstances surrounding petitioner's trial or from number of panel excused for prejudgment of petitioner, of inflamed community sentiment to counter indicia of impartiality disclosed by *voir dire* transcript. Thus, in totality of circumstances, petitioner failed to show inherent prejudice in trial setting or actual prejudice from jury-selection process. *Murphy v. Florida*, p. 794.

**III. Equal Protection of the Laws.**

1. *Divorce—Child support—Statute establishing different ages of majority for males and females.*—In context of child support, classification effectuated by Utah statute which provides that period of minority for males extends to age 21 and for females to age 18, denies equal protection of laws as guaranteed by Fourteenth Amendment. Notwithstanding "old notions" cited by state court that it is man's primary responsibility to provide a home, that it is salutary for him to have education and training before he assumes that responsibility, and that females tend to mature and marry earlier than males, there is nothing rational in statutory distinction between males and females, which, when related to divorce decree ordering appellee husband to make monthly payments to appellant wife for support of parties' children, results in appellee's liability for support for daughter only to age 18 but for son to age 21, thus imposing "criteria wholly unrelated to the objective of that statute." *Stanton v. Stanton*, p. 7.

2. *Elections—Countywide balloting—Residency districts.*—Alabama statutory system providing for countywide balloting for each of four members of Dallas County Commission, but requiring that a member be elected from each of four residency districts, is not unconstitutional though populations of four districts vary widely, with result that only one Selma resident can be a Commission member, although city contains about one-half of county's population. Because districts are used "merely as the basis of residence for candidates, not for voting or representation," each commissioner represents citizens of entire county and not merely those of district in which he resides. *Dallas County v. Reese*, p. 477.

3. *Limitation on right to vote—Bond elections—Persons rendering property for taxation.*—Texas constitutional and statutory provisions and Fort Worth city charter provisions limiting right to vote in city bond issue elections to persons who have "rendered" or listed property for taxation, erect a classification that impermissibly dis-

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franchises persons otherwise qualified to vote, solely because they have not rendered some property for taxation. *Hill v. Stone*, p. 289.

4. *Sales tax on "gross proceeds"*—*Denial of deduction of federal gasoline excise tax*.—Petitioner service station operator, by being denied deduction of federal gasoline excise tax in computing gross proceeds of retail sales of gasoline for purposes of Mississippi sales tax, is not denied equal protection as against dealers in other States who are not required to include federal excise tax as part of sales tax base, since prohibition of Equal Protection Clause is against denial by State as among taxpayers subject to its laws. *Gurley v. Rhoden*, p. 200.

**IV. Fifth Amendment.**

*Double jeopardy*—*Prosecution as adult after Juvenile Court adjudicatory hearing*.—Prosecution of respondent as an adult in California Superior Court, after an adjudicatory finding in Juvenile Court that he had violated a criminal statute and a subsequent finding that he was unfit for treatment as a juvenile, violated Double Jeopardy Clause of Fifth Amendment, as applied to States through Fourteenth Amendment. Respondent was put in jeopardy at Juvenile Court adjudicatory hearing, whose object was to determine whether he had committed acts that violated a criminal law and whose potential consequences included both stigma inherent in that determination and deprivation of liberty for many years. Jeopardy attached when Juvenile Court, as trier of facts, began to hear evidence. *Breed v. Jones*, p. 519.

**V. First Amendment.**

1. *Establishment Clause*—*State assistance to nonpublic schools*.—Act 194 authorizing Pennsylvania to provide "auxiliary services" directly to all children enrolled in nonpublic elementary and secondary schools meeting State's compulsory attendance requirements, and provisions of Act 195 for loans directly to nonpublic schools of "instructional materials and equipment, useful to the education" of nonpublic school children, violate Establishment Clause of First Amendment as made applicable to States by Fourteenth. But provisions of Act 195 for loans to nonpublic school children of textbooks "acceptable for use in" public schools, are constitutional. *Meek v. Pittenger*, p. 349.

2. *Freedom of speech*—*Statute making it crime to publish advertisements for abortions*.—Virginia statute making it a misdemeanor, by sale or circulation of any publication, to encourage or prompt

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processing of an abortion, as applied to appellant managing editor of Virginia newspaper who was convicted of violating statute as result of publishing a New York City organization's advertisement for abortions, infringed constitutionally protected speech under First Amendment. *Bigelow v. Virginia*, p. 809.

**VI. Speech or Debate Clause.**

*Senate Subcommittee—Inquiry—Immunity from judicial interference.*—Activities of Senate Subcommittee on Internal Security, individual Senators, and Chief Counsel, in making inquiry into respondent organization's activities pursuant to Senate resolution authorizing Subcommittee to make study of administration, operation, and enforcement of Internal Security Act of 1950, fall within "legitimate legislative sphere" and, once this appears, are protected by absolute prohibition of Speech or Debate Clause of Constitution against being "questioned in any other Place" and hence are immune from judicial interference. *Eastland v. United States Servicemen's Fund*, p. 491.

**VII. Supremacy Clause.**

*Increase in state employees' pay—Conflict with Pay Board ruling.*—Since Ohio legislation increasing state employees' wages and salaries above amount authorized by Pay Board under Economic Stabilization Act of 1970 conflicted with Pay Board ruling, State must yield under Supremacy Clause to federal mandate. *Fry v. United States*, p. 542.

**VIII. Tax on United States and its Instrumentalities.**

*State sales tax on liquor sold to military installations.*—Viewing Mississippi's wholesale markup imposed by regulation on liquor sold by out-of-state distillers and suppliers to military installations within State as a sales tax, legal incidence of tax rests upon instrumentalities of United States as purchasers, and hence markup is unconstitutional as a tax imposed upon United States and its instrumentalities. Since legal incidence of tax is upon United States, in view of requirement of regulation that tax be passed on to purchaser, federal immunity with respect to sales of liquor to two exclusively federal enclaves within Mississippi is preserved by § 107 (a) of Buck Act. Under that provision § 105 (a) of Act, which precludes any person from being relieved of any state sales or use tax on ground that sale or use occurred in whole or in part within a federal area, "shall not be deemed to authorize the levy or collec-

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tion of any tax on or from the United States or any instrumentality thereof." Twenty-first Amendment did not abolish federal immunity with respect to taxes on sales of liquor to concurrent jurisdiction bases within Mississippi. *United States v. Mississippi Tax Comm'n*, p. 599.

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**CONTEMPT.**

*Summary contempt punishment—Fed. Rule Crim. Proc. 42 (a).*—Where respondents, who had been charged, along with one Anderson, in separate indictments for separate bank robberies and who pleaded guilty, were summoned as prosecution witnesses at Anderson's trial but refused to testify on Fifth Amendment grounds and still refused to do so after being granted immunity and ordered to testify, District Court properly imposed, pursuant to Fed. Rule Crim. Proc. 42 (a), summary contempt punishment under circumstances. *United States v. Wilson*, p. 309.

**CONTRACT RENEGOTIATION.** See **Freedom of Information Act**, 8.

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*Application to state employees.*—Act's language contemplating general stabilization of "prices, rents, wages, salaries, dividends, and interest" and providing that controls should "call for generally comparable sacrifices by business and labor as well as other segments of the economy," and its legislative history showing that Congress had rejected an amendment exempting state employees, make it clear that Act was intended to apply to employees generally, including state employees. That Act did not expressly refer to States warrants no inference that controls could not extend to their employees. Fry v. United States, p. 542.

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*Reversible errors—State election laws—Necessity for clearance under Voting Rights Act.*—District Court's error in holding that certain Mississippi statutes do not have to be submitted for clearance pursuant to § 5 of Voting Rights Act of 1965, and its consequent error in deciding constitutional challenges to statutes based on racial discrimination claims, require reversal; but this is without prejudice to that court's authority to entertain an appropriate proceeding to require that 1975 elections be conducted pursuant to a court-ordered reapportionment plan. Connor v. Waller, p. 656.

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- EXEMPTION 5 OF FREEDOM OF INFORMATION ACT.** See Freedom of Information Act, 1-2, 5-8; Procedure, 3.
- EXEMPTION 7 OF FREEDOM OF INFORMATION ACT.** See Freedom of Information Act, 3; Procedure, 3.
- EXHAUSTION OF STATE REMEDIES.** See Habeas Corpus.
- FACE-TO-FACE REFUSAL TO COMPLY WITH COURT ORDER.** See Contempt.
- FACIAL OVERBREADTH.** See Standing to Raise Issue.
- FAILING BROKER-DEALERS.** See Securities Investor Protection Act of 1970.
- FAILURE TO STATE A CLAIM.** See Jurisdiction, 1.
- FAIRFAX COUNTY, VA.** See Antitrust Acts, 1-3.

**FAIR TRIALS.** See *Constitutional Law*, II, 3, 6; *Federal-State Relations*, 3-4; *Habeas Corpus*.

**FATHER'S SUPPORT OF CHILDREN.** See *Constitutional Law*, III, 1; *Mootness*, 1; *Standing to Sue*.

**FEDERAL COURT INTERVENTION IN COURT-MARTIAL PROCEEDINGS.** See *Jurisdiction*, 1.

**FEDERAL ENCLAVES.** See *Constitutional Law*, VIII.

**FEDERAL FOOD, DRUG, AND COSMETIC ACT.**

1. *Violations—Duties of corporate officer under Act—Food distributors—Punishment.*—Act imposes upon persons exercising authority and supervisory responsibility reposed in them by a business organization not only a positive duty to seek out and remedy violations but also, and primarily, a duty to implement measures that will insure that violations will not occur; in order to make food distributors "the strictest censors of their merchandise," Act punishes "neglect where the law requires care, or inaction where it imposes a duty." *United States v. Park*, p. 658.

2. *Violations—Prosecution—Corporate officer's responsibility—Defense—Rebuttal evidence.*—In prosecution of national food chain and respondent, its president, for alleged violations of § 301 (k) of Act by causing interstate food shipments being held in certain warehouse to be exposed to rodent contamination, admission of testimony concerning warning in letter from Food and Drug Administration to respondent as to insanitary conditions at warehouse, was proper rebuttal evidence to respondent's defense that he had justifiably relied upon subordinates to handle sanitation matters. *United States v. Park*, p. 658.

3. *Violations—Prosecution—Corporate officer's responsibility—Instructions to jury—Propriety.*—In prosecution of national food chain and respondent, its president, for alleged violations of § 301 (k) of Act by causing interstate food shipments being held in certain warehouse to be exposed to rodent contamination, trial court's instructions to jury, viewed as a whole and in context, were not misleading and provided a proper guide for jury's determination. Charge adequately focused on issue of respondent's authority respecting conditions that formed basis of alleged violations, fairly advising jury that to find guilt it must find that respondent "had a responsible relation to the situation"; that "situation" was condition of warehouse; and that by virtue of his position he "had authority and responsibility" to deal therewith. *United States v. Park*, p. 658.

**FEDERAL GASOLINE EXCISE TAXES.** See *Constitutional Law*, II, 5; III, 4.

**FEDERAL IMMUNITY FROM TAXATION.** See **Constitutional Law, VIII.**

**FEDERAL INTERFERENCE WITH STATE PROSECUTIONS.**  
See **Federal-State Relations, 2-4.**

**FEDERAL RULES OF CRIMINAL PROCEDURE.** See **Contempt.**

**FEDERAL-STATE RELATIONS.** See also **Antitrust Acts, 5-6;**  
**Civil Rights Act of 1968;** **Clean Air Amendments of 1970;**  
**Constitutional Law, I, 2; VIII;** **Jurisdiction, 2;** **Procedure, 1;**  
**Removal.**

1. *Aid to Families with Dependent Children—Unemployed fathers—State regulation—Conflict with Social Security Act.*—Vermont regulation defining an "unemployed father" as one who is, *inter alia*, out of work, provided "[h]e is not receiving Unemployment Compensation during the same week as assistance is granted," as applied to exclude unemployed fathers who are merely eligible for unemployment compensation from receiving AFDC benefits, impermissibly conflicts with § 407 (b) (2) (C) (ii) of Social Security Act, as correctly interpreted by District Court as making actual payment of, rather than mere eligibility for, unemployment compensation disqualifying factor for AFDC benefits. As evidenced by that provision's legislative history, Congress did not intend provision's coverage to be at State's discretion once it elected to participate in AFDC program. *Philbrook v. Glodgett*, p. 707.

2. *Federal declaratory relief—Threatened state prosecution.*—Since decision on which District Court relied in dismissing action challenging constitutionality of Dallas loitering ordinance and seeking declaratory relief, was subsequently reversed in *Steffel v. Thompson*, 415 U. S. 452, wherein it was held that federal declaratory relief is not precluded when a state prosecution based upon an assertedly unconstitutional state statute has been threatened, but is not pending, even if a showing of bad-faith enforcement or other special circumstances has not been made, Court of Appeals' judgment affirming District Court is reversed and case is remanded to District Court for reconsideration in light of *Steffel* as to whether there is a genuine threat of prosecution and as to relationship between past prosecution and alleged threat of future prosecutions. *Ellis v. Dyson*, p. 426.

3. *Federal injunctive relief against state prosecution.*—Respondent's claim that he cannot obtain a fair hearing in New Jersey state courts on a criminal prosecution is without merit, and facts he alleges do not bring this matter within any exception to rule of

**FEDERAL-STATE RELATIONS—Continued.**

*Younger v. Harris*, 401 U. S. 37, so as to warrant granting of federal injunctive relief against state criminal prosecution. *Kugler v. Helfant*, p. 117.

4. *Federal intervention in state criminal proceedings—Suppression of evidence.*—Federal courts should refuse to intervene in state criminal proceedings to suppress use of evidence even when claimed to have been unlawfully obtained. Procedure ordered by Court of Appeals, whereby District Court was to enter a declaratory judgment, based on evidentiary hearing on respondent's charge that he was coerced to give grand jury testimony, on question whether such testimony was admissible in respondent's state criminal trial, would contravene basic policy against federal interference with state prosecutions as much as would granting of injunctive relief sought. *Kugler v. Helfant*, p. 117.

5. *State "lodger" regulations—Violation of Social Security Act.*—New York "lodger" regulations, which require a pro-rata reduction in shelter allowance of a family receiving Aid to Families with Dependent Children solely because a parent allows a nonlegally responsible person to reside in home, and which are based on assumption that nonpaying lodger is contributing to welfare of household, without inquiry into whether he in fact does so, violate Social Security Act and implementing regulations. *Van Lare v. Hurley*, p. 338.

6. *Subcontracting agreement between union and general contractor—Subjection to state antitrust laws—Conflict with federal labor policies.*—Respondent union's agreement with petitioner general building contractor, whereby petitioner agreed to subcontract all plumbing and mechanical work only to firms that had a current multiemployer collective-bargaining contract with respondent, is not subject to state antitrust laws, use of which to regulate union activities in aid of union organization would risk substantial conflict with policies central to federal labor law. *Connell Co. v. Plumbers & Steamfitters*, p. 616.

**FEE SCHEDULES FOR LAWYERS.** See **Antitrust Acts**, 1-3.

**FIFTH AMENDMENT.** See **Constitutional Law**, IV; **Contempt**.

**"FINAL OPINIONS" DISCLOSABLE UNDER FREEDOM OF INFORMATION ACT.** See **Freedom of Information Act**, 1, 3, 5-8.

**FINANCIAL RELIEF TO CUSTOMERS OF FAILING BROKER-DEALERS.** See **Securities Investor Protection Act of 1970**.

- FINANCING PURCHASE OF HOME.** See **Antitrust Acts**, 3-4.
- FIRST AMENDMENT.** See **Constitutional Law**, V; **Standing to Raise Issue**.
- FOOD AND DRUG ADMINISTRATION.** See **Federal Food, Drug, and Cosmetic Act**.
- FOOD CONTAMINATION.** See **Federal Food, Drug, and Cosmetic Act**.
- FOREIGN CORPORATIONS.** See **Constitutional Law**, I, 1.
- FORT WORTH.** See **Constitutional Law**, III, 3; **Retroactivity**.
- FOURTEENTH AMENDMENT.** See **Constitutional Law**, II, 3-6; III; IV; V; **Habeas Corpus**; **Retroactivity**.
- FRANCHISE TAXES.** See **Constitutional Law**, I, 1.
- FRAUD IN SALE OF SECURITIES.** See **Securities Act of 1933**, 2; **Securities Exchange Act of 1934**, 1, 3.
- FREEDOM OF INFORMATION ACT.** See also **Procedure**, 2-3.

1. *Exemption 5—Application to “final opinions.”*—Exemption 5 of Act, which exempts “inter-agency or intra-agency memorandums” from disclosure to the public, can never apply to “final opinions,” which not only invariably explain agency action already taken or an agency decision already made, but also constitute “final dispositions” of matters by an agency. *NLRB v. Sears, Roebuck & Co.*, p. 132.

2. *Exemption 5—Attorney work-product rule.*—Exemption 5 of Act, which exempts “inter-agency or intra-agency memorandums” from disclosure to public, covers attorney work-product rule which clearly applies to memoranda prepared by an attorney in contemplation of litigation and setting forth attorney’s theory of case and his litigation strategy. *NLRB v. Sears, Roebuck & Co.*, p. 132.

3. *National Labor Relations Board—General Counsel—Advice and Appeals Memoranda—Documents incorporated by reference—Exemption 7.*—Petitioners’ claim that documents incorporated by reference in Advice and Appeals Memoranda of NLRB’s General Counsel regarding unfair labor practice charges, which documents were previously protected from disclosure by Act’s Exemption 7 as “investigatory files compiled for law enforcement purposes,” should not lose their exempt status by reason of incorporation, has merit, since a document protected by Exemption 7 does not become disclosable solely because it is referred to in a “final opinion,” and

**FREEDOM OF INFORMATION ACT—Continued.**

accordingly case must be remanded to District Court for a determination whether such documents are protected by Exemption 7, as amended. *NLRB v. Sears, Roebuck & Co.*, p. 132.

4. *National Labor Relations Board—General Counsel—Appeals Memorandum—“Circumstances of case.”*—Petitioner NLRB and its General Counsel are not required to produce or create explanatory material in those instances in which an Appeals Memorandum regarding an unfair labor practice charge refers to “the circumstances of the case,” nor are they required to identify, after the fact, those pre-existing documents that contain “circumstances of a case” to which an opinion may have referred, and which are not identified by party seeking disclosure. *NLRB v. Sears, Roebuck & Co.*, p. 132.

5. *National Labor Relations Board—General Counsel—Exempt Advice and Appeals Memoranda—“Intra-agency memoranda.”*—Those Advice and Appeals Memoranda that explain decisions by NLRB’s General Counsel to file an unfair labor practice complaint and commence litigation before NLRB are not “final opinions” made in “adjudication of cases” within meaning of 5 U. S. C. § 552 (a)(2)(A) and do fall within scope of Act’s Exemption 5, which exempts “inter-agency or intra-agency memorandums” from disclosure to public. *NLRB v. Sears, Roebuck & Co.*, p. 132.

6. *National Labor Relations Board—General Counsel—Non-exempt Advice and Appeals Memoranda—Documents incorporated by reference.*—Documents incorporated by reference in nonexempt Advice and Appeals Memoranda that explain decisions by NLRB’s General Counsel not to file unfair labor practice complaint, lose any exemption they might previously have held as “intra-agency” memoranda under Act’s Exemption 5, and if an agency chooses expressly to adopt or incorporate by reference an intra-agency memorandum previously covered by Exemption 5 in what would otherwise be a final opinion, that memorandum may be withheld only on ground that it is covered by some exemption other than Exemption 5. *NLRB v. Sears, Roebuck & Co.*, p. 132.

7. *National Labor Relations Board—General Counsel—Non-exempt Advice and Appeals Memoranda—“Final opinions.”*—Those Advice and Appeals Memoranda that explain decisions by NLRB’s General Counsel not to file an unfair labor practice complaint are “final opinions” made in “adjudication of cases” within meaning of 5 U. S. C. § 552 (a)(2)(A), and hence fall outside scope of Act’s Exemption 5, which exempts “inter-agency or intra-agency memo-

**FREEDOM OF INFORMATION ACT**—Continued.

randums" from disclosure to public, and must be disclosed. *NLRB v. Sears, Roebuck & Co.*, p. 132.

8. *Renegotiation Board—Regional Board and Division Reports—Exemption 5.*—Neither Regional Board nor Division Reports to Renegotiation Board as to whether Government contractor realized excessive profits are final opinions disclosable under 5 U. S. C. § 552 (a) (2) (A), and thus such reports fall within Act's Exemption 5, which exempts "inter-agency or intra-agency memorandums" from disclosure to public, since (1) only full Board has power by law to make decision whether excessive profits exist; (2) both types of reports are prepared prior to that decision and are used by Board in its deliberations; and (3) evidence fails to support conclusion that reasoning in reports is adopted by Board as *its* reasoning, even when it agrees with report's conclusion. *Renegotiation Board v. Grumman Aircraft*, p. 168.

**FREEDOM OF RELIGION.** See *Constitutional Law*, V, 1.

**FREEDOM OF SPEECH.** See *Constitutional Law*, V, 2; *Standing to Raise Issue*.

**GASOLINE EXCISE TAXES.** See *Constitutional Law*, II, 5; III, 4.

**GENERAL COUNSEL FOR NATIONAL LABOR RELATIONS BOARD.** See *Freedom of Information Act*, 3-7; *Procedure*, 2-3.

**GENERAL-OBLIGATION BOND ELECTIONS.** See *Constitutional Law*, III, 3; *Retroactivity*.

**GEORGIA.** See *Clean Air Amendments of 1970*.

**GOVERNMENT CONTRACTS.** See *Freedom of Information Act*, 8.

**GOVERNMENT PERMITS.** See *Attorneys' Fees*.

**GRAND JURY TESTIMONY.** See *Federal-State Relations*, 4.

**GROSS PROCEEDS OF RETAIL SALES.** See *Constitutional Law*, II, 5; III, 4.

**HABEAS CORPUS.**

*Bar to relief—Failure to exhaust state remedies.*—Respondent state prisoner failed to exhaust available state remedies on denial-of-fair-trial claim involving destruction of exculpatory evidence that formed basis for unconditional federal writ of habeas corpus, and

**HABEAS CORPUS**—Continued.

hence he is entitled to no relief based upon a claim with respect to which state remedies have not been exhausted. *Pitchess v. Davis*, p. 482.

**HEAT OF PASSION ON SUDDEN PROVOCATION.** See Constitutional Law, II, 4.

**HIGHEST STATE COURT.** See Appeals, 2.

**HOMICIDE.** See Constitutional Law, II, 4.

**HOUSING PROJECTS.** See Securities Act of 1933; Securities Exchange Act of 1934, 2-3.

**IMMUNITY OF SENATE SUBCOMMITTEE FROM JUDICIAL INTERFERENCE.** See Constitutional Law, VI.

**IMMUNITY OF UNITED STATES FROM TAXATION.** See Constitutional Law, VIII.

**IMPERMISSIBLE CLASSIFICATIONS.** See Constitutional Law, III, 3; Retroactivity.

**IMPLEMENTATION PLAN VARIANCE PROCEDURES.** See Clean Air Amendments of 1970.

**IMPLIED PRIVATE RIGHTS OF ACTION.** See Securities Investor Protection Act of 1970.

**INCIDENCE OF TAX.** See Constitutional Law, I, 1; II, 5; VIII.

**INCURABLE INJURIES.** See Seamen.

**INFLATION.** See Constitutional Law, I, 2; VII; Economic Stabilization Act of 1970.

**INJUNCTIONS.** See also Federal-State Relations, 3-4; Jurisdiction, 1; Procedure, 1.

*Erroneous restraining order and preliminary injunction.*—In appellee physician's action for injunctive relief against enforcement of allegedly unconstitutional Wisconsin statute empowering state examining board temporarily to suspend a physician's license without formal proceedings, District Court erred when it restrained contested hearing at which board would determine whether appellee's license would be temporarily suspended and when it preliminarily enjoined enforcement of statute against appellee, since on record it is quite unlikely that appellee would ultimately prevail on merits of due process issue. *Withrow v. Larkin*, p. 35.

- INJURED SEAMEN.** See *Seamen*.
- INSTRUCTIONAL MATERIALS AND EQUIPMENT LOANS TO NONPUBLIC SCHOOLS.** See *Constitutional Law*, V, 1.
- INSTRUCTIONS TO JURY.** See *Federal Food, Drug, and Cosmetic Act*, 3.
- INSTRUMENTALITIES OF UNITED STATES.** See *Constitutional Law*, VIII.
- INSUBSTANTIAL CONSTITUTIONAL CLAIM.** See *Constitutional Law*, II, 1.
- INTENTIONAL OBSTRUCTION OF COURT PROCEEDINGS.** See *Contempt*.
- INTER-AGENCY MEMORANDA.** See *Freedom of Information Act*, 1-2, 5, 7-8.
- INTERFERENCE WITH STATE PROSECUTIONS.** See *Federal-State Relations*, 2-4.
- INTERNAL REVENUE SERVICE.** See *Bankruptcy Act*.
- INTERNAL SECURITY ACT OF 1950.** See *Constitutional Law*, VI.
- INTERSTATE CARRIERS.** See *Constitutional Law*, I, 1.
- INTERSTATE COMMERCE.** See *Antitrust Acts*, 2-3; *Constitutional Law*, I, 2.
- INTERVENING LEGISLATION.** See *Mootness*, 2.
- INTOXICATING LIQUORS.** See *Constitutional Law*, VIII.
- INTRA-AGENCY MEMORANDA.** See *Freedom of Information Act*, 1-2, 5-8.
- INVESTIGATIVE FUNCTIONS.** See *Constitutional Law*, II, 2.
- INVESTIGATORY FILES.** See *Freedom of Information Act*, 3; *Procedure*, 3.
- INVESTMENT CONTRACTS.** See *Securities Act of 1933*, 1; *Securities Exchange Act of 1934*, 2.
- JUDICIAL QUESTIONING OF SENATE SUBCOMMITTEE'S ACTIVITIES.** See *Constitutional Law*, VI.
- JUDICIAL REVIEW.** See also *Clean Air Amendments of 1970*.  
*Secretary of Labor's decision against suit to set aside union election—Scope of review.*—While 28 U. S. C. § 1337 confers juris-

**JUDICIAL REVIEW**—Continued.

dition on District Court to entertain respondent defeated union-office candidate's suit to have Secretary's decision not to bring suit to set aside union election as a violation of Labor-Management Reporting and Disclosure Act of 1959 declared arbitrary and capricious and to order him to file suit, and Secretary's decision is not excepted from judicial review by 5 U. S. C. § 701 (a), but by virtue of 5 U. S. C. §§ 702 and 704 is reviewable under standard specified in § 706 (2)(A), Court of Appeals erred insofar as it construed § 706 (2)(A) to authorize District Court to allow respondent a trial-type inquiry into factual bases for Secretary's decision. *Dunlop v. Bachowski*, p. 560.

**JURISDICTION.** See also **Appeals**; **Civil Rights Act of 1968**, 1; **Federal-State Relations**, 6; **Judicial Review**; **Securities Act of 1933**, 2; **Securities Exchange Act of 1934**, 3.

1. *District Court—Intervention in court-martial proceedings—Defendant's access to documents.*—Relief as to appellee's claim, in his action in District Court to enjoin court-martial proceedings against him, that certain limitations imposed by military authorities on his pretrial access to classified documents in issue denied him due process and effective assistance of counsel, is squarely precluded by this Court's holding in *Schlesinger v. Councilman*, 420 U. S. 738, that "when a serviceman charged with crimes by military authorities can show no harm other than that attendant to resolution of his case within the military court system, the federal district courts must refrain from intervention." Hence "unlimited access" aspect of appellee's suit must be dismissed for failure to state a claim upon which relief can be granted. *McLucas v. DeChamplain*, p. 21.

2. *District Court—Suit challenging validity of state regulation under Aid to Families with Dependent Children program—Jurisdiction over Secretary of Health, Education, and Welfare.*—This Court will not inquire into question whether District Court had jurisdiction over appellant HEW Secretary in suit against him and Vermont official challenging validity of Vermont regulation under AFDC program, but will make an exception to general rule that this Court has a duty to so inquire, where question has been inadequately briefed, substantive issue has been decided in State's case, and Secretary has stated he will comply with District Court decision on statutory issue if it is affirmed. Exercise of District Court's jurisdiction over Secretary has resulted in no adjudication on merits that could not have been just as properly

**JURISDICTION**—Continued.

made without Secretary, and in no issuance of process against Secretary which he has properly contended to be wrongful before this Court. *Philbrook v. Glodgett*, p. 707.

**JUROR EXPOSURE TO DEFENDANT'S PAST CRIMES OR TO NEWS OF CRIME CHARGED.** See Constitutional Law, II, 3, 6.

**JUROR HOSTILITY.** See Constitutional Law, II, 6.

**JURY INSTRUCTIONS.** See Federal Food, Drug, and Cosmetic Act, 3.

**JURY SELECTIONS.** See Constitutional Law, II, 6.

**JURY TRIALS.** See Appeals, 2.

**JUSTICIABILITY.** See Mootness, 1; Standing to Sue.

**JUVENILE COURTS.** See Constitutional Law, IV.

**LABOR.** See Freedom of Information Act, 3-7; Procedure, 2-3.

**LABOR-MANAGEMENT REPORTING AND DISCLOSURE ACT OF 1959.** See Judicial Review.

**LABOR UNIONS.** See Antitrust Acts, 5-6; Federal-State Relations, 6; Judicial Review.

**LANDRUM-GRIFFIN ACT.** See Judicial Review.

**LAWYERS' FEES.** See Antitrust Acts, 1-4.

**LEARNED PROFESSIONS.** See Antitrust Acts, 4.

**LEASES OF APARTMENTS.** See Securities Act of 1933; Securities Exchange Act of 1934, 2-3.

**LEGAL INCIDENCE OF TAX.** See Constitutional Law, I, 1; II, 5; VIII.

**LEGITIMATE LEGISLATIVE SPHERE.** See Constitutional Law, VI.

**LICENSES.** See Constitutional Law, II, 2; Injunctions; Procedure, 1.

**LIMITATION OF ACTIONS.** See Civil Rights Act of 1870.

**LIMITATIONS ON RIGHT TO VOTE.** See Constitutional Law, III, 3; Retroactivity.

**LIQUEFIED PETROLEUM PRODUCTS.** See Constitutional Law, I, 1.

- LIQUOR DISTILLERS AND SUPPLIERS.** See Constitutional Law, VIII.
- LISTING OF PROPERTY FOR TAXATION.** See Constitutional Law, III, 3; Retroactivity.
- LOCAL BOND ELECTIONS.** See Constitutional Law, III, 3; Retroactivity.
- “LODGER” REGULATIONS.** See Federal-State Relations, 5.
- LOITERING.** See Federal-State Relations, 2.
- LOUISIANA.** See Constitutional Law, I, 1; Mootness, 2.
- LOW-COST HOUSING.** See Securities Act of 1933, 1; Securities Exchange Act of 1934, 2.
- MAINE.** See Constitutional Law, II, 4.
- MAINTENANCE AND CURE.** See Seamen.
- MANSLAUGHTER.** See Constitutional Law, II, 4.
- MARITIME COLLISIONS.** See Admiralty.
- MARKUPS ON LIQUOR.** See Constitutional Law, VIII.
- MASSACHUSETTS.** See Appeals, 2.
- MECHANICAL SUBCONTRACTORS.** See Antitrust Acts, 5-6; Federal-State Relations, 6.
- MILITARY INSTALLATIONS.** See Constitutional Law, VIII.
- MINIMUM-FEE SCHEDULES FOR LAWYERS.** See Antitrust Acts, 1-3.
- MINORITY.** See Constitutional Law, III, 1; Mootness, 1; Standing to Sue.
- MISLEADING STATEMENTS IN CONNECTION WITH PURCHASE OR SALE OF SECURITIES.** See Securities Exchange Act of 1934, 1, 3.
- MISSISSIPPI.** See Civil Rights Act of 1968, 1; Constitutional Law, II, 5; III, 4; VIII; Elections; Removal.
- MITCHELL-LAMA ACT.** See Securities Act of 1933; Securities Exchange Act of 1934, 2-3.
- MOOTNESS.** See also Standing to Raise Issue; Standing to Sue.
1. *Divorce—Child support—Effect of child's attaining age 21.*—Issue as to whether appellee husband, who was ordered by divorce decree to make monthly payments to appellant wife for support

**MOOTNESS**—Continued.

of parties' children, was entitled to discontinue payments for daughter's support after she attained age 18 pursuant to challenged Utah statute providing that period of minority for males extends to age 21 and for females to age 18, is not rendered moot by fact that appellant and daughter are now both over 21. If appellee is obligated by divorce decree to support daughter between ages 18 and 21, there is an amount past due and owing. *Stanton v. Stanton*, p. 7.

2. *Intervening laws*. Changes in state constitutional, statutory, and other applicable rules, raise question as to whether this case has become moot. *Edwards v. Healy*, p. 772.

**"MOST FAVORED NATION" CLAUSES**. See *Antitrust Acts*, 5-6.

**MULTIEMPLOYER COLLECTIVE-BARGAINING AGREEMENTS**. See *Antitrust Acts*, 5-6; *Federal-State Relations*, 6.

**MULTIPLE TRIALS**. See *Constitutional Law*, IV.

**MURDER**. See *Constitutional Law*, II, 4.

**NATIONAL AMBIENT AIR QUALITY STANDARDS**. See *Clean Air Amendments of 1970*.

**NATIONAL LABOR RELATIONS ACT**. See *Antitrust Acts*, 5-6; *Federal-State Relations*, 6.

**NATIONAL LABOR RELATIONS BOARD'S GENERAL COUNSEL**. See *Freedom of Information Act*, 3-7; *Procedure*, 2-3.

**NEW JERSEY**. See *Federal-State Relations*, 3-4.

**NEWSPAPER ADVERTISEMENTS FOR ABORTIONS**. See *Constitutional Law*, V, 2; *Standing to Raise Issue*.

**NEW YORK**. See *Constitutional Law*, V, 2; *Federal-State Relations*, 5.

**NEW YORK PRIVATE HOUSING FINANCE LAW**. See *Securities Act of 1933*; *Securities Exchange Act of 1934*, 2-3.

**NONAPPROPRIATED FUND ACTIVITIES**. See *Constitutional Law*, VIII.

**NONPAYING LODGERS**. See *Federal-State Relations*, 5.

**NONPUBLIC SCHOOLS**. See *Constitutional Law*, V, 1.

**NONSECTARIAN SCHOOLS**. See *Constitutional Law*, V, 1.

**NOTICE OF TAX LEVY**. See *Bankruptcy Act*.

- OBSTRUCTION OF COURT PROCEEDINGS.** See Contempt.
- OFFERINGS OF SECURITIES.** See Securities Exchange Act of 1934, 1.
- OHIO.** See Constitutional Law, I, 2; VII; Economic Stabilization Act of 1970.
- OUT-OF-STATE LIQUOR DISTILLERS AND SUPPLIERS.** See Constitutional Law, VIII.
- OVERBREADTH.** See Standing to Raise Issue.
- PAROCHIAL SCHOOLS.** See Constitutional Law, V, 1.
- PAY BOARD.** See Constitutional Law, I, 2; VII; Economic Stabilization Act of 1970.
- PENNSYLVANIA.** See Constitutional Law, V, 1.
- PERIOD OF MINORITY.** See Constitutional Law, III, 1; Mootness, 1; Standing to Sue.
- PERMANENT INJURIES.** See Seamen.
- PETROLEUM PRODUCTS.** See Constitutional Law, I, 1.
- PHYSICAL EVIDENCE.** See Habeas Corpus.
- PHYSICIANS.** See Constitutional Law, II, 2; Injunctions; Procedure, 1.
- PIPELINES.** See Constitutional Law, I, 1.
- PLUMBING SUBCONTRACTORS.** See Antitrust Acts, 5-6; Federal-State Relations, 6.
- POLLUTION.** See Clean Air Amendments of 1970.
- POSTPONEMENTS OF CLEAN AIR REQUIREMENTS.** See Clean Air Amendments of 1970.
- PRACTICE OF LAW.** See Antitrust Acts, 1-4.
- PRE-EMPTION.** See Federal-State Relations, 6.
- PREJUDGMENT.** See Constitutional Law, II, 2.
- PRETRIAL PUBLICITY.** See Constitutional Law, II, 3, 6.
- PRICE FIXING.** See Antitrust Acts, 1-3.
- PRIMARY AMBIENT AIR QUALITY STANDARDS.** See Clean Air Amendments of 1970.
- PRIVATE ATTORNEYS GENERAL.** See Attorneys' Fees.
- PRIVATE DAMAGES ACTIONS.** See Securities Exchange Act of 1934, 1.

**PRIVATE RIGHTS OF ACTION.** See **Securities Investor Protection Act of 1970.**

**PRIVATE SCHOOLS.** See **Constitutional Law, V, 1.**

**PROBABLE CAUSE.** See **Constitutional Law, II, 2.**

**PROCEDURAL DUE PROCESS.** See **Constitutional Law, II, 2.**

**PROCEDURE.** See also **Federal-State Relations, 3-4; Injunctions; Standing to Raise Issue.**

1. *Suit to enjoin enforcement of state statute—Three-judge District Court—Improper declaration of unconstitutionality—Erroneous injunction.*—In appellee physician's action for injunctive relief against enforcement of allegedly unconstitutional Wisconsin's statute empowering state examining board temporarily to suspend a physician's license without formal proceedings, three-judge District Court's initial judgment should not have declared statute unconstitutional and erroneously enjoined board from applying it against all licensees. *Withrow v. Larkin*, p. 35.

2. *Supreme Court—Adjudication of claim not raised below.*—This Court will not reach petitioners' claim that Advice and Appeals Memoranda of National Labor Relations Board's General Counsel regarding unfair labor practice charges are exempt from disclosure under Freedom of Information Act's Exemption 2 as documents "related solely to the internal personnel rules and practices of an agency," that claim not having been raised below. *NLRB v. Sears, Roebuck & Co.*, p. 132.

3. *Supreme Court—Adjudication of claim not raised or passed on below.*—This Court will not adjudicate petitioners' claim that Advice and Appeals Memoranda of National Labor Relations Board's General Counsel regarding unfair labor practice charges are exempt from disclosure under Freedom of Information Act's Exemption 7 as "investigatory files compiled for law enforcement purposes." That claim was not made in District Court and, although it was made in Court of Appeals, that court affirmed without opinion on basis of its prior decision in another case not involving Exemption 7, and it is therefore not clear whether that court passed on claim. Moreover, Congress passed a limiting amendment to Exemption 7 after petitioners filed their brief, and thus any decision of Exemption 7 issue in this case would have to be made under exemption as amended, which could not have been done by courts below. *NLRB v. Sears, Roebuck & Co.*, p. 132.

**PROFESSIONAL MISCONDUCT.** See **Constitutional Law, II, 2; Injunctions; Procedure, 1.**

- PROOF BEYOND REASONABLE DOUBT.** See Constitutional Law, II, 4.
- PROPERTY DAMAGE.** See Admiralty.
- PROPERTY TAXES.** See Constitutional Law, III, 3; Retroactivity.
- PROPORTIONAL FAULT.** See Admiralty.
- PROSECUTION WITNESSES.** See Contempt.
- PROTECTED SPEECH.** See Constitutional Law, V, 2; Standing to Raise Issue.
- PROTECTION OF INVESTORS.** See Securities Investor Protection Act of 1970.
- PUBLIC ASSISTANCE.** See Federal-State Relations, 1, 5.
- PUNISHMENT FOR CONTEMPT.** See Contempt.
- PURCHASE OF HOME.** See Antitrust Acts, 3.
- PURCHASE OF SECURITIES.** See Securities Act of 1933, 2; Securities Exchange Act of 1934, 1, 3.
- PURE SPEECH.** See Constitutional Law, V, 2; Standing to Raise Issue.
- QUALIFICATION TO DO BUSINESS IN STATE.** See Constitutional Law, I, 1.
- RACIAL DISCRIMINATION.** See Civil Rights Act of 1870; Elections; Removal.
- RATIONAL BASIS.** See Constitutional Law, III, 1.
- REAPPORTIONMENT.** See Elections.
- REASONABLE DOUBT.** See Constitutional Law, II, 4.
- REBUTTAL EVIDENCE.** See Federal Food, Drug, and Cosmetic Act, 2.
- RECEIVERS IN BANKRUPTCY.** See Bankruptcy Act.
- REFUSAL TO TESTIFY.** See Contempt.
- REGIONAL BOARD REPORTS.** See Freedom of Information Act, 8.
- REGIONAL DIRECTORS OF NATIONAL LABOR RELATIONS BOARD.** See Freedom of Information Act, 1-7.
- REMOVAL.** See also Civil Rights Act of 1968.
1. *State prosecutions—28 U. S. C. § 1443 (1)—Title I, Civil Rights Act of 1968.*—Removal from state to federal court pursuant to 28

**REMOVAL**—Continued.

U. S. C. § 1443 (1) of prosecutions of petitioner Negroes for conspiring to bring about boycott of business establishments in Vicksburg, Miss., because of alleged racial discrimination in employment, was not warranted solely on petitioners' allegations that statutes underlying charges were unconstitutional, that there was no basis in fact for those charges, or that their arrest and prosecution otherwise denied them their constitutional rights. Nor does Title I of Civil Rights Act of 1968 furnish adequate basis for removal under § 1443 (1). *Johnson v. Mississippi*, p. 213.

2. *State prosecutions*—28 U. S. C. § 1443 (1)—*Title I, Civil Rights Act of 1968*.—Absence of any evidence or legislative history indicating that Congress intended to accomplish in Title I of Civil Rights Act of 1968 what it has failed or refused to do directly through amendment of 28 U. S. C. § 1443 (1) necessitates rejection of right of removal from state to federal court of prosecutions of petitioner Negroes for conspiring to bring about boycott of business establishments in Vicksburg, Miss., because of alleged racial discrimination in employment. In addition there are other avenues of relief open to petitioners for vindication of their federal rights that may have been or will be violated. *Johnson v. Mississippi*, p. 213.

**'RENDERING' OF PROPERTY FOR TAXATION.** See **Constitutional Law, III, 3; Retroactivity.**

**RENEGOTIATION ACT OF 1951.** See **Freedom of Information Act, 8.**

**RESIDENCY DISTRICTS.** See **Constitutional Law, III, 2.**

**RESIDENTIAL REAL ESTATE TRANSACTIONS.** See **Anti-trust Acts, 3.**

**RESTRAINING ORDERS.** See **Injunctions; Procedure, 1.**

**RESTRAINTS ON COMPETITION.** See **Antitrust Acts, 6; Federal-State Relations, 6.**

**RESTRICTIONS ON RIGHT TO VOTE.** See **Constitutional Law, III, 3; Retroactivity.**

**RETROACTIVITY.** See also **Constitutional Law, III, 3.**

*Rulings on constitutionality of voting restrictions.*—District Court's ruling that Texas constitutional and statutory provisions and Fort Worth city charter provisions limiting right to vote in city bond issue elections to persons who have "rendered" or listed property for taxation, did not serve any compelling state interest and there-

**RETROACTIVITY**—Continued.

fore violated Equal Protection Clause of Fourteenth Amendment, should apply only to those bond authorization elections that were not final on date of that court's judgment. As to other jurisdictions that may have similar restrictive voting classifications, this Court's decision upholding District Court should apply only to elections not final as of date of this decision. *Hill v. Stone*, p. 289.

**REVERSIBLE ERROR.** See **Elections.**

**"REVISIONS" OF STATE CLEAN AIR IMPLEMENTATION PLANS.** See **Clean Air Amendments of 1970.**

**RIGHTS OF ACTION.** See **Securities Investor Protection Act of 1970.**

**RIGHT TO FAIR TRIAL.** See **Constitutional Law, II, 3, 6; Habeas Corpus.**

**RIGHT TO MAINTAIN ACTION.** See **Securities Exchange Act of 1934, 1.**

**RIGHT TO VOTE.** See **Constitutional Law, III, 3; Retroactivity.**

**ROBBERY.** See **Constitutional Law, II, 3, 6.**

**RODENT CONTAMINATION.** See **Federal Food, Drug, and Cosmetic Act, 2-3.**

**RULE OF DIVIDED DAMAGES.** See **Admiralty.**

**RULE OF PROPORTIONAL FAULT.** See **Admiralty.**

**RULES OF CRIMINAL PROCEDURE.** See **Contempt.**

**SALE OF SECURITIES.** See **Securities Act of 1933, 2; Securities Exchange Act of 1934, 1, 3.**

**SALES TAXES.** See **Constitutional Law, II, 5; III, 4; VIII.**

**SANITATION.** See **Federal Food, Drug, and Cosmetic Act.**

**SCHOOLS.** See **Constitutional Law, V, 1.**

**SCOPE OF JUDICIAL REVIEW.** See **Judicial Review.**

**SEAMEN.**

*Maintenance and cure—Permanent injury.*—A shipowner's duty to furnish an injured seaman maintenance and cure continues from date seaman leaves ship to date when a medical diagnosis is made that his injury was permanent immediately after his accident and therefore incurable. *Vella v. Ford Motor Co.*, p. 1.

**SECONDARY SCHOOLS.** See **Constitutional Law, V, 1.**

**SECRETARY OF HEALTH, EDUCATION, AND WELFARE.**

See **Jurisdiction**, 2.

**SECRETARY OF LABOR.** See **Judicial Review**.**SECURITIES ACT OF 1933.**

1. *Stock in cooperative housing corporation as "investment contract" within Act.*—A share of common stock in a cooperative housing corporation, which is required to acquire an apartment in project and which cannot be transferred to a nontenant, pledged, encumbered, or bequeathed (except to a surviving spouse), and does not convey voting rights based on number owned (residents of each apartment having one vote), does not constitute an "investment contract" as defined by Act and Securities Exchange Act of 1934, a term which, like term "any instrument commonly known as a security," involves investment in a common venture premised on a reasonable expectation of profits to be derived from entrepreneurial or managerial efforts of others. Here neither of kinds of profits traditionally associated with securities were offered to respondent shareholders; instead, as indicated in Information Bulletin issued in project's initial stages, which stressed "non-profit" nature of project, focus was upon acquisition of a place to live. *United Housing Foundation, Inc. v. Forman*, p. 837.

2. *Stock in cooperative housing corporation as "securities" within Act—Suit claiming fraud in sale—Lack of federal jurisdiction.*—Shares of common stock in a cooperative housing corporation, which are required to acquire an apartment in project and which cannot be transferred to a nontenant, pledged, encumbered, or bequeathed (except to a surviving spouse), and do not convey voting rights based on number owned (residents of each apartment having one vote), do not constitute "securities" within purview of Act or Securities Exchange Act of 1934, and since respondents' claims of violations of antifraud provisions of both Acts in connection with sale of stock to them are not cognizable in federal court, District Court properly dismissed their complaint. *United Housing Foundation, Inc. v. Forman*, p. 837.

**SECURITIES AND EXCHANGE COMMISSION.** See **Securities Exchange Act of 1934**, 1; **Securities Investor Protection Act of 1970**.**SECURITIES EXCHANGE ACT OF 1934.**

1. *Damages action under Rule 10b-5—Who can maintain action—Birnbaum rule.*—A private damages action under Securities and Exchange Commission's Rule 10b-5 promulgated under Act and making it unlawful to use deceptive devices or make misleading

**SECURITIES EXCHANGE ACT OF 1934—Continued.**

statements "in connection with the purchase or sale of any security," is confined to actual purchasers or sellers of securities, and rule of *Birnbaum v. Newport Steel Corp.*, 193 F. 2d 461, precluding a person who is neither a purchaser nor a seller from bringing such an action, bars respondent offeree of securities from maintaining suit for damages for violation of § 10 (b) of Act and Rule 10b-5. *Blue Chip Stamps v. Manor Drug Stores*, p. 723.

2. *Stock in cooperative housing corporation as "investment contract" within Act.*—A share of common stock in a cooperative housing corporation, which is required to acquire an apartment in project and which cannot be transferred to a nontenant, pledged, encumbered, or bequeathed (except to a surviving spouse), and does not convey voting rights based on number owned (residents of each apartment having one vote), does not constitute an "investment contract" as defined by Act and Securities Act of 1933, a term which, like term "any instrument commonly known as a security," involves investment in a common venture premised on a reasonable expectation of profits to be derived from entrepreneurial or managerial efforts of others. Here neither of kinds of profits traditionally associated with securities were offered to respondent shareholders; instead, as indicated in Information Bulletin issued in project's initial stages, which stressed "non-profit" nature of project, focus was upon acquisition of a place to live. *United Housing Foundation, Inc. v. Forman*, p. 837.

3. *Stock in cooperative housing corporation as "securities" within Act—Suit claiming fraud in sale—Lack of federal jurisdiction.*—Shares of common stock in a cooperative housing corporation, which are required to acquire an apartment in project and which cannot be transferred to a nontenant, pledged, encumbered, or bequeathed (except to a surviving spouse), and do not convey voting rights based on number owned (residents of each apartment having one vote), do not constitute "securities" within purview of Act or Securities Act of 1933, and since respondents' claims of violations of antifraud provisions of both Acts in connection with sale of stock to them are not cognizable in federal court, District Court properly dismissed their complaint. *United Housing Foundation, Inc. v. Forman*, p. 837.

**SECURITIES INVESTOR PROTECTION ACT OF 1970.**

*Customers of failing broker-dealers—Right of action under SIPA.*—Customers of failing broker-dealers have no implied right of action under SIPA to compel Securities Investor Protection Corp. to act for their benefit, Securities and Exchange Commission's statutory

**SECURITIES INVESTOR PROTECTION ACT OF 1970**—Cont. authority to compel SIPC to discharge its obligations being exclusive means by which SIPC can be forced to act. *Securities Investor Protection v. Barbour*, p. 412.

**SELECTION OF JURIES.** See *Constitutional Law*, II, 3, 6.

**SENATE SUBCOMMITTEE ON INTERNAL SECURITY.** See *Constitutional Law*, VI.

**SEPARATION OF CHURCH AND STATE.** See *Constitutional Law*, V, 1.

**SERVICE STATION OPERATORS.** See *Constitutional Law*, II, 5; III, 4.

**SEX DISCRIMINATION.** See *Constitutional Law*, III, 1.

**SHELTER ALLOWANCES.** See *Federal-State Relations*, 5.

**SHERMAN ACT.** See *Antitrust Acts*.

**SHIPOWNER'S DUTY TO FURNISH MAINTENANCE AND CURE.** See *Seamen*.

**SOCIAL SECURITY ACT.** See *Federal-State Relations*, 1, 5; *Jurisdiction*, 2.

**SPEECH OR DEBATE CLAUSE.** See *Constitutional Law*, VI.

**STANDING TO RAISE ISSUE.** See also *Constitutional Law*, V, 2.

*Constitutionality of statute—Effect of intervening amendment.*—Though intervening amendment of Virginia statute making it a misdemeanor, by sale or circulation of any publication, to encourage or prompt processing of an abortion, as a practical matter moots for future issue of whether statute was facially overbroad, Virginia courts erred in denying appellant, who was convicted of violating statute, standing to raise that issue since "pure speech" rather than conduct was involved and no consideration was given to whether or not alleged overbreadth was substantial. *Bigelow v. Virginia*, p. 809.

**STANDING TO SUE.** See also *Mootness*, 1; *Securities Exchange Act of 1934*, 1.

*Divorced wife—Child support—Constitutionality of statute establishing different ages of majority for males and females.*—Appellant wife, to whom appellee husband was ordered by divorce decree to make payments for support of parties' daughter and son, does not lack standing, upon seeking support for daughter after age 18, to

- STANDING TO SUE**—Continued.  
challenge constitutionality of Utah statute providing that period of minority for males extends to age 21 and for females to age 18, because she is not of age group affected by statute; another statute obligates her to support daughter to age 21. Stanton v. Stanton, p. 7.
- STATE ACTION.** See **Antitrust Acts**, 1.
- STATE CLEAN AIR IMPLEMENTATION PLANS.** See **Clean Air Amendments of 1970**.
- STATE CORPORATION FRANCHISE TAXES.** See **Constitutional Law**, I, 1.
- STATE COURTS.** See **Federal-State Relations**, 3-4.
- STATE EMPLOYEES.** See **Constitutional Law**, II, 1; VII; **Economic Stabilization Act of 1970**.
- STATE GASOLINE EXCISE TAXES.** See **Constitutional Law**, II, 5; III, 4.
- STATE PRISONERS.** See **Habeas Corpus**.
- STATE PROSECUTIONS.** See **Civil Rights Act of 1968**; **Federal-State Relations**, 2-4; **Removal**.
- STATE SALES TAXES.** See **Constitutional Law**, II, 5; III, 4; VIII.
- STATE SOVEREIGNTY.** See **Constitutional Law**, I, 2; VII.
- STATE-SUBSIDIZED COOPERATIVE HOUSING PROJECTS.**  
See **Securities Act of 1933**; **Securities Exchange Act of 1934**, 2-3
- STATUTE OF LIMITATIONS.** See **Civil Rights Act of 1870**.
- STOCK OFFERINGS.** See **Securities Exchange Act of 1934**, 1.
- SUBCONTRACTORS.** See **Antitrust Acts**, 5-6; **Federal-State Relations**, 6.
- SUBPOENAS DUCES TECUM.** See **Constitutional Law**, VI.
- SUFFRAGE RIGHTS.** See **Constitutional Law**, III, 3; **Retroactivity**.
- SUMMARY CONTEMPT PUNISHMENT.** See **Contempt**.
- SUPPORT OF CHILDREN.** See **Constitutional Law**, III, 1; **Mootness**, 1; **Standing to Sue**.
- SUPPRESSION OF EVIDENCE.** See **Federal-State Relations**, 4.

- SUPREMACY CLAUSE.** See **Constitutional Law**, VII.
- SUPREME COURT.** See also **Appeals**, 2; **Procedure**, 2-3.
1. Proceedings in memory of Mr. Chief Justice Warren, p. v.
  2. Assignments of Mr. Justice Clark (retired) to the United States Court of Appeals for the Second Circuit, pp. 939, 1017.
  3. Assignment of Mr. Justice Clark (retired) to the United States Court of Appeals for the Fourth Circuit, p. 981.
  4. Assignment of Mr. Justice Clark (retired) to the United States Court of Appeals for the Eighth Circuit, p. 981.
  5. Assignment of Mr. Justice Clark (retired) to the United States Court of Appeals for the Tenth Circuit, p. 1018.
  6. Bankruptcy Rules and Official Bankruptcy Forms, p. 1019.
- SUSPENSION OF LIMITATION PERIOD.** See **Civil Rights Act of 1870**.
- SUSPENSION OF PHYSICIAN'S LICENSE.** See **Constitutional Law**, II, 2; **Injunctions**; **Procedure**, 1.
- TAXES.** See **Constitutional Law**, I, 1; II, 5; III, 4; VIII.
- TAX LEVIES OR LIENS.** See **Bankruptcy Act**.
- TEMPORARY RESTRAINING ORDERS.** See **Injunctions**; **Procedure**, 1.
- TEXAS.** See **Constitutional Law**, III, 3; **Federal-State Relations**, 2; **Retroactivity**.
- TEXTBOOK LOANS TO NONPUBLIC SCHOOL CHILDREN.**  
See **Constitutional Law**, V, 1.
- THREATS OF CRIMINAL PROSECUTION.** See **Federal-State Relations**, 2.
- TITLE EXAMINATIONS.** See **Antitrust Acts**, 3-4.
- TOLLING OF LIMITATION PERIOD.** See **Civil Rights Act of 1870**.
- TORTS.** See **Admiralty**.
- TRADING STAMPS.** See **Securities Exchange Act of 1934**, 1.
- TRANS-ALASKA OIL PIPELINE.** See **Attorneys' Fees**.
- TRANSFER HEARINGS IN JUVENILE COURT.** See **Constitutional Law**, IV.
- TRANSFERS OF ASSETS.** See **Bankruptcy Act**.
- TRIALS BY JURY.** See **Appeals**, 2.
- TWENTY-FIRST AMENDMENT.** See **Constitutional Law**, VIII.

- “TWO-TIER” TRIAL SYSTEMS.** See Appeals, 2.
- UNCONDITIONAL WRITS OF HABEAS CORPUS.** See Habeas Corpus.
- UNEMPLOYED FATHER PROGRAM.** See Federal-State Relations, 1.
- UNEMPLOYMENT COMPENSATION.** See Federal-State Relations, 1
- UNEQUAL RESIDENCY DISTRICTS.** See Constitutional Law, III, 2.
- UNFAIR LABOR PRACTICES.** See Freedom of Information Act, 3-7; Procedure, 2-3.
- UNIFORM CODE OF MILITARY JUSTICE.** See Appeals, 1; Constitutional Law, II, 1.
- UNION ELECTIONS.** See Judicial Review.
- UNIONS.** See Antitrust Acts, 5-6; Federal-State Relations, 6; Judicial Review.
- UNITED STATES.** See Bankruptcy Act; Constitutional Law, VIII.
- UTAH.** See Constitutional Law, III, 1; Mootness; Standing to Sue.
- VARIANCES FROM CLEAN AIR REQUIREMENTS.** See Clean Air Amendments of 1970.
- VERMONT.** See Federal-State Relations, 1; Jurisdiction, 2.
- VESSELS.** See Admiralty.
- VIOLENT INTERFERENCES WITH CIVIL RIGHTS.** See Civil Rights Act of 1968.
- VIRGINIA.** See Antitrust Acts, 1-4; Constitutional Law, V, 2; Standing to Raise Issue.
- VOIR DIRE.** See Constitutional Law, II, 3, 6.
- VOTING RIGHTS.** See Constitutional Law, III, 3; Elections; Retroactivity.
- VOTING RIGHTS ACT OF 1965.** See Elections.
- WAGE AND SALARY CONTROLS.** See Constitutional Law, I, 2; VII; Economic Stabilization Act of 1970.
- WELFARE REGULATIONS.** See Federal-State Relations, 1, 5; Jurisdiction, 2.

**WHOLESALE MARKUPS ON LIQUOR.** See **Constitutional Law, VIII.**

**WISCONSIN.** See **Constitutional Law, II, 2; Injunctions; Procedure, 1.**

**WITNESSES.** See **Contempt.**

**WORDS AND PHRASES.**

1. "*Adjudication of cases.*" 5 U. S. C. § 552 (a)(2)(A) (Freedom of Information Act). NLRB v. Sears, Roebuck & Co., p. 132.

2. "*Final opinions.*" 5 U. S. C. § 552 (a)(2)(A) (Freedom of Information Act). NLRB v. Sears, Roebuck & Co., p. 132; Re-negotiation Board v. Grumman Aircraft, p. 168.

3. "*Investment contract.*" § 2 (1), Securities Act of 1933, 15 U. S. C. § 77b (1); § 3 (a)(10), Securities Exchange Act of 1934, 15 U. S. C. § 78c (a)(10). United Housing Foundation, Inc. v. Forman, p. 837.

4. "*Security.*" § 2 (1), Securities Act of 1933, 15 U. S. C. § 77b (1); § 3 (a)(10), Securities Exchange Act of 1934, 15 U. S. C. § 78c (a)(10). United Housing Foundation, Inc. v. Forman, p. 837.

**WORK-PRODUCT RULE.** See **Freedom of Information Act, 2.**















