

ORDERS FROM JUNE 16 THROUGH
JUNE 30, 1975

JUNE 16, 1975*

Appeals Dismissed

No. 74-1209. WESTINGHOUSE ELECTRIC CORP. ET AL. v. COUNTY OF LOS ANGELES ET AL. Appeal from Ct. App. Cal., 2d App. Dist., dismissed for want of substantial federal question. Reported below: 42 Cal. App. 3d 32, 116 Cal. Rptr. 742.

*MR. JUSTICE DOUGLAS took no part in the consideration or decision of cases in which orders hereinafter reported were announced on this date, with the exception of the following:

No. 69-1, *Augenblick v. United States*, *infra*, p. 1007; No. 73-1288, *Alfred Dunhill of London, Inc. v. Republic of Cuba*, *infra*, p. 1005; No. 74-294, *Watson v. Kenlick Coal Co., Inc.*, *infra*, p. 1012; No. 74-883, *Federal Power Commission v. Moss*, *infra*, p. 1006; No. 74-1045, *Moss v. Federal Power Commission*, *infra*, p. 1020; No. 74-1063, *Carter v. United States*, *infra*, p. 1020; No. 74-1094, *Womack v. United States*, *infra*, p. 1022; No. 74-1096, *Conk v. Clegg*, *infra*, p. 1007; No. 74-1103, *Estelle v. Johnson*, *infra*, p. 1024; No. 74-1115, *Miller v. United States*, *infra*, p. 1024; No. 74-1144, *Lawrence v. South Carolina*, *infra*, p. 1025; No. 74-1161, *Clements v. Faraca*, *infra*, p. 1006; No. 74-1180, *Pinell v. California*, *infra*, p. 1007; No. 74-1192, *Karp v. United States*, *infra*, p. 1007; No. 74-1207, *American Chemical Corp. v. County of Los Angeles*, *infra*, p. 1007; No. 74-1209, *Westinghouse Electric Corp. v. County of Los Angeles*, *infra*, this page; No. 74-1228, *Miller v. United States*, *infra*, p. 1025; No. 74-1276, *Cotten v. Schlesinger*, *infra*, p. 1027; No. 74-1327, *Democratic Executive Committee of Columbiana County*, *infra*, p. 1002; No. 74-1342, *Teschner v. Chicago Title & Trust Co.*, *infra*, p. 1002; No. 74-1345, *U. S. Merchandise Mart, Inc. v. D&H Distributing Co.*, *infra*, p. 1007; No. 74-1362, *Waddell v. Fleming*, *infra*, p. 1007; No. 74-1365, *Joyner v. North Carolina*, *infra*, p. 1002; No. 74-1379, *Poulson v. Walsh-Groves*, *infra*, p. 1002; No. 74-1460, *Augenblick v. United States*, *infra*, p. 1007; and No. 74-6195, *Waugh v. Gray*, *infra*, p. 1027.

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No. 74-1365. *JOYNER v. NORTH CAROLINA*. Appeal from Sup. Ct. N. C. dismissed for want of substantial federal question. Reported below: 286 N. C. 366, 211 S. E. 2d 320.

No. 74-1379. *POULSON v. WALSH-GROVES ET AL.* Appeal from Sup. Ct. Mont. dismissed for want of substantial federal question. Reported below: 166 Mont. 163, 531 P. 2d 1335.

No. 74-1342. *TESCHNER v. CHICAGO TITLE & TRUST Co. ET AL.* Appeal from Sup. Ct. Ill. dismissed for want of substantial federal question. MR. JUSTICE DOUGLAS would note probable jurisdiction and set case for oral argument. Reported below: 59 Ill. 2d 452, 322 N. E. 2d 54.

No. 74-1347. *THOMPSON ET UX. v. PROPERTY TAX APPEAL BOARD OF ILLINOIS ET AL.* Appeal from App. Ct. Ill., 2d 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: 22 Ill. App. 3d 316, 317 N. E. 2d 121.

No. 74-6215. *WOODS v. GEORGIA*. Appeal from Sup. Ct. Ga. dismissed for want of substantial federal question. Reported below: 233 Ga. 347, 211 S. E. 2d 300.

Vacated and Remanded on Appeal

No. 74-1327. *DEMOCRATIC EXECUTIVE COMMITTEE OF COLUMBIANA COUNTY, OHIO, ET AL. v. BROWN, SECRETARY OF STATE OF OHIO*. Appeal from D. C. N. D. Ohio. Judgment vacated and case remanded so that a fresh order or decree may be entered from which a timely appeal may be taken to the United States Court of Appeals

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for the Sixth Circuit. *MTM, Inc. v. Baxley*, 420 U. S. 799 (1975).

Certiorari Granted—Vacated and Remanded

No. 73-6761. *BURKO v. MARYLAND*. Ct. App. Md. Motion for leave to proceed *in forma pauperis* and certiorari granted. Judgment vacated and case remanded for further consideration in light of *Mullaney v. Wilbur*, 421 U. S. 684 (1975).

No. 74-5632. *CASTRO v. REGAN, PRISON SUPERINTENDENT*. C. A. 3d Cir. Motion for leave to proceed *in forma pauperis* and certiorari granted. Judgment vacated and case remanded for further consideration in light of *Mullaney v. Wilbur*, 421 U. S. 684 (1975). Reported below: 505 F. 2d 731.

Miscellaneous Orders

No. A-933. *ED. PHILLIPS & SONS CO. ET AL. v. NOVAK, LIQUOR CONTROL COMMISSIONER OF MINNESOTA, ET AL.*; and

No. A-994. *GRIGGS, COOPER & Co., INC., v. NOVAK, LIQUOR CONTROL COMMISSIONER OF MINNESOTA, ET AL.* Sup. Ct. Minn. Applications for stay of enforcement of Minnesota Laws 1973, c. 664, § 2 (Minn. Stat. § 340.114 (1974)), presented to MR. JUSTICE BLACKMUN, and by him referred to the Court, denied. THE CHIEF JUSTICE took no part in the consideration or decision of these applications.*

No. A-996 (74-1222). *WOLFF, WARDEN v. RICE*. C. A. 8th Cir. Application of respondent for bail pending disposition of petition for writ of certiorari, presented to MR. JUSTICE BLACKMUN, and by him referred to the Court, denied.

*See also note, *supra*, p. 1001.

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No. D-41. *IN RE DISBARMENT OF SIEGEL*. It having been reported to this Court that George J. Siegel, of New York, N. Y., has been disbarred from the practice of law in all of the courts of the State of New York, and this Court by order of February 24, 1975 [420 U. S. 941], having suspended the said George J. Siegel 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;

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

No. D-44. *IN RE DISBARMENT OF MORGAN*. It having been reported to this Court that Edward LeRoy Morgan, of Phoenix, Ariz., has been disbarred from the practice of law in the United States District Court for the District of Columbia, and this Court by order of March 24, 1975 [420 U. S. 988], having suspended the said Edward LeRoy Morgan 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 Edward LeRoy Morgan, 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.

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

No. 73-62. *WHEELER ET AL. v. BARRERA ET AL.*, 417 U. S. 402. Motion of petitioners for modification of

*See also note, *supra*, p. 1001.

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judgment granted, and the last paragraph of this Court's judgment, dated June 10, 1974, is hereby modified to read: "On consideration whereof, it is ordered and adjudged by this Court that the judgment of the United States Court of Appeals for the Eighth Circuit in this cause be, and the same is hereby, affirmed, with directions that the case be remanded to the United States District Court for the Western District of Missouri for further action consistent with the opinion and judgment of this Court."

No. 73-1288. ALFRED DUNHILL OF LONDON, INC. *v.* REPUBLIC OF CUBA ET AL. C. A. 2d Cir. [Certiorari granted, 416 U. S. 981.] Case restored to calendar for reargument. In addition to other questions presented by this case, counsel are requested to brief and discuss during oral argument: Should this Court's holding in *Banco Nacional de Cuba v. Sabbatino*, 376 U. S. 398 (1964), be reconsidered?

No. 74-773. HUDGENS *v.* NATIONAL LABOR RELATIONS BOARD ET AL. C. A. 5th Cir. [Certiorari granted, 420 U. S. 971.] Motion of respondents for additional time for oral argument granted and 15 additional minutes allotted for that purpose. Petitioner also allotted 15 additional minutes for oral argument.

No. 74-1141. UNITED STATES *v.* GADDIS ET AL. C. A. 5th Cir. [Certiorari granted, 421 U. S. 987.] Motion for appointment of counsel is granted, and Tommy Day Wilcox, Esquire, of Macon, Ga., is appointed to serve as counsel for respondents in this case.

No. 74-6384. WILLIAMS *v.* UNITED STATES; and

No. 74-6436. STEWART *v.* GRIFFIN, JUDGE, ET AL. Motions for leave to file petitions for writs of mandamus denied.

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No. 74-6592. TUBBS *v.* HENDERSON, WARDEN; and
No. 74-6609. FORD *v.* REES, WARDEN. Motions for
leave to file petitions for writs of habeas corpus denied.

Certiorari Granted

No. 74-883. FEDERAL POWER COMMISSION *v.* MOSS
ET AL. C. A. D. C. Cir. Certiorari granted. MR. JUSTICE
STEWART and MR. JUSTICE POWELL took no part in
the consideration or decision of this petition. Reported
below: 164 U. S. App. D. C. 1, 502 F. 2d 461.

No. 74-1243. BECKWITH *v.* UNITED STATES. C. A.
D. C. Cir. Certiorari granted. Reported below: 166
U. S. App. D. C. 361, 510 F. 2d 741.

No. 74-6293. GOLDBERG *v.* UNITED STATES. C. A. 9th
Cir. Motion for leave to proceed *in forma pauperis*
granted. Certiorari granted limited to Question 8 pre-
sented by the petition which reads as follows: "Whether
18 U. S. C. § 3500, the Jencks Act, contains an 'attorney's
work product exception'; and whether a Government
attorney's notes of conversations with the key Govern-
ment witness, to whom the prosecutors read back their
notes from time to time where the witness corrected
same, which notes were prepared 'only after lengthy con-
versations had occurred and a mutual understanding of
the factual situation' had been reached, if not com-
pellable under the Jencks Act, are compellable under the
doctrine of *Brady vs. Maryland*."

Certiorari Denied. (See also No. 74-1347, *supra*.)

No. 74-1161. CLEMENTS, DIRECTOR, MENTAL RE-
TARDATION CENTER OF GEORGIA *v.* FARACA. C. A. 5th Cir.
Certiorari denied. Reported below: 506 F. 2d 956.

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No. 74-1207. *AMERICAN CHEMICAL CORP. ET AL. v. COUNTY OF LOS ANGELES ET AL.* Ct. App. Cal., 2d App. Dist. Certiorari denied. Reported below: 42 Cal. App. 3d 45, 57, 59, 63; 116 Cal. Rptr. 751, 758, 759, 761.

No. 69-1. *AUGENBLICK v. UNITED STATES*; and

No. 74-1460. *AUGENBLICK v. UNITED STATES.* Ct. Cl. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 206 Ct. Cl. 74, 509 F. 2d 1157.

No. 74-1096. *CONK v. CLEGG ET AL.* C. A. 10th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 507 F. 2d 1351.

No. 74-1180. *PINELL ET AL. v. CALIFORNIA.* Ct. App. Cal., 1st App. Dist. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 43 Cal. App. 3d 627, 117 Cal. Rptr. 913.

No. 74-1192. *KARP v. UNITED STATES.* C. A. 9th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 508 F. 2d 1122.

No. 74-1345. *U. S. MERCHANDISE MART, INC. v. D&H DISTRIBUTING Co.* C. A. D. C. Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 166 U. S. App. D. C. 205, 509 F. 2d 538.

No. 74-1362. *WADDELL v. FLEMING.* C. A. 10th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 510 F. 2d 4.

No. 74-142. *H. B. GREGORY Co. ET AL. v. UNITED STATES.* C. A. 7th Cir. Certiorari denied. Reported below: 502 F. 2d 700.

No. 74-1214. *THOMAS v. UNITED STATES.* C. A. 6th Cir. Certiorari denied. Reported below: 511 F. 2d 1404.

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No. 74-1224. *MAYES ET AL. v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 512 F. 2d 637.

No. 74-1231. *OWENS v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 511 F. 2d 1205.

No. 74-1256. *BOWNESS v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 504 F. 2d 391.

No. 74-1259. *MANDEL ET AL. v. NOUSE ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 509 F. 2d 1031.

No. 74-1273. *SHAMY v. GOLDSTEIN, U. S. ATTORNEY, ET AL.* C. A. 3d Cir. Certiorari denied. Reported below: 510 F. 2d 970.

No. 74-1309. *BOREN v. IOWA*. Sup. Ct. Iowa. Certiorari denied. Reported below: 224 N. W. 2d 14.

No. 74-1330. *NATIONAL RIGHT TO WORK LEGAL DEFENSE & EDUCATION FOUNDATION, INC., ET AL. v. RICHEY, U. S. DISTRICT JUDGE*. C. A. D. C. Cir. Certiorari denied. Reported below: 167 U. S. App. D. C. 18, 510 F. 2d 1239.

No. 74-1344. *HOUSE OF VISION, INC. v. WATSON, DIRECTOR, DEPARTMENT OF REGISTRATION AND EDUCATION OF ILLINOIS*. Sup. Ct. Ill. Certiorari denied. Reported below: 59 Ill. 2d 508, 322 N. E. 2d 15.

No. 74-1354. *WIDEMAN, ADMINISTRATOR v. MISSISSIPPI VALLEY GAS Co.* C. A. 5th Cir. Certiorari denied. Reported below: 507 F. 2d 658.

No. 74-1358. *MAY ET AL. v. SUPREME COURT OF COLORADO ET AL.* C. A. 10th Cir. Certiorari denied. Reported below: 508 F. 2d 136.

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No. 74-1359. *BENNETT v. NEW YORK*. App. Div., Sup. Ct. N. Y., 2d Jud. Dept. Certiorari denied. Reported below: 46 App. Div. 2d 804, 361 N. Y. S. 2d 37.

No. 74-1364. *RHONE-POULENC, S. A., ET AL. v. DANN, COMMISSIONER OF PATENTS*. C. A. 4th Cir. Certiorari denied. Reported below: 507 F. 2d 261.

No. 74-1368. *DENTI v. NEW YORK*. App. Div., Sup. Ct. N. Y., 1st Jud. Dept. Certiorari denied. Reported below: 47 App. Div. 2d 513, 365 N. Y. S. 2d 987.

No. 74-1382. *VANDERHIDE v. BROWN & SHARPE MANUFACTURING Co., INC.* C. A. 6th Cir. Certiorari denied. Reported below: 508 F. 2d 845.

No. 74-1425. *STEINMAN v. NADJARI, DEPUTY ATTORNEY GENERAL OF NEW YORK*. C. A. 2d Cir. Certiorari denied. Reported below: 515 F. 2d 505.

No. 74-1432. *RUBENS ET UX. v. NEW YORK STOCK EXCHANGE, INC., ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 510 F. 2d 968.

No. 74-5986. *JOHNSON v. COMSTOCK, MEN'S COLONY SUPERINTENDENT*. C. A. 9th Cir. Certiorari denied.

No. 74-6202. *HILL v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 508 F. 2d 345.

No. 74-6248. *WILLIAMS v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 507 F. 2d 1279.

No. 74-6264. *BUSH v. UNITED STATES*. C. A. 9th Cir. Certiorari denied.

No. 74-6271. *WESTOVER v. UNITED STATES*; and

No. 74-6283. *ROBERTS v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 511 F. 2d 1154.

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No. 74-6272. *ACOSTA DE EVANS v. UNITED STATES*. C. A. 9th Cir. Certiorari denied.

No. 74-6278. *WEEMS v. HENDERSON, WARDEN*. C. A. 5th Cir. Certiorari denied. Reported below: 506 F. 2d 1055.

No. 74-6287. *DUEMMEL v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 513 F. 2d 634.

No. 74-6297. *MONTOYA v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 509 F. 2d 574.

No. 74-6307. *McINTYRE v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 508 F. 2d 403.

No. 74-6340. *HOLLAND v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 510 F. 2d 453.

No. 74-6369. *POITRA v. UNITED STATES*. C. A. 10th Cir. Certiorari denied.

No. 74-6397. *FOSTER v. MICHIGAN*. Cir. Ct., Oakland County, Mich. Certiorari denied.

No. 74-6399. *RICHARDS v. KENTUCKY*. Ct. App. Ky. Certiorari denied. Reported below: 517 S. W. 2d 237.

No. 74-6405. *LASKY v. LAVALLEE, CORRECTIONAL SUPERINTENDENT*. C. A. 2d Cir. Certiorari denied.

No. 74-6406. *PLOUF v. CONNORS, DIRECTOR, VETERANS ADMINISTRATION REGIONAL OFFICE, ET AL.* C. A. 1st Cir. Certiorari denied. Reported below: 515 F. 2d 502.

No. 74-6412. *CASPER v. BLACKLEDGE, WARDEN, ET AL.* C. A. 4th Cir. Certiorari denied.

No. 74-6448. *DENMAN v. RUSSELL ET AL.* C. A. 3d Cir. Certiorari denied. Reported below: 505 F. 2d 729.

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No. 74-6413. *CHAVEZ v. NEW MEXICO*. Ct. App. N. M. Certiorari denied. Reported below: 87 N. M. 180, 531 P. 2d 603.

No. 74-6414. *DORNAU v. FLORIDA*. Dist. Ct. App. Fla., 2d App. Dist. Certiorari denied. Reported below: 306 So. 2d 167.

No. 74-6415. *BYRD v. RICKETTS, WARDEN*. Sup. Ct. Ga. Certiorari denied. Reported below: 233 Ga. 779, 213 S. E. 2d 610.

No. 74-6419. *FITZGERALD v. ESTELLE, CORRECTIONS DIRECTOR*. C. A. 5th Cir. Certiorari denied. Reported below: 505 F. 2d 1334.

No. 74-6421. *HEWLETT v. TENNESSEE*. Ct. Crim. App. Tenn. Certiorari denied. Reported below: 517 S. W. 2d 760.

No. 74-6433. *STRATTON v. DIETERS ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 513 F. 2d 632.

No. 74-6439. *HAYWARD v. JOHNSON, CORRECTIONAL SUPERINTENDENT*. C. A. 3d Cir. Certiorari denied. Reported below: 508 F. 2d 322.

No. 74-6449. *SKINNER v. CALIFORNIA*. Sup. Ct. Cal. Certiorari denied.

No. 74-6450. *NAVEDO v. NEW YORK*. App. Div., Sup. Ct. N. Y., 3d Jud. Dept. Certiorari denied. Reported below: 47 App. Div. 2d 773, 365 N. Y. S. 2d 566.

No. 74-6451. *MIKELL v. GILCHRIST COUNTY, FLORIDA, ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 504 F. 2d 758.

No. 74-6453. *BARKSDALE v. RYAN, JUDGE, ET AL.* C. A. 7th Cir. Certiorari denied. Reported below: 511 F. 2d 1405.

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No. 74-6459. *AINSWORTH v. MISSISSIPPI*. Sup. Ct. Miss. Certiorari denied. Reported below: 304 So. 2d 656.

No. 74-6470. *HEMSTREET v. STATE PERSONNEL BOARD*. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 74-6481. *HIRSCH v. MARYLAND STATE BAR ASSN., INC.* Ct. App. Md. Certiorari denied. Reported below: 274 Md. 368, 335 A. 2d 108.

No. 74-6517. *CHAMBLER v. ESTELLE, CORRECTIONS DIRECTOR*. C. A. 5th Cir. Certiorari denied. Reported below: 509 F. 2d 574.

No. 74-6560. *WHEELER v. TENNESSEE*. Sup. Ct. Tenn. Certiorari denied.

No. 74-294. *WATSON ET AL. v. KENLICK COAL CO., INC., ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 498 F. 2d 1183.

MR. JUSTICE DOUGLAS, dissenting.

Petitioners are landowners in Magoffin County, Ky. Seventy years ago, their predecessors in ownership deeded away all rights to the minerals in and under their land, retaining only the surface rights; respondents are the present holders of the mineral rights, and have strip-mined much of the coal which underlies the land. Petitioners brought this action under 42 U. S. C. § 1983, seeking injunctive relief¹ and damages for the destruction of the land surface through respondents' strip-

¹ The prayer for injunctive relief is now mooted, for all practical purposes, by the recent revision of Ky. Rev. Stat. Ann. § 350.060. See Ky. Acts 1974, c. 373, p. 719. Effective January 1, 1975, that statute prohibits strip mining without the written consent of the owner of any freehold interest in the surface land. This statutory change clearly would not moot petitioners' claim for damages based upon respondents' past conduct.

mining operations. The Court of Appeals affirmed the dismissal of the complaint, holding that there was no state action involved and that petitioners had not been deprived of any federal constitutional right. 498 F. 2d 1183 (CA6 1974).

This case is unfortunately no more than a mere footnote in a continuing tragedy of environmental and human despoliation. The rape of Appalachia for its precious coal has been a dark and dismal chapter in our Nation's history, moving one observer to lament:

"Coal has always cursed the land in which it lies. When men begin to wrest it from the earth it leaves a legacy of foul streams, hideous slag heaps and polluted air. It peoples this transformed land with blind and crippled men and with widows and orphans. It is an extractive industry which takes all away and restores nothing. It mars but never beautifies. It corrupts but never purifies."²

One of the hardest hit areas has been the Cumberland Plateau in eastern Kentucky. In the late 19th century, the hill country was swept by a virtual wave of coal buyers seeking to acquire precious mineral rights from the often naive and illiterate mountaineers. The contest was hardly an equal one,³ and most coal buyers

² H. Caudill, *Night Comes to the Cumberlands* x (1963).

³ Harry Caudill, a Kentucky attorney with a long history of involvement in strip-mining litigation, has painted a vivid picture of these encounters:

"In the summer of 1885 gentlemen arrived in the county-seat towns for the purpose of buying tracts of minerals, leaving the surface of the land in the ownership of the mountaineers who resided on it. The Eastern and Northern capitalists selected for this mission men of great guile and charm. They were courteous, pleasant and wonderful storytellers. Their goal was to buy the minerals on a grand scale as cheaply as possible and on terms so favorable to the purchasers as to grant them every desirable exploitive privilege,

escaped with a stack of "broad-form" deeds which left nominal title to the land surface in the landowner, but which conveyed to the grantee the right to excavate and remove all minerals and, in the course of such removal, to divert and pollute the water and to dump mining refuse on the surface. Against the backdrop of then-current mining technology, the prospects and hazards of such actions must have seemed remote and insignificant.⁴

while simultaneously leaving to the mountaineer an illusion of ownership and the continuing responsibility for practically all the taxes which might be thereafter levied against the land.

"When the highland couple sat down at the kitchen table to sign the deed their guest had brought to them they were at an astounding disadvantage. On one side of the rude table sat an astute trader, more often than not a graduate of a fine college and a man experienced in the larger business world. He was thoroughly aware of the implications of the transaction and of the immense wealth which he was in the process of acquiring. Across the table on a puncheon bench sat a man and woman out of a different age. Still remarkably close to the frontier of a century before, neither of them possessed more than the rudiments of an education. Hardly more than 25 per cent of such mineral deeds were signed by grantors who could so much as scrawl their names. Most of them 'touched the pen and made their mark,' in the form of a spidery X, in the presence of witnesses whom the agent had thoughtfully brought along. Usually the agent was the notary public, but sometimes he brought one from the county seat. Unable to read the instrument or able to read it only with much uncertainty, the sellers relied upon the agent for an explanation of its contents—contents which were to prove deadly to the welfare of generations of the mountaineer's descendants." *Id.*, at 72-74.

⁴ See *Martin v. Kentucky Oak Mining Co.*, 429 S. W. 2d 395, 401 (Ky. 1968) (Hill, J., dissenting):

"Strip mining was neither heard of nor dreamed of in 1905 in Knott County, the locality of the coal land in question. There was no railroad in Knott County until long thereafter. Neither was there a navigable stream in that county. About the only coal mined in those days was from the outcroppings in creek beds, where a small

With the advance of technology, however, the stakes increased; each successive innovation was visited upon the mountaineers with the approval of the courts, which found these new and unforeseen techniques to fall within the scope of the aged and yellowing deeds. Judicial decisions gave virtually untrammelled powers to the coal companies, so long as they acted without malice:

“With impunity [the companies] could kill the fish in the streams, render the water in the farmer’s well unpotable and, by corrupting the stream from which his livestock drank, compel him to get rid of his milk cows and other beasts. They were authorized to pile mining refuse wherever they desired, even if the chosen sites destroyed the homes of farmers and bestowed no substantial advantage on the corporations. The companies which held ‘long-form’ mineral deeds were empowered to withdraw subjacent supports, thereby causing the surface to subside and fracture. They could build roads wherever they desired, even through lawns and fertile vegetable gardens. They could sluice poisonous water from the pits onto crop lands. With im-

quantity was obtained by the use of a newfound tool—the coal pick.”

A similar description appears in H. Caudill, *supra*, n. 2, at 305-306:

“[W]hen the mountaineer’s ancestor (for the seller is, in most instances, long since dead) sold his land he lived in an isolated backwater. Coal mining was a primitive industry whose methods had changed little in a hundred years and which still depended entirely on picks and shovels. To the mountaineer ‘mining’ meant tunneling into a hillside and digging the coal for removal through the opening thus made. That the right to mine could authorize shaving off and destroying the surface of the land in order to arrive at the underlying minerals was undreamed of by buyers and sellers alike.”

punity they could hurl out from their washeries clouds of coal grit which settled on fields of corn, alfalfa and clover and rendered them worthless as fodder. Fumes from burning slate dumps peeled paint from houses, but the companies were absolved from damages.

“. . . The companies, which had bought their coal rights at prices ranging from fifty cents to a few dollars per acre, were, in effect, left free to do as they saw fit, restrained only by the shallow consciences of their officials.”⁵

The final blow in the expansion of the coal companies' rights under broad-form deeds was struck when the Kentucky Court of Appeals, in *Buchanan v. Watson*, 290 S. W. 2d 40 (1956), held that the broad-form deed conveys the right to strip-mine and that the mining company, in the absence of arbitrary, wanton, or malicious destruction, incurs no liability to the surface owner for destruction of the surface during the strip-mining process. The Kentucky court has adhered to that holding through an unbroken string of decisions culminating in *Martin v. Kentucky Oak Mining Co.*, 429 S. W. 2d 395 (1968), where the court reaffirmed *Buchanan* over the vigorous dissent of three of its members.⁶ While the Kentucky General Assembly has finally provided legislative relief for the victims of strip mining,⁷ that

⁵ H. Caudill, *supra*, n. 2, at 306-307.

⁶ Judge Hill, joined in his dissenting opinion by Judge Milliken, stated: "I am shocked and appalled that the court of last resort in the beautiful state of Kentucky would ignore the logic and reasoning of the great majority of other states and lend its approval and encouragement to the diabolical devastation and destruction of a large part of the surface of this fair state without compensation to the owners thereof." 429 S. W. 2d, at 402.

⁷ See n. 1, *supra*.

relief is prospective only and will not bring about the repair or reclamation of already ravaged lands.

In my view, the courts below took an unjustifiably narrow approach to the state-action issue presented by this lawsuit. It is undisputed that Kentucky imposes extensive regulatory controls upon strip miners, including a permit requirement and a requirement that plans meeting minimum legal standards be submitted.⁸ This regulatory involvement alone might not be sufficient to warrant a finding of state action, but it is coupled with a long and unbroken line of state-court decisions recognizing and enforcing strip-mining rights under broad-form deeds. It is well settled that state judicial decrees, as well as legislative enactments, may constitute state action.⁹ See *Shelley v. Kraemer*, 334 U. S. 1 (1948).

It is said that respondents are simply private parties engaged in the exercise of private contractual rights conferred upon them by petitioners' predecessors in interest; but the very claim raised by petitioners is that those private contractual rights have been arbitrarily and irrationally broadened by the state courts to a degree never contemplated by the grantors.¹⁰ The State's role

⁸ Ky. Rev. Stat. Ann. §§ 350.060 (1)-(6), as amended by Ky. Acts 1974, c. 69, p. 64, c. 258, p. 491, and c. 273, p. 719.

⁹ It is true that this particular deed has not been the subject of any state court proceeding, and that petitioners thus have not experienced the direct application of an adverse ruling by the state courts. Nevertheless, the Kentucky Court of Appeals has been unswerving in its adherence to the *Buchanan* rule, and there is no reason to suppose that petitioners' deed would receive a more favorable interpretation.

¹⁰ It is interesting to note that Kentucky courts stand virtually alone in the degree to which they have expanded grantees' rights under broad-form deeds. Contrary decisions from sister States are collected in *Martin v. Kentucky Oak Mining Co.*, 429 S. W. 2d, at 402 (Hill, J., dissenting).

in this process can hardly be termed that of an innocent and disinterested bystander—respondents, in exercising their claimed rights under the broad-form deed, are clearly armed with the weight and force of state judicial precedent, and the enforcement power of the State lurks in the background as guarantor of those rights.

In light of the above, petitioners' claim of state action is not insubstantial on the facts of this case. Cf. *Jackson v. Metropolitan Edison Co.*, 419 U. S. 345, 359 (1974) (DOUGLAS, J., dissenting); *Adickes v. S. H. Kress & Co.*, 398 U. S. 144 (1970); *Burton v. Wilmington Parking Authority*, 365 U. S. 715 (1961).

Even if petitioners can establish the presence of state action, they cannot prevail unless they can also establish a deprivation of a federal constitutional right. The Court of Appeals properly recognized that the interpretation and delineation of contractual and property rights is ordinarily a matter of state law, pure and simple, and that an adverse interpretation by a state court, even if erroneous, does not constitute a deprivation of property without due process of law. On the other hand, the Due Process Clause of the Fourteenth Amendment is not wholly without content for purposes of evaluating the arbitrariness of actions by the State; state enactments and regulations may be tested under that Clause against a modest but identifiable standard of minimum rationality. See *Williamson v. Lee Optical Co.*, 348 U. S. 483, 490-491 (1955); cf. *Roe v. Wade*, 410 U. S. 113 (1973).

Petitioners argue that the state courts have interpreted broad-form deeds as conveying far more than those deeds could ever have been intended to convey, and that the result has been a taking of their property without due process. As *Williamson* makes clear, the standard of review under the Due Process Clause is a very minimal one, at least where no fundamental right or interest is

involved; the odds against the success of this type of due process argument are high, but I am not prepared to say that it could not succeed under any set of circumstances, no matter how extreme or outrageous.

If a petitioner came to us claiming that he had entered into a written contract for sale of his car, and that the state courts, in an action upon the contract, had interpreted the term "car" to include not only his automobile but his house, dog, and vegetable garden as well, I would hesitate to characterize as wholly frivolous his claim that he had been deprived of property without due process of law. The relevance of this example to the instant case would depend, of course, on the amount of evidence which could be adduced bearing upon the intent of petitioners' predecessors in interest, including any evidence of the relationship between the purchase price paid for the mineral rights alone and the full market value of the land and minerals together.¹¹ Petitioners face serious obstacles of proof in making a claim of this sort, but such obstacles cannot justify throwing them out of court at the pleading stage.

In my view, the issues presented by this petition are substantial. In some of our Western States, corporations which operate copper smelters have acquired from downwind farmers releases of claims for damages which are now recorded as the acquisition of "smoke easements." Thus the problem presented here may have wide application and deserves explication and decision by this Court. I would grant certiorari and set the case for oral argument.

¹¹ The record in the instant case apparently does not disclose any information about Magoffin County land values in relation to the purchase price per acre for the mineral rights under the deed in question, but such information could undoubtedly be produced on remand.

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No. 74-1045. *MOSS ET AL. v. FEDERAL POWER COMMISSION*. C. A. D. C. Cir. Certiorari denied. THE CHIEF JUSTICE and MR. JUSTICE BLACKMUN would grant certiorari. MR. JUSTICE STEWART and MR. JUSTICE POWELL took no part in the consideration or decision of this petition. Reported below: 164 U. S. App. D. C. 1, 502 F. 2d 461.

No. 74-1063. *CARTER ET AL. v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. MR. JUSTICE DOUGLAS, being of the view that any state or federal ban on, or regulation of, obscenity is prohibited by the Constitution, *Roth v. United States*, 354 U. S. 476, 508-514 (1957) (DOUGLAS, J., dissenting); *Miller v. California*, 413 U. S. 15, 42-47 (1973) (DOUGLAS, J., dissenting); *Paris Adult Theatre I v. Slaton*, 413 U. S. 49, 70-73 (1973) (DOUGLAS, J., dissenting), would grant certiorari and summarily reverse the judgment. Reported below: 506 F. 2d 1251.

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

Petitioners were charged in the United States District Court for the Western District of Tennessee with the transportation of obscene movies in interstate commerce by means of a common carrier in violation of 18 U. S. C. § 1462, transportation of obscene movies in interstate commerce for the purpose of distribution in violation of 18 U. S. C. § 1465, and with conspiracy to violate the aforesaid statutes in violation of 18 U. S. C. § 371. Title 18 U. S. C. § 1462 provides in pertinent part:

“Whoever brings into the United States, or any place subject to the jurisdiction thereof, or knowingly uses any express company or other common carrier, for carriage in interstate or foreign commerce—

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“(a) any obscene, lewd, lascivious, or filthy book, pamphlet, picture, motion-picture film, paper, letter, writing, print, or other matter of indecent character;

“Shall be fined not more than \$5,000 or imprisoned not more than five years, or both, for the first such offense and shall be fined not more than \$10,000 or imprisoned not more than ten years, or both, for each such offense thereafter.”

Title 18 U. S. C. § 1465 provides in pertinent part:

“Whoever knowingly transports in interstate or foreign commerce for the purpose of sale or distribution any obscene, lewd, lascivious, or filthy book, pamphlet, picture, film, paper, letter, writing, print, silhouette, drawing, figure, image, cast, photograph recording, electrical transcription or other article capable of producing sound or any other matter of indecent or immoral character, shall be fined not more than \$5,000 or imprisoned not more than five years, or both.”

Petitioners moved to dismiss the indictment on two grounds. First, they argued that the obscenity decisions announced by this Court in June 1973, including *Miller v. California*, 413 U. S. 15, could not be applied retroactively to conduct which occurred prior to those decisions. Second, they contended that *Miller* and its related decisions rejected application of a national standard to the question of obscenity and that the statutes under which they were indicted contain that national standard. The District Court granted petitioners' motion to dismiss the indictment. The Court of Appeals for the Sixth Circuit reversed and remanded for a trial on the merits. 506 F. 2d 1251.

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I adhere to my dissent in *United States v. Orito*, 413 U. S. 139, 147 (1973), in which, speaking of 18 U. S. C. § 1462, I expressed the view that “[w]hatever the extent of the Federal Government’s power to bar the distribution of allegedly obscene material to juveniles or the offensive exposure of such material to unconsenting adults, the statute before us is clearly overbroad and unconstitutional on its face.” 413 U. S., at 147–148. For the reasons stated in my dissent in *Miller v. California*, *supra*, at 47, I would therefore grant certiorari, and, since the judgment of the Court of Appeals for the Sixth Circuit was rendered after *Orito*, reverse.* In that circumstance, I have no occasion to consider whether the other questions presented merit plenary review. See *Heller v. New York*, 413 U. S. 483, 494 (1973) (BRENNAN, J., dissenting).

No. 74–1094. WOMACK ET AL. v. UNITED STATES. C. A. D. C. Cir. Certiorari denied. MR. JUSTICE DOUGLAS, being of the view that any state or federal ban on, or regulation of, obscenity is prohibited by the Constitution, *Roth v. United States*, 354 U. S. 476, 508–514 (1957) (DOUGLAS, J., dissenting); *Miller v. California*, 413 U. S. 15, 42–47 (1973) (DOUGLAS, J., dissenting); *Paris Adult Theatre I v. Slaton*, 413 U. S. 49, 70–73 (1973) (DOUGLAS, J., dissenting), would grant certiorari and summarily reverse the judgment. Reported below: 166 U. S. App. D. C. 35, 509 F. 2d 368.

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

Petitioners were convicted in the United States District Court for the District of Columbia of mailing

*Although four of us would grant certiorari and reverse the judgment, the Justices who join this opinion do not insist that the case be decided on the merits.

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obscene matter in violation of 18 U. S. C. § 1461, and of transporting the matter in interstate commerce in violation of 18 U. S. C. § 1462. Title 18 U. S. C. § 1461 provides in pertinent part:

“Every obscene, lewd, lascivious, indecent, filthy or vile article, matter, thing, device, or substance;

“Is declared to be nonmailable matter and shall not be conveyed in the mails or delivered from any post office or by any letter carrier.”

Title 18 U. S. C. § 1462 provides in pertinent part:

“Whoever brings into the United States, or any place subject to the jurisdiction thereof, or knowingly uses any express company or other common carrier, for carriage in interstate or foreign commerce—

“(a) any obscene, lewd, lascivious, or filthy book, pamphlet, picture, motion-picture film, paper, letter, writing, print, or other matter of indecent character;

“Shall be fined not more than \$5,000 or imprisoned not more than five years, or both, for the first such offense and shall be fined not more than \$10,000 or imprisoned not more than ten years, or both, for each such offense thereafter.”

The Court of Appeals for the District of Columbia Circuit affirmed the convictions. 166 U. S. App. D. C. 35, 509 F. 2d 368.

I adhere to my dissent in *United States v. Orito*, 413 U. S. 139, 147 (1973), in which, speaking of 18 U. S. C. § 1462, I expressed the view that “[w]hatever the extent of the Federal Government’s power to bar the distribution of allegedly obscene material to juveniles or the offensive

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exposure of such material to unconsenting adults, the statute before us is clearly overbroad and unconstitutional on its face." 413 U. S., at 147-148. For the reasons stated in my dissent in *Miller v. California*, 413 U. S. 15, 47 (1973), I would therefore grant certiorari, and, since the judgment of the Court of Appeals for the District of Columbia Circuit was rendered after *Orito*, reverse.* In that circumstance, I have no occasion to consider whether the other questions presented merit plenary review. See *Heller v. New York*, 413 U. S. 483, 494 (1973) (BRENNAN, J., dissenting).

Finally, it does not appear that the obscenity of the disputed materials was adjudged by applying local community standards. Based on my dissent in *Hamling v. United States*, 418 U. S. 87, 141 (1974), I believe that, consistent with the Due Process Clause, petitioners must be given an opportunity to have their case decided on, and to introduce evidence relevant to, the legal standard upon which their convictions have ultimately come to depend. Thus, even on its own terms, the Court should vacate the judgment below and remand for a determination whether petitioners should be afforded a new trial under local community standards.

No. 74-1103. ESTELLE, CORRECTIONS DIRECTOR *v.* JOHNSON. C. A. 5th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. THE CHIEF JUSTICE and MR. JUSTICE WHITE would grant certiorari. Reported below: 506 F. 2d 347.

No. 74-1115. MILLER ET AL. *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. MR. JUSTICE DOUGLAS, being of the view that any state or federal ban on, or regu-

*Although four of us would grant certiorari and reverse the judgment, the Justices who join this opinion do not insist that the case be decided on the merits.

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lation of, obscenity is prohibited by the Constitution, *Roth v. United States*, 354 U. S. 476, 508-514 (1957) (DOUGLAS, J., dissenting); *Miller v. California*, 413 U. S. 15, 42-47 (1973) (DOUGLAS, J., dissenting); *Paris Adult Theatre I v. Slaton*, 413 U. S. 49, 70-73 (1973) (DOUGLAS, J., dissenting), would grant certiorari and summarily reverse the judgment. Reported below: 505 F. 2d 1247.

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

Petitioners were convicted in the United States District Court for the Central District of California of mailing allegedly obscene matter in violation of 18 U. S. C. § 1461. The Court of Appeals for the Ninth Circuit affirmed. 455 F. 2d 899 (1972). We granted certiorari and remanded the case for further consideration in light of *Miller v. California*, 413 U. S. 15 (1973). 413 U. S. 913 (1973). On remand, the Court of Appeals for the Ninth Circuit again affirmed the convictions. 505 F. 2d 1247.

For the reasons stated in my dissent from the remand of this case, 413 U. S. 914, and because the present judgment was rendered after *Miller*, I would grant certiorari and reverse the judgment.*

No. 74-1144. LAWRENCE ET AL. *v.* SOUTH CAROLINA. Sup. Ct. S. C. Certiorari denied. MR. JUSTICE BRENNAN and MR. JUSTICE WHITE would grant certiorari. Reported below: 264 S. C. 3, 212 S. E. 2d 52.

No. 74-1228. MILLER ET AL. *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. MR. JUSTICE DOUGLAS, being of the view that any state or federal ban on, or regu-

*Although four of us would grant certiorari and reverse the judgment, the Justices who join this opinion do not insist that the case be decided on the merits.

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lation of, obscenity is prohibited by the Constitution, *Roth v. United States*, 354 U. S. 476, 508-514 (1957) (DOUGLAS, J., dissenting); *Miller v. California*, 413 U. S. 15, 42-47 (1973) (DOUGLAS, J., dissenting); *Paris Adult Theatre I v. Slaton*, 413 U. S. 49, 70-73 (1973) (DOUGLAS, J., dissenting), would grant certiorari and summarily reverse the judgment. Reported below: 507 F. 2d 1100.

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

Petitioners were convicted in the United States District Court for the Central District of California of mailing allegedly obscene matter in violation of 18 U. S. C. § 1461, and of transporting such matter in violation of 18 U. S. C. § 1462. The Court of Appeals for the Ninth Circuit affirmed. 431 F. 2d 655 (1970). We granted certiorari and remanded the case for further consideration in light of *Miller v. California*, 413 U. S. 15 (1973). 413 U. S. 913 (1973). On remand, the Court of Appeals for the Ninth Circuit again affirmed the convictions. 507 F. 2d 1100.

For the reasons stated in my dissent from the remand of this case, 413 U. S. 914, and because the present judgment was rendered after *Miller*, I would grant certiorari and reverse the judgment.*

No. 74-1229. AMERICAN TELEPHONE & TELEGRAPH CO. ET AL. v. FEDERAL COMMUNICATIONS COMMISSION ET AL. C. A. 3d Cir. Certiorari denied. MR. JUSTICE BLACKMUN took no part in the consideration or decision of this petition.† Reported below: 503 F. 2d 1250.

*Although four of us would grant certiorari and reverse the judgment, the Justices who join this opinion do not insist that the case be decided on the merits.

†See also note, *supra*, p. 1001.

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No. 74-1334. ZUCKER ET AL. *v.* BELL TELEPHONE COMPANY OF PENNSYLVANIA ET AL. C. A. 3d Cir. Certiorari denied. MR. JUSTICE BLACKMUN took no part in the consideration or decision of this petition.* Reported below: 510 F. 2d 971.

No. 74-1234. ABASCAL *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. MR. JUSTICE BRENNAN and MR. JUSTICE MARSHALL would grant certiorari, vacate the judgment, and remand case for consideration of question of mootness. Reported below: 509 F. 2d 752.

No. 74-1237. BROWN ET AL. *v.* UNITED STATES ET AL. C. A. 3d Cir. Certiorari denied. MR. JUSTICE BRENNAN would grant certiorari. Reported below: 508 F. 2d 618.

No. 74-1276. COTTEN *v.* SCHLESINGER, SECRETARY OF DEFENSE. C. A. 4th Cir. Motion of Americans for Middle East Neutrality for leave to file a brief as *amicus curiae* denied. MR. JUSTICE DOUGLAS took no part in the consideration or decision of this motion. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 506 F. 2d 1397.

No. 74-6195. WAUGH *v.* GRAY, CORRECTIONAL SUPERINTENDENT. C. A. 6th Cir. Certiorari denied. Reported below: 508 F. 2d 845.

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

On November 15, 1969, petitioner was arrested in connection with a burglary in Amberly Village, Ohio. When arrested, he was in possession of a black purse from the burglarized home. On November 17, 1969, petitioner was convicted in Cincinnati Municipal Court of receiving or concealing the black purse. He was sen-

*See also note, *supra*, p. 1001.

tenced to 30 days in the workhouse, and \$55 in fines and costs were imposed.

After serving the sentence and paying the fines and costs, petitioner was indicted and convicted of burglary in the Hamilton County Court of Common Pleas. The prosecution's crucial evidence was the black purse. Petitioner was sentenced to a term of five to 30 years' imprisonment.

After exhausting available state-court remedies, petitioner sought a writ of habeas corpus in the United States District Court for the Southern District of Ohio, Eastern Division, contending that his conviction for burglary violated the Double Jeopardy Clause. Although the District Court found that both of petitioner's convictions arose out of "a single transaction," the petition was denied. The United States Court of Appeals for the Sixth Circuit affirmed. 508 F. 2d 845.

The two charges leveled against petitioner clearly arose out of the same criminal transaction or episode, yet they were tried separately. In that circumstance, we should grant certiorari and reverse the burglary conviction. 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 joinder at one trial, except in extremely limited circumstances not present here, of "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 *Wells v. Missouri*, 419 U. S. 1075 (1974) (BRENNAN, J., dissenting); *Tijerina v. New Mexico*, 417 U. S. 956 (1974) (BRENNAN, J., dissenting); *Ciuzio v. United States*, 416 U. S. 995 (1974) (BRENNAN, J., dissenting);

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Harris v. Washington, 404 U. S. 55, 57 (1971) (concurring statement); *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); *State v. Gregory*, 66 N. J. 510, 333 A. 2d 257 (1975).

Rehearing Denied

No. 73-1723. HILL, ATTORNEY GENERAL OF TEXAS *v.* STONE ET AL., 421 U. S. 289;

No. 74-519. FRANKEL *v.* AMERICAN EXPORT ISBRANDTSEN LINES, INC., 421 U. S. 946;

No. 74-1014. MEISTER ET UX. *v.* COMMISSIONER OF INTERNAL REVENUE, 421 U. S. 964;

No. 74-1046. BLANKNER *v.* CITY OF CHICAGO ET AL., 421 U. S. 948;

No. 74-6222. SMITH ET AL. *v.* LINK, GOVERNOR OF NORTH DAKOTA, ET AL., 421 U. S. 970; and

No. 74-6276. SMITH, TRUSTEE IN BANKRUPTCY *v.* BRYANT ET AL., 421 U. S. 979. Petitions 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 District of Columbia Circuit on June 6, 1975, and for such additional time as may be required to complete unfinished business, pursuant to 28 U. S. C. § 294 (a), is ordered entered on the minutes of this Court, pursuant to 28 U. S. C. § 295.

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Affirmed on Appeal

No. 74-1375. *MONTGOMERY v. DOUGLAS ET AL.* Affirmed on appeal from D. C. Colo. Reported below: 388 F. Supp. 1139.

Appeals Dismissed

No. 74-1227. *ELLIS ET AL. v. CALIFORNIA.* Appeal from App. Dept., Super. Ct. Cal., County of Santa Barbara, dismissed for want of substantial federal question.

No. 74-1467. *WILLIAM C. HAAS & Co., INC. v. RUSSIAN HILL IMPROVEMENT ASSN. ET AL.* Appeal from Ct. App. Cal., 1st App. Dist., dismissed for want of substantial federal question. Reported below: 44 Cal. App. 3d 158, 118 Cal. Rptr. 490.

No. 74-6469. *IN RE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF MONTANA ET AL. (MITCHELL ET UX., REAL PARTIES IN INTEREST) v. MONTANA EX REL. LEMIEUX, COUNTY ATTORNEY OF JEFFERSON COUNTY, ET AL.* Appeal from Sup. Ct. Mont. dismissed for want of substantial federal question. Reported below: 166 Mont. 115, 531 P. 2d 665.

No. 74-1404. *PRESSMAN v. NEW YORK ET AL.* Appeal from D. C. E. D. N. Y. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied.

Vacated and Remanded on Appeal

No. 73-1413. *STAATS, COMPTROLLER GENERAL, ET AL. v. AMERICAN CIVIL LIBERTIES UNION, INC., ET AL.* Appeal from D. C. D. C. [Probable jurisdiction noted, 417

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U. S. 944.] Judgment vacated and case remanded with directions to dismiss the cause as moot. MR. JUSTICE DOUGLAS took no part in the consideration or decision of this case. Reported below: 366 F. Supp. 1041.

No. 74-872. NATIONAL SOCIETY OF PROFESSIONAL ENGINEERS *v.* UNITED STATES. Appeal from D. C. D. C. Judgment vacated and case remanded for further consideration in light of *Goldfarb v. Virginia State Bar*, 421 U. S. 773 (1975). MR. JUSTICE DOUGLAS took no part in the consideration or decision of this case. Reported below: 389 F. Supp. 1193.

No. 74-1169. ROGERS ET AL. *v.* INMATES' COUNCIL-MATIC VOICE ET AL. Appeal from D. C. N. D. Ohio. Judgment vacated and case remanded so that a fresh order or decree may be entered from which a timely appeal may be taken to the United States Court of Appeals for the Sixth Circuit. MR. JUSTICE DOUGLAS took no part in the consideration or decision of this case.

No. 74-1458. CLARK ET AL. *v.* PETERS ET AL. Appeal from C. A. 5th Cir. Judgment vacated and case remanded for further consideration in light of *Dallas County v. Reese*, 421 U. S. 477 (1975). Reported below: 508 F. 2d 267.

Certiorari Granted—Vacated and Remanded

No. 74-1162. IMPSON *v.* UNITED STATES. C. A. 5th Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *United States v. Hale*, ante, p. 171. MR. JUSTICE DOUGLAS took no part in the consideration or decision of this case. Reported below: 506 F. 2d 1055.

No. 74-5092. ROSE *v.* UNITED STATES. C. A. 2d Cir. Motion for leave to proceed *in forma pauperis* and certiorari granted. Judgment vacated and case remanded

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for further consideration in light of *United States v. Hale*, ante, p. 171. MR. JUSTICE DOUGLAS took no part in the consideration or decision of this case. Reported below: 500 F. 2d 12.

No. 74-6118. *WATTS v. UNITED STATES*. C. A. 5th Cir. Motion for leave to proceed *in forma pauperis* and certiorari granted. Upon representation of the Solicitor General set forth in his brief for the United States filed May 2, 1975, judgment vacated, and case remanded to the United States District Court for the Northern District of Georgia to permit the Government to dismiss charges against petitioner. MR. JUSTICE DOUGLAS took no part in the consideration or decision of this motion and petition. Reported below: 505 F. 2d 951.

MR. CHIEF JUSTICE BURGER, with whom MR. JUSTICE WHITE and MR. JUSTICE REHNQUIST join, dissenting.

Petitioner was acquitted in the Superior Court of Fulton County, Ga., of aggravated assault with intent to rob and carrying a concealed weapon. Thereafter, petitioner was convicted in federal court of knowingly possessing an unregistered firearm, a sawed-off shotgun, in violation of 26 U. S. C. § 5861 (d). The federal charge arose out of the same episode, and involved the same weapon, as the state prosecution. The Court of Appeals affirmed the judgment of conviction, rejecting, *inter alia*, petitioner's contention that the state acquittal barred his federal prosecution under the Double Jeopardy Clause of the Fifth Amendment. 505 F. 2d 951.

The evidence at petitioner's federal trial established that in connection with a robbery attempt on November 14, 1973, petitioner, accompanied by another, assaulted Robert McGibbon with a 12-gauge, single-barreled, sawed-off shotgun. McGibbon managed to break away from his assailants and immediately reported the inci-

dent to Officer Ward, an Atlanta policeman who was nearby. Ward located petitioner and a companion a few blocks away and, on the basis of McGibbon's description, took them into custody. As petitioner's companion was entering the patrol car, Ward noticed him bend down "as if he was putting something under the car." Subsequent investigation revealed the sawed-off shotgun, which was not registered to petitioner, under the patrol car.

In rejecting petitioner's double jeopardy claim, the Court of Appeals pointed out that, under Ga. Code Ann. §§ 26-9911a, 9913a, possession of a sawed-off shotgun 15 inches or less in length is prohibited, whereas the shotgun involved here had an overall length of 16½ inches. The Court of Appeals held that, in any event, the prior state prosecution and acquittal were not a bar to the subsequent federal prosecution under *Abbate v. United States*, 359 U. S. 187 (1959), and *Bartkus v. Illinois*, 359 U. S. 121 (1959). Although he agrees with the latter conclusion, the Solicitor General nevertheless now requests the Court to vacate the judgment of the Court of Appeals and remand the case to the District Court to permit the Government to move for dismissal of the charges against petitioner. The request is based on the Government's belated claim that the prosecution of petitioner under § 5861 (d) "did not conform to the Department of Justice policy of not prosecuting individuals previously tried in a state court for offenses involving the same acts, unless there exist 'most compelling reasons,' and then only after the specific approval of the appropriate Assistant Attorney General has been obtained."

In support of his position, the Solicitor General states that no approval was sought in this case, and he concludes that it "does not present circumstances which

constitute 'compelling reasons' for the federal prosecution." He notes that the State did not indict petitioner for possession of a sawed-off shotgun, but for *carrying a concealed weapon*, as to which the length of the shotgun was irrelevant, and he speculates that, since there was ample evidence of concealment, the state jury likely acquitted petitioner because of insufficient evidence of possession. In light of the fact that possession is an element of the federal offense proscribed by § 5861 (d), the Solicitor General reasons that the policies underlying the Department's internal directive "are directly involved."

Since this is the third occasion in recent months upon which I have been unable to agree with the Court's acquiescence in a request by the Government for aid in implementing the policy of the Department of Justice, I deem it appropriate to state my views. See also *Hayles v. United States*, 419 U. S. 892 (1974); *Ackerson v. United States*, 419 U. S. 1099 (1975).

I

The policy upon which the Government relies was first promulgated shortly after our decisions in *Abbate* and *Bartkus, supra*, in a memorandum from Attorney General Rogers to United States Attorneys. See *Petite v. United States*, 361 U. S. 529, 531 (1960). Noting the duty of federal prosecutors "to observe not only the rulings of the Court but the spirit of the rulings as well," and advocating continuing efforts "to cooperate with state and local authorities to the end that the trial occur in the jurisdiction, whether it be state or federal, where the public interest is best served," the Attorney General concluded that if "this be determined accurately, and is followed by efficient and intelligent cooperation of state and federal law enforcement authorities, then considera-

tion of a second prosecution very seldom should arise." He directed that "no federal case should be tried when there has already been a state prosecution for substantially the same act or acts without [the approval of the appropriate Assistant Attorney General after consultation with the Attorney General]." Department of Justice Press Release, Apr. 6, 1959; N. Y. Times, Apr. 6, 1959, p. 19, col. 2.

I question whether the action taken by the Court in *Hayles* and *Ackerson*, *supra*, and the action taken today represent "efficient and intelligent cooperation" among federal law enforcement authorities, let alone between state and federal authorities. In this case, for instance, we are asked to intervene in order that the Government may move for the dismissal of charges lawfully brought by it in the first instance, tried before a jury in the District Court, and the conviction upon which was affirmed by an opinion of a panel of the Court of Appeals. It requires more than the desire of the Department of Justice to keep its house in order to persuade me that the Court should have a hand in nullifying such a substantial commitment of federal prosecutorial and judicial resources. Indeed, since it appears that the trial and conviction of petitioner were without reversible defect, constitutional or otherwise, and that the putative hardship which the policy was designed to prevent has already been suffered and cannot be remedied, I believe that the Court's action today ill serves the "interest of justice," *Petite v. United States*, *supra*, at 531, if that phrase be interpreted to comprehend society's interest in the efficient use of its judicial resources to convict the guilty. Cf. *Orlando v. United States*, 387 F. 2d 348, 349 (CA9 1967) (Pope, J., dissenting). The only purpose served by the Court's action is to aid the Government in emphasizing to its staff lawyers the need for a con-

sistent internal administrative policy. But with all deference I suggest that is not a judicial function and surely not the function of this Court.

Neither the rulings of this Court, nor their "spirit," require that we sacrifice the careful work of the District Court and the Court of Appeals—to say nothing of the public funds which that work required—to the vagaries of administrative interpretation. If the Government attorneys who initiated this prosecution did so without consulting their superiors, that is an internal matter within the Department of Justice to be dealt with directly by that Department, but it should not bear on a judgment lawfully obtained. Corrective action more appropriately lies through prospective enforcement of departmental policies. Cf. *Sullivan v. United States*, 348 U. S. 170, 172–174 (1954); *United States v. Hutul*, 416 F. 2d 607, 626–627 (CA7 1969), cert. denied, 396 U. S. 1012 (1970). The resources of law enforcement agencies and courts, once committed to a rational course of action culminating in a valid judgment, should not be dissipated without better reason.

II

Quite apart from my general disagreement with the use of this Court to implement executive policy decisions, it is not at all clear to me that any federal court, and particularly this Court, should automatically conform its judgments to results allegedly dictated by a policy, however wise, which the judicial branch had no part in formulating. If these doubts be well founded, independent judicial appraisal is required *a fortiori* where, as here, the policy purportedly derives from the rulings of this Court and their "spirit." The federal courts have no role in prosecutorial decisions, but, once the judicial power has been invoked,

it is decidedly the role of federal courts to interpret the decisions of this Court and to assess the validity of judgments duly entered.

Judicial involvement in an independent appraisal of the Justice Department's application of its internal policy in this instance, however, could give rise to a form of surveillance in other instances. Surely it is not our function either to approve or disapprove internal prosecutorial policies and even less so their implementation. But the course on which the Government has persuaded this Court to embark requires us to do just that unless we are blindly to accept the Government's belated analysis. Cf. *United States v. Williams*, 431 F. 2d 1168, 1175 (CA5 1970), rev'd en banc on other grounds, 447 F. 2d 1285 (1971), cert. denied, 405 U. S. 954 (1972).

III

The present case vividly demonstrates the difficulties which confront judges who would undertake to do more than rubberstamp the policy decisions of the Department of Justice. The policy relied on, which appears to have been cast in terms to provide great flexibility and discretion, inevitably involves considerations and nuances inappropriate for judicial evaluation. Moreover, such evaluation is impossible without access to data regarding other applications of the policy in the 16 years since it was publicly announced. Finally, a comparison of the 1959 directive with the Government's statement of the policy in this case reveals variations which are not explained and of course need not be explained so long as application of the policy remains a matter within the Department of Justice. The 1959 memorandum referred to "a state prosecution for substantially the same act or acts." However, in speculating as to the basis for the verdict acquitting petitioner in state court, the Govern-

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ment seems to suggest that the relevant inquiry under the policy is not whether the charges in federal court are based on the "same act or acts" as those which founded the state prosecution, but rather whether the state and federal offenses share common elements or require the same evidence for conviction. Cf. *Abbate v. United States*, 359 U. S., at 196-197 (opinion of BRENNAN, J.).

For present purposes, it is unnecessary to pursue these ambiguities. The factors I have discussed suggest the incompatibility of the action the Court takes today with the goal of "efficient and intelligent cooperation" which animated the Attorney General's 1959 memorandum, and with the "interest of justice," broadly conceived. The Department's 1959 policy is in no way questioned. But assuming as I do that *Abbate* and *Bartkus* remain good law, there is no reason for this Court to lend its aid to the implementation of an internal prosecutorial policy applicable only by speculation on our part, and there are abundant reasons for not doing so.

Miscellaneous Orders

No. ———. IN RE RESIGNATION OF NIXON. Motion of Richard M. Nixon, of San Clemente, Cal., to resign as a member of the Bar of this Court granted, and it is ordered that his name be stricken from the roll of attorneys admitted to practice before the Bar of this Court. MR. JUSTICE DOUGLAS and MR. JUSTICE REHNQUIST took no part in the consideration or decision of this matter.

No. 74-940. COLORADO RIVER WATER CONSERVATION DISTRICT ET AL. *v.* UNITED STATES; and

No. 74-949. AKIN ET AL. *v.* UNITED STATES. C. A. 10th Cir. [Certiorari granted, 421 U. S. 946.] Motion of petitioners for divided argument granted. MR. JUSTICE DOUGLAS took no part in the consideration or decision of this motion.

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No. ————. *FUENTES v. WORKERS' COMPENSATION APPEALS BOARD OF CALIFORNIA ET AL.* Ct. App. Cal., 4th App. Dist. Motion to dispense with printing petition denied. *Snider v. All State Administrators, Inc.*, 414 U. S. 685 (1974).

No. 73-1808. *LAING v. UNITED STATES ET AL.* C. A. 2d Cir. [Certiorari granted, 419 U. S. 824];

No. 74-75. *UNITED STATES ET AL. v. HALL.* C. A. 6th Cir. [Certiorari granted, 419 U. S. 824]; and

No. 73-7031. *FOWLER v. NORTH CAROLINA.* Sup. Ct. N. C. [Certiorari granted, 419 U. S. 963.] Cases restored to calendar for reargument.

No. 74-858. *CAREY, GOVERNOR OF NEW YORK, ET AL. v. SUGAR ET AL.*; and

No. 74-859. *CURTIS CIRCULATION CO. ET AL. v. SUGAR ET AL.* Appeals from D. C. S. D. N. Y. [Probable jurisdiction noted, 421 U. S. 908.] Motion of appellants for additional time for oral argument granted and ten additional minutes allotted for that purpose. MR. JUSTICE DOUGLAS took no part in the consideration or decision of this motion.

No. 74-1287. *WEINSTEIN ET AL. v. BRADFORD ET AL.* C. A. 4th Cir. [Certiorari granted, 421 U. S. 998.] Motion for appointment of counsel granted and Howard Lesnick, Esquire, of Philadelphia, Pa., is appointed to serve as counsel for respondents in this case. MR. JUSTICE DOUGLAS took no part in the consideration or decision of this motion.

No. 74-1366. *SCHAEFER ET AL. v. FIRST NATIONAL BANK OF LINCOLNWOOD ET AL.*; and

No. 74-1407. *RODMAN & RENSHAW v. SCHAEFER ET AL.* C. A. 7th Cir. The Solicitor General is invited to file a brief in these cases expressing the views of the United States.

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No. 74-1427. REUBEN L. ANDERSON-CHERNE, INC. *v.* COMMISSIONER OF REVENUE OF MINNESOTA. Appeal from Sup. Ct. Minn. The Solicitor General is invited to file a brief in this case expressing the views of the United States.

No. 74-6460. HERREN *v.* UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF ARKANSAS;

No. 74-6498. COZZETTI *v.* UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEVADA ET AL.; and

No. 74-6499. GOUDIE *v.* DISTRICT OF COLUMBIA COURT OF APPEALS. Motions for leave to file petitions for writs of mandamus denied. MR. JUSTICE DOUGLAS took no part in the consideration or decision of these motions.

Probable Jurisdiction Noted

No. 74-1409. NORTH *v.* RUSSELL ET AL. Appeal from Ct. App. Ky. Probable jurisdiction noted.

Certiorari Granted

No. 74-882. DE CANAS ET AL. *v.* BICA ET AL. Ct. App. Cal., 2d App. Dist. Certiorari granted. Reported below: 40 Cal. App. 3d 976, 115 Cal. Rptr. 444.

No. 74-1396. MICHELIN TIRE CORP. *v.* WAGES, TAX COMMISSIONER, ET AL. Sup. Ct. Ga. Certiorari granted. Reported below: 233 Ga. 712, 214 S. E. 2d 349.

No. 74-532. MCKINNEY *v.* ALABAMA. Sup. Ct. Ala. Certiorari granted. MR. JUSTICE DOUGLAS took no part in the consideration or decision of this petition. Reported below: 292 Ala. 484, 296 So. 2d 228.

No. 74-1274. ABBOTT LABORATORIES ET AL. *v.* PORTLAND RETAIL DRUGGISTS ASSN., INC. C. A. 9th Cir. Motion of American Hospital Assn. for leave to file a

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brief as *amicus curiae* and certiorari granted. MR. JUSTICE DOUGLAS took no part in the consideration or decision of this motion and petition. Reported below: 510 F. 2d 486.

No. 74-1107. CAPPAERT ET AL. *v.* UNITED STATES ET AL.; and

No. 74-1304. NEVADA EX REL. WESTERGARD *v.* UNITED STATES ET AL. C. A. 9th Cir. Certiorari granted, cases consolidated, and a total of one hour allotted for oral argument. Reported below: 508 F. 2d 313.

No. 74-1393. SINGLETON, CHIEF, BUREAU OF MEDICAL SERVICES, DEPARTMENT OF HEALTH AND WELFARE OF MISSOURI *v.* WULFF ET AL. C. A. 8th Cir. Certiorari granted limited to Questions 1 and 2 presented by the petition which read as follows:

"1. Whether there is a logical nexus between the status of respondent-physicians and the claims they seek to have adjudicated sufficient to confer standing on them to challenge the constitutionality of Section 208.152, RSMo Supp. 1973.

"2. Whether the Court of Appeals acted in excess of its jurisdiction when it proceeded to determine on the merits the constitutionality of Section 208.152, RSMo Supp. 1973."

MR. JUSTICE DOUGLAS took no part in the consideration or decision of this petition. Reported below: 508 F. 2d 1211.

No. 74-1435. ENVIRONMENTAL PROTECTION AGENCY ET AL. *v.* CALIFORNIA EX REL. STATE WATER RESOURCES CONTROL BOARD ET AL. C. A. 9th Cir. Certiorari granted and case set for oral argument with No. 74-220, *Hancock v. Train* [certiorari granted, 420 U. S. 971]. Reported below: 511 F. 2d 963.

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Certiorari Denied. (See also No. 74-1404, *supra*.)

No. 74-1170. *AUSTIN ET AL. v. UNITED STATES ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 511 F. 2d 622.

No. 74-1204. *ROGERS v. UNITED STATES.* C. A. 5th Cir. Certiorari denied. Reported below: 504 F. 2d 1079.

No. 74-1275. *METROPOLITAN TRASH, INC. v. DUNLOP, SECRETARY OF LABOR.* C. A. 10th Cir. Certiorari denied. Reported below: 513 F. 2d 1324.

No. 74-1281. *FRANKS v. UNITED STATES;* and

No. 74-6318. *MITCHELL v. UNITED STATES.* C. A. 6th Cir. Certiorari denied. Reported below: 511 F. 2d 25.

No. 74-1286. *RICHTER v. UNITED STATES.* C. A. 7th Cir. Certiorari denied. Reported below: 507 F. 2d 682.

No. 74-1293. *CITY OF BLACK JACK, MISSOURI v. UNITED STATES.* C. A. 8th Cir. Certiorari denied. Reported below: 508 F. 2d 1179.

No. 74-1317. *LIDLAW CORP. v. NATIONAL LABOR RELATIONS BOARD.* C. A. 7th Cir. Certiorari denied. Reported below: 507 F. 2d 1381.

No. 74-1326. *INDIANA HARBOR BELT RAILROAD Co. v. UNITED STATES ET AL.* C. A. 7th Cir. Certiorari denied. Reported below: 510 F. 2d 644.

No. 74-1331. *CITY OF PHILADELPHIA ET AL. v. BAKER, TRUSTEE, ET AL.* C. A. 3d Cir. Certiorari denied. Reported below: 508 F. 2d 279.

No. 74-1340. *HOTEL, RESTAURANT EMPLOYEES & BARTENDERS' UNION, LOCAL 5, AFL-CIO v. INTER-ISLAND RESORTS, LTD., DBA KONA SURF HOTEL, ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 507 F. 2d 411.

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No. 74-1333. *CARR v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 507 F. 2d 191.

No. 74-1360. *PETERSON v. BLUE CROSS/BLUE SHIELD OF TEXAS ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 508 F. 2d 55.

No. 74-1389. *AMENT ET AL. v. BROCKER*. Ct. App. Ohio, Mahoning County. Certiorari denied.

No. 74-1428. *BROTT v. ST. FRANCIS HOSPITAL OF LYNWOOD*. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 74-1429. *SIMES ET AL. v. HAASE ET AL.* Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 74-1469. *AMOCO PRODUCTION Co. ET AL. v. MIKE HOOKS, INC., ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 510 F. 2d 382.

No. 74-6051. *ROSENBERG v. SHUBIN, CORRECTIONAL SUPERINTENDENT*. C. A. 2d Cir. Certiorari denied.

No. 74-6162. *WHITE v. DALTON, U. S. DISTRICT JUDGE*. C. A. 4th Cir. Certiorari denied.

No. 74-6223. *ROTHAERMEL v. UNITED STATES*. C. A. 10th Cir. Certiorari denied.

No. 74-6252. *STURGIS v. UNITED STATES*. Ct. App. D. C. Certiorari denied.

No. 74-6299. *HERNANDEZ v. GOVERNMENT OF THE VIRGIN ISLANDS*. C. A. 3d Cir. Certiorari denied. Reported below: 508 F. 2d 712.

No. 74-6328. *BORUSKI v. UNITED STATES ET AL.* C. A. 2d Cir. Certiorari denied.

No. 74-6341. *BORUSKI v. UNITED STATES ET AL.* C. A. 2d Cir. Certiorari denied.

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No. 74-6345. *LEE v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 509 F. 2d 645.

No. 74-6347. *BELLE v. MACDONIELS*. C. A. 8th Cir. Certiorari denied.

No. 74-6471. *BORUSKI v. GENERAL ACCOUNTING OFFICE*. C. A. 2d Cir. Certiorari denied.

No. 74-6621. *REED v. MICHIGAN*. Sup. Ct. Mich. Certiorari denied. Reported below: 393 Mich. 342, 224 N. W. 2d 867.

No. 73-1176. *106 FORSYTH CORP., DBA PARIS THEATRE v. BISHOP, MAYOR OF ATHENS, ET AL.* C. A. 5th Cir. Certiorari denied. MR. JUSTICE DOUGLAS took no part in the consideration or decision of this petition. Reported below: 482 F. 2d 280.

No. 73-6973. *BOZEMAN v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. MR. JUSTICE DOUGLAS took no part in the consideration or decision of this petition. Reported below: 495 F. 2d 508.

No. 73-7097. *HALL v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. MR. JUSTICE DOUGLAS took no part in the consideration or decision of this petition. Reported below: 493 F. 2d 904.

No. 74-1015. *INTERCOUNTY CONSTRUCTION CORP. ET AL. v. WALTER, DEPUTY COMMISSIONER, BUREAU OF EMPLOYEES' COMPENSATION, U. S. DEPARTMENT OF LABOR, ET AL.* C. A. D. C. Cir. Certiorari denied. MR. JUSTICE DOUGLAS took no part in the consideration or decision of this petition. Reported below: 163 U. S. App. D. C. 147, 500 F. 2d 815.

No. 74-6241. *ANALLA v. UNITED STATES*. C. A. 10th Cir. Certiorari denied. MR. JUSTICE DOUGLAS took no part in the consideration or decision of this petition.

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No. 74-1198. *MACKETHAN, RECEIVER v. VIRGINIA*. C. A. 4th Cir. Certiorari denied. MR. JUSTICE DOUGLAS took no part in the consideration or decision of this petition. Reported below: 508 F. 2d 838.

No. 74-6302. *FUGATE v. HATHAWAY, SECRETARY OF THE INTERIOR, ET AL.* C. A. 9th Cir. Certiorari denied. MR. JUSTICE DOUGLAS took no part in the consideration or decision of this petition. Reported below: 510 F. 2d 307.

No. 74-6303. *WERTIS v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. MR. JUSTICE DOUGLAS took no part in the consideration or decision of this petition. Reported below: 505 F. 2d 683.

No. 74-6311. *VARGAS v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. MR. JUSTICE DOUGLAS took no part in the consideration or decision of this petition. Reported below: 510 F. 2d 1406.

No. 74-6322. *BARKSDALE v. HENDERSON, WARDEN*. C. A. 5th Cir. Certiorari denied. MR. JUSTICE DOUGLAS took no part in the consideration or decision of this petition. Reported below: 510 F. 2d 382.

No. 74-6331. *DAVILA-LEAL v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. MR. JUSTICE DOUGLAS took no part in the consideration or decision of this petition.

No. 74-6368. *NAVARRO ET AL. v. GOVERNMENT OF THE VIRGIN ISLANDS*. C. A. 3d Cir. Certiorari denied. MR. JUSTICE DOUGLAS took no part in the consideration or decision of this petition. Reported below: 513 F. 2d 11.

No. 74-6371. *COLON v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. MR. JUSTICE DOUGLAS took no part in the consideration or decision of this petition. Reported below: 513 F. 2d 634.

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No. 74-6355. *RIVERA-LARA v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. MR. JUSTICE DOUGLAS took no part in the consideration or decision of this petition.

No. 74-6383. *RIMKA v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. MR. JUSTICE DOUGLAS took no part in the consideration or decision of this petition. Reported below: 512 F. 2d 425.

No. 74-6386. *FERRIS v. MORGAN, CHIEF JUDGE, U. S. DISTRICT COURT*. C. A. 7th Cir. Certiorari denied. MR. JUSTICE DOUGLAS took no part in the consideration or decision of this petition.

No. 74-6462. *WHITE v. REYNOLDS ET AL.* C. A. 4th Cir. Certiorari denied. MR. JUSTICE DOUGLAS took no part in the consideration or decision of this petition.

No. 74-6473. *ROMERO v. ARIZONA*. Sup. Ct. Ariz. Certiorari denied. MR. JUSTICE DOUGLAS took no part in the consideration or decision of this petition.

No. 74-6480. *BURNS v. SLATER ET AL.* Sup. Ct. Okla. Certiorari denied. MR. JUSTICE DOUGLAS took no part in the consideration or decision of this petition.

No. 74-6482. *TISCHMAK v. GEORGIA*. Ct. App. Ga. Certiorari denied. MR. JUSTICE DOUGLAS took no part in the consideration or decision of this petition. Reported below: 133 Ga. App. 534, 211 S. E. 2d 587.

No. 74-6484. *BAKER v. CALIFORNIA LAND TITLE CO.* C. A. 9th Cir. Certiorari denied. MR. JUSTICE DOUGLAS took no part in the consideration or decision of this petition. Reported below: 507 F. 2d 895.

No. 74-6492. *JONES v. GUNN, WARDEN*. C. A. 9th Cir. Certiorari denied. MR. JUSTICE DOUGLAS took no part in the consideration or decision of this petition.

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No. 74-6485. *BARKLEY v. CALIFORNIA*. Ct. App. Cal., 2d App. Dist. Certiorari denied. MR. JUSTICE DOUGLAS took no part in the consideration or decision of this petition.

No. 74-6487. *HUGHES v. AULT, CORRECTIONS DIRECTOR*. C. A. 5th Cir. Certiorari denied. MR. JUSTICE DOUGLAS took no part in the consideration or decision of this petition.

No. 74-6488. *DONALDSON v. WYRICK, WARDEN*. C. A. 8th Cir. Certiorari denied. MR. JUSTICE DOUGLAS took no part in the consideration or decision of this petition.

No. 74-6491. *WARREN v. OKLAHOMA*. Ct. Crim. App. Okla. Certiorari denied. MR. JUSTICE DOUGLAS took no part in the consideration or decision of this petition. Reported below: 537 P. 2d 443.

No. 74-6500. *JACOBS v. ALABAMA*. C. A. 5th Cir. Certiorari denied. MR. JUSTICE DOUGLAS took no part in the consideration or decision of this petition. Reported below: 511 F. 2d 1190.

No. 74-6582. *RICHARDSON v. RUNDLE, CORRECTIONAL SUPERINTENDENT*. C. A. 3d Cir. Certiorari denied. MR. JUSTICE DOUGLAS took no part in the consideration or decision of this petition. Reported below: 511 F. 2d 1396.

No. 74-1246. *KNEZ v. IMMIGRATION AND NATURALIZATION SERVICE*. C. A. 9th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari.

No. 74-1295. *DEATON, INC. v. NATIONAL LABOR RELATIONS BOARD*. C. A. 5th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 502 F. 2d 1221.

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No. 74-1159. INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA ET AL. *v.* PILOT FREIGHT CARRIERS, INC. C. A. 5th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 506 F. 2d 914.

No. 74-1377. JOHNSON ET AL. *v.* NEW YORK. App. Div., Sup. Ct. N. Y., 2d Jud. Dept. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 46 App. Div. 2d 739, 361 N. Y. S. 2d 325.

No. 74-1394. CLINTON COMMUNITY HOSPITAL CORP. *v.* SOUTHERN MARYLAND MEDICAL CENTER ET AL. C. A. 4th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 510 F. 2d 1037.

No. 74-1422. CINCINNATI ENQUIRER, INC., ET AL. *v.* RAMEY ET AL. C. A. 6th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 508 F. 2d 1188.

No. 74-6184. POOLE *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 161 U. S. App. D. C. 289, 495 F. 2d 115.

No. 74-6191. BRITTON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 511 F. 2d 25.

No. 74-6231. KLEIN *v.* IMMIGRATION AND NATURALIZATION SERVICE. C. A. 9th Cir. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari.

No. 74-1440. MICHIGAN *v.* REED. Sup. Ct. Mich. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 393 Mich. 342, 224 N. W. 2d 867.

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No. 74-1310. EDWARDS UNDERGROUND WATER DISTRICT ET AL. *v.* HILLS, SECRETARY OF HOUSING AND URBAN DEVELOPMENT, ET AL. C. A. 5th Cir. Certiorari denied. MR. JUSTICE DOUGLAS and MR. JUSTICE BLACKMUN would grant certiorari. Reported below: 502 F. 2d 43.

No. 74-1388. PEACOCK *v.* BOARD OF REGENTS OF THE UNIVERSITIES AND STATE COLLEGES OF ARIZONA ET AL. C. A. 9th Cir. Motion of Association of California School Administrators for leave to file a brief as *amicus curiae* granted. Certiorari denied. MR. JUSTICE DOUGLAS would grant certiorari. Reported below: 510 F. 2d 1324.

Rehearing Denied

No. 73-1765. MEEK ET AL. *v.* PITTENGER, SECRETARY OF EDUCATION, ET AL., 421 U. S. 349;

No. 74-950. BARRETT *v.* UNITED STATES, 421 U. S. 964;

No. 74-991. COSTANZA *v.* UNITED STATES, 421 U. S. 987;

No. 74-1116. SMITH *v.* UNITED STATES, 421 U. S. 980;

No. 74-1164. ALFRED A. KNOPF, INC., ET AL. *v.* COLBY, DIRECTOR, CENTRAL INTELLIGENCE AGENCY, ET AL., 421 U. S. 992;

No. 74-1210. SADLAK *v.* GILLIGAN, GOVERNOR OF OHIO, ET AL., 421 U. S. 956;

No. 74-1280. NAT HARRISON ASSOCIATES, INC. *v.* LOUISVILLE GAS & ELECTRIC CO. ET AL., 421 U. S. 988;

No. 74-5922. CROSIER *v.* CALIFORNIA, 421 U. S. 966;

No. 74-6068. ENTREKIN *v.* UNITED STATES, 421 U. S. 977; and

No. 74-6169. ENTREKIN *v.* UNITED STATES, 421 U. S. 977. Petitions for rehearing denied. MR. JUSTICE DOUGLAS took no part in the consideration or decision of these petitions.

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No. 74-6109. BRAGG *v.* MID-AMERICA FEDERAL SAVINGS & LOAN ASSN., ET AL., 421 U. S. 933;

No. 74-6122. HARRELSON *v.* UNITED STATES, 421 U. S. 968; and

No. 74-6357. ROOTS *v.* WAINWRIGHT, CORRECTIONS DIRECTOR, 421 U. S. 996. Petitions for rehearing denied. MR. JUSTICE DOUGLAS took no part in the consideration or decision of these petitions.

No. 74-6092. BORASKY *v.* UNITED STATES, 421 U. S. 977. Petition for rehearing and other relief denied. MR. JUSTICE DOUGLAS took no part in the consideration or decision of this petition.

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Vacated and Remanded on Appeal

No. 74-726. SHELDON, HOSPITAL SUPERINTENDENT *v.* REYNOLDS; and

No. 74-5743. REYNOLDS *v.* SHELDON, HOSPITAL SUPERINTENDENT. Appeals from D. C. N. D. Tex. Motions of Perry Wayne Reynolds for leave to proceed *in forma pauperis* granted, judgment vacated, and cases remanded for further consideration in light of *O'Connor v. Donaldson*, *ante*, p. 563. Reported below: 381 F. Supp. 1374.

No. 74-1181. MAZER ET AL. *v.* WEINBERGER, SECRETARY OF HEALTH, EDUCATION, AND WELFARE, ET AL.; and

No. 74-5538. KOHR *v.* WEINBERGER, SECRETARY OF HEALTH, EDUCATION, AND WELFARE, ET AL. Appeals from D. C. E. D. Pa. Motion of appellant in No. 74-5538 for leave to proceed *in forma pauperis* granted. Judgments vacated and cases remanded to the United

*MR. JUSTICE DOUGLAS took no part in the consideration or decision of cases in which orders hereinafter reported were announced on this date.

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BRENNAN, J., dissenting

States District Court for the Eastern District of Pennsylvania to consider its jurisdiction in light of *Weinberger v. Salfi*, ante, p. 749. Reported below: No. 74-1181, 385 F. Supp. 1321; No. 74-5538, 378 F. Supp. 1299.

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

The Court remands these cases for consideration in light of *Weinberger v. Salfi*, ante, p. 749, of the question whether there was jurisdiction in the District Court. It appears from the papers before us that the record in these cases concerning exhaustion of administrative remedies under 42 U. S. C. § 405 (g) is precisely the same as the record in *Salfi*, supra. In all three cases, the plaintiffs did not exhaust fully on the constitutional question because they believed exhaustion to be futile; and in all three cases, the Secretary objected in the District Court that there was no jurisdiction because exhaustion was not completed through a hearing. See *Salfi*, ante, p. 786 (BRENNAN, J., dissenting). I believe that if § 405 (g) is, as the Court holds in *Salfi*, to be the exclusive jurisdictional basis for constitutional attacks upon Title II of the Social Security Act, then we should not require exhaustion past the point of futility, even if the Secretary so desires. See *Salfi*, ante, at 793-794 (BRENNAN, J., dissenting). But even on the Court's holding in *Salfi*, which leaves the determination of futility to the Secretary, I think we are at least obliged to be consistent in our treatment of cases decided upon identical records. Since the Court found in *Salfi* that the Secretary had determined exhaustion to be adequate, consistency certainly requires that the Court make the same determination, albeit fictitious, in these cases. This would eliminate any jurisdictional question, and reaching the merits, I would affirm in both cases.

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No. 74-6102. HAGLER ET UX. *v.* SNOW, JUDGE. Appeal from Sup. Ct. Utah. Motion of appellants for leave to proceed *in forma pauperis* granted. Judgment vacated and case remanded for further consideration in light of *North Georgia Finishing, Inc. v. Di-Chem, Inc.*, 419 U. S. 601 (1975).

Certiorari Granted—Vacated and Remanded

No. 73-6064. HUSTON *v.* CALIFORNIA. Ct. App. Cal., 4th App. Dist. Motion for leave to proceed *in forma pauperis* and certiorari granted. Judgment vacated and case remanded for further consideration in light of *Faretta v. California*, *ante*, p. 806.

No. 74-599. UNITED STATES *v.* SPEED ET AL. C. A. 5th Cir. Motions of respondents for leave to proceed *in forma pauperis* and certiorari granted. Judgment vacated and case remanded for further consideration in light of *Bowen v. United States*, *ante*, p. 916, and *United States v. Peltier*, *ante*, p. 531. Reported below: 497 F. 2d 546.

No. 74-970. CITY OF PARMA, OHIO, ET AL. *v.* CORNELIUS ET AL. C. A. 6th Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Warth v. Seldin*, *ante*, p. 490.

No. 74-993. JANNEY *v.* UNITED STATES. C. A. 5th Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *United States v. Ortiz*, *ante*, p. 891, and *United States v. Brigioni-Ponce*, *ante*, p. 873. Reported below: 506 F. 2d 897.

No. 74-1339. GUMANIS *v.* DONALDSON. C. A. 5th Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *O'Connor v. Donaldson*, *ante*, p. 563, and *Wood v. Strickland*, 420 U. S. 308 (1975). Reported below: 493 F. 2d 507.

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No. 74-5913. *DUNAWAY v. NEW YORK*. Ct. App. N. Y. Motion for leave to proceed *in forma pauperis* and certiorari granted. Judgment vacated and case remanded for further consideration in light of *Brown v. Illinois*, *ante*, p. 590. Reported below: 35 N. Y. 2d 741, 320 N. E. 2d 646.

No. 74-6014. *HART v. UNITED STATES*; and *DIXON ET AL. v. UNITED STATES*. C. A. 5th Cir. Motion for leave to proceed *in forma pauperis* and certiorari granted. Judgment vacated and case remanded for further consideration in light of *United States v. Ortiz*, *ante*, p. 891, and *United States v. Brignoni-Ponce*, *ante*, p. 873. Reported below: 506 F. 2d 887 (first case); 506 F. 2d 899 (second case).

No. 74-6016. *ARNOLD v. UNITED STATES*. C. A. 5th Cir. Motion for leave to proceed *in forma pauperis* and certiorari granted. Judgment vacated and case remanded for further consideration in light of *United States v. Ortiz*, *ante*, p. 891, and *United States v. Brignoni-Ponce*, *ante*, p. 873. Reported below: 506 F. 2d 899.

No. 74-6061. *ROCHA-LOPEZ v. UNITED STATES*. C. A. 9th Cir. Motion for leave to proceed *in forma pauperis* and certiorari granted. Judgment vacated and case remanded for further consideration in light of *United States v. Ortiz*, *ante*, p. 891, and *United States v. Brignoni-Ponce*, *ante*, p. 873.

No. 74-6086. *GONZALEZ-DIAZ v. UNITED STATES*. C. A. 9th Cir. Motion for leave to proceed *in forma pauperis* and certiorari granted. Judgment vacated and case remanded for further consideration in light of *United States v. Ortiz*, *ante*, p. 891, and *United States v. Brignoni-Ponce*, *ante*, p. 873.

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No. 74-5551. RYON *v.* MARYLAND. Ct. Sp. App. Md. Motion for leave to proceed *in forma pauperis* and certiorari granted. Judgment vacated and case remanded for further consideration in light of *Brown v. Illinois*, *ante*, p. 590.

No. 74-6150. COFFEY ET AL. *v.* UNITED STATES. C. A. 5th Cir. Motion for leave to proceed *in forma pauperis* and certiorari granted. Judgment vacated and case remanded for further consideration in light of *United States v. Brignoni-Ponce*, *ante*, p. 873. Reported below: 509 F. 2d 574.

Certiorari Granted—Affirmed in Part and Reversed in Part. (See No. 74-337, *ante*, p. 922.)

Miscellaneous Orders

No. 74-730. ROEMER ET AL. *v.* BOARD OF PUBLIC WORKS OF MARYLAND ET AL. Appeal from D. C. Md. [Probable jurisdiction noted, 420 U. S. 922.] Motion of appellees for additional time for oral argument granted and 15 additional minutes allotted for that purpose. Appellants allotted 15 additional minutes for oral argument.

No. 74-1179. UNITED STATES *v.* MILLER. C. A. 5th Cir. [Certiorari granted, 421 U. S. 1010.] Motion for appointment of counsel granted, and Denver Lee Rampy, Jr., Esquire, of Warner Robins, Ga., is appointed to serve as counsel for respondent in this case.

Probable Jurisdiction Noted or Postponed

No. 74-1137. LAVINE, COMMISSIONER, DEPARTMENT OF SOCIAL SERVICES OF NEW YORK *v.* MILNE ET AL. Appeal from D. C. S. D. N. Y. Motion of appellees for leave to proceed *in forma pauperis* granted. Probable jurisdiction noted. Reported below: 384 F. Supp. 206.

No. 74-6212. NORTON, A MINOR, BY CHILES *v.* WEINBERGER, SECRETARY OF HEALTH, EDUCATION, AND WEL-

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FARE. Appeal from D. C. Md. Motion for leave to proceed *in forma pauperis* granted. Further consideration of question of jurisdiction postponed to hearing of case on the merits. See *Weinberger v. Salfi*, ante, p. 749, at 763 n. 8. Reported below: 390 F. Supp. 1084.

Certiorari Granted

No. 73-861. EAST CARROLL PARISH SCHOOL BOARD ET AL. *v.* MARSHALL. C. A. 5th Cir. Certiorari granted. Reported below: 485 F. 2d 1297.

No. 74-520. MONTANYE, CORRECTIONAL SUPERINTENDENT, ET AL. *v.* HAYMES. C. A. 2d Cir. Motion of respondent for leave to proceed *in forma pauperis* and certiorari granted. Reported below: 505 F. 2d 977.

No. 74-1055. STONE, WARDEN *v.* POWELL. C. A. 9th Cir. Motion of respondent for leave to proceed *in forma pauperis* and certiorari granted. In addition to those questions presented by the petition, counsel are requested to brief and argue the following question: Whether, in light of the fact that the District Court found that the Henderson, Nev., police officer had probable cause to arrest respondent for violation of an ordinance which at the time of the arrest had not been authoritatively determined to be unconstitutional, respondent's claim that the gun discovered as a result of a search incident to that arrest violated his rights under the Fourth and Fourteenth Amendments to the United States Constitution is one cognizable under 28 U. S. C. § 2254. Reported below: 507 F. 2d 93.

No. 74-1222. WOLFF, WARDEN *v.* RICE. C. A. 8th Cir. Motion of respondent for leave to proceed *in forma pauperis* and certiorari granted. In addition to those questions presented by the petition, counsel are requested to brief and argue the following question: Whether the constitutional validity of the entry and search of re-

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spondent's premises by Omaha police officers under the circumstances of this case is a question properly cognizable under 28 U. S. C. § 2254. Reported below: 513 F. 2d 1280.

Certiorari Denied

No. 73-1856. *FOERSTER v. UNITED STATES*. C. A. 9th Cir. Certiorari denied.

No. 73-1896. *HENDRIX v. UNITED STATES*. C. A. 9th Cir. Certiorari denied.

No. 73-6851. *RODRIGUEZ-HERNANDEZ v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 493 F. 2d 168.

No. 73-6923. *RICE ET AL. v. UNITED STATES*. C. A. 9th Cir. Certiorari denied.

No. 73-6926. *SMITH v. UNITED STATES*. C. A. 9th Cir. Certiorari denied.

No. 73-6975. *MILLER v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 492 F. 2d 37 and 499 F. 2d 1247.

No. 74-185. *GREEN, ADMINISTRATOR v. WEINBERG ET AL.* C. A. 3d Cir. Certiorari denied. Reported below: 495 F. 2d 1368.

No. 74-572. *ANTICO v. CALIFORNIA*. App. Dept., Super. Ct. Cal., County of Los Angeles. Certiorari denied.

No. 74-584. *SEARS v. DANN, COMMISSIONER OF PATENTS*. C. A. 4th Cir. Certiorari denied. Reported below: 502 F. 2d 122.

No. 74-703. *PHILLIPS ET AL. v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 496 F. 2d 1395.

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No. 73-7088. *DEVER, AKA DIZEREGA v. UNITED STATES*. C. A. 9th Cir. Certiorari denied.

No. 74-648. *OWEN v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 493 F. 2d 463.

No. 74-904. *DEPARTMENT OF HUMAN RESOURCES OF GEORGIA ET AL. v. BURNHAM ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 503 F. 2d 1319.

No. 74-5062. *QUIROZ-REYNA v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 500 F. 2d 1223.

No. 74-5114. *LARIOS-MONTES v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 500 F. 2d 941.

No. 74-5148. *GORDON v. UNITED STATES*. C. A. 9th Cir. Certiorari denied.

No. 74-5214. *JEANGUENAT v. UNITED STATES*. C. A. 9th Cir. Certiorari denied.

No. 74-5307. *BACA v. UNITED STATES*. C. A. 9th Cir. Certiorari denied.

No. 74-5422. *MADUENO-ASTORGA ET AL. v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 503 F. 2d 820.

No. 74-5554. *BUTLER v. MISSISSIPPI*. Sup. Ct. Miss. Certiorari denied. Reported below: 296 So. 2d 673.

No. 74-5584. *SANDERS v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 498 F. 2d 911.

No. 74-6055. *EVANS ET AL. v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 507 F. 2d 879.

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No. 74-6003. ALVAREZ-GARCIA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 74-6126. COLLINS *v.* BENSINGER ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 506 F. 2d 1405.

No. 74-6259. GONZALES, AKA MARTINEZ, ET AL. *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 510 F. 2d 383.

No. 74-6327. DE LEON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 506 F. 2d 1054.

Assignment Order

An order of THE CHIEF JUSTICE designating and assigning Mr. Justice Clark (retired) to perform judicial duties in the United States Court of Appeals for the Seventh Circuit from October 20, 1975, to October 24, 1975, and for such additional time as may be required to complete unfinished business, pursuant to 28 U. S. C. § 294 (a), is ordered entered on the minutes of this Court, pursuant to 28 U. S. C. § 295.