

ORDERS FROM FEBRUARY 27 THROUGH  
MAY 1, 1978

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FEBRUARY 27, 1978

*Affirmed on Appeal*

No. 77-1033. BRISCOE, GOVERNOR OF TEXAS, ET AL. *v.* ESCALANTE ET AL. Affirmed on appeal from D. C. W. D. Tex. Reported below: 446 F. Supp. 560.

*Appeals Dismissed*

No. 77-957. HUTTER *v.* KORZEN, 'TREASURER OF COOK COUNTY. Appeal from App. Ct. Ill., 1st Dist., dismissed for want of substantial federal question.

No. 77-979. APPALACHIAN POWER CO. *v.* PUBLIC SERVICE COMMISSION OF WEST VIRGINIA. Appeal from Sup. Ct. App. W. Va. dismissed for want of substantial federal question.

*Miscellaneous Orders.* (See also No. 77-6018, *infra.*)

No. A-666. O'LEARY *v.* PALMER ET AL. Sup. Ct. Ohio. Application for stay, presented to MR. JUSTICE BRENNAN, and by him referred to the Court, denied.

No. D-105. IN RE DISBARMENT OF SALTZER. Disbarment entered. [For earlier order, see 431 U. S. 912.]

No. D-120. IN RE DISBARMENT OF BOZNOS. Disbarment entered. [For earlier order, see 434 U. S. 900.]

No. D-131. IN RE DISBARMENT OF GIBSON. It is ordered that Truman Kella Gibson, Jr., of Chicago, Ill., be suspended from the practice of law in this Court and that a rule issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

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No. 76-1701. *TENNESSEE VALLEY AUTHORITY v. HILL ET AL.* C. A. 6th Cir. [Certiorari granted, 434 U. S. 954.] Motions of Southeastern Legal Foundation and Pacific Legal Foundation for leave to file briefs as *amici curiae* granted. Motion of respondents for additional time for oral argument or, in the alternative, for divided argument denied.

No. 77-178. *ROBERTSON v. WEGMANN, EXECUTOR, ET AL.* C. A. 5th Cir. [Certiorari granted, 434 U. S. 983.] Motion of Lawyers' Committee for Civil Rights Under Law for leave to file a brief as *amicus curiae* granted.

No. 77-240. *ST. PAUL FIRE & MARINE INSURANCE CO. ET AL. v. BARRY ET AL.* C. A. 1st Cir. [Certiorari granted, 434 U. S. 919.] Motion of Lakeside Hospital, Inc., for leave to file a brief as *amicus curiae* granted.

No. 77-285. *CALIFORNIA ET AL. v. UNITED STATES.* C. A. 9th Cir. [Certiorari granted, 434 U. S. 984.] Motion of Charles J. Meyers for leave to file a brief as *amicus curiae* granted.

No. 77-324. *HICKLIN ET AL. v. ORBECK, COMMISSIONER, DEPARTMENT OF LABOR OF ALASKA, ET AL.* Appeal from Sup. Ct. Alaska. [Probable jurisdiction noted, 434 U. S. 919.] Motion of National Right to Work Legal Defense Foundation for leave to file a brief as *amicus curiae* granted.

No. 77-369. *FURNCO CONSTRUCTION CORP. v. WATERS ET AL.* C. A. 7th Cir. [Certiorari granted, 434 U. S. 996.] Motion of Equal Employment Advisory Council for leave to file a brief as *amicus curiae* granted.

No. 77-6017. *MONTEER v. UNITED STATES ET AL.* Motion for leave to file petition for writ of habeas corpus and/or prohibition denied.

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No. 77-452. MOBIL ALASKA PIPELINE Co. v. UNITED STATES ET AL.;

No. 77-457. EXXON PIPELINE Co. v. UNITED STATES ET AL.;

No. 77-551. BP PIPELINES, INC. v. UNITED STATES ET AL.;  
and

No. 77-602. ARCO PIPE LINE Co. v. UNITED STATES ET AL.  
C. A. 5th Cir. [Certiorari granted, 434 U. S. 964.] Motion of the Solicitor General for additional time for oral argument granted and 15 additional minutes allotted respondents for that purpose. Petitioners also allotted 15 additional minutes for oral argument. MR. JUSTICE STEWART and MR. JUSTICE POWELL took no part in the consideration or decision of this motion.

No. 77-5858. NAZARIO DE TORO v. PUERTO RICO ET AL.  
Motion for leave to file petition for writ of mandamus denied.

*Probable Jurisdiction Noted*

No. 77-388. WASHINGTON ET AL. v. CONFEDERATED BANDS AND TRIBES OF THE YAKIMA INDIAN NATION. Appeal from C. A. 9th Cir. Probable jurisdiction noted. The parties are directed to address the following issue: "Whether the partial geographic and subject matter jurisdiction exercised by the State of Washington within the Yakima Indian Reservation pursuant to Public Law 280 violates either the statutory requirements of Public Law 280 or the Equal Protection Clause of the Fourteenth Amendment." Reported below: 552 F. 2d 1332.

*Certiorari Granted*

No. 77-952. GROUP LIFE & HEALTH INSURANCE Co., AKA BLUE SHIELD OF TEXAS, ET AL. v. ROYAL DRUG Co., INC., DBA ROYAL PHARMACY OF CASTLE HILLS ET AL., ET AL. C. A. 5th Cir. Motion of Blue Shield Assn. for leave to file a brief as *amicus curiae* and certiorari granted. Reported below: 556 F. 2d 1375.



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No. 77-841. QUERN, DIRECTOR, DEPARTMENT OF PUBLIC AID OF ILLINOIS *v.* JORDAN. C. A. 7th Cir. Motion of respondent for leave to proceed *in forma pauperis* and certiorari granted. Reported below: 563 F. 2d 873.

*Certiorari Denied*

No. 77-592. SEYMOUR *v.* UNITED STATES;

No. 77-5448. BROWN ET AL. *v.* UNITED STATES; and

No. 77-5456. NEWSOME *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 555 F. 2d 407.

No. 77-668. ALABAMA ASSOCIATION OF INSURANCE AGENTS, INC., ET AL. *v.* BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM. C. A. 5th Cir. Certiorari denied. Reported below: 558 F. 2d 729.

No. 77-669. DE MATEOS, ADMINISTRATRIX *v.* TEXACO INC. ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 562 F. 2d 895.

No. 77-722. CARROLL, GOVERNOR OF KENTUCKY, ET AL. *v.* DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 561 F. 2d 1.

No. 77-786. MOORE *v.* RICHMOND, FREDERICKSBURG & POTOMAC RAILROAD. C. A. 4th Cir. Certiorari denied. Reported below: 556 F. 2d 573.

No. 77-865. POWELL *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 564 F. 2d 256.

No. 77-872. COMMITTEE OF INTERNS AND RESIDENTS *v.* NATIONAL LABOR RELATIONS BOARD ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 566 F. 2d 810.

No. 77-963. TENNESSEE *v.* ARMSTRONG. Ct. Crim. App. Tenn. Certiorari denied. Reported below: 555 S. W. 2d 870.

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No. 77-964. *IRANIAN SHIPPING LINES, S. A. v. ARYA SHIPPING LINES, S. A., ET AL.* C. A. 2d Cir. Certiorari denied.

No. 77-965. *TAMARI ET AL., DBA WAHBE TAMARI & SONS Co. v. BACHE & Co. (LEBANON) S. A. L. ET AL.* C. A. 7th Cir. Certiorari denied. Reported below: 565 F. 2d 1194.

No. 77-967. *CROWNOVER v. GLEICHMAN ET AL.* Sup. Ct. Colo. Certiorari denied. Reported below: 194 Colo. 48, 574 P. 2d 497.

No. 77-973. *FAULKNER v. BALDWIN PIANO & ORGAN Co. ET AL.* C. A. 7th Cir. Certiorari denied. Reported below: 561 F. 2d 677.

No. 77-985. *GEISINGER v. BOARD OF COUNTY COMMISSIONERS OF MIAMI COUNTY, OHIO, ET AL.* Sup. Ct. Ohio. Certiorari denied. Reported below: 52 Ohio St. 2d 51, 369 N. E. 2d 477.

No. 77-1070. *KOEHNEN v. UNITED STATES.* C. A. 7th Cir. Certiorari denied. Reported below: 567 F. 2d 393.

No. 77-1079. *LOMBARDI v. UNITED STATES.* C. A. 3d Cir. Certiorari denied. Reported below: 565 F. 2d 153.

No. 77-5466. *ROBINSON v. UNITED STATES.* C. A. 2d Cir. Certiorari denied. Reported below: 560 F. 2d 507.

No. 77-5672. *BOORD v. UNITED STATES.* C. A. 1st Cir. Certiorari denied. Reported below: 564 F. 2d 87.

No. 77-5690. *HUGHES v. SOUTH CAROLINA.* Sup. Ct. S. C. Certiorari denied.

No. 77-5750. *PHILLIPS v. WILLIAMS ET AL.* Ct. Crim. App. Okla. Certiorari denied.

No. 77-5760. *SMITH v. OHIO.* Sup. Ct. Ohio. Certiorari denied.

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No. 77-5776. *MULLINS v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 562 F. 2d 999.

No. 77-5822. *WOODS v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 560 F. 2d 660.

No. 77-5837. *ILACQUA v. UNITED STATES*. C. A. 6th Cir. Certiorari denied.

No. 77-5838. *EAGLIN v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 571 F. 2d 1069.

No. 77-5863. *TALAMAS v. UNITED STATES*. C. A. 6th Cir. Certiorari denied.

No. 77-5864. *KEHN v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 562 F. 2d 1259.

No. 77-5887. *LAING v. UNITED STATES*. C. A. 2d Cir. Certiorari denied.

No. 77-5893. *BAILEY v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 565 F. 2d 162.

No. 77-5915. *DOHERTY v. INTERNAL REVENUE SERVICE ET AL.* C. A. 7th Cir. Certiorari denied.

No. 77-5988. *JOHNSON v. HATRAC, PRISON SUPERINTENDENT*. C. A. 3d Cir. Certiorari denied. Reported below: 564 F. 2d 90.

No. 77-5997. *GARDNER v. SUPERINTENDENT, VIRGINIA STATE PENITENTIARY*. C. A. 4th Cir. Certiorari denied. Reported below: 565 F. 2d 156.

No. 77-6000. *HALEY v. FLORIDA*. Dist. Ct. App. Fla., 4th Dist. Certiorari denied. Reported below: 344 So. 2d 349.

No. 77-6006. *TYLER v. PEACH ET AL.* C. A. 8th Cir. Certiorari denied.



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No. 77-6013. *WYCHE v. WARDEN, MARYLAND PENITENTIARY*. C. A. 4th Cir. Certiorari denied. Reported below: 565 F. 2d 160.

No. 77-6015. *TOLER v. WYRICK, WARDEN*. C. A. 8th Cir. Certiorari denied. Reported below: 563 F. 2d 372.

No. 77-6028. *NEWELL ET AL. v. DAVIS, CORRECTIONS DIRECTOR, ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 563 F. 2d 123.

No. 77-6047. *SELBY v. NEW YORK*. Ct. App. N. Y. Certiorari denied.

No. 77-6058. *DOYLE v. CHESTER COUNTY WATER RESOURCES AUTHORITY*. Pa. Commw. Ct. Certiorari denied.

No. 77-6064. *BARRON ET AL. v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 564 F. 2d 95.

No. 77-6070. *SMITH v. MABRY, CORRECTION COMMISSIONER*. C. A. 8th Cir. Certiorari denied. Reported below: 564 F. 2d 249.

No. 77-6109. *SCHNITZER v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 567 F. 2d 536.

No. 77-672. *NATIONAL LABOR RELATIONS BOARD v. GRAY-GRIMES TOOL Co., INC.* C. A. 6th Cir. Certiorari denied. MR. JUSTICE BRENNAN, MR. JUSTICE WHITE, and MR. JUSTICE MARSHALL would grant certiorari. Reported below: 557 F. 2d 1233.

No. 77-695. *AMERICAN PUBLIC GAS ASSN. ET AL. v. FEDERAL ENERGY REGULATORY COMMISSION ET AL.*; and

No. 77-697. *AMERADA HESS CORP. ET AL. v. FEDERAL ENERGY REGULATORY COMMISSION*. C. A. D. C. Cir. Certiorari denied. MR. JUSTICE STEWART and MR. JUSTICE POWELL took no part in the consideration or decision of these petitions. Reported below: 186 U. S. App. D. C. 23, 567 F. 2d 1016.

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No. 77-759. WHITMAN AREA IMPROVEMENT COUNCIL ET AL. v. RESIDENT ADVISORY BOARD ET AL.;

No. 77-761. PHILADELPHIA HOUSING AUTHORITY v. RESIDENT ADVISORY BOARD OF PHILADELPHIA ET AL.;

No. 77-762. REDEVELOPMENT AUTHORITY OF THE CITY OF PHILADELPHIA v. RESIDENT ADVISORY BOARD OF PHILADELPHIA ET AL.; and

No. 77-966. CITY OF PHILADELPHIA ET AL. v. RESIDENT ADVISORY BOARD OF PHILADELPHIA ET AL. C. A. 3d Cir. Motion of Nellie Reynolds for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 564 F. 2d 126.

No. 77-764. CRISP, WARDEN, ET AL. v. BROMLEY ET AL. C. A. 10th Cir. Motion of respondents for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 561 F. 2d 1351.

No. 77-866. CALIFANO, SECRETARY OF HEALTH, EDUCATION, AND WELFARE v. WHITE. C. A. 2d Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 559 F. 2d 852.

No. 77-5653. KNAPP v. ARIZONA. Sup. Ct. Ariz. Certiorari denied. MR. JUSTICE BLACKMUN concurs in the denial of certiorari in this case on the usual understanding that it is without prejudice to petitioner's seeking relief by habeas corpus. Reported below: 114 Ariz. 531, 562 P. 2d 704.

MR. JUSTICE BRENNAN and MR. JUSTICE MARSHALL, dissenting.

Adhering to our views that the death penalty is in all circumstances cruel and unusual punishment prohibited by the Eighth and Fourteenth Amendments, *Gregg v. Georgia*, 428 U. S. 153, 227, 231 (1976), we would grant certiorari and vacate the death sentence in this case.



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No. 77-5728. *JONES v. VIRGINIA*. Sup. Ct. Va. Certiorari denied. MR. JUSTICE BRENNAN and MR. JUSTICE MARSHALL would grant certiorari.

No. 77-5735. *PICKENS, AKA COAKLEY v. ARKANSAS*. Sup. Ct. Ark. Certiorari denied. Reported below: 261 Ark. 756, 551 S. W. 2d 212.

MR. JUSTICE BRENNAN and MR. JUSTICE MARSHALL, dissenting.

Adhering to our views that the death penalty is in all circumstances cruel and unusual punishment prohibited by the Eighth and Fourteenth Amendments, *Gregg v. Georgia*, 428 U. S. 153, 227, 231 (1976), we would grant certiorari and vacate the death sentence in this case.

No. 77-5869. *CLIFT v. ALABAMA*. Sup. Ct. Ala. Certiorari denied. Reported below: 352 So. 2d 838.

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

Petitioner was indicted for murder in Alabama state court, convicted of second-degree murder after a jury trial, and sentenced to 25 years' imprisonment. Thereafter, he was brought to trial on a separate indictment charging the additional offense of robbery arising out of the same episode, over his objection that this indictment violated the Double Jeopardy Clause. He was convicted after a second trial, and sentenced to an additional term of 10 years' imprisonment. On appeal, the Alabama Court of Appeals affirmed the robbery conviction, but ordered that the robbery sentence run concurrently with the sentence imposed for the murder conviction. 352 So. 2d 836 (1976). The Supreme Court of Alabama reversed the Court of Appeals' determination as to sentencing, holding that because it found robbery and murder to be separate offenses for double jeopardy purposes, each offense could be the subject of a separate prosecution even if both crimes

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were perpetrated during the same transaction. 352 So. 2d 838 (1977).

I would grant the petition for certiorari and reverse the judgment of the Supreme Court of Alabama. I adhere to the view that the Double Jeopardy Clause of the Fifth Amendment, applied to the States through the Fourteenth Amendment, requires the prosecution in one proceeding, 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 *Thompson v. Oklahoma*, 429 U. S. 1053 (1977) (BRENNAN, J., dissenting), and cases collected therein.

No. 77-6018. *ARUNGA v. ELLIS*, CHIEF, UI DIVISION, DEPARTMENT OF EMPLOYMENT DEVELOPMENT. C. A. 9th Cir. Certiorari and/or motion for leave to file petition for writ of mandamus denied.

*Rehearing Denied*

No. 77-582. *CHASE BRASS & COPPER Co., INC. v. FRANCHISE TAX BOARD OF CALIFORNIA*, 434 U. S. 1029;

No. 77-607. *CLARK v. FLORIDA*, 434 U. S. 1013;

No. 77-766. *ALBERT v. FIRST NATIONAL BANK & TRUST COMPANY OF MARQUETTE, EXECUTOR*, 434 U. S. 1035;

No. 77-876. *WRIGHT v. UNITED STATES*, 434 U. S. 1036;

No. 77-5678. *QURAISHI v. NYQUIST, COMMISSIONER OF EDUCATION OF NEW YORK*, 434 U. S. 1019;

No. 77-5696. *TIMMINS v. GORE NEWSPAPERS Co., INC.*, 434 U. S. 1020; and

No. 77-5850. *SMILEY v. CALIFORNIA ET AL.*, 434 U. S. 1050. Petitions for rehearing denied.

No. 76-749. *PFIZER INC. ET AL. v. GOVERNMENT OF INDIA ET AL.*, 434 U. S. 308. Petition for rehearing denied. MR. JUSTICE BLACKMUN took no part in the consideration or decision of this petition.

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No. 76-1796. OTTOBONI ET AL. *v.* UNITED STATES, 434 U. S. 930. Motion for leave to file petition for rehearing denied.

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*Dismissal Under Rule 60*

No. 77-806. GULF OIL CORP. *v.* CONNECTICUT PUBLIC UTILITIES CONTROL AUTHORITY ET AL. C. A. 3d Cir. Certiorari dismissed under this Court's Rule 60. Reported below: 563 F. 2d 588.

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*Appeals Dismissed*

No. 77-1072. YEE *v.* YEE ET AL. Appeal from Sup. Ct. Hawaii dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied.

No. 77-1091. EPSTEIN *v.* CIVIL SERVICE COMMISSION ET AL. Appeal from App. Ct. Ill., 1st Dist., dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied. Reported below: 47 Ill. App. 3d 81, 361 N. E. 2d 782.

*Certiorari Granted—Vacated and Remanded*

No. 77-5742. FRAKES *v.* UNITED STATES. C. A. 6th Cir. Motion of petitioner for leave to proceed *in forma pauperis* and certiorari granted. Judgment vacated and case remanded to the United States District Court for the Western District of Kentucky with instructions to grant the Government's motion to dismiss the indictment. THE CHIEF JUSTICE, MR. JUSTICE WHITE, and MR. JUSTICE REHNQUIST dissent. Reported below: 563 F. 2d 803.

No. 77-172. MORELOCK ET AL. *v.* NCR CORP. C. A. 6th Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Lorillard v. Pons*, 434 U. S. 575 (1978). Reported below: 546 F. 2d 682.



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No. 76-6258. *WHITEHEAD v. UNITED STATES*. C. A. 4th Cir. Motion of petitioner for leave to proceed *in forma pauperis* and certiorari granted. Judgment vacated and case remanded for further consideration in light of *Simpson v. United States*, *ante*, p. 6. Reported below: 549 F. 2d 942.

*Dismissed After Certiorari Granted*

No. 77-567. *NEW YORK STATE PAROLE BOARD ET AL. v. CORALLUZZO*. C. A. 2d Cir. [Certiorari granted, 434 U. S. 996.] Motion of respondent to dismiss writ of certiorari granted and the writ is dismissed as improvidently granted. MR. JUSTICE WHITE and MR. JUSTICE REHNQUIST dissent.

*Miscellaneous Orders*

No. —. *NATIONAL CITIZENS COMMITTEE FOR BROADCASTING v. FEDERAL COMMUNICATIONS COMMISSION ET AL.* C. A. D. C. Cir. Motion of petitioner to dispense with printing petition for writ of certiorari denied.

No. A-688. *LONG ISLAND RAILROAD CO. v. ABERDEEN & ROCKFISH RAILROAD CO. ET AL.* The application for a stay of the judgment of the United States Court of Appeals for the Fifth Circuit in case No. 77-1054, presented to MR. JUSTICE POWELL, and by him referred to the Court, is granted, only insofar as the judgment requires applicant Long Island Railroad Company to keep in a separate trust fund the proceeds of the interim 12.5 per cent terminal surcharge, pending the timely filing of a petition for writ of certiorari. Should a timely petition for writ of certiorari not be filed or be denied, this stay is to terminate automatically. If the petition for writ of certiorari is granted, this stay is to remain in effect pending the judgment of this Court. In all other respects, the application for stay is denied.

MR. JUSTICE POWELL took no part in the consideration or decision of this application.

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No. 76-1200. CRIST, WARDEN, ET AL. *v.* CLINE ET AL. Appeal from C. A. 9th Cir. [Probable jurisdiction postponed, 430 U. S. 982.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* granted and 15 additional minutes allotted for that purpose.

No. 77-240. ST. PAUL FIRE & MARINE INSURANCE CO. ET AL. *v.* BARRY ET AL. C. A. 1st Cir. [Certiorari granted, 434 U. S. 919.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* granted and 15 additional minutes allotted for that purpose. Petitioners also allotted 15 additional minutes for oral argument.

No. 77-444. PENN CENTRAL TRANSPORTATION CO ET AL. *v.* NEW YORK CITY ET AL. Appeal from Ct. App. N. Y. [Probable jurisdiction noted, 434 U. S. 983.] Motions of Pacific Legal Foundation, National Trust for Historic Preservation et al., and Real Estate Board of New York, Inc., for leave to file briefs as *amici curiae* granted. Motion of the Solicitor General to participate in oral argument as *amicus curiae* granted and 15 minutes allotted for that purpose. Appellants also allotted 15 additional minutes for oral argument.

No. 77-653. SWISHER, STATE'S ATTORNEY FOR BALTIMORE CITY, ET AL. *v.* BRADY ET AL. Appeal from D. C. Md. [Probable jurisdiction noted, 434 U. S. 963.] Motion of the State Public Defender of California for leave to file a brief as *amicus curiae* granted.

No. 77-6029. PILLON *v.* UNITED STATES DISTRICT COURT FOR THE DISTRICT OF SOUTH CAROLINA ET AL. Motion for leave to file petition for writ of mandamus denied.

*Probable Jurisdiction Noted or Postponed*

No. 77-891. BEAL, SECRETARY OF WELFARE OF PENNSYLVANIA, ET AL. *v.* FRANKLIN ET AL. Appeal from D. C. E. D. Pa. Probable jurisdiction noted.

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No. 77-515. *HOLT CIVIC CLUB ET AL. v. CITY OF TUSCALOOSA ET AL.* Appeal from D. C. N. D. Ala. Further consideration of question of jurisdiction postponed to hearing of case on the merits.

*Certiorari Granted*

No. 77-920. *THOR POWER TOOL Co. v. COMMISSIONER OF INTERNAL REVENUE.* C. A. 7th Cir. Certiorari granted. Reported below: 563 F. 2d 861.

No. 77-922. *CHRYSLER CORP. v. BROWN, SECRETARY OF DEFENSE, ET AL.* C. A. 3d Cir. Certiorari granted. Reported below: 565 F. 2d 1172.

*Certiorari Denied.* (See also Nos. 77-1072 and 1091, *supra*).

No. 76-5632. *OLIVER v. UNITED STATES.* C. A. 4th Cir. Certiorari denied. Reported below: 546 F. 2d 1096.

No. 77-637. *REEVE ET AL. v. UNITED STATES.* C. A. 9th Cir. Certiorari denied. Reported below: 558 F. 2d 522.

No. 77-661. *MOSS v. UNITED STATES.* C. A. 2d Cir. Certiorari denied. Reported below: 562 F. 2d 155.

No. 77-769. *UNITED STEELWORKERS JUSTICE COMMITTEE v. UNITED STATES ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 553 F. 2d 451.

No. 77-773. *LAMONT v. UNITED STATES.* C. A. 2d Cir. Certiorari denied. Reported below: 565 F. 2d 212.

No. 77-782. *AMERICAN IRON & STEEL INSTITUTE ET AL. v. ENVIRONMENTAL PROTECTION AGENCY.* C. A. 3d Cir. Certiorari denied. Reported below: 560 F. 2d 589.

No. 77-783. *MORRISON v. REED, SECRETARY, DEPARTMENT OF CORRECTION OF NORTH CAROLINA.* C. A. 4th Cir. Certiorari denied. Reported below: 565 F. 2d 272.

No. 77-795. *WEGNER ET AL. v. UNITED STATES.* C. A. 7th Cir. Certiorari denied. Reported below: 562 F. 2d 53.



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No. 77-839. *SPEIDEL, AKA ROJAS v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 562 F. 2d 1129.

No. 77-863. *BUTHORN v. UNITED STATES*. C. A. 2d Cir. Certiorari denied.

No. 77-879. *BAILEY CO., INC. v. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION*. C. A. 6th Cir. Certiorari denied. Reported below: 563 F. 2d 439.

No. 77-906. *SCHOTT ET UX. v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 560 F. 2d 1021.

No. 77-989. *WOLF v. ILLINOIS*. App. Ct. Ill., 2d Dist. Certiorari denied. Reported below: 48 Ill. App. 3d 736, 363 N. E. 2d 402.

No. 77-1011. *PASSARELLI v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 565 F. 2d 43.

No. 77-1012. *FRIBESCO S. A. ET AL. v. MITSUI & Co. (U. S. A.), INC., ET AL.* App. Div., Sup. Ct. N. Y., 1st Jud. Dept. Certiorari denied. Reported below: 58 App. Div. 2d 513, 394 N. Y. S. 2d 832.

No. 77-1069. *KEIFFER ET AL. v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 566 F. 2d 105.

No. 77-1071. *LINFIELD v. BOARD OF HIGHER EDUCATION OF THE CITY OF NEW YORK*. Ct. App. N. Y. Certiorari denied.

No. 77-1122. *ANTHONY v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 566 F. 2d 1184.

No. 77-1125. *PERKINS v. UNITED STATES*. C. A. 6th Cir. Certiorari denied.

No. 77-5174. *MURRY v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 559 F. 2d 1222.

No. 77-5748. *SMITH v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 566 F. 2d 1186.

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No. 77-5769. *APUZZO v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 555 F. 2d 306.

No. 77-5775. *JIMINEZ-VALENCIA v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 566 F. 2d 1185.

No. 77-5784. *WOFFORD v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 562 F. 2d 582.

No. 77-5831. *LEWIS v. CHAVEZ, CORRECTIONAL SUPERINTENDENT*. C. A. 9th Cir. Certiorari denied.

No. 77-5836. *PAYTON v. CARLSON, DIRECTOR, U. S. BUREAU OF PRISONS, ET AL.* C. A. 5th Cir. Certiorari denied.

No. 77-5852. *RICARD v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 563 F. 2d 45.

No. 77-5857. *MAWYER v. CALIFANO, SECRETARY OF HEALTH, EDUCATION, AND WELFARE*. C. A. 4th Cir. Certiorari denied. Reported below: 558 F. 2d 1029.

No. 77-5865. *WALKER v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 564 F. 2d 891.

No. 77-5890. *SHANKS v. UNITED STATES*. C. A. 6th Cir. Certiorari denied.

No. 77-5923. *MORRIS, AKA HUNDLEY v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 566 F. 2d 1170.

No. 77-5927. *MASE v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 556 F. 2d 671.

No. 77-5930. *MEEKS v. GEORGIA*. Ct. App. Ga. Certiorari denied. Reported below: 142 Ga. App. 452, 236 S. E. 2d 119.

No. 77-5933. *ALVAREZ-TOSTADO v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 566 F. 2d 1184.

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No. 77-5939. *ILACQUA v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 562 F. 2d 399.

No. 77-5948. *YOUNG v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 566 F. 2d 1171.

No. 77-5962. *HARMON v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 566 F. 2d 1045.

No. 77-6024. *LEWIS ET UX. v. UNITED STATES*. Ct. Cl. Certiorari denied.

No. 77-6030. *JOHNSON v. NUNES ET AL.* C. A. 1st Cir. Certiorari denied. Reported below: 566 F. 2d 1166.

No. 77-6032. *HURD v. HURD*. Sup. Ct. Cal. Certiorari denied.

No. 77-6036. *PERSINGER v. ILLINOIS*. App. Ct. Ill., 5th Dist. Certiorari denied. Reported below: 49 Ill. App. 3d 116, 363 N. E. 2d 897.

No. 77-6044. *McCRARY v. LEFEVRE*, CORRECTIONAL SUPERINTENDENT. C. A. 2d Cir. Certiorari denied.

No. 77-6048. *JONES v. McCracken*. C. A. 10th Cir. Certiorari denied. Reported below: 562 F. 2d 22.

No. 77-6050. *HOUSTON v. EGELER*, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 77-6053. *HURT v. LORTON COMPLEX ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 566 F. 2d 1173.

No. 77-6083. *HULSE v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 566 F. 2d 1185.

No. 77-6110. *DEATON v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 563 F. 2d 777.

No. 77-6116. *MOYNAGH v. UNITED STATES*. C. A. 1st Cir. Certiorari denied. Reported below: 566 F. 2d 799.



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No. 77-6120. *MOORER v. UNITED STATES*. C. A. 6th Cir. Certiorari denied.

No. 77-6132. *PICCIRILLO v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 562 F. 2d 39.

No. 77-6145. *LYON v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 567 F. 2d 777.

No. 77-6148. *KING v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 563 F. 2d 559.

No. 77-6150. *WHITEFIELD v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 568 F. 2d 771.

No. 77-6152. *PATTON v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 568 F. 2d 774.

No. 77-6159. *KIRKLAND v. UNITED STATES*. Ct. App. D. C. Certiorari denied.

No. 77-1028. *INSURANCE COMPANY OF NORTH AMERICA v. MOSLEY ET AL.* Sup. Ct. Fla. Motion of respondent Robert Mosley for leave to proceed *in forma pauperis* granted. Motion for attorney fees denied. Certiorari denied. Reported below: 352 So. 2d 172.

No. 77-1046. *MARCO DENTAL PRODUCTS, INC. v. AUSTIN*. C. A. 9th Cir. Certiorari denied. Mr. Justice WHITE would grant certiorari. Reported below: 560 F. 2d 966.

### *Rehearing Denied*

No. 76-1334. *BORDENKIRCHER, PENITENTIARY SUPERINTENDENT v. HAYES*, 434 U. S. 357;

No. 76-6372. *QUILLOIN v. WALCOTT ET VIR*, 434 U. S. 246;

No. 77-709. *WEINBERGER v. EQUIFAX, INC.* (FORMERLY RETAIL CREDIT Co.), 434 U. S. 1035;

No. 77-5809. *TURNER v. LANDRY*, 434 U. S. 1049;

No. 77-5841. *HOLLIS v. NEW YORK*, 434 U. S. 1049; and

No. 77-5896. *CRANE v. UNITED STATES*, 434 U. S. 1039. Petitions for rehearing denied.

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No. 77-5516. *BEACHEM v. UNITED STATES ET AL.*, 434 U. S. 1007. Motion for leave to file petition for rehearing denied.

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*Rehearing Denied*

No. 77-1033. *BRISCOE, GOVERNOR OF TEXAS, ET AL. v. ESCALANTE ET AL.*, *ante*, p. 901. Petition for rehearing denied. Motion of appellees for issuance of judgment forthwith, presented to Mr. JUSTICE POWELL, and by him referred to the Court, granted.

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*Dismissal Under Rule 60*

No. 77-1110. *CHESAPEAKE & OHIO RAILWAY CO. v. ILLINOIS CENTRAL GULF RAILROAD CO.* C. A. 7th Cir. Certiorari dismissed under this Court's Rule 60. Reported below: 564 F. 2d 222.

*Appeals Dismissed*

No. 77-794. *SILVERTON v. CALIFORNIA.* Appeal from Ct. App. Cal., 2d App. Dist., dismissed for want of substantial federal question.

No. 77-987. *FORGE ET AL. v. MINNESOTA.* Appeal from Sup. Ct. Minn. dismissed for want of substantial federal question. Reported below: 262 N. W. 2d 341.

No. 77-1050. *DEKAM ET AL. v. CITY OF SOUTHFIELD ET AL.* Appeal from Ct. App. Mich. dismissed for want of substantial federal question. Reported below: 75 Mich. App. 188, 254 N. W. 2d 839.

No. 77-1130. *POTTS v. KENTUCKY.* Appeal from Ct. App. Ky. dismissed for want of substantial federal question. Reported below: 561 S. W. 2d 682.

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No. 77-6055. *SMITH v. LOUISIANA*. Appeal from Sup. Ct. La. dismissed for want of substantial federal question. Reported below: 349 So. 2d 1244.

No. 77-1056. *SUNBEAM TELEVISION CORP. ET AL. v. SHEVIN, ATTORNEY GENERAL OF FLORIDA, ET AL.* Appeal from Sup. Ct. Fla. dismissed for want of substantial federal question. MR. JUSTICE BRENNAN, MR. JUSTICE WHITE, and MR. JUSTICE BLACKMUN would note probable jurisdiction and set case for oral argument. Reported below: 351 So. 2d 723.

### *Miscellaneous Orders*

No. A-722. *MARTIN v. KANSAS*. Application for stay of mandate of the Supreme Court of Kansas, presented to MR. JUSTICE MARSHALL, and by him referred to the Court, denied.

No. A-747 (Nos. 77-1236 and 77-1237). *GENERAL ATOMIC CO. v. FELTER, JUDGE, ET AL.* Application for stay of all further proceedings in *United Nuclear Corp. v. General Atomic Co.*, in the District Court of New Mexico, Santa Fe County, presented to MR. JUSTICE WHITE, and by him referred to the Court, denied.

No. 76-1607. *SECURITIES AND EXCHANGE COMMISSION v. SLOAN*. C. A. 2d Cir. [Certiorari granted, 434 U. S. 901.] Motion of Canadian Javelin Ltd. for leave to participate in oral argument as *amicus curiae* denied.

No. 76-1701. *TENNESSEE VALLEY AUTHORITY v. HILL ET AL.* C. A. 6th Cir. [Certiorari granted, 434 U. S. 954.] Motions of Eastern Band of Cherokee Indians and East Tennessee Valley Landowners' Assn. for leave to file briefs as *amici curiae* granted.

No. 77-444. *PENN CENTRAL TRANSPORTATION CO. ET AL. v. NEW YORK CITY ET AL.* Appeal from Ct. App. N. Y. [Probable jurisdiction noted, 434 U. S. 983.] Motion of Committee to Save Grand Central Station et al. for leave to file a brief as *amici curiae* granted.



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No. 77-560. GARDNER *v.* WESTINGHOUSE BROADCASTING CO. C. A. 3d Cir. [Certiorari granted, 434 U. S. 984.] Motion of Equal Employment Advisory Council for leave to file a brief as *amicus curiae* granted.

No. 77-6259. SEAGROVES *v.* TENNESSEE. Motion for leave to file petition for writ of habeas corpus denied.

No. 77-1094. GALANTE *v.* ATTORNEY GENERAL OF THE UNITED STATES ET AL. Motion for leave to file petition for writ of habeas corpus denied. MR. JUSTICE MARSHALL took no part in the consideration or decision of this motion.

*Probable Jurisdiction Noted*

No. 77-120. DOUGHERTY COUNTY, GEORGIA, BOARD OF EDUCATION, ET AL. *v.* WHITE. Appeal from D. C. M. D. Ga. Probable jurisdiction noted. Reported below: 431 F. Supp. 919.

No. 77-803. BARRY, CHAIRMAN, RACING AND WAGERING BOARD OF NEW YORK, ET AL. *v.* BARCHI. Appeal from D. C. S. D. N. Y. Probable jurisdiction noted. Reported below: 436 F. Supp. 775.

No. 77-1115. LALLI *v.* LALLI, ADMINISTRATRIX, ET AL. Appeal from Ct. App. N. Y. Probable jurisdiction noted. Reported below: 43 N. Y. 2d 65, 371 N. E. 2d 481.

No. 77-991. CALIFANO, SECRETARY OF HEALTH, EDUCATION, AND WELFARE *v.* AZNAVORIAN; and

No. 77-5999. AZNAVORIAN *v.* CALIFANO, SECRETARY OF HEALTH, EDUCATION, AND WELFARE. Appeals from D. C. S. D. Cal. Motions of Grace Aznavorian for leave to proceed *in forma pauperis* granted. Probable jurisdiction noted, cases consolidated, and a total of one hour allotted for oral argument. Reported below: 440 F. Supp. 788.

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*Certiorari Granted*

No. 77-1000. CHICAGO, ROCK ISLAND & PACIFIC RAILROAD Co. v. REDIKER. Ct. App. Kan. Certiorari granted. Reported below: 1 Kan. App. 2d 581, 571 P. 2d 70.

No. 77-1016. UNITED CALIFORNIA BANK ET AL., Co-EXECUTORS v. UNITED STATES. C. A. 9th Cir. Certiorari granted. Reported below: 563 F. 2d 400.

No. 77-1105. HERBERT v. LANDO ET AL. C. A. 2d Cir. Certiorari granted. Reported below: 568 F. 2d 974.

No. 77-654. GREAT ATLANTIC & PACIFIC TEA CO., INC. v. FEDERAL TRADE COMMISSION. C. A. 2d Cir. Certiorari granted. MR. JUSTICE STEVENS took no part in the consideration or decision of this petition. Reported below: 557 F. 2d 971.

No. 77-5781. RAKAS ET AL. v. ILLINOIS. App. Ct. Ill., 3d Dist. Motion of petitioners for leave to proceed *in forma pauperis* and certiorari granted. Reported below: 46 Ill. App. 3d 569, 360 N. E. 2d 1252.

*Certiorari Denied*

No. 77-603. MARTORANO v. UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 557 F. 2d 1 and 561 F. 2d 406.

No. 77-713. WEST v. UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 562 F. 2d 375.

No. 77-771. SCHURGIN v. UNITED STATES; and

No. 77-5755. RIMAR v. UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 558 F. 2d 1271.

No. 77-780. CORNFELD, DBA GRAYHALL, INC. v. UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 563 F. 2d 967.

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No. 77-809. *JOE v. VIRGINIA*. Sup. Ct. Va. Certiorari denied.

No. 77-818. *COMMERCIAL NATIONAL BANK OF DALLAS v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 559 F. 2d 1215.

No. 77-846. *GRAVES ET AL. v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 556 F. 2d 1319.

No. 77-859. *G. M. LEASING CORP. ET AL. v. UNITED STATES ET AL.* C. A. 10th Cir. Certiorari denied. Reported below: 560 F. 2d 1011.

No. 77-868. *REA EXPRESS, INC. v. UNITED STATES ET AL.*; and

No. 77-869. *BROTHERHOOD OF RAILWAY, AIRLINE & STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS & STATION EMPLOYEES v. UNITED STATES ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 568 F. 2d 940.

No. 77-886. *MARTORELLA ET AL. v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 565 F. 2d 153.

No. 77-889. *SMITH v. VIRGINIA*. Sup. Ct. Va. Certiorari denied.

No. 77-894. *PIERCE v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 561 F. 2d 735.

No. 77-928. *UNITED STEELWORKERS OF AMERICA, AFL-CIO-CLC, ET AL. v. NATIONAL REJECTORS INDUSTRIES*. C. A. 8th Cir. Certiorari denied. Reported below: 562 F. 2d 1069.

No. 77-938. *ANGELINI ET AL. v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 565 F. 2d 469.

No. 77-944. *FREY v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 558 F. 2d 270.



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No. 77-953. *BUFFALO RIVER CONSERVATION & RECREATION COUNCIL ET AL. v. NATIONAL PARK SERVICE ET AL.* C. A. 8th Cir. Certiorari denied. Reported below: 558 F. 2d 1342.

No. 77-990. *DiCARLO ET AL. v. UNITED STATES.* C. A. 1st Cir. Certiorari denied. Reported below: 565 F. 2d 802.

No. 77-994. *MORGAN v. UNITED STATES.* C. A. 9th Cir. Certiorari denied. Reported below: 565 F. 2d 1065.

No. 77-995. *GORDON ET UX. v. COMMISSIONER OF INTERNAL REVENUE.* C. A. 9th Cir. Certiorari denied. Reported below: 572 F. 2d 193.

No. 77-1017. *RHODES, GOVERNOR OF OHIO v. KRAUSE ET AL.;*

No. 77-1018. *DEL CORSO, ADJUTANT GENERAL OF OHIO, ET AL. v. KRAUSE ET AL.;* and

No. 77-1022. *KRAUSE ET AL. v. RHODES, GOVERNOR OF OHIO, et al.* C. A. 6th Cir. Certiorari denied. Reported below: 570 F. 2d 563.

No. 77-1024. *FURNESS WITHY & Co., LTD., ET AL. v. BUNGE CORP.* C. A. 5th Cir. Certiorari denied. Reported below: 558 F. 2d 790.

No. 77-1025. *HESS v. UPPER MISSISSIPPI TOWING CORP. ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 559 F. 2d 1030.

No. 77-1030. *OLINKRAFT, INC. v. LOUISIANA, THROUGH THE DEPARTMENT OF HIGHWAYS OF LOUISIANA.* Sup. Ct. La. Certiorari denied. Reported below: 350 So. 2d 865.

No. 77-1031. *BOUDREAUX v. MISSISSIPPI.* Sup. Ct. Miss. Certiorari denied. Reported below: 350 So. 2d 688.

No. 77-1040. *HUGHES AIRCRAFT CO. v. BELL TELEPHONE LABORATORIES, INC.* C. A. 3d Cir. Certiorari denied. Reported below: 564 F. 2d 654.

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No. 77-1044. CARAVEL OFFICE BUILDING CO. ET AL. *v.* BOGLEY HARTING MAHONEY & LEIBLING, INC. Sup. Ct. Va. Certiorari denied.

No. 77-1045. BERGEN COUNTY ASSOCIATES ET AL. *v.* BOROUGH OF EAST RUTHERFORD ET AL. Super. Ct. N. J. Certiorari denied.

No. 77-1047. SHERARD *v.* GINSBERG ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 559 F. 2d 1221.

No. 77-1049. ST. LOUIS UNION TRUST CO. ET AL. *v.* MERRILL LYNCH, PIERCE, FENNER & SMITH, INC., ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 562 F. 2d 1040.

No. 77-1052. BUTKER *v.* ALCOHOLIC BEVERAGE CONTROL APPEALS BOARD. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 77-1053. NUTTER *v.* TORREZ, DBA PERFECTO PLUMBING SEWER SERVICE, INC., ET AL. Sup. Ct. Kan. Certiorari denied. Reported below: 222 Kan. 749.

No. 77-1054. TRACHTMAN *v.* ANKER, CHANCELLOR, NEW YORK CITY PUBLIC SCHOOLS, ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 563 F. 2d 512.

No. 77-1055. LUNSFORD *v.* INVESTORS DIVERSIFIED SERVICES, INC., ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 567 F. 2d 393.

No. 77-1090. FOUNDING CHURCH OF SCIENTOLOGY *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 187 U. S. App. D. C. 297, 572 F. 2d 321.

No. 77-1142. ROBLES *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 563 F. 2d 1308.

No. 77-1151. JACKSON ET AL. *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 567 F. 2d 393.

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No. 77-1158. *ALLEN v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 566 F. 2d 1193.

No. 77-1159. *HALL v. UNITED STATES*. C. A. D. C. Cir. Certiorari denied.

No. 77-1167. *MAGEEAN v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 568 F. 2d 779.

No. 77-1168. *CONSTANTINE v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 567 F. 2d 266.

No. 77-5511. *JONES v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 563 F. 2d 569.

No. 77-5556. *BAKER v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 562 F. 2d 43.

No. 77-5733. *MORGAN v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 559 F. 2d 397.

No. 77-5777. *NEYRA v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 565 F. 2d 153.

No. 77-5780. *WEST v. BROWN, SECRETARY OF DEFENSE, ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 558 F. 2d 757.

No. 77-5785. *OAKES v. UNITED STATES*. C. A. 10th Cir. Certiorari denied. Reported below: 564 F. 2d 384.

No. 77-5786. *BOBISINK v. UNITED STATES*. C. A. 1st Cir. Certiorari denied. Reported below: 562 F. 2d 106.

No. 77-5814. *FISHER v. UNITED STATES*. C. A. 6th Cir. Certiorari denied.

No. 77-5817. *HARRINGTON v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 566 F. 2d 1185.

No. 77-5820. *BENEL v. UNITED STATES*. C. A. 1st Cir. Certiorari denied. Reported below: 566 F. 2d 1166.



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No. 77-5839. *LONGORIA v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 566 F. 2d 1185.

No. 77-5845. *ZUBER v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 566 F. 2d 1184.

No. 77-5848. *DIXON v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 562 F. 2d 1138.

No. 77-5854. *SPEIR ET AL. v. UNITED STATES*. C. A. 10th Cir. Certiorari denied. Reported below: 564 F. 2d 934.

No. 77-5889. *LIVINGSTON ET AL. v. OKLAHOMA*. Ct. Crim. App. Okla. Certiorari denied.

No. 77-5892. *SHANNON v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 564 F. 2d 90.

No. 77-5936. *PALANACKI v. UNITED STATES*. C. A. 6th Cir. Certiorari denied.

No. 77-5940. *SMOLSKY v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 565 F. 2d 153.

No. 77-5949. *JARDAN v. HUNTER*, U. S. DISTRICT JUDGE. C. A. 8th Cir. Certiorari denied.

No. 77-5955. *MCDONNELL v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 565 F. 2d 153.

No. 77-5965. *COX v. UNITED STATES*. C. A. 10th Cir. Certiorari denied. Reported below: 567 F. 2d 930.

No. 77-5975. *HORNG v. IMMIGRATION AND NATURALIZATION SERVICE*. C. A. 2d Cir. Certiorari denied.

No. 77-5976. *EMLER v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 570 F. 2d 584.

No. 77-5994. *MASEL v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 563 F. 2d 322.

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No. 77-6002. *SKIDMORE v. NATIONAL RAILROAD ADJUSTMENT BOARD, THIRD DIVISION*. C. A. 3d Cir. Certiorari denied. Reported below: 565 F. 2d 153.

No. 77-6003. *TYLER v. MISSOURI*. C. A. 8th Cir. Certiorari denied. Reported below: 566 F. 2d 1179.

No. 77-6009. *COONE ET UX. v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 565 F. 2d 1214.

No. 77-6020. *ELLIS v. UNITED STATES*. C. A. 10th Cir. Certiorari denied.

No. 77-6022. *HARRISON v. MORRIS, CHIEF JUDGE, U. S. DISTRICT COURT*. C. A. 10th Cir. Certiorari denied.

No. 77-6033. *CALDWELL v. UNITED STATES*. C. A. 7th Cir. Certiorari denied.

No. 77-6049. *DORAN v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 564 F. 2d 1176.

No. 77-6063. *OLDEN v. COMMUNITY RELEASE BOARD*. C. A. 9th Cir. Certiorari denied.

No. 77-6065. *RICKS v. MARYLAND*. Ct. Sp. App. Md. Certiorari denied.

No. 77-6069. *LADD v. ALASKA*. Sup. Ct. Alaska. Certiorari denied. Reported below: 568 P. 2d 960.

No. 77-6072. *MYERS v. ARIZONA*. Sup. Ct. Ariz. Certiorari denied. Reported below: 117 Ariz. 79, 570 P. 2d 1252.

No. 77-6074. *TRANTINO v. HATRAC, PRISON SUPERINTENDENT*. C. A. 3d Cir. Certiorari denied. Reported below: 563 F. 2d 86.

No. 77-6077. *CLARK v. MALLEY, WARDEN, ET AL.* C. A. 10th Cir. Certiorari denied.

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No. 77-6080. *BILLINGSLEY ET AL. v. SEIBELS, MAYOR OF BIRMINGHAM, ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 556 F. 2d 276.

No. 77-6081. *WILLIAMS v. LEEKE, CORRECTIONS DIRECTOR, ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 568 F. 2d 775.

No. 77-6082. *TURNER v. TEXAS.* Sup. Ct. Tex. Certiorari denied. Reported below: 556 S. W. 2d 563.

No. 77-6085. *MOORE ET AL. v. COWAN, WARDEN.* C. A. 6th Cir. Certiorari denied. Reported below: 560 F. 2d 1298.

No. 77-6089. *TYLER v. GOINS, SHERIFF.* C. A. 8th Cir. Certiorari denied.

No. 77-6091. *STEVENSON v. YOUNG, ACTING PENITENTIARY SUPERINTENDENT.* C. A. 4th Cir. Certiorari denied. Reported below: 559 F. 2d 1213.

No. 77-6093. *RAITPORT v. GENERAL ELECTRIC CO. ET AL.* C. A. 2d Cir. Certiorari denied.

No. 77-6096. *WALLOE v. CUYLER, CORRECTIONAL SUPERINTENDENT.* C. A. 3d Cir. Certiorari denied. Reported below: 566 F. 2d 1171.

No. 77-6099. *CONOVER v. CALIFORNIA.* Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 77-6102. *ROCCA v. GROOMES, WARDEN, ET AL.* C. A. 3d Cir. Certiorari denied. Reported below: 566 F. 2d 1171.

No. 77-6108. *SAYLES v. HAYWOOD, JUDGE, ET AL.* Ct. App. D. C. Certiorari denied.

No. 77-6112. *ANDERSON ET UX. v. WATERTOWN SAVINGS BANK ET AL.* C. A. 1st Cir. Certiorari denied. Reported below: 566 F. 2d 1166.

No. 77-6113. *HEFLIN v. OREGON.* Ct. App. Ore. Certiorari denied.



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No. 77-6114. *REED v. OWEN ET AL.* Sup. Ct. Colo. Certiorari denied. Reported below: See — Colo. —, 570 P. 2d 26.

No. 77-6115. *LAWARY v. UNITED STATES.* C. A. 10th Cir. Certiorari denied.

No. 77-6118. *SMYZER v. DOTSON, SUPERINTENDENT, CAREER DEVELOPMENT CENTER OF KENTUCKY.* C. A. 6th Cir. Certiorari denied.

No. 77-6121. *O'NEILL v. CALIFORNIA.* App. Dept., Super. Ct. Cal., County of Alameda. Certiorari denied.

No. 77-6122. *MARSH v. CUPP, WARDEN.* C. A. 9th Cir. Certiorari denied.

No. 77-6123. *LOWE v. VIRGINIA.* Sup. Ct. Va. Certiorari denied. Reported below: 218 Va. 670, 239 S. E. 2d 112.

No. 77-6124. *LAWRENCE ET AL. v. UNITED STATES.* C. A. 4th Cir. Certiorari denied. Reported below: 565 F. 2d 159.

No. 77-6127. *NOONE v. SZORADI ET AL.* Ct. App. D. C. Certiorari denied.

No. 77-6128. *RICHARDSON v. TEXAS.* Ct. Crim. App. Tex. Certiorari denied. Reported below: 555 S. W. 2d 134.

No. 77-6129. *RILEY v. FLORIDA.* Dist. Ct. App. Fla., 2d Dist. Certiorari denied. Reported below: 352 So. 2d 180.

No. 77-6133. *CARR v. DICK ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 559 F. 2d 27.

No. 77-6136. *CHRISTIAN v. PERINI, PENITENTIARY SUPERINTENDENT.* C. A. 6th Cir. Certiorari denied.

No. 77-6139. *CRAWFORD v. KANSAS.* Sup. Ct. Kan. Certiorari denied. Reported below: 223 Kan. 127, 573 P. 2d 982.

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No. 77-6143. *JENKINS v. WASHINGTON POST CO. ET AL.* C. A. D. C. Cir. Certiorari denied.

No. 77-6146. *RAUPP v. UNITED STATES.* C. A. 10th Cir. Certiorari denied.

No. 77-6151. *CAMPBELL v. INDIANA.* Ct. App. Ind. Certiorari denied.

No. 77-6164. *MILLER v. UNITED STATES.* C. A. 1st Cir. Certiorari denied. Reported below: 564 F. 2d 103.

No. 77-6172. *LIEBERMAN v. UNITED STATES.* C. A. 5th Cir. Certiorari denied. Reported below: 567 F. 2d 389.

No. 77-6174. *BROWN v. UNITED STATES.* C. A. 4th Cir. Certiorari denied. Reported below: 565 F. 2d 159.

No. 77-6175. *MARSHALL v. UNITED STATES.* Ct. Cl. Certiorari denied. Reported below: 215 Ct. Cl. 969, 566 F. 2d 1191.

No. 77-6176. *ADAMS v. UNITED STATES.* C. A. 7th Cir. Certiorari denied. Reported below: 567 F. 2d 391.

No. 77-6181. *LIPSCOMB v. UNITED STATES.* C. A. 6th Cir. Certiorari denied.

No. 77-6186. *McELROY v. WILSON ET AL.* Ct. App. Ga. Certiorari denied. Reported below: 143 Ga. App. 893, 240 S. E. 2d 155.

No. 77-6187. *BASS, AKA JOHNSON v. UNITED STATES.* C. A. 3d Cir. Certiorari denied. Reported below: 568 F. 2d 770.

No. 77-6188. *BERKLEY v. UNITED STATES.* C. A. 3d Cir. Certiorari denied. Reported below: 568 F. 2d 770.

No. 77-6196. *SCRUGGS v. UNITED STATES.* C. A. 7th Cir. Certiorari denied. Reported below: 570 F. 2d 349.

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No. 77-6200. VAN BUREN *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 568 F. 2d 607.

No. 77-6205. BROWN *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 77-6206. LOWE *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 569 F. 2d 1113.

No. 77-6246. SUMLIN *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 567 F. 2d 684.

No. 76-6204. BONNER *v.* COUGHLIN ET AL. C. A. 7th Cir. Certiorari denied. MR. JUSTICE STEVENS took no part in the consideration or decision of this petition: Reported below: 545 F. 2d 565.

No. 77-1020. WINOKUR ET AL. *v.* BELL FEDERAL SAVINGS & LOAN ASSN. ET AL. C. A. 7th Cir. Certiorari denied. MR. JUSTICE STEVENS took no part in the consideration or decision of this petition. Reported below: 560 F. 2d 271.

No. 77-121. WALKER, GOVERNOR OF ILLINOIS, ET AL. *v.* LITTLE. C. A. 7th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 552 F. 2d 193.

No. 77-732. MICHIGAN *v.* HAMPTON. Ct. App. Mich. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied.

No. 77-743. ROWE, CORRECTIONS DIRECTOR, ET AL. *v.* FERIS. C. A. 7th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 551 F. 2d 185.

No. 77-986. BLACK, REFORMATORY SUPERINTENDENT *v.* NIEMEYER ET AL. C. A. 6th Cir. Motion of respondents for leave to proceed *in forma pauperis* granted. Certiorari denied.



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No. 77-992. *RAINES, SECRETARY OF CORRECTIONS, ET AL. v. WRIGHT ET AL.* Ct. App. Kan. Motion of respondents for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 1 Kan. App. 2d 494, 571 P. 2d 26.

No. 77-691. *SUPREME COURT OF ILLINOIS ET AL. v. KTSANES.* C. A. 7th Cir. Certiorari denied. MR. JUSTICE BLACKMUN and MR. JUSTICE POWELL would grant certiorari. Reported below: 552 F. 2d 740 and 560 F. 2d 790.

No. 77-714. *DALEY v. UNITED STATES.* C. A. 2d Cir. Certiorari denied. MR. JUSTICE WHITE would grant certiorari. Reported below: 564 F. 2d 645.

No. 77-733. *MICHIGAN v. ALLENSWORTH.* Sup. Ct. Mich. Certiorari denied, it appearing that the judgment below rests upon adequate state grounds. Reported below: 401 Mich. 67, 257 N. W. 2d 81.

No. 77-770. *AKIN v. UNITED STATES.* C. A. 7th Cir. Application for bail, presented to MR. JUSTICE MARSHALL, and by him referred to the Court, denied. Certiorari denied. Reported below: 562 F. 2d 459.

No. 77-785. *CONSUMERS UNION OF THE UNITED STATES, INC. v. COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS ET AL.* C. A. D. C. Cir. Certiorari denied. MR. JUSTICE WHITE and MR. JUSTICE POWELL would grant certiorari. Reported below: 182 U. S. App. D. C. 423, 561 F. 2d 872.

No. 77-887. *SURLES v. WIRTH.* C. A. 4th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. MR. JUSTICE BLACKMUN would grant certiorari. Reported below: 562 F. 2d 319.

No. 77-1048. *CANON v. MASSACHUSETTS.* Sup. Jud. Ct. Mass. Certiorari denied. MR. JUSTICE STEWART would grant certiorari. Reported below: 373 Mass. 494, 368 N. E. 2d 1181.

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No. 77-1060. *CONDIT ET AL. v. UNITED AIR LINES, INC.* C. A. 4th Cir. Certiorari denied. MR. JUSTICE STEWART would grant certiorari. Reported below: 558 F. 2d 1176.

No. 77-1057. *YUHAS ET AL. v. LIBBEY-OWENS-FORD CO.* C. A. 7th Cir. Certiorari denied. MR. JUSTICE BRENNAN and MR. JUSTICE STEWART would grant certiorari. Reported below: 562 F. 2d 496.

No. 77-1059. *BOSSARD, ADMINISTRATRIX, ET AL. v. EXXON CORP.* C. A. 5th Cir. Certiorari denied. MR. JUSTICE POWELL took no part in the consideration or decision of this petition. Reported below: 559 F. 2d 1040.

No. 77-1083. *SIMPSON v. O'NEAL*. Sup. Ct. Miss. Certiorari denied. MR. JUSTICE BRENNAN and MR. JUSTICE MARSHALL would grant certiorari. Reported below: 350 So. 2d 998.

No. 77-5757. *JARVIS v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 560 F. 2d 494.

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

In denying certiorari in this case, the Court allows the Second Circuit's "but for" corollary to the exclusionary rule to pass unreviewed, at least for the present. As applied in this case, the Second Circuit rule allows into evidence the fruits of an arrest involving serious constitutional questions, because the court below could envision a set of circumstances in which the arrest might have been carried out constitutionally.

Petitioner was arrested on April 20, 1976, on the authority of a "John Doe" bench warrant. The arresting agents broke down the door of petitioner's home and arrested him in his bed. The trial court approved the arrest on the basis of extrinsic evidence which supplemented the nameless and descriptionless warrant. However, the Second Circuit found the "John Doe" warrant to be invalid, and went on to consider whether the

arrest might otherwise be defended under 18 U. S. C. § 3052, which grants FBI agents authority to make felony arrests based on reasonable suspicion. Observing that *United States v. Watson*, 423 U. S. 411 (1976), left unresolved the constitutionality of probable-cause arrests pursuant to statutory authority effected in a private home without a warrant, the Second Circuit concluded that the facts of this case raised "serious question whether the forcible entry into Jarvis' home without a valid warrant and in the absence of exigent circumstances meets the requirement of the statute or fourth amendment standards of reasonableness." 560 F. 2d 494, 498 (CA2 1977).

Nevertheless, the Second Circuit affirmed the admissibility of photographs, fingerprints, and identifications resulting therefrom, all of which followed petitioner's arrest. Its reasoning was that the agents *could have* legally arrested petitioner on probable cause as he emerged from his home, and, had they done so, all the evidence complained of would then have materialized anyway. "The illegal arrest thus was not a 'but for' cause for the introduction of the evidence appellant seeks to suppress." *Id.*, at 498-499.

This "but for" test presents a substantial question for the proper enforcement of the exclusionary rule. Its origin is dubious,<sup>1</sup> and its use has not been explicitly sanctioned outside of the Second Circuit.<sup>2</sup> Most importantly, it sanctions a *post*

<sup>1</sup> *United States v. Galante*, 547 F. 2d 733 (CA2 1976), which the Second Circuit cites as supporting the "but for" test, engaged in speculation in a fashion similar to the court's action in this case, but it also based the holding of admissibility on the interruption of the chain connecting illegal arrest and seizure of evidence by an independent act of the suspect. *Id.*, at 741. In *United States v. Edmons*, 432 F. 2d 577 (CA2 1970), also relied on by the Solicitor General in opposing this petition, the Second Circuit excluded the fruits of "flagrantly illegal arrests," while reserving the question of exclusion after "an arrest made in good faith" but lacking probable cause. *Id.*, at 584.

<sup>2</sup> The Solicitor General relies on only one Circuit case outside of the Second Circuit, *Sutton v. United States*, 267 F. 2d 271 (CA4 1959). The



*hoc* hypothesizing by a court as to what the conditions for an arrest or a search might have been. If a court is satisfied that the Constitution need not have been violated in the conduct of a particular arrest, then, under this rule, evidence derived from the arrest, which in fact violated the Constitution, may be admitted. In short, the exclusionary rule is suspended when constitutional infringements are gratuitous.

The "but for" rule is not a mere application or extension of our cases sustaining the admissibility of evidence arguably the product of a prior constitutional breach. In *Wong Sun v. United States*, 371 U. S. 471 (1963), this Court sanctioned the use of evidence possibly stemming from an illegal arrest, where the "connection between the arrest and the [evidence] had 'become so attenuated as to dissipate the taint,'" *id.*, at 491, citing *Nardone v. United States*, 308 U. S. 338, 341 (1939). In *Brown v. Illinois*, 422 U. S. 590 (1975), we recently reaffirmed that "[i]n order for the causal chain, between the illegal arrest and the statements made subsequent thereto, to be broken, *Wong Sun* requires . . . that the statement . . . be 'sufficiently an act of free will to purge the primary taint.'" *Id.*, at 602. In both cases it was recognized that evidence which would not have arisen "but for" an illegal arrest might still be admitted if, under the facts *as they actually developed*, a break in the chain occurred. But in this case, the Government does not argue that an act of the petitioner's free will intervened to break the causality between arrest and identification. Rather, this case deals in suppositions of how the illegality of the arrest might have been avoided.

The primary rationale for the exclusionary rule is to deter official misconduct. *United States v. Calandra*, 414 U. S. 338,

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defendant there sought to suppress *all* evidence in order to punish the Government for an unreasonably long prearrest delay. The absence of any causal link between the right infringement and the evidence sought to be suppressed clearly distinguishes *Sutton* from the present case and from the discussion of "but for" causation generally.

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347-348 (1974). Evidence that comes to light after official misconduct but not because of it may be introduced. No deterrent purpose is served by excluding it. The Second Circuit rule poses the problem of evidence which comes to light because of official misconduct, but which might well have arisen anyway. It makes the exclusion decision turn not on what events transpired but on what might have transpired. It makes courts not factfinders but fact predictors. As a deterrent, it removes the exclusion sanction from that police misconduct which is gratuitous and avoidable, precisely the type of behavior most in need of deterrence. I believe this Court should give plenary consideration to the interpretation the Second Circuit has given to the exclusionary rule this Court originally fashioned.

I dissent from the denial of certiorari.

No. 77-5891. *MANION v. ILLINOIS*. Sup. Ct. Ill. Certiorari denied. MR. JUSTICE BLACKMUN would grant certiorari. Reported below: 67 Ill. 2d 564, 367 N. E. 2d 1313.

No. 77-6057. *BOWDEN v. GEORGIA*; and

No. 77-6107. *MITCHELL v. HOPPER, WARDEN*. Sup. Ct. Ga. Certiorari denied. Reported below: No. 77-6057, 239 Ga. 821, 238 S. E. 2d 905; No. 77-6107, 239 Ga. 781, 239 S. E. 2d 2.

MR. JUSTICE BRENNAN and MR. JUSTICE MARSHALL, dissenting.

Adhering to our views that the death penalty is in all circumstances cruel and unusual punishment prohibited by the Eighth and Fourteenth Amendments, *Gregg v. Georgia*, 428 U. S. 153, 227, 231 (1976), we would grant certiorari and vacate the death sentences in these cases.

### *Rehearing Denied*

No. 76-5815. *ZANNIS v. UNITED STATES*, 430 U. S. 934. Second motion for leave to file petition for rehearing denied.

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No. 77-219. *PLUMLEE v. UNITED STATES*, 434 U. S. 1040;  
No. 77-801. *FOWLER v. MARYLAND STATE BOARD OF LAW EXAMINERS*, 434 U. S. 1043; and

No. 77-5960. *ROOTS v. WAINWRIGHT, SECRETARY, DEPARTMENT OF OFFENDER REHABILITATION OF FLORIDA*, 434 U. S. 1059. Petitions for rehearing denied.

No. 72-1679. *HACKETT, DIRECTOR, DEPARTMENT OF EMPLOYMENT SECURITY OF RHODE ISLAND, ET AL. v. GRINNELL CORP.*, 414 U. S. 879;

No. 76-6983. *KEEFER v. PENNSYLVANIA*, 434 U. S. 1009; and

No. 77-5676. *BEARD v. ESTELLE, CORRECTIONS DIRECTOR*, 434 U. S. 1019. Motions for leave to file petitions for rehearing denied.

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*Miscellaneous Order*

No. A-807. *BROWN ET AL. v. THOMSON, GOVERNOR OF NEW HAMPSHIRE*. Application for stay of judgment of the United States Court of Appeals for the First Circuit, presented to Mr. JUSTICE BRENNAN, and by him referred to the Court, granted pending timely filing and disposition of a petition for writ of certiorari in this Court.

Should the petition for a writ of certiorari not be timely filed or denied, this stay is to terminate automatically. In the event the petition for a writ of certiorari is granted, this stay is to remain in effect pending issuance of the judgment of this Court.

THE CHIEF JUSTICE dissenting.

I would not disturb the order of the United States Court of Appeals for the First Circuit. Moreover, the Attorney General of New Hampshire having this day personally represented to the Clerk of this Court that the proclamation of March 21,



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1978, has been superseded by a new proclamation dated March 24, 1978, filed today, the application referred to the Court appears to be moot, and I therefore dissent from the action of the Court and would reinstate the order of the Court of Appeals.

MR. JUSTICE STEWART, MR. JUSTICE POWELL, and MR. JUSTICE REHNQUIST, dissenting.

As we would not disturb the order of the Court of Appeals of the First Circuit, we dissent from the order of this Court.

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*Appeals Dismissed*

No. 77-1100. ILLINOIS STATE BOARD OF ELECTIONS *v.* SANGMEISTER ET AL. Appeal from C. A. 7th Cir. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied. Reported below: 565 F. 2d 460.

No. 77-6162. ADAMS *v.* MULDER ET AL. Appeal from C. A. 5th Cir. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied. Reported below: 567 F. 2d 388.

No. 77-5919. RICHARDSON ET AL., EXECUTORS *v.* BLUMEN-THAL, SECRETARY OF THE TREASURY, ET AL. Appeal from C. A. 2d Cir. dismissed for failure to file notice of appeal within the time provided by 28 U. S. C. § 2101 (a) and this Court's Rule 11. Reported below: 560 F. 2d 500.

*Miscellaneous Orders*

No. A-739 (77-6178). GARRETT *v.* UNITED STATES. C. A. 9th Cir. Application for stay, presented to MR. JUSTICE MARSHALL, and by him referred to the Court, denied.

No. A-754 (77-1293). PETERSON *v.* UNITED STATES. C. A. 7th Cir. Application for stay, presented to MR. JUSTICE MARSHALL, and by him referred to the Court, denied.

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No. A-791. *FUND OF FUNDS, LTD., ET AL. v. ARTHUR ANDERSEN & CO. ET AL.* C. A. 2d Cir. Application for extension of time to file petition for writ of certiorari, presented to MR. JUSTICE BRENNAN, and by him referred to the Court, denied.

No. 54, Orig. *UNITED STATES v. FLORIDA ET AL.* Special Master's Accounting of Expense Funds is accepted. It is ordered that the Special Master be discharged. [For earlier order herein, see *e. g.*, 430 U. S. 140.]

No. 76-1114. *CALIFORNIA ET AL. v. SOUTHLAND ROYALTY Co. ET AL.*;

No. 76-1133. *EL PASO NATURAL GAS Co. v. SOUTHLAND ROYALTY Co. ET AL.*; and

No. 76-1587. *FEDERAL ENERGY REGULATORY COMMISSION v. SOUTHLAND ROYALTY Co. ET AL.* C. A. 5th Cir. [Certiorari granted *sub nom. Federal Power Comm'n v. Southland Royalty Co.*, 433 U. S. 907.] These cases restored to calendar for reargument. MR. JUSTICE STEWART and MR. JUSTICE POWELL took no part in the consideration or decision of this order.

No. 77-152. *BETH ISRAEL HOSPITAL v. NATIONAL LABOR RELATIONS BOARD.* C. A. 1st Cir. [Certiorari granted, 434 U. S. 1033.] Motion of Massachusetts Hospital Workers Union, Local 880, for leave to intervene granted.

No. 77-369. *FURNCO CONSTRUCTION CORP. v. WATERS ET AL.* C. A. 7th Cir. [Certiorari granted, 434 U. S. 996.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* denied.

No. 77-510. *UNITED STATES v. NEW MEXICO.* Sup. Ct. N. M. [Certiorari granted, 434 U. S. 1008.] Motion of National Wildlife Federation et al. to file a brief as *amici curiae* denied.

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No. 77-575. JOHN ET AL. *v.* MISSISSIPPI; and

No. 77-836. UNITED STATES *v.* JOHN ET AL. C. A. 5th Cir. [Probable jurisdiction postponed, 434 U. S. 1032.] Joint motion for additional time for oral argument granted and 30 additional minutes allotted for that purpose.

No. 77-1098. BELL, SECURITIES COMMISSIONER OF ARKANSAS *v.* INTERNATIONAL TRADING, LTD., ET AL. Sup. Ct. Ark. The Solicitor General is invited to file a brief in this case expressing the views of the United States.

No. 77-1289. LUTHERAN HOSPITAL OF MILWAUKEE, INC. *v.* NATIONAL LABOR RELATIONS BOARD. C. A. 7th Cir. Motion of petitioner to consolidate with No. 77-152, *Beth Israel Hospital v. National Labor Relations Board* [certiorari granted, 434 U. S. 1033], denied.

No. 77-6321. PAYTON *v.* HARRIS, WARDEN, ET AL. Motion for leave to file petition for writ of habeas corpus denied.

*Certiorari Granted*

No. 77-961. NEW YORK TELEPHONE CO. ET AL. *v.* NEW YORK STATE DEPARTMENT OF LABOR ET AL. C. A. 2d Cir. Certiorari granted. Reported below: 566 F. 2d 388.

No. 77-968. DETROIT EDISON CO. *v.* NATIONAL LABOR RELATIONS BOARD. C. A. 6th Cir. Certiorari granted. Reported below: 560 F. 2d 722.

*Certiorari Denied.* (See also Nos. 77-1100 and 77-6162, *supra.*)

No. 77-674. THE TAMANO ET AL. *v.* UNITED STATES ET AL. C. A. 1st Cir. Certiorari denied. Reported below: 564 F. 2d 964.

No. 77-686. CHIAPPE *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 562 F. 2d 39.



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No. 77-736. *NEW YORK STOCK EXCHANGE, INC., ET AL. v. HEIMANN, COMPTROLLER OF THE CURRENCY.* C. A. D. C. Cir. Certiorari denied. Reported below: 183 U. S. App. D. C. 217, 562 F. 2d 736.

No. 77-787. *TIDWELL v. UNITED STATES.* C. A. 5th Cir. Certiorari denied. Reported below: 559 F. 2d 262.

No. 77-898. *POMPONIO ET AL. v. UNITED STATES.* C. A. 4th Cir. Certiorari denied. Reported below: 563 F. 2d 659.

No. 77-900. *VELSICOL CHEMICAL CORP. v. UNITED STATES.* C. A. 7th Cir. Certiorari denied. Reported below: 561 F. 2d 671.

No. 77-901. *FRAKES v. UNITED STATES.* C. A. 9th Cir. Certiorari denied. Reported below: 564 F. 2d 821.

No. 77-903. *MYERS v. ILLINOIS.* Sup. Ct. Ill. Certiorari denied. Reported below: 67 Ill. 2d 308, 367 N. E. 2d 949.

No. 77-917. *WHITESIDE & CO. ET AL. v. NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC., ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 557 F. 2d 1118.

No. 77-936. *COASTAL STATES PETROCHEMICAL Co. v. UNITED STATES.* Ct. Cl. Certiorari denied. Reported below: 214 Ct. Cl. 520, 559 F. 2d 1.

No. 77-946. *IANNONE ET AL. v. UNITED STATES.* C. A. 2d Cir. Certiorari denied.

No. 77-948. *ZANNINO v. UNITED STATES.* C. A. 3d Cir. Certiorari denied. Reported below: 566 F. 2d 1171.

No. 77-956. *PARKE, DAVIS & Co. v. CALIFANO, SECRETARY OF HEALTH, EDUCATION, AND WELFARE, ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 564 F. 2d 1200.

No. 77-974. *HALL v. UNITED STATES.* C. A. 9th Cir. Certiorari denied. Reported below: 559 F. 2d 1160.

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No. 77-962. HAWAIIAN TELEPHONE CO. ET AL. *v.* HAWAII DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS ET AL. C. A. 9th Cir. Certiorari before judgment denied.

No. 77-996. POE *v.* STETSON, SECRETARY OF THE AIR FORCE, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 562 F. 2d 56.

No. 77-997. HAWAII *v.* CONSUMER PRODUCT SAFETY COMMISSION ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 185 U. S. App. D. C. 133, 566 F. 2d 798.

No. 77-998. LOGAL *v.* CRUSE ET AL. Sup. Ct. Ind. Certiorari denied. Reported below: 267 Ind. 83, 368 N. E. 2d 235.

No. 77-1029. CLAY *v.* BOMAR. C. A. 6th Cir. Certiorari denied.

No. 77-1076. MASSACHUSETTS *v.* DUSTIN. Sup. Jud. Ct. Mass. Certiorari denied. Reported below: 373 Mass. 612, 368 N. E. 2d 1388.

No. 77-1082. JOYNER *v.* PHELPS, WARDEN. Sup. Ct. La. Certiorari denied. Reported below: 352 So. 2d 187.

No. 77-1084. BARBEE *v.* NORTH CAROLINA. Ct. App. N. C. Certiorari denied. Reported below: 34 N. C. App. 66, 237 S. E. 2d 352.

No. 77-1088. CHESTNUTT CORP. *v.* GOLFAND ET AL. C. A. 2d Cir. Certiorari denied.

No. 77-1103. BRYAN *v.* MERRILL LYNCH, PIERCE, FENNER & SMITH, INC. C. A. 4th Cir. Certiorari denied. Reported below: 565 F. 2d 276.

No. 77-1112. DUKE *v.* UNITED STATES STEEL CORP. ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 560 F. 2d 1022.

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No. 77-1114. *TERNES v. NORTH DAKOTA*. Sup. Ct. N. D. Certiorari denied. Reported below: 259 N. W. 2d 296.

No. 77-1139. *BURNETT v. ARKANSAS*. Sup. Ct. Ark. Certiorari denied. Reported below: 262 Ark. 235, 556 S. W. 2d 653.

No. 77-1178. *QUINN v. KANSAS POWER & LIGHT CO.* C. A. 10th Cir. Certiorari denied.

No. 77-1187. *BLACK ET AL. v. UNITED STATES*. C. A. 10th Cir. Certiorari denied. Reported below: 569 F. 2d 1111.

No. 77-1204. *RODRIGUEZ v. UNITED STATES*; and

No. 77-1212. *RODRIGUEZ v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 568 F. 2d 771.

No. 77-1215. *CADY v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 567 F. 2d 771.

No. 77-5832. *COLE v. ILLINOIS*. App. Ct. Ill., 5th Dist. Certiorari denied. Reported below: 50 Ill. App. 3d 133, 365 N. E. 2d 133.

No. 77-5875. *DUKE v. UNITED STATES*. C. A. 2d Cir. Certiorari denied.

No. 77-5884. *WELCH v. EVANS ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 564 F. 2d 94.

No. 77-5895. *RUDOLPH v. WISCONSIN*. Sup. Ct. Wis. Certiorari denied. Reported below: 78 Wis. 2d 435, 254 N. W. 2d 471.

No. 77-5971. *MYERS v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 564 F. 2d 1329.

No. 77-6008. *ASUMANSI v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 566 F. 2d 1173.

No. 77-6037. *WYLIE v. UNITED STATES*. C. A. D. C. Cir. Certiorari denied. Reported below: 186 U. S. App. D. C. 231, 569 F. 2d 62.



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No. 77-6038. *LEWIS v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 567 F. 2d 785.

No. 77-6051. *CHALK v. SECRETARY OF LABOR ET AL.* C. A. D. C. Cir. Certiorari denied. Reported below: 184 U. S. App. D. C. 189, 565 F. 2d 764.

No. 77-6056. *CLARK v. BENSON, WARDEN*. C. A. 10th Cir. Certiorari denied.

No. 77-6061. *EVANS v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 559 F. 2d 244.

No. 77-6134. *PETERSON v. MARYLAND*. Ct. App. Md. Certiorari denied. Reported below: 281 Md. 309, 379 A. 2d 164.

No. 77-6138. *ARIAS v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 566 F. 2d 1184.

No. 77-6142. *JENKINS v. DISTRICT OF COLUMBIA*. C. A. D. C. Cir. Certiorari denied.

No. 77-6153. *RICKS v. HOPPER, WARDEN*. Sup. Ct. Ga. Certiorari denied.

No. 77-6154. *BROOMFIELD v. WAINWRIGHT, SECRETARY, DEPARTMENT OF OFFENDER REHABILITATION OF FLORIDA*. C. A. 5th Cir. Certiorari denied.

No. 77-6163. *FAHRIG ET AL. v. BERGER ET AL.* Ct. App. Ohio, Montgomery County. Certiorari denied.

No. 77-6166. *TENNART v. LOUISIANA*. Sup. Ct. La. Certiorari denied. Reported below: 352 So. 2d 629.

No. 77-6168. *CLOUDY v. INDIANA*. Ct. App. Ind. Certiorari denied.

No. 77-6169. *MURRAY v. CALIFANO, SECRETARY, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE*. C. A. 4th Cir. Certiorari denied. Reported below: 565 F. 2d 157.

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No. 77-6171. *EXUM v. PERINI, CORRECTIONAL SUPERINTENDENT*. C. A. 6th Cir. Certiorari denied.

No. 77-6173. *GREEN v. WARDEN, MARYLAND STATE PENITENTIARY*. C. A. 4th Cir. Certiorari before judgment denied.

No. 77-6179. *NAYLOR v. SUPERIOR COURT OF ARIZONA, COUNTY OF MARICOPA, ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 558 F. 2d 1363.

No. 77-6182. *TIPPETT v. MISSOURI*. Ct. App. Mo., St. Louis Dist. Certiorari denied. Reported below: 558 S. W. 2d 288.

No. 77-6183. *WILLIAMS ET AL. v. HOYT ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 556 F. 2d 1336.

No. 77-6185. *ROGERS v. THIRTY-SEVENTH JUDICIAL COURT ET AL.* C. A. 10th Cir. Certiorari denied.

No. 77-6207. *CARDILLO v. BELL, ATTORNEY GENERAL, ET AL.* C. A. 3d Cir. Certiorari denied. Reported below: 562 F. 2d 43.

No. 77-6214. *SIMPSON v. KREIGER, SHERIFF*. C. A. 6th Cir. Certiorari denied. Reported below: 565 F. 2d 390.

No. 77-6220. *PICO-ZAZUETA v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 564 F. 2d 1367.

No. 77-6243. *SMITH v. UNITED STATES*. C. A. 10th Cir. Certiorari denied.

No. 77-6249. *HOWZE v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 567 F. 2d 389.

No. 77-6257. *HUDSON v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 566 F. 2d 889.

No. 77-6262. *BULL v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 565 F. 2d 869.

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No. 77-6264. *KULAS v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 570 F. 2d 353.

No. 77-6269. *MONTES-ZARATE v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 552 F. 2d 1330.

No. 77-6284. *ILACQUA v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 562 F. 2d 399.

No. 77-6311. *ECKERT v. HEWITT ET AL.* C. A. 3d Cir. Certiorari denied.

No. 77-318. *SHANG, ACTING COMMISSIONER, DEPARTMENT OF SOCIAL SERVICES OF NEW YORK v. HOLLEY ET AL.* C. A. 2d Cir. Motion of respondents Holley et al. for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 553 F. 2d 845.

No. 77-958. *PENNSYLVANIA v. JONES, AKA FRIDAY*. Sup. Ct. Pa. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 474 Pa. 364, 378 A. 2d 835.

No. 77-1075. *AMERICAN SOCIETY OF TRAVEL AGENTS, INC., ET AL. v. BLUMENTHAL, SECRETARY OF THE TREASURY, ET AL.* C. A. D. C. Cir. Certiorari denied. MR. JUSTICE BRENNAN, MR. JUSTICE WHITE, and MR. JUSTICE POWELL would grant certiorari. Reported below: 184 U. S. App. D. C. 253, 566 F. 2d 145.

#### *Rehearing Denied*

No. 77-584. *NEUSTEIN v. UNITED STATES*, 434 U. S. 1062;  
No. 77-5515. *HAMPTON v. UNITED STATES*, 434 U. S. 1071;  
and

No. 77-5804. *SIMMONS ET AL. v. UNITED STATES*, 434 U. S. 1074. Petitions for rehearing denied.

No. 77-5328. *HILLIARD v. ESTELLE*, CORRECTIONS DIRECTOR, 434 U. S. 1016. Motion for leave to file petition for rehearing denied.



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*Affirmed on Appeal*

No. 77-980. *LEWIS v. COWEN ET AL.* Affirmed on appeal from D. C. E. D. Pa. MR. JUSTICE BRENNAN and MR. JUSTICE POWELL would note probable jurisdiction and set case for oral argument. Reported below: 443 F. Supp. 544.

*Appeal Dismissed*

No. 77-1026. *RILEY, A MINOR, BY GIBBS v. OHIO ET AL.* Appeal from Ct. App. Ohio, Franklin County, dismissed for want of substantial federal question.

*Certiorari Granted—Vacated and Remanded*

No. 77-85. *SMALLING, SUPERINTENDENT OF UNIFIED SCHOOL DISTRICT NO. 480, SEWARD COUNTY, KANSAS, ET AL. v. EPPERSON ET AL.* C. A. 10th Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Carey v. Phipus*, ante, p. 247. Reported below: 551 F. 2d 254.

*Miscellaneous Orders*

No. A-636 (77-6111). *BROWN v. UNITED STATES.* C. A. 2d Cir. Application for stay, presented to MR. JUSTICE STEVENS, and by him referred to the Court, denied.

No. A-776. *KEOGH v. MAIN XX XVI, INC.* County Ct. of Law No. 3, Harris County, Tex. Application for stay, presented to MR. JUSTICE MARSHALL, and by him referred to the Court, denied.

No. D-122. *IN RE DISBARMENT OF STILLO.* Disbarment entered. [For earlier order, see 434 U. S. 979.]

No. D-125. *IN RE DISBARMENT OF DUDEN.* Disbarment entered. [For earlier order, see 434 U. S. 980.]

No. D-126. *IN RE DISBARMENT OF SPAR.* Disbarment entered. [For earlier order, see 434 U. S. 980.]

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No. D-127. IN RE DISBARMENT OF GONZALEZ. Disbarment entered. [For earlier order, see 434 U. S. 980.]

No. D-128. IN RE DISBARMENT OF KELLOGG. Disbarment entered. [For earlier order see 434 U. S. 980.]

No. D-132. IN RE DISBARMENT OF ESSER. It is ordered that Gene Ira Esser of New York, N. Y., be suspended from the practice of law in this Court and that a rule issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D-133. IN RE DISBARMENT OF CHU. It is ordered that Gene Loy Chu of New York, N. Y., be suspended from the practice of law in this Court and that a rule issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. 77-529. WISE, MAYOR OF DALLAS, ET AL. *v.* LIPSCOMB ET AL. C. A. 5th Cir. [Certiorari granted, 434 U. S. 1008.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* granted and 15 minutes allotted for that purpose, provided that the brief of the United States is filed on or before April 10, 1978. If the brief is timely filed, appellants also allotted an additional 15 minutes for oral argument.

No. 77-888. VITEK, CORRECTIONAL DIRECTOR, ET AL. *v.* JONES ET AL. D. C. Neb. [Probable jurisdiction noted, 434 U. S. 1060.] Motion of appellee Jones for leave to proceed herein *in forma pauperis* granted. Motion for appointment of counsel granted, and it is ordered that Thomas A. Wurtz, Esquire, of Lincoln, Neb., be appointed to serve as counsel for appellee Jones in this case.

No. 77-1207. BLUM, ACTING COMMISSIONER, DEPARTMENT OF SOCIAL SERVICES OF NEW YORK, ET AL. *v.* TOOMEY ET UX. C. A. 2d Cir. The Solicitor General is invited to file a brief in this case expressing the views of the United States.

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No. 77-6354. *NORTHERN v. DEPARTMENT OF HUMAN SERVICES OF TENNESSEE*. Appeal from Sup. Ct. Tenn. Motion to expedite denied.

No. 77-1037. *RENWICK v. UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT ET AL.* Motion for leave to file petition for writ of mandamus and/or other relief denied.

*Certiorari Granted*

No. 77-1051. *GIVHAN v. WESTERN LINE CONSOLIDATED SCHOOL DISTRICT ET AL.* C. A. 5th Cir. Certiorari granted. Reported below: 555 F. 2d 1309.

*Certiorari Denied*

No. 77-570. *AVERY v. NEW ENGLAND TELEPHONE & TELEGRAPH Co.* C. A. 2d Cir. Certiorari denied. Reported below: 559 F. 2d 1202.

No. 77-805. *FRANKLIN v. GEORGIA*. Ct. App. Ga. Certiorari denied. Reported below: 143 Ga. App. 3, 237 S. E. 2d 425.

No. 77-851. *FERNANDEZ v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 556 F. 2d 1246.

No. 77-855. *WARNER-LAMBERT Co. v. FEDERAL TRADE COMMISSION*; and

No. 77-1118. *FEDERAL TRADE COMMISSION v. WARNER-LAMBERT Co.* C. A. D. C. Cir. Certiorari denied. Reported below: 183 U. S. App. D. C. 230, 562 F. 2d 749.

No. 77-870. *MISSOURI PACIFIC RAILROAD Co. v. CITY OF PALESTINE, TEXAS, ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 559 F. 2d 408.

No. 77-885. *COMMISSIONER OF EDUCATION OF NEW JERSEY ET AL. v. BOARD OF EDUCATION OF THE NORTH HUNTERDON REGIONAL HIGH SCHOOL, TOWNSHIP OF FRANKLIN, ET AL.* Sup. Ct. N. J. Certiorari denied. Reported below: 74 N. J. 345, 378 A. 2d 218.



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No. 77-939. *BLIZZARD v. MAHAN, PRISON SUPERINTENDENT, ET AL.* C. A. 4th Cir. Certiorari denied.

No. 77-959. *HULVER v. UNITED STATES.* C. A. 8th Cir. Certiorari denied. Reported below: 562 F. 2d 1132.

No. 77-960. *CLINTON MUNICIPAL SEPARATE SCHOOL DISTRICT v. UNITED STATES.* C. A. 5th Cir. Certiorari denied. Reported below: 560 F. 2d 1188.

No. 77-976. *DAVIS v. UNITED STATES.* C. A. 5th Cir. Certiorari denied. Reported below: 564 F. 2d 688.

No. 77-999. *HELPER v. UNITED STATES;*

No. 77-5991. *GENTRY v. UNITED STATES;* and

No. 77-6052. *HORNSTEIN v. UNITED STATES.* C. A. 7th Cir. Certiorari denied. Reported below: 563 F. 2d 836.

No. 77-1001. *MARKLEY ET AL. v. UNITED STATES.* C. A. 1st Cir. Certiorari denied. Reported below: 567 F. 2d 523.

No. 77-1005. *BROWN v. UNITED STATES.* C. A. 6th Cir. Certiorari denied.

No. 77-1034. *NOGUERAS ET AL. v. PUERTO RICO INTERNATIONAL AIRLINES, INC., ET AL.* C. A. 1st Cir. Certiorari denied.

No. 77-1035. *VICE v. UNITED STATES.* C. A. 5th Cir. Certiorari denied. Reported below: 562 F. 2d 1004.

No. 77-1043. *STIFEL, NICOLAUS & Co., INC., ET AL. v. GARNATZ.* C. A. 8th Cir. Certiorari denied. Reported below: 559 F. 2d 1357.

No. 77-1073. *LEE PHARMACEUTICALS v. UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA (DEN-MAT, INC., ET AL., REAL PARTIES IN INTEREST).* C. A. 9th Cir. Certiorari denied.

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No. 77-1085. *AMERICAN BILTRITE, INC., ET AL. v. UNITED STATES ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 559 F. 2d 1221.

No. 77-1113. *LOZADA v. NEW YORK.* App. Div., Sup. Ct. N. Y., 2d Jud. Dept. Certiorari denied. Reported below: 57 App. Div. 2d 907, 394 N. Y. S. 2d 460.

No. 77-1116. *TORO CO. ET AL. v. ALSOP, U. S. DISTRICT JUDGE, ET AL.* C. A. 8th Cir. Certiorari denied. Reported below: 565 F. 2d 998.

No. 77-1121. *STATE COMPENSATION INSURANCE FUND v. WORKERS' COMPENSATION APPEALS BOARD OF CALIFORNIA ET AL.* Sup. Ct. Cal. Certiorari denied.

No. 77-1127. *BROWN v. UNITED STATES.* C. A. 5th Cir. Certiorari denied. Reported below: 567 F. 2d 389.

No. 77-1141. *WALTER E. HELLER & CO. v. FIRST VIRGINIA BANKSHARES.* C. A. 5th Cir. Certiorari denied. Reported below: 559 F. 2d 1307.

No. 77-1183. *CITY OF EVANSTON, ILLINOIS v. ANDRUSS ET AL.* Sup. Ct. Ill. Certiorari denied. Reported below: 68 Ill. 2d 215, 369 N. E. 2d 1258.

No. 77-1206. *GAMBINO ET AL. v. UNITED STATES.* C. A. 2d Cir. Certiorari denied. Reported below: 566 F. 2d 414.

No. 77-1216. *DUHON ET AL. v. UNITED STATES.* C. A. 5th Cir. Certiorari denied. Reported below: 565 F. 2d 345.

No. 77-1224. *FOSTER ET UX. v. UNITED STATES.* C. A. 9th Cir. Certiorari denied.

No. 77-1230. *TAYLOR v. UNITED STATES.* C. A. 7th Cir. Certiorari denied. Reported below: 569 F. 2d 448.

No. 77-1233. *ODNEAL ET AL. v. UNITED STATES.* C. A. 9th Cir. Certiorari denied. Reported below: 565 F. 2d 598.

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No. 77-1238. *LEVATINO v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 564 F. 2d 414.

No. 77-5539. *WALKING CROW v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 560 F. 2d 386.

No. 77-5855. *RAPP v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 564 F. 2d 101.

No. 77-5916. *MANSON v. CALIFORNIA*. Ct. App. Cal., 2d App. Dist. Certiorari denied. Reported below: 71 Cal. App. 3d 1, 139 Cal. Rptr. 275.

No. 77-5954. *CAREY v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 565 F. 2d 545.

No. 77-5987. *SCOTT v. UNITED STATES*. C. A. 6th Cir. Certiorari denied.

No. 77-6014. *ALBERT v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 568 F. 2d 489.

No. 77-6027. *SILBERBERG ET AL. v. UNITED STATES*. C. A. 2d Cir. Certiorari denied.

No. 77-6046. *WHITNEY v. UNITED STATES*. C. A. 9th Cir. Certiorari denied.

No. 77-6071. *ABASCAL v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 564 F. 2d 821.

No. 77-6079. *SMITH v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 565 F. 2d 159.

No. 77-6090. *LEWIS v. CHAVEZ, CORRECTIONAL SUPERINTENDENT*. C. A. 9th Cir. Certiorari denied.

No. 77-6106. *TYLER v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 565 F. 2d 160.

No. 77-6135. *DESHAZO v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 565 F. 2d 893.



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No. 77-6144. *ADCOCK v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 571 F. 2d 582.

No. 77-6189. *COHEN v. NEW YORK*. App. Div., Sup. Ct. N. Y., 1st Jud. Dept. Certiorari denied. Reported below: 59 App. Div. 2d 1066, 399 N. Y. S. 2d 552.

No. 77-6190. *PEVLOR v. KENTUCKY*. Sup. Ct. Ky. Certiorari denied.

No. 77-6193. *HARRIS, AKA DAVIS v. UNITED STATES*; and  
No. 77-6195. *FELDER v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: No. 77-6193, 568 F. 2d 771; No. 77-6195, 568 F. 2d 770.

No. 77-6197. *RATLIFF v. OHIO*. Sup. Ct. Ohio. Certiorari denied.

No. 77-6198. *LYLE v. WYRICK, WARDEN*. C. A. 8th Cir. Certiorari denied. Reported below: 565 F. 2d 529.

No. 77-6199. *THUNDERSHIELD v. SOLEM, WARDEN, ET AL.* C. A. 8th Cir. Certiorari denied. Reported below: 565 F. 2d 1018.

No. 77-6203. *ZINK v. ESTELLE, CORRECTIONS DIRECTOR*. C. A. 5th Cir. Certiorari denied.

No. 77-6210. *STAFFORD v. WEBER ET AL.* Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 77-6213. *HERNANDEZ ET AL. v. COLORADO*. C. A. 10th Cir. Certiorari denied.

No. 77-6223. *GRISMORE v. UNITED STATES*. C. A. 10th Cir. Certiorari denied. Reported below: 564 F. 2d 929.

No. 77-6224. *SCHOULTZ v. SHERIFF, CARSON CITY, NEVADA*. C. A. 9th Cir. Certiorari denied. Reported below: 568 F. 2d 778.

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No. 77-6227. *PUNCH ET AL. v. UNITED STATES*. Ct. App. D. C. Certiorari denied. Reported below: 377 A. 2d 1353.

No. 77-6232. *HENDERSON v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 565 F. 2d 1119.

No. 77-6240. *BARNEY v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 568 F. 2d 134.

No. 77-6266. *MORA v. UNITED STATES*. C. A. 10th Cir. Certiorari denied.

No. 77-6270. *GODIN v. UNITED STATES*. C. A. 10th Cir. Certiorari denied.

No. 77-6272. *DANIELS v. OHIO*. Ct. App. Ohio, Hamilton County. Certiorari denied.

No. 77-6275. *MONTOYA v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 568 F. 2d 1368.

No. 77-6281. *SPEADLING v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 570 F. 2d 348.

No. 77-6292. *GRAY v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 565 F. 2d 881.

No. 77-6294. *SUMMERS v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 565 F. 2d 161.

No. 77-6295. *FRANKLIN v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 568 F. 2d 1156.

No. 77-6298. *CARBAJAL v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 570 F. 2d 352.

No. 77-6302. *CERKL v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 570 F. 2d 352.

No. 77-6306. *MURPHY v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 569 F. 2d 771.

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No. 77-6312. PEDERSON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 568 F. 2d 779.

No. 77-6314. ENRIQUEZ-PALAFIX *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 570 F. 2d 352.

No. 77-6316. PARKER *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 566 F. 2d 1304.

No. 77-6319. MULLHOLAN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 570 F. 2d 353.

No. 77-6327. MOORE *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 571 F. 2d 154.

No. 77-6334. SIMPKINS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 568 F. 2d 774.

No. 77-1108. ANTAL *v.* BOYLE ET AL. C. A. D. C. Cir. Certiorari denied. MR. JUSTICE BRENNAN and MR. JUSTICE POWELL would grant certiorari. Reported below: 185 U. S. App. D. C. 245, 567 F. 2d 112.

No. 77-1111. COLORADO *v.* BRAMLETT. Sup. Ct. Colo. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 194 Colo. 205, 573 P. 2d 94.

No. 77-1132. NEW MEXICO EX REL. ENVIRONMENTAL IMPROVEMENT AGENCY *v.* ALBUQUERQUE PUBLISHING Co. Sup. Ct. N. M. Certiorari denied, it appearing that the judgment below rests upon adequate state grounds. Reported below: 91 N. M. 125, 571 P. 2d 117.

No. 77-1175. ILLINOIS *v.* PENDLETON. App. Ct. Ill., 1st Dist. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied, it appearing that the judgment below rests upon adequate state grounds. Reported below: 52 Ill. App. 3d 241, 367 N. E. 2d 196.



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No. 77-5874. *LITTLE v. ARKANSAS*. Sup. Ct. Ark. Certiorari denied. Reported below: 261 Ark. 859, 554 S. W. 2d 312.

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

I would grant certiorari to resolve the question whether, before a juvenile waives her constitutional rights to remain silent and consult with an attorney, she is entitled to competent advice from an adult who does not have significant conflicts of interest.

Petitioner, a girl of "low dull normal" intelligence,<sup>1</sup> has been sentenced to spend the rest of her life in prison for a crime that occurred when she was 13 years old.<sup>2</sup> Her conviction for the murder of her father was based in large part on incriminating statements that she made on three occasions. The most important of these statements was a lengthy confession given at the county juvenile home on the day of the murder, in the presence of her mother, a probation officer, a prosecuting attorney, and two sheriff's deputies.

Prior to making this confession, petitioner spent 10-15 minutes alone with her mother, who had earlier been questioned by the police concerning the murder and who believed that she was herself a suspect. 261 Ark. 859, 866-867, 554 S. W. 2d 312, 314-315 (1977). The mother emerged from this meeting, "look[ing] as if she had been crying," and stated

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<sup>1</sup> 261 Ark. 859, 870, 554 S. W. 2d 312, 317 (1977). The psychiatrist who made this observation had been called by the State at a pretrial hearing on petitioner's suppression motion. He also stated that petitioner had "basic insecurity and inadequacy" and that she was "fearful of doing the wrong thing." *Ibid.*

<sup>2</sup> The opinion of the Arkansas Supreme Court suggests at one point that petitioner might have been 14 years old, *id.*, at 863, 554 S. W. 2d, at 313, but assumes at another point that petitioner was 13, *id.*, at 876, 554 S. W. 2d, at 320-321. The State here concedes that petitioner was 13. Brief in Opposition 5.

that petitioner wanted to confess. *Id.*, at 867, 554 S. W. 2d at 315. Petitioner then was advised of her rights under the Fifth and Sixth Amendments, pursuant to *Miranda v. Arizona*, 384 U. S. 436 (1966).<sup>3</sup> She said that she understood her rights and wished to talk. Her confession was tape-recorded and, along with testimony concerning petitioner's other self-incriminating statements,<sup>4</sup> was introduced at trial over timely objection. Petitioner's subsequent conviction was affirmed by the Arkansas Supreme Court.

The issue presented here is an important one. In *In re Gault*, 387 U. S. 1 (1967), this Court recognized that "special problems may arise with respect to waiver of the [Fifth Amendment] privilege by or on behalf of children" and that "the greatest care must be taken to assure that . . . [a child's confession] was not the product of ignorance of rights or of adolescent fantasy, fright or despair." *Id.*, at 55. Several years earlier, in *Gallegos v. Colorado*, 370 U. S. 49 (1962), the Court observed that "a 14-year-old boy, no matter how sophisticated, . . . is unable to know how to protect his own interests or how to get the benefits of his constitutional rights." *Id.*, at 54. In both of these cases, convictions of

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<sup>3</sup> Petitioner had been given *Miranda* warnings at least once prior to this time, see n. 4, *infra*, and her rights had been separately explained to her mother, 261 Ark., at 866-867, 554 S. W. 2d, at 315.

<sup>4</sup> Petitioner had earlier stated, while being taken to the juvenile home by deputy sheriffs, that she had "'done it.'" *Id.*, at 866, 554 S. W. 2d, at 315. It is not clear whether this brief statement was made spontaneously or in response to questioning by the sheriffs. Compare *ibid.*, with *id.*, at 872, 554 S. W. 2d, at 318. *Miranda* warnings had been given before petitioner spoke.

The final set of statements made by petitioner and used against her were made at a juvenile home where petitioner was held for several months. She developed a close relationship with a "house mother," who later testified that petitioner had admitted to her that petitioner had committed the crime partly out of fear of her father's sexual advances. *Id.*, at 872-873, 554 S. W. 2d, at 318. There is no indication that the house mother ever advised petitioner of her rights.

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MARSHALL, J., dissenting

juveniles were reversed, in part because they had not had an opportunity to consult with a relative or lawyer prior to confessing. See 387 U. S., at 56; 370 U. S., at 54.<sup>5</sup>

Requiring that a child receive adult advice before making a confession ensures that the child is protected from "his own immaturity," thereby "put[ting] him on a less unequal footing with his interrogators. *Ibid.*"<sup>6</sup> Petitioner here did consult with her mother before she made her statement. The mother, however, was plainly not in a position to provide rational advice with only the child's interests in mind, especially on the day of the murder. The mother had been through the traumatic experience of having her husband shot while he slept next to her, and then had suffered the additional trauma of believing herself to be a suspect, see *supra*, at 957. Like her daughter, the mother had been given tranquilizers not long before the confession was made. 261 Ark., at 869-872, 554 S. W. 2d, at 316-318. The mother's testimony indicates understandable confusion and incomprehension at the time her daughter's rights were explained to her:

"I didn't know what to do. I didn't have nobody there with me, and being under this shock, and then them

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<sup>5</sup> See also *Haley v. Ohio*, 332 U. S. 596, 599-600 (1948):

"[W]hen, as here, a mere child—an easy victim of the law—is before us, special care in scrutinizing the record must be used. Age 15 is a tender and difficult age for a boy of any race. He cannot be judged by the more exacting standards of maturity. That which would leave a man cold and unimpressed can overawe and overwhelm a lad in his early teens. . . . [W]e cannot believe that a lad of tender years is a match for the police in such a contest. He needs counsel and support if he is not to become the victim first of fear, then of panic. He needs someone on whom to lean lest the overpowering presence of the law, as he knows it, crush him."

<sup>6</sup> Many state courts have required that a child receive competent parental or other adult advice before waiving constitutional rights. See, e. g., *Lewis v. State*, 259 Ind. 431, 436-440, 288 N. E. 2d 138, 141-143 (1972); *In re K. W. B.*, 500 S. W. 2d 275, 279-283 (Mo. App. 1973); *Commonwealth v. Webster*, 466 Pa. 314, 320-328, 353 A. 2d 372, 375-379 (1975). See also *Weatherspoon v. State*, 328 So. 2d 875, 876 (Fla. App. 1976).



coming and picking her up, and I was sedated, she was sedated. . . . I was trying to make funeral arrangements. . . . I didn't know. I'd never been through a shock like this." Tr. 172, 173, 175-176.

Under the circumstances, it is hardly surprising that the mother cried when she was supposed to be giving dispassionate advice, see *supra*, at 957-958, and then urged her daughter to confess, 261 Ark., at 869, 554 S. W. 2d, at 316.

We recognized in *Gault* that the "competence of parents" is a relevant factor in determining the validity of a waiver of rights by a child. 387 U. S., at 55. When the parent is emotionally distraught, crying, and under the influence of drugs, not only is her advice likely to be less than "competent," but the parent's demeanor may well have an adverse effect on the child's ability to make a knowing waiver of her own rights. And to uphold a child's waiver on the ground that she received parental advice is surely questionable when the parent has two obvious conflicts of interest, one arising from the possibility that the parent herself is a suspect, and the other from the fact that she is "advising" the person accused of killing her spouse.

The difficulties inherent in a situation like that presented here have been recognized by lower courts and commentators. See, e. g., *McBride v. Jacobs*, 101 U. S. App. D. C. 189, 190, 247 F. 2d 595, 596 (1957) (parent may waive child's rights if waiver is "intelligent [and] knowing" and "there is no conflict of interest between them"); *Daniels v. State*, 226 Ga. 269, 273, 174 S. E. 2d 422, 424 (1970) (mother intoxicated; *Gault* requires "competent, sober mother"); *Ezell v. State*, 489 P. 2d 781, 783-784 (Okla. Crim. App. 1971) (confession inadmissible despite presence of mother and legal guardian; no showing that either was "capable of protecting defendant's constitutional rights"); *In re L. B.*, 33 Colo. App. 1, 4, 513 P. 2d 1069, 1070 (1973) (father, incarcerated on drunkenness and other charges, taken from cell to advise son; parent's "mere physical

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presence" is not sufficient); Institute of Judicial Administration & American Bar Assn., Joint Commission on Juvenile Justice Standards, Standards Relating to Police Handling of Juvenile Problems 69-73 (tent. draft 1977); Note, 57 B. U. L. Rev. 778, 783, 787-788 (1977).

Under all of the circumstances, petitioner's contention that there was no valid waiver of her rights deserves this Court's plenary consideration. At the time that she made the decision to confess, this girl of "low dull normal" intelligence was not old enough, according to state law, to make decisions for herself on such other matters as marriage, voting, drinking alcoholic beverages, entering into an enforceable contract, initiating a lawsuit, and remaining in school.<sup>7</sup> Her mother was hardly in a position to act on petitioner's behalf on the day of the confession, as discussed above. In view of our reaffirmation only last Term that courts must "indulge in every reasonable presumption against waiver," *Brewer v. Williams*, 430 U. S. 387, 404 (1977), I would grant the petition for certiorari.

### *Rehearing Denied*

No. 77-646. *BRAND v. UNITED STATES*, 434 U. S. 1063;

No. 77-856. *PHILLIPS PETROLEUM CO. v. SHUTTS, EXECUTOR, ET AL.*, 434 U. S. 1068;

No. 77-883. *DAPPOLONIA v. BOARD OF CHIROPRACTIC EXAMINERS OF FLORIDA*, 434 U. S. 1056; and

No. 77-5174. *MURRY v. UNITED STATES*, *ante*, p. 915. Petitions for rehearing denied.

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<sup>7</sup> Ark. Stat. Ann. § 55-102 (Supp. 1977); Ark. Const. Art. 3, § 1, Ark. Stat. Ann. § 3-212 (1976) and §§ 48-902.1 to 48-903.2 (1977); *Robertson v. King*, 225 Ark. 276, 278-279, 280 S. W. 2d 402, 403-404 (1955); Ark. Stat. Ann. § 27-823 (1962) and § 80-1502 (1960). In addition, a child of petitioner's age in Arkansas may not, *inter alia*, give blood or obtain a tattoo without parental consent, §§ 82-1606 (Supp. 1977), 41-2468 (1977); play cards in a "saloon," § 41-2459; "frequent" any "pool-hall," § 41-2461; or operate a motor vehicle, §§ 75-310, 75-324 (Supp. 1977).

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No. 77-5419. TWYMAN *v.* OKLAHOMA ET AL., 434 U. S. 1071;

No. 77-5695. MOORE *v.* BRIERTON, WARDEN, 434 U. S. 1088;

No. 77-5721. THORNTON *v.* GEORGIA, 434 U. S. 1073;

No. 77-5748. SMITH *v.* UNITED STATES, *ante*, p. 915;

No. 77-5811. GILBERT *v.* YALANZON, 434 U. S. 1049;

No. 77-5870. BARNETT ET UX. *v.* CISNEROS ET AL., 434 U. S. 1075;

No. 77-5963. RAITPORT *v.* BANK & TRUST COMPANY OF OLD YORK ROAD ET AL., 434 U. S. 1077;

No. 77-6000. HALEY *v.* FLORIDA, *ante*, p. 906; and

No. 77-6006. TYLER *v.* PEACH ET AL., *ante*, p. 906. Petitions for rehearing denied.

No. 77-5048. DUDAR *v.* UNITED STATES, 434 U. S. 864. Motion for leave to file petition for rehearing denied.

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*Affirmed on Appeal*

No. 77-971. NORTH CAROLINA EX REL. MORROW ET AL. *v.* CALIFANO, SECRETARY OF HEALTH, EDUCATION, AND WELFARE, ET AL. Appeal from D. C. E. D. N. C. Motions of Pacific Legal Foundation and Association of American Physicians & Surgeons, Inc., for leave to file briefs as *amici curiae* granted. Judgment affirmed. Reported below: 445 F. Supp. 532.

*Appeals Dismissed*

No. 77-981. M. R. T. S., INC., DBA CLASSIC CAT THEATER *v.* DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL OF CALIFORNIA ET AL. Appeal from Ct. App. Cal., 4th App. Dist., dismissed for want of substantial federal question.

No. 77-982. TASELLI ET AL. *v.* DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL OF CALIFORNIA ET AL. Appeal from Ct. App. Cal., 2d App. Dist., dismissed for want of substantial federal question.



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No. 77-1179. *STOCKLER v. MICHIGAN ET AL.* Appeal from Ct. App. Mich. dismissed for want of substantial federal question. Reported below: 75 Mich. App. 640, 255 N. W. 2d 718.

No. 77-1211. *REGENOLD v. BABY FOLD, INC., ET AL.* Appeal from Sup. Ct. Ill. dismissed for want of substantial federal question. Reported below: 68 Ill. 2d 419, 369 N. E. 2d 858.

No. 77-1188. *BREZA v. CITY OF TRIMONT.* Appeal from Sup. Ct. Minn. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied.

No. 77-6228. *DEMERS v. RHODE ISLAND ET AL.* Appeal from C. A. 1st Cir. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied.

No. 77-6231. *MUKA v. HEFFRON ET AL.* Appeal from Ct. App. N. Y. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied. Reported below: 42 N. Y. 2d 823, 364 N. E. 2d 1344.

No. 77-6244. *MARSCHALL ET UX. v. KRISTENSEN ET AL.* Appeal from Ct. App. Wash. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied.

No. 77-6313. *JENKINS v. DISTRICT OF COLUMBIA.* Appeal from Ct. App. D. C. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied.

No. 77-6149. *HARPER v. DUFFEY.* Appeal from D. C. Mass. dismissed for want of jurisdiction.

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*Vacated and Remanded on Appeal*

No. 77-16. UNITED STATES *v.* DEPARTMENT OF TRANSPORTATION OF GEORGIA. Appeal from D. C. N. D. Ga. Judgment vacated and case remanded for further consideration in light of *Massachusetts v. United States*, ante, p. 444.

*Certiorari Granted—Vacated and Remanded.* (See also No. 77-5898, ante, p. 559.)

No. 76-548. BALTIMORE GAS & ELECTRIC CO. ET AL. *v.* NATURAL RESOURCES DEFENSE COUNCIL, INC., ET AL. C. A. D. C. Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Vermont Yankee Nuclear Power Corp. v. Natural Resources Defense Council, Inc.*, ante, p. 519. MR. JUSTICE POWELL took no part in the consideration or decision of this case. Reported below: 178 U. S. App. D. C. 336, 547 F. 2d 633.

No. 76-745. LONG ISLAND LIGHTING CO. *v.* LLOYD HARBOR STUDY GROUP, INC. C. A. D. C. Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Vermont Yankee Nuclear Power Corp. v. Natural Resources Defense Council, Inc.*, ante, p. 519. MR. JUSTICE POWELL took no part in the consideration or decision of this case.

No. 77-947. BORDENKIRCHER, PENITENTIARY SUPERINTENDENT *v.* GASTON. C. A. 6th Cir. Motion of respondent for leave to proceed *in forma pauperis* and certiorari granted. Judgment vacated and case remanded for further consideration in light of *Bordenkircher v. Hayes*, 434 U. S. 357 (1978). MR. JUSTICE MARSHALL dissents. Reported below: 564 F. 2d 99.

*Certiorari Dismissed*

No. 77-6141. BUSIC *v.* UNITED STATES. C. A. 3d Cir. Certiorari dismissed, it appearing that the judgment of the Court of Appeals for the Third Circuit has been vacated.

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*Miscellaneous Orders*

No. A-798 (77-1360). *BRACY ET AL. v. UNITED STATES*. C. A. 9th Cir. Application for reconsideration of denial of stay, presented to MR. JUSTICE REHNQUIST, and by him referred to the Court, denied.

No. A-817. *WEINSTEIN v. FLORIDA*. Sup. Ct. Fla. Application for stay, presented to MR. JUSTICE MARSHALL, and by him referred to the Court, denied.

No. A-821 (77-1377). *HULL v. FLORIDA*. Sup. Ct. Fla. Renewed application for stay, presented to MR. JUSTICE BRENNAN, and by him referred to the Court, denied.

No. A-863 (77-1471). *EDWARDS ET AL., MEMBERS, HOUSE OF REPRESENTATIVES v. CARTER, PRESIDENT OF THE UNITED STATES*. C. A. D. C. Cir. Application for injunction, presented to THE CHIEF JUSTICE, and by him referred to the Court, denied.

No. D-130. *IN RE DISBARMENT OF SPURLARK*. It having been reported to the Court that Royal E. Spurlark, Jr., has been reinstated on the roll of attorneys admitted to practice in the State of Illinois, it is ordered that the order of this Court entered January 9, 1978 [434 U. S. 1004], suspending Royal E. Spurlark, Jr., from further practice of law in this Court be vacated and that the rule to show cause issued January 9, 1978, be discharged.

No. 76-1701. *TENNESSEE VALLEY AUTHORITY v. HILL ET AL.* C. A. 6th Cir. [Certiorari granted, 434 U. S. 954.] Motion of Pacific Legal Foundation for leave to participate in oral argument as *amicus curiae* denied.

No. 77-380. *ANDRUS, SECRETARY OF THE INTERIOR v. CHARLESTONE STONE PRODUCTS Co., INC.* C. A. 9th Cir. [Certiorari granted, 434 U. S. 964.] Motion of J. Alan Steele for leave to file a brief as *amicus curiae* granted.



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No. 77-510. UNITED STATES *v.* NEW MEXICO. Sup. Ct. N. M. [Certiorari granted, 434 U. S. 1008.] Motion of respondent for divided argument granted.

No. 77-528. FEDERAL COMMUNICATIONS COMMISSION *v.* PACIFICA FOUNDATION ET AL. C. A. D. C. Cir. [Certiorari granted, 434 U. S. 1008.] Motion of American Broadcasting Co. et al. for leave to participate in oral argument as *amici curiae* denied.

No. 77-529. WISE, MAYOR OF DALLAS, ET AL. *v.* LIPSCOMB ET AL. C. A. 5th Cir. [Certiorari granted, 434 U. S. 1008.] Motion of Lawyers' Committee for Civil Rights Under Law for leave to file a brief as *amicus curiae* granted. Motion of the Solicitor General to permit Peter Buscemi, Esquire, to present oral argument *pro hac vice* granted.

No. 77-539. ZENITH RADIO CORP. *v.* UNITED STATES. C. A. 5th Cir. [Certiorari granted, 434 U. S. 1060.] Motions of Ford Motor Co., Craig Corp. et al., Union des Industries de la Communauté Européenne, and American Importers Assn., Inc., for leave to file briefs as *amici curiae* granted.

No. 77-693. WILL, U. S. DISTRICT JUDGE *v.* CALVERT FIRE INSURANCE CO. ET AL. C. A. 7th Cir. [Certiorari granted, 434 U. S. 1008.] Motion of American Mutual Reinsurance Co. for additional time for oral argument denied without prejudice. Should petitioner cede a total of 10 minutes, divided argument is granted.

No. 77-1036. LARSEN, ACTING COMMISSIONER OF LABOR OF THE VIRGIN ISLANDS *v.* ROGERS. Appeal from C. A. 3d Cir. The Solicitor General is invited to file a brief in this case expressing the views of the United States.

No. 77-6394. LEFEBRE *v.* WISCONSIN ET AL.; and

No. 77-6450. DAVIDSON *v.* UNITED STATES. Motions for leave to file petitions for writs of habeas corpus denied.

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No. 77-1358. GAETANO ET AL. *v.* OBERDORFER, U. S. DISTRICT JUDGE;

No. 77-6245. KLEIN *v.* DECKER, U. S. DISTRICT JUDGE; and

No. 77-6279. TYLER *v.* GRADY, JUDGE. Motions for leave to file petitions for writs of mandamus denied.

*Probable Jurisdiction Noted*

No. 77-69. PANORA, REGISTRAR OF MOTOR VEHICLES OF MASSACHUSETTS *v.* MONTRYM. Appeal from D. C. Mass. [Restored to calendar, 434 U. S. 1058.] Probable jurisdiction noted. Reported below: 429 F. Supp. 393.

No. 77-1163. FRIEDMAN ET AL. *v.* ROGERS ET AL.;

No. 77-1164. ROGERS ET AL. *v.* FRIEDMAN ET AL.; and

No. 77-1186. TEXAS OPTOMETRIC ASSN., INC. *v.* ROGERS ET AL. Appeals from D. C. E. D. Tex. Probable jurisdiction noted. Cases consolidated and a total of one and one-half hours allotted for oral argument. Reported below: 438 F. Supp. 428.

No. 77-5992. ADDINGTON *v.* TEXAS. Appeal from Sup. Ct. Tex. Motion of appellant for leave to proceed *in forma pauperis* granted. Probable jurisdiction noted. Reported below: 557 S. W. 2d 511.

*Certiorari Granted*

No. 77-1202. MICHIGAN *v.* DORAN. Sup. Ct. Mich. Certiorari granted. Reported below: 401 Mich. 235, 258 N. W. 2d 406.

No. 77-6248. HUNTER *v.* DEAN, SHERIFF. Sup. Ct. Ga. Motion of petitioner for leave to proceed *in forma pauperis* and certiorari granted. Reported below: 240 Ga. 214, 239 S. E. 2d 791.

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*Certiorari Denied.* (See also Nos. 77-1188, 77-6228, 77-6231, 77-6244, and 77-6313, *supra*.)

No. 77-487. *FRAZIER v. UNITED STATES*. C. A. 8th Cir. *Certiorari denied*. Reported below: 560 F. 2d 884.

No. 77-763. *BRACKETT v. UNITED STATES*. C. A. D. C. Cir. *Certiorari denied*. Reported below: 185 U. S. App. D. C. 394, 567 F. 2d 501.

No. 77-925. *WINDHAM ET AL. v. AMERICAN BRANDS, INC., ET AL.* C. A. 4th Cir. *Certiorari denied*. Reported below: 565 F. 2d 59.

No. 77-977. *HUBBARD BROADCASTING, INC. v. FEDERAL COMMUNICATIONS COMMISSION ET AL.* C. A. D. C. Cir. *Certiorari denied*. Reported below: 184 U. S. App. D. C. 115, 564 F. 2d 600.

No. 77-978. *WESTERN CHAIN CO. v. BROWNLEE ET AL.* App. Ct. Ill., 1st Dist. *Certiorari denied*. Reported below: 49 Ill. App. 3d 247, 364 N. E. 2d 926.

No. 77-984. *MASCARENHAS v. MERIDIAN HOSPITAL AUTHORITY*. C. A. 5th Cir. *Certiorari denied*. Reported below: 560 F. 2d 683.

No. 77-988. *RICHARDSON ET AL. v. McFADDEN ET AL.* C. A. 4th Cir. *Certiorari denied*. Reported below: 563 F. 2d 1130.

No. 77-1010. *MIAMI HERALD PUBLISHING CO. ET AL. v. KRENTZMAN, U. S. DISTRICT JUDGE*. C. A. 5th Cir. *Certiorari denied*. Reported below: 558 F. 2d 1202.

No. 77-1013. *PUGLISI ET AL. v. UNITED STATES*. Ct. Cl. *Certiorari denied*. Reported below: 215 Ct. Cl. 86, 564 F. 2d 403.

No. 77-1019. *LIVESTOCK MARKETERS, INC., ET AL. v. UNITED STATES*. C. A. 5th Cir. *Certiorari denied*. Reported below: 558 F. 2d 748.



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No. 77-1027. *DOE ET AL. v. McMILLAN, CHAIRMAN, HOUSE COMMITTEE ON THE DISTRICT OF COLUMBIA, ET AL.* C. A. D. C. Cir. Certiorari denied. Reported below: 185 U. S. App. D. C. 48, 566 F. 2d 713.

No. 77-1038. *STEWART v. UNITED STATES.* C. A. 4th Cir. Certiorari denied. Reported below: 565 F. 2d 159.

No. 77-1041. *EX PARTE MOODY.* Sup. Ct. Ala. Certiorari denied. Reported below: 351 So. 2d 538.

No. 77-1064. *McLENNAN ET AL. v. UNITED STATES.* C. A. 9th Cir. Certiorari denied. Reported below: 563 F. 2d 943.

No. 77-1065. *LAWRIW v. UNITED STATES.* C. A. 8th Cir. Certiorari denied. Reported below: 568 F. 2d 98.

No. 77-1087. *EWANCO v. COMMISSIONER OF PATENTS AND TRADEMARKS.* C. A. D. C. Cir. Certiorari denied. Reported below: 186 U. S. App. D. C. 328, 569 F. 2d 159.

No. 77-1093. *MALIZIA v. UNITED STATES.* C. A. 2d Cir. Certiorari denied.

No. 77-1096. *FEENEY ET AL. v. SECURITIES AND EXCHANGE COMMISSION.* C. A. 8th Cir. Certiorari denied. Reported below: 564 F. 2d 260.

No. 77-1102. *VAUGHN v. UNITED STATES; and*

No. 77-6130. *LITTLE v. UNITED STATES.* C. A. 8th Cir. Certiorari denied. Reported below: 567 F. 2d 346.

No. 77-1109. *MOODY v. ALABAMA EX REL. PAYNE, COMMISSIONER OF INSURANCE OF ALABAMA, ET AL.* Sup. Ct. Ala. Certiorari denied. Reported below: 351 So. 2d 552.

No. 77-1135. *BROWN v. TANENBAUM, JUDGE, ET AL.* C. A. 2d Cir. Certiorari denied.

No. 77-1136. *O'HAYER ET UX. v. BLACK ET AL.* C. A. 10th Cir. Certiorari denied. Reported below: 567 F. 2d 361.

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No. 77-1138. *PATTERSON v. KENTUCKY*. Ct. App. Ky. Certiorari denied. Reported below: 556 S. W. 2d 909.

No. 77-1140. *DOYLE v. BOARD OF FIRE AND POLICE COMMISSIONERS OF THE VILLAGE OF SCHAUMBURG*. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 48 Ill. App. 3d 449, 363 N. E. 2d 79.

No. 77-1143. *JONES v. MISSOURI*. Ct. App. Mo., Kansas City Dist. Certiorari denied. Reported below: 558 S. W. 2d 233.

No. 77-1147. *FIRESTONE TIRE & RUBBER CO. v. TAYLOR, DIRECTOR, EMPLOYMENT SECURITY COMMISSION OF MICHIGAN, ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 571 F. 2d 580.

No. 77-1148. *NORRIS v. ARKANSAS*. Sup. Ct. Ark. Certiorari denied. Reported below: 262 Ark. 188, 555 S. W. 2d 560.

No. 77-1149. *HOFFMAN ET AL. v. PUBLIC EMPLOYEES' RETIREMENT FUND*. Ct. App. Ore. Certiorari denied. Reported below: 31 Ore. App. 85, 569 P. 2d 701.

No. 77-1152. *BEE JAY'S TRUCK STOP, INC. v. DEPARTMENT OF REVENUE OF ILLINOIS*. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 52 Ill. App. 3d 90, 367 N. E. 2d 173.

No. 77-1156. *ALNOA G. CORP. v. CITY OF HOUSTON, TEXAS*. C. A. 5th Cir. Certiorari denied. Reported below: 563 F. 2d 769.

No. 77-1157. *TOPPS CHEWING GUM, INC. v. FLEER CORP.* C. A. 3d Cir. Certiorari denied.

No. 77-1165. *THOMPSON ET AL. v. OHIO*. Ct. App. Ohio, Stark County. Certiorari denied.

No. 77-1166. *PHILADELPHIA GAS WORKS v. GULF OIL CORP. ET AL.* C. A. 3d Cir. Certiorari denied. Reported below: 570 F. 2d 1138.

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No. 77-1180. *LA FATCH v. MM CORP. ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 565 F. 2d 81.

No. 77-1192. *LYONS v. SALVE REGINA COLLEGE ET AL.* C. A. 1st Cir. Certiorari denied. Reported below: 565 F. 2d 200.

No. 77-1194. *LOZANO v. TEXAS MEXICAN RAILWAY CO.* C. A. 5th Cir. Certiorari denied. Reported below: 564 F. 2d 720.

No. 77-1198. *NAMIROWSKI v. NABISCO, INC.* C. A. 7th Cir. Certiorari denied. Reported below: 567 F. 2d 392.

No. 77-1199. *TIMES-PICAYUNE PUBLISHING CO. v. FORREST.* Ct. App. La., 1st Cir. Certiorari denied. Reported below: 347 So. 2d 1255.

No. 77-1208. *ESTABROOK v. WISE ET AL.* Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 348 So. 2d 355.

No. 77-1210. *ALITALIA-LINEE AEREE ITALIANE, S. P. A. v. MANUFACTURERS HANOVER TRUST CO.* C. A. 2d Cir. Certiorari denied.

No. 77-1214. *DAVIDSON v. COLUMBIA UNIVERSITY ET AL.* App Div., Sup. Ct. N. Y., 2d Jud. Dept. Certiorari denied.

No. 77-1223. *SUPER ATHLETICS CORP. ET AL. v. UNIVERSAL ATHLETIC SALES CO.* C. A. 3d Cir. Certiorari denied. Reported below: 566 F. 2d 1170.

No. 77-1281. *DILLON v. UNITED STATES.* C. A. 10th Cir. Certiorari denied. Reported below: 566 F. 2d 702.

No. 77-1291. *TREVINO v. UNITED STATES.* C. A. 5th Cir. Certiorari denied. Reported below: 565 F. 2d 1317.

No. 77-1292. *IVEY ET AL. v. UNITED STATES.* C. A. 5th Cir. Certiorari denied. Reported below: 567 F. 2d 389.



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No. 77-1295. *BURKE v. NARRAGANSETT ELECTRIC CO.* Sup. Ct. R. I. Certiorari denied. Reported below: — R. I. —, 381 A. 2d 1358.

No. 77-1296. *UNITED STATES NAVIGATION, INC., ET AL. v. ESPOSITO.* C. A. 2d Cir. Certiorari denied.

No. 77-1302. *WOODS v. UNITED STATES.* C. A. 6th Cir. Certiorari denied. Reported below: 568 F. 2d 509.

No. 77-1334. *LIEBERT v. UNITED STATES*; and

No. 77-1343. *HARKINS v. UNITED STATES.* C. A. 3d Cir. Certiorari denied. Reported below: No. 77-1334, 571 F. 2d 573; No. 77-1343, 571 F. 2d 572.

No. 77-1349. *UNION v. UNITED STATES.* C. A. 8th Cir. Certiorari denied. Reported below: 570 F. 2d 816.

No. 77-1350. *MORENO ET UX. v. UNITED STATES.* C. A. 9th Cir. Certiorari denied. Reported below: 569 F. 2d 1049.

No. 77-5157. *HURST v. UNITED STATES.* C. A. 6th Cir. Certiorari denied. Reported below: 559 F. 2d 1222.

No. 77-5479. *LEE v. UNITED STATES.* C. A. 4th Cir. Certiorari denied. Reported below: 562 F. 2d 47.

No. 77-5902. *BURGESS v. CALIFORNIA.* Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 77-5931. *DURAN v. NEW MEXICO.* Ct. App. N. M. Certiorari denied. Reported below: 91 N. M. 35, 570 P. 2d 36 and 39.

No. 77-5956. *STILLMAN v. UNITED STATES*;

No. 77-5967. *BRYANT v. UNITED STATES*;

No. 77-5978. *PERRY v. UNITED STATES*;

No. 77-6103. *CAMPBELL v. UNITED STATES*; and

No. 77-6160. *SMITH v. UNITED STATES.* C. A. 5th Cir. Certiorari denied. Reported below: 563 F. 2d 1227.

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No. 77-5958. *ELLIOTT v. ILLINOIS*. App. Ct. Ill., 4th Dist. Certiorari denied. Reported below: 46 Ill. App. 3d 887, 361 N. E. 2d 852.

No. 77-5984. *JOHNSON v. UNITED STATES*. C. A. D. C. Cir. Certiorari denied.

No. 77-5995. *REDA v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 563 F. 2d 510.

No. 77-6005. *HIMES v. HEWITT, CORRECTIONAL SUPERINTENDENT*. C. A. 3d Cir. Certiorari denied.

No. 77-6019. *HOCKER v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 566 F. 2d 1173.

No. 77-6023. *CLARK v. UNITED STATES*. C. A. 9th Cir. Certiorari denied.

No. 77-6031. *DAVIS v. IOWA*. Sup. Ct. Iowa. Certiorari denied. Reported below: 259 N. W. 2d 843.

No. 77-6039. *CARR v. UNITED STATES*. C. A. 6th Cir. Certiorari denied.

No. 77-6078. *LEWIS v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 565 F. 2d 1248.

No. 77-6088. *ROBSON v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 568 F. 2d 778.

No. 77-6104. *CARTER v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 569 F. 2d 801.

No. 77-6111. *BROWN v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 566 F. 2d 1170.

No. 77-6119. *FELTS v. UNITED STATES*. C. A. 9th Cir. Certiorari denied.

No. 77-6125. *BARKLEY v. LUMPKIN, WARDEN*. C. A. 9th Cir. Certiorari denied. Reported below: 566 F. 2d 1180.

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No. 77-6126. *CROCKER v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 566 F. 2d 1173.

No. 77-6131. *MUNCASTER v. GRIFFIN*. C. A. 5th Cir. Certiorari denied.

No. 77-6137. *GILLEN v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 567 F. 2d 393.

No. 77-6140. *COOKE v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 566 F. 2d 1170.

No. 77-6157. *PHILLIPS v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 564 F. 2d 32.

No. 77-6161. *MIZE v. UNITED STATES*. C. A. 9th Cir. Certiorari denied.

No. 77-6167. *MORGAN v. UNITED STATES*; and

No. 77-6178. *GARRETT v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 565 F. 2d 1065.

No. 77-6184. *WRIGHT v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 565 F. 2d 486.

No. 77-6201. *POPE v. OHIO*. Ct. App. Ohio, Cuyahoga County. Certiorari denied.

No. 77-6209. *VON DER LINDEN v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 561 F. 2d 1340.

No. 77-6212. *HOPPE v. WISCONSIN*. C. A. 7th Cir. Certiorari denied. Reported below: 570 F. 2d 347.

No. 77-6229. *ANDERSON v. LOUISIANA*. Sup. Ct. La. Certiorari denied. Reported below: 352 So. 2d 1019.

No. 77-6230. *RIDDELL v. WASHINGTON*. Sup. Ct. Wash. Certiorari denied.

No. 77-6237. *BLITZ v. ILLINOIS*. Sup. Ct. Ill. Certiorari denied. Reported below: 68 Ill. 2d 287, 369 N. E. 2d 1238.



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No. 77-6238. *SHERIDAN v. ILLINOIS*. App. Ct. Ill., 4th Dist. Certiorari denied. Reported below: 51 Ill. App. 3d 963, 367 N. E. 2d 422.

No. 77-6239. *ROBINSON v. FLORIDA*. Dist. Ct. App. Fla., 3d Dist. Certiorari denied. Reported below: 351 So. 2d 1100.

No. 77-6241. *GABLE v. MASSEY, CORRECTIONAL SUPERINTENDENT*. C. A. 5th Cir. Certiorari denied. Reported below: 566 F. 2d 459.

No. 77-6242. *MARTIN v. WYRICK, WARDEN*. C. A. 8th Cir. Certiorari denied. Reported below: 568 F. 2d 583.

No. 77-6253. *HARRIS v. CHASE ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 571 F. 2d 576.

No. 77-6254. *MARCUS v. MCGINNIS, CORRECTIONS COMMISSIONER*. C. A. 2d Cir. Certiorari denied.

No. 77-6256. *BACKUS v. FLORIDA*. Dist. Ct. App. Fla., 3d Dist. Certiorari denied. Reported below: 353 So. 2d 213.

No. 77-6258. *JACKSON v. INDIANA*. Sup. Ct. Ind. Certiorari denied. Reported below: 267 Ind. 62, 366 N. E. 2d 1186.

No. 77-6260. *McKINLEY v. ILLINOIS*. Sup. Ct. Ill. Certiorari denied. Reported below: 69 Ill. 2d 145, 370 N. E. 2d 1040.

No. 77-6263. *EVANS v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 569 F. 2d 209.

No. 77-6271. *McGOWAN v. ILLINOIS*. Sup. Ct. Ill. Certiorari denied. Reported below: 69 Ill. 2d 73, 370 N. E. 2d 537.

No. 77-6276. *PHILLIPS v. OLIAN ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 565 F. 2d 1213.

No. 77-6277. *HOWARD v. WYRICK, WARDEN*. C. A. 8th Cir. Certiorari denied.

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No. 77-6282. *COLEDANCHISE v. MURDAUGH ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 566 F. 2d 1172.

No. 77-6287. *BUNKIS v. UNITED STATES.* C. A. 4th Cir. Certiorari denied. Reported below: 570 F. 2d 346.

No. 77-6315. *ENNIS v. LEFEVRE, CORRECTIONAL SUPERINTENDENT.* C. A. 2d Cir. Certiorari denied. Reported below: 560 F. 2d 1072.

No. 77-6326. *RALLS v. MANSON, CORRECTIONS COMMISSIONER.* C. A. 2d Cir. Certiorari denied.

No. 77-6328. *WALKER v. UNITED STATES.* C. A. 9th Cir. Certiorari denied. Reported below: 569 F. 2d 502.

No. 77-6331. *PITTMAN v. UNITED STATES.* C. A. 6th Cir. Certiorari denied. Reported below: 571 F. 2d 584.

No. 77-6335. *O'BRIEN v. UNITED STATES.* C. A. 6th Cir. Certiorari denied. Reported below: 571 F. 2d 584.

No. 77-6342. *GUNSTON v. UNITED STATES.* Ct. Cl. Certiorari denied.

No. 77-6344. *WATKINS v. UNITED STATES.* C. A. 6th Cir. Certiorari denied. Reported below: 564 F. 2d 201 and 570 F. 2d 151.

No. 77-6349. *KIZER v. UNITED STATES.* C. A. 9th Cir. Certiorari denied. Reported below: 569 F. 2d 504.

No. 77-6367. *McNAIR v. UNITED STATES.* C. A. 3d Cir. Certiorari denied. Reported below: 571 F. 2d 573.

No. 77-6376. *BOWERS v. UNITED STATES.* C. A. 5th Cir. Certiorari denied. Reported below: 567 F. 2d 1309.

No. 77-6414. *CHAVEZ-CHAPULA v. UNITED STATES.* C. A. 9th Cir. Certiorari denied. Reported below: 570 F. 2d 352.

No. 77-6415. *BOETTJER v. UNITED STATES.* C. A. 9th Cir. Certiorari denied. Reported below: 569 F. 2d 1078.

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No. 77-6437. *GREEN v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 568 F. 2d 1366.

No. 77-643. *UNITED STEELWORKERS OF AMERICA, AFL-CIO-CLC v. SADLOWSKI ET AL.* C. A. 3d Cir. Certiorari denied. Reported below: 554 F. 2d 586.

MR. JUSTICE WHITE, with whom MR. JUSTICE STEWART and MR. JUSTICE REHNQUIST join, dissenting.

The Court's action today lets stand the ruling by a panel of the Court of Appeals for the Third Circuit that attorney's fees are awardable to intervenors in union election challenges processed under Title IV of the Labor Management Reporting and Disclosure Act (LMRDA), 73 Stat. 532, 29 U. S. C. § 481 *et seq.* The issues presented in this case are of serious importance to the proper enforcement of the LMRDA, and also to the prosecution generally of private claims that benefit a broad class of persons.

The decision below rested on two necessary foundations: that the scheme of Title IV of the LMRDA did not foreclose the awarding of attorney's fees to intervenors, and that the "common benefit" exception to the American rule against awarding attorney's fees could fairly be applied to a case of intervention under Title IV such as occurred here.

In *Trbovich v. Mine Workers*, 404 U. S. 528 (1972), this Court held that intervention by an individual union member whose initial complaint commenced the challenge to the election was not inimical to the LMRDA. Title IV anticipates that objections to the conduct of union elections be initiated by union members filing a complaint with the Secretary of Labor after exhausting union remedies. Thereupon, however, it is the exclusive province of the Secretary to commence a civil action in federal district court. 29 U. S. C. § 482 (b). *Trbovich* held that the union member who initiated the challenge might still intervene in the federal suit, "so long as that intervention is limited to the claims of illegality presented



by the Secretary's complaint." *Trbovich, supra*, at 537. This conclusion represented a very careful balance between Title IV's commitment of enforcement authority to the Secretary's sole discretion, and a recognition that the union member who originally raised the complaint might wish to see his claims pressed in some manner different from that of the Secretary.

The opinion below threatens to upset that delicate compromise. Intervention by union members in support of the Secretary's grounds of complaint was upheld in *Trbovich* only because it would make the union liable "to relatively little additional burden," and would "not subject the union to burdensome multiple litigation, nor will it compel the union to respond to a new and potentially groundless suit." *Trbovich, supra*, at 536. Once attorney's fees are assessable against a union on behalf of intervenors, however, the union has indeed become liable to an "additional burden" that could be quite costly. And the adjudication of whether an intervenor has contributed significantly to the common benefit of all union members could well involve the "burdensome multiple litigation" that the restrictions on intervention imposed by *Trbovich* were intended to avoid.

Although not controlling, the Secretary of Labor's views should also be considered in any matter concerning the proper enforcement of the Act he is to administer. It is significant, therefore, that the Secretary has in this case broken his silence on the attorney's fees question for the first time. It is the position of the Secretary that the awarding of attorney's fees to intervenors "significantly impedes the effective enforcement of Title IV."\*

The other holding below, that intervention in such a case as

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\*Memorandum on Behalf of Secretary of Labor 2. The Secretary believes that the availability of attorney's fees will encourage excessive intervention since, no matter how great or small the assistance an individual might have provided the Secretary, it is only by intervening that he can hope to receive compensation.

this contributes to the "common benefit" of the group to be assessed the attorney's fees, raises problems of its own. A judge-made exception to the traditional American rule against awarding attorney's fees, the "common benefit" theory is premised on a court's equity power to allocate a portion of a fund won for a class of persons through the efforts of a single person to compensate that single person. See *Hall v. Cole*, 412 U. S. 1, 5 n. 7 (1973). Subsequent elaboration extended the early theory to cases where no single class of persons was suing, *Sprague v. Ticonic Nat. Bank*, 307 U. S. 161 (1939), and to cases involving a common benefit other than a tangible pool of assets. *Mills v. Electric Auto-Lite Co.*, 396 U. S. 375 (1970); *Hall v. Cole*, *supra*.

The contribution made by an individual union member, however, who intervenes in an action brought by the Secretary of Labor, can only with great difficulty be viewed as the creation of a common benefit. The Secretary has already investigated the case, and is already conducting the suit. And the rationale permitting intervention was not to duplicate the efforts of the Secretary. Intervention was held permissible in *Trbovich* in order to protect a union member's interest, or his choice of how to represent that interest, precisely to the extent that the individual's interest *diverged* from the Secretary's. The Secretary is the champion of the "vital public interest in assuring free and democratic union elections that transcends the narrower interest of the complaining union member." *Trbovich*, *supra*, at 539, citing *Wirtz v. Glass Bottle Blowers*, 389 U. S. 463, 475 (1968). Hence, the rationale that provides for the right to intervene in the first place substantially undercuts the intervenor's claim to be creating a significant *common* benefit not already provided by the Secretary.

The Third Circuit panel, in adopting a common-benefit theory, correctly observed that our opinion in *Alyeska Pipeline Co. v. Wilderness Society*, 421 U. S. 240 (1975), recognized the continuing vitality of that theory. More questionable, however, is whether the court below took proper account of

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*Alyeska's* explanation of the antedating opinions that applied a common-benefit theory:

"In this Court's common-fund and common-benefit decisions, the classes of beneficiaries were small in number and easily identifiable. The benefits could be traced with some accuracy, and there was reason for confidence that the costs could indeed be shifted with some exactitude to those benefiting." *Id.*, at 265 n. 39.

The intervenor's contribution admittedly need not be the provision of a monetary sum. However, the lower court's reasoning that a new election in a single district benefited the entire membership of the United Steelworkers of America in such an identifiable and proportionate way as to justify burdening the entire membership with the intervenor's attorney's fees represents logic squarely at issue with *Alyeska's* construction of the common-benefit theory.

Both holdings of the lower court appear to conflict with this Court's decisions. The awarding of attorney's fees to intervenors in Title IV proceedings threatens seriously to obstruct the administration of the LMRDA. The common-benefit exception has in this case been stretched beyond the bounds of its creative rationale, both as to whether a benefit has been shown to exist at all, given the Secretary's dominant enforcement role, and as to whether it is fair to tax the entire union with the costs of providing what benefit there might be. I would grant certiorari to resolve these important issues affecting the administration of the LMRDA and the conduct of all common-benefit litigation.

No. 77-910. GOVERNMENT OF THE VIRGIN ISLANDS ET AL. *v.* VITCO, INC. C. A. 3d Cir. Certiorari denied. MR. JUSTICE WHITE and MR. JUSTICE BLACKMUN would grant certiorari. Reported below: 560 F. 2d 180.

No. 77-765. WADSWORTH, ADMINISTRATOR, NEW HAMPSHIRE EMPLOYERS' BENEFIT TRUST ET AL. *v.* WHALAND, COM-



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MISSIONER, DEPARTMENT OF INSURANCE OF NEW HAMPSHIRE;  
and

No. 77-772. DAWSON, ADMINISTRATOR, NORTHERN NEW ENGLAND CARPENTERS HEALTH AND WELFARE FUND ET AL. *v.* WHALAND, COMMISSIONER, DEPARTMENT OF INSURANCE OF NEW HAMPSHIRE. C. A. 1st Cir. Certiorari denied. MR. JUSTICE WHITE would grant certiorari. Reported below: 562 F. 2d 70.

No. 77-949. ILLINOIS *v.* WASHINGTON. Sup. Ct. Ill. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 68 Ill. 2d 186, 369 N. E. 2d 57.

*Rehearing Denied*

No. 77-447. RATCHFORD, PRESIDENT, UNIVERSITY OF MISSOURI, ET AL. *v.* GAY LIB ET AL., 434 U. S. 1080;

No. 77-596. GULF OIL CORP. *v.* FEDERAL ENERGY REGULATORY COMMISSION ET AL., 434 U. S. 1062;

No. 77-777. MILLER *v.* HARRIS, SECRETARY OF HOUSING AND URBAN DEVELOPMENT, ET AL., 434 U. S. 1065;

No. 77-853. WALTON ET UX. *v.* PAPAGIANOPOULOS ET AL., 434 U. S. 1067;

No. 77-941. ENDER *v.* CHRYSLER CORP. ET AL., 434 U. S. 1070;

No. 77-957. HUTTER *v.* KORZEN, TREASURER OF COOK COUNTY, *ante*, p. 901;

No. 77-975. SUMMERS *v.* ALABAMA, 434 U. S. 1070;

No. 77-1072. YEE *v.* YEE ET AL., *ante*, p. 911;

No. 77-5801. FRIVALDO *v.* CLELAND, ADMINISTRATOR, VETERANS' AFFAIRS, ET AL., 434 U. S. 1074;

No. 77-5882. KAPLAN *v.* WHIPPLE ET AL., JUDGES, 434 U. S. 1059;

No. 77-5908. HAMPTON *v.* ALASKA, 434 U. S. 1056;

No. 77-5921. GADDIS *v.* GEORGIA, 434 U. S. 1088; and

No. 77-5923. MORRIS, AKA HUNDLEY *v.* UNITED STATES, *ante*, p. 916. Petitions for rehearing denied.

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No. 77-6013. *WYCHE v. WARDEN, MARYLAND PENITENTIARY*, *ante*, p. 907. Petition for rehearing denied.

No. 77-908. *MADRY v. SOREL ET AL.*, 434 U. S. 1086. Motion of petitioner to defer consideration of petition for rehearing and petition for rehearing denied.

No. 77-5877. *CARROLL v. MANSON, CORRECTIONS COMMISSIONER, ET AL.*, 434 U. S. 1075. Motion for leave to file petition for rehearing denied.

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*Dismissals Under Rule 60*

No. 76-1610. *AYALA ET AL. v. UNITED STATES ET AL.* C. A. 9th Cir. [Certiorari granted, 434 U. S. 814.] Writ of certiorari dismissed under this Court's Rule 60. Reported below: 550 F. 2d 1196.

No. 77-1000. *CHICAGO, ROCK ISLAND & PACIFIC RAILROAD Co. v. REDIKER*. Ct. App. Kan. [Certiorari granted, *ante*, p. 922.] Writ of certiorari dismissed under this Court's Rule 60. Reported below: 1 Kan. App. 2d 581, 571 P. 2d 70.

No. 77-1344. *K. S. B. TECHNICAL SALES CORP. ET AL. v. NORTH JERSEY DISTRICT WATER SUPPLY COMMISSION OF NEW JERSEY ET AL.* Appeal from Sup. Ct. N. J. dismissed under this Court's Rule 60. Reported below: 75 N. J. 272, 381 A. 2d 774.

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*Appeals Dismissed*

No. 76-1738. *SEWELL v. GEORGIA*. Appeal from Sup. Ct. Ga. dismissed for want of substantial federal question. Reported below: 238 Ga. 495, 233 S. E. 2d 187.

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

Appellant, William M. Sewell, appeals from a judgment of the Supreme Court of Georgia which affirmed his conviction

on a one-count accusation framed under the Georgia obscenity statute, Ga. Code § 26-2101 (1975). In July 1975, a police officer bought a magazine, *Hot and Sultry*, and a device said to be an "artificial vagina," from appellant, an employee of the Stewart Avenue Adult Book Store. Shortly after this sale, the officer, joined by two others, entered the store, arrested appellant, and seized various vibrators, rubber devices shaped like penises, and other items alleged to be devices for sexual stimulation. After attempting unsuccessfully to have the seized material suppressed, appellant was convicted by a jury of selling the magazine and artificial vagina and of possessing the other material and was sentenced to 12 months in jail and a fine of \$4,000.

Georgia Code § 26-2101 (a) (1975) provides:

"A person commits the offense of distributing obscene materials when he sells . . . or otherwise disseminates to any person any obscene material of any description, knowing the obscene nature thereof, or offers to do so, or possesses such material with the intent to do so, provided that the word 'knowing,' as used herein, shall be deemed to be either actual or constructive knowledge of the obscene contents of the subject matter, and a person has constructive knowledge of the obscene contents if he has knowledge of facts which would put a reasonable and prudent person on notice as to the suspect nature of the material."

Sections 26-2101 (b) through 26-2101 (d) define the term "obscene materials" used in § 26-2101 (a). Section 26-2101 (b) covers published material alleged to be obscene and generally tracks the guidelines set out in *Miller v. California*, 413 U. S. 15 (1973). Section 26-2101 (c) states that, in addition to material covered in subsection (b), "any device designed or marketed as useful primarily for the stimulation of human genital organs is obscene material under this section."

The jury was instructed that it should determine the obscen-



ity of Hot and Sultry under the standards set out in §§ 26-2101 (a) and 26-2101 (b) and that the sale of the artificial vagina and the possession of the other material should be considered under §§ 26-2101 (a) and 26-2101 (c). The trial judge further charged the jury on the meaning of "knowing" in the words set out in § 26-2101 (a). A general verdict of guilty was returned.

In this Court, appellant raises constitutional objections to a number of features of § 26-2101. First, he argues that an obscenity statute which defines scienter in a manner which authorizes obscenity convictions on mere "constructive" knowledge impermissibly chills the dissemination of materials protected under the First and Fourteenth Amendments. Jurisdictional Statement 3. Second, he argues that there is no rational basis for § 26-2101 (c) and, in addition, that it is unconstitutionally vague. Jurisdictional Statement 3, 9-10. Third, appellant contends that Hot and Sultry is not obscene as a matter of law. *Id.*, at 3. And, finally, appellant challenges the warrantless mass seizure of the sexual devices on First, Fourth, and Fourteenth Amendment grounds. *Id.*, at 3, 17.

This is an appeal and I cannot agree with the Court that the first and second questions presented can be dismissed as not presenting substantial federal questions.<sup>1</sup>

## I

In *Ballew v. Georgia*, ante, p. 223, we granted certiorari to consider, but did not reach, the precise scienter issue now raised by appellant. See Pet. for Cert. in *Ballew v. Georgia*, O. T. 1977, No. 76-761, p. 2. I see no basis for concluding that a federal constitutional question sufficiently substantial

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<sup>1</sup> Although I agree with my Brother STEWART, *post*, at 988-989, that § 26-2101 is unconstitutional as applied to the magazine involved in this case, I recognize that a majority of this Court does not agree with this view and, accordingly, I would hear argument on the scienter issue.

to be granted review on certiorari is now so insubstantial as not to require exercise of our mandatory appellate jurisdiction in this case. Moreover, even if others do not agree that the void-for-vagueness issue is substantial, the fact that appellant might have been convicted for sale or possession of the seized devices is irrelevant to consideration of the obscenity issue. As we said in *Stromberg v. California*, 283 U. S. 359, 367-368 (1931):

"The verdict against the appellant was a general one. It did not specify the ground upon which it rested. . . . [I]t is impossible to say under which clause of the statute the conviction was obtained. . . . It follows that instead of its being permissible to hold, with the state court, that the verdict could be sustained if any one of the clauses of the statute were found to be valid, the necessary conclusion from the manner in which the case was sent to the jury is that, if any of the clauses in question is invalid under the Federal Constitution, the conviction cannot be upheld."

See also *Bachellar v. Maryland*, 397 U. S. 564 (1970).

## II

Appellant's second argument, that § 26-2101 (c) is void for vagueness, also raises a substantial federal question—one of first impression in this Court—even though appellant fundamentally misapprehends the reach of the First Amendment in his argument that the protections of that Amendment extend to the sexual devices involved in this case.<sup>2</sup> As we said in *Grayned v. City of Rockford*, 408 U. S. 104, 108-109 (1972):

"It is a basic principle of due process that an enactment

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<sup>2</sup> Even if devices might in some circumstances be protected by the First and Fourteenth Amendments, this is not the case here since no claim is made that the devices are in any way expressive or that their possession and sale is in any way related to appellant's right to speak.

is void for vagueness if its prohibitions are not clearly defined. Vague laws offend several important values. First, because we assume that man is free to steer between lawful and unlawful conduct, we insist that laws give the person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that he may act accordingly. Vague laws may trap the innocent by not providing fair warning. Second, if arbitrary and discriminatory enforcement is to be prevented, laws must provide explicit standards for those who apply them. A vague law impermissibly delegates basic policy matters to policemen, judges, and juries for resolution on an *ad hoc* and subjective basis, with the attendant dangers of arbitrary and discriminatory application." (Footnotes omitted.)

See also *Papachristou v. Jacksonville*, 405 U. S. 156 (1972); *Cline v. Frink Dairy Co.*, 274 U. S. 445 (1927); *Connally v. General Construction Co.*, 269 U. S. 385 (1926).

Section 26-2101 (c) at least arguably offends both principles enunciated in *Grayned*. Even conceding that a jury could properly infer from the shapes of the seized devices that some could be used for sexual stimulation, the fact that some people might use the devices for that purpose scarcely suffices to show that they are designed or marketed *primarily* for sexual stimulation. As one commentator has noted, statutes couched in such terms of "judgment and degree" contain seeds of "inherent discontrol" over the law enforcement process and have been "virtually [the] exclusive target of void-for-vagueness nullification." Note, *The Void-for-Vagueness Doctrine in the Supreme Court*, 109 U. Pa. L. Rev. 67, 92-93 (1960). Moreover, "it is in this realm, where the equilibrium between the individual's claims of freedom and society's demands upon him is left to be struck *ad hoc* on the basis of a subjective evaluation, . . . that there exists the risk of continuing irregu-



larity with which the vagueness cases have been concerned.” *Id.*, at 93.<sup>3</sup>

In addition, although vague statutes may be saved from constitutional infirmity if they require specific intent as an element of an offense, see *Papachristou v. Jacksonville*, *supra*, at 163, the constructive scienter requirement of § 26-2101 (a), at least as applied in appellant’s trial, provides no reasonable assurance that persons will know or ought to know when they are likely to violate § 26-2101 (c).

The record here is very clear: Appellant was convicted solely on the basis of the *guesses* and *assumptions* of the single witness at trial—a policeman who had never used the devices, Tr. 24; never seen them used, *id.*, at 25; and who knew of no one who used them for sexual stimulation, *id.*, at 26—that the seized devices were used primarily for the stimulation of human genitals. See *id.*, at 22, 24. In explaining how he had reached his guesses and assumptions notwithstanding a total lack of personal familiarity with the seized devices, that witness stated that he had seen, in the course of his investigations, “newspapers that are printed and catalogs that are sent out to different people pertaining to these things.” *Id.*, at 32. No catalogs were introduced into evidence and no evidence was given to show that the unidentified

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<sup>3</sup> Moreover, the facial vagueness of § 26-2101 (c) is enhanced by its interpretation by law enforcement personnel. Although § 26-2101 (c) by its terms applies only to devices that are “designed or marketed as useful primarily for the stimulation of human genital organs,” the accusation against appellant nonetheless charged appellant with possession of “3 anal stimulators.” Clerk’s Tr. 3. So far as I know, no dictionary includes the human anus among the *genital* organs. See also *Balthazar v. Superior Court*, 573 F. 2d 698 (CA1 1978). The packaging of another item states quite clearly on the back that the item is a “doggy dong.” Whether this item, in the shape of a rubber candlestick, is to be used with dogs or humans—or simply as a “novelty,” for whatever ribald humor it may give rise to—it is impossible to discover how appellant or a jury could conclude that this item is *primarily* used for stimulation of *human* genitals.

catalogs would likely have been sent to appellant. Thus, how the proverbial "reasonable man," or even a "reasonable clerk in an adult book store," would have been put on notice of the *primary* use to which the seized devices would be put is simply not apparent.

It is therefore hard to imagine a more stark *prima facie* case of a "vague law [which] impermissibly delegates basic policy matters to policemen, judges, and juries for resolution on an *ad hoc* and subjective basis." *Grayned v. City of Rockford*, *supra*, at 108–109. In a society where the rule of law is paramount, it simply will not do to allow persons, however ignoble their trade—or perhaps because their trade is ignoble, cf. *Papachristou v. City of Jacksonville*, *supra*—to be convicted of crimes solely because policemen and juries, encouraged by the State, can conjure up scenes of sexual stimulation in which devices play a major role.

For the reasons set out above, I would set this case for argument.

MR. JUSTICE STEWART, dissenting.

The appellant stands convicted of the single crime of distributing obscene material in violation of Ga. Code § 26–2101 (1975). Cf. *Robinson v. State*, 143 Ga. App. 37, 38–39, 237 S. E. 2d 436, 438 (1977), vacated and remanded on other grounds, *post*, p. 991. The one-count indictment charged that he had sold both sexual devices, alleged to be obscene material as defined in § 26–2101 (c), and a magazine, alleged to be obscene under the definition in § 26–2101 (b).

While the appellant does not claim that the definition of obscenity in subsection (b) is unconstitutional, he does ask this Court to examine the magazine in question and to determine that it is constitutionally protected as a matter of law. I continue to believe that "at least in the absence of distribution to juveniles or obtrusive exposure to unconsenting adults, the First and Fourteenth Amendments prohibit the State and

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Federal Governments from attempting wholly to suppress sexually oriented materials on the basis of their allegedly 'obscene' contents." *Paris Adult Theatre I v. Slaton*, 413 U. S. 49, 113 (BRENNAN, J., dissenting). I therefore believe that the appellant's conviction cannot constitutionally rest on the sale of an allegedly obscene magazine.

Because it cannot be determined that the jury in this case did not convict the appellant on the basis of the magazine sale alone, I would reverse the judgment of the Supreme Court of Georgia.\* See *Stromberg v. California*, 283 U. S. 359, 368.

No. 77-790. *TEAL v. GEORGIA*. Appeal from Ct. App. Ga. dismissed for want of substantial federal question. Reported below: 143 Ga. App. 47, 238 S. E. 2d 128.

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

Appellant, Warren Teal, appeals from a judgment of the Georgia Court of Appeals which affirmed his conviction on a one-count accusation framed under the Georgia obscenity statute, Ga. Code § 26-2101 (1975). On August 29, 1975, two Atlanta area law enforcement officers bought a magazine, *Piece Meal*, from appellant, an employee of the Ponce de Leon Adult Book Store, and immediately arrested appellant and seized various items alleged to be devices "designed or marketed as useful primarily for the stimulation of human genital organs." § 26-2101 (c). After attempting unsuccessfully to have the seized material suppressed, appellant was convicted by a jury of selling the magazine and possessing the devices and was sentenced to 12 months in jail and a \$5,000 fine.

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\*Like my Brother BRENNAN, *ante*, at 984 n. 1, I recognize that a majority of the Court does not share this view, and since I also agree with Part I of his dissenting opinion, I would alternatively note probable jurisdiction and hear argument in this case on the scienter issue, if three other Members of the Court were like-minded.



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In this Court, appellant presents constitutional questions identical to those in *Sewell v. Georgia*, ante, p. 982, which are set out in my dissent there. For the reasons stated in that dissent, I would set this case for argument on the scienter and void-for-vagueness issues.\*

MR. JUSTICE STEWART, dissenting.

This case is in all relevant respects identical to *Sewell v. Georgia*, ante, p. 982. For the reasons stated in my dissenting opinion in that case, I would reverse the judgment of the Georgia Court of Appeals, or alternatively, note probable jurisdiction and hear argument on the scienter issue.

No. 77-1220. *SCHROEDER v. MUNICIPAL COURT OF THE LOS CERRITOS JUDICIAL DISTRICT (CALIFORNIA, REAL PARTY IN INTEREST)*. Appeal from Ct. App. Cal., 2d App. Dist., dismissed for want of substantial federal question. Reported below: 73 Cal. App. 3d 841, 141 Cal. Rptr. 85.

No. 77-6365. *GILL v. GILL ET AL.* Appeal from C. A. 3d Cir. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied. Reported below: 568 F. 2d 768.

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\*A review of the record in this case shows that, as in *Sewell v. Georgia*, ante, p. 982 (BRENNAN, J., dissenting), the scienter requirement does not save Ga. Code § 26-2101 (c) (1975) from vagueness. Although a police officer testified here that, in the course of viewing adult movies, he had seen some of the devices used to stimulate human genitals and, in addition, that he had seen a catalog which marketed the devices for such a use, there was no showing that appellant had seen or should have seen the indicated movies or that appellant was familiar with any such catalog. Indeed, the trial judge refused to admit the catalog into evidence because it had no relation to the constructive scienter issue. Thus the conclusion that the seized devices were "useful primarily for the stimulation of human genital organs," here as in *Sewell*, was reached solely from an inference to be drawn from the shape of the devices and the arresting officers' guesses and assumptions.

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No. 77-1229. HUFFMAN, ADMINISTRATOR *v.* KENTUCKY ET AL. Appeal from Ct. App. Ky. dismissed for want of substantial federal question. Reported below: 561 S. W. 2d 683.

*Vacated and Remanded on Appeal*

No. 77-915. ROBINSON *v.* GEORGIA. Appeal from Ct. App. Ga. Judgment vacated and case remanded for further consideration in light of *Ballew v. Georgia*, ante, p. 223. Reported below: 143 Ga. App. 37, 237 S. E. 2d 436.

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

Appellant, Ernest H. Robinson, appeals from a judgment of the Georgia Court of Appeals which affirmed his conviction on a one-count accusation framed under the Georgia obscenity statute, Ga. Code § 26-2101 (1975). As in *Sewell v. Georgia*, ante, p. 982, and *Teal v. Georgia*, ante, p. 989, appellant was an employee in an adult book store and was arrested for selling an allegedly obscene magazine to an Atlanta police officer. Immediately after the arrest, the police seized various devices thought to be "designed or marketed as useful primarily for the stimulation of human genital organs." § 26-2101 (c). After attempting unsuccessfully to have the seized material suppressed, appellant was convicted by a five-person jury of selling the magazine and possessing the devices and was sentenced to 12 months in jail and a \$1,000 fine.

In this Court, appellant presents constitutional questions identical to those in *Sewell v. Georgia*, supra, and, in addition, alleges that a jury composed of only five persons is constitutionally deficient. Although I agree that appellant's conviction by a five-person jury cannot stand, see *Ballew v. Georgia*, ante, p. 223, I would nonetheless set the case for argument on the scienter and void-for-vagueness issues, see *Sewell v. Georgia*, ante, p. 982 (BRENNAN, J., dissenting), since a reversal on either of those grounds might bar a retrial, whereas Georgia is free under the Court's remand order to put appel-

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lant to another trial under a statute that may well be unconstitutional.

MR. JUSTICE STEWART, dissenting.

This case is in all relevant respects identical to *Sewell v. Georgia*, ante, p. 982. For the reasons stated in my dissenting opinion in that case, I would reverse the judgment of the Georgia Court of Appeals, or, alternatively, note probable jurisdiction and hear argument on the scierter issue.

*Certiorari Granted—Vacated and Remanded*

No. 77-440. PLEASURE DRIVEWAY AND PARK DISTRICT OF PEORIA, ILLINOIS, ET AL. v. KUREK ET AL. C. A. 7th Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *City of Lafayette v. Louisiana Power & Light Co.*, ante, p. 389. MR. JUSTICE STEVENS took no part in the consideration or decision of this case. Reported below: 557 F. 2d 580.

No. 77-734. CITY OF IMPACT ET AL. v. WHITWORTH, DBA DINKIE'S FOOD MART. C. A. 5th Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *City of Lafayette v. Louisiana Power & Light Co.*, ante, p. 389. Reported below: 559 F. 2d 378.

No. 77-826. FAIRFAX HOSPITAL ASSN. ET AL. v. CITY OF FAIRFAX ET AL. C. A. 4th Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *City of Lafayette v. Louisiana Power & Light Co.*, ante, p. 389. Reported below: 562 F. 2d 280.

No. 77-835. UNIVERSITY OF TEXAS SYSTEM ET AL. v. ASSAF. C. A. 5th Cir. Certiorari granted, judgment vacated, and case remanded to the United States District Court for the Southern District of Texas with directions to dismiss the case as moot. *Board of Regents of the University of Texas System v. New Left Education Project*, 414 U. S. 807 (1973). Reported below: 557 F. 2d 822.



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*Miscellaneous Orders*

No. A-807. *BROWN ET AL. v. THOMSON, GOVERNOR OF NEW HAMPSHIRE*. C. A. 1st Cir. Motion to amend or clarify order which this Court entered March 24, 1978 [*ante*, p. 938], denied.

No. A-856. *KISSINGER v. REPORTERS COMMITTEE FOR FREEDOM OF THE PRESS ET AL.* Application for stay of order of the United States District Court for the District of Columbia, entered January 25, 1978, presented to THE CHIEF JUSTICE and by him referred to the Court, granted pending final disposition of the appeals in the United States Court of Appeals for the District of Columbia Circuit.

No. D-134. *IN RE DISBARMENT OF BEITLING*. It is ordered that S. Richard Beitling of Independence, Mo., be suspended from the practice of law in this Court and that a rule issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. 75-679. *INTERNAL REVENUE SERVICE v. FRUEHAUF CORP. ET AL.*, 429 U. S. 1085. Motion of respondents to retax costs denied.

No. 77-529. *WISE, MAYOR OF DALLAS, ET AL. v. LIPSCOMB ET AL.* C. A. 5th Cir. [Certiorari granted, 434 U. S. 1008.] Motion of Adelfa B. Callejo et al. for leave to participate in oral argument denied. MR. JUSTICE BRENNAN, MR. JUSTICE MARSHALL, and MR. JUSTICE STEVENS would grant the motion.

No. 77-1200. *AMERICAN ASSOCIATION OF COUNCILS OF MEDICAL STAFFS OF PRIVATE HOSPITALS, INC. v. JUDGES OF THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT*. Motion for leave to file petition for writ of mandamus denied.

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No. 77-6462. *BEGLEY v. CARTER ET AL.*; and

No. 77-6479. *RICKS v. COLLINS, WARDEN*. Motions for leave to file petitions for writs of habeas corpus denied.

No. 77-1131. *IN RE VENDO Co.* On February 10, 1978, petitioner filed for leave to file a petition for writ of mandamus and further prayed that a writ of mandamus issue to the United States District Court for the Northern District of Illinois directing the District Court to dissolve the preliminary injunction in *Lektro-Vend Corp. v. Vendo Co.* In *Vendo Co. v. Lektro-Vend Corp.*, 433 U. S. 623 (1977), this Court had held that the preliminary injunction violated the Anti-Injunction Act, 28 U. S. C. § 2283. The Court has now been advised of an order entered on April 6, 1978, dissolving the injunction in accordance with the judgment of this Court. Petitioner's motion is therefore dismissed as moot.

*Probable Jurisdiction Noted*

No. 77-1248. *ILLINOIS STATE BOARD OF ELECTIONS v. SOCIALIST WORKERS PARTY ET AL.* Appeal from C. A. 7th Cir. Probable jurisdiction noted. Reported below: 566 F. 2d 586.

*Certiorari Granted*

No. 77-533. *HISQUIERDO v. HISQUIERDO*. Sup. Ct. Cal. Certiorari granted. Reported below: 19 Cal. 3d 613, 566 P. 2d 224.

*Certiorari Denied.* (See also No. 77-6365, *supra.*)

No. 77-880. *LOWTHER ET AL. v. MARYLAND EMPLOYEES RETIREMENT SYSTEM ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 561 F. 2d 1120.

No. 77-993. *UNION OIL COMPANY OF CALIFORNIA v. ASHLAND OIL COMPANY OF CALIFORNIA ET AL.* Temp. Emerg. Ct. App. Certiorari denied. Reported below: 567 F. 2d 984.

No. 77-1039. *FRANKLIN v. ATKINS ET AL.* C. A. 10th Cir. Certiorari denied. Reported below: 562 F. 2d 1188.

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No. 77-1063. *EISENBERG v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 567 F. 2d 391.

No. 77-1068. *PFISTER v. WADDY*, U.S. DISTRICT JUDGE; and *PFISTER v. DELTA AIR LINES, INC., ET AL.* C. A. D. C. Cir. Certiorari denied.

No. 77-1080. *REDMOND v. UNITED STATES*; and

No. 77-6073. *LUND v. UNITED STATES*. C. A. 10th Cir. Certiorari denied. Reported below: 546 F. 2d 1386.

No. 77-1081. *KNEHANS v. ALEXANDER, SECRETARY OF THE ARMY*. C. A. D. C. Cir. Certiorari denied. Reported below: 184 U. S. App. D. C. 420, 566 F. 2d 312.

No. 77-1092. *THIES v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 566 F. 2d 1171.

No. 77-1097. *REYNOLDS METALS Co. v. BROWN, SECRETARY, DEPARTMENT OF DEFENSE, ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 564 F. 2d 663.

No. 77-1099. *BUTTRAM v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 568 F. 2d 770.

No. 77-1101. *PAPPAS TELEVISION, INC. v. FEDERAL COMMUNICATIONS COMMISSION ET AL.* C. A. D. C. Cir. Certiorari denied. Reported below: 185 U. S. App. D. C. 133, 566 F. 2d 798.

No. 77-1117. *McFAYDEN-SNIDER v. UNITED STATES*. C. A. 6th Cir. Certiorari denied.

No. 77-1120. *TSANAS v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 572 F. 2d 340.

No. 77-1124. *SOUTHWESTERN LIFE INSURANCE Co. v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 560 F. 2d 627.



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No. 77-1133. *MARINO v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 562 F. 2d 941.

No. 77-1160. *LOCAL 144, HOTEL, HOSPITAL, NURSING HOME & ALLIED HEALTH SERVICES UNION, SEIU, AFL-CIO v. LONG ISLAND COLLEGE HOSPITAL ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 566 F. 2d 833.

No. 77-1191. *GISH ET UX. v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 559 F. 2d 572.

No. 77-1209. *LONG MFG., N. C., INC. v. DOLLAR ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 561 F. 2d 613.

No. 77-1218. *WHITTEN ET AL. v. CALIFORNIA*. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 77-1222. *RUUD ET AL. v. MINNESOTA*. Sup. Ct. Minn. Certiorari denied. Reported below: 259 N. W. 2d 567.

No. 77-1231. *CITY OF CLEVELAND v. CLEVELAND ELECTRIC ILLUMINATING CO. ET AL.* C. A. 6th Cir. Certiorari denied.

No. 77-1232. *CARR v. UNITED STATES*;

No. 77-6283. *ANDERSON v. UNITED STATES*; and

No. 77-6291. *BULLARD v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 554 F. 2d 1071.

No. 77-1241. *WAGNER ET AL. v. BURLINGTON NORTHERN, INC., ET AL.* C. A. 7th Cir. Certiorari denied. Reported below: 566 F. 2d 1176.

No. 77-1243. *DETRICH, DIRECTOR, DEPARTMENT OF PUBLIC WELFARE OF SAN DIEGO COUNTY v. SHELTON G.* Ct. App. Cal., 4th App. Dist. Certiorari denied. Reported below: 74 Cal. App. 3d 125, 141 Cal. Rptr. 554.

No. 77-1244. *WADDELL v. PEPSI COLA Co.* Ct. App. D. C. Certiorari denied.

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No. 77-1245. *PARADISE PALMS COMMUNITY ASSN. v. PARADISE HOMES ET AL.* Sup. Ct. Nev. Certiorari denied. Reported below: 93 Nev. 488, 568 P. 2d 577.

No. 77-1246. *MARYLAND v. WHEELER.* Ct. App. Md. Certiorari denied. Reported below: 281 Md. 593, 380 A. 2d 1052.

No. 77-1304. *McADAMS v. BELL, ATTORNEY GENERAL, ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 564 F. 2d 414.

No. 77-1357. *COLEMAN v. VIRGINIA.* Sup. Ct. Va. Certiorari denied.

No. 77-1367. *WELSH v. UNITED STATES.* C. A. 6th Cir. Certiorari denied.

No. 77-1375. *MOROYOQUI v. UNITED STATES.* C. A. 9th Cir. Certiorari denied. Reported below: 570 F. 2d 862.

No. 77-1393. *CARDARELLA v. UNITED STATES.* C. A. 8th Cir. Certiorari denied. Reported below: 570 F. 2d 264.

No. 77-5942. *HANNA v. ILLINOIS.* App. Ct. Ill., 4th Dist. Certiorari denied. Reported below: 48 Ill. App. 3d 6, 362 N. E. 2d 424.

No. 77-5972. *ARMSTEAD ET AL. v. PHELPS, CORRECTIONS SECRETARY, ET AL.* C. A. 5th Cir. Certiorari denied.

No. 77-6054. *PHILLIPS v. BENTON ET AL.* C. A. 10th Cir. Certiorari denied.

No. 77-6094. *ROSENMUND v. VIRGINIA.* Sup. Ct. Va. Certiorari denied.

No. 77-6101. *SHAVER v. UNITED STATES.* C. A. 4th Cir. Certiorari denied. Reported below: 565 F. 2d 159.

No. 77-6117. *JACKSON v. OVERBERG, CORRECTIONAL SUPERINTENDENT.* C. A. 6th Cir. Certiorari denied.

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No. 77-6191. *WILLIAMS v. UNITED STATES*. C. A. D. C. Cir. Certiorari denied.

No. 77-6211. *McNAIR v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 568 F. 2d 771.

No. 77-6226. *LUNA v. UNITED STATES*. C. A. 6th Cir. Certiorari denied.

No. 77-6234. *PEREZ v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 571 F. 2d 584.

No. 77-6255. *YOUNG v. CALIFORNIA*. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 77-6265. *THOMPSON v. FLORIDA*; and *SURACE v. FLORIDA*. Sup. Ct. Fla. Certiorari denied. Reported below: 351 So. 2d 701 (first case); 351 So. 2d 702 (second case).

No. 77-6280. *DAVIS v. NEW YORK*. Ct. App. N. Y. Certiorari denied. Reported below: 43 N. Y. 2d 17, 371 N. E. 2d 456.

No. 77-6296. *CHAPMAN v. INDIANA*. Ct. App. Ind. Certiorari denied.

No. 77-6297. *BURR v. INDIANA*. Sup. Ct. Ind. Certiorari denied. Reported below: 267 Ind. 75, 367 N. E. 2d 1085.

No. 77-6299. *PLEMONS v. ESTELLE, CORRECTIONS DIRECTOR*. C. A. 5th Cir. Certiorari denied.

No. 77-6301. *WILLIAMS v. OHIO ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 547 F. 2d 40.

No. 77-6305. *TRICE v. KENTUCKY*. Ct. App. Ky. Certiorari denied. Reported below: 561 S. W. 2d 684.

No. 77-6310. *KEELING v. TEXAS*. Ct. Crim. App. Tex. Certiorari denied. Reported below: 556 S. W. 2d 832.



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No. 77-6317. *AGUIRRE v. MORRIS, WARDEN*. C. A. 9th Cir. Certiorari denied.

No. 77-6320. *MABERY v. NEW YORK*. C. A. 2d Cir. Certiorari denied.

No. 77-6322. *MORGAN v. SETLIFF, WARDEN*. C. A. 7th Cir. Certiorari denied.

No. 77-6324. *BURRELL v. ESTELLE, CORRECTIONS DIRECTOR*. C. A. 5th Cir. Certiorari denied.

No. 77-6329. *SHERLEY v. KENTUCKY*. Sup. Ct. Ky. Certiorari denied. Reported below: 558 S. W. 2d 615.

No. 77-6417. *WATKINS, DBA BELTONE HEARING AID CENTER v. LOU BACHRODT CHEVROLET, INC.* App. Ct. Ill., 2d Dist. Certiorari denied. Reported below: 48 Ill. App. 3d 954, 363 N. E. 2d 609.

No. 77-6436. *GAY v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 567 F. 2d 916.

No. 77-6446. *ROACH v. UNITED STATES*. C. A. 3d Cir. Certiorari denied.

No. 77-6449. *CLYBURN v. UNITED STATES*. Ct. App. D. C. Certiorari denied. Reported below: 381 A. 2d 260.

No. 77-6452. *BLACK HORSE v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 568 F. 2d 555.

No. 77-6453. *HERNANDEZ ET AL. v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 568 F. 2d 779.

No. 77-6461. *SACCO v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 571 F. 2d 791.

No. 77-6491. *JACKSON v. VIRGINIA*. Sup. Ct. Va. Certiorari denied.

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No. 77-1089. *HEARST v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. MR. JUSTICE BRENNAN would grant certiorari limited to Questions VII and VIII presented by the petition. Reported below: 563 F. 2d 1331.

No. 77-1308. *NATIONAL BROADCASTING Co., INC., ET AL. v. NIEMI*. Ct. App. Cal., 1st App. Dist. Certiorari denied. MR. JUSTICE BRENNAN would grant certiorari. Reported below: 74 Cal. App. 3d 383, 141 Cal. Rptr. 511.

No. 77-1329. *OHIO v. TETER*. Ct. App. Ohio, Summit County. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied.

No. 77-1385. *MAY v. INDIANA*. Ct. App. Ind. Certiorari denied. MR. JUSTICE STEWART would grant certiorari. Reported below: — Ind. App. —, 364 N. E. 2d 172.

No. 77-5953. *RILEY v. ILLINOIS*. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 49 Ill. App. 3d 304, 364 N. E. 2d 306.

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

I dissent from the denial of certiorari. Petitioner was 16 years old at the time of his arrest in connection with three homicides.<sup>1</sup> After being held for an hour and a half in a police car at the cemetery where the bodies were found, petitioner was taken to the police station, where his shoes, trousers, and shirt were removed<sup>2</sup> and he was given a blanket and placed in a cell. An hour or two later, after being advised

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<sup>1</sup> All facts are taken from the opinion of the Illinois Appellate Court. 49 Ill. App. 3d 304, 364 N. E. 2d 306 (1977). It appears that petitioner first told the police that he was 17 years old, but it is here undisputed that petitioner was 16 at the time of the events in question. See *id.*, at 306, 310, 364 N. E. 2d, at 307-308, 310; Brief in Opposition 2.

<sup>2</sup> This clothing was apparently removed for evidentiary purposes. See 49 Ill. App. 3d, at 306, 364 N. E. 2d, at 307.

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of his constitutional rights to remain silent and consult with an attorney, petitioner asked to speak to his father, who had come to the police station when he learned of his son's arrest;<sup>3</sup> this request was ignored by the police. Petitioner then confessed to the crimes, and later that evening repeated the confession to a prosecuting attorney, without having consulted with the parent whom he had asked to see or with any other friendly adult. The confession was introduced over objection at petitioner's trial, which led to his conviction for murder and to sentences of 75 to 225 years.<sup>4</sup>

The Illinois courts considered and rejected petitioner's argument, made initially in support of his motion to suppress the confession, that "the request of a juvenile defendant to see a parent is tantamount to an adult's request for an attorney" and should terminate police interrogation. 49 Ill. App. 3d 304, 308, 364 N. E. 2d 306, 309 (1977).<sup>5</sup> It is this argument that petitioner presses here.

I have recently expressed my view that this Court should decide whether a juvenile's waiver of rights is valid in the absence of "competent advice from an adult who does not have significant conflicts of interest." *Little v. Arkansas*, ante, p. 957 (dissenting from denial of certiorari). The instant case presents a related but less difficult issue, for we need not consider here whether the Constitution requires that

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<sup>3</sup> Police testimony conflicted with both petitioner's claim that he had asked to see his father and the father's claim that he had asked repeatedly to see his son. There is no dispute, however, about the father's presence at the police station that evening, and the trial court assumed, in ruling on petitioner's suppression motion, that petitioner had made the request to see his father. *Id.*, at 306-307, 310, 364 N. E. 2d, at 308, 310.

<sup>4</sup> Petitioner was convicted of two counts of murder, for which he received concurrent sentences of 75 to 225 years. He was also convicted of one count of involuntary manslaughter, for which he received a sentence of 3 to 10 years.

<sup>5</sup> The Illinois Supreme Court denied leave to appeal. App. B to Pet. for Cert.



a juvenile always receive adult advice before making a confession. Compare *ante*, at 958-959, and nn. 5-6. Nor need we decide whether adult advice tainted by conflict of interest is nevertheless sufficient for constitutional purposes. See *ante*, at 959-960. The narrow question presented here is simply whether an accused child's request to see a parent must be honored by the police before they continue interrogation, at least when the parent is available at the police station and interested in speaking to his child.

There is a conflict of authority on this question that indicates a need for this Court to exercise its certiorari jurisdiction. See Sup. Ct. Rule 19. The Supreme Court of California has held:

"[W]hen . . . a minor is taken into custody and is subjected to interrogation, without the presence of an attorney, his request to see one of his parents . . . must . . . be construed to indicate that the minor suspect desires to invoke his Fifth Amendment privilege. The police must cease custodial interrogation immediately upon exercise of the privilege." *People v. Burton*, 6 Cal. 3d 375, 383-384, 491 P. 2d 793, 798 (1971).

Other state courts have gone further, requiring that a juvenile always receive adult advice before the police may accept his confession, regardless of whether he asks to speak to an adult. See, e. g., *Lewis v. State*, 259 Ind. 431, 436-440, 288 N. E. 2d 138, 141-143 (1972); *In re K. W. B.*, 500 S. W. 2d 275, 279-283 (Mo. App. 1973); *Commonwealth v. Webster*, 466 Pa. 314, 320-328, 353 A. 2d 372, 375-379 (1975); *Commonwealth v. McCutchen*, 463 Pa. 90, 343 A. 2d 669 (1975). On the other hand, at least two courts in addition to the court below have upheld the admission of confessions obtained after juveniles' requests to see parents had been ignored by the police. *Chaney v. Wainwright*, 561 F. 2d 1129 (CA5 1977) (2-1 decision); *State v. Young*, 220 Kan. 541, 555, 552 P. 2d 905, 916 (1976) (noting that honoring juvenile's request to see

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parent would be the "better police practice," although not constitutionally required).<sup>6</sup>

In *In re Gault*, 387 U. S. 1 (1967), this Court emphasized that "the greatest care must be taken to assure that [a juvenile's] admission was voluntary . . . [and] that it was not the product of ignorance of rights or of adolescent fantasy, fright or despair." *Id.*, at 55. In light of this admonition, there is an obvious incongruity in requiring the police to honor an adult's request for an attorney while allowing them to ignore a juvenile's request to speak to a parent:

"[T]he state readily concedes that the police would have been required to accede to a request for an attorney. The accused who requests his mother rather than his ever-available attorney is the less knowledgeable, more easily coerced person most in need of protection from police overreaching. It makes no sense to protect the knowledgeable accused from stationhouse coercion while abandoning the young person who knows no more than to ask for the one person he trusts, his mother." *Chaney v. Wainwright*, *supra*, at 1134 (Goldberg, J., dissenting) (footnote omitted).

These considerations, at the very least, indicate that the issue presented here is a substantial one. For this reason, and because of the conflict among state and federal courts on the question, I would grant the petition for certiorari.

No. 77-6016. FRANKLIN ET AL. *v.* SHIELDS ET AL. C. A. 4th Cir. Motion of Public Defender of Wisconsin for leave to file a brief as *amicus curiae* granted. Certiorari denied. MR. JUSTICE BRENNAN, MR. JUSTICE WHITE, and MR. JUSTICE

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<sup>6</sup> The Illinois court in the instant case similarly indicated that "it would be preferable to make sure, whenever possible, that a parent or guardian is present when a juvenile waives his rights." 49 Ill. App. 3d, at 311, 364 N. E. 2d, at 311, quoting *In re Stiff*, 32 Ill. App. 3d 971, 978, 336 N. E. 2d 619, 625 (1975).

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MARSHALL would grant certiorari. Reported below: 569 F. 2d 784.

No. 77-6288. GIBSON *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 351 So. 2d 948.

MR. JUSTICE BRENNAN and MR. JUSTICE MARSHALL, dissenting.

Adhering to our views that the death penalty is in all circumstances cruel and unusual punishment prohibited by the Eighth and Fourteenth Amendments, *Gregg v. Georgia*, 428 U. S. 153, 227, 231 (1976), we would grant certiorari and vacate the death sentence in this case.

*Rehearing Denied*

No. 77-863. BUTHORN *v.* UNITED STATES, *ante*, p. 915; and

No. 77-1028. INSURANCE COMPANY OF NORTH AMERICA *v.* MOSLEY ET AL., *ante*, p. 918. Petitions for rehearing denied.

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*Appeals Dismissed*

No. 77-1061. DARKS *v.* TRANSOK PIPE LINE Co. Appeal from Ct. Crim. App. Okla. dismissed for want of substantial federal question.

No. 77-1250. INTERNATIONAL TRACERS OF AMERICA *v.* ESTATE OF HARD ET AL. Appeal from Sup. Ct. Wash. dismissed for want of substantial federal question. Reported below: 89 Wash. 2d 140, 570 P. 2d 131.

No. 77-1285. TOWNSHIP OF MIDLAND ET AL. *v.* MICHIGAN STATE BOUNDARY COMMISSION ET AL. Appeal from Sup. Ct. Mich. dismissed for want of substantial federal question. Reported below: 401 Mich. 641, 259 N. W. 2d 326.

No. 77-6361. RAITPORT *v.* ACRO-MATIC, INC. Appeal from Super. Ct. Pa. dismissed for want of substantial federal question. Reported below: 248 Pa. Super. 588, 374 A. 2d 695.



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No. 77-1176. NABISCO, INC., ET AL. *v.* KORZEN, TREASURER OF COOK COUNTY, ET AL. Appeal from Sup. Ct. Ill. Motion of Northwestern University for leave to file a brief as *amicus curiae* granted. Appeal dismissed for want of substantial federal question. Reported below: 68 Ill. 2d 451, 369 N. E. 2d 829.

No. 77-1287. FISHER *v.* OHIO. Appeal from Sup. Ct. Ohio dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied.

No. 77-6289. WARD *v.* UTAH. Appeal from Sup. Ct. Utah dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied. Reported below: 571 P. 2d 1343.

#### *Miscellaneous Orders*

No. 76-1560. UNITED STATES *v.* UNITED STATES GYPSUM CO. ET AL. C. A. 3d Cir. [Certiorari granted, 434 U. S. 815.] Motion of respondents Colon Brown et al. for leave to file supplemental brief after argument granted. MR. JUSTICE BLACKMUN took no part in the consideration or decision of this motion.

No. 77-1234. INTERNATIONAL ASSOCIATION OF MACHINISTS & AEROSPACE WORKERS, AFL-CIO *v.* COMPAGNIE NATIONALE AIR FRANCE. C. A. 2d Cir. The Solicitor General is invited to file a brief in this case expressing the views of the United States.

No. 77-1471. EDWARDS ET AL., MEMBERS, HOUSE OF REPRESENTATIVES *v.* CARTER, PRESIDENT OF THE UNITED STATES. C. A. D. C. Cir. Motion of petitioners to expedite consideration of petition for writ of certiorari denied. Application for injunction, presented to THE CHIEF JUSTICE, and by him referred to the Court, denied.

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No. 77-6278. KNIGHT *v.* UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MASSACHUSETTS;

No. 77-6352. TOWNSLEY *v.* LINDSAY, JUDGE, ET AL.; and

No. 77-6358. SIDDLE *v.* UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF OHIO ET AL. Motions for leave to file petitions for writs of mandamus denied.

*Certiorari Granted*

No. 77-1301. GANNETT Co., INC. *v.* DEPASQUALE, JUDGE, ET AL. Ct. App. N. Y. Certiorari granted. Reported below: 43 N. Y. 2d 370, 372 N. E. 2d 544.

No. 77-1305. PARKLANE HOSIERY Co., INC., ET AL. *v.* SHORE. C. A. 2d Cir. Certiorari granted. Reported below: 565 F. 2d 815.

No. 77-6067. DUREN *v.* MISSOURI. Sup. Ct. Mo. Motion of petitioner for leave to proceed *in forma pauperis* and certiorari granted. Reported below: 556 S. W. 2d 11.

*Certiorari Denied.* (See also Nos. 77-1287 and 77-6289, *supra.*)

No. 77-755. ROCKY MOUNTAIN MOTOR TARIFF BUREAU, INC., ET AL. *v.* UNITED STATES ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 559 F. 2d 1251.

No. 77-1008. SIOUX CITY & NEW ORLEANS BARGE LINES, INC. *v.* HELENA MARINE SERVICE, INC. C. A. 8th Cir. Certiorari denied. Reported below: 564 F. 2d 15.

No. 77-1062. DARKS ET AL. *v.* TRANSOK PIPE LINE Co. C. A. 10th Cir. Certiorari denied. Reported below: 565 F. 2d 1150.

No. 77-1095. CLEMENTE ET AL. *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 567 F. 2d 1140.

No. 77-1104. MONROE COUNTY CONSERVATION COUNCIL, INC., ET AL. *v.* ADAMS, SECRETARY OF TRANSPORTATION. C. A. 2d Cir. Certiorari denied. Reported below: 566 F. 2d 419.

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No. 77-1128. *GRIFFIN ET UX. v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 571 F. 2d 583.

No. 77-1145. *VERNELL v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 559 F. 2d 963.

No. 77-1155. *SANTANA v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 568 F. 2d 770.

No. 77-1170. *BIBBS ET AL. v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 564 F. 2d 1165.

No. 77-1174. *BELL v. UNITED STATES*. C. A. 2d Cir. Certiorari denied.

No. 77-1182. *UNITED AIR LINES, INC. v. INDA*. C. A. 9th Cir. Certiorari denied. Reported below: 565 F. 2d 554.

No. 77-1190. *ALL ISLAND DELIVERY SERVICE, INC., ET AL. v. UNITED STATES ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 565 F. 2d 290.

No. 77-1235. *LAKE LIVINGSTON WASHATERIA, INC., ET AL. v. HASTY ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 566 F. 2d 104.

No. 77-1242. *TALLY v. JOHNSON ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 565 F. 2d 161.

No. 77-1249. *BISPING v. VIRGINIA*. Sup. Ct. Va. Certiorari denied. Reported below: 240 S. E. 2d 656.

No. 77-1252. *DONOVAN CONSTRUCTION COMPANY OF MINNESOTA v. FLORIDA TELEPHONE CORP.* C. A. 5th Cir. Certiorari denied. Reported below: 564 F. 2d 1191.

No. 77-1256. *BARONE v. BARNES, JUDGE, ET AL.* C. A. 10th Cir. Certiorari denied.

No. 77-1259. *BEN R. HENDRIX TRADING Co., INC. v. J. HENRY SCHROEDER BANKING CORP. ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 560 F. 2d 1192.



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No. 77-1274. ALUMINUM COMPANY OF AMERICA ET AL. *v.* CUYAHOGA COUNTY BOARD OF REVISION ET AL. Ct. App. Ohio, Cuyahoga County. Certiorari denied.

No. 77-1280. E. F. I., INC. *v.* M. I. I., DBA MARKETERS INTERNATIONAL, INC., ET AL. Ct. Civ. App. Tex., 14th Sup. Jud. Dist. Certiorari denied. Reported below: 550 S. W. 2d 401.

No. 77-1286. CITY OF EAST DETROIT *v.* LLEWELLYN ET AL.; CITY OF EAST DETROIT *v.* VICKERY ET AL.; and CAPRI THEATRE Co., INC. *v.* CITY OF EAST DETROIT ET AL. Sup. Ct. Mich. Certiorari denied. Reported below: 401 Mich. 314, 257 N. W. 2d 902 (first case); 401 Mich. 843 (second and third cases).

No. 77-1309. MARYLAND PUBLIC INTEREST RESEARCH GROUP *v.* ELKINS, PRESIDENT, UNIVERSITY OF MARYLAND, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 565 F. 2d 864.

No. 77-1406. GAETANO ET AL. *v.* SILBERT, U. S. ATTORNEY. C. A. D. C. Cir. Certiorari denied.

No. 77-5941. BHONGSUPATANA *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 562 F. 2d 39.

No. 77-5951. SMITH *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 50 Ill. App. 3d 320, 365 N. E. 2d 558.

No. 77-5957. CEDILLO *v.* ESTELLE, CORRECTIONS DIRECTOR. C. A. 5th Cir. Certiorari denied.

No. 77-6084. EMINHIZER *v.* PENNSYLVANIA. Sup. Ct. Pa. Certiorari denied.

No. 77-6100. WASHINGTON *v.* IOWA. Sup. Ct. Iowa. Certiorari denied. Reported below: 257 N. W. 2d 890.

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No. 77-6192. *GREER v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 566 F. 2d 472.

No. 77-6222. *BRANNON v. UNITED STATES*. C. A. 9th Cir. Certiorari denied.

No. 77-6225. *ROCK v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 568 F. 2d 771.

No. 77-6273. *MOORE v. FORD MOTOR CO., WAYNE ASSEMBLY PLANT*. Sup. Ct. Mich. Certiorari denied.

No. 77-6290. *McDANIEL v. HOPPER, ASSISTANT DISTRICT ATTORNEY OF TULSA COUNTY, OKLAHOMA*. C. A. 10th Cir. Certiorari denied.

No. 77-6330. *ANDERSON v. DABDO ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 565 F. 2d 161.

No. 77-6336. *CHRISTIENSEN v. GUNN, WARDEN*. C. A. 9th Cir. Certiorari denied.

No. 77-6337. *ALTIZER v. YOUNG, ACTING WARDEN, ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 569 F. 2d 812.

No. 77-6338. *THORNTON v. DELAWARE*. Sup. Ct. Del. Certiorari denied. Reported below: 383 A. 2d 283.

No. 77-6340. *SOLOMON v. CALIFORNIA*. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 77-6341. *TURNER v. LOUISIANA*. Sup. Ct. La. Certiorari denied. Reported below: 352 So. 2d 1007.

No. 77-6343. *SKINNER v. CARDWELL, WARDEN*. C. A. 9th Cir. Certiorari denied. Reported below: 564 F. 2d 1381.

No. 77-6345. *APEL v. WAINWRIGHT, SECRETARY, DEPARTMENT OF OFFENDER REHABILITATION OF FLORIDA*. C. A. 5th Cir. Certiorari denied.

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No. 77-6350. *HINES v. CALIFORNIA*. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 77-6351. *ROYSE v. WASHINGTON ET AL.* Sup. Ct. Wash. Certiorari denied.

No. 77-6360. *HOLSEY v. WARDEN, MARYLAND PENITENTIARY*. Ct. Sp. App. Md. Certiorari denied.

No. 77-6364. *MARTIN v. NEW ENGLAND TELEPHONE & TELEGRAPH CO.* C. A. 1st Cir. Certiorari denied. Reported below: 566 F. 2d 360.

No. 77-6369. *RAY v. COWAN, PENITENTIARY SUPERINTENDENT*. C. A. 6th Cir. Certiorari denied.

No. 77-6370. *ELLIS v. OKLAHOMA ET AL.* C. A. 10th Cir. Certiorari denied.

No. 77-6401. *REEB v. ECONOMIC OPPORTUNITY ATLANTA, INC.* C. A. 5th Cir. Certiorari denied. Reported below: 565 F. 2d 1213.

No. 77-6430. *FERMIN v. CALIFANO, SECRETARY OF HEALTH, EDUCATION, AND WELFARE*. C. A. 5th Cir. Certiorari denied. Reported below: 567 F. 2d 388.

No. 77-6456. *MONTOYA-GUERRERO v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 570 F. 2d 353.

No. 77-6464. *PUGH v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 566 F. 2d 626.

No. 77-6469. *BURNETT v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 568 F. 2d 205.

No. 77-6490. *OLIVERA v. UNITED STATES*. C. A. 1st Cir. Certiorari denied.



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No. 77-6495. WARME, AKA WARNER *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 572 F. 2d 57.

No. 77-784. MARYLAND *v.* MARZULLO. C. A. 4th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 561 F. 2d 540.

MR. JUSTICE WHITE, with whom MR. JUSTICE REHNQUIST joins, dissenting.

This petition presents a question of fundamental importance to the administration of criminal justice in both the state and federal courts: What minimum standard of competence must be displayed by an attorney for a criminal defendant in order to satisfy the requirement of the Sixth Amendment that the defendant receive the effective assistance of counsel?

Despite the clear significance of this question, the Federal Courts of Appeals are in disarray. Three Circuits subscribe to the view that the representation of a defendant will be deemed adequate as a matter of constitutional law unless it was "such as to make a mockery, a sham or a farce of the trial." *United States v. Madrid Ramirez*, 535 F. 2d 125, 129 (CA1 1976); *Rickenbacker v. Warden*, 550 F. 2d 62, 65 (CA2 1976); *Gillihan v. Rodriguez*, 551 F. 2d 1182, 1187 (CA10 1977). Four Circuits require, however, that defense counsel render "reasonably competent" assistance. *United States v. De Coster*, 159 U. S. App. D. C. 326, 331, 487 F. 2d 1197, 1202 (1973); *Beasley v. United States*, 491 F. 2d 687, 696 (CA6 1974) ("reasonably effective assistance"); *United States v. Fessel*, 531 F. 2d 1275, 1278 (CA5 1976) ("reasonably effective assistance"); *United States v. Easter*, 539 F. 2d 663, 665-666 (CA8 1976) ("customary skills and diligence that a reasonably competent attorney would perform under similar circumstances"). The Third and Seventh Circuits have developed their own, apparently different, standards for determining whether effective assistance of counsel has been rendered to a defendant. *Moore v. United States*, 432 F. 2d

730, 736 (CA3 1970) ("the exercise of the customary skill and knowledge which normally prevails at the time and place"); *United States ex rel. Williams v. Twomey*, 510 F. 2d 634, 641 (CA7 1975) ("assistance which meets a minimum standard of professional representation"). The Court of Appeals for the Ninth Circuit is internally divided. Compare *Saunders v. Eyman*, No. 75-3485 (Apr. 18, 1977) ("farce or a mockery of justice") with *Cooper v. Fitzharris*, 551 F. 2d 1162, 1166 (1977) ("reasonably effective assistance"), rehearing en banc granted.

This case presents an appropriate occasion for addressing this issue. The District Court, following an earlier decision of the Fourth Circuit which held that "one is deprived of effective assistance of counsel only in those extreme instances where the representation is so transparently inadequate as to make a farce of the trial," *Root v. Cunningham*, 344 F. 2d 1, 3 (1965), found that the representation which had been provided to defendant was adequate for constitutional purposes. The Court of Appeals for the Fourth Circuit expressly disavowed the test used in *Root*, adopted a new test requiring "representation within the range of competence demanded of attorneys in criminal cases," and applied this new standard to reverse the District Court. Thus, the choice of standard was determinative of the outcome of this case. Moreover, the Court of Appeals focused on a relatively discrete problem in the conduct of the trial, so that analysis of the adequacy of representation will not require inquiry into all aspects of the preparation and handling of the case.

The decisions of this Court recognize that the right to counsel is fundamental to a fair trial. *Gideon v. Wainwright*, 372 U. S. 335 (1963); *Powell v. Alabama*, 287 U. S. 45, 68-69 (1932); and, in the last analysis, it is this Court's responsibility to determine what level of competence satisfies the constitutional imperative. It also follows that we should attempt to eliminate disparities in the minimum quality of representa-

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tion required to be provided to indigent defendants. In refusing to review a case which so clearly frames an issue that has divided the Courts of Appeals, the Court shirks its central responsibility as the court of last resort, particularly its function in the administration of criminal justice under a Constitution such as ours.

I respectfully dissent.

No. 77-943. *ILLINOIS v. GRAY*. Sup. Ct. Ill. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied, it appearing that the judgment below rests on an adequate state ground. MR. JUSTICE STEWART and MR. JUSTICE MARSHALL would deny petition without explanation. Reported below: 69 Ill. 2d 44, 370 N. E. 2d 797.

MR. JUSTICE STEVENS.

The Court's occasional practice of explaining its denials of certiorari, see, *e. g.*, *Michigan v. Allensworth*, *ante*, p. 933; *Illinois v. Pendleton*, *ante*, p. 956; *Illinois v. Garlick*, 434 U. S. 988 (1977), is, I believe, inconsistent with the rule that such denials have no precedential value. Since I regard that rule as an important aspect of our practice, I do not join the Court's explanation in this case.

No. 77-1262. *BECK v. MORRISON PUMP Co., INC.* C. A. 7th Cir. Certiorari denied. MR. JUSTICE STEVENS took no part in the consideration or decision of this petition. Reported below: 566 F. 2d 8.

No. 77-1266. *MORIAL ET AL. v. JUDICIARY COMMISSION OF THE STATE OF LOUISIANA ET AL.* C. A. 5th Cir. Certiorari denied. MR. JUSTICE WHITE would grant certiorari. Reported below: 565 F. 2d 295.

No. 77-1277. *MISSOURI STATE HIGHWAY COMMISSION v. MEYER*. C. A. 8th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 567 F. 2d 804.



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No. 77-6025. HUFFMAN v. FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 350 So. 2d 5.

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

Petitioner, a Negro male, was convicted by an all-white jury of raping a white woman, and was sentenced to life imprisonment.<sup>1</sup> In a post-conviction proceeding, he moved for a new trial on the ground that racial bias in the jury selection process deprived him of his Sixth Amendment right to an impartial jury and his Fourteenth Amendment rights to equal protection and due process. The trial court denied the motion, and the Florida District Court of Appeal affirmed without opinion, 336 So. 2d 612 (1976). With three justices dissenting, a four-man majority of the Florida Supreme Court dismissed petitioner's certiorari petition for lack of jurisdiction, without explanation. 350 So. 2d 5 (1977).

There can be no dispute that Negroes were systematically excluded from petitioner's jury in violation of the Fourteenth Amendment. The all-white jury was selected from an all-white venire, drawn from the same master jury list which the Florida District Court of Appeal held, in *Jordan v. State*, 293 So. 2d 131 (1974), to have been composed in a racially discriminatory fashion. As the District Court of Appeal noted in *Jordan*, the jury list was derived by a method rife with opportunity for racial discrimination, and reflected a substantial statistical disparity between the proportion of Negroes included and those who were eligible.<sup>2</sup> The State was unable

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<sup>1</sup> Petitioner was also convicted of burglary, for which he was given a concurrent life sentence. On appeal, the convictions were affirmed, but the concurrent sentence for burglary was reduced to 15 years. 301 So. 2d 815 (Fla. App. 1974).

<sup>2</sup> Petitioner was convicted in November 1972 in Sarasota County, Fla. The *Jordan* court found that the master jury list in use in Sarasota County at that time was compiled from voter registration cards, which indicated the race of the voter, and were taken from only 4 or 5 out of the 45

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in *Jordan* to rebut the prima facie case of discrimination thus demonstrated, see, e. g., *Castaneda v. Partida*, 430 U. S. 482, 494–495 (1977); *Alexander v. Louisiana*, 405 U. S. 625, 630–631 (1972), and the State does not here contest that the jury which convicted petitioner was selected in an unconstitutional manner.

The State argues, instead, that we are foreclosed from reaching the merits of petitioner's claim by virtue of his failure to raise the issue by written motion prior to selection of the individual jurors, as required by Fla. Rule Crim. Proc. 3.290.<sup>3</sup> But petitioner did present a timely oral motion, and, under the circumstances of this case, adherence to the requirement of a written motion would serve only "to force resort to an arid ritual of meaningless form." *Staub v. City of Baxley*, 355 U. S. 313, 320 (1958). As soon as he saw the all-white venire, petitioner's counsel moved to strike the panel, and requested

voting precincts in the county. The jury commissioners did not use objective criteria for choosing precincts, and the precincts that were selected here "had virtually no registered black voters," whereas approximately 50% of the registered voters in two precincts, and 2.65% of the voters in the county as a whole, were Negroes. 293 So. 2d, at 132–133, and n. 7. The *Jordan* court found that, out of a total of 1,344 persons on the jury list, at most 4 were Negroes (0.297%), and that the chance of drawing such a small percentage of Negroes in a random sample of 1,344 of the registered voters in the county as a whole would be less than 1 in 10 million. *Id.*, at 133 n. 4.

<sup>3</sup> Rule 3.290 provides:

"The state or defendant may challenge the panel. A challenge to the panel may be made only on the ground that the prospective jurors were not selected or drawn according to law. Challenges to the panel shall be made and decided before any individual juror is examined, unless otherwise ordered by the court. A challenge to the panel shall be in writing and shall specify the facts constituting the ground of the challenge. Challenges to the panel shall be tried by the court. Upon the trial of a challenge to the panel the witnesses may be examined on oath by the court and may be so examined by either party. If the challenge to the panel is sustained, the court shall discharge the panel. If the challenge is not sustained, the individual jurors shall be called."

an opportunity to question the jury commissioners to determine whether Negroes had been systematically excluded.<sup>4</sup> The trial judge expressed willingness to allow questioning of the supervisor of elections but not the jury commissioners, and—because the supervisor of elections would not have been able to offer any relevant testimony—counsel agreed to proceed with trial, with the “understand[ing] . . . that I have placed on the record that the jury panel is white.” App. to Pet. for Cert. E-6.

The jury commissioners’ testimony clearly was essential to development of petitioner’s discrimination claim. See n. 2, *supra*. Thus, rejection of counsel’s request to interrogate the commissioners was tantamount to denial of petitioner’s claim, and the filing of a written motion would have served no immediate purpose and would have unnecessarily delayed the proceedings.<sup>5</sup> The dissenting opinions in the Florida Supreme Court concluded that in this situation petitioner was not foreclosed as a matter of state law from raising his claim on collateral attack, notwithstanding his failure to comply with the letter of Rule 3.290. See 350 So. 2d, at 7-8 (Boyd, J., dissenting); *id.*, at 8-9 (Sundberg, J., dissenting). But, even assuming that the Florida Supreme Court’s dismissal for lack of jurisdiction was based on petitioner’s failure to make a written motion,<sup>6</sup> such a purely formalistic application of a

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<sup>4</sup> Counsel explained his failure to file a written motion, with the following:

“I might say that I did not file such a motion in writing for the Court because I didn’t see the panel until today.” App. to Pet. for Cert. E-3.

<sup>5</sup> Under these circumstances, it is simply untenable to suggest, as the State does, Response to Pet. for Cert. 1, that petitioner “abandoned” his oral motion by not accepting the trial judge’s offer to allow questioning of the supervisor of elections.

<sup>6</sup> It is not clear whether the court’s dismissal was based on petitioner’s failure to comply with Rule 3.290, or solely on a conclusion that there was no direct conflict between the decision of the District Court of Appeal in this case, and the decision of that court in *Jordan v. State*. See Fla.



state procedural rule does not constitute an independent and adequate state ground barring review in this Court. Cf. *Wright v. Georgia*, 373 U. S. 284, 289-291 (1963); *NAACP v. Alabama ex rel. Flowers*, 377 U. S. 288, 293-297 (1964). As Mr. Justice Holmes so eloquently stated: "Whatever springs the State may set for those who are endeavoring to assert rights that the State confers, the assertion of federal rights, when plainly and reasonably made, is not to be defeated under the name of local practice." *Davis v. Wechsler*, 263 U. S. 22, 24 (1923).

I would grant certiorari and set the case for oral argument.

MR. JUSTICE STEVENS.

As MR. JUSTICE MARSHALL points out, the dissenting members of the Florida Supreme Court expressed the opinion that, as a matter of state law, the petitioner could assert his federal claim in a state collateral proceeding. *Ante*, at 1016. The majority of that court, however, concluded that the claim could not be raised in such a proceeding. They therefore did not decide the federal constitutional question. Since petitioner has now exhausted his state remedies, the federal question remains open for decision in a federal habeas corpus proceeding.

As the petition comes to us, we may assume that a summary reversal might have been appropriate on direct review of petitioner's conviction, and also that a collateral attack in the federal court should succeed. It does not follow, however, that this Court has the power to compel a State to employ a collateral post-conviction remedy in which specific federal claims may be raised. See *Case v. Nebraska*, 381 U. S. 336. Accordingly, totally apart from the considerations discussed by MR. JUSTICE MARSHALL, there are serious procedural questions

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Const., Art. 5, § 3 (b) (3) (limiting certiorari jurisdiction of Florida Supreme Court to cases in which there is a "direct conflict" between decisions of district courts of appeal, and to several other categories of cases not relevant here.)

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that must be answered before addressing the merits of petitioner's federal claim. In making this observation I do not presume to explain the reasons for the Court's action; I write only to identify this as one of the many cases in which a persuasive dissent may create the unwarranted impression that the Court has acted arbitrarily in denying a petition for certiorari.

No. 77-6359. *ROSS v. HOPPER, WARDEN*. Sup. Ct. Ga. Certiorari denied. Reported below: 250 Ga. 369, 240 S. E. 2d 850.

MR. JUSTICE BRENNAN and MR. JUSTICE MARSHALL, dissenting.

Adhering to our views that the death penalty is in all circumstances cruel and unusual punishment prohibited by the Eighth and Fourteenth Amendments, *Gregg v. Georgia*, 428 U. S. 153, 227, 231 (1976), we would grant certiorari and vacate the death sentence in this case.

*Rehearing Denied*

No. 76-1719. *WASHINGTON MEDICAL CENTER, INC., ET AL. v. UNITED STATES*, 434 U. S. 902;

No. 77-953. *BUFFALO RIVER CONSERVATION AND RECREATION COUNCIL ET AL. v. NATIONAL PARK SERVICE ET AL.*, *ante*, p. 924;

No. 77-1056. *SUNBEAM TELEVISION CORP. ET AL. v. SHEVIN, ATTORNEY GENERAL OF FLORIDA, ET AL.*, *ante*, p. 920;

No. 77-5733. *MORGAN v. UNITED STATES*, *ante*, p. 926; and

No. 77-5965. *COX v. UNITED STATES*, *ante*, p. 927. Petitions for rehearing denied.

OPINIONS OF INDIVIDUAL JUSTICES IN  
CHAMBERS

BRACY ET AL. v. UNITED STATES

ON PETITION FOR WRIT

No. A-726 (7-1350). Decided March 28, 1978.

Application for stay of Court of Appeals' judgment ordering applicant  
to answer questions and allowing rehearing, pending a petition for  
writ of habeas corpus. It is ordered that the judgment be stayed.

It is so ordered that the stay be granted until the Court of Appeals has  
acted on the petition for writ of habeas corpus. The stay shall be  
subject to the order of the Court of Appeals.

REPORTER'S NOTE

The next page is purposely numbered 1301. The numbers between  
1018 and 1301 were intentionally omitted, in order to make it possible to  
publish in-chambers opinions with *permanent* page numbers, thus mak-  
ing the official citations available upon publication of the preliminary  
prints of the United States Reports.

Justice in the United States District Court for the Southern  
District of California. The Court of Appeals for the Ninth

rehearing on February 28, 1978. That court granted that  
request for a stay of its mandate fully pending consideration of  
the petition for rehearing, and not pending their petition for  
writ of habeas corpus. The Court of Appeals denied rehearing and denied  
the writ, and applicants now request that I stay the en-  
forcement of the judgment of the Court of Appeals pending  
adoption of that petition for certiorari.

The chief contention raised by applicants in their petition  
for writ of habeas corpus is that a witness committed perjury before the  
grand jury which indicted them. The witness admitted his  
perjury at trial, and applicants moved to dismiss the indict-  
ment, contending that the prosecutor should have immediately



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that must be answered before addressing the merits of petitioner's federal claim. In making this observation, I do not presume to explain the reasons for the Court's action; I write only to identify this as one of the many cases in which a persuasive dissent may create the unwarranted impression that the Court has acted arbitrarily in denying a petition for certiorari.

No. 77-1650. *Ippe v. Harris, Warden*. Sup. Ct. Certiorari denied. Reported below: 350 Ga. 366 240 S. E. 2d 850.

Mr. JUSTICE BRENNAN and Mr. JUSTICE MARSHALL, dissenting.

Adhering to our view that the death penalty is in all circumstances cruel and unusual punishment prohibited by the Eighth and Fourteenth Amendments, *Gregg v. Georgia*, 428 U.S. 153, 96 S.Ct. 223, 49 L.Ed.2d 176 (1975), we dissent from the Court's denial of certiorari in this case. The Georgia Supreme Court's decision in this case is based on the ground that the Georgia Constitution prohibits the death penalty. We believe that the Georgia Constitution does not prohibit the death penalty. The Georgia Supreme Court's decision is based on the ground that the Georgia Constitution prohibits the death penalty. We believe that the Georgia Constitution does not prohibit the death penalty.

No. 76-1719. *Washington National Insurance Co. v. United States*, 434 U.S. 901.

No. 77-853. *Shirley Ross Cunningham and Thomas Cook v. National Park Service et al.*, ante, p. 934.

No. 77-1656. *Schramm Transp. Corp. et al. v. Service, Attorney General of Florida, et al.*, ante, p. 930.

No. 77-1758. *Mullan v. United States*, ante, p. 935, and

No. 77-1665. *Cox v. United States*, ante, p. 937. Petitions for rehearing denied.