

ORDERS FROM MAY 12 THROUGH
JUNE 12, 1978

MAY 12, 1978

Dismissal Under Rule 60

No. 76-1837. PUNTA GORDA ISLES, INC. *v.* LIVESAY ET AL. C. A. 8th Cir. [Certiorari granted, 434 U. S. 954.] Writ of certiorari dismissed under this Court's Rule 60.

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Appeals Dismissed. (See also No. 77-293, *ante*, p. 84.)

No. 77-950. COLLECTION CONSULTANTS, INC., ET AL. *v.* TEXAS. Appeal from Ct. Crim. App. Tex. dismissed for want of substantial federal question. Reported below: 556 S. W. 2d 787.

No. 77-6409. CONRAD *v.* COMMERCE BANK OF KANSAS CITY. Appeal from Ct. App. Mo., St. Louis Dist., dismissed for want of substantial federal question. Reported below: 560 S. W. 2d 388.

No. 77-6447. SMITH *v.* ILLINOIS. Appeal from App. Ct. Ill., 5th Dist., dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied. Reported below: 49 Ill. App. 3d 1134, 368 N. E. 2d 233.

Vacated and Remanded on Appeal

No. 76-1616. COUNTY OF LOS ANGELES ET AL. *v.* CHAVEZ-SALIDO ET AL. Appeal from D. C. C. D. Cal. Judgment vacated and case remanded for further consideration in light of *Foley v. Connelie*, 435 U. S. 291 (1978). Reported below: 427 F. Supp. 158.

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Miscellaneous Orders

No. A-726. *KAPLAN v. NEW JERSEY*. C. A. 3d Cir. Application for stay, presented to MR. JUSTICE BLACKMUN, and by him referred to the Court, denied.

No. A-866 (77-6639). *CHAPMAN v. FEDERAL NATIONAL MORTGAGE ASSN.* Ct. App. Mich. Application for stay, presented to THE CHIEF JUSTICE, and by him referred to the Court, denied.

No. A-904 (77-1538). *ABRAHAMS, AKA CARR v. UNITED STATES*. C. A. 1st Cir. Application for bail, presented to MR. JUSTICE POWELL, and by him referred to the Court, denied.

No. A-930. *CITY OF MOBILE ET AL. v. BOLDEN ET AL.* C. A. 5th Cir. Application for recall and stay of mandate, presented to MR. JUSTICE POWELL, and by him referred to the Court, denied. MR. JUSTICE STEWART and MR. JUSTICE REHNQUIST would grant the application.

No. 77-1373. *MAINE CENTRAL RAILROAD Co. v. HALPERIN ET AL.* Appeal from Sup. Jud. Ct. Me. The Solicitor General is invited to file a brief in this case expressing the views of the United States.

No. 77-1438. *WALSH v. WANGELIN*, U. S. DISTRICT JUDGE. Motion for leave to file petition for writ of prohibition denied.

No. 77-6362. *GREEN v. HUNTER*, U. S. DISTRICT JUDGE; and

No. 77-6379. *GREEN v. UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF MISSOURI*. Motions for leave to file petitions for writs of mandamus denied.

Probable Jurisdiction Noted

No. 76-808. *NYQUIST, COMMISSIONER, NEW YORK STATE DEPARTMENT OF EDUCATION, ET AL. v. NORWICK ET AL.* Appeal from D. C. S. D. N. Y. Probable jurisdiction noted. Reported below: 417 F. Supp. 913.

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No. 77-1254. VANCE, SECRETARY OF STATE, ET AL. *v.* BRADLEY ET AL. Appeal from D. C. D. C. Probable jurisdiction noted. Reported below: 436 F. Supp. 134.

No. 77-6431. CABAN *v.* MOHAMMED ET UX. Appeal from Ct. App. N. Y. Motion of appellant for leave to proceed *in forma pauperis* granted. Probable jurisdiction noted. Reported below: 43 N. Y. 2d 708, 372 N. E. 2d 42.

Certiorari Granted. (See also No. 77-293, *ante*, p. 84.)

No. 77-1172. NATIONAL MUFFLER DEALERS ASSN., INC. *v.* UNITED STATES. C. A. 2d Cir. *Certiorari* granted. Reported below: 565 F. 2d 845.

No. 77-1359. UNITED STATES *v.* KIMBELL FOODS, INC., ET AL. C. A. 5th Cir. *Certiorari* granted. Reported below: 557 F. 2d 491.

Certiorari Denied. (See also No. 77-6447, *supra*.)

No. 76-1163. NYQUIST, COMMISSIONER OF EDUCATION OF NEW YORK, ET AL. *v.* SURMELI ET AL. C. A. 2d Cir. *Certiorari* denied. Reported below: 556 F. 2d 560.

No. 77-1002. VIGORITO *v.* UNITED STATES;

No. 77-1004. DELUCA ET AL. *v.* UNITED STATES;

No. 77-6026. DIMATTEO *v.* UNITED STATES;

No. 77-6035. MASCITTI *v.* UNITED STATES; and

No. 77-6165. SCAFIDI *v.* UNITED STATES. C. A. 2d Cir. *Certiorari* denied. Reported below: 564 F. 2d 633.

No. 77-1074. AFFILIATED UTE CITIZENS OF UTAH *v.* UNITED STATES. Ct. Cl. *Certiorari* denied. Reported below: 215 Ct. Cl. 935, 566 F. 2d 1191.

No. 77-1086. KERR, POLICE DIRECTOR OF THE CITY OF NEWARK, ET AL. *v.* GASPARINETTI ET AL. C. A. 3d Cir. *Certiorari* denied. Reported below: 568 F. 2d 311.

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No. 77-1144. *DUNCAN ET AL. v. FURROW AUCTION CO. ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 564 F. 2d 1107.

No. 77-1153. *REESE v. UNITED STATES.* C. A. 9th Cir. Certiorari denied.

No. 77-1161. *DREBIN ET AL. v. UNITED STATES.* C. A. 9th Cir. Certiorari denied. Reported below: 557 F. 2d 1316 and 572 F. 2d 215.

No. 77-1213. *LLORENTE v. NEW YORK*; and *DORONZORO v. NEW YORK.* App. Div., Sup. Ct. N. Y., 1st Jud. Dept. Certiorari denied. Reported below: 57 App. Div. 2d 526, 393 N. Y. S. 2d 575.

No. 77-1227. *MOITY v. SWIFT AGRICULTURAL CHEMICALS CORP.* C. A. 5th Cir. Certiorari denied.

No. 77-1228. *NICKELL v. UNITED STATES.* C. A. 6th Cir. Certiorari denied. Reported below: 552 F. 2d 684.

No. 77-1236. *GENERAL ATOMIC CO. v. FELTER, JUDGE, ET AL.*; and

No. 77-1269. *GENERAL ATOMIC CO. v. FELTER, JUDGE, ET AL.* Sup. Ct. N. M. Certiorari denied.

No. 77-1240. *MAHROOM v. HOOK ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 563 F. 2d 1369.

No. 77-1263. *ANTHONY v. COMMISSIONER OF INTERNAL REVENUE.* C. A. 3d Cir. Certiorari denied. Reported below: 566 F. 2d 1168.

No. 77-1267. *WIREMAN v. INDIANA SUPREME COURT DISCIPLINARY COMMISSION.* Sup. Ct. Ind. Certiorari denied. Reported below: — Ind. —, 367 N. E. 2d 1368.

No. 77-1272. *VINER v. UNITED STATES.* C. A. 3d Cir. Certiorari denied. Reported below: 568 F. 2d 771.

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No. 77-1276. *OXBERGER v. WINEGARD*. Sup. Ct. Iowa. Certiorari denied. Reported below: 258 N. W. 2d 847.

No. 77-1278. *CLARK COUNTY, NEVADA v. ALPER ET AL.* Sup. Ct. Nev. Certiorari denied. Reported below: 93 Nev. 569, 571 P. 2d 810.

No. 77-1299. *FOUR WINDS, INC. v. INDIANA AERONAUTICS COMMISSION*. Sup. Ct. Ind. Certiorari denied. Reported below: 267 Ind. 137, 368 N. E. 2d 1340.

No. 77-1300. *EISENBERG v. ED MARGIS PLUMBING & HEATING Co., INC.* Sup. Ct. Wis. Certiorari denied. Reported below: 80 Wis. 2d 577, 258 N. W. 2d 720.

No. 77-1311. *SHELL OIL Co. ET AL. v. FRED WEBER, INC.* C. A. 8th Cir. Certiorari denied. Reported below: 566 F. 2d 602.

No. 77-1313. *BAILEY v. STREET*. C. A. 6th Cir. Certiorari denied. Reported below: 571 F. 2d 580.

No. 77-1314. *HARRY GOODKIN & Co. v. ABRAHAMSON ET UX.* C. A. 2d Cir. Certiorari denied. Reported below: 568 F. 2d 862.

No. 77-1315. *LAWRENCE ET AL. v. KLEIN ET AL.* App. Div., Sup. Ct. N. Y., 1st Jud. Dept. Certiorari denied. Reported below: 58 App. Div. 2d 751, 396 N. Y. S. 2d 223.

No. 77-1316. *CADY v. GOULD ET AL.* Ct. App. Mo., Kansas City Dist. Certiorari denied. Reported below: 558 S. W. 2d 755.

No. 77-1317. *KENT v. ILLINOIS*. App. Ct. Ill., 3d Dist. Certiorari denied. Reported below: 49 Ill. App. 3d 1030, 365 N. E. 2d 239.

No. 77-1319. *SMITH ET AL. v. INDIANA*. Ct. App. Ind. Certiorari denied. Reported below: — Ind. App. —, 363 N. E. 2d 227.

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No. 77-1320. *WILLIAMS v. NORTH CAROLINA*. Ct. App. N. C. Certiorari denied. Reported below: 34 N. C. App. 408, 238 S. E. 2d 668.

No. 77-1323. *HUBBARD BROADCASTING, INC., ET AL. v. AMMERMAN ET AL.* Ct. App. N. M. Certiorari denied. Reported below: 91 N. M. 250, 572 P. 2d 1258.

No. 77-1333. *THORSTAD v. NORTH DAKOTA*. Sup. Ct. N. D. Certiorari denied. Reported below: 261 N. W. 2d 899.

No. 77-1335. *INTERSTATE PROPERTIES ET AL. v. BECKER ET AL.* C. A. 3d Cir. Certiorari denied. Reported below: 569 F. 2d 1203.

No. 77-1348. *CONNECTICUT v. PENLAND*. Sup. Ct. Conn. Certiorari denied. Reported below: 174 Conn. 153, 384 A. 2d 356.

No. 77-1353. *OWENDALE-GAGETOWN SCHOOL DISTRICT v. STATE BOARD OF EDUCATION ET AL.* Ct. App. Mich. Certiorari denied.

No. 77-1361. *CALVERT FIRE INSURANCE Co. v. AMERICAN MUTUAL REINSURANCE Co.* App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 52 Ill. App. 3d 922, 367 N. E. 2d 104.

No. 77-1362. *VE-RI-TAS, INC., ET AL. v. ADVERTISING REVIEW COUNCIL OF METROPOLITAN DENVER, INC., ET AL.* C. A. 10th Cir. Certiorari denied. Reported below: 567 F. 2d 963.

No. 77-1365. *DACEY v. HOUSE ET AL.*; and *DACEY v. DORSEY*. C. A. 2d Cir. Certiorari denied. Reported below: 573 F. 2d 1289 (first case); 568 F. 2d 275 (second case).

No. 77-1368. *DONDICH v. UNITED STATES*. C. A. 9th Cir. Certiorari denied.

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No. 77-1369. *SANTO v. FEICK SECURITY SYSTEMS ET AL.* Sup. Ct. Fla. Certiorari denied. Reported below: 354 So. 2d 985.

No. 77-1377. *HULL v. FLORIDA.* Dist. Ct. App. Fla., 2d Dist. Certiorari denied. Reported below: 349 So. 2d 237.

No. 77-1384. *FLOTA MERCANTE GRANCOLOMBIANA, S. A. v. HUDSON WATERWAYS CORP.* C. A. 2d Cir. Certiorari denied. Reported below: 573 F. 2d 1290.

No. 77-1412. *BARBER ET AL. v. SKYLINE AVIATION, INC.* C. A. 8th Cir. Certiorari denied. Reported below: 566 F. 2d 1178.

No. 77-1414. *BECKWITH v. BECKWITH.* Ct. App. D. C. Certiorari denied. Reported below: 379 A. 2d 955.

No. 77-1416. *TEMPORALE v. CONNECTICUT.* App. Sess., Super. Ct. Conn. Certiorari denied. Reported below: See 174 Conn. 802, 382 A. 2d 1332.

No. 77-1433. *CECIL v. UNITED STATES*; and

No. 77-1441. *MANZER v. UNITED STATES.* C. A. 10th Cir. Certiorari denied.

No. 77-1440. *SUGAR v. UNITED STATES.* C. A. 7th Cir. Certiorari denied. Reported below: 570 F. 2d 349.

No. 77-1471. *EDWARDS ET AL., MEMBERS OF CONGRESS v. CARTER, PRESIDENT OF THE UNITED STATES.* C. A. D. C. Cir. Certiorari denied. Reported below: 189 U. S. App. D. C. 1, 580 F. 2d 1055.

No. 77-1477. *FINLEY ET UX. v. UNITED STATES.* C. A. 8th Cir. Certiorari denied. Reported below: 571 F. 2d 430.

No. 77-1480. *IANNELLI ET UX. v. UNITED STATES.* C. A. 3d Cir. Certiorari denied. Reported below: 571 F. 2d 572.

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No. 77-1487. *WOODY v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 567 F. 2d 1353.

No. 77-6147. *WILLIAMS v. DELAWARE*. Sup. Ct. Del. Certiorari denied. Reported below: 378 A. 2d 117.

No. 77-6156. *FAISON v. MITCHELL, WARDEN*. C. A. 4th Cir. Certiorari denied. Reported below: 563 F. 2d 1135.

No. 77-6158. *STEWART ET AL. v. OHIO*. Sup. Ct. Ohio. Certiorari denied.

No. 77-6170. *NAPOLES v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 570 F. 2d 348.

No. 77-6194. *PIPES v. RONALD A. COCO, INC., ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 564 F. 2d 414.

No. 77-6208. *COZZA v. DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE*. C. A. 2d Cir. Certiorari denied.

No. 77-6235. *BRETZ v. CRIST, WARDEN*. Sup. Ct. Mont. Certiorari denied. Reported below: 575 P. 2d 44.

No. 77-6250. *SMITH v. OKLAHOMA*. Ct. Crim. App. Okla. Certiorari denied. Reported below: 573 P. 2d 1215.

No. 77-6268. *TEEMAN v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 570 F. 2d 349.

No. 77-6303. *BANKS ET AL. v. UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT ET AL.* C. A. 8th Cir. Certiorari denied. Reported below: 565 F. 2d 528.

No. 77-6304. *JONES v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 569 F. 2d 499.

No. 77-6308. *NIXON v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 570 F. 2d 353.

No. 77-6318. *WOLGEMUTH v. ILLINOIS*. Sup. Ct. Ill. Certiorari denied. Reported below: 69 Ill. 2d 154, 370 N. E. 2d 1067.

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No. 77-6356. *CONANT v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 568 F. 2d 1366.

No. 77-6363. *LEWIS v. ROSE, WARDEN*; and

No. 77-6404. *HODGES v. ROSE, WARDEN*. C. A. 6th Cir. Certiorari denied. Reported below: 570 F. 2d 643.

No. 77-6368. *JACKSON ET AL. v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 571 F. 2d 583.

No. 77-6377. *HOHMANN v. CALIFORNIA ET AL.* C. A. 9th Cir. Certiorari denied.

No. 77-6380. *HETLAND v. OREGON*. Ct. App. Ore. Certiorari denied. Reported below: 31 Ore. App. 529, 570 P. 2d 1201.

No. 77-6381. *YOUNG v. CLANON, MEDICAL FACILITY SUPERINTENDENT*. C. A. 9th Cir. Certiorari denied.

No. 77-6382. *MULERO ET UX. v. AUTORIDAD DE LAS FUENTES FLUVIALES DE PUERTO RICO*. Sup. Ct. P. R. Certiorari denied. Reported below: — P. R. R. —.

No. 77-6391. *GIBSON v. ROSE, WARDEN*. Ct. Crim. App. Tenn. Certiorari denied.

No. 77-6392. *PINEDA v. FLORIDA*. C. A. 5th Cir. Certiorari denied. Reported below: 564 F. 2d 1163.

No. 77-6399. *BATTEN v. VIRGINIA*. Sup. Ct. Va. Certiorari denied.

No. 77-6402. *HARDIN v. TEXAS*. Ct. Crim. App. Tex. Certiorari denied.

No. 77-6408. *CLAYTON v. LOGGINS, CORRECTIONAL SUPERINTENDENT, ET AL.* C. A. 9th Cir. Certiorari denied.

No. 77-6412. *JUSTICE v. HESSELDEN PLUMBING Co.* Ct. App. Ohio, Franklin County. Certiorari denied.

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No. 77-6419. *BOWERS v. BATTLES, CAMP SUPERVISOR, HARLAN COUNTY FORESTRY CAMP.* C. A. 6th Cir. Certiorari denied. Reported below: 568 F. 2d 1.

No. 77-6420. *WION v. UNITED STATES.* C. A. 10th Cir. Certiorari denied.

No. 77-6426. *DOWNING v. FRAGGASSI ET AL.* Pa. Commw. Ct. Certiorari denied. Reported below: 26 Pa. Commw. 517, 364 A. 2d 748.

No. 77-6427. *GARCIA v. STONE, WARDEN.* C. A. 9th Cir. Certiorari denied.

No. 77-6433. *BRAHAM v. ALASKA.* Sup. Ct. Alaska. Certiorari denied. Reported below: 571 P. 2d 631.

No. 77-6435. *IN RE ESTATE OF BASALYGA.* Sup. Ct. Pa. Certiorari denied. Reported below: 474 Pa. 606, 379 A. 2d 305.

No. 77-6440. *JOHNSON v. CALIFORNIA.* Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 77-6441. *CLOUDY v. ALLISON.* C. A. 7th Cir. Certiorari denied.

No. 77-6448. *WINTERS v. WARDEN, TENNESSEE STATE PENITENTIARY.* C. A. 6th Cir. Certiorari denied.

No. 77-6455. *DRUM v. UNITED STATES.* C. A. 9th Cir. Certiorari denied. Reported below: 568 F. 2d 779.

No. 77-6457. *BAMOND v. NEW YORK ET AL.* C. A. 2d Cir. Certiorari denied.

No. 77-6471. *CASTILLO (LOPEZ) v. GOVERNMENT OF THE CANAL ZONE.* C. A. 5th Cir. Certiorari denied. Reported below: 568 F. 2d 405.

No. 77-6482. *RICHARDSON v. PENNSYLVANIA.* Sup. Ct. Pa. Certiorari denied. Reported below: 476 Pa. 571, 383 A. 2d 510.

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- No. 77-6503. *DeSANTIS v. UNITED STATES*;
No. 77-6529. *BOSCIA v. UNITED STATES*;
No. 77-6556. *SCOLIERY v. UNITED STATES*; and
No. 77-6557. *PLUSQUELLEC v. UNITED STATES*. C. A. 3d
Cir. Certiorari denied. Reported below: 573 F. 2d 827.
- No. 77-6506. *McDONALD v. THOMPSON, WARDEN*. C. A.
6th Cir. Certiorari denied. Reported below: 573 F. 2d
1311.
- No. 77-6513. *PALLAN v. UNITED STATES*. C. A. 9th Cir.
Certiorari denied. Reported below: 571 F. 2d 497.
- No. 77-6518. *CARUSO v. UNITED STATES BOARD OF PAROLE*.
C. A. 3d Cir. Certiorari denied. Reported below: 570 F.
2d 1150.
- No. 77-6525. *MAGUIRE v. UNITED STATES*. C. A. 1st Cir.
Certiorari denied. Reported below: 571 F. 2d 675.
- No. 77-6527. *JONES v. UNITED STATES*. C. A. 4th Cir.
Certiorari denied. Reported below: 565 F. 2d 159.
- No. 77-6530. *CRUZ v. UNITED STATES*. C. A. 9th Cir.
Certiorari denied.
- No. 77-6533. *HEFT v. UNITED STATES*. C. A. 10th Cir.
Certiorari denied. Reported below: 571 F. 2d 543.
- No. 77-6535. *WAKEFIELD v. UNITED STATES*. C. A. 6th
Cir. Certiorari denied. Reported below: 573 F. 2d 1312.
- No. 77-6550. *SPICER v. UNITED STATES*. C. A. 5th Cir.
Certiorari denied. Reported below: 566 F. 2d 105.
- No. 77-6552. *ARLT v. UNITED STATES*. C. A. 5th Cir.
Certiorari denied. Reported below: 567 F. 2d 1295.
- No. 77-6561. *CYPHERS v. UNITED STATES*. C. A. 10th
Cir. Certiorari denied.

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No. 77-6568. *STANCELL v. UNITED STATES*. C. A. 4th Cir. Certiorari denied.

No. 77-6580. *HUGHES v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 570 F. 2d 948.

No. 77-6590. *ROBINSON v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 570 F. 2d 353.

No. 77-6597. *WILCOX, AKA TAYLOR v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 570 F. 2d 352.

No. 77-6608. *WIMBLEY v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 570 F. 2d 354.

No. 77-6609. *SHANE v. UNITED STATES*. C. A. 7th Cir. Certiorari denied.

No. 77-6613. *BAER v. UNITED STATES*. C. A. 6th Cir. Certiorari denied.

No. 77-6620. *WILLIAMS v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 570 F. 2d 657.

No. 77-1003. *NAPOLI ET AL. v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. MR. JUSTICE BRENNAN and MR. JUSTICE STEWART would grant certiorari. Reported below: 564 F. 2d 633.

No. 77-1066. *ENSLIN v. BEAN, CORRECTIONAL SUPERINTENDENT*. C. A. 4th Cir. Certiorari denied. MR. JUSTICE BRENNAN and MR. JUSTICE MARSHALL would grant certiorari. Reported below: 565 F. 2d 156.

No. 77-1201. *ZEIGLER COAL CO. v. LOCAL UNION No. 1870, UNITED MINE WORKERS OF AMERICA, ET AL.* C. A. 7th Cir. Motion of Bituminous Coal Operators' Assn., Inc., for leave to file a brief as *amicus curiae* granted. Certiorari denied. Reported below: 566 F. 2d 582.

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No. 77-1275. MARTIN B. GLAUSER DODGE Co. v. CHRYSLER CORP. ET AL. C. A. 3d Cir. Motion of Independent Dealers Committee Dedicated to Action for leave to file a brief as *amicus curiae* granted. Certiorari denied. Reported below: 570 F. 2d 72.

No. 77-1279. FLESCHNER ET AL. v. ABRAHAMSON ET UX. C. A. 2d Cir. Motion of Investment Counsel Association of America, Inc., for leave to file a brief as *amicus curiae* granted. Certiorari denied. MR. JUSTICE STEWART and MR. JUSTICE POWELL would grant certiorari. Reported below: 568 F. 2d 862.

No. 77-1284. GAUDET v. EXXON CORP.; and

No. 77-1328. ST. PIERRE v. EXXON CORP. ET AL. C. A. 5th Cir. Certiorari denied. MR. JUSTICE POWELL took no part in the consideration or decision of these petitions. Reported below: 562 F. 2d 351.

No. 77-1345. TELEPHONE USERS ASSN., INC. v. PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA ET AL. Ct. App. D. C. Certiorari denied. MR. JUSTICE POWELL took no part in the consideration or decision of this petition.

No. 77-1341. VINCENT, CORRECTIONAL SUPERINTENDENT v. SANTIAGO. C. A. 2d Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 573 F. 2d 1295.

No. 77-1346. TAYLOR, DIRECTOR OF PERSONNEL OF PHILADELPHIA, ET AL. v. RODRIGUEZ. C. A. 3d Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 569 F. 2d 1231.

No. 77-1421. LAHMAN MANUFACTURING Co., INC., ET AL. v. FARMHAND, INC. C. A. 8th Cir. Motion to defer consideration of petition for writ of certiorari and certiorari denied. Reported below: 568 F. 2d 112.

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No. 77-6095. *SAWYER v. FLORIDA*. Dist. Ct. App. Fla., 3d Dist. Certiorari denied. MR. JUSTICE BRENNAN would grant certiorari. Reported below: 346 So. 2d 1071.

No. 77-6202. *ST. JOHN v. ESTELLE, CORRECTIONS DIRECTOR*. C. A. 5th Cir. Certiorari denied. MR. JUSTICE BLACKMUN would grant certiorari. Reported below: 563 F. 2d 168.

No. 77-6378. *THOMAS v. GEORGIA*; and

No. 77-6424. *CORN v. GEORGIA*. Sup. Ct. Ga. Certiorari denied. Reported below: No. 77-6378, 240 Ga. 393, 242 S. E. 2d 1; No. 77-6424, 240 Ga. 130, 240 S. E. 2d 694.

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.

No. 77-6542. *HOPSON ET AL. v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. MR. JUSTICE STEVENS took no part in the consideration or decision of this petition. Reported below: 567 F. 2d 392.

Rehearing Denied

No. 77-1088. *CHESTNUTT CORP. v. GALFAND ET AL.*, 435 U. S. 943;

No. 77-1142. *ROBLES v. UNITED STATES*, 435 U. S. 925;

No. 77-5644. *JENKINS v. DISTRICT OF COLUMBIA*, 434 U. S. 1018;

No. 77-6080. *BILLINGSLEY ET AL. v. SEIBELS, MAYOR OF BIRMINGHAM, ET AL.*, 435 U. S. 929; and

No. 77-6107. *MITCHELL v. HOPPER, WARDEN*, 435 U. S. 937. Petitions for rehearing denied.

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- No. 77-6108. SAYLES *v.* HAYWOOD, JUDGE, 435 U. S. 929;
No. 77-6127. NOONE *v.* SZORADI ET AL., 435 U. S. 930;
No. 77-6163. FAHRIG ET AL. *v.* BERGER ET AL., 435 U. S.
945;
No. 77-6183. WILLIAMS ET AL. *v.* HOYT ET AL., 435 U. S.
946;
No. 77-6186. McELROY *v.* WILSON ET AL., 435 U. S. 931;
and
No. 77-6213. HERNANDEZ ET AL. *v.* COLORADO, 435 U. S.
954. Petitions for rehearing denied.

No. 76-1359. BANKERS TRUST CO. *v.* MALLIS ET AL., 435
U. S. 381. Petition for rehearing denied. MR. JUSTICE
BLACKMUN took no part in the consideration or decision of
this petition.

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Appeals Dismissed

No. 77-1371. CONWAY *v.* WISCONSIN. Appeal from Sup.
Ct. Wis. dismissed for want of substantial federal question.
Reported below: 80 Wis. 2d 268, 258 N. W. 2d 717.

No. 77-1380. HEPPERLE *v.* RICKS 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: 566 F.
2d 104.

Miscellaneous Orders

No. A-954. AMERICAN TELEPHONE & TELEGRAPH CO. *v.*
MCI TELECOMMUNICATIONS CORP. ET AL.; and

No. A-966. UNITED STATES INDEPENDENT TELEPHONE
ASSN. *v.* MCI TELECOMMUNICATIONS CORP. ET AL. Applica-
tions for stay of April 14, 1978, order of the United States
Court of Appeals for the District of Columbia Circuit, pre-
sented to THE CHIEF JUSTICE, and by him referred to the
Court, denied.

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No. A-891. *ROBERTS v. UNITED STATES*. C. A. 9th Cir. Application for an extension of time in which to file a petition for writ of certiorari, presented to MR. JUSTICE MARSHALL, and by him referred to the Court, granted and time to file such petition extended to and including May 30, 1978.

No. 73, Orig. *CALIFORNIA v. NEVADA*. Motion of California State Assemblyman Mike Cullen for leave to file a brief as *amicus curiae*; motion of Nevada for leave to file amended answer setting forth counterclaim; and motion of California for leave to file amended complaint, referred to Special Master. [For earlier order herein, see 433 U. S. 918.]

No. 77-5992. *ADDINGTON v. TEXAS*. Sup. Ct. Tex. [Probable jurisdiction noted, 435 U. S. 967.] Motion of appellant for appointment of counsel granted, and it is ordered that Martha L. Boston, of Austin, Tex., be appointed to serve as counsel for appellant in this case.

No. 77-6657. *CONRAD v. FIRST STATE BANK & TRUST CO.* Motion for leave to file petition for writ of habeas corpus denied.

Probable Jurisdiction Noted

No. 77-1134. *MONTANA ET AL. v. UNITED STATES*. Appeal from D. C. Mont. Probable jurisdiction noted. Reported below: 437 F. Supp. 354.

Certiorari Granted

No. 77-1258. *MINNESOTA v. FIRST OF OMAHA SERVICE CORP. ET AL.*; and

No. 77-1265. *MARQUETTE NATIONAL BANK OF MINNEAPOLIS v. FIRST OF OMAHA SERVICE CORP. ET AL.* Sup. Ct. Minn. Certiorari granted, cases consolidated, and a total of one hour allotted for oral argument. In addition to the questions presented by the petitions, the parties are directed to brief and argue jurisdictional issue as to whether the petitions were timely filed. Reported below: 262 N. W. 2d 358.

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No. 77-1387. FEDERAL OPEN MARKET COMMITTEE OF THE FEDERAL RESERVE SYSTEM *v.* MERRILL. C. A. D. C. Cir. Certiorari granted. Reported below: 184 U. S. App. D. C. 203, 565 F. 2d 778.

Certiorari denied. (See also No. 77-1380, *supra.*)

No. 77-1123. DUNNING ET AL. *v.* BOYES. Sup. Ct. Ala. Certiorari denied. Reported below: 351 So. 2d 883.

No. 77-1126. STANLEY ET AL. *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 77-1169. BAZZANO *v.* UNITED STATES;

No. 77-6097. GUFFEY *v.* UNITED STATES; and

No. 77-6236. MATZ *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 570 F. 2d 1120.

No. 77-1273. HAWN ET AL. *v.* COUNTY OF VENTURA, CALIFORNIA, ET AL. Ct. App. Cal., 2d App. Dist. Certiorari denied. Reported below: 73 Cal. App. 3d 1009, 141 Cal. Rptr. 111.

No. 77-1282. SERVICE ARMAMENT Co. *v.* UNITED STATES. Ct. Cl. Certiorari denied. Reported below: 215 Ct. Cl. 199, 567 F. 2d 377.

No. 77-1290. SHEPHERD *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied. Reported below: 74 Cal. App. 3d 334, 141 Cal. Rptr. 379.

No. 77-1297. LAX *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 570 F. 2d 353.

No. 77-1307. MINNESOTA ET AL. *v.* ZAY ZAH ET AL. Sup. Ct. Minn. Certiorari denied. Reported below: 259 N. W. 2d 580.

No. 77-1379. GODIN *v.* MASSACHUSETTS. Sup. Jud. Ct. Mass. Certiorari denied. Reported below: — Mass. —, 371 N. E. 2d 438.

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No. 77-1382. *BALLARD v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 573 F. 2d 1313.

No. 77-1386. *FRISCO LAND & MINING Co. v. CALIFORNIA*. Ct. App. Cal., 1st App. Dist. Certiorari denied. Reported below: 74 Cal. App. 3d 736, 141 Cal. Rptr. 820.

No. 77-1391. *DELESDEMIER v. ESTATE OF LOGA ET AL.* Ct. App. La., 4th Cir. Certiorari denied. Reported below: 354 So. 2d 576.

No. 77-1392. *NEVADA EX REL. WESTERGARD, STATE ENGINEER, ET AL. v. SALMON RIVER CANAL Co., LTD.* C. A. 9th Cir. Certiorari denied. Reported below: 564 F. 2d 1244.

No. 77-1400. *TANGORA ET AL. v. PETZ ET AL.* C. A. 3d Cir. Certiorari denied.

No. 77-1403. *ROBINSON, DBA DO-RITE GROCERY & MARKET v. BULLOCK, COMPTROLLER OF PUBLIC ACCOUNTS OF TEXAS*. Ct. Civ. App. Tex., 3d Sup. Jud. Dist. Certiorari denied. Reported below: 553 S. W. 2d 196.

No. 77-1404. *FOX ET AL. v. KNEIP ET AL.* Sup. Ct. S. D. Certiorari denied. Reported below: — S. D. —, 260 N. W. 2d 371.

No. 77-1449. *OLMSTEAD v. NORTH DAKOTA*. Sup. Ct. N. D. Certiorari denied. Reported below: 261 N. W. 2d 880.

No. 77-1474. *HUNT v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 570 F. 2d 353.

No. 77-1478. *PACIFIC GAS & ELECTRIC Co. ET AL. v. WIDENER*. Ct. App. Cal., 1st App. Dist. Certiorari denied. Reported below: 75 Cal. App. 3d 415, 142 Cal. Rptr. 304.

No. 77-1498. *TAXE v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 572 F. 2d 216.

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No. 77-1541. *GARRETT ET AL. v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 574 F. 2d 778.

No. 77-6059. *O'LEARY v. A. O. SMITH HARVESTORE PRODUCTS, INC.* C. A. 5th Cir. Certiorari denied. Reported below: 561 F. 2d 631.

No. 77-6087. *MOORER ET AL. v. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT ET AL.* C. A. 8th Cir. Certiorari denied. Reported below: 561 F. 2d 175.

No. 77-6180. *DANIELS v. NEW MEXICO*. C. A. 10th Cir. Certiorari denied.

No. 77-6247. *WITHEROW v. UNITED STATES*. C. A. 6th Cir. Certiorari denied.

No. 77-6267. *YODER v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 573 F. 2d 1300.

No. 77-6274. *RODRIGUEZ-GASTELUM v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 569 F. 2d 482.

No. 77-6323. *GILLINGS v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 568 F. 2d 1307.

No. 77-6332. *CASCIOLA v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 568 F. 2d 778.

No. 77-6346. *WOODSON v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 566 F. 2d 1171.

No. 77-6353. *WEDDELL v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 567 F. 2d 767.

No. 77-6357. *HOHENSEE ET AL. v. CARTER*. C. A. 4th Cir. Certiorari denied. Reported below: 565 F. 2d 155.

No. 77-6371. *BUNTS v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 570 F. 2d 351.

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No. 77-6374. *GOMEZ-SILVA v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 570 F. 2d 352.

No. 77-6383. *BASILE v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 569 F. 2d 1053.

No. 77-6397. *YOUNG, AKA CLOUDY v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 544 F. 2d 522.

No. 77-6411. *SHRADER v. MITCHELL, WARDEN*. C. A. 4th Cir. Certiorari denied. Reported below: 566 F. 2d 1173.

No. 77-6421. *SEK v. BETHLEHEM STEEL CORP.* C. A. 3d Cir. Certiorari denied. Reported below: 565 F. 2d 153.

No. 77-6422. *MUNCASTER v. COMMISSIONER OF INTERNAL REVENUE*. C. A. 5th Cir. Certiorari denied.

No. 77-6423. *HINTZ v. ALASKA ET AL.* Sup. Ct. Alaska. Certiorari denied.

No. 77-6445. *O'NEAL v. GRIFFIN ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 559 F. 2d 28.

No. 77-6467. *GROOMES v. WHITNER ET AL.* Ct. App. Ga. Certiorari denied. Reported below: 144 Ga. App. 530, 241 S. E. 2d 604.

No. 77-6472. *BRAKE v. ADAMS ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 568 F. 2d 772.

No. 77-6474. *SMITH v. FLORIDA*. Sup. Ct. Fla. Certiorari denied. Reported below: 353 So. 2d 818.

No. 77-6475. *MARSHALL v. FLORIDA*. Dist. Ct. App. Fla., 2d Dist. Certiorari denied. Reported below: 354 So. 2d 107.

No. 77-6478. *HARDIN v. EVANS, SHERIFF*. C. A. 5th Cir. Certiorari denied.

No. 77-6481. *SATTERFIELD v. MITCHELL, WARDEN*. C. A. 4th Cir. Certiorari denied. Reported below: 572 F. 2d 443.

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No. 77-6487. *KING v. CHAVEZ, PRISON SUPERINTENDENT, ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 570 F. 2d 350.

No. 77-6492. *GARCIA v. MALLEY, WARDEN.* C. A. 10th Cir. Certiorari denied.

No. 77-6498. *MCBRIDE v. DELTA AIR LINES, INC.* C. A. 6th Cir. Certiorari denied. Reported below: 571 F. 2d 581.

No. 77-6499. *MENARD v. NEBRASKA.* Sup. Ct. Neb. Certiorari denied. Reported below: 199 Neb. 456, 259 N. W. 2d 479.

No. 77-6500. *CLEVELAND v. MARYLAND.* Ct. Sp. App. Md. Certiorari denied.

No. 77-6504. *EDDINGS v. OKLAHOMA.* Ct. Crim. App. Okla. Certiorari denied. Reported below: 584 P. 2d 1340.

No. 77-6505. *WATSON v. NEW JERSEY.* Sup. Ct. N. J. Certiorari denied. Reported below: 75 N. J. 593, 384 A. 2d 823.

No. 77-6507. *TODD v. GEORGIA.* Ct. App. Ga. Certiorari denied. Reported below: 143 Ga. App. 619, 239 S. E. 2d 188.

No. 77-6509. *GOODE v. PERINI, CORRECTIONAL SUPERINTENDENT.* C. A. 6th Cir. Certiorari denied. Reported below: 571 F. 2d 581.

No. 77-6512. *KICKASOLA v. JIM WALLACE OIL CO. ET AL.* Ct. App. Ga. Certiorari denied. Reported below: 144 Ga. App. 758, 242 S. E. 2d 483.

No. 77-6515. *HILL v. WYRICK, WARDEN.* C. A. 8th Cir. Certiorari denied. Reported below: 570 F. 2d 748.

No. 77-6523. *DUDAR v. UNITED STATES.* C. A. 6th Cir. Certiorari denied.

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No. 77-6524. *SNYDER v. SNYDER ET AL.* C. A. 8th Cir. Certiorari denied.

No. 77-6534. *LYON ET UX. v. COMMISSIONER OF INTERNAL REVENUE.* C. A. 9th Cir. Certiorari denied.

No. 77-6565. *DELAY v. KENTUCKY.* Ct. App. Ky. Certiorari denied. Reported below: 560 S. W. 2d 823.

No. 77-6593. *CARTER v. EXECUTIVE BRANCH OF THE UNITED STATES ET AL.* C. A. 2d Cir. Certiorari denied.

No. 77-6606. *WRIGHT v. ESTELLE, CORRECTIONS DIRECTOR.* Ct. Crim. App. Tex. Certiorari denied.

No. 77-6633. *PIERCE v. INDIANA ET AL.* C. A. 7th Cir. Certiorari denied.

No. 77-6672. *FRIST v. WALKER ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 566 F. 2d 1172.

No. 77-689. *INDIANA & MICHIGAN ELECTRIC Co. v. CITY OF MISHAWAKA, INDIANA, ET AL.* C. A. 7th Cir. Motion of Edison Electric Institute for leave to file a brief as *amicus curiae* granted. Certiorari denied. Reported below: 560 F. 2d 1314.

No. 77-1015. *PRATE ET AL. v. FREEDMAN, CITY MANAGER OF THE CITY OF ROCHESTER, ET AL.* C. A. 2d Cir. Certiorari denied. MR. JUSTICE WHITE would grant certiorari. Reported below: 573 F. 2d 1294.

No. 77-1106. *O'BRIEN v. PENNSYLVANIA.* Sup. Ct. Pa. Certiorari denied. MR. JUSTICE BRENNAN and MR. JUSTICE WHITE would grant certiorari. Reported below: 475 Pa. 123, 379 A. 2d 1313.

No. 77-1408. *DANDO ENTERPRISES, LTD. v. PRITCHETT ET AL.* C. A. 8th Cir. Motion of respondent for damages and certiorari denied. Reported below: 568 F. 2d 570.

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No. 77-6325. *WATSON v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. MR. JUSTICE BRENNAN and MR. JUSTICE POWELL would grant certiorari. Reported below: 573 F. 2d 1300.

Rehearing Denied

No. 77-959. *HULVER v. UNITED STATES*, 435 U. S. 951;
No. 77-5874. *LITTLE v. ARKANSAS*, 435 U. S. 957;
No. 77-5995. *REDA v. UNITED STATES*, 435 U. S. 973;
No. 77-6079. *SMITH v. UNITED STATES*, 435 U. S. 953;
No. 77-6276. *PHILLIPS v. OLIAN ET AL.*, 435 U. S. 975; and
No. 77-6462. *BEGLEY v. CARTER ET AL.*, 435 U. S. 994.
Petitions for rehearing denied.

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Miscellaneous Order

No. A-997. *DOUTHIT v. GEORGIA*. Sup. Ct. Ga. Application for stay of execution of the death sentence in this case, presented to MR. JUSTICE POWELL, and by him referred to the Court, denied. MR. JUSTICE BRENNAN and MR. JUSTICE MARSHALL would grant the stay.

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Affirmed on Appeal

No. 77-1150. *CONCERNED CITIZENS OF SOUTHERN OHIO, INC., ET AL. v. PINE CREEK CONSERVANCY DISTRICT ET AL.* Affirmed on appeal from D. C. S. D. Ohio. MR. JUSTICE BRENNAN, MR. JUSTICE WHITE, and MR. JUSTICE MARSHALL would note probable jurisdiction and set case for oral argument.

Appeals Dismissed

No. 77-6354. *NORTHERN v. DEPARTMENT OF HUMAN RESOURCES OF TENNESSEE*. Appeal from Sup. Ct. Tenn. dismissed as moot. Reported below: See 563 S. W. 2d 197.

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No. 77-5063. *SCOTT ET UX. v. FEDERAL NATIONAL MORTGAGE ASSN.* Appeal from Sup. Ct. Mo. dismissed for want of substantial federal question. MR. JUSTICE BRENNAN took no part in the consideration or decision of this case. Reported below: 548 S. W. 2d 545.

No. 77-6217. *STACY v. FLORIDA.* Appeal from Sup. Ct. Fla. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied. Reported below: 355 So. 2d 517.

Certiorari Granted—Vacated and Remanded

No. 77-371. *SHIRLEY ET AL. v. RETAIL STORE EMPLOYEES UNION ET AL.* Sup. Ct. Kan. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Sears, Roebuck & Co. v. San Diego County District Council of Carpenters, ante*, p. 180. Reported below: 222 Kan. 373, 565 P. 2d 585.

Miscellaneous Orders

No. A-967. *DER-RONG CHOUR v. FERRO, DISTRICT DIRECTOR, IMMIGRATION AND NATURALIZATION SERVICE, ET AL.* C. A. 2d Cir. Application for stay of deportation, presented to MR. JUSTICE BRENNAN, and by him referred to the Court, denied. THE CHIEF JUSTICE, MR. JUSTICE MARSHALL, and MR. JUSTICE POWELL would reject the application since it was not signed by counsel.

No. 77-6727. *GREEN v. LEE, GOVERNOR OF MARYLAND, ET AL.* Motion for leave to file petition for writ of habeas corpus denied.

No. 77-6555. *GREEN v. HUNTER, U. S. DISTRICT JUDGE.* Motion for leave to file petition for writ of mandamus denied.

Probable Jurisdiction Noted

No. 77-1119. *ORR v. ORR.* Appeal from Ct. Civ. App. Ala. Probable jurisdiction noted. Reported below: 351 So. 2d 904.

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Certiorari Granted

No. 77-1177. *SCOTT v. ILLINOIS*. Sup. Ct. Ill. Certiorari granted. Reported below: 68 Ill. 2d 269, 369 N. E. 2d 881.

No. 77-1337. *NEVADA ET AL. v. HALL ET AL.* Ct. App. Cal., 1st App. Dist. Certiorari granted. Reported below: 74 Cal. App. 3d 280, 141 Cal. Rptr. 439.

No. 77-1388. *MASSACHUSETTS v. WHITE*. Sup. Jud. Ct. Mass. Certiorari granted. Reported below: — Mass. —, 371 N. E. 2d 777.

Certiorari Denied. (See also No. 77-6217, *supra.*)

No. 77-123. *LOCAL NO. 757, ICE CREAM DRIVERS & EMPLOYEES UNION, ET AL. v. BARCLAY'S ICE CREAM CO., LTD.* Ct. App. N. Y. Certiorari denied. Reported below: 41 N. Y. 2d 269, 360 N. E. 2d 956.

No. 77-1171. *LATHROP ET UX. v. BELL FEDERAL SAVINGS & LOAN ASSN.* Sup. Ct. Ill. Certiorari denied. Reported below: 68 Ill. 2d 375, 370 N. E. 2d 188.

No. 77-1193. *STEARSMAN v. UNITED STATES*. Ct. Cl. Certiorari denied. Reported below: 215 Ct. Cl. 972, 566 F. 2d 1192.

No. 77-1197. *PULAWA ET AL. v. HAWAII*. Sup. Ct. Hawaii. Certiorari denied. Reported below: 58 Haw. 377, 569 P. 2d 900.

No. 77-1217. *SIMKOVICH v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 568 F. 2d 771.

No. 77-1239. *FIRST NATIONAL BANK OF AKRON v. JUDICIAL PANEL ON MULTIDISTRICT LITIGATION ET AL.* C. A. 2d Cir. Certiorari denied.

No. 77-1247. *GIBSON v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 567 F. 2d 1237.

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No. 77-1293. *PETERSON v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 570 F. 2d 348.

No. 77-1310. *RICCO v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 566 F. 2d 433.

No. 77-1321. *PALUMBO ET AL. v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 568 F. 2d 770 and 771.

No. 77-1331. *NATIONAL CITIZENS COMMITTEE FOR BROADCASTING v. FEDERAL COMMUNICATIONS COMMISSION ET AL.* C. A. D. C. Cir. Certiorari denied. Reported below: 186 U. S. App. D. C. 102, 567 F. 2d 1095.

No. 77-1338. *MUMMERT v. UNITED STATES*; and

No. 77-6384. *REYNOSO-ULLOA v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 548 F. 2d 1329.

No. 77-1429. *ANTILL v. SIGMAN*. Sup. Ct. Ga. Certiorari denied. Reported below: 240 Ga. 511, 241 S. E. 2d 254.

No. 77-1431. *FRINK v. FRINK*. Super. Ct. N. J. Certiorari denied.

No. 77-1434. *ST. LOUIS-SAN FRANCISCO RAILWAY Co. v. GRIFFITH*. Ct. App. Mo., St. Louis Dist. Certiorari denied. Reported below: 559 S. W. 2d 278.

No. 77-1436. *SETCHELL v. ANOKA COUNTY, MINNESOTA, SHERIFF'S CIVIL SERVICE COMMISSION*. Sup. Ct. Minn. Certiorari denied. Reported below: 261 N. W. 2d 354.

No. 77-1437. *PELTZ v. JOINT BAR ASSOCIATION GRIEVANCE COMMITTEE FOR THE SECOND AND ELEVENTH JUDICIAL DISTRICTS*. App. Div., Sup. Ct. N. Y., 2d Jud. Dept. Certiorari denied. Reported below: 60 App. Div. 2d 587, 400 N. Y. S. 2d 511.

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No. 77-1445. *MELENDY v. UNITED STATES POSTAL SERVICE ET AL.* C. A. 7th Cir. Certiorari denied. Reported below: 570 F. 2d 348.

No. 77-1446. *SOUTHERN CAPITAL CORP. v. SOUTHERN PACIFIC CO. ET AL.* C. A. 8th Cir. Certiorari denied. Reported below: 568 F. 2d 590.

No. 77-1454. *ABERNATHY, ADMINISTRATOR v. SCHENLEY INDUSTRIES, INC., ET AL.* C. A. 4th Cir. Certiorari denied.

No. 77-1456. *PECK v. DUNN ET AL.* Sup. Ct. Utah. Certiorari denied. Reported below: 574 P. 2d 367.

No. 77-1461. *BERG v. GROWE, SECRETARY OF STATE OF MINNESOTA, ET AL.* Sup. Ct. Minn. Certiorari denied. Reported below: 262 N. W. 2d 412.

No. 77-1516. *PELTZMAN v. CENTRAL GULF LINES, INC.* C. A. 2d Cir. Certiorari denied. Reported below: 573 F. 2d 1294.

No. 77-1555. *BENSABAT v. UNITED STATES.* C. A. 5th Cir. Certiorari denied. Reported below: 568 F. 2d 1226.

No. 77-1602. *JOHNSON v. UNITED STATES.* C. A. 10th Cir. Certiorari denied.

No. 77-5737. *MATTHEWS ET AL. v. LOCAL UNION No. 3, INTERNATIONAL UNION OF OPERATING ENGINEERS, ET AL.* Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 77-6216. *FELLOWS v. MARYLAND.* Ct. Sp. App. Md. Certiorari denied.

No. 77-6218. *SMITH, AKA THOMAS v. FLORIDA.* Sup. Ct. Fla. Certiorari denied. Reported below: 354 So. 2d 985.

No. 77-6233. *WILMORE v. UNITED STATES.* C. A. 3d Cir. Certiorari denied. Reported below: 568 F. 2d 771.

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No. 77-6251. *McALLISTER v. GARRISON, WARDEN*. C. A. 4th Cir. Certiorari denied. Reported below: 569 F. 2d 813.

No. 77-6285. *ALLSUP v. UNITED STATES*. C. A. 10th Cir. Certiorari denied.

No. 77-6286. *LEVINE v. UNITED STATES*. C. A. 1st Cir. Certiorari denied. Reported below: 569 F. 2d 1175.

No. 77-6293. *HARRIS v. UNITED STATES DISTRICT COURT FOR THE DISTRICT OF KANSAS*. C. A. 10th Cir. Certiorari denied.

No. 77-6388. *BROWN ET AL. v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 571 F. 2d 572 and 573.

No. 77-6393. *TIERNEY v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 568 F. 2d 771.

No. 77-6451. *MARTINEZ v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 559 F. 2d 28.

No. 77-6494. *GOODEN v. HARRIS COUNTY COMMISSIONERS COURT ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 568 F. 2d 1365.

No. 77-6497. *SELLARS v. BUSCH ET AL.* C. A. 9th Cir. Certiorari denied.

No. 77-6514. *ESPINOZA v. ESTELLE, CORRECTIONS DIRECTOR*. C. A. 5th Cir. Certiorari denied.

No. 77-6517. *WILSON v. ARMSTRONG ET AL.* C. A. 6th Cir. Certiorari denied.

No. 77-6526. *JIRANEK v. BANK OF AMERICA*. C. A. 9th Cir. Certiorari denied. Reported below: 566 F. 2d 1182.

No. 77-6538. *BROWN v. NEW MEXICO*. Sup. Ct. N. M. Certiorari denied. Reported below: 91 N. M. 349, 573 P. 2d 1204.

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No. 77-6545. *WILSON v. CRISP, WARDEN*. C. A. 10th Cir. Certiorari denied.

No. 77-6546. *NANCE v. UNION CARBIDE CORPORATION, CONSUMER PRODUCTS DIVISION*. C. A. 4th Cir. Certiorari denied.

No. 77-6554. *DAWN, DBA GAME CO. v. STERLING DRUG, INC., ET AL.* C. A. 9th Cir. Certiorari denied.

No. 77-6560. *SCOTT v. OVERBURG, CORRECTIONAL SUPERINTENDENT*. C. A. 6th Cir. Certiorari denied.

No. 77-6562. *TAYLOR ET AL. v. ALLEN SUPERIOR COURT, CRIMINAL-FELONY DIVISION*. Ct. App. Ind. Certiorari denied. Reported below: — Ind. App. —, 366 N. E. 2d 206.

No. 77-6564. *SCHERER v. WOLFF, WARDEN*. C. A. 9th Cir. Certiorari denied.

No. 77-6584. *MCNEAL v. UNITED STATES*. C. A. 6th Cir. Certiorari denied.

No. 77-6587. *ELDRIDGE v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 569 F. 2d 319.

No. 77-6623. *SCHMITZ v. UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA ET AL.* C. A. 9th Cir. Certiorari denied.

No. 77-6629. *FRAZEE v. UNITED STATES*. C. A. 10th Cir. Certiorari denied.

No. 77-6634. *JAMES v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 574 F. 2d 320.

No. 77-6643. *NUNEZ-CHAVEZ v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 570 F. 2d 353.

No. 77-6647. *DAVIS v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 573 F. 2d 1302.

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No. 77-6653. GREATHOUSE *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 571 F. 2d 586.

No. 77-6655. NUNEZ *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 573 F. 2d 769.

No. 77-6659. SUPPLEE *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 573 F. 2d 1303.

No. 77-6674. SMITH *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 77-6681. BETTKER *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 567 F. 2d 388.

No. 77-6687. DAVIS *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 573 F. 2d 1177.

No. 77-6688. SNEAD *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 76-1523. SWOAP, DIRECTOR, DEPARTMENT OF BENEFIT PAYMENTS OF CALIFORNIA *v.* GARCIA ET AL. Ct. App. Cal., 2d App. Dist. Motion of respondents for leave to proceed *in forma pauperis* granted. Certiorari denied. MR. JUSTICE STEWART would grant certiorari. Reported below: 63 Cal. App. 3d 903, 134 Cal. Rptr. 137.

No. 76-1799. TRANSCONTINENTAL GAS PIPE LINE CORP. *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 this petition. Reported below: 183 U. S. App. D. C. 146, 562 F. 2d 664.

No. 76-1826. LONDON ET AL. *v.* UNITED STATES;

No. 76-1852. GENCO *v.* UNITED STATES; and

No. 76-6978. SHADE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. MR. JUSTICE BRENNAN would grant certiorari. Reported below: 556 F. 2d 709.

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No. 76-6637. *DAVIAGE v. UNITED STATES*. C. A. D. C. Cir. Certiorari denied. MR. JUSTICE BRENNAN would grant certiorari. Reported below: 179 U. S. App. D. C. 281, 551 F. 2d 467.

No. 76-6828. *FURY v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. MR. JUSTICE BRENNAN would grant certiorari. Reported below: 554 F. 2d 522.

No. 77-5291. *LEE v. UNITED STATES*. C. A. D. C. Cir. Certiorari denied. MR. JUSTICE BRENNAN would grant certiorari. Reported below: 183 U. S. App. D. C. 129, 561 F. 2d 1022.

No. 77-1077. *GRAVES ET UX. v. WHITE MOUNTAIN APACHE TRIBE, DBA FORT APACHE TIMBER CO., ET AL.* Ct. App. Ariz. Certiorari denied. MR. JUSTICE BLACKMUN would grant certiorari. Reported below: 117 Ariz. 32, 570 P. 2d 803.

No. 77-1226. *LONG v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 562 F. 2d 185.

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

In September 1975, a friend of petitioner in West Germany mailed petitioner a magazine, entitled *Stellungen*. A customs officer, assigned to the Post Office opened the envelope containing the magazine and forwarded it to customs officials who determined that the magazine was obscene, seized it, and began forfeiture proceedings against it under 19 U. S. C. § 1305¹ in the District Court for the Southern District of New York. Petitioner appeared in response to a notice of the impending forfeiture, see 19 CFR § 12.40 (1977), and argued that the magazine was not obscene under standards prevailing in Lancaster, Pa., petitioner's home and the address to which

¹ "All persons are prohibited from importing into the United States from any foreign country . . . any obscene book [or] pamphlet . . . and all such articles . . . shall be subject to seizure and forfeiture . . ."

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the magazine was sent. The trial judge agreed with petitioner that the relevant inquiry related to community standards in Lancaster and dismissed the complaint since the United States had failed to produce evidence of the relevant community standard.² The Court of Appeals for the Second Circuit reversed, holding that the relevant community standards were those at the port of entry, the Southern District of New York.

I continue to adhere to the view expressed in my dissent in *United States v. 12 200-Ft. Reels of Film*, 413 U. S. 123, 138 (1973):

“Whatever the extent of the Federal Government’s power to bar the distribution of allegedly obscene material to juveniles or the offensive exposure of such material to unconsenting adults, the statute before us is . . . clearly overbroad and unconstitutional on its face.”

Accordingly, I would reverse the judgment of the Court of Appeals.

No. 77-1253. *NIMMO ET AL. v. GRAINGER ET AL.* C. A. 5th Cir. Certiorari denied. MR. JUSTICE POWELL would grant certiorari. Reported below: 547 F. 2d 303.

No. 77-1330. *ISAKSON ET AL. v. UNITED STATES ET AL.* C. A. 7th Cir. Certiorari denied. MR. JUSTICE STEVENS took no part in the consideration or decision of this petition. Reported below: 567 F. 2d 730.

No. 77-1339. *ROBINSON v. CITY OF BIRMINGHAM.* Ct. Crim. App. Ala. Certiorari denied. Reported below: 353 So. 2d 528 and 534.

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

Petitioner was convicted of two separate offenses of knowingly and unlawfully exhibiting an allegedly obscene motion

² In addition, the trial court ruled that the procedures afforded under § 1305 were insufficient to satisfy the First Amendment. Cf. *Freedman v. Maryland*, 380 U. S. 51 (1965). The Court of Appeals disagreed.

picture film under Birmingham City Ordinance No. 67-2, § 3. He was sentenced to pay a fine of \$300 and perform hard labor for the city of Birmingham for 180 days on the first conviction and to pay a fine of \$150 and perform hard labor for 90 days on the second. Prior to each trial, petitioner moved to suppress the film involved on the ground that the warrant for the seizure of the film was improper in that the magistrate who issued the warrant had not first viewed the film to ensure that there was probable cause to believe the film was obscene. In each case the motion to suppress was denied and these rulings were affirmed on appeal.

Birmingham City Ordinance No. 67-2, § 3, under which petitioner was convicted, provides:

“It shall be unlawful for any person to knowingly publish, print, exhibit, distribute or have in his possession with intent to distribute, exhibit, sell or offer for sale, in the city or the police jurisdiction thereof, any obscene matter.”

Brief in Opposition 3.

Birmingham City Ordinance No. 74-18, which authorizes the issuance of warrants to seize allegedly obscene material, provides:

“Section 1. The following words and terms, shall when used in this ordinance, have the following respective meanings:

“A. ‘*Obscene Motion Picture*’: A motion picture which to the average person, applying contemporary community standards, the predominant appeal of which motion picture taken as a whole is to prurient interest, that is, a shameful or morbid interest in sexual conduct, nudity or excretion, and depicts or describes in a patently offensive manner sexual conduct, which motion picture taken as a whole lacks serious literary, artistic, political or scientific value.

"Section 2. Search warrants for the seizure as evidence of motion picture films alleged to be obscene as defined herein and to have been exhibited publicly in the City . . . in violation of Ordinance Number 67-2 . . . may be issued by a Recorder or by a Magistrate as hereinafter provided in this ordinance.

"Section 3. Any police officer of the City or other individual who shall accuse any person of publicly exhibiting in the City . . . an obscene motion picture film in violation of said Ordinance Number 67-2 . . . may appear before a Recorder or Magistrate and testify under oath to the facts upon which he bases such accusation

"Section 4. If such Recorder or Magistrate determines from said affidavit or affidavits . . . that there is probable cause to believe such motion picture film is obscene, he shall proceed to issue a search warrant for the seizure of said motion picture film and a warrant for the arrest of the person or persons accused of publicly exhibiting the same in the City . . . in violation of said Ordinance Number 67-2" App. to Pet. for Cert. A. 18-A. 20.

As the text of Birmingham's ordinances suggests, Birmingham has attempted to declare obscene all material that it could constitutionally declare obscene under this Court's guidelines in *Miller v. California*, 413 U. S. 15 (1973). See 353 So. 2d 528, 533 (Ala. Crim. App.), cert. denied, 353 So. 2d 534 (Ala. 1977). Birmingham has, moreover, allowed warrants to issue for the seizure of allegedly obscene motion pictures on a showing of probable cause to believe a film is obscene under the *Miller* standards.

In this Court and in the courts below, petitioner has contended that Ordinance No. 74-18 is unconstitutional because it allows a warrant to issue under the authority of a judicial officer who has not personally seen the allegedly obscene motion picture. This argument is not insubstantial, but I need not address it since I continue to adhere to my view that

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"at least in the absence of distribution to juveniles or obtrusive exposure to unconsenting adults, the First and Fourteenth Amendments prohibit the State and 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 (1973) (dissenting opinion). Under this test, Birmingham Ordinance No. 67-2 is unconstitutionally overbroad and invalid on its face. See *Miller v. California*, *supra*, at 47 (BRENNAN, J., dissenting). Similarly, Birmingham Ordinance No. 74-18 is also invalid in that it allows the seizure of a film on a showing that cannot, under my view of the First and Fourteenth Amendments, constitute probable cause to believe a crime has been committed. For these reasons, I would grant certiorari and summarily reverse petitioner's convictions.

No. 77-1418. CONSOLIDATED MOTOR INNS *v.* ALIAS ENTERPRISES, LTD. C. A. 5th Cir. Motion of BVA Credit Corp. for leave to file a brief as *amicus curiae* granted. Certiorari denied.

No. 77-1490. ALFORD *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 355 So. 2d 108.

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

The issue presented is whether a sentence of death may constitutionally be imposed by a trial judge who has been made "aware" of, but states that he has not "considered," certain information in a presentence report not revealed to the defendant.

I

Petitioner was convicted by a jury of first-degree murder and rape in 1973. The trial judge, following the jury's recommendation, sentenced petitioner to death. The Florida Supreme Court affirmed the judgment, 307 So. 2d 433 (1975),

and this Court denied certiorari. 428 U. S. 912 (1976).¹ After our decision in *Gardner v. Florida*, 430 U. S. 349 (1977), the Florida Supreme Court directed the trial judge to file a response "stating whether he imposed the death sentence . . . on the basis of consideration of any information not known to appellant," and provided that petitioner would have an opportunity to move to vacate the sentence thereafter. The trial judge filed a response, stating that he had not considered any information not known to petitioner in imposing the death penalty.²

Petitioner then filed a motion to vacate the death sentence. He alleged that the "confidential evaluation" portion of the presentence report (which defense counsel had obtained after sentencing through clemency proceedings) affirmatively contradicted the trial judge's response, indicating that prior to sentencing the probation officer had given the judge certain information about petitioner which had not been disclosed to

¹ At that time, MR. JUSTICE BRENNAN and I dissented from the denial of certiorari. We noted there:

"Petitioner contends that his right of confrontation, guaranteed by the Sixth and Fourteenth Amendments, was violated because the transcript of the preliminary hearing testimony of a material prosecution witness was read at his trial and the prosecution, although it was aware that the witness would leave Florida prior to the trial, failed to use available procedures to assure the witness' presence at trial or to depose the witness before the trial began. See *Barber v. Page*, 390 U. S. 719 (1968). On the record in this case, we would grant certiorari and set the case for oral argument.

"In any event, the imposition and carrying out of the death penalty in this case constitute cruel and unusual punishment in violation of the Eighth and Fourteenth Amendments. *Gregg v. Georgia*, [428 U. S. 153,] 227 (BRENNAN, J., dissenting); *id.*, p. 231 (MARSHALL, J., dissenting). We would therefore grant certiorari and vacate the judgment in this case insofar as it leaves undisturbed the death sentence imposed."

² The judge's "response" stated that he "did not consider information unknown to the Appellant in conjunction with any matter in this case." App. to Pet. for Cert. A12. Attached to this response was a letter written by the judge prior to sentencing, to the probation officer who prepared the

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him. In a 4-3 decision, the Florida Supreme Court denied petitioner's motion and upheld the death sentence. 355 So. 2d 108 (1978).

The majority agreed with the State that there is a difference between a trial judge's being "aware" of and "considering" facts. It purported to find support in MR. JUSTICE STEVENS' statement in *Gardner, supra*, at 359-360, written on behalf of himself and two other Members of the Court,³

presentence report. The letter, which appears in App. II to Response to Pet. for Cert., is reproduced in its entirety below:

September 12, 1973

Joel Padgett, Probation Supervisor
Probation and Parole Department
County Courthouse
West Palm Beach, Florida

Re: Learie Leo Alford

Dear Joel:

I know you have expended a great deal of time, effort and conscientious evaluation in the preparation of the pre-sentence report concerning Learie Leo Alford. I recall that you indicated to me that the revelation of the confidential section of this report to the defense would be damaging and compromising to sources who had confided in you. I respect your judgment in this.

I feel, however, in a case in which the jury has recommended the supreme penalty known to our law, that there well may be a constitutional right to disclosure of this confidential section to the defendant. As far as I know, there is not yet a judicial decision on what the meaning of 'factual material' in Rule 3.713 (b) may be. I feel that if I cannot release the confidential section to the defendant, I should not review it myself in this particular case. I know that this means that I shall not have the benefit of a major portion of your work in this report because of this view and I regret that this is so.

Accordingly, do not deliver that section of your report to me.

Thank you.

Very truly yours,
MARVIN MOUNTS, JR.,
Circuit Judge.

³ The Florida Supreme Court apparently mistakenly believed that MR. JUSTICE STEVENS was speaking for the Court. See 355 So. 2d, at 109.

that “[i]n those cases in which the accuracy of a report is contested, the trial judge can avoid delay by disregarding the disputed material.” Without further analysis,⁴ the majority concluded that “the trial judge complied with the requirements of *Gardner* and the motion to vacate is denied.”

Justice Boyd, dissenting, argued that any facts of which the trial judge was privately made aware should have been disclosed to defense counsel with an opportunity to refute them. In his view, it was “unconstitutional for courts to impose sentences upon persons convicted of crime without affording the accused persons an opportunity to refute any information known to the sentencing judge.” 355 So. 2d, at 110. Noting that absent such procedures, “incorrect representations, perhaps made in good faith,” could be used by the court in setting punishment, the justice stated: “Such protection is more important in capital cases, where the defendant’s life is at stake, than in any other kind of case.” *Ibid.* Justice Hatchett also dissented, joined by Justices Boyd and Sundberg, arguing that the majority’s distinction between “consideration” and “awareness” was not supported by our decision in *Gardner* and was inconsistent with the thrust of that opinion. He argued that a trial judge may constitutionally “disregard” material of which he is aware only after presenting it to the defendant for an opportunity to contest facts. 355 So. 2d, at 110.

II

I continue to adhere to my view that the death penalty is unconstitutional under all circumstances. *Furman v. Georgia*, 408 U. S. 238, 314 (1972) (MARSHALL, J., concurring); *Gregg v. Georgia*, 428 U. S. 153, 231 (1976) (MARSHALL, J., dissenting). I would therefore grant certiorari and vacate the death sentence on this basis alone. However, as I wrote in *Gardner v. Florida*, *supra*, at 365, if the State is to be permitted to impose such an irreversible penalty it ought at the least to do

⁴The majority noted that a judge may be aware of proffered inadmissible evidence without considering it. *Ibid.*

so only through procedures that provide the maximum assurance of accuracy and fairness in the sentencing determination. In *Gardner*, we vacated a Florida death sentence imposed by a judge, in part on the basis of the confidential portion of a presentence report not disclosed to defense counsel. In the instant case, three of the seven justices on the Florida State Supreme Court believed that the procedures followed herein were unfair, unconstitutional, and not in conformity with this Court's opinion in *Gardner*. In so important an area as life and death, I should think this factor alone would have persuaded my Brethren to give plenary consideration to the issue.

The due process question raised by the dissents below is a substantial one. As noted below, "[t]he first paragraph of the confidential evaluation indicates that the sentencing judge 'was made aware of some of [the report's] facts' by the [probation] supervisor." 355 So. 2d, at 109. The trial judge anticipated our decision in *Gardner* to some extent and attempted to avoid reliance on facts not disclosed to petitioner.⁵ But it is not disputed that the judge and the probation supervisor had *ex parte* communications in this case in which some adverse information about petitioner was imparted to the judge and not revealed to the petitioner.⁶

⁵ See n. 2, *supra*, and n. 6, *infra*.

⁶ The papers before us do not clearly reflect what particular facts the trial judge was made aware of. Petitioner has annexed to his petition an extract from a "Deposition of Joel Padgett," the probation supervisor who wrote the confidential evaluation. App. to Pet. for Cert. A15. Respondent states that the deposition was apparently taken after the motion to vacate the death sentence was filed, and has not been made part of the record or served upon counsel for respondent, Response to Pet. for Cert. 7; respondent does not, however, dispute the accuracy of its contents. In this deposition, Padgett stated that he told the judge over the telephone that a confidential informant who had been in the county jail with petitioner advised him that petitioner was involved with prostitutes. Padgett also stated that he might have told the judge on the phone that the informant stated that petitioner had admitted to him his guilt. At some point in their telephone conversation, Padgett testified, the judge had cut him off, saying he did not want to hear any more.

In this context, the distinction between "awareness" of adverse facts and "consideration" of them is one too tenuous on which to make a life turn. Persons acting in complete good faith may attempt to put out of their minds information received; with respect to many kinds of decisionmaking, we act on the assumption that they are successful in doing so. Yet we should not be blind to the fact that this "assumption" is often a mere fiction: surely we have all experienced the difficulty in actually excising from our consciousness apparently salient factors that have been brought to our attention. See *Lakeside v. Oregon*, 435 U. S. 333, 345 (1978) (STEVENS, J., dissenting). This is particularly true where, as is alleged to have occurred in the instant case, see n. 6, *supra*, a sentencing judge is advised *ex parte* that a defendant who went to trial had admitted to another inmate in the jail that he had committed the crime.⁷

Where imposition of so "unique" a penalty is concerned, a punctilious attempt to achieve complete, factual accuracy in decisionmaking should be insisted upon. This can be achieved only by requiring complete disclosure of every fact relating to the defendant that has come to the sentencing judge's attention, and by affording the defendant a complete opportunity to contest and rebut those facts. The spirit of our holding in *Gardner* requires no less. I agree with the three dissenting justices below that this standard has not been met here.⁸

For these reasons, I dissent from the denial of certiorari.

⁷ Since petitioner's defense at trial was that of alibi, receipt of such information might have influenced the judge to enhance the sentence on the ground that the defendant deliberately permitted false testimony to be presented on his behalf. Cf. *United States v. Hendrix*, 505 F. 2d 1233 (CA2 1974), cert. denied, 423 U. S. 897 (1975).

⁸ Sadly, this case once again illustrates the fallacy of the premise upon which some of my Brethren sustained the Florida death penalty statute in *Proffitt v. Florida*, 428 U. S. 242 (1976)—that the statute's procedures would eliminate inaccuracy, unfairness, and arbitrariness in the imposition of the death sentence.

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No. 77-1510. SURETY TITLE INSURANCE AGENCY, INC. v. VIRGINIA STATE BAR. C. A. 4th Cir. Certiorari denied. MR. JUSTICE WHITE would grant certiorari. Reported below: 571 F. 2d 205.

Rehearing Denied

No. 77-1050. DEKAM ET AL. v. CITY OF SOUTHFIELD ET AL., 435 U. S. 919;

No. 77-1140. DOYLE v. BOARD OF FIRE & POLICE COMMISSIONERS OF THE VILLAGE OF SCHAUMBERG, 435 U. S. 970;

No. 77-1188. BREZA v. CITY OF TRIMONT, 435 U. S. 963;

No. 77-1358. GAETANO ET AL. v. OBERDORFER, U. S. DISTRICT JUDGE, 435 U. S. 967;

No. 77-6149. HARPER v. DUFFY, 435 U. S. 963;

No. 77-6244. MARSCHALL ET UX. v. KRISTENSEN ET AL., 435 U. S. 963; and

No. 77-6299. PLEMONS v. ESTELLE, CORRECTIONS DIRECTOR, 435 U. S. 998. Petitions for rehearing denied.

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Affirmed on Appeal

No. 77-1376. UNITED STATES v. GEORGIA ET AL. Affirmed on appeal from D. C. N. D. Ga. MR. JUSTICE BRENNAN and MR. JUSTICE MARSHALL would vacate the judgment and remand the case for further consideration in light of *United States v. Board of Commissioners of Sheffield, Alabama*, 435 U. S. 110 (1978).

No. 77-1450. BANG ET AL. v. NOREEN ET AL. Affirmed on appeal from D. C. Minn. Reported below: 442 F. Supp. 758.

Appeals Dismissed

No. 77-1472. PENA v. SOUTHERN PACIFIC TRANSPORTATION Co. Appeal from Ct. Civ. App. Tex., 8th Sup. Jud. Dist., dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied. Reported below: 555 S. W. 2d 184.

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No. 77-1606. RUSSELL ET AL. *v.* PARKER ET AL. Appeal from Ct. App. Cal., 1st App. Dist., dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied.

No. 77-1485. HILLIGOSS ET AL. *v.* LADOW, MAYOR OF KOKOMO, ET AL. Appeal from Ct. App. Ind. dismissed for want of substantial federal question. Reported below: — Ind. App. —, 368 N. E. 2d 1365.

Certiorari Granted—Vacated and Remanded

No. 77-497. NEW ORLEANS PUBLIC SERVICE, INC. *v.* UNITED STATES. C. A. 5th Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Marshall v. Barlow's, Inc.*, *ante*, p. 307. Reported below: 553 F. 2d 459.

No. 77-605. MISSISSIPPI POWER & LIGHT Co. *v.* UNITED STATES. C. A. 5th Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Marshall v. Barlow's, Inc.*, *ante*, p. 307. Reported below: 553 F. 2d 480.

No. 77-557. CONSOLIDATION COAL Co. *v.* UNITED STATES;

No. 77-606. MARKS *v.* UNITED STATES; and

No. 77-622. ZITKO *v.* UNITED STATES. C. A. 6th Cir. Certiorari granted, judgment vacated, and cases remanded for further consideration in light of *Marshall v. Barlow's, Inc.*, *ante*, p. 307; and *Michigan v. Tyler*, *ante*, p. 499. Reported below: 560 F. 2d 214.

No. 77-1270. UNITED STATES *v.* LABRIOLA ET AL. C. A. 2d Cir. Motions of respondents for leave to proceed *in forma pauperis* and certiorari granted. Judgment vacated and case remanded for further consideration in light of *United States v. Mauro*, *ante*, p. 340. Reported below: 573 F. 2d 1298.

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Miscellaneous Orders

No. A-1005. *LITTLE v. CIUROS*, CORRECTION COMMISSIONER. C. A. 2d Cir. Application for stay, presented to MR. JUSTICE MARSHALL, and by him referred to the Court, denied.

No. D-135. *IN RE DISBARMENT OF KUTZA*. It is ordered that William Henry Kutza, of Fort Myers, Fla., 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. 77-747. *ALLIED STRUCTURAL STEEL CO. v. SPANNAUS*, ATTORNEY GENERAL OF MINNESOTA, ET AL. D. C. Minn. [Probable jurisdiction noted, 434 U. S. 1045.] Motion of Allied Structural Steel Co. for leave to file supplemental brief after argument granted. MR. JUSTICE BLACKMUN took no part in the consideration or decision of this motion.

Certiorari Granted

No. 76-1309. *UNITED STATES v. CACERES*. C. A. 9th Cir. Certiorari granted. Reported below: 545 F. 2d 1182.

No. 77-1327. *LAKE COUNTRY ESTATES, INC., ET AL. v. TAHOE REGIONAL PLANNING AGENCY ET AL.* C. A. 9th Cir. Certiorari granted. Reported below: 566 F. 2d 1353.

No. 77-1413. *ARONSON v. QUICK POINT PENCIL CO.* C. A. 8th Cir. Certiorari granted. Reported below: 567 F. 2d 757.

Certiorari Denied. (See also Nos. 77-1472 and 77-1606, *supra.*)

No. 76-6559. *SCALLION v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 548 F. 2d 1168.

No. 77-206. *KENAAN v. UNITED STATES*. C. A. 1st Cir. Certiorari denied. Reported below: 557 F. 2d 912.

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No. 77-1162. *JONES TRANSFER CO. ET AL. v. UNITED STATES ET AL.*;

No. 77-1189. *NATIONAL INDUSTRIAL TRAFFIC LEAGUE v. UNITED STATES ET AL.*; and

No. 77-1370. *FORD MOTOR CO. v. UNITED STATES ET AL.* C. A. 3d Cir. Certiorari denied. Reported below: 569 F. 2d 196.

No. 77-1184. *PERLONGO v. UNITED STATES.* Ct. Cl. Certiorari denied. Reported below: 215 Ct. Cl. 982, 566 F. 2d 1192.

No. 77-1195. *WOLAK v. UNITED STATES.* C. A. 6th Cir. Certiorari denied. Reported below: 571 F. 2d 584.

No. 77-1260. *ATKINSON ET AL. v. UNITED STATES.* C. A. 4th Cir. Certiorari denied. Reported below: 565 F. 2d 1283.

No. 77-1303. *SUN OIL CO. v. COMMISSIONER OF INTERNAL REVENUE.* C. A. 3d Cir. Certiorari denied. Reported below: 562 F. 2d 258.

No. 77-1318. *WESTERN UNION INTERNATIONAL, INC. v. FEDERAL COMMUNICATIONS COMMISSION ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 568 F. 2d 1012.

No. 77-1324. *ANDERSON, CLAYTON & Co. v. UNITED STATES.* C. A. 5th Cir. Certiorari denied. Reported below: 562 F. 2d 972.

No. 77-1336. *HAMILTON v. UNITED STATES.* C. A. 9th Cir. Certiorari denied. Reported below: 568 F. 2d 1302.

No. 77-1347. *INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 1547, AFL-CIO v. NATIONAL LABOR RELATIONS BOARD.* C. A. D. C. Cir. Certiorari denied. Reported below: 184 U. S. App. D. C. 213, 565 F. 2d 788.

No. 77-1352. *LITTLETON v. UNITED STATES.* C. A. 5th Cir. Certiorari denied. Reported below: 569 F. 2d 1154.

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No. 77-1356. *FLECHA ET AL. v. MARSHALL, SECRETARY OF LABOR, ET AL.* C. A. 1st Cir. Certiorari denied. Reported below: 567 F. 2d 1154.

No. 77-1372. *INTERSTATE MOTOR FREIGHT SYSTEM v. INTERSTATE COMMERCE COMMISSION ET AL.* C. A. D. C. Cir. Certiorari denied. Reported below: 186 U. S. App. D. C. 329, 569 F. 2d 160.

No. 77-1398. *FINEMAN v. UNITED STATES.* C. A. 3d Cir. Certiorari denied. Reported below: 571 F. 2d 572.

No. 77-1443. *MELIA v. CALIFANO, SECRETARY OF HEALTH, EDUCATION, AND WELFARE.* C. A. 5th Cir. Certiorari denied. Reported below: 565 F. 2d 1213.

No. 77-1451. *YOUNG v. BOARD OF TRUSTEES OF THE UNIVERSITY OF TOLEDO ET AL.* Ct. App. Ohio, Lucas County. Certiorari denied.

No. 77-1453. *BIRGE v. GEORGIA.* Sup. Ct. Ga. Certiorari denied. Reported below: 240 Ga. 501, 241 S. E. 2d 213.

No. 77-1459. *SUN PUBLISHING Co. v. STEVENS.* Sup. Ct. S. C. Certiorari denied. Reported below: 270 S. C. 65, 240 S. E. 2d 812.

No. 77-1462. *SUNSHINE REALTY, INC., ET AL. v. CUYAHOGA COUNTY BOARD OF REVISION ET AL.* Ct. App. Ohio, Cuyahoga County. Certiorari denied.

No. 77-1475. *ELECTRONICS CORPORATION OF AMERICA v. SCULLY SIGNAL Co.; and*

No. 77-1484. *SCULLY SIGNAL Co. v. ELECTRONICS CORPORATION OF AMERICA.* C. A. 1st Cir. Certiorari denied. Reported below: 570 F. 2d 355.

No. 77-1479. *PLUNKETT v. CITY OF LAKEWOOD.* Ct. App. Cal., 2d App. Dist. Certiorari denied.

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No. 77-1482. *AUTOHAUS BRUGGER, INC. v. SAAB MOTORS, INC., ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 567 F. 2d 901.

No. 77-1494. *HINCKLEY PLASTIC, INC. v. REED-PRENTICE DIVISION PACKAGE MACHINERY Co. ET AL.* Sup. Ct. Ill. Certiorari denied. Reported below: 70 Ill. 2d 1, 374 N. E. 2d 437.

No. 77-1496. *HOUSER, DBA HOUSER AUTOMOTIVE v. DISTRICT NO. 9, INTERNATIONAL ASSOCIATION OF MACHINISTS & AEROSPACE WORKERS ET AL.* C. A. 7th Cir. Certiorari denied. Reported below: 570 F. 2d 349.

No. 77-1522. *ALEXANDER ET AL. v. AERO LODGE No. 735, INTERNATIONAL ASSOCIATION OF MACHINISTS & AEROSPACE WORKERS, AFL-CIO, ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 565 F. 2d 1364.

No. 77-1564. *SOUTHPARK SQUARE, LTD. v. CITY OF JACKSON, MISSISSIPPI, ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 565 F. 2d 338.

No. 77-1596. *GARMON ET AL. v. UNITED STATES.* C. A. 9th Cir. Certiorari denied. Reported below: 573 F. 2d 1316 and 1317.

No. 77-1605. *EISENBERG v. BOARD OF WISCONSIN STATE BAR COMMISSIONERS.* Sup. Ct. Wis. Certiorari denied. Reported below: 81 Wis. 2d 175, 259 N. W. 2d 745.

No. 77-5252. *RIDGEWAY v. UNITED STATES.* C. A. 6th Cir. Certiorari denied. Reported below: 558 F. 2d 357.

No. 77-5582. *RANDALL v. UNITED STATES.* C. A. D. C. Cir. Certiorari denied. Reported below: 185 U. S. App. D. C. 133, 566 F. 2d 798.

No. 77-5590. *CUMBERBATCH v. UNITED STATES.* C. A. 2d Cir. Certiorari denied. Reported below: 563 F. 2d 49.

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No. 77-5706. *CHICO ET AL. v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 558 F. 2d 1047.

No. 77-6215. *GREEN ET AL. v. HESS, ACTING WARDEN, ET AL.* C. A. 10th Cir. Certiorari denied.

No. 77-6221. *SWINNEN v. DEES, WARDEN*. Sup. Ct. La. Certiorari denied.

No. 77-6252. *TYLER v. CALLAHAN, ASSISTANT CIRCUIT ATTORNEY, CITY OF ST. LOUIS, ET AL.* C. A. 8th Cir. Certiorari denied. Reported below: 573 F. 2d 1313.

No. 77-6261. *ANGUSH v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 573 F. 2d 1287.

No. 77-6307. *McCRAVY v. LANE, WARDEN*. C. A. 6th Cir. Certiorari denied. Reported below: 573 F. 2d 1310.

No. 77-6309. *FAHRIG ET AL. v. CUMMING ET AL.* C. A. 6th Cir. Certiorari denied.

No. 77-6366. *ERICKSON v. UNITED STATES*. C. A. 10th Cir. Certiorari denied.

No. 77-6387. *JAFFESS v. SCHAFFNER ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 573 F. 2d 1291.

No. 77-6389. *PARTAIN v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 564 F. 2d 414.

No. 77-6410. *SLUK v. UNITED STATES ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 573 F. 2d 1299.

No. 77-6416. *JAMES v. HOGAN, WARDEN*. C. A. 5th Cir. Certiorari denied. Reported below: 568 F. 2d 204.

No. 77-6425. *OCHOA v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 564 F. 2d 1155.

No. 77-6432. *SLOCUM v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 571 F. 2d 589.

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No. 77-6439. *GUBELMAN v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 571 F. 2d 1252.

No. 77-6444. *CODY v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 563 F. 2d 244.

No. 77-6459. *GUARINO v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 573 F. 2d 1298.

No. 77-6566. *CARTER v. PROPERTY SERVICES OF AMERICA, INC., ET AL.* C. A. 5th Cir. Certiorari denied.

No. 77-6567. *FINKELSTEIN v. NEW YORK*. App. Div., Sup. Ct. N. Y., 2d Jud. Dept. Certiorari denied. Reported below: 60 App. Div. 2d 796, 399 N. Y. S. 2d 959.

No. 77-6572. *TOWNSEND ET AL. v. CLOVER BOTTOM HOSPITAL & SCHOOL ET AL.* Sup. Ct. Tenn. Certiorari denied. Reported below: 560 S. W. 2d 623.

No. 77-6582. *CARTER v. ROMINES ET AL.* C. A. 8th Cir. Certiorari denied. Reported below: 560 F. 2d 395.

No. 77-6585. *CLOUDY v. INDIANA*. Ct. App. Ind. Certiorari denied.

No. 77-6588. *JOHNSON v. INDIANA*. Sup. Ct. Ind. Certiorari denied. Reported below: 267 Ind. 256, 369 N. E. 2d 623.

No. 77-6592. *MONTOYA v. KILLINGER ET AL.* C. A. 5th Cir. Certiorari denied.

No. 77-6596. *MASON v. GAGNON, WARDEN*. C. A. 7th Cir. Certiorari denied.

No. 77-6601. *LEHMAN v. GABOR*. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 77-6611. *DRAYER v. KRASNER ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 572 F. 2d 348.

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No. 77-6618. LEE *v.* EWING, COLE, ERDMAN & EUBANK ET AL. C. A. 3d Cir. Certiorari denied.

No. 77-6642. MCGUFF *v.* ALABAMA ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 566 F. 2d 939.

No. 77-6678. SANCHEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 573 F. 2d 1317.

No. 77-6697. HERNANDEZ ET AL. *v.* FOGG, CORRECTIONAL SUPERINTENDENT. C. A. 2d Cir. Certiorari denied. Reported below: 573 F. 2d 1291.

No. 77-6700. WILLIAMSON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 574 F. 2d 320.

No. 77-6706. HERNANDEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 572 F. 2d 680.

No. 77-6707. RAMOS *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied.

No. 77-6708. MENDEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 573 F. 2d 1316.

No. 77-6716. HAHN *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 573 F. 2d 1382.

No. 77-6719. WALL *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 570 F. 2d 353.

No. 77-6720. BAILS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 570 F. 2d 351.

No. 77-6732. WRIGHT *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 573 F. 2d 681.

No. 77-593. UNITED STATES *v.* SORRELL; and UNITED STATES *v.* THOMPSON. C. A. 3d Cir. Motion of respondents for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 562 F. 2d 227 (first case); 562 F. 2d 232 (second case).

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No. 77-326. UNITED STATES *v.* FERRO. C. A. 2d Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 556 F. 2d 630.

No. 77-970. SONSTEGARD *v.* CITY OF KETTERING. Ct. App. Ohio, Montgomery County. Certiorari denied. MR. JUSTICE BRENNAN and MR. JUSTICE MARSHALL would grant certiorari. Reported below: 53 Ohio App. 2d 334, 374 N. E. 2d 163.

No. 77-1058. HELGEMOE, WARDEN, ET AL. *v.* MELOON. C. A. 1st Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. THE CHIEF JUSTICE and MR. JUSTICE BLACKMUN would grant the petition and reverse summarily notwithstanding the new statute, N. H. Rev. Stat. Ann., ch. 632-A (Supp. 1977). Reported below: 564 F. 2d 602.

No. 77-1407. KITSIS *v.* CALIFORNIA. App. Dept., Super. Ct. Cal., County of Los Angeles. Certiorari denied. MR. JUSTICE MARSHALL would grant certiorari. Reported below: 77 Cal. App. 3d Supp. 1, 143 Cal. Rptr. 537.

No. 77-6400. WIGGINS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. MR. JUSTICE BRENNAN and MR. JUSTICE WHITE would grant certiorari. Reported below: 566 F. 2d 944.

No. 77-6470. SMITH *v.* HOPPER, WARDEN. Sup. Ct. Ga. Certiorari denied. Reported below: 240 Ga. 93, 239 S. E. 2d 510.

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. 77-6466. *CASSIDY v. UNITED STATES*. C. A. 10th Cir. Certiorari denied. MR. JUSTICE BRENNAN, MR. JUSTICE STEWART, and MR. JUSTICE WHITE would grant certiorari. Reported below: 571 F. 2d 534.

No. 77-6589. *SMITH v. CONNECTICUT PAROLE BOARD ET AL.* C. A. 2d Cir. Certiorari and other relief denied.

No. 77-6703. *EMERSON v. WAINWRIGHT, SECRETARY, DEPARTMENT OF OFFENDER REHABILITATION OF FLORIDA*. C. A. 5th Cir. Certiorari denied for failure to file petition within the time provided by 28 U. S. C. § 2101 (c). Reported below: 560 F. 2d 1021.

Rehearing Denied

No. 77-1013. *PUGLISI ET AL. v. UNITED STATES*, 435 U. S. 968;

No. 77-1063. *EISENBERG v. UNITED STATES*, 435 U. S. 995;

No. 77-1065. *LAWRIE v. UNITED STATES*, 435 U. S. 969;

No. 77-1241. *WAGNER ET AL. v. BURLINGTON NORTHERN, INC., ET AL.*, 435 U. S. 996;

No. 77-5953. *RILEY v. ILLINOIS*, 435 U. S. 1000;

No. 77-6288. *GIBSON v. FLORIDA*, 435 U. S. 1004;

No. 77-6345. *APEL v. WAINWRIGHT, SECRETARY, DEPARTMENT OF REHABILITATION OF FLORIDA*, 435 U. S. 1009;

No. 77-6352. *TOWNSLEY v. LINDSAY, JUDGE, ET AL.*, 435 U. S. 1006;

No. 77-6417. *WATKINS, DBA BELTONE HEARING AID CENTER v. LOU BACHRODT CHEVROLET, INC.*, 435 U. S. 999;

No. 77-6430. *FERMIN v. CALIFANO, SECRETARY OF HEALTH, EDUCATION, AND WELFARE*, 435 U. S. 1010; and

No. 77-6479. *RICKS v. COLLINS, WARDEN*, 435 U. S. 994. Petitions for rehearing denied.

No. 76-1750. *STUMP ET AL. v. SPARKMAN ET VIR*, 435 U. S. 349. Petition for rehearing denied. MR. JUSTICE BRENNAN took no part in the consideration or decision of this petition.

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Dismissal Under Rule 60

No. 77-1395. VETTERLI ET AL., MEMBERS OF PASADENA CITY BOARD OF EDUCATION *v.* REAL, U. S. DISTRICT JUDGE, ET AL. Motion for leave to file petition for writ of mandamus dismissed under this Court's Rule 60.

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Appeals Dismissed

No. 77-1185. MEMORIAL CONSULTANTS, INC. *v.* ILLINOIS EX REL. LINDBERG, COMPTROLLER OF ILLINOIS. Appeal from App. Ct. Ill., 3d Dist., dismissed for want of substantial federal question. Reported below: 50 Ill. App. 3d 1005, 366 N. E. 2d 127.

No. 77-1535. HEILMAN *v.* A & M RECORDS, INC. Appeal from Ct. App. Cal., 2d App. 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: 75 Cal. App. 3d 554, 142 Cal. Rptr. 390.

Vacated and Remanded on Appeal

No. 77-1306. JAQUES *v.* STATE BAR GRIEVANCE ADMINISTRATOR. Appeal from Sup. Ct. Mich. Judgment vacated and case remanded for further consideration in light of *Ohralik v. Ohio State Bar Assn.*, *ante*, p. 447. Reported below: 401 Mich. 516, 258 N. W. 2d 443.

Miscellaneous Orders

No. A-980 (77-6683). CAMPBELL *v.* UNITED STATES. C. A. 6th Cir. Application for bail, presented to MR. JUSTICE MARSHALL, and by him referred to the Court, denied.

No. A-990 (77-1161). DREBIN ET AL. *v.* UNITED STATES, *ante*, p. 904. Application for extension of time in which to file petition for rehearing, presented to MR. JUSTICE BRENNAN, and by him referred to the Court, denied.

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No. A-992. *HUGHES v. TEXAS*. Ct. Crim. App. Tex. Application for appointment of counsel to prepare and file petition for writ of certiorari, presented to MR. JUSTICE POWELL, and by him referred to the Court, denied.

No. A-1037 (77-1736). *SMITH, PRESIDENT, VILLAGE OF SKOKIE, ILLINOIS, ET AL. v. COLLIN ET AL.* C. A. 7th Cir. Application for stay of mandate or, in the alternative, for stay of enforcement of judgment pending action on petition for certiorari, presented to MR. JUSTICE STEVENS, and by him referred to the Court, denied.

MR. JUSTICE BLACKMUN, with whom MR. JUSTICE REHNQUIST joins, dissenting.

I feel that the decision of the United States Court of Appeals for the Seventh Circuit is in some tension with this Court's decision, 26 years ago, in *Beauharnais v. Illinois*, 343 U. S. 250 (1952). *Beauharnais* has never been overruled or formally limited in any way. I therefore would grant the stay pending consideration of the applicants' petition for certiorari, which has now been filed, and pending further order of the Court.

No. D-95. *IN RE DISBARMENT OF OHRALIK*. Disbarment entered. [For earlier order herein, see 429 U. S. 1035.]

No. 76-1694. *MOBIL OIL CORP. v. LIGHTCAP ET AL.*, 434 U. S. 876. Respondents are requested to file a response to petition for rehearing within 30 days. MR. JUSTICE STEWART and MR. JUSTICE POWELL took no part in the consideration or decision of this order.

No. 77-803. *BARRY, CHAIRMAN, RACING AND WAGERING BOARD OF NEW YORK, ET AL. v. BARCHI*. D. C. S. D. N. Y. [Probable jurisdiction noted, 435 U. S. 921.] Motion of New York Racing Assn., Inc., for leave to file a brief as *amicus curiae* granted.

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No. 77-753. INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA *v.* DANIEL; and

No. 77-754. LOCAL 705, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA, ET AL. *v.* DANIEL. C. A. 7th Cir. [Certiorari granted, 434 U. S. 1061.] Motions for leave to file briefs as *amici curiae* filed by American Academy of Actuaries, Chamber of Commerce of the United States of America, American Bankers Assn., National Coordinating Committee for Multi-employer Plans, and ERISA Industry Committee, granted.

No. 77-837. NEW MOTOR VEHICLE BOARD OF CALIFORNIA ET AL. *v.* ORRIN W. FOX CO. ET AL.; and

No. 77-849. NORTHERN CALIFORNIA MOTOR CAR DEALERS ASSN. ET AL. *v.* ORRIN W. FOX CO. ET AL. D. C. C. D. Cal. [Probable jurisdiction noted, 434 U. S. 1060.] Motion of National Automobile Dealers Assn. for leave to file a brief out of time as *amicus curiae* denied. Motion of appellants in No. 77-849 for additional time for oral argument denied; alternative request for divided argument granted.

No. 77-1115. LALLI *v.* LALLI, ADMINISTRATRIX, ET AL. Ct. App. N. Y. [Probable jurisdiction noted, 435 U. S. 921.] Motion of Legal Aid Society of New York City et al. for leave to file a brief as *amicus curiae* granted.

No. 77-5781. RAKAS ET AL. *v.* ILLINOIS. App. Ct. Ill., 3d Dist. [Certiorari granted, 435 U. S. 922.] Motion of Americans for Effective Law Enforcement, Inc., for leave to file a brief as *amicus curiae* granted.

No. 77-1254. VANCE, SECRETARY OF STATE, ET AL. *v.* BRADLEY ET AL. D. C. D. C. [Probable jurisdiction noted, *ante*, p. 903.] Motion of appellees to dispense with printing appendix granted.

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No. 77-1202. MICHIGAN *v.* DORAN. Sup. Ct. Mich. [Certiorari granted, 435 U. S. 967.] Motion of respondent for leave to proceed further herein *in forma pauperis* granted.

Probable Jurisdiction Postponed

No. 77-1378. JAPAN LINE, LTD., ET AL. *v.* COUNTY OF LOS ANGELES ET AL. Appeal from Sup. Ct. Cal. Motion of Sea Land Service, Inc., for leave to file a brief as *amicus curiae* granted. Further consideration of question of jurisdiction postponed to hearing of case on the merits. The Solicitor General is invited to file a brief in this case expressing the views of the United States. Reported below: 20 Cal. 3d 180, 571 P. 2d 254.

Certiorari Granted

No. 77-1410. BUTNER *v.* UNITED STATES ET AL. C. A. 4th Cir. Certiorari granted. Reported below: 566 F. 2d 1207.

No. 77-1489. NEW JERSEY *v.* PORTASH. Super. Ct. N. J. Certiorari granted. Reported below: 151 N. J. Super. 200, 376 A. 2d 950.

No. 77-648. FEDERAL ENERGY REGULATORY COMMISSION *v.* PENNZOIL PRODUCING CO. ET AL. C. A. 5th Cir. Certiorari granted. MR. JUSTICE STEWART and MR. JUSTICE POWELL took no part in the consideration or decision of this petition. Reported below: 553 F. 2d 485.

No. 77-1465. DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR *v.* RASMUSSEN ET AL.; and

No. 77-1491. GEO CONTROL, INC., ET AL. *v.* RASMUSSEN ET AL. C. A. 9th Cir. Certiorari granted, cases consolidated, and a total of one hour allotted for oral argument. Reported below: 567 F. 2d 1385.

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No. 77-1493. *GLADSTONE, REALTORS ET AL. v. VILLAGE OF BELLWOOD ET AL.* C. A. 7th Cir. Certiorari granted. Reported below: 569 F. 2d 1013.

Certiorari Denied. (See also No. 77-1535, *supra.*)

No. 77-1098. *BELL, SECURITIES COMMISSIONER OF ARKANSAS v. INTERNATIONAL TRADING, LTD., ET AL.* Sup. Ct. Ark. Certiorari denied. Reported below: 262 Ark. 244, 556 S. W. 2d 420.

No. 77-1268. *PALM v. VETERANS' ADMINISTRATION OF THE UNITED STATES ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 573 F. 2d 1294.

No. 77-1283. *KARCH v. UNITED STATES.* Ct. Cl. Certiorari denied. Reported below: 215 Ct. Cl. 209, 568 F. 2d 722.

No. 77-1322. *PRO-FOOTBALL, INC., ET AL. v. HECHT ET AL.* C. A. D. C. Cir. Certiorari denied. Reported below: 187 U. S. App. D. C. 73, 570 F. 2d 982.

No. 77-1325. *M & M LEASING CORP. ET AL. v. SEATTLE FIRST NATIONAL BANK ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 563 F. 2d 1377.

No. 77-1326. *CARTER v. UNITED STATES.* C. A. 5th Cir. Certiorari denied. Reported below: 566 F. 2d 1265.

No. 77-1351. *OIL, CHEMICAL & ATOMIC WORKERS INTERNATIONAL UNION, AFL-CIO v. JOHNS-MANVILLE PRODUCTS CORP. ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 557 F. 2d 1126.

No. 77-1355. *McNIFF v. UNITED STATES.* C. A. 9th Cir. Certiorari denied. Reported below: 570 F. 2d 353.

No. 77-1363. *BRADSHAW v. GOVERNMENT OF THE VIRGIN ISLANDS.* C. A. 3d Cir. Certiorari denied. Reported below: 569 F. 2d 777.

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No. 77-1364. CENTRAL ARKANSAS AUCTION SALE, INC., ET AL. *v.* DEPARTMENT OF AGRICULTURE ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 570 F. 2d 724.

No. 77-1366. GILES LOWERY STOCKYARDS, INC., DBA LUFKIN LIVESTOCK EXCHANGE *v.* DEPARTMENT OF AGRICULTURE ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 565 F. 2d 321.

No. 77-1374. C. K. SMITH & Co., INC., ET AL. *v.* NATIONAL LABOR RELATIONS BOARD. C. A. 1st Cir. Certiorari denied. Reported below: 569 F. 2d 162.

No. 77-1405. RAMOS *v.* IMMIGRATION AND NATURALIZATION SERVICE. C. A. 9th Cir. Certiorari denied.

No. 77-1411. CAULFIELD ET AL. *v.* HIRSCH, REGIONAL DIRECTOR, NATIONAL LABOR RELATIONS BOARD, ET AL. C. A. 3d Cir. Certiorari before judgment denied.

No. 77-1424. JACOBS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 570 F. 2d 346.

No. 77-1442. AKERS MOTOR LINES, INC., OF DELAWARE ET AL. *v.* INTERSTATE COMMERCE COMMISSION ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 566 F. 2d 1172.

No. 77-1469. CARTER *v.* HAWSEY, JUDGE. 14th Jud. Dist. Ct. La., Calcasieu Parish. Certiorari denied.

No. 77-1495. MILLER *v.* UNITED ASSOCIATION OF JOURNEMEN & APPRENTICES OF THE PLUMBING & PIPE FITTING INDUSTRY, LOCAL UNION No. 198. C. A. 5th Cir. Certiorari denied. Reported below: 567 F. 2d 389.

No. 77-1509. RELIANCE INSURANCE Co. *v.* F & D ELECTRICAL CONTRACTORS, INC., ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 568 F. 2d 1159.

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No. 77-1524. *MILLER v. AMERICAN TELEPHONE & TELEGRAPH CO. ET AL.* C. A. 2d Cir. Certiorari denied.

No. 77-1529. *INGRAM ET AL. v. CHAMPLIN PETROLEUM CO. ET AL.* C. A. 10th Cir. Certiorari denied. Reported below: 560 F. 2d 994.

No. 77-1558. *CRAMER v. METROPOLITAN FEDERAL SAVINGS & LOAN ASSN.* Sup. Ct. Mich. Certiorari denied. Reported below: 401 Mich. 252, 258 N. W. 2d 20.

No. 77-1591. *MICHIGAN v. BORMAN, JUDGE (ALEXANDER, REAL PARTY IN INTEREST).* Ct. App. Mich. Certiorari denied. Reported below: 79 Mich. App. 495, 261 N. W. 2d 63.

No. 77-1619. *LAPUMA v. UNITED STATES.* C. A. 6th Cir. Certiorari denied. Reported below: 575 F. 2d 1338.

No. 77-1626. *HIGGINS ET AL. v. UNITED STATES;* and
No. 77-6747. *SWAN v. UNITED STATES.* C. A. 5th Cir. Certiorari denied. Reported below: 568 F. 2d 365.

No. 77-1627. *MCCOY v. UNITED STATES.* C. A. 10th Cir. Certiorari denied. Reported below: 573 F. 2d 14.

No. 77-6177. *MORALES v. UNITED STATES.* C. A. 9th Cir. Certiorari denied. Reported below: 570 F. 2d 353.

No. 77-6204. *PARTEE v. ILLINOIS.* App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 52 Ill. App. 3d 178, 367 N. E. 2d 188.

No. 77-6347. *CEPHUS v. CALIFORNIA.* Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 77-6372. *VALENZUELA (DELGADO) v. UNITED STATES.* C. A. 5th Cir. Certiorari denied. Reported below: 567 F. 2d 389.

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No. 77-6348. *BLACK v. UNITED STATES*. C. A. 6th Cir. Certiorari denied.

No. 77-6386. *DANE v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 570 F. 2d 840.

No. 77-6390. *LE BRUN v. CUPP, PENITENTIARY SUPERINTENDENT*. Sup. Ct. Ore. Certiorari denied.

No. 77-6406. *DENOMIE v. UNITED STATES*. C. A. 6th Cir. Certiorari denied.

No. 77-6413. *MCRAE ET AL. v. UNITED STATES BUREAU OF PRISONS ET AL.* C. A. D. C. Cir. Certiorari denied. Reported below: 185 U. S. App. D. C. 132, 566 F. 2d 797.

No. 77-6438. *WILSON v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 571 F. 2d 589.

No. 77-6465. *FLYNN v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 573 F. 2d 1297.

No. 77-6468. *MILLER v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 565 F. 2d 1273.

No. 77-6476. *MISSOURI v. UNITED STATES*. Ct. App. D. C. Certiorari denied.

No. 77-6477. *ROBEY v. UNITED STATES*. C. A. 9th Cir. Certiorari denied.

No. 77-6483. *COTTON v. UNITED STATES ET AL.* C. A. 10th Cir. Certiorari denied. Reported below: 567 F. 2d 958.

No. 77-6485. *PITTS v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 569 F. 2d 343.

No. 77-6488. *BURKHART v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 566 F. 2d 1184.

No. 77-6502. *ANTONMARCHI v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 568 F. 2d 770.

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No. 77-6516. *LENTINI v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 573 F. 2d 1291.

No. 77-6521. *SCOTT v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 571 F. 2d 586.

No. 77-6549. *COLLINS v. UNITED STATES*. C. A. 2d Cir. Certiorari denied.

No. 77-6558. *MAGDA v. UNITED STATES*. C. A. 2d Cir. Certiorari denied.

No. 77-6569. *GONZALEZ v. UNITED STATES*. C. A. 1st Cir. Certiorari denied. Reported below: 566 F. 2d 1166.

No. 77-6575. *MORRIS v. MORTON-NORWICH PRODUCTS, INC., ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 567 F. 2d 389.

No. 77-6617. *WAMPLER v. OREGON*. Ct. App. Ore. Certiorari denied. Reported below: 30 Ore. App. 931, 569 P. 2d 46.

No. 77-6619. *ANDERSON v. WYNNE, CLERK OF SUPERIOR COURT, MARTIN COUNTY, ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 568 F. 2d 772.

No. 77-6622. *MOORE v. WAGELEY, CORRECTIONAL SUPERINTENDENT*. C. A. 4th Cir. Certiorari denied.

No. 77-6626. *DOCTOR v. RAY, GOVERNOR OF WASHINGTON, ET AL.* C. A. 9th Cir. Certiorari denied.

No. 77-6628. *TATUM v. GOLDEN ET AL.* C. A. 8th Cir. Certiorari denied. Reported below: 570 F. 2d 753.

No. 77-6630. *SMITH v. COWAN, WARDEN*; and

No. 77-6631. *RANDOLPH v. COWAN, WARDEN*. C. A. 6th Cir. Certiorari denied. Reported below: 560 F. 2d 1298.

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No. 77-6632. *HENDRICKS v. INDIANA*. Sup. Ct. Ind. Certiorari denied. Reported below: 267 Ind. 496, 371 N. E. 2d 1312.

No. 77-6637. *SMITH v. ILLINOIS*. App. Ct. Ill., 2d Dist. Certiorari denied. Reported below: 52 Ill. App. 3d 583, 367 N. E. 2d 756.

No. 77-6638. *MOORE v. MICHIGAN*. Sup. Ct. Mich. Certiorari denied. Reported below: 401 Mich. 844, — N. W. 2d —.

No. 77-6639. *CHAPMAN v. FEDERAL NATIONAL MORTGAGE ASSN.* Ct. App. Mich. Certiorari denied.

No. 77-6649. *HARRIS v. INDIANA*. Sup. Ct. Ind. Certiorari denied. Reported below: 267 Ind. 572, 372 N. E. 2d 174.

No. 77-6650. *STANLEY v. FLORIDA*. Dist. Ct. App. Fla., 4th Dist. Certiorari denied. Reported below: 350 So. 2d 475.

No. 77-6686. *WILLIS v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 564 F. 2d 415.

No. 77-6705. *ZUNIGA-LARA v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 570 F. 2d 1286.

No. 77-6722. *KENNEDY v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 575 F. 2d 1338.

No. 77-6737. *BURNETTE v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 571 F. 2d 578.

No. 77-6741. *TANDA v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 568 F. 2d 1122.

No. 77-6752. *ALLSUP v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 573 F. 2d 1141.

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No. 77-1207. BLUM, ACTING COMMISSIONER, DEPARTMENT OF SOCIAL SERVICES OF NEW YORK, ET AL. *v.* TOOMEY ET UX. C. A. 2d Cir. Motion of respondents for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 565 F. 2d 1259.

No. 77-1251. WAINWRIGHT, SECRETARY, DEPARTMENT OF OFFENDER REHABILITATION OF FLORIDA, ET AL. *v.* DEMAR. Sup. Ct. Fla. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 354 So. 2d 366.

No. 77-1390. ALTON BOX BOARD CO. ET AL. *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. MR. JUSTICE WHITE would grant certiorari. Reported below: 570 F. 2d 347.

No. 77-1415. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION *v.* D. H. HOLMES Co., LTD. C. A. 5th Cir. Certiorari denied. MR. JUSTICE BRENNAN and MR. JUSTICE MARSHALL would grant certiorari. Reported below: 556 F. 2d 787.

No. 77-1419. BELL, ATTORNEY GENERAL, ET AL. *v.* SOCIALIST WORKERS PARTY ET AL. C. A. 2d Cir. Certiorari denied. THE CHIEF JUSTICE, MR. JUSTICE WHITE, and MR. JUSTICE POWELL would grant certiorari. Reported below: 565 F. 2d 19.

No. 77-1425. BALLEW *v.* GEORGIA. Ct. App. Ga. Certiorari denied.

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

Petitioner, convicted of distributing obscene materials under Ga. Code § 26-2101 (1975), for a second time asks this Court to decide the question:

“Whether . . . jury instructions on *scienter* allowing a finding of ‘constructive knowledge’ in an obscenity case are sufficient to meet . . . constitutional minimum standards. . . ?” Pet. for Cert. 2.

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In *Ballew v. Georgia*, 435 U. S. 223 (1978) (*Ballew I*), which involved petitioner's earlier conviction under § 26-2101, we granted certiorari to consider, but did not reach, precisely this issue. See Pet. for Cert. in *Ballew v. Georgia*, O. T. 1977, No. 76-761, p. 2. I see no reason to suppose that this issue is any less worthy of consideration on certiorari now than it was when we accepted it in *Ballew I*. For this reason, I would grant certiorari. See also *Sewell v. Georgia*, 435 U. S. 982 (1978) (BRENNAN, J., dissenting from dismissal of appeal); *Teal v. Georgia*, 435 U. S. 989 (1978) (same); *Robinson v. Georgia*, 435 U. S. 991 (1978) (dissenting from vacation of judgment and remand). Barring this, I would grant this petition and summarily reverse. See *Ballew I*, *supra*, at 246 (opinion of BRENNAN, J.); *Sanders v. Georgia*, 424 U. S. 931 (1976) (dissent from denial of certiorari).

No. 77-6486. *BARELA v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. MR. JUSTICE STEWART, MR. JUSTICE BLACKMUN, and MR. JUSTICE POWELL would grant certiorari. Reported below: 571 F. 2d 1108.

No. 77-1521. *MARKER ET AL. v. INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE & AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, INC., ET AL.* C. A. D. C. Cir. Motion for leave to file petition for writ of certiorari and/or petition for writ of certiorari denied.

Rehearing Denied

No. 77-1029. *CLAY v. BOMAR*, 435 U. S. 943;

No. 77-1068. *PFISTER v. WADDY*, U. S. DISTRICT JUDGE, and *PFISTER v. DELTA AIR LINES, INC., ET AL.*, 435 U. S. 995; and

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*, 435 U. S. 993. Petitions for rehearing denied.

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No. 77-6265. THOMPSON *v.* FLORIDA and SURACE *v.* FLORIDA, 435 U. S. 998;

No. 77-6278. KNIGHT *v.* UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MASSACHUSETTS, 435 U. S. 1006;

No. 77-6358. SIDDLE *v.* UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF OHIO ET AL., 435 U. S. 1006; and

No. 77-6359. ROSS *v.* HOPPER, WARDEN, 435 U. S. 1018.
Petitions for rehearing denied.