

ORDERS FROM JUNE 14 THROUGH  
JUNE 19, 1978

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JUNE 14, 1978

*Dismissal Under Rule 60*

No. 77-6373. *EATON v. UNITED STATES*. C. A. 5th Cir. Certiorari dismissed under this Court's Rule 60. Reported below: 567 F. 2d 389.

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*Dismissal Under Rule 60*

No. 77-6547. *WEDEL v. UNITED STATES*. C. A. 10th Cir. Certiorari dismissed under this Court's Rule 60.

*Appeals Dismissed*

No. 77-1460. *NIAGARA MOHAWK POWER CORP. v. PUBLIC SERVICE COMMISSION OF NEW YORK*. Appeal from App. Div., Sup. Ct. N. Y., 3d Jud. Dept., dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied. Reported below: 59 App. Div. 2d 73, 397 N. Y. S. 2d 210.

No. 77-6796. *GODBOUT v. NORTON*. Appeal from Sup. Ct. Minn. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied. Reported below: 262 N. W. 2d 374.

*Miscellaneous Orders*

No. A-1029 (77-1674). *FIELD v. UNITED STATES*. C. A. 2d Cir. Application for bail denied without prejudice to an application in the District Court. See 18 U. S. C. §§ 3148, 3146; Fed. Rule App. Proc. 9 (b); *United States v. Bowdach*, 561 F. 2d 1160, 1167, and n. 2 (CA5 1977).

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No. A-1054 (Nos. 77-452, 77-457, 77-551, and 77-602). MOBIL ALASKA PIPELINE CO. *v.* UNITED STATES ET AL.; EXXON PIPELINE CO. *v.* UNITED STATES ET AL.; BP PIPELINES, INC. *v.* UNITED STATES ET AL.; and ARCO PIPE LINE CO. *v.* UNITED STATES ET AL., 436 U. S. 631. Application for an order directing compliance with conditions of stay received and presented to Mr. JUSTICE BRENNAN, and by him referred to the Court. It is ordered that the judgment of this Court in the above-entitled cases be issued forthwith.

No. 77-891. BEAL, SECRETARY OF WELFARE OF PENNSYLVANIA, ET AL. *v.* FRANKLIN ET AL. D. C. E. D. Pa. [Probable jurisdiction noted, 435 U. S. 913.] Motion for appointment of Alan Ernest, Esquire, as guardian *ad litem* for unborn children denied.

No. 77-1388. MASSACHUSETTS *v.* WHITE. Sup. Jud. Ct. Mass. [Certiorari granted, 436 U. S. 925.] Motion of respondent for leave to proceed further herein *in forma pauperis* granted.

No. 77-6670. CARTER *v.* ROBERTS, U. S. DISTRICT JUDGE. Motion for leave to file petition for writ of mandamus denied.

#### *Probable Jurisdiction Noted*

No. 77-1715. SECRETARY OF PUBLIC WELFARE OF PENNSYLVANIA ET AL. *v.* INSTITUTIONALIZED JUVENILES ET AL. Appeal from D. C. E. D. Pa. Motion of appellees for leave to proceed *in forma pauperis* granted. Probable jurisdiction noted. Case set for oral argument with No. 75-1690, *Parham v. J. L.* [probable jurisdiction noted, 431 U. S. 936; restored to calendar, 434 U. S. 1031].

#### *Certiorari Granted*

No. 77-1547. DOUGLAS OIL COMPANY OF CALIFORNIA ET AL. *v.* PETROL STOPS NORTHWEST ET AL. C. A. 9th Cir. Certiorari granted. Reported below: 571 F. 2d 1127.

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No. 77-874. ALEXANDER ET AL. *v.* UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT ET AL. C. A. 7th Cir.; and

No. 77-1463. HARRIS, SECRETARY OF HOUSING AND URBAN DEVELOPMENT, ET AL. *v.* COLE ET AL. C. A. D. C. Cir. Certiorari granted, cases consolidated, and a total of one hour allotted for oral argument. Reported below: No. 77-874, 555 F. 2d 166; No. 77-1463, 187 U. S. App. D. C. 156, 571 F. 2d 590.

No. 77-1553. COUNTY OF LOS ANGELES ET AL. *v.* DAVIS ET AL. C. A. 9th Cir. Certiorari granted. Reported below: 566 F. 2d 1334.

*Certiorari Denied.* (See also Nos. 77-1460 and 77-6796, *supra.*)

No. 77-1137. NEVILLE *v.* FRIEDMAN, JUDGE, ET AL. Sup. Ct. Ill. Certiorari denied. Reported below: 67 Ill. 2d 488, 367 N. E. 2d 1341.

No. 77-1225. SEIDEL *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied. Reported below: 557 S. W. 2d 311.

No. 77-1354. FURRER ET UX. *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 9th Cir. Certiorari denied. Reported below: 566 F. 2d 1115.

No. 77-1389. CADILLAC OVERALL SUPPLY Co. *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 568 F. 2d 1078.

No. 77-1394. QUICK PAK, INC. *v.* NATIONAL LABOR RELATIONS BOARD. C. A. 6th Cir. Certiorari denied. Reported below: 570 F. 2d 649.

No. 77-1397. ABRAMS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 568 F. 2d 411.



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No. 77-1399. *MECHANIC'S BUILDING & LOAN CO. v. FEDERAL HOME LOAN BANK BOARD ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 571 F. 2d 582.

No. 77-1401. *GOODWIN v. BRIGGS ET AL.* C. A. D. C. Cir. Certiorari denied. Reported below: 186 U. S. App. D. C. 179, 569 F. 2d 10.

No. 77-1420. *CHICAGO HEALTH CLUBS, INC. v. NATIONAL LABOR RELATIONS BOARD.* C. A. 7th Cir. Certiorari denied. Reported below: 567 F. 2d 331.

No. 77-1423. *PAVONE v. UNITED STATES.* C. A. 7th Cir. Certiorari denied. Reported below: 570 F. 2d 674.

No. 77-1428. *YESTERDAY'S CHILDREN ET AL. v. KENNEDY, DIRECTOR, DEPARTMENT OF CHILDREN AND FAMILY SERVICES OF ILLINOIS, ET AL.* C. A. 7th Cir. Certiorari denied. Reported below: 569 F. 2d 431.

No. 77-1448. *THOMAS v. UNITED STATES.* C. A. 9th Cir. Certiorari denied. Reported below: 571 F. 2d 589.

No. 77-1452. *LEWIN ET UX. v. COMMISSIONER OF INTERNAL REVENUE.* C. A. 7th Cir. Certiorari denied. Reported below: 569 F. 2d 444.

No. 77-1458. *MAPCO, INC., ET AL. v. CARTER, PRESIDENT OF THE UNITED STATES, ET AL.* Temp. Emerg. Ct. App. Certiorari denied. Reported below: 573 F. 2d 1268.

No. 77-1488. *PERLMAN ET AL. v. CALIFORNIA.* Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 77-1508. *GUST v. UNITED STATES CUSTOMS SERVICE.* C. A. 6th Cir. Certiorari denied. Reported below: 571 F. 2d 581.

No. 77-1525. *KAUFMAN v. ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK.* C. A. 2d Cir. Certiorari denied. Reported below: 573 F. 2d 1291.

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No. 77-1526. *GOLZ v. ILLINOIS*. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 53 Ill. App. 3d 654, 368 N. E. 2d 1069.

No. 77-1527. *LAJE v. R. E. THOMASON GENERAL HOSPITAL*. C. A. 5th Cir. Certiorari denied. Reported below: 564 F. 2d 1159.

No. 77-1530. *HARBIN v. INTERLAKE STEAMSHIP Co.*; and  
No. 77-1536. *INTERLAKE STEAMSHIP Co. v. HARBIN*. C. A. 6th Cir. Certiorari denied. Reported below: 570 F. 2d 99.

No. 77-1531. *ASSOCIATED MILK PRODUCERS, INC. v. UNITED STATES ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 566 F. 2d 1293.

No. 77-1537. *VOLKSWAGENWERK AG ET AL. v. HERMAN, U. S. DISTRICT JUDGE, ET AL.* C. A. 3d Cir. Certiorari denied.

No. 77-1544. *JOYCE BEVERAGES, INC., ET AL. v. JOYCE ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 571 F. 2d 703.

No. 77-1549. *JOHNSON ET AL. v. GENERAL MOTORS ASSEMBLY DIVISION, GENERAL MOTORS CORP.* Ct. App. Ga. Certiorari denied. Reported below: 144 Ga. App. 305, 241 S. E. 2d 30.

No. 77-1560. *PARISH OF EAST BATON ROUGE v. PIERSON ET AL.* Ct. App. La., 1st Cir. Certiorari denied. Reported below: 353 So. 2d 726.

No. 77-1561. *O'CONNOR ET AL. v. CITY OF LOUISVILLE FIRE FIGHTERS PENSION FUND*. Sup. Ct. Ky. Certiorari denied. Reported below: 561 S. W. 2d 675.

No. 77-1563. *PPX ENTERPRISES, INC. v. SCEPTER RECORDS, INC.* Ct. App. N. Y. Certiorari denied. Reported below: 43 N. Y. 2d 972, 375 N. E. 2d 731.

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No. 77-1572. *ROGERS v. FLORIDA*. Dist. Ct. App. Fla., 2d Dist. Certiorari denied. Reported below: 349 So. 2d 239.

No. 77-1579. *FENNELL v. BUTLER ET AL.* C. A. 8th Cir. Certiorari denied. Reported below: 570 F. 2d 263.

No. 77-1623. *GRIFFIN v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 575 F. 2d 1341.

No. 77-5985. *CANE v. KENTUCKY*. Ct. App. Ky. Certiorari denied. Reported below: 556 S. W. 2d 902.

No. 77-6339. *SMITH v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 570 F. 2d 351.

No. 77-6395. *GUZMAN v. UNITED STATES*; and

No. 77-6577. *BENSOR v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 566 F. 2d 560.

No. 77-6428. *HANNAH v. NEW JERSEY*. C. A. 3d Cir. Certiorari denied. Reported below: 568 F. 2d 771.

No. 77-6429. *GRIFFIN v. SAN BERNARDINO POLICE DEPARTMENT ET AL.* C. A. 9th Cir. Certiorari denied.

No. 77-6463. *BUTTORFF ET AL. v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 572 F. 2d 619.

No. 77-6489. *DAVIS ET AL. v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 566 F. 2d 105.

No. 77-6501. *WHITE v. UNITED STATES*; and

No. 77-6544. *DIAZ v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: No. 77-6501, 570 F. 2d 354; No. 77-6544, 570 F. 2d 352.

No. 77-6520. *JOHNSON v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 569 F. 2d 269.

No. 77-6531. *CAMERON v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 570 F. 2d 352.



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No. 77-6548. *MORGAN ET AL. v. JACKSON, CORRECTIONS DIRECTOR, ET AL.* C. A. D. C. Cir. Certiorari denied.

No. 77-6551. *HAMILTON v. DELAWARE.* Sup. Ct. Del. Certiorari denied. Reported below: 382 A. 2d 249.

No. 77-6559. *JACKSON v. UNITED STATES.* C. A. 7th Cir. Certiorari denied. Reported below: 569 F. 2d 1003.

No. 77-6576. *JOHNSON v. UNITED STATES.* C. A. 9th Cir. Certiorari denied. Reported below: 572 F. 2d 227.

No. 77-6581. *FERRI v. UNITED STATES ET AL.* C. A. D. C. Cir. Certiorari denied.

No. 77-6586. *CHESHIRE v. UNITED STATES.* C. A. 5th Cir. Certiorari denied. Reported below: 569 F. 2d 887.

No. 77-6591. *FERRARA v. UNITED STATES.* C. A. 8th Cir. Certiorari denied. Reported below: 571 F. 2d 428.

No. 77-6614. *PALMER v. UNITED STATES.* C. A. 3d Cir. Certiorari denied. Reported below: 574 F. 2d 164.

No. 77-6627. *KING v. UNITED STATES.* C. A. 8th Cir. Certiorari denied. Reported below: 572 F. 2d 1274.

No. 77-6636. *ZEPEDA-SANTANA v. UNITED STATES.* C. A. 5th Cir. Certiorari denied. Reported below: 569 F. 2d 1386.

No. 77-6640. *WILLIAMS v. LOUISIANA ET AL.* Sup. Ct. La. Certiorari denied. Reported below: 353 So. 2d 1299.

No. 77-6648. *NASIM v. COMMISSIONER OF INTERNAL REVENUE.* C. A. 4th Cir. Certiorari denied. Reported below: 565 F. 2d 157.

No. 77-6656. *BONNELL v. BLACK, REFORMATORY SUPERINTENDENT.* C. A. 6th Cir. Certiorari denied.

No. 77-6658. *BREWSTER v. NEW YORK.* App. Div., Sup. Ct. N. Y., 1st Jud. Dept. Certiorari denied. Reported below: 60 App. Div. 2d 796, 399 N. Y. S. 2d 958.

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No. 77-6660. *TAYLOR v. POEHLING*, ASSISTANT CIRCUIT ATTORNEY, CITY OF ST. LOUIS. C. A. 8th Cir. Certiorari denied.

No. 77-6664. *CHAMBERS v. OKLAHOMA*. Ct. Crim. App. Okla. Certiorari denied.

No. 77-6665. *RACHAL v. SUPERINTENDENT OF M. C. I. AT WALPOLE*. C. A. 1st Cir. Certiorari denied.

No. 77-6668. *GRAY ET AL. v. CALIFORNIA*; and

No. 77-6682. *MERTZ v. CALIFORNIA*. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 77-6669. *WILLIAMS v. ALABAMA*. Ct. Crim. App. Ala. Certiorari denied. Reported below: 354 So. 2d 829.

No. 77-6677. *SULLIVAN v. CALIFORNIA*. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 77-6690. *MEADER v. MONTANA*. Sup. Ct. Mont. Certiorari denied.

No. 77-6693. *RADISICH v. RADISICH ET AL.* Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 77-6695. *WATSON v. MARYLAND*. Ct. App. Md. Certiorari denied. Reported below: 282 Md. 73, 382 A. 2d 574.

No. 77-6786. *BRADFORD v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 571 F. 2d 1351.

No. 77-6791. *SKIDMORE v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 575 F. 2d 1338.

No. 77-6800. *KIRK v. UNITED STATES*. C. A. 4th Cir. Certiorari denied.

No. 77-6803. *MARQUEZ v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 574 F. 2d 931.



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No. 77-1196. SHERWIN ET AL. v. UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 572 F. 2d 196.

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

Petitioners were convicted in the United States District Court for the Central District of California of multiple counts of knowingly transporting allegedly obscene materials in interstate commerce by common carrier in violation of 18 U. S. C. §§ 1462<sup>1</sup> and 1465<sup>2</sup> (1976 ed.). Although it overturned convictions on some counts, the Court of Appeals for the Ninth Circuit affirmed petitioners' convictions on three counts and also petitioner Sherwin's conviction for conspiracy under 18 U. S. C. § 371 (1976 ed.).

Petitioners ask this Court to consider whether "a standard of *scienter* which authorizes obscenity convictions on mere knowledge of the 'sexual orientation' of material impermissibly chill[s] the dissemination of expression protected under the First Amendment of the United States Constitution." Pet. for Cert. 2. This question is much the same as that presented in *Ballew v. Georgia*, 435 U. S. 223 (1978), *Sewell v.*

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<sup>1</sup> "Whoever brings into the United States, or any place subject to the jurisdiction thereof, or knowingly uses any express company or other common carrier, for carriage in interstate or foreign commerce—

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

"Shall be fined not more than \$5,000 or imprisoned not more than five years, or both . . . ."

<sup>2</sup> "Whoever knowingly transports in interstate or foreign commerce for the purpose of sale or distribution any obscene, lewd, lascivious, or filthy book, pamphlet, picture, film, paper, letter, writing, print, silhouette, drawing, figure, image, cast, phonograph recording, electrical transcription or other article capable of producing sound or any other matter of indecent or immoral character, shall be fined not more than \$5,000 or imprisoned not more than five years, or both."

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*Georgia*, 435 U. S. 982 (1978), *Robinson v. Georgia*, 435 U. S. 991 (1978), and *Teal v. Georgia*, 435 U. S. 989 (1978). For the reasons stated in my dissent from denial of certiorari in *Sewell, supra*, at 982, I would hear oral argument on this issue. Barring this, I would summarily reverse petitioners' convictions. See, e. g., *United States v. Orito*, 413 U. S. 139, 147 (1973) (BRENNAN, J., dissenting); *Christian v. United States*, 432 U. S. 910 (1977) (BRENNAN, J., dissenting from denial of certiorari); *Danley v. United States*, 424 U. S. 929 (1976) (same); *Kutler v. United States*, 423 U. S. 959 (1975) (same).

No. 77-1342. *PERRIN ET AL. v. DUNN ET AL.* C. A. 1st Cir. Motions of respondents for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 570 F. 2d 21.

No. 77-1381. *DRUMMOND ET UX. v. FULTON COUNTY DEPARTMENT OF FAMILY AND CHILDREN'S SERVICES ET AL.*; and

No. 77-6454. *HILL v. FULTON COUNTY DEPARTMENT OF FAMILY AND CHILDREN'S SERVICES ET AL.* C. A. 5th Cir. Certiorari denied. MR. JUSTICE BRENNAN and MR. JUSTICE WHITE would grant certiorari. Reported below: 563 F. 2d 1200.

No. 77-1505. *ESSEX COUNTY WELFARE BOARD v. DEPARTMENT OF INSTITUTIONS AND AGENCIES ET AL.* Sup. Ct. N. J. Motion of respondent Irene Stowers for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 75 N. J. 232, 381 A. 2d 349.

No. 77-1532. *HALL, CORRECTIONS COMMISSIONER, ET AL. v. MORGAN.* C. A. 1st Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 569 F. 2d 1161.

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No. 77-1534. *SOUTH CENTRAL BELL TELEPHONE Co. v. LOUISIANA PUBLIC SERVICE COMMISSION*. Sup. Ct. La. Certiorari denied. MR. JUSTICE WHITE and MR. JUSTICE POWELL would grant certiorari. Reported below: 352 So. 2d 964.

No. 77-1548. *SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION, LOCAL No. 3 v. SIEBLER HEATING & AIR CONDITIONING, INC., ET AL.* C. A. 8th Cir. Certiorari denied. MR. JUSTICE WHITE would grant certiorari. Reported below: 563 F. 2d 366.

No. 77-6539. *DENNEY v. TEXAS*. Ct. Crim. App. Tex. Certiorari denied. Reported below: 558 S. W. 2d 467.

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

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

No. 77-6616. *LAYTON v. POGUE, WARDEN*. C. A. 9th Cir. Certiorari denied. MR. JUSTICE BRENNAN, MR. JUSTICE WHITE, and MR. JUSTICE MARSHALL would grant certiorari. Reported below: 568 F. 2d 777.

### *Rehearing Denied*

No. 77-1091. *EPSTEIN v. CIVIL SERVICE COMMISSION ET AL.*, 435 U. S. 911;

No. 77-1190. *ALL ISLAND DELIVERY SERVICE, INC., ET AL. v. UNITED STATES ET AL.*, 435 U. S. 1007;

No. 77-1357. *COLEMAN v. VIRGINIA*, 435 U. S. 997;

No. 77-6235. *BRETZ v. CRIST, WARDEN*, 436 U. S. 908; and

No. 77-6303. *BANKS ET AL. v. UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT ET AL.*, 436 U. S. 908. Petitions for rehearing denied.



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No. 77-6409. CONRAD v. COMMERCE BANK OF KANSAS CITY, 436 U. S. 901;

No. 77-6457. BAMOND v. NEW YORK ET AL., 436 U. S. 910; and

No. 77-6657. CONRAD v. FIRST STATE BANK & TRUST CO., 436 U. S. 916. Petitions for rehearing denied.