

ORDERS FROM END OF OCTOBER TERM, 1977  
THROUGH FEBRUARY 1, 1979

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CASES DISMISSED IN VACATION

No. 77-1674. *FIELD v. UNITED STATES*. C. A. 2d Cir. Certiorari dismissed July 18, 1978, under this Court's Rule 60. Reported below: 578 F. 2d 1371.

No. 77-6714. *NICHOLAS v. UNITED STATES*. C. A. 2d Cir. Certiorari dismissed July 18, 1978, under this Court's Rule 60. Reported below: 578 F. 2d 1370.

No. 77-1676. *McLOUTH STEEL CORP. v. JEWELL COAL & COKE Co.* C. A. 6th Cir. Certiorari dismissed July 21, 1978, under this Court's Rule 60. Reported below: 570 F. 2d 594.

No. 77-1862. *ISRAEL, WARDEN v. HUGHES*. C. A. 7th Cir. Certiorari dismissed August 3, 1978, under this Court's Rule 60. Reported below: 576 F. 2d 1250.

No. 78-94. *TENNECO OIL Co. ET AL. v. FEDERAL ENERGY REGULATORY COMMISSION*. C. A. 5th Cir. Certiorari dismissed August 7, 1978, under this Court's Rule 60. Reported below: 571 F. 2d 834.

No. 78-81. *VAN WYK v. MARCOUX ET AL.* C. A. 8th Cir. Certiorari dismissed August 24, 1978, under this Court's Rule 60. Reported below: 572 F. 2d 651.

No. 78-145. *BANNER, COMMISSIONER OF PATENTS AND TRADEMARKS v. CHAKRABARTY*. C. C. P. A. Certiorari dismissed August 25, 1978, under this Court's Rule 60. Reported below: 571 F. 2d 40.

No. 77-1587. *CONSTRUCTION AGGREGATES CORP. v. MORVANT, ADMINISTRATRIX*. C. A. 6th Cir. Certiorari dismissed August 30, 1978, under this Court's Rule 60. Reported below: 570 F. 2d 626.

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No. 77-6766. *McKIE v. ALASKA*. Sup. Ct. Alaska. Certiorari dismissed September 6, 1978, under this Court's Rule 60.

No. 78-5286. *GONZALEZ v. NEW YORK*. App. Div., Sup. Ct. N. Y., 2d Jud. Dept. Certiorari dismissed September 20, 1978, under this Court's Rule 60. Reported below: 63 App. Div. 2d 686, 404 N. Y. S. 2d 933.

No. 78-5190. *DEAN v. SUPERIOR COURT OF CALIFORNIA, COUNTY OF RIVERSIDE (CALIFORNIA, REAL PARTY IN INTEREST)*. Ct. App. Cal., 4th App. Dist. Certiorari dismissed September 26, 1978, under this Court's Rule 60.

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*Affirmed on Appeal*

No. 77-1570. *MILLIS ET AL. v. HIGH DRIVE WATER DISTRICT ET AL.* Affirmed on appeal from D. C. Colo.

No. 78-199. *MORTGAGE GROWTH INVESTORS v. CLOW CORP. ET AL.* Affirmed on appeal from D. C. E. D. Mich.

*Appeals Dismissed*

No. 77-1340. *SMITH v. GUMMO ET AL.* Appeal from Ct. App. Cal., 1st App. Dist., dismissed for want of substantial federal question. MR. JUSTICE BRENNAN, MR. JUSTICE WHITE, and MR. JUSTICE STEVENS would note probable jurisdiction and set case for oral argument.

No. 77-1373. *MAINE CENTRAL RAILROAD CO. v. HALPERIN ET AL.* Appeal from Sup. Jud. Ct. Me. dismissed for want of substantial federal question. MR. JUSTICE STEWART, MR. JUSTICE WHITE, and MR. JUSTICE POWELL would note probable jurisdiction and set case for oral argument. Reported below: 381 A. 2d 8.

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No. 77-1036. LARSEN, ACTING COMMISSIONER OF LABOR OF THE VIRGIN ISLANDS *v.* LOCKHART. Appeal from C. A. 3d Cir. Motion of appellee for leave to proceed *in forma pauperis* granted. Appeal dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied. Reported below: 563 F. 2d 617.

No. 77-1568. MISSOURI CHURCH OF SCIENTOLOGY *v.* STATE TAX COMMISSION OF MISSOURI ET AL. Appeal from Sup. Ct. Mo. dismissed for want of substantial federal question. MR. JUSTICE STEVENS would note probable jurisdiction and set case for oral argument. Reported below: 560 S. W. 2d 837.

No. 77-1584. ASSOCIATION OF PERSONNEL AGENCIES OF NEW YORK, INC., ET AL. *v.* ROSS, INDUSTRIAL COMMISSIONER OF NEW YORK. Appeal from Ct. App. N. Y. dismissed for want of substantial federal question. Reported below: 43 N. Y. 2d 873, 374 N. E. 2d 363.

No. 77-1723. ARISTOCRATIC RESTAURANT OF MASSACHUSETTS, INC. *v.* ALCOHOLIC BEVERAGES CONTROL COMMISSION; and ARISTOCRATIC RESTAURANT OF MASSACHUSETTS, INC. *v.* ALCOHOLIC BEVERAGES CONTROL COMMISSION. Appeals from Sup. Jud. Ct. Mass. dismissed for want of substantial federal question. Reported below: 374 Mass. 547, 374 N. E. 2d 1181 (first case); 374 Mass. 564, 374 N. E. 2d 1192 (second case).

No. 77-1737. ROLOFF EVANGELISTIC ENTERPRISES, INC., ET AL. *v.* TEXAS. Appeal from Ct. Civ. App. Tex., 3d Sup. Jud. Dist., dismissed for want of substantial federal question. Reported below: 556 S. W. 2d 856.

No. 77-1743. DOWNTOWN L. A. IMPORTS ET AL. *v.* SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES (YOUNGER, ATTORNEY GENERAL OF CALIFORNIA, REAL PARTY IN INTEREST). Appeal from Ct. App. Cal., 2d App. Dist., dismissed for want of substantial federal question.

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No. 77-1775. *RENTAR INDUSTRIAL DEVELOPMENT CORP. ET AL. v. CARL A. MORSE, INC.* Appeal from Ct. App. N. Y. dismissed for want of substantial federal question. Reported below: 43 N. Y. 2d 952, 375 N. E. 2d 409.

No. 77-1834. *LANG v. CITY OF PHILADELPHIA ET AL.* Appeal from Commw. Ct. Pa. dismissed for want of substantial federal question. Reported below: 31 Pa. Commw. 537, 377 A. 2d 849.

No. 77-6713. *KEYES v. OKLAHOMA DEPARTMENT OF INSTITUTIONS, SOCIAL AND REHABILITATIVE SERVICES ET AL.* Appeal from Sup. Ct. Okla. dismissed for want of substantial federal question. Reported below: 574 P. 2d 1026.

No. 78-28. *SANKO ET AL. v. CARLSON, CLERK, KANE COUNTY CIRCUIT COURT.* Appeal from Sup. Ct. Ill. dismissed for want of substantial federal question. Reported below: See 69 Ill. 2d 246, 371 N. E. 2d 613.

No. 78-39. *ZRENCHIK ET AL. v. PEOPLES' COMMUNITY HOSPITAL AUTHORITY.* Appeal from Ct. App. Mich. dismissed for want of substantial federal question.

No. 78-57. *FIVE-R EXCAVATING, INC. v. DEPARTMENT OF REVENUE OF PENNSYLVANIA; and J & R EQUIPMENT RENTAL Co., INC. v. DEPARTMENT OF REVENUE OF PENNSYLVANIA.* Appeals from Sup. Ct. Pa. dismissed for want of substantial federal question.

No. 78-73. *WRIGHT, DBA TOUCH OF CLASS MASSAGE PARLOR, ET AL. v. CITY OF INDIANAPOLIS ET AL.* Appeal from Sup. Ct. Ind. dismissed for want of substantial federal question. Reported below: 267 Ind. 471, 371 N. E. 2d 1298.

No. 78-101. *ROBERTS v. ROBERTS.* Appeal from Sup. Ct. Neb. dismissed for want of substantial federal question. Reported below: 200 Neb. 256, 263 N. W. 2d 449.

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No. 78-104. *JOHNSON ET AL. v. ATTORNEY GENERAL OF MARYLAND ET AL.* Appeal from Ct. App. Md. dismissed for want of substantial federal question. Reported below: 282 Md. 274, 385 A. 2d 57.

No. 78-138. *WESTINGHOUSE ELECTRIC CORP. v. PENNSYLVANIA.* Appeal from Sup. Ct. Pa. dismissed for want of substantial federal question. Reported below: 478 Pa. 164, 386 A. 2d 491.

No. 78-5001. *FRANCIS v. MASSACHUSETTS; and O'CLAIR v. MASSACHUSETTS.* Appeals from Sup. Jud. Ct. Mass. dismissed for want of substantial federal question. Reported below: 374 Mass. 750, 374 N. E. 2d 1207 (first case); 374 Mass. 759, 374 N. E. 2d 1212 (second case).

No. 78-5081. *STEIN v. TEXAS POWER & LIGHT CO. ET AL.* Appeal from Ct. Civ. App. Tex., 2d Sup. Jud. Dist., dismissed for want of substantial federal question.

No. 77-1592. *CAMBRON ET AL. v. CANAL INSURANCE CO.* Appeal from Sup. Ct. Ga. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied. Reported below: 240 Ga. 708, 242 S. E. 2d 32.

No. 77-1631. *RIDGILL ET UX. v. RESTON HOMEOWNERS ASSN.* Appeal from Sup. Ct. Va. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied.

No. 77-1642. *CHERAMIE ET AL. v. GUIDRY ET UX.* Appeal from Sup. Ct. La. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied. Reported below: 354 So. 2d 1280.

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No. 77-1726. *APPLEMAN v. FUREDY, TRUSTEE IN BANKRUPTCY*. Appeal from C. A. 10th Cir. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied. Reported below: 567 F. 2d 967.

No. 77-1825. *ARTHUR ET AL. v. CLAY COMMUNITY SCHOOLS ET AL.*; and *TOLIN ET AL. v. SOUTHWEST PARKE COMMUNITY SCHOOL CORP. ET AL.* Appeals from Ct. App. Ind. dismissed for want of jurisdiction. Treating the papers whereon the appeals were taken as petitions for writs of certiorari, certiorari denied.

No. 77-1854. *SIGETY ET UX. v. HYNES, DEPUTY ATTORNEY GENERAL OF NEW YORK, ET AL.* Appeal from App. Div., Sup. Ct. N. Y., 1st 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: 61 App. Div. 2d 1143, 403 N. Y. S. 2d 609.

No. 77-6671. *SAFFIOTI v. NEW YORK*. Appeal from C. A. 2d 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: 573 F. 2d 1295.

No. 77-6745. *CONRAD v. FIRST STATE BANK & TRUST Co. ET AL.* Appeal from D. C. E. D. Mo. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied. Reported below: 446 F. Supp. 1088.

No. 77-6837. *CONRAD v. WANGELIN, U. S. DISTRICT JUDGE, ET AL.* Appeal from D. C. E. D. Mo. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied. Reported below: 441 F. Supp. 345.

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No. 77-6900. *MACKEY 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: 357 So. 2d 186.

No. 77-6914. *DAVIS v. LAWYERS PROFESSIONAL RESPONSIBILITY BOARD OF MINNESOTA ET AL.* 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: 264 N. W. 2d 371.

No. 77-6988. *BLOCH ET UX. v. GENERAL MOTORS ACCEPTANCE CORP.* Appeal from App. Div., Sup. Ct. N. Y., 2d 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: 61 App. Div. 2d 1140, 403 N. Y. S. 2d 164.

No. 77-6999. *WAYLAND v. ESSEX COUNTY BANK & TRUST Co.* Appeal from C. A. 1st Cir. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied.

No. 77-7003. *WAYLAND v. ESSEX COUNTY NEWSPAPERS, INC.* Appeal from C. A. 1st Cir. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied. Reported below: 577 F. 2d 721.

No. 78-74. *THEIS v. CITY OF SAN ANTONIO, BY AND THROUGH WATER WORKS BOARD OF TRUSTEES OF SAN ANTONIO.* Appeal from Ct. Civ. App. Tex., 12th 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: 554 S. W. 2d 278.

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No. 78-5091. *KELLEY v. JOHNSON ET UX.* Appeal from Sup. Ct. Vt. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied. Reported below: 136 Vt. 628 and 629, 388 A. 2d 31 and 32.

No. 78-5092. *ALEXANDER v. DELAWARE STATE BAR ASSN.* Appeal from Sup. Ct. Del. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied. Reported below: 386 A. 2d 652.

No. 78-5117. *HEMMERLE ET AL. v. McDOWELL.* Appeal from Dist. Ct. App. Fla., 2d Dist., dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied. Reported below: 346 So. 2d 1255.

No. 78-5131. *IN RE MORRIS.* Appeal from Sup. Ct. S. C. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied. Reported below: 270 S. C. 308, 241 S. E. 2d 911.

No. 77-1621. *LIGGETT v. KANSAS EX REL. SCHNEIDER, ATTORNEY GENERAL OF KANSAS, ET AL.* Appeal from Sup. Ct. Kan. Motion of American Physicians & Surgeons, Inc., for leave to file a brief as *amicus curiae* granted. Appeal dismissed for want of substantial federal question. Reported below: 223 Kan. 610, 576 P. 2d 221.

No. 77-1670. *SUFFOLK OUTDOOR ADVERTISING Co., INC. v. HULSE ET AL.* Appeal from Ct. App. N. Y. dismissed for want of substantial federal question. MR. JUSTICE BLACKMUN and MR. JUSTICE POWELL would note probable jurisdiction and set case for oral argument. Reported below: 43 N. Y. 2d 483, 373 N. E. 2d 263.

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No. 78-5185. *JENKINS v. DISTRICT OF COLUMBIA*. Appeal from C. A. D. C. Cir. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied.

No. 77-1671. *MODJESKA SIGN STUDIOS, INC. v. BERLE, COMMISSIONER, DEPARTMENT OF ENVIRONMENTAL CONSERVATION OF NEW YORK*. Appeal from Ct. App. N. Y. dismissed for want of substantial federal question. MR. JUSTICE BLACKMUN and MR. JUSTICE POWELL would note probable jurisdiction and set case for oral argument. Reported below: 43 N. Y. 2d 468, 373 N. E. 2d 255.

No. 77-1784. *VETERANS OF FOREIGN WARS, POST 4264, ET AL. v. CITY OF STEAMBOAT SPRINGS*. Appeal from Sup. Ct. Colo. dismissed for want of substantial federal question. MR. JUSTICE STEWART, MR. JUSTICE BLACKMUN, and MR. JUSTICE POWELL would note probable jurisdiction and set case for oral argument. Reported below: 195 Colo. 44, 575 P. 2d 835.

No. 77-6604. *LITTLE v. NEBRASKA*. Appeal from Sup. Ct. Neb. dismissed for want of substantial federal question. MR. JUSTICE BRENNAN and MR. JUSTICE WHITE would note probable jurisdiction and set case for oral argument. Reported below: 199 Neb. 772, 261 N. W. 2d 847.

No. 77-6635. *WEEKS v. ILLINOIS*. Appeal from App. Ct. Ill., 4th Dist., dismissed for want of substantial federal question. MR. JUSTICE BRENNAN and MR. JUSTICE MARSHALL would note probable jurisdiction and set case for oral argument. Reported below: 52 Ill. App. 3d 1101, 372 N. E. 2d 163.

No. 77-6749. *CARTER v. DAWSON, SECRETARY, DEPARTMENT FOR HUMAN RESOURCES OF KENTUCKY*. Appeal from Ct. App. Ky. dismissed for want of substantial federal question. *Quern v. Mandley*, 436 U. S. 725 (1978). Reported below: 561 S. W. 2d 686.

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*Certiorari Granted—Vacated and Remanded*

No. 77-792. RUBIN *v.* UNITED STATES. C. A. 5th Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of the position presently asserted by the Solicitor General in his supplemental brief filed August 21, 1978. MR. JUSTICE REHNQUIST dissents. Reported below: 559 F. 2d 975.

No. 77-1599. COOK *v.* MUSKINGUM WATERSHED CONSERVANCY DISTRICT. C. A. 6th Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Monell v. Department of Social Services of New York City*, 436 U. S. 658 (1978). Reported below: 573 F. 2d 1310.

No. 77-1663. SOCIETY FOR THE WELFARE OF ANIMALS, INC. *v.* WALRATH. Dist. Ct. App. Fla., 3d Dist. Motion of Humane Society of the United States for leave to file a brief as *amicus curiae* granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Bates v. State Bar of Arizona*, 433 U. S. 350 (1977). Reported below: 343 So. 2d 934.

No. 77-6536. HAMMONS *v.* UNITED STATES. C. A. 5th Cir. Motion of petitioner for leave to proceed *in forma pauperis* and certiorari granted. Judgment vacated and case remanded for further consideration in light of the position presently asserted by the Solicitor General in his memorandum filed July 11, 1978. THE CHIEF JUSTICE, MR. JUSTICE WHITE, and MR. JUSTICE REHNQUIST dissent. Reported below: 569 F. 2d 1155.

No. 77-6992. BISHOP *v.* ARIZONA. Sup. Ct. Ariz. Motion of petitioner for leave to proceed *in forma pauperis* and certiorari granted. Judgment vacated insofar as it leaves undisturbed the death penalty imposed, and case is remanded for further proceedings. See *Lockett v. Ohio*, 438 U. S. 586 (1978). Reported below: 118 Ariz. 263, 576 P. 2d 122.

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No. 77-6910. *DONOHO v. UNITED STATES*. C. A. 9th Cir. Motion of petitioner for leave to proceed *in forma pauperis* and certiorari granted. Judgment vacated and case remanded for further consideration in light of the position presently asserted by the Solicitor General in his memorandum filed September 5, 1978. MR. JUSTICE REHNQUIST dissents. Reported below: 575 F. 2d 718.

No. 77-6912. *MILLER v. KENTUCKY*. Sup. Ct. Ky. Motion of petitioner for leave to proceed *in forma pauperis* and certiorari granted. Judgment vacated and case remanded for further consideration in light of *Taylor v. Kentucky*, 436 U. S. 478 (1978). Reported below: 563 S. W. 2d 10.

No. 77-7002. *ADAMS v. OHIO*. Sup. Ct. Ohio. Motion of petitioner for leave to proceed *in forma pauperis* and certiorari granted. Judgment vacated insofar as it leaves undisturbed the death penalty imposed, and case is remanded for further proceedings. See *Lockett v. Ohio*, 438 U. S. 586 (1978). Reported below: 53 Ohio St. 2d 223, 374 N. E. 2d 137.

No. 78-87. *ENVIRONMENTAL DEFENSE FUND, INC., ET AL. v. EAST BAY MUNICIPAL UTILITY DISTRICT ET AL.* Sup. Ct. Cal. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *California v. United States*, 438 U. S. 645 (1978). Reported below: 20 Cal. 3d 327, 572 P. 2d 1128.

No. 78-5008. *NABOZNY v. OHIO*. Sup. Ct. Ohio. Motion of petitioner for leave to proceed *in forma pauperis* and certiorari granted. Judgment vacated insofar as it leaves undisturbed the death penalty imposed, and case is remanded for further proceedings. See *Lockett v. Ohio*, 438 U. S. 586 (1978). Reported below: 54 Ohio St. 2d 195, 375 N. E. 2d 784.

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No. 78-44. *PEMBERTON v. SPERANDIO*. Sup. Ct. Mo. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Kulko v. Superior Court of California*, 436 U. S. 84 (1978). Reported below: 568 S. W. 2d 935.

#### *Miscellaneous Orders*

No. 8, Orig. *ARIZONA v. CALIFORNIA ET AL.* Motion of Donald D. Stark for leave to file a brief as *amicus curiae* granted. [For earlier order herein, see, *e. g.*, 438 U. S. 912.]

No. 77, Orig. *TENNESSEE v. ARKANSAS*. Motion for leave to file bill of complaint granted and defendant allowed 60 days in which to answer.

No. 78, Orig. *CALIFORNIA v. ARIZONA ET AL.* Motion for leave to file bill of complaint set for oral argument in due course.

No. 79, Orig. *OKLAHOMA v. ARKANSAS*. Motion for leave to file bill of complaint granted and defendant allowed 60 days in which to answer.

No. 76-1310. *HOUCHINS, SHERIFF v. KQED, INC., ET AL.*, 438 U. S. 1. Motion to retax costs denied. MR. JUSTICE MARSHALL and MR. JUSTICE BLACKMUN took no part in the consideration or decision of this motion.

No. 77-120. *DOUGHERTY COUNTY, GEORGIA, BOARD OF EDUCATION, ET AL. v. WHITE*. D. C. M. D. Ga. [Probable jurisdiction noted, 435 U. S. 921.] Motion of appellee for divided argument granted.

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.] Motions of Harness Horsemen International, Inc., and Horsemen's Benevolent & Protective Assn. for leave to file briefs as *amici 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 of Gray Panthers and PROD et al. for leave to file briefs as *amici curiae* granted. Motions of AFL-CIO, the Solicitor General, and Stephen W. Holohan for leave to file briefs as *amici curiae* denied. Motion of American Bar Assn. for reconsideration of the July 3, 1978, order [438 U. S. 913] denying leave to file a brief as *amicus curiae* denied.

No. 77-952. GROUP LIFE & HEALTH INSURANCE CO., AKA BLUE SHIELD OF TEXAS, ET AL. v. ROYAL DRUG CO., INC., DBA ROYAL PHARMACY OF CASTLE HILLS ET AL., ET AL. C. A. 5th Cir. [Certiorari granted, 435 U. S. 903.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* granted and 15 minutes allotted for that purpose. Petitioners also allotted an additional 15 minutes for oral argument.

No. 77-1202. MICHIGAN v. DORAN. Sup. Ct. Mich. [Certiorari granted, 435 U. S. 967.] Further consideration of suggestion of mootness deferred to hearing of case on the merits.

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, 436 U. S. 916.] Motions of Minnesota AFL-CIO, Conference of State Bank Supervisors, Consumer Bankers Assn., and First National Bank of Chicago for leave to file briefs as *amici curiae* granted.

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No. 77-1659. CHASE MANHATTAN BANK, N. A. *v.* FINANCE ADMINISTRATION OF THE CITY OF NEW YORK ET AL. Ct. App. N. Y.;

No. 77-1694. BENJAMIN FRANKLIN FEDERAL SAVINGS & LOAN ASSN. *v.* DERENCO, INC. Sup. Ct. Ore.;

No. 77-1866. BOSWELL ET AL. *v.* GEORGIA POWER CO. ET AL. C. A. 5th Cir.; and

No. 78-129. BRITISH EUROPEAN AIRWAYS *v.* BENJAMINS ET AL. C. A. 2d Cir. The Solicitor General is invited to file briefs in these cases expressing the views of the United States.

No. 77-1819. VAUGHN ET AL. *v.* VERMILION CORP. Ct. App. La., 3d Cir. The Solicitor General is invited to file a brief in this case expressing the views of the United States. MR. JUSTICE POWELL took no part in the consideration or decision of this order.

No. 78-5040. SCHAFFER *v.* ROBINSON, WARDEN; and

No. 78-5152. HOOD *v.* WAINWRIGHT, SECRETARY, DEPARTMENT OF OFFENDER REHABILITATION OF FLORIDA. Motions for leave to file petitions for writs of habeas corpus denied.

No. 77-6458. CARTER ET AL. *v.* UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF TEXAS;

No. 77-6663. REYNOLDS *v.* UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT;

No. 77-6810. ROBINSON *v.* BYRNE, U. S. DISTRICT JUDGE;

No. 77-6841. MORRIS *v.* LINCOLN NATIONAL LIFE INSURANCE Co.;

No. 77-6894. MOUNT *v.* HAIGHT, U. S. DISTRICT JUDGE, ET AL.;

No. 77-6918. MOUNT *v.* SIFTON, U. S. DISTRICT JUDGE;

No. 77-6965. BROWN *v.* UNITED STATES; and

No. 78-5196. CLARK *v.* UNITED STATES DISTRICT COURT FOR THE DISTRICT OF KANSAS. Motions for leave to file petitions for writs of mandamus denied.

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No. 78-5186. SHADD *v.* UNITED STATES BOARD OF PAROLE ET AL. Motion for leave to file petition for writ of habeas corpus and/or mandamus denied.

No. 77-6717. LEE *v.* FAIRCHILD ET AL., U. S. CIRCUIT JUDGES; and

No. 77-6831. McDONALD *v.* LEATHERS, CLERK, SUPREME COURT OF TENNESSEE, ET AL. Motions for leave to file petitions for writs of mandamus and/or prohibition denied.

No. 77-6922. KRIKMANIS *v.* UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT ET AL. Motion for leave to file petition for writ of mandamus and/or certiorari denied.

No. 77-6960. JENKINS *v.* WILKEY, U. S. CIRCUIT JUDGE, ET AL. Motion for leave to file petition for writ of mandamus and other relief denied.

*Probable Jurisdiction Noted*

No. 77-1439. HUGHES *v.* OKLAHOMA. Appeal from Ct. Crim. App. Okla. Probable jurisdiction noted. Reported below: 572 P. 2d 573.

No. 77-1609. TORRES *v.* PUERTO RICO. Appeal from Sup. Ct. P. R. Probable jurisdiction noted. Reported below: 106 P. R. R. 588.

No. 77-1844. CITY OF MOBILE, ALABAMA, ET AL *v.* BOLDEN ET AL. Appeal from C. A. 5th Cir. Probable jurisdiction noted. Reported below: 571 F. 2d 238.

No. 78-3. PARHAM *v.* HUGHES. Appeal from Sup. Ct. Ga. Probable jurisdiction noted. Reported below: 241 Ga. 198, 243 S. E. 2d 867.

*Certiorari Granted*

No. 77-1554. COUNTY COURT OF ULSTER COUNTY, NEW YORK, ET AL. *v.* ALLEN ET AL. C. A. 2d Cir. Certiorari granted. Reported below: 568 F. 2d 998.

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No. 77-1724. BURKS ET AL. *v.* LASKER ET AL. C. A. 2d Cir. Certiorari granted. Reported below: 567 F. 2d 1208.

No. 77-1511. CALIFANO, SECRETARY OF HEALTH, EDUCATION, AND WELFARE *v.* ELLIOTT ET AL. C. A. 9th Cir. Motion of respondents for leave to proceed *in forma pauperis* and certiorari granted. Reported below: 564 F. 2d 1219.

No. 77-1571. DELAWARE *v.* PROUSE. Sup. Ct. Del. Motion of respondent for leave to proceed *in forma pauperis* and certiorari granted. Reported below: 382 A. 2d 1359.

No. 77-1680. MICHIGAN *v.* DEFILLIPPO. Ct. App. Mich. Motion of respondent for leave to proceed *in forma pauperis* and certiorari granted. Reported below: 80 Mich. App. 197, 262 N. W. 2d 921.

No. 77-1701. ROSE, WARDEN *v.* MITCHELL ET AL. C. A. 6th Cir. Motion of respondents for leave to proceed *in forma pauperis* and certiorari granted. Reported below: 570 F. 2d 129.

No. 77-1829. BELL, ATTORNEY GENERAL, ET AL. *v.* WOLFISH ET AL. C. A. 2d Cir. Motion of respondents for leave to proceed *in forma pauperis* and certiorari granted. Reported below: 573 F. 2d 118.

No. 77-1575. FEDERAL COMMUNICATIONS COMMISSION *v.* MIDWEST VIDEO CORP. ET AL.;

No. 77-1648. AMERICAN CIVIL LIBERTIES UNION *v.* FEDERAL COMMUNICATIONS COMMISSION ET AL.; and

No. 77-1662. NATIONAL BLACK MEDIA COALITION ET AL. *v.* MIDWEST VIDEO CORP. ET AL. C. A. 8th Cir. Motion of Consumers Union of the United States, Inc., for leave to file a brief as *amicus curiae* granted. Certiorari granted, cases consolidated, and a total of one hour allotted for oral argument. Reported below: 571 F. 2d 1025.

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No. 78-201. GREENHOLTZ, CHAIRMAN, BOARD OF PAROLE OF NEBRASKA, ET AL. *v.* INMATES OF THE NEBRASKA PENAL AND CORRECTIONAL COMPLEX ET AL. C. A. 8th Cir. Motion of respondents for leave to proceed *in forma pauperis* and certiorari granted. Reported below: 576 F. 2d 1274.

No. 77-1578. BROADCAST MUSIC, INC., ET AL. *v.* COLUMBIA BROADCASTING SYSTEM, INC., ET AL.; and

No. 77-1583. AMERICAN SOCIETY OF COMPOSERS, AUTHORS & PUBLISHERS ET AL. *v.* COLUMBIA BROADCASTING SYSTEM, INC., ET AL. C. A. 2d Cir. Certiorari granted, cases consolidated, and a total of one hour allotted for oral argument. The Solicitor General is invited to file a brief in these cases expressing the views of the United States. Reported below: 562 F. 2d 130.

No. 77-1644. UNITED STATES *v.* CRITTENDEN, DBA CRITTENDEN TRACTOR Co. C. A. 5th Cir. Certiorari granted and case set for oral argument with No. 77-1359, *United States v. Kimbell Foods, Inc.* [certiorari granted, 436 U. S. 903]. Reported below: 563 F. 2d 678.

No. 77-1722. DALIA *v.* UNITED STATES. C. A. 3d Cir. Certiorari granted limited to Question 1 presented by the petition. Reported below: 575 F. 2d 1344.

No. 77-1652. FEDERAL ENERGY REGULATORY COMMISSION *v.* SHELL OIL Co. ET AL.; and

No. 77-1654. CONSUMER FEDERATION OF AMERICA, ENERGY POLICY TASK FORCE *v.* FEDERAL ENERGY REGULATORY COMMISSION. C. A. 5th Cir. Certiorari granted, cases consolidated, and a total of one hour allotted for oral argument. MR. JUSTICE STEWART took no part in the consideration or decision of these petitions. Reported below: 566 F. 2d 536.

No. 77-1686. LEO SHEEP Co. ET AL. *v.* UNITED STATES ET AL. C. A. 10th Cir. Certiorari granted. MR. JUSTICE WHITE took no part in the consideration or decision of this petition. Reported below: 570 F. 2d 881.

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*Certiorari Denied.* (See also Nos. 77-1036, 77-1592, 77-1631, 77-1642, 77-1726, 77-1825, 77-1854, 77-6671, 77-6745, 77-6837, 77-6900, 77-6914, 77-6988, 77-6999, 77-7003, 78-74, 78-5091, 78-5092, 78-5117, 78-5131, and 78-5185, *supra.*)

No. 77-1181. DEPARTMENT OF HUMAN RESOURCES OF TEXAS *v.* CALIFANO, SECRETARY OF HEALTH, EDUCATION, AND WELFARE, ET AL. C. A. 5th Cir. *Certiorari denied.* Reported below: 556 F. 2d 326.

No. 77-1234. INTERNATIONAL ASSOCIATION OF MACHINISTS & AEROSPACE WORKERS, AFL-CIO *v.* COMPAGNIE NATIONALE AIR FRANCE. C. A. 2d Cir. *Certiorari denied.* Reported below: 573 F. 2d 1291.

No. 77-1332. CITY OF VANCEBURG, KENTUCKY *v.* FEDERAL ENERGY REGULATORY COMMISSION. C. A. D. C. Cir. *Certiorari denied.* Reported below: 187 U. S. App. D. C. 196, 571 F. 2d 630.

No. 77-1360. BRACY ET AL. *v.* UNITED STATES. C. A. 9th Cir. *Certiorari denied.* Reported below: 566 F. 2d 649.

No. 77-1383. WATTS ET AL. *v.* BAYOU LANDING, LTD., DBA FLORIDA BOOK MART, ET AL. C. A. 5th Cir. *Certiorari denied.* Reported below: 563 F. 2d 1172.

No. 77-1402. ALBRECHTSEN ET AL. *v.* ANDRUS, SECRETARY OF THE INTERIOR. C. A. 10th Cir. *Certiorari denied.* Reported below: 570 F. 2d 906.

No. 77-1409. BAKER ET AL. *v.* UNITED STATES. C. A. 9th Cir. *Certiorari denied.* Reported below: 567 F. 2d 924.

No. 77-1417. MAURICE P. FOLEY Co., INC., ET AL. *v.* BALDERSON ET AL. C. A. D. C. Cir. *Certiorari denied.* Reported below: 186 U. S. App. D. C. 301, 569 F. 2d 132.

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No. 77-1430. *STRICKLAND ET AL. v. GEORGIA*. Ct. App. Ga. Certiorari denied. Reported below: 144 Ga. App. 128, 240 S. E. 2d 579.

No. 77-1432. *KILRAIN ET AL. v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 566 F. 2d 979.

No. 77-1435. *SMITH v. UNITED STATES AIR FORCE ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 566 F. 2d 957.

No. 77-1447. *RETAIL STORE EMPLOYEES UNION, LOCAL 876, RETAIL CLERKS INTERNATIONAL ASSN., AFL-CIO v. NATIONAL LABOR RELATIONS BOARD*. C. A. 6th Cir. Certiorari denied. Reported below: 570 F. 2d 586.

No. 77-1455. *PENNSYLVANIA v. POWELL*. Sup. Ct. Pa. Certiorari denied.

No. 77-1457. *LLOYD WOOD CONSTRUCTION Co., INC. v. UNITED STATES*. Ct. Cl. Certiorari denied. Reported below: 215 Ct. Cl. 946, 566 F. 2d 1191.

No. 77-1466. *BOSWELL v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 565 F. 2d 1338.

No. 77-1468. *ROBINSON v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 570 F. 2d 949.

No. 77-1470. *DELTA AIR LINES, INC. v. CIVIL AERONAUTICS BOARD ET AL.* C. A. D. C. Cir. Certiorari denied. Reported below: 187 U. S. App. D. C. 335, 574 F. 2d 546.

No. 77-1476. *ATLANTIC PRODUCE Co., INC. v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 568 F. 2d 772.

No. 77-1486. *GARZA v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 568 F. 2d 1366.

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- No. 77-1499. *NORTH v. UNITED STATES*;  
No. 77-1500. *WALKER v. UNITED STATES*;  
No. 77-1501. *PAPPAS v. UNITED STATES*; and  
No. 77-1502. *CRAIG v. UNITED STATES*. C. A. 7th Cir.  
Certiorari denied. Reported below: 573 F. 2d 455.
- No. 77-1504. *MARKERT ET AL. v. UNITED STATES*. C. A.  
7th Cir. Certiorari denied. Reported below: 573 F. 2d 513.
- No. 77-1506. *ZAZZARA v. UNITED STATES*. C. A. 9th Cir.  
Certiorari denied. Reported below: 571 F. 2d 589.
- No. 77-1507. *CHEYENNE RIVER SIOUX TRIBE OF INDIANS  
v. ANDRUS, SECRETARY OF THE INTERIOR, ET AL.* C. A. 8th Cir.  
Certiorari denied. Reported below: 566 F. 2d 1085.
- No. 77-1512. *ESTATE OF RYAN ET AL. v. COMMISSIONER OF  
INTERNAL REVENUE*. C. A. 7th Cir. Certiorari denied. Re-  
ported below: 568 F. 2d 531.
- No. 77-1513. *TALSKY v. DEPARTMENT OF REGISTRATION  
AND EDUCATION OF ILLINOIS ET AL.* Sup. Ct. Ill. Certiorari  
denied. Reported below: 68 Ill. 2d 579, 370 N. E. 2d 173.
- No. 77-1514. *GEORGIA-PACIFIC CORP. v. UNITED STATES*.  
Ct. Cl. Certiorari denied. Reported below: 215 Ct. Cl. 354,  
568 F. 2d 1316.
- No. 77-1518. *EDGEWATER HOSPITAL, INC., ET AL. v. BIO-  
ANALYTICAL SERVICES, INC.* C. A. 7th Cir. Certiorari de-  
nied. Reported below: 565 F. 2d 450.
- No. 77-1520. *UNIVERSITY OF TEXAS MEDICAL BRANCH AT  
GALVESTON ET AL. v. UNITED STATES*. C. A. 5th Cir. Certio-  
rari denied. Reported below: 557 F. 2d 438.
- No. 77-1528. *NEW YORK STATE COMMISSION ON CABLE  
TELEVISION v. FEDERAL COMMUNICATIONS COMMISSION ET AL.*  
C. A. 2d Cir. Certiorari denied. Reported below: 571 F. 2d  
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No. 77-1523. *MILLER v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 571 F. 2d 573.

No. 77-1533. *WILLIAMS ET VIR v. CALIFANO, SECRETARY OF HEALTH, EDUCATION, AND WELFARE*. C. A. 5th Cir. Certiorari denied. Reported below: 566 F. 2d 1044.

No. 77-1538. *ABRAHAMS, AKA CARR v. UNITED STATES*. C. A. 1st Cir. Certiorari denied. Reported below: 575 F. 2d 3.

No. 77-1539. *EASTON v. UNITED STATES*;

No. 77-1770. *HOCKRIDGE v. UNITED STATES*; and

No. 77-6908. *PETRI v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 573 F. 2d 752.

No. 77-1542. *MAGGY v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 560 F. 2d 1372.

No. 77-1550. *RECREATIONAL PRODUCTS MARKETING, INC. v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 568 F. 2d 1366.

No. 77-1551. *NATIONAL COMMISSION ON EGG NUTRITION ET AL. v. FEDERAL TRADE COMMISSION*. C. A. 7th Cir. Certiorari denied. Reported below: 570 F. 2d 157.

No. 77-1552. *WEIDMAN v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 572 F. 2d 1199.

No. 77-1559. *UNION MUTUAL LIFE INSURANCE CO. v. UNITED STATES*. C. A. 1st Cir. Certiorari denied. Reported below: 570 F. 2d 382.

No. 77-1562. *DRESSER INDUSTRIES, INC. v. BONHAM*. C. A. 3d Cir. Certiorari denied. Reported below: 569 F. 2d 187.

No. 77-1565. *AETNA CASUALTY & SURETY CO. ET AL. v. UNITED STATES ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 570 F. 2d 1197.

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No. 77-1566. *SARGENT-WELCH SCIENTIFIC CO. v. VENTRON CORP. ET AL.* C. A. 7th Cir. Certiorari denied. Reported below: 567 F. 2d 701.

No. 77-1569. *CATALDO ET UX. v. LAND ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 573 F. 2d 1288.

No. 77-1573. *AMERICAN TELEPHONE & TELEGRAPH CO. ET AL. v. O'CONNOR, U. S. DISTRICT JUDGE, ET AL.* C. A. 10th Cir. Certiorari denied.

No. 77-1574. *DEKELAITA v. SHELL OIL CO.* C. A. 9th Cir. Certiorari denied. Reported below: 570 F. 2d 350.

No. 77-1576. *BROWNING v. UNITED STATES.* C. A. 10th Cir. Certiorari denied. Reported below: 572 F. 2d 720.

No. 77-1577. *WILLIAMS v. CLAYTOR, SECRETARY OF THE NAVY, ET AL.* C. A. D. C. Cir. Certiorari denied. Reported below: 187 U. S. App. D. C. 427, 574 F. 2d 638.

No. 77-1580. *GIST ET AL. v. STAMFORD HOSPITAL DISTRICT ET AL.* Ct. Civ. App. Tex., 11th Sup. Jud. Dist. Certiorari denied. Reported below: 557 S. W. 2d 556.

No. 77-1582. *WALLS v. BELL, ATTORNEY GENERAL, ET AL.* C. A. 7th Cir. Certiorari denied. Reported below: 567 F. 2d 391.

No. 77-1585. *STEPHENSON ET AL. v. UNITED STATES.* C. A. 6th Cir. Certiorari denied. Reported below: 571 F. 2d 584.

No. 77-1586. *KEECH ET AL. v. UNITED STATES ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 572 F. 2d 36.

No. 77-1588. *NASH ET AL. v. FARMERS NEW WORLD LIFE INSURANCE CO. ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 570 F. 2d 558.

No. 77-1589. *OLIVETI v. UNITED STATES.* C. A. 5th Cir. Certiorari denied. Reported below: 567 F. 2d 638.

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No. 77-1590. THOMPSON, SUPERINTENDENT OF PUBLIC INSTRUCTION OF WISCONSIN *v.* HOLY TRINITY COMMUNITY SCHOOL, INC. Sup. Ct. Wis. Certiorari denied. Reported below: 82 Wis. 2d 139, 262 N. W. 2d 210.

No. 77-1593. COX *v.* WASHINGTON. Ct. App. Wash. Certiorari denied. Reported below: 17 Wash. App. 896, 566 P. 2d 935.

No. 77-1594. RATCLIFF *v.* ESTELLE, CORRECTIONS DIRECTOR. C. A. 5th Cir. Certiorari denied.

No. 77-1595. COSDEN *v.* WASHINGTON. Ct. App. Wash. Certiorari denied. Reported below: 18 Wash. App. 213, 568 P. 2d 802.

No. 77-1597. GELINAS ET UX. *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 1st Cir. Certiorari denied. Reported below: 573 F. 2d 1285.

No. 77-1598. HAMMOND *v.* ALABAMA. Ct. Crim. App. Ala. Certiorari denied. Reported below: 354 So. 2d 280.

No. 77-1600. GILLRING OIL CO. *v.* FEDERAL ENERGY REGULATORY COMMISSION. C. A. 5th Cir. Certiorari denied. Reported below: 566 F. 2d 1323.

No. 77-1601. PERRY ET AL. *v.* WILSON ET AL. Ct. App. Ga. Certiorari denied. Reported below: 144 Ga. App. 58, 240 S. E. 2d 290.

No. 77-1603. DAUGHERTY *v.* CITY OF LONG BEACH, CALIFORNIA, ET AL. Ct. App. Cal., 2d App. Dist. Certiorari denied. Reported below: 75 Cal. App. 3d 972, 142 Cal. Rptr. 593.

No. 77-1604. KANTOR *v.* DUNN, GOVERNOR OF TENNESSEE, ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 571 F. 2d 581.

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No. 77-1607. *JOHNSON, DRAKE & PIPER, INC. v. NEW YORK*. Ct. App. N. Y. Certiorari denied. Reported below: 43 N. Y. 2d 677, 371 N. E. 2d 786.

No. 77-1608. *HERNANDEZ v. CALIFORNIA*. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 77-1610. *ALMAND v. UNITED STATES*; and

No. 77-6758. *VILLAREAL ET AL. v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: No. 77-1610, 565 F. 2d 927; No. 77-6758, 565 F. 2d 932.

No. 77-1612. *STIRLING ET AL. v. UNITED STATES*; and

No. 77-1761. *PHILLIPS v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 571 F. 2d 708.

No. 77-1614. *BOWEN, GOVERNOR OF INDIANA, ET AL. v. UNITED STATES ET AL.* C. A. 7th Cir. Certiorari denied. Reported below: 573 F. 2d 400.

No. 77-1616. *NELSON v. DEFENSE LOGISTICS AGENCY*. C. A. 5th Cir. Certiorari denied. Reported below: 568 F. 2d 1366.

No. 77-1617. *LACKLEN v. CAMPBELL, CHAIRMAN, CIVIL SERVICE COMMISSION, ET AL.* C. A. D. C. Cir. Certiorari denied. Reported below: 187 U. S. App. D. C. 240, 571 F. 2d 674.

No. 77-1622. *WRIGHT ET AL. v. UNITED STATES ET AL.* C. A. 10th Cir. Certiorari denied. Reported below: 568 F. 2d 153.

No. 77-1624. *PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE v. SEACOAST ANTI-POLLUTION LEAGUE ET AL.* C. A. 1st Cir. Certiorari denied. Reported below: 572 F. 2d 872.

No. 77-1628. *CELEBRITY, INC. v. A & B INSTRUMENT Co., INC., ET AL.* C. A. 10th Cir. Certiorari denied. Reported below: 573 F. 2d 11.

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No. 77-1629. *WILKES v. CALIFORNIA*. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 77-1630. *MACK TRUCKS, INC. v. NATIONAL LABOR RELATIONS BOARD ET AL.* C. A. 3d Cir. Certiorari denied. Reported below: 573 F. 2d 1302.

No. 77-1632. *TRUCK DRIVERS LOCAL UNION No. 807, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, HELPERS & WAREHOUSEMEN OF AMERICA v. BOHACK CORP.* C. A. 2d Cir. Certiorari denied. Reported below: 567 F. 2d 237.

No. 77-1633. *WEINSTEIN v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 578 F. 2d 1372.

No. 77-1634. *SECURITY SAVINGS & LOAN ASSOCIATION OF DICKINSON, TEXAS v. CITY SAVINGS ASSN.* Sup. Ct. Tex. Certiorari denied. Reported below: 560 S. W. 2d 930.

No. 77-1635. *FICKLIN ET AL. v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 570 F. 2d 352.

No. 77-1636. *REED v. CITY OF LOS ANGELES ET AL.* App. Ct. Cal., 2d App. Dist. Certiorari denied.

No. 77-1637. *ROBINSON v. KUSPER, CLERK OF COOK COUNTY, ET AL.* Sup. Ct. Ill. Certiorari denied. Reported below: 69 Ill. 2d 374, 372 N. E. 2d 66.

No. 77-1638. *CRANE ET AL. v. BARTH ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 573 F. 2d 1289.

No. 77-1639. *HAMPTON v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 577 F. 2d 743.

No. 77-1640. *CLARK EQUIPMENT CO. v. KELLER ET AL.* C. A. 8th Cir. Certiorari denied. Reported below: 570 F. 2d 778.

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No. 77-1641. *GUISTO v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 577 F. 2d 729.

No. 77-1643. *HOULTIN v. UNITED STATES*; and  
No. 77-6728. *PHILLIPS v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 566 F. 2d 1027.

No. 77-1646. *JONES ET AL. v. FARMERS ALLIANCE MUTUAL INSURANCE Co.* C. A. 10th Cir. Certiorari denied. Reported below: 570 F. 2d 1384.

No. 77-1647. *McGIRR v. DIVISION OF VETERANS AFFAIRS, EXECUTIVE DEPARTMENT, STATE OF NEW YORK, ET AL.* Ct. App. N. Y. Certiorari denied. Reported below: 43 N. Y. 2d 635, 374 N. E. 2d 123.

No. 77-1651. *YOUNGSTOWN CARTAGE Co. v. UNITED STATES ET AL.* C. A. D. C. Cir. Certiorari denied. Reported below: 187 U. S. App. D. C. 294, 571 F. 2d 1243.

No. 77-1655. *HOWELL v. THOMAS, SHERIFF*. C. A. 5th Cir. Certiorari denied. Reported below: 566 F. 2d 469.

No. 77-1656. *BIANCONE v. PENNSYLVANIA*. Super. Ct. Pa. Certiorari denied. Reported below: 249 Pa. Super. 34, 375 A. 2d 743.

No. 77-1657. *TEXAS EMPLOYERS' INSURANCE ASSN. v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 558 F. 2d 766 and 569 F. 2d 874.

No. 77-1658. *CRICCHI v. NABER ET AL.* C. C. P. A. Certiorari denied. Reported below: 567 F. 2d 382.

No. 77-1660. *ABLE CONTRACTORS, INC. v. MARSHALL, SECRETARY OF LABOR*. C. A. 9th Cir. Certiorari denied. Reported below: 573 F. 2d 1055.

No. 77-1661. *MARCH ET UX. v. ALLIS-CHALMERS CORP. ET AL.* C. A. 3d Cir. Certiorari denied. Reported below: 571 F. 2d 572.

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No. 77-1664. *SHELTON v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 573 F. 2d 917.

No. 77-1666. *WARMINSTER TOWNSHIP, PENNSYLVANIA v. PITRONE*. C. A. 3d Cir. Certiorari denied. Reported below: 572 F. 2d 98.

No. 77-1667. *MULLIGAN v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 573 F. 2d 775.

No. 77-1668. *TAYLOR v. PERGEAU*. C. A. 9th Cir. Certiorari denied.

No. 77-1669. *FAZIO ET UX. v. ZONING HEARING BOARD OF EAST MARLBOROUGH TOWNSHIP*. Pa. Commw. Ct. Certiorari denied. Reported below: 32 Pa. Commw. 243, 378 A. 2d 1299.

No. 77-1672. *FIRST NATIONAL BANK OF OREGON, TRUSTEE v. UNITED STATES*. Ct. Cl. Certiorari denied. Reported below: 215 Ct. Cl. 609, 571 F. 2d 21.

No. 77-1673. *HASENSTAB v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 575 F. 2d 1035.

No. 77-1675. *MARION CIRCUIT COURT OF MARION COUNTY, INDIANA, ET AL. v. INDIANA EX REL. PUBLIC SERVICE COMMISSION OF INDIANA ET AL.* Sup. Ct. Ind. Certiorari denied. Reported below: 267 Ind. 422, 370 N. E. 2d 690.

No. 77-1678. *BUCUVALAS v. MASSACHUSETTS*. Ct. App. Mass. Certiorari denied. Reported below: — Mass. App. —, 373 N. E. 2d 221.

No. 77-1683. *UNITED TELEGRAPH WORKERS, AFL-CIO v. NATIONAL LABOR RELATIONS BOARD ET AL.* C. A. D. C. Cir. Certiorari denied. Reported below: 187 U. S. App. D. C. 231, 571 F. 2d 665.

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No. 77-1682. *LISA-JET, INC. v. DUNCAN AVIATION, INC.* C. A. 8th Cir. Certiorari denied. Reported below: 569 F. 2d 1044.

No. 77-1684. *BROADUS v. LOTT, ADMINISTRATRIX.* Sup. Ct. Miss. Certiorari denied. Reported below: 353 So. 2d 749.

No. 77-1685. *ROCHE v. UNITED STATES*; and  
No. 78-5125. *RAMOS v. UNITED STATES.* C. A. 2d Cir. Certiorari denied. Reported below: 575 F. 2d 56.

No. 77-1689. *LITTON SYSTEMS, INC. v. UNITED STATES.* C. A. 4th Cir. Certiorari denied. Reported below: 573 F. 2d 195.

No. 77-1691. *WAN SHIH HSIEH v. IMMIGRATION AND NATURALIZATION SERVICE.* C. A. 2d Cir. Certiorari denied. Reported below: 569 F. 2d 1179.

No. 77-1692. *RONWIN v. SUPREME COURT OF ARIZONA.* Sup. Ct. Ariz. Certiorari denied.

No. 77-1693. *PELLITIERI v. UNITED STATES.* C. A. 8th Cir. Certiorari denied. Reported below: 576 F. 2d 749.

No. 77-1695. *UNIFICATION CHURCH ET AL. v. BELL, ATTORNEY GENERAL, ET AL.* C. A. D. C. Cir. Certiorari denied. Reported below: 189 U. S. App. D. C. 92, 581 F. 2d 870.

No. 77-1698. *WESTERN PENNSYLVANIA MOTOR CARRIERS ASSN. v. INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA, LOCAL 249.* C. A. 3d Cir. Certiorari denied. Reported below: 574 F. 2d 783.

No. 77-1699. *DIEM v. UNITED STATES ET AL.* C. A. 2d Cir. Certiorari denied.

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No. 77-1700. WESTPORT TAXI SERVICE, INC., ET AL. *v.* ADAMS, SECRETARY OF TRANSPORTATION, ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 571 F. 2d 697.

No. 77-1702. KANSAS CITY SOUTHERN RAILWAY CO. ET AL. *v.* CITY OF SHREVEPORT ET AL. Sup. Ct. La. Certiorari denied. Reported below: 354 So. 2d 1362.

No. 77-1705. DUNGAN, TRUSTEE IN BANKRUPTCY *v.* MORGAN DRIVE-AWAY, INC., ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 570 F. 2d 867.

No. 77-1706. JANICH BROS., INC. *v.* AMERICAN DISTILLING Co. C. A. 9th Cir. Certiorari denied. Reported below: 570 F. 2d 848.

No. 77-1707. STARR ET AL. *v.* NIXON ET AL. C. A. 10th Cir. Certiorari before judgment denied.

No. 77-1708. BULLINGTON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 577 F. 2d 743.

No. 77-1709. THOMAS *v.* FLORIDA. Dist. Ct. App. Fla., 4th Dist. Certiorari denied.

No. 77-1712. MARINA MANAGEMENT CORP. *v.* BREWER. C. A. 2d Cir. Certiorari denied. Reported below: 572 F. 2d 43.

No. 77-1713. TAERGHODSI *v.* IMMIGRATION AND NATURALIZATION SERVICE; AND YOUSEFI *v.* IMMIGRATION AND NATURALIZATION SERVICE. C. A. 5th Cir. Certiorari denied. Reported below: 569 F. 2d 1154.

No. 77-1714. KIDDER *v.* ANDERSON ET AL. Sup. Ct. La. Certiorari denied. Reported below: 354 So. 2d 1306.

No. 77-1716. KELLY *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 569 F. 2d 928.

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No. 77-1718. *CITY OF PHILADELPHIA ET AL. v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 573 F. 2d 802.

No. 77-1719. *NOLAN v. FLORIDA*. Sup. Ct. Fla. Certiorari denied. Reported below: 355 So. 2d 516.

No. 77-1720. *STEWART v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 576 F. 2d 1350.

No. 77-1721. *LYSEK ET UX. v. COMMISSIONER OF INTERNAL REVENUE*. C. A. 9th Cir. Certiorari denied.

No. 77-1725. *COLECO INDUSTRIES, INC. v. BERMAN ET AL.* C. A. 3d Cir. Certiorari denied. Reported below: 567 F. 2d 569.

No. 77-1728. *SHIFFMAN v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 576 F. 2d 703.

No. 77-1729. *UNITED STATES v. KELLEY ET VIR.* C. A. 2d Cir. Certiorari denied. Reported below: 568 F. 2d 259.

No. 77-1730. *CLINTON v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 574 F. 2d 464.

No. 77-1731. *DAVISTON v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 577 F. 2d 729.

No. 77-1732. *AGNEW v. NORTH CAROLINA*. Sup. Ct. N. C. Certiorari denied. Reported below: 294 N. C. 382, 241 S. E. 2d 684.

No. 77-1734. *WARDEN, WEST VIRGINIA PENITENTIARY v. JONES*. Sup. Ct. App. W. Va. Certiorari denied. Reported below: — W. Va. —, 241 S. E. 2d 914.

No. 77-1738. *WILLIAMS v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 578 F. 2d 1383.

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No. 77-1739. RYAN ET AL. *v.* DONNELLY. Dist. Ct. App. Fla., 3d Dist. Certiorari denied. Reported below: 348 So. 2d 970.

No. 77-1740. PHILLIPS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 577 F. 2d 495.

No. 77-1741. HOLLADAY *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 566 F. 2d 1018.

No. 77-1742. STATE TAX COMMISSION, DEPARTMENT OF TAXATION AND FINANCE OF NEW YORK *v.* HOLLY S. CLARENDON TRUST. Ct. App. N. Y. Certiorari denied. Reported below: 43 N. Y. 2d 933, 374 N. E. 2d 1242.

No. 77-1744. BARNES, COMMISSIONER OF CORPORATIONS OF CALIFORNIA *v.* HEWLETT-PACKARD CO. ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 571 F. 2d 502.

No. 77-1745. GDOWIK *v.* FLORIDA. Dist. Ct. App. Fla., 4th Dist. Certiorari denied. Reported below: 352 So. 2d 183.

No. 77-1746. FAYER *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 573 F. 2d 741.

No. 77-1747. NATIONAL LAND FOR PEOPLE, INC. *v.* ANDRUS, SECRETARY OF THE INTERIOR, ET AL. C. A. D. C. Cir. Certiorari denied.

No. 77-1748. McCULLOCH GAS PROCESSING CORP. *v.* CANADIAN HIDROGAS RESOURCES, LTD., ET AL. Temp. Emerg. Ct. App. Certiorari denied. Reported below: 577 F. 2d 712.

No. 77-1749. PEREZ *v.* BORCHERS, DISTRICT ATTORNEY, 49TH JUDICIAL DISTRICT, TEXAS, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 567 F. 2d 285.

No. 77-1750. MICHIGAN NATIONAL BANK *v.* MARSHALL, SECRETARY OF LABOR. C. A. 6th Cir. Certiorari denied.

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No. 77-1751. *LACEY v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 578 F. 2d 1371.

No. 77-1752. *RAUCH v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 574 F. 2d 706.

No. 77-1753. *SLIDELL FORD TRACTOR, INC. v. FORD MOTOR Co. ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 570 F. 2d 947.

No. 77-1754. *WILDLIFE PRESERVES, INC. v. UNITED STATES ET AL.* C. A. 3d Cir. Certiorari denied. Reported below: 568 F. 2d 771.

No. 77-1755. *MERCER ET UX. v. COMMISSIONER OF INTERNAL REVENUE*. C. A. 9th Cir. Certiorari denied. Reported below: 564 F. 2d 1317.

No. 77-1757. *HEATH TEC DIVISION/SAN FRANCISCO v. NATIONAL LABOR RELATIONS BOARD*. C. A. 9th Cir. Certiorari denied. Reported below: 566 F. 2d 1367.

No. 77-1759. *M. J. KELLY Co. ET AL. v. CIPRA, INC.* C. A. 10th Cir. Certiorari denied.

No. 77-1760. *DILLON MATERIALS HANDLING, INC. v. ALBION INDUSTRIES, A DIVISION OF KING-SEELEY THERMOS Co.* C. A. 5th Cir. Certiorari denied. Reported below: 567 F. 2d 1299.

No. 77-1762. *THOMPSON v. SHAW ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 571 F. 2d 582.

No. 77-1763. *SUTTON ET AL. v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 577 F. 2d 738.

No. 77-1766. *LINCOLN ET AL. v. UNITED STATES*. C. A. D. C. Cir. Certiorari denied. Reported below: 188 U. S. App. D. C. 315, 580 F. 2d 578.

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No. 77-1764. *McLAUGHLIN v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 577 F. 2d 729.

No. 77-1768. *THOMAS v. TEXAS*. Ct. Crim. App. Tex. Certiorari denied. Reported below: 562 S. W. 2d 240.

No. 77-1769. *EASTERN SCIENTIFIC CO. v. WILD HEERBRUGG INSTRUMENTS, INC.* C. A. 1st Cir. Certiorari denied. Reported below: 572 F. 2d 883.

No. 77-1771. *LUSTGARTEN v. BAKER, ADMINISTRATOR, HIGHLAND DISTRICT HOSPITAL, ET AL.* Ct. App. Ohio, Highland County. Certiorari denied.

No. 77-1772. *KAHAN ET AL. v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 572 F. 2d 923.

No. 77-1773. *PRUNE BARGAINING ASSN. ET AL. v. BERGLAND, SECRETARY OF AGRICULTURE, ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 571 F. 2d 1132.

No. 77-1774. *FORD v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 577 F. 2d 729.

No. 77-1776. *BEARDSLEE ET UX. v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 562 F. 2d 1016.

No. 77-1777. *PELTZMAN v. AMERICAN RADIO ASSN.* App. Term, Sup. Ct. N. Y., 1st Jud. Dept. Certiorari denied.

No. 77-1778. *GUIFFRE v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 576 F. 2d 126.

No. 77-1781. *RABCO METAL PRODUCTS, INC. v. NATIONAL LABOR RELATIONS BOARD*. C. A. 9th Cir. Certiorari denied. Reported below: 566 F. 2d 1182.

No. 77-1782. *ARTHUR ANDERSEN & Co. v. OHIO ET AL.* C. A. 10th Cir. Certiorari denied. Reported below: 570 F. 2d 1370.

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No. 77-1787. *GIACALONE v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 574 F. 2d 328.

No. 77-1789. *SATTERWHITE v. TEXAS*. Ct. Crim. App. Tex. Certiorari denied. Reported below: 560 S. W. 2d 697.

No. 77-1791. *BARDWELL ET AL. v. SPRING WOODS BANK*. C. A. 5th Cir. Certiorari denied. Reported below: 569 F. 2d 1153.

No. 77-1793. *CITY OF WARREN ET AL. v. KELLY ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 577 F. 2d 740.

No. 77-1795. *SVENSKA ORIENT LINEN v. TEN.* C. A. 2d Cir. Certiorari denied. Reported below: 573 F. 2d 772.

No. 77-1796. *METRO CLUB, INC. v. METRO PASSBOOK, INC., ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 571 F. 2d 582.

No. 77-1797. *DiCARLO ET AL. v. UNITED STATES*. C. A. 1st Cir. Certiorari denied. Reported below: 575 F. 2d 952.

No. 77-1798. *PORTER COUNTY CHAPTER OF THE IZAAK WALTON LEAGUE OF AMERICA, INC., ET AL. v. COSTLE, ADMINISTRATOR, ENVIRONMENTAL PROTECTION AGENCY, ET AL.* C. A. 7th Cir. Certiorari denied. Reported below: 571 F. 2d 359.

No. 77-1799. *UNITED FEDERATION OF TEACHERS WELFARE FUND v. STATE HUMAN RIGHTS APPEAL BOARD ET AL.* App. Div., Sup. Ct. N. Y., 1st Jud. Dept. Certiorari denied. Reported below: 59 App. Div. 2d 826, 398 N. Y. S. 2d 775.

No. 77-1800. *SUPERIOR OIL Co. v. FEDERAL ENERGY REGULATORY COMMISSION*. C. A. 5th Cir. Certiorari denied. Reported below: 569 F. 2d 971.

No. 77-1801. *RITTER v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 569 F. 2d 1331.

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No. 77-1802. *ARMS ET UX. v. WATSON ET AL.* Sup. Ct. Minn. Certiorari denied. Reported below: 263 N. W. 2d 610.

No. 77-1803. *DIVISION OF BEVERAGE, DEPARTMENT OF BUSINESS REGULATION OF FLORIDA v. BONANNI SHIP SUPPLY, INC.* Sup. Ct. Fla. Certiorari denied. Reported below: 356 So. 2d 308.

No. 77-1804. *THOMSON v. ONSTAD, SHERIFF, ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 573 F. 2d 1316.

No. 77-1805. *LEGRAND v. NEW YORK.* App. Div., Sup. Ct. N. Y., 2d Jud. Dept. Certiorari denied. Reported below: 61 App. Div. 2d 815, 402 N. Y. S. 2d 209.

No. 77-1807. *BURGIO v. UNITED STATES.* C. A. 2d Cir. Certiorari denied. Reported below: 580 F. 2d 1045.

No. 77-1808. *GENERAL INSURANCE COMPANY OF AMERICA v. OKLAHOMA CITY HOUSING AUTHORITY ET AL.* C. A. 10th Cir. Certiorari denied. Reported below: 571 F. 2d 1140.

No. 77-1811. *ALLIED FIDELITY CORP. v. COMMISSIONER OF INTERNAL REVENUE.* C. A. 7th Cir. Certiorari denied. Reported below: 572 F. 2d 1190.

No. 77-1812. *SHUFFMAN, EXECUTRIX v. HARTFORD TEXTILE CORP. ET AL.* C. A. 2d Cir. Certiorari denied.

No. 77-1813. *VON LUETZOW v. ALEXANDER, SECRETARY OF THE ARMY, ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 570 F. 2d 346.

No. 77-1814. *PENNSYLVANIA v. SMITH.* Super. Ct. Pa. Certiorari denied. Reported below: 250 Pa. Super. 436, 378 A. 2d 1015.

No. 77-1815. *PAYNE ET AL. v. TRAVENOL LABORATORIES, INC., ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 565 F. 2d 895.

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No. 77-1816. *DiGILIO ET AL. v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 577 F. 2d 725 and 728.

No. 77-1817. *IN RE MCPARTLIN*. C. A. 7th Cir. Certiorari denied. Reported below: 577 F. 2d 748.

No. 77-1820. *INTERSTATE NATURAL GAS ASSOCIATION OF AMERICA ET AL. v. FEDERAL ENERGY REGULATORY COMMISSION*. C. A. D. C. Cir. Certiorari denied. Reported below: 187 U. S. App. D. C. 426, 574 F. 2d 637.

No. 77-1821. *DAVIS v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 576 F. 2d 1065.

No. 77-1823. *COOK v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 573 F. 2d 281.

No. 77-1827. *FLICKINGER v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 573 F. 2d 1349.

No. 77-1828. *UNION PACIFIC RAILROAD CO. ET AL. v. COHN ET AL.* C. A. 8th Cir. Certiorari denied. Reported below: 572 F. 2d 650.

No. 77-1830. *HASKIN v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 573 F. 2d 1316.

No. 77-1836. *TIDMORE v. CITY OF BIRMINGHAM*. Ct. Crim. Ala. Certiorari denied. Reported below: 356 So. 2d 231.

No. 77-1838. *SAVE OUR CEMETERIES, INC., ET AL. v. ARCHDIOCESE OF NEW ORLEANS, INC., ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 572 F. 2d 320.

No. 77-1839. *DECATURVILLE SPORTSWEAR CO., INC., ET AL. v. NATIONAL LABOR RELATIONS BOARD ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 573 F. 2d 929.

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No. 77-1837. *AVANT, INC. v. POLAROID CORP.* C. A. 1st Cir. Certiorari denied. Reported below: 572 F. 2d 889.

No. 77-1840. *MURPHY v. SMITH, AKA DAVENPORT, ADMINISTRATRIX.* Ct. App. Ohio, Hamilton County. Certiorari denied.

No. 77-1841. *TORO v. MALCOLM, CORRECTIONS COMMISSIONER, ET AL.* Ct. App. N. Y. Certiorari denied. Reported below: 44 N. Y. 2d 146, 375 N. E. 2d 739.

No. 77-1843. *HOLSHOUSER ET AL. v. BOLDING ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 575 F. 2d 461.

No. 77-1847. *BANGOR & AROOSTOOK RAILROAD CO. ET AL. v. INTERSTATE COMMERCE COMMISSION ET AL.* C. A. 1st Cir. Certiorari denied. Reported below: 574 F. 2d 1096.

No. 77-1850. *GRACE v. UNITED STATES.* C. A. 9th Cir. Certiorari denied. Reported below: 577 F. 2d 752.

No. 77-1851. *VERDONCK v. FREEDING, DBA FREEDING DISPOSAL, ET AL.* App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 56 Ill. App. 3d 575, 371 N. E. 2d 1109.

No. 77-1852. *OSBORN v. ILLINOIS.* App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 53 Ill. App. 3d 312, 368 N. E. 2d 608.

No. 77-1853. *MAY DEPARTMENT STORES CO. v. VETERANS' ADMINISTRATION ET AL.* C. A. 8th Cir. Certiorari denied. Reported below: 572 F. 2d 1275.

No. 77-1855. *BAILEY v. UNITED STATES.* C. A. 9th Cir. Certiorari denied.

No. 77-1856. *WOODFORD v. UNITED STATES.* C. A. 2d Cir. Certiorari denied. Reported below: 580 F. 2d 1046.

No. 77-1858. *BEAVER ET AL. v. ALANIZ ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 572 F. 2d 657.

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No. 77-1857. *NORTH BY NORTHWEST CIVIC ASSN., INC., ET AL. v. CATES ET AL.* Sup. Ct. Ga. Certiorari denied. Reported below: 241 Ga. 39, 243 S. E. 2d 32.

No. 77-1864. *WHITE v. UNITED STATES.* C. A. 6th Cir. Certiorari denied. Reported below: 575 F. 2d 1339.

No. 77-1869. *ELI LILLY & Co. v. SMITHKLINE CORP.* C. A. 3d Cir. Certiorari denied. Reported below: 575 F. 2d 1056.

No. 77-6155. *SMITH v. UNITED STATES.* C. A. 10th Cir. Certiorari denied.

No. 77-6375. *MARTIN v. BLACKBURN, WARDEN.* C. A. 5th Cir. Certiorari denied. Reported below: 568 F. 2d 1366.

No. 77-6396. *MATTISON v. LEEKE, CORRECTIONS COMMISSIONER, ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 571 F. 2d 576.

No. 77-6398. *MASSEY v. LEEKE, CORRECTIONS COMMISSIONER, ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 566 F. 2d 1173.

No. 77-6403. *TREADWAY v. MISSOURI.* Sup. Ct. Mo. Certiorari denied. Reported below: 558 S. W. 2d 646.

No. 77-6405. *MILLER v. HARVEY, WARDEN, ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 566 F. 2d 879.

No. 77-6407. *MCCURRY v. TEXAS ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 564 F. 2d 414.

No. 77-6418. *PISANI v. LOUISIANA.* Sup. Ct. La. Certiorari denied. Reported below: 352 So. 2d 1043.

No. 77-6434. *CORTEZ v. NEW YORK.* App. Div., Sup. Ct. N. Y., 1st Jud. Dept. Certiorari denied. Reported below: 59 App. Div. 2d 1066, 399 N. Y. S. 2d 158.

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No. 77-6442. *GREER v. CALIFORNIA*. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 77-6473. *MARTIN v. KANSAS*. Sup. Ct. Kan. Certiorari denied. Reported below: 223 Kan. clxix, 573 P. 2d 612.

No. 77-6480. *REDDY ET AL. v. JONES, SECRETARY, DEPARTMENT OF CORRECTION OF NORTH CAROLINA, ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 572 F. 2d 979.

No. 77-6493. *TAPIA v. NEW MEXICO*. Ct. App. N. M. Certiorari denied.

No. 77-6496. *HERRERA v. MALLEY, WARDEN*. C. A. 10th Cir. Certiorari denied.

No. 77-6508. *DEASON v. ARKANSAS*. Sup. Ct. Ark. Certiorari denied. Reported below: 263 Ark. 56, 562 S. W. 2d 79.

No. 77-6510. *WILSON v. MARYLAND*. Ct. App. Md. Certiorari denied. Reported below: 281 Md. 640, 382 A. 2d 1053.

No. 77-6511. *COOK v. MARYLAND*. Ct. App. Md. Certiorari denied. Reported below: 281 Md. 665, 381 A. 2d 671.

No. 77-6519. *GRIFFIN v. CRUMP*. C. A. 10th Cir. Certiorari denied.

No. 77-6522. *CHAMBLISS v. FOOTE ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 562 F. 2d 1015.

No. 77-6532. *OLSON v. ALLEN, JUDGE*. Sup. Ct. Kan. Certiorari denied.

No. 77-6537. *SPEARS ET AL. v. UNITED STATES*. C. A. 10th Cir. Certiorari denied. Reported below: 568 F. 2d 799.

No. 77-6541. *STILL v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 568 F. 2d 1366.

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No. 77-6573. *THRASHER v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 569 F. 2d 894.

No. 77-6574. *YANNI v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 573 F. 2d 1300.

No. 77-6594. *REGAN v. CALIFORNIA*; and  
No. 77-6598. *CARR v. CALIFORNIA*. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 77-6599. *RIGGS v. FLAMM, WARDEN*. C. A. 6th Cir. Certiorari denied. Reported below: 573 F. 2d 1311.

No. 77-6600. *SATTERFIELD v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 572 F. 2d 687.

No. 77-6602. *DESKINS v. BORDENKIRCHER, WARDEN*. C. A. 6th Cir. Certiorari denied. Reported below: 577 F. 2d 740.

No. 77-6603. *WILSON v. UNITED STATES*; and  
No. 77-6605. *RICHARDSON ET AL. v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 560 F. 2d 861.

No. 77-6610. *COULSTON v. VIRGINIA*. Sup. Ct. Va. Certiorari denied.

No. 77-6612. *BECKER v. UNITED STATES*; and  
No. 77-6646. *BECKER v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 566 F. 2d 914.

No. 77-6615. *THWEATT v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 578 F. 2d 1372.

No. 77-6621. *ARNOLD v. HOGAN, WARDEN*. Ct. App. D. C. Certiorari denied.

No. 77-6624. *GARCIA v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 575 F. 2d 1343.

No. 77-6625. *PAYNE v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 577 F. 2d 745.

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No. 77-6641. *LEE v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 573 F. 2d 1316.

No. 77-6644. *MINNIFIELD v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 570 F. 2d 353.

No. 77-6651. *INDIAN BOY X v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 565 F. 2d 585.

No. 77-6652. *SMITH ET UX. v. UNITED STATES*. C. A. 10th Cir. Certiorari denied.

No. 77-6654. *THOMAS v. ALFORD, WARDEN, ET AL.* C. A. 10th Cir. Certiorari denied.

No. 77-6661. *WILLIAMS v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 571 F. 2d 344.

No. 77-6662. *SHELBY v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 573 F. 2d 971.

No. 77-6666. *TAYLOR v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 559 F. 2d 1215.

No. 77-6667. *TOWNES v. COLEMAN, ATTORNEY GENERAL OF VIRGINIA, ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 573 F. 2d 1306.

No. 77-6675. *INMATES OF THE NEBRASKA PENAL AND CORRECTIONAL COMPLEX v. GREENHOLTZ, CHAIRMAN, BOARD OF PAROLE OF NEBRASKA, ET AL.* C. A. 8th Cir. Certiorari denied. Reported below: 567 F. 2d 1368.

No. 77-6676. *HILL v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 573 F. 2d 1301.

No. 77-6679. *HART v. UNITED STATES*. C. A. 8th Cir. Certiorari denied.

No. 77-6683. *CAMPBELL v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 571 F. 2d 583.

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No. 77-6684. *WELCH v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 572 F. 2d 1359.

No. 77-6685. *EVERS v. UNITED STATES*. C. A. 5th Cir. Certiorari denied.

No. 77-6689. *YELARDY v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 567 F. 2d 863.

No. 77-6692. *SANCHEZ v. UNITED STATES*. C. A. 10th Cir. Certiorari denied. Reported below: 574 F. 2d 505.

No. 77-6694. *WILLIAMS v. UNITED STATES*; and  
No. 78-5027. *McGRAY v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 575 F. 2d 388.

No. 77-6696. *LEWIS v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 573 F. 2d 1298.

No. 77-6698. *IMBRUGLIA v. UNITED STATES*. C. A. 1st Cir. Certiorari denied. Reported below: 564 F. 2d 87.

No. 77-6699. *LUDWIG v. WASHINGTON*. Ct. App. Wash. Certiorari denied. Reported below: 18 Wash. App. 50, 566 P. 2d 946.

No. 77-6704. *MONTGOMERY v. ESTELLE, CORRECTIONS DIRECTOR*. C. A. 5th Cir. Certiorari denied. Reported below: 568 F. 2d 457.

No. 77-6710. *STRICKLAND v. HOPPER, WARDEN*. C. A. 5th Cir. Certiorari denied. Reported below: 571 F. 2d 275.

No. 77-6711. *BRAGG v. MID-AMERICA FEDERAL SAVINGS & LOAN ASSN. ET AL.* C. A. 7th Cir. Certiorari denied. Reported below: 570 F. 2d 347.

No. 77-6712. *BRIDGES v. UNITED STATES*. Ct. App. D. C. Certiorari denied. Reported below: 381 A. 2d 1073.

No. 77-6718. *CARTER v. STETSON, SECRETARY OF THE AIR FORCE, ET AL.* C. A. D. C. Cir. Certiorari denied.

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No. 77-6721. *PAPRSKAR v. ESTELLE, CORRECTIONS DIRECTOR*. C. A. 5th Cir. Certiorari denied. Reported below: 566 F. 2d 1277.

No. 77-6723. *PIERRO v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 577 F. 2d 730.

No. 77-6724. *BARKET v. FLORIDA*. Sup. Ct. Fla. Certiorari denied. Reported below: 356 So. 2d 263.

No. 77-6725. *LEE v. ESTELLE, CORRECTIONS DIRECTOR*. C. A. 5th Cir. Certiorari denied. Reported below: 568 F. 2d 1365.

No. 77-6726. *LIPSCOMB v. AMERICAN EXPRESS Co.* Ct. App. Mich. Certiorari denied.

No. 77-6729. *HAWTHORNE v. UNITED STATES*. C. A. 10th Cir. Certiorari denied.

No. 77-6730. *McKINNEY v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 575 F. 2d 1338.

No. 77-6731. *BATTLE v. UNITED STATES*. C. A. 4th Cir. Certiorari denied.

No. 77-6733. *HALLMAN v. UNITED STATES*; and

No. 77-6742. *DiGIOVANNI v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 577 F. 2d 729.

No. 77-6734. *GUARIN v. CLELAND, ADMINISTRATOR, VETERANS' AFFAIRS, ET AL.* C. A. D. C. Cir. Certiorari denied.

No. 77-6735. *HUGHES v. MARYLAND*. Ct. Sp. App. Md. Certiorari denied.

No. 77-6736. *MUSTACCHIO v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 566 F. 2d 1170.

No. 77-6738. *JONES v. JAGO, CORRECTIONAL SUPERINTENDENT*. C. A. 6th Cir. Certiorari denied.

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No. 77-6739. *WAITES v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 569 F. 2d 384.

No. 77-6740. *JORGENSEN ET AL. v. CUPP, PENITENTIARY SUPERINTENDENT*. Ct. App. Ore. Certiorari denied. Reported below: 31 Ore. App. 157, 570 P. 2d 86.

No. 77-6746. *CARTER v. TEXAS*. C. A. 5th Cir. Certiorari denied. Reported below: 564 F. 2d 414.

No. 77-6748. *JONES v. HOPPER, WARDEN*. C. A. 5th Cir. Certiorari denied. Reported below: 562 F. 2d 1259.

No. 77-6750. *GRACE v. HOPPER, WARDEN*. C. A. 5th Cir. Certiorari denied. Reported below: 566 F. 2d 507.

No. 77-6751. *GLENN v. NEW YORK*. App. Div., Sup. Ct. N. Y., 1st Jud. Dept. Certiorari denied. Reported below: 61 App. Div. 2d 890, 402 N. Y. S. 2d 700.

No. 77-6753. *THOMAS v. FLORIDA*. Sup. Ct. Fla. Certiorari denied. Reported below: 354 So. 2d 372.

No. 77-6755. *BAS v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 578 F. 2d 1370.

No. 77-6756. *CANNEY v. WAINWRIGHT, DIRECTOR, DEPARTMENT OF OFFENDER REHABILITATION OF FLORIDA*. C. A. 5th Cir. Certiorari denied. Reported below: 568 F. 2d 1365.

No. 77-6757. *STEWART ET AL. v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 573 F. 2d 84.

No. 77-6759. *O'LEARY v. PALMER ET AL.* Ct. App. Ohio, Summit County. Certiorari denied.

No. 77-6760. *BALDARRAMA v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 566 F. 2d 560.

No. 77-6761. *BROWN v. PENNSYLVANIA*. Sup. Ct. Pa. Certiorari denied.

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No. 77-6762. *SPEAR v. HOGAN, WARDEN, ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 573 F. 2d 84.

No. 77-6763. *DORROUGH ET AL. v. MULLIKIN, ASSOCIATE WARDEN.* C. A. 5th Cir. Certiorari denied. Reported below: 563 F. 2d 187.

No. 77-6764. *WILSON v. WILLOWBROOK, INC.* C. A. 5th Cir. Certiorari denied. Reported below: 569 F. 2d 1154.

No. 77-6765. *SMITH v. DODSON, SUPERINTENDENT OF UNIT #11, ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 571 F. 2d 577.

No. 77-6767. *PEACOCK v. COX ET VIR.* Ct. App. Ga. Certiorari denied. Reported below: 143 Ga. App. 762, 240 S. E. 2d 97.

No. 77-6770. *HOCKER v. UNITED STATES.* C. A. 6th Cir. Certiorari denied. Reported below: 575 F. 2d 1338.

No. 77-6771. *CLEVELAND v. UNITED STATES;*

No. 77-6773. *TANNER v. UNITED STATES;* and

No. 77-6938. *SWAIN v. UNITED STATES.* C. A. 5th Cir. Certiorari denied. Reported below: 571 F. 2d 334.

No. 77-6772. *UNDERWOOD v. UNITED STATES.* C. A. 6th Cir. Certiorari denied. Reported below: 575 F. 2d 1338.

No. 77-6775. *RAU v. UNITED STATES.* C. A. 6th Cir. Certiorari denied. Reported below: 575 F. 2d 1338.

No. 77-6777. *FREEMAN ET AL. v. MABRY, CORRECTION COMMISSIONER.* C. A. 8th Cir. Certiorari denied. Reported below: 570 F. 2d 813.

No. 77-6778. *LEE v. UNITED STATES.* C. A. D. C. Cir. Certiorari denied.

No. 77-6779. *WEBER v. OHIO.* Ct. App. Ohio, Medina County. Certiorari denied.

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No. 77-6780. *CORBITT v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 577 F. 2d 729.

No. 77-6781. *WATSON v. UNITED STATES*. Ct. App. D. C. Certiorari denied.

No. 77-6783. *K. G. W. v. GEORGIA*. Ct. App. Ga. Certiorari denied. Reported below: 144 Ga. App. 251, 240 S. E. 2d 755.

No. 77-6784. *TUCKER v. ARIZONA*. Sup. Ct. Ariz. Certiorari denied. Reported below: 118 Ariz. 76, 574 P. 2d 1295.

No. 77-6785. *STEVENS v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 575 F. 2d 1338.

No. 77-6787. *DALTON v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 570 F. 2d 352.

No. 77-6788. *HARGROVE v. NEW YORK*. App. Div., Sup. Ct. N. Y., 2d Jud. Dept. Certiorari denied. Reported below: 60 App. Div. 2d 636, 400 N. Y. S. 2d 184.

No. 77-6789. *ROBERTS v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 572 F. 2d 319.

No. 77-6792. *MADDOX v. INTERNAL REVENUE SERVICE*. C. A. 5th Cir. Certiorari denied. Reported below: 562 F. 2d 1259.

No. 77-6793. *PETERSON v. MOORE, WARDEN, ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 575 F. 2d 1338.

No. 77-6794. *PALASCHAK v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 577 F. 2d 730.

No. 77-6795. *JONES v. NEW YORK*. Ct. App. N. Y. Certiorari denied. Reported below: 44 N. Y. 2d 76, 375 N. E. 2d 41.

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No. 77-6797. *PAYTON v. PAYTON ET AL.* Sup. Ct. S. C. Certiorari denied. Reported below: 270 S. C. 275, 241 S. E. 2d 901.

No. 77-6799. *PEREIRA v. UNITED STATES.* C. A. 2d Cir. Certiorari denied. Reported below: 574 F. 2d 103.

No. 77-6801. *BRAWER v. CICCONE, MEDICAL CENTER DIRECTOR.* C. A. 3d Cir. Certiorari denied. Reported below: 573 F. 2d 1301.

No. 77-6802. *OLSON v. RAINES ET AL.* C. A. 10th Cir. Certiorari denied.

No. 77-6804. *RICHARDS v. BUTLER, CORRECTIONAL SUPERINTENDENT, ET AL.* C. A. 2d Cir. Certiorari denied.

No. 77-6805. *SIMMONS v. UNITED STATES.* C. A. 6th Cir. Certiorari denied. Reported below: 577 F. 2d 744.

No. 77-6806. *SMITH v. ROGERS MEMORIAL HOSPITAL, NOW CAPITOL HILL HOSPITAL.* Ct. App. D. C. Certiorari denied. Reported below: 382 A. 2d 1025.

No. 77-6807. *WYATT v. UNITED STATES.* C. A. 5th Cir. Certiorari denied. Reported below: 573 F. 2d 84.

No. 77-6808. *STINSON v. CARDWELL, WARDEN.* C. A. 9th Cir. Certiorari denied. Reported below: 577 F. 2d 752.

No. 77-6811. *FRANKLIN v. CROSBY TYPESETTING Co. ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 568 F. 2d 1098.

No. 77-6812. *MYERS v. UNITED STATES.* C. A. 5th Cir. Certiorari denied. Reported below: 572 F. 2d 506.

No. 77-6813. *ALONZO v. UNITED STATES.* C. A. 5th Cir. Certiorari denied. Reported below: 571 F. 2d 1384.

No. 77-6815. *SANDERS v. WARDEN, STATE PRISON OF SOUTHERN MICHIGAN.* C. A. 6th Cir. Certiorari denied.

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No. 77-6816. *WHITE v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 569 F. 2d 263.

No. 77-6818. *BERRY v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 575 F. 2d 1338.

No. 77-6820. *PETERS v. GEORGIA*. Sup. Ct. Ga. Certiorari denied. Reported below: 241 Ga. 152, 243 S. E. 2d 883.

No. 77-6821. *LANDRUM v. MICHIGAN*. Ct. App. Mich. Certiorari denied.

No. 77-6822. *RIGGINS v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 563 F. 2d 1264.

No. 77-6823. *MARTINEZ v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 571 F. 2d 589.

No. 77-6824. *WASHINGTON v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 577 F. 2d 738.

No. 77-6825. *SHAVER v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 571 F. 2d 578.

No. 77-6826. *DANCY v. UNITED STATES*. C. A. 10th Cir. Certiorari denied.

No. 77-6827. *LOWENBERG v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 577 F. 2d 753.

No. 77-6828. *CLARK v. CURRAN ET UX*. Sup. Ct. Ariz. Certiorari denied. Reported below: 118 Ariz. 111, 575 P. 2d 310.

No. 77-6829. *ROBINSON v. OHIO*. Ct. App. Ohio, Lake County. Certiorari denied.

No. 77-6830. *HAWKINS v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 566 F. 2d 1006.

No. 77-6832. *HENDERSON v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 573 F. 2d 84.

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No. 77-6833. *POLK v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 574 F. 2d 964.

No. 77-6834. *WOOLDRIDGE v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 572 F. 2d 1027.

No. 77-6836. *GAMBLE v. OKLAHOMA ET AL.* Ct. Crim. App. Okla. Certiorari denied.

No. 77-6838. *OROPEZA-BRIONES v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 578 F. 2d 224.

No. 77-6839. *BRIGHTWELL v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 563 F. 2d 569.

No. 77-6840. *CLIFTON v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 577 F. 2d 745.

No. 77-6842. *DOWNES v. INDIANA*. Sup. Ct. Ind. Certiorari denied. Reported below: 267 Ind. 342, 369 N. E. 2d 1079.

No. 77-6843. *FORMICOLA v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 577 F. 2d 743.

No. 77-6844. *FORMICOLA v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 577 F. 2d 743.

No. 77-6845. *SWANSON v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 572 F. 2d 523.

No. 77-6846. *CROSBY v. UNITED STATES*. Ct. App. D. C. Certiorari denied. Reported below: 383 A. 2d 351.

No. 77-6847. *COLEMAN v. LOGGINS, CORRECTIONAL SUPERINTENDENT*. C. A. 9th Cir. Certiorari denied.

No. 77-6848. *COUSINO v. MICHIGAN*. Sup. Ct. Mich. Certiorari denied.

No. 77-6849. *DEFEVERE ET AL. v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 570 F. 2d 352.

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No. 77-6850. *BRAKE v. WOMBLE, SHERIFF, ET AL.*; and *BRAKE v. NASH COUNTY SUPERIOR COURT*. C. A. 4th Cir. Certiorari denied. Reported below: 570 F. 2d 345 (first case); 571 F. 2d 574 (second case).

No. 77-6851. *CARLEO v. UNITED STATES*. C. A. 10th Cir. Certiorari denied. Reported below: 576 F. 2d 846.

No. 77-6852. *MATHIS v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 577 F. 2d 730.

No. 77-6853. *HENDRICKSON v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 573 F. 2d 1308.

No. 77-6854. *DORROUGH ET AL. v. HOGAN, WARDEN, ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 563 F. 2d 1259.

No. 77-6856. *WILSON v. INDIANA*. Sup. Ct. Ind. Certiorari denied. Reported below: 268 Ind. 91, 373 N. E. 2d 1095.

No. 77-6857. *HOLCOMB v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 578 F. 2d 1381.

No. 77-6858. *BRODY v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 580 F. 2d 1045.

No. 77-6859. *WEINSTEIN v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 577 F. 2d 1147.

No. 77-6860. *HAYNES v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 573 F. 2d 236.

No. 77-6861. *PARISIEN v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 574 F. 2d 974.

No. 77-6862. *KING v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 576 F. 2d 432.

No. 77-6863. *GUZMAN v. ESTELLE, CORRECTIONS DIRECTOR*. C. A. 5th Cir. Certiorari denied.

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No. 77-6864. *TAYLOR v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 572 F. 2d 1027.

No. 77-6865. *KOWALAK v. MICHIGAN*. Sup. Ct. Mich. Certiorari denied.

No. 77-6866. *VALLIER v. UNITED STATES*. C. A. 10th Cir. Certiorari denied.

No. 77-6867. *BATTLE v. UNITED STATES*. Ct. App. D. C. Certiorari denied.

No. 77-6870. *STOKES v. FAIR, CORRECTIONAL SUPERINTENDENT*. C. A. 1st Cir. Certiorari denied.

No. 77-6871. *SNEAD v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 577 F. 2d 730.

No. 77-6872. *DEFALCO v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 577 F. 2d 729.

No. 77-6873. *HARO v. UNITED STATES*. C. A. 10th Cir. Certiorari denied. Reported below: 573 F. 2d 661.

No. 77-6874. *TRAYLOR v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 577 F. 2d 744.

No. 77-6875. *THOMAS ET AL. v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 573 F. 2d 1302.

No. 77-6877. *CRAWFORD v. UNITED STATES*; and

No. 77-6906. *BIARD v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 576 F. 2d 794.

No. 77-6878. *GREEN v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 575 F. 2d 1341.

No. 77-6880. *MUNOZ v. GOVERNMENT OF THE CANAL ZONE*. C. A. 5th Cir. Certiorari denied. Reported below: 569 F. 2d 1153.

No. 77-6881. *FONTAINE v. UNITED STATES*. C. A. 1st Cir. Certiorari denied. Reported below: 575 F. 2d 970.

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No. 77-6882. *SHEPHERD v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 576 F. 2d 719.

No. 77-6883. *WILLIAMS v. UNITED STATES*; and  
No. 77-6902. *KOMOK v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 574 F. 2d 988.

No. 77-6884. *COUSER v. MARYLAND*. Ct. App. Md. Certiorari denied. Reported below: 282 Md. 125, 383 A. 2d 389.

No. 77-6886. *BROWN v. PENNSYLVANIA*. Super. Ct. Pa. Certiorari denied. Reported below: 248 Pa. Super. 595, 374 A. 2d 700.

No. 77-6887. *BROWN v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 570 F. 2d 351.

No. 77-6888. *DRAGER v. PANZA ET AL.* C. A. 3d Cir. Certiorari denied. Reported below: 568 F. 2d 768.

No. 77-6890. *WOJNO v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 566 F. 2d 105.

No. 77-6891. *MADURO v. GOVERNMENT OF THE VIRGIN ISLANDS*. C. A. 3d Cir. Certiorari denied. Reported below: 577 F. 2d 726.

No. 77-6892. *BROWN v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 578 F. 2d 1370.

No. 77-6893. *PIOUS v. CURRY, JUDGE*. Sup. Ct. Ill. Certiorari denied.

No. 77-6895. *MACKLIN v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 573 F. 2d 1046.

No. 77-6896. *LUNA v. UNITED STATES*. C. A. 1st Cir. Certiorari denied. Reported below: 585 F. 2d 1.

No. 77-6897. *KENNICK v. PLAIN DEALER PUBLISHING CO. ET AL.* Ct. App. Ohio, Cuyahoga County. Certiorari denied.

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No. 77-6898. *DUMAS v. BORDENKIRCHER, PENITENTIARY SUPERINTENDENT*. C. A. 6th Cir. Certiorari denied. Reported below: 577 F. 2d 740.

No. 77-6901. *MATTHEWS v. CALIFORNIA*. Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 77-6903. *PRICE v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 577 F. 2d 753.

No. 77-6904. *JONES v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 577 F. 2d 743.

No. 77-6907. *PITTMAN v. GEORGIA POWER Co.* C. A. 5th Cir. Certiorari denied. Reported below: 570 F. 2d 947.

No. 77-6909. *CHILES v. VIRGINIA*. Sup. Ct. Va. Certiorari denied.

No. 77-6911. *MORICI v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 578 F. 2d 1371.

No. 77-6913. *PETERS v. BANK OF AMERICA NT & SA ET AL.* C. A. 9th Cir. Certiorari denied.

No. 77-6915. *LOPEZ-ZARAGOZA ET AL. v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 577 F. 2d 748.

No. 77-6917. *CHEATWOOD v. UNITED STATES*. C. A. 10th Cir. Certiorari denied. Reported below: 575 F. 2d 821.

No. 77-6919. *JONES v. TENNESSEE*. Ct. Crim. App. Tenn. Certiorari denied.

No. 77-6921. *RANSONETTE v. ESTELLE, CORRECTIONS DIRECTOR*. C. A. 5th Cir. Certiorari denied.

No. 77-6923. *GRAHAM v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 575 F. 2d 739.

No. 77-6924. *ASHLEY v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 569 F. 2d 975.

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- No. 77-6925. *MICHELE v. UNITED STATES*. C. A. 2d Cir. Certiorari denied.
- No. 77-6926. *MITCHELL v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 575 F. 2d 1338.
- No. 77-6927. *BALDRIDGE v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 575 F. 2d 1343.
- No. 77-6928. *CARTER v. BLUMENTHAL, SECRETARY OF THE TREASURY*. C. A. 10th Cir. Certiorari denied.
- No. 77-6929. *LIPPINCOTT v. UNITED STATES*. C. A. 10th Cir. Certiorari denied. Reported below: 579 F. 2d 551.
- No. 77-6930. *CANNON v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 577 F. 2d 746.
- No. 77-6931. *GLASBY v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 576 F. 2d 734.
- No. 77-6932. *COOMES v. COMMISSIONER OF INTERNAL REVENUE*. C. A. 6th Cir. Certiorari denied. Reported below: 572 F. 2d 554.
- No. 77-6933. *BENAVIDES v. UNITED STATES*. C. A. 5th Cir. Certiorari denied.
- No. 77-6934. *MUTYAMBIZI v. MARYLAND*. Ct. Sp. App. Md. Certiorari denied. Reported below: 37 Md. App. 148, 376 A. 2d 1125.
- No. 77-6935. *REEVES v. GEORGIA*. Sup. Ct. Ga. Certiorari denied. Reported below: 241 Ga. 44, 243 S. E. 2d 24.
- No. 77-6936. *ADAMS v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 573 F. 2d 827.
- No. 77-6937. *CLARY ET AL. v. UNITED STATES*. C. A. 10th Cir. Certiorari denied. Reported below: 575 F. 2d 1310.
- No. 77-6939. *EVANS v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 575 F. 2d 1286.

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No. 77-6940. *McKENZIE v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 577 F. 2d 729.

No. 77-6941. *JOHNSON v. JOHNSON ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 577 F. 2d 741.

No. 77-6942. *PORTER v. CITY OF CHICAGO ET AL.* C. A. 7th Cir. Certiorari denied. Reported below: 577 F. 2d 748.

No. 77-6943. *FULWILEY v. CALIFANO, SECRETARY OF HEALTH, EDUCATION, AND WELFARE*. C. A. 5th Cir. Certiorari denied. Reported below: 569 F. 2d 1153.

No. 77-6944. *HOLMES v. CALIFANO, SECRETARY OF HEALTH, EDUCATION, AND WELFARE*. C. A. 5th Cir. Certiorari denied. Reported below: 572 F. 2d 318.

No. 77-6945. *ROGERS v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 577 F. 2d 745.

No. 77-6947. *ALDEN v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 576 F. 2d 772.

No. 77-6948. *TURNAGE v. NORTH CAROLINA*. Ct. App. N. C. Certiorari denied. Reported below: 35 N. C. App. 774, 242 S. E. 2d 400.

No. 77-6950. *HARRIS ET AL. v. CALIFORNIA*. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 77-6951. *CONTRERAS-DIAZ v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 575 F. 2d 740.

No. 77-6954. *PIZANIE v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 572 F. 2d 318.

No. 77-6955. *PERRY v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 576 F. 2d 158.

No. 77-6957. *ESQUIVEL v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 575 F. 2d 1343.

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No. 77-6958. *KIRBY v. METZ, CORRECTIONAL SUPERINTENDENT*. C. A. 2d Cir. Certiorari denied. Reported below: 580 F. 2d 1044.

No. 77-6959. *VALENTINE v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 575 F. 2d 299.

No. 77-6961. *WILLIAMS v. LIBERTY ET AL.* C. A. 7th Cir. Certiorari denied. Reported below: 575 F. 2d 1341.

No. 77-6963. *PAUL v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 570 F. 2d 353.

No. 77-6964. *LOUIS v. DEES, WARDEN*. Sup. Ct. La. Certiorari denied. Reported below: 357 So. 2d 1149.

No. 77-6966. *WILLIS v. CALIFANO, SECRETARY OF HEALTH, EDUCATION, AND WELFARE*. C. A. 5th Cir. Certiorari denied. Reported below: 570 F. 2d 1390.

No. 77-6967. *LANIER v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 578 F. 2d 1246.

No. 77-6969. *KNOFF v. WAINWRIGHT, SECRETARY, DEPARTMENT OF OFFENDER REHABILITATION OF FLORIDA*. C. A. 5th Cir. Certiorari denied. Reported below: 572 F. 2d 318.

No. 77-6970. *McCLINDON v. WARDEN, ILLINOIS STATE PENITENTIARY*. C. A. 7th Cir. Certiorari denied. Reported below: 575 F. 2d 108.

No. 77-6971. *TATE v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 575 F. 2d 1152.

No. 77-6972. *KEAN v. OHIO*. Ct. App. Ohio, Hamilton County. Certiorari denied.

No. 77-6973. *SMITH v. COMMUNICATIONS SATELLITE CORP.* C. A. D. C. Cir. Certiorari denied. Reported below: 187 U. S. App. D. C. 426, 574 F. 2d 637.

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No. 77-6974. *BOALBEY v. NORRIS ET UX.* C. A. 7th Cir. Certiorari denied.

No. 77-6975. *HARVEY v. UNITED STATES.* C. A. 6th Cir. Certiorari denied. Reported below: 577 F. 2d 743.

No. 77-6976. *ALLEGREZZA v. CALIFORNIA.* Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 77-6978. *KNEE v. WAINWRIGHT, SECRETARY, DEPARTMENT OF OFFENDER REHABILITATION OF FLORIDA.* C. A. 5th Cir. Certiorari denied. Reported below: 575 F. 2d 298.

No. 77-6980. *WILSON v. UNITED STATES.* Ct. App. D. C. Certiorari denied.

No. 77-6981. *SEYMOUR v. UNITED STATES.* C. A. 9th Cir. Certiorari denied. Reported below: 576 F. 2d 1345.

No. 77-6982. *ROSSI v. UNITED STATES;* and

No. 78-5011. *DUBOS v. UNITED STATES.* C. A. 9th Cir. Certiorari denied. Reported below: 573 F. 2d 1316.

No. 77-6983. *JONES v. UNITED STATES.* C. A. 6th Cir. Certiorari denied. Reported below: 577 F. 2d 743.

No. 77-6984. *KALEC v. DELLINGER, PROSECUTOR OF WHITE COUNTY, ET AL.* C. A. 7th Cir. Certiorari denied.

No. 77-6985. *DOLEN v. NEW HAMPSHIRE.* C. A. 1st Cir. Certiorari denied.

No. 77-6986. *RANSIER v. UNITED STATES.* C. A. 5th Cir. Certiorari denied. Reported below: 573 F. 2d 84.

No. 77-6987. *ROYA v. UNITED STATES.* C. A. 7th Cir. Certiorari denied. Reported below: 574 F. 2d 386.

No. 77-6990. *MAYE v. UNITED STATES.* C. A. 2d Cir. Certiorari denied. Reported below: 580 F. 2d 1046.

No. 77-6991. *HOWARD v. SANDOCK ET AL.* C. A. 5th Cir. Certiorari denied.

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No. 77-6993. *BRISCOE v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 574 F. 2d 406.

No. 77-6994. *CLARK v. ILLINOIS*. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 55 Ill. App. 3d 379, 370 N. E. 2d 1111.

No. 77-6995. *PERKOV v. NEW YORK*. App. Div., Sup. Ct. N. Y., 4th Jud. Dept. Certiorari denied.

No. 77-6996. *ANTHONY v. UNITED STATES*. C. A. 6th Cir. Certiorari denied.

No. 77-6997. *LOWER v. ILLINOIS*. App. Ct. Ill., 2d Dist. Certiorari denied. Reported below: 55 Ill. App. 3d 1014, 370 N. E. 2d 1278.

No. 77-6998. *ELLIS v. NEW YORK*. App. Div., Sup. Ct. N. Y., 1st Jud. Dept. Certiorari denied.

No. 77-7000. *JERRY v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 571 F. 2d 573.

No. 77-7005. *DUNLAP v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 577 F. 2d 867.

No. 77-7006. *RIM v. FLORIDA*. Sup. Ct. Fla. Certiorari denied. Reported below: 359 So. 2d 1218.

No. 77-7007. *TRUJILLO v. UNITED STATES*. C. A. 10th Cir. Certiorari denied. Reported below: 578 F. 2d 285.

No. 77-7008. *GASTON v. BORDENKIRCHER, PENITENTIARY SUPERINTENDENT*. C. A. 6th Cir. Certiorari denied.

No. 77-7010. *ALLARD v. HELGEMOE, WARDEN, ET AL.* C. A. 1st Cir. Certiorari denied. Reported below: 572 F. 2d 1.

No. 77-7011. *TATE v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 575 F. 2d 1152.

No. 77-7013. *JACKSON v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 576 F. 2d 749.

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No. 77-7014. *NOLEN v. BROWN, SECRETARY OF DEFENSE*. C. A. 5th Cir. Certiorari denied. Reported below: 573 F. 2d 84.

No. 78-4. *POPE ET AL. v. CINCINNATI GAS & ELECTRIC CO. ET AL.* Sup. Ct. Ohio. Certiorari denied. Reported below: 54 Ohio St. 2d 12, 374 N. E. 2d 406.

No. 78-5. *JAYS FOODS, INC., ET AL. v. NATIONAL LABOR RELATIONS BOARD*. C. A. 7th Cir. Certiorari denied. Reported below: 573 F. 2d 438.

No. 78-8. *GARLAND v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 577 F. 2d 743.

No. 78-9. *PACIFIC GAS & ELECTRIC CO. v. CITY OF SANTA CLARA, CALIFORNIA, ET AL.*; and

No. 78-35. *CITY OF SANTA CLARA, CALIFORNIA v. ANDRUS, SECRETARY OF THE INTERIOR, ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 572 F. 2d 660.

No. 78-11. *FREDONIA BROADCASTING CORP., INC. v. RCA CORP.* C. A. 5th Cir. Certiorari denied. Reported below: 569 F. 2d 251.

No. 78-14. *SAKOL v. COMMISSIONER OF INTERNAL REVENUE*. C. A. 2d Cir. Certiorari denied. Reported below: 574 F. 2d 694.

No. 78-15. *CREEK NATION v. UNITED STATES*. Ct. Cl. Certiorari denied. Reported below: 216 Ct. Cl. 455, 578 F. 2d 1389.

No. 78-16. *RUNKLES v. CONNECTICUT*. Sup. Ct. Conn. Certiorari denied. Reported below: 174 Conn. 405, 389 A. 2d 730.

No. 78-18. *BATTS v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 573 F. 2d 599.

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No. 78-20. *FITZGERALD v. INTERMOUNTAIN FARMERS ASSN.* Sup. Ct. Utah. Certiorari denied. Reported below: 574 P. 2d 1162.

No. 78-21. *MANNING ET AL. v. UNITED STATES.* C. A. 3d Cir. Certiorari denied. Reported below: 577 F. 2d 730.

No. 78-23. *MATTHIAS v. ENDRES.* Sup. Ct. Fla. Certiorari denied. Reported below: 353 So. 2d 843.

No. 78-24. *GREENFIELD v. UNITED STATES.* C. A. 5th Cir. Certiorari denied. Reported below: 574 F. 2d 305.

No. 78-26. *SEARS, ROEBUCK & Co. v. ROBERTS;* and

No. 78-29. *ROBERTS v. SEARS, ROEBUCK & Co.* C. A. 7th Cir. Certiorari denied. Reported below: 573 F. 2d 976.

No. 78-27. *INTERNATIONAL BROTHERHOOD OF BOILERMAKERS, IRON SHIP BUILDERS, BLACKSMITHS, FORGERS & HELPERS, LOCAL No. 358, AFL-CIO v. NATIONAL LABOR RELATIONS BOARD.* C. A. D. C. Cir. Certiorari denied. Reported below: 187 U. S. App. D. C. 425, 574 F. 2d 636.

No. 78-30. *MANCH, SUPERINTENDENT OF SCHOOLS OF THE CITY OF BUFFALO, ET AL. v. ARTHUR ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 573 F. 2d 134.

No. 78-31. *JOHNSON v. MEIGS, JUDGE.* Sup. Ct. Ky. Certiorari denied. Reported below: 567 S. W. 2d 311.

No. 78-33. *ALDENS, INC. v. RYAN, ADMINISTRATOR OF CONSUMER AFFAIRS OF OKLAHOMA.* C. A. 10th Cir. Certiorari denied. Reported below: 571 F. 2d 1159.

No. 78-36. *LUCOM v. REID, PROPERTY APPRAISER OF PALM BEACH COUNTY, ET AL.* Sup. Ct. Fla. Certiorari denied. Reported below: 358 So. 2d 132.

No. 78-37. *TITUS v. UNITED STATES.* C. A. 9th Cir. Certiorari denied. Reported below: 576 F. 2d 210.

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No. 78-41. *LUGO v. UNITED STATES*. C. A. 9th Cir. Certiorari denied.

No. 78-43. *BIRMINGHAM ET UX. v. ALLISON ET UX., DBA ALLISON'S RESTAURANT*. Ct. App. Tenn. Certiorari denied.

No. 78-46. *GATLING ET AL. v. ATLANTIC RICHFIELD CO.* C. A. 2d Cir. Certiorari denied. Reported below: 577 F. 2d 185.

No. 78-47. *SCHULKE v. SCHULKE*. Ct. App. Colo. Certiorari denied. Reported below: 40 Colo. App. 473, 579 P. 2d 90.

No. 78-48. *SPIEGEL v. MOYE, U. S. DISTRICT JUDGE*. C. A. 5th Cir. Certiorari denied.

No. 78-50. *WELLS v. KENTUCKY*. Sup. Ct. Ky. Certiorari denied. Reported below: 562 S. W. 2d 622.

No. 78-52. *PIERCE v. CAPITAL CITIES COMMUNICATIONS, INC., ET AL.* C. A. 3d Cir. Certiorari denied. Reported below: 576 F. 2d 495.

No. 78-56. *HATCHER v. UNITED STATES*. C. A. 9th Cir. Certiorari denied.

No. 78-59. *PRAETZ ET AL. v. PETERSEN, DIRECTOR, DEPARTMENT OF PUBLIC HEALTH OF ILLINOIS, ET AL.* C. A. 7th Cir. Certiorari denied. Reported below: 577 F. 2d 745.

No. 78-62. *NORDBY SUPPLY CO. v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 572 F. 2d 1377.

No. 78-68. *NAVARRO v. DISTRICT DIRECTOR, IMMIGRATION AND NATURALIZATION SERVICE*. C. A. 7th Cir. Certiorari denied. Reported below: 574 F. 2d 379.

No. 78-69. *MOHAWK TOWING CO., INC., ET AL. v. STREET, ADMINISTRATOR, ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 575 F. 2d 299.

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No. 78-71. SILVER DOLLAR MINING CO. ET AL. *v.* PVO INTERNATIONAL, INC., ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 573 F. 2d 609.

No. 78-75. BATTIN *v.* CALIFORNIA. Ct. App. Cal., 4th App. Dist. Certiorari denied. Reported below: 77 Cal. App. 3d 635, 143 Cal. Rptr. 731.

No. 78-76. ELLIOTT *v.* ARKANSAS STATE MEDICAL BOARD. Sup. Ct. Ark. Certiorari denied. Reported below: 263 Ark. 86, 563 S. W. 2d 427.

No. 78-77. RASMUSSEN DRILLING, INC. *v.* KERR-McGEE NUCLEAR CORP. ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 571 F. 2d 1144.

No. 78-82. GRAY *v.* UNITED STATES; and

No. 78-5045. ROOKS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 577 F. 2d 33.

No. 78-85. BOONE ET AL. *v.* J & M McKEE. Sup. Ct. Ark. Certiorari denied. Reported below: 263 Ark. 20, 563 S. W. 2d 409.

No. 78-86. LEE, ACTING GOVERNOR OF MARYLAND, ET AL. *v.* DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 571 F. 2d 1273.

No. 78-95. NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION ET AL. *v.* PACCAR, INC., ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 573 F. 2d 632.

No. 78-98. GRAVES TRUCK LINE, INC. *v.* APPLETON ELECTRIC Co. C. A. 7th Cir. Certiorari denied. Reported below: 577 F. 2d 746.

No. 78-102. BARNA ET AL. *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 578 F. 2d 1376.

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No. 78-103. SMITH *v.* FORRESTER, DBA IDEAL HOME & DEVELOPMENT. Ct. App. Ga. Certiorari denied. Reported below: 145 Ga. App. 281, 243 S. E. 2d 575.

No. 78-105. GORDON *v.* GORDON. Sup. Ct. Okla. Certiorari denied. Reported below: 577 P. 2d 1271.

No. 78-106. HANSON *v.* UNITED STATES STEEL CORP. C. A. 7th Cir. Certiorari denied. Reported below: 577 F. 2d 746.

No. 78-109. THOMPSON *v.* KENTON COUNTY BOARD OF ELECTIONS ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 575 F. 2d 1338.

No. 78-111. UNITED MINE WORKERS OF AMERICA *v.* SCOTIA COAL Co. C. A. 6th Cir. Certiorari denied. Reported below: 575 F. 2d 1338.

No. 78-112. MIEBACH *v.* UNITED STATES; and

No. 78-5082. MARAVILLA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 577 F. 2d 753.

No. 78-113. BOYD *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 78-115. INLAND OIL & TRANSPORT Co. *v.* ADAMS, SECRETARY OF TRANSPORTATION, ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 575 F. 2d 184.

No. 78-116. OKLAHOMA PUBLISHING Co. ET AL. *v.* EQUAL EMPLOYMENT OPPORTUNITY COMMISSION ET AL.; and OKLAHOMA PUBLISHING Co. ET AL. *v.* WALSH, ACTING CHAIRMAN, EQUAL EMPLOYMENT OPPORTUNITY COMMISSION ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 579 F. 2d 66 (second case).

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No. 78-118. *ROLL ET UX. v. WEST SIDE FEDERAL SAVINGS & LOAN ASSOCIATION OF NEW YORK CITY*. C. A. 2d Cir. Certiorari denied. Reported below: 573 F. 2d 1294.

No. 78-122. *SHULER v. INDIANA*. Ct. App. Ind. Certiorari denied.

No. 78-124. *McINTYRE ET UX. v. EVEREST & JENNINGS, INC.* C. A. 8th Cir. Certiorari denied. Reported below: 575 F. 2d 155.

No. 78-126. *GUTHARTZ v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 573 F. 2d 225.

No. 78-127. *MESSINA v. NEW JERSEY*. Super. Ct. N. J. Certiorari denied.

No. 78-130. *COLE ET AL. v. KLASMEIER, FIRE ADMINISTRATOR*. Cir. Ct. of Anne Arundel County, Md. Certiorari denied.

No. 78-132. *SOLBORO KNITTING MILLS, INC. v. NATIONAL LABOR RELATIONS BOARD ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 572 F. 2d 936.

No. 78-133. *RUBY ET AL. v. GILES, ADMINISTRATOR, BUREAU OF EMPLOYMENT SERVICES OF OHIO, ET AL.* Ct. App. Ohio, Franklin County. Certiorari denied.

No. 78-136. *WHOLESALE MATERIALS CO., INC. v. MAGNA CORP., DBA MISSISSIPPI STEEL*. Sup. Ct. Miss. Certiorari denied. Reported below: 357 So. 2d 296.

No. 78-141. *OVERMYER v. FORSYTHE ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 576 F. 2d 779.

No. 78-142. *BOTKIN ET AL. v. DELTA AIR LINES, INC.* C. A. 5th Cir. Certiorari denied. Reported below: 571 F. 2d 1376.

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No. 78-143. *BECKER v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 569 F. 2d 951.

No. 78-146. *VAN PELT ET AL. v. KANSAS*. Ct. App. Kan. Certiorari denied. Reported below: 2 Kan. App. 2d xxiv, 575 P. 2d 577.

No. 78-151. *MUELLER ET AL. v. HUBBARD MILLING CO.* C. A. 8th Cir. Certiorari denied. Reported below: 573 F. 2d 1029.

No. 78-152. *CLEVELAND ELECTRIC ILLUMINATING CO. v. WILLIAMS, DIRECTOR, ENVIRONMENTAL PROTECTION AGENCY OF OHIO*. Ct. App. Ohio, Franklin County. Certiorari denied. Reported below: 55 Ohio App. 2d 272, 380 N. E. 2d 1342.

No. 78-153. *WASTE MANAGEMENT OF WISCONSIN, INC., DBA CITY DISPOSAL CO. v. WISCONSIN*. Sup. Ct. Wis. Certiorari denied. Reported below: 81 Wis. 2d 555, 261 N. W. 2d 147.

No. 78-164. *ROCHELLE, ADMINISTRATRIX v. FRENCH ET AL.* Ct. App. Tenn. Certiorari denied.

No. 78-170. *BOARD OF EDUCATION, BRATENAHL, OHIO, LOCAL SCHOOL DISTRICT v. STATE BOARD OF EDUCATION OF OHIO ET AL.* Sup. Ct. Ohio. Certiorari denied. Reported below: 53 Ohio St. 2d 173, 373 N. E. 2d 1238.

No. 78-175. *LOUISIANA v. FALKINS*. Sup. Ct. La. Certiorari denied. Reported below: 356 So. 2d 415.

No. 78-183. *MINIX v. INDIANA*. Ct. App. Ind. Certiorari denied.

No. 78-184. *LUCEY ET AL. v. LISTER ET AL.* C. A. 7th Cir. Certiorari denied. Reported below: 575 F. 2d 1325.

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No. 78-185. *AMERICAN INTERNATIONAL REINSURANCE Co., INC. v. AIRCO, INC.* C. C. P. A. Certiorari denied. Reported below: 570 F. 2d 941.

No. 78-192. *OLITT v. ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK.* App. Div., Sup. Ct. N. Y., 1st Jud. Dept. Certiorari denied. Reported below: 61 App. Div. 2d 416, 402 N. Y. S. 2d 410.

No. 78-195. *REICHEL v. DISTRICT 27, UNITED STEELWORKERS, ET AL.* Ct. App. Ohio, Stark County. Certiorari denied.

No. 78-197. *WILKINS v. UNITED STATES.* C. A. 9th Cir. Certiorari denied.

No. 78-202. *DEASON v. UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW MEXICO.* C. A. 10th Cir. Certiorari denied. Reported below: 574 F. 2d 504.

No. 78-204. *RABON v. GUARDSMARK, INC.* C. A. 4th Cir. Certiorari denied. Reported below: 571 F. 2d 1277.

No. 78-206. *NUNLEY v. GUIDO, COMMISSIONER OF POLICE OF NASSAU COUNTY.* App. Div., Sup. Ct. N. Y., 2d Jud. Dept. Certiorari denied. Reported below: 62 App. Div. 2d 1000, 403 N. Y. S. 2d 301.

No. 78-208. *SITKIN SMELTING & REFINING Co., INC., ET AL. v. FMC CORP.* C. A. 3d Cir. Certiorari denied. Reported below: 575 F. 2d 440.

No. 78-214. *DUNCAN ET AL. v. BRONDES FORD SALES, INC., ET AL.* Ct. App. Ohio, Lucas County. Certiorari denied.

No. 78-219. *MISSOURI EX REL. UTILITY CONSUMERS COUNCIL OF MISSOURI, INC. v. PUBLIC SERVICE COMMISSION OF MISSOURI ET AL.* Ct. App. Mo., St. Louis Dist. Certiorari denied. Reported below: 562 S. W. 2d 688.

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No. 78-250. WAHL ET AL. *v.* REXNORD, INC., ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 577 F. 2d 731.

No. 78-262. GANNON, EXECUTRIX *v.* MOBIL OIL Co., A DIVISION OF SOCONY OIL Co., INC. C. A. 10th Cir. Certiorari denied. Reported below: 573 F. 2d 1158.

No. 78-263. EUTECTIC CORP. ET AL. *v.* METCO, INC. C. A. 2d Cir. Certiorari denied. Reported below: 579 F. 2d 1.

No. 78-322. JOHNSON *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 78-323. LANE ET AL. *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 574 F. 2d 1019.

No. 78-325. KELLY *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 78-331. LOPEZ *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 578 F. 2d 1371.

No. 78-5002. ROBERTS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 78-5003. ROTARDIER ET AL. *v.* FLAXMAN. C. A. 2d Cir. Certiorari denied. Reported below: 573 F. 2d 1295.

No. 78-5009. EVANS *v.* McCLUSKEY ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 567 F. 2d 755.

No. 78-5012. YOUNG *v.* YOUNGER, ATTORNEY GENERAL OF CALIFORNIA. C. A. 9th Cir. Certiorari denied.

No. 78-5013. CARUTHERS *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied.

No. 78-5014. BLANKNER *v.* GOODWIN, COMMISSIONER, NEW YORK STATE DIVISION OF HOUSING AND COMMUNITY RENEWAL. App. Div., Sup. Ct. N. Y., 2d Jud. Dept. Certiorari denied.

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No. 78-5016. *SAYLES v. SALES*. Ct. App. D. C. Certiorari denied.

No. 78-5017. *POLLARD v. INDUSTRIAL RELATIONS COMMISSION ET AL.* Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 355 So. 2d 520.

No. 78-5018. *RHODES v. SCHOEN, CORRECTIONS COMMISSIONER, ET AL.* C. A. 8th Cir. Certiorari denied. Reported below: 574 F. 2d 968.

No. 78-5019. *POPE v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 574 F. 2d 320.

No. 78-5020. *HERNANDEZ v. CALIFORNIA*. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 78-5024. *SEAY v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 575 F. 2d 880.

No. 78-5029. *WILLIAMS v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 577 F. 2d 188.

No. 78-5030. *ROLLINS v. WYRICK, WARDEN*. C. A. 8th Cir. Certiorari denied. Reported below: 574 F. 2d 420.

No. 78-5031. *COOPER ET AL. v. UNITED STATES*, C. A. 6th Cir. Certiorari denied. Reported below: 577 F. 2d 1079.

No. 78-5032. *WAINSCOTT v. KENTUCKY*. Sup. Ct. Ky. Certiorari denied. Reported below: 562 S. W. 2d 628.

No. 78-5033. *TREFREN v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 577 F. 2d 753.

No. 78-5036. *ARIAS v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 575 F. 2d 253.

No. 78-5037. *WHITE v. CHRISTIAN THEOLOGICAL SEMINARY*. C. A. 7th Cir. Certiorari denied. Reported below: 575 F. 2d 1341.

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No. 78-5038. *VILLARREAL v. UNITED STATES*. C. A. 10th Cir. Certiorari denied.

No. 78-5039. *BAKER v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 577 F. 2d 752.

No. 78-5042. *JONES v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 577 F. 2d 743.

No. 78-5043. *READ v. BAKER ET AL., TRUSTEES*. C. A. 3d Cir. Certiorari denied. Reported below: 577 F. 2d 728.

No. 78-5044. *LOWE v. UNITED STATES*; and

No. 78-5052. *DIXON v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 575 F. 2d 1193.

No. 78-5046. *WINFIELD v. CALIFANO, SECRETARY OF HEALTH, EDUCATION, AND WELFARE*. C. A. 3d Cir. Certiorari denied. Reported below: 571 F. 2d 164.

No. 78-5048. *MARTINO v. AMERICAN AIRLINES, INC.* C. A. 2d Cir. Certiorari denied. Reported below: 573 F. 2d 1292.

No. 78-5049. *FERRELL v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 575 F. 2d 880.

No. 78-5050. *McINTYRE v. UNITED STATES*. C. A. 10th Cir. Certiorari denied.

No. 78-5053. *BURKE v. VIRGINIA*. C. A. 4th Cir. Certiorari denied. Reported below: 571 F. 2d 574.

No. 78-5054. *HORTON v. WAINWRIGHT, SECRETARY, DEPARTMENT OF OFFENDER REHABILITATION OF FLORIDA*. C. A. 5th Cir. Certiorari denied. Reported below: 575 F. 2d 879.

No. 78-5055. *MAZZEFFI v. SCHWANKE, DBA ASHLAND & WAVELAND SERVICE STATION, ET AL.* App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 52 Ill. App. 3d 1032, 368 N. E. 2d 441.

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No. 78-5056. *FORD ET AL. v. SCHMIDT, SECRETARY, DEPARTMENT OF HEALTH AND SOCIAL SERVICES OF WISCONSIN, ET AL.* C. A. 7th Cir. Certiorari denied. Reported below: 577 F. 2d 408.

No. 78-5059. *CHAVIS v. NEW YORK.* App. Div., Sup. Ct. N. Y., 1st Jud. Dept. Certiorari denied.

No. 78-5060. *MASONE v. UNITED STATES.* C. A. 3d Cir. Certiorari denied. Reported below: 578 F. 2d 1376.

No. 78-5064. *YOUNG v. WASHINGTON.* Sup. Ct. Wash. Certiorari denied. Reported below: 89 Wash. 2d 613, 574 P. 2d 1171.

No. 78-5068. *TATE v. UNITED STATES; and*

No. 78-5088. *GENT v. UNITED STATES.* C. A. 5th Cir. Certiorari denied. Reported below: 572 F. 2d 455.

No. 78-5069. *PRUITT v. MABRY, CORRECTION COMMISSIONER.* C. A. 8th Cir. Certiorari denied. Reported below: 574 F. 2d 956.

No. 78-5071. *GOINS v. MISSOURI PACIFIC RAILROAD.* C. A. 5th Cir. Certiorari denied. Reported below: 568 F. 2d 204.

No. 78-5073. *GEISLER v. SHERIFF OF ALEXANDRIA, VIRGINIA.* C. A. 4th Cir. Certiorari denied. Reported below: 568 F. 2d 772.

No. 78-5075. *SCOTT v. UNITED STATES.* C. A. 6th Cir. Certiorari denied. Reported below: 578 F. 2d 1186.

No. 78-5083. *BROADSWORD v. OREGON.* Ct. App. Ore. Certiorari denied. Reported below: 32 Ore. App. 331, 574 P. 2d 670.

No. 78-5085. *HAMILTON v. DEPARTMENT OF SOCIAL SERVICES OF NEW YORK CITY, HUMAN RESOURCES ADMINISTRATION.* C. A. 2d Cir. Certiorari denied. Reported below: 578 F. 2d 1367.

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No. 78-5090. *CARD v. DENTON, REHABILITATION AND CORRECTION DIRECTOR, ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 577 F. 2d 740.

No. 78-5096. *HERRERA v. UNITED STATES.* C. A. 6th Cir. Certiorari denied. Reported below: 578 F. 2d 1381.

No. 78-5098. *NOONE v. DART DRUG CORP.* Sup. Ct. Va. Certiorari denied.

No. 78-5102. *CARTER v. REESE, CHAIRPERSON, STATE BOARD OF PARDONS AND PAROLES.* C. A. 5th Cir. Certiorari denied.

No. 78-5105. *BUEGE v. UNITED STATES.* C. A. 7th Cir. Certiorari denied. Reported below: 578 F. 2d 187.

No. 78-5107. *REYNA v. UNITED STATES.* C. A. 5th Cir. Certiorari denied. Reported below: 572 F. 2d 515.

No. 78-5108. *BAILEY v. UNITED STATES.* Ct. App. D. C. Certiorari denied. Reported below: 385 A. 2d 32.

No. 78-5109. *REED v. UNITED STATES.* Ct. App. D. C. Certiorari denied. Reported below: 383 A. 2d 316.

No. 78-5116. *SINOHUE v. CALIFORNIA.* Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 78-5118. *WILSON v. UNITED STATES.* C. A. 6th Cir. Certiorari denied. Reported below: 578 F. 2d 1382.

No. 78-5119. *NEARY v. UNITED STATES.* C. A. 7th Cir. Certiorari denied. Reported below: 577 F. 2d 746.

No. 78-5122. *WYNDE v. UNITED STATES.* C. A. 8th Cir. Certiorari denied. Reported below: 579 F. 2d 1088.

No. 78-5124. *SCOTT v. TENNESSEE.* Ct. Crim. App. Tenn. Certiorari denied.

No. 78-5127. *MOSKOWITZ v. UNITED STATES.* C. A. 2d Cir. Certiorari denied. Reported below: 581 F. 2d 14.

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No. 78-5130. *MATTHEWS v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 578 F. 2d 1374.

No. 78-5132. *ZUNIGA ET AL. v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 577 F. 2d 746.

No. 78-5133. *UBBEN v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 579 F. 2d 730.

No. 78-5137. *BRINSON v. EGELER, WARDEN*. C. A. 6th Cir. Certiorari denied. Reported below: 578 F. 2d 1380.

No. 78-5139. *CALHOUN ET UX. v. FRANCHISE TAX BOARD*. Sup. Ct. Cal. Certiorari denied. Reported below: 20 Cal. 3d 881, 574 P. 2d 763.

No. 78-5140. *FRANCIS v. MASSACHUSETTS*. Sup. Jud. Ct. Mass. Certiorari denied. Reported below: 375 Mass. 211, 375 N. E. 2d 1221.

No. 78-5142. *SHABASS, AKA DENSON v. FLORIDA*. Dist. Ct. App. Fla., 2d Dist. Certiorari denied.

No. 78-5144. *REYNOLDS v. KENTUCKY*. Ct. App. Ky. Certiorari denied.

No. 78-5145. *DOWNTON v. OHIO*. Ct. App. Ohio, Allen County. Certiorari denied.

No. 78-5146. *MOORE v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 578 F. 2d 1381.

No. 78-5147. *BALOUN v. HELFERTY*. C. A. 6th Cir. Certiorari denied.

No. 78-5148. *FRENCH v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 575 F. 2d 677.

No. 78-5149. *BEACHEM v. HIGGINBOTHAM, U. S. CIRCUIT JUDGE, ET AL.* C. A. 3d Cir. Certiorari denied.

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- No. 78-5154. *ANDRADE v. SIMPSON*. Ct. App. D. C. Certiorari denied.
- No. 78-5155. *AILSTOCK v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 578 F. 2d 1381.
- No. 78-5157. *LINDSEY v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 578 F. 2d 1381.
- No. 78-5158. *LOCKETT v. BLACKBURN, WARDEN*. C. A. 5th Cir. Certiorari denied. Reported below: 571 F. 2d 309.
- No. 78-5161. *PARKER, AKA COLE v. NEW YORK*. App. Div., Sup. Ct. N. Y., 1st Jud. Dept. Certiorari denied.
- No. 78-5164. *KELLEY v. UNITED STATES*; and  
No. 78-5173. *FISH v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 577 F. 2d 145.
- No. 78-5165. *ALSTON v. ZAHRADNICK, PENITENTIARY SUPERINTENDENT*. C. A. 4th Cir. Certiorari denied. Reported below: 573 F. 2d 1304.
- No. 78-5169. *GARCIA v. CALIFORNIA*. Ct. App. Cal., 3d App. Dist. Certiorari denied. Reported below: 78 Cal. App. 3d 247, 144 Cal. Rptr. 176.
- No. 78-5170. *BUTLER v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 578 F. 2d 1386.
- No. 78-5174. *HENRY v. HENRY*. Ct. App. La., 4th Cir. Certiorari denied.
- No. 78-5176. *SCEIFERS v. INDIANA*. Sup. Ct. Ind. Certiorari denied. Reported below: 267 Ind. 687, 373 N. E. 2d 131.
- No. 78-5183. *FREE v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 574 F. 2d 1221.
- No. 78-5187. *CALLISON v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 577 F. 2d 53.

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No. 78-5191. *RUSSELL v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 573 F. 2d 1306.

No. 78-5197. *WILLINGHAM v. HOPPER, WARDEN*. C. A. 5th Cir. Certiorari denied. Reported below: 578 F. 2d 870.

No. 78-5199. *GAINES v. UNITED STATES*. C. A. 6th Cir. Certiorari denied.

No. 78-5202. *EMERY v. MONTANA ET AL.* Sup. Ct. Mont. Certiorari denied. Reported below: 177 Mont. 73, 580 P. 2d 445.

No. 78-5205. *JACKSON, AKA SHABAZZ v. McCUNE, WARDEN*. C. A. 9th Cir. Certiorari denied. Reported below: 577 F. 2d 751.

No. 78-5206. *KRUEGER v. WISCONSIN*. Sup. Ct. Wis. Certiorari denied. Reported below: 84 Wis. 2d 272, 267 N. W. 2d 602.

No. 78-5207. *GARLAND v. LOUISIANA*. Sup. Ct. La. Certiorari denied. Reported below: 357 So. 2d 1157.

No. 78-5209. *RIDDELL v. VINZANT, PENITENTIARY SUPERINTENDENT, ET AL.* C. A. 9th Cir. Certiorari denied.

No. 78-5211. *RAMSEY v. INDIANA*. Ct. App. Ind. Certiorari denied.

No. 78-5217. *JONES v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 576 F. 2d 598.

No. 78-5224. *HOCHMAN v. BOARD OF EDUCATION OF THE CITY OF NEWARK ET AL.* Super. Ct. N. J. Certiorari denied.

No. 78-5231. *DOZIER v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 575 F. 2d 880.

No. 78-5234. *ANDRADE-DIAZ v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 578 F. 2d 1386.

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No. 78-5245. ALLEN *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 78-5252. BROWN *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 583 F. 2d 915.

No. 78-5281. YOUNGBEAR *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 578 F. 2d 1384.

No. 78-5284. PALMER *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 575 F. 2d 721.

No. 77-1288. QUAGLINO *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Motions of Martin T. Orne and California Attorneys for Criminal Justice for leave to file briefs as *amici curiae* granted. Certiorari denied.

No. 77-1483. NATIONAL AUTOMOBILE DEALERS ASSN., INC. *v.* BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM. C. A. D. C. Cir. Certiorari denied. MR. JUSTICE POWELL took no part in the consideration or decision of this petition. Reported below: 187 U. S. App. D. C. 240, 571 F. 2d 674.

No. 77-1696. NEWPORT NEWS SHIPBUILDING & DRY DOCK Co. ET AL. *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. MR. JUSTICE POWELL took no part in the consideration or decision of this petition. Reported below: 571 F. 2d 1283.

No. 77-1540. INTERNATIONAL BUSINESS MACHINES CORP. *v.* FEDERAL COMMUNICATIONS COMMISSION ET AL.; and

No. 77-1690. AMERICAN TELEPHONE & TELEGRAPH Co. *v.* FEDERAL COMMUNICATIONS COMMISSION ET AL. C. A. 2d Cir. Certiorari denied. MR. JUSTICE WHITE would grant certiorari. MR. JUSTICE BLACKMUN and MR. JUSTICE STEVENS took no part in the consideration or decision of these petitions. Reported below: 572 F. 2d 17.

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No. 77-1783. *AMERICAN NATIONAL BANK v. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION*. C. A. 4th Cir. Certiorari denied. MR. JUSTICE POWELL took no part in the consideration or decision of this petition. Reported below: 574 F. 2d 1173.

No. 77-1620. *FIRST NATIONAL BANK & TRUST COMPANY IN ALTON, EXECUTOR v. BERKE, RECEIVER*. C. A. 7th Cir. Certiorari denied. MR. JUSTICE STEVENS took no part in the consideration or decision of this petition. Reported below: 570 F. 2d 187.

No. 77-1758. *ASSOCIATION OF PROFESSIONAL FLIGHT ATTENDANTS v. AIRLINE STEWARDS & STEWARDESSES ASSOCIATION, LOCAL 550, TWU, AFL-CIO, ET AL.* C. A. 7th Cir. Certiorari denied. MR. JUSTICE STEVENS took no part in the consideration or decision of this petition. Reported below: 573 F. 2d 960.

No. 78-10. *CHARLES O. FINLEY & Co., INC. v. KUHN, COMMISSIONER OF BASEBALL, ET AL.* C. A. 7th Cir. Certiorari denied. MR. JUSTICE STEVENS took no part in the consideration or decision of this petition. Reported below: 569 F. 2d 527.

No. 78-148. *KAISER ALUMINUM & CHEMICAL CORP. ET AL. v. COLUMBIA METAL CULVERT Co., INC.* C. A. 3d Cir. Certiorari denied. MR. JUSTICE STEVENS took no part in the consideration or decision of this petition. Reported below: 579 F. 2d 20.

No. 77-6460. *FRAZIER v. WEATHERHOLTZ, SHERIFF*; and  
No. 77-6528. *DOOLEY v. SHEFFER, PENITENTIARY SUPERINTENDENT, ET AL.* C. A. 4th Cir. Certiorari denied. MR. JUSTICE BRENNAN and MR. JUSTICE MARSHALL would grant certiorari. Reported below: 572 F. 2d 994.

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No. 78-5135. *LARKIN v. QUINN ET AL.* C. A. 7th Cir. Certiorari denied. MR. JUSTICE STEVENS took no part in the consideration or decision of this petition. Reported below: 570 F. 2d 348.

No. 77-1650. *GARZA v. RODRIGUEZ.* C. A. 5th Cir. Certiorari denied. MR. JUSTICE BRENNAN and MR. JUSTICE MARSHALL would grant certiorari. Reported below: 559 F. 2d 259.

No. 77-6782. *MCCRIMMON ET AL. v. LESTER, JUDGE, ET AL.* Sup. Ct. Fla. Certiorari denied. MR. JUSTICE BRENNAN and MR. JUSTICE MARSHALL would grant certiorari. Reported below: 354 So. 2d 381.

No. 77-1679. *ESTATE OF WILSON ET AL. v. AIKEN INDUSTRIES, INC.* Sup. Ct. Pa. Certiorari denied. Reported below: 477 Pa. 34, 383 A. 2d 808.

MR. JUSTICE BLACKMUN, concurring.

Mr. Justice Black prefaced his dissent in *Boddie v. Connecticut*, 401 U. S. 371, 389 (1971), with the observation: "This is a strange case and a strange holding." I would apply the Justice's observation to what legal theorizing has effectuated here.

Thomas A. Wilson was the sole shareholder of National Carbide Die Company. In 1967, respondent, Aiken Industries, Inc., purchased Carbide's assets in exchange for Aiken stock. It was agreed that Mr. Wilson would be employed by Aiken and that, while so employed, he would refrain from competition.

Subsequently, Aiken instituted an equity action in a Pennsylvania state court against Wilson. An injunction and damages were sought. While the suit was pending, Wilson died, and the executors of his will were substituted as defendants. The claim for injunctive relief was then withdrawn. The chancellor found that the decedent had violated both his con-

tractual and his fiduciary duties, and awarded damages of \$196,576.75<sup>1</sup> to Aiken. A court en banc affirmed.

The executors appealed to the Supreme Court of Pennsylvania. That tribunal affirmed the judgment by an equally divided vote. Such a result, of course, is no stranger to appellate procedure and in itself raises no constitutional issue. See, e. g., *Carter v. Miller*, 434 U. S. 356 (1978); *Williams & Wilkins Co. v. United States*, 420 U. S. 376 (1975).

What is strange, however, and what surely will be inexplicable to many laymen if not to some lawyers, is that *all* participating justices of the Supreme Court of Pennsylvania, six in number, concluded that the judgment, in its determination of damages, was erroneous. Three voted to affirm on the issue of liability, "but would vacate the award insofar as it fixes the amount of damages and would remand for the recalculation of damages." 477 Pa. 34, 37, 383 A. 2d 808, 809 (1978). The other three "would reverse the decree below on the ground the non-competition agreement was not breached." *Id.*, at 38, 383 A. 2d, at 809. One opinion was filed for the first group of justices. *Ibid.* Each of the three who would reverse filed a separate opinion. *Id.*, at 46, 48, 383 A. 2d, at 814, 815.

The trial court's judgment, although all six reviewing justices agreed that it was erroneous, nonetheless was affirmed.<sup>2</sup> The executors, as petitioners here, understandably complain, and with some vigor, about what they feel is "a patent miscarriage of justice." Pet. for Cert. 4. They concede that no federal question was raised during the state-court proceedings, but they assert that this was because "the denial of due process occurred in the order of the state appellate court." *Ibid.*

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<sup>1</sup> The parties in their submissions here employ the figure of \$193,576.75. Pet. for Cert. 4; Brief in Opposition 1. For present purposes the \$3,000 difference is of no significance.

<sup>2</sup> "The Court being equally divided with respect to the question of appellant's liability, the decree below is affirmed." 477 Pa., at 37, 383 A. 2d, at 809.

I suppose that this Court necessarily is correct in denying the petition for certiorari. It is well established that certiorari will not be granted where a federal constitutional issue is raised here for the first time on review of a state-court decision. *Moore v. Illinois*, 408 U. S. 786, 799 (1972); *Cardinale v. Louisiana*, 394 U. S. 437, 438-439 (1969). There appears to be an exception to that rule, however, whenever the federal issue arose from an unanticipated ruling of the state court, the petition for rehearing presented the first opportunity to raise it, and that opportunity was seized. *Herndon v. Georgia*, 295 U. S. 441, 443-444 (1935); *Great Northern R. Co. v. Sunburst Oil & Refining Co.*, 287 U. S. 358, 366-367 (1932).

Petitioners in fact applied to the Supreme Court of Pennsylvania for reargument. Their application, reproduced in the App. to Brief in Opposition 1a, refers, to be sure, to "a patent miscarriage of justice." *Id.*, at 2a. But the stress is on "a substantial conflict of opinion among the Justices on the scope of appellate review of an equity adjudication," and on "the law of restrictive covenants in Pennsylvania." *Ibid.* In all this, any deprivation of federal due process is not suggested in so many words. In any event, the Pennsylvania court denied reargument without explanatory comment. I fear that, as a consequence, petitioners fall short of placing themselves within the protective exception recognized in the *Herndon* and *Sunburst* cases. See *Beck v. Washington*, 369 U. S. 541, 553-554 (1962).

I therefore join the Court in its denial of the petition for certiorari. I must confess, however, that when a State's highest court unanimously agrees that a judgment is wrong but nevertheless affirms that judgment by an equally divided vote, I am left with substantial discomfort. That, I suspect, is not something this Court can resolve or cure on the record before us. I observe only that there ought to be some way on the state side—such as rehearing and definitive decision by a full complement of justices—for this obviously, and conced-

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edly, unjust result to be corrected. Otherwise, I fear that there will be new recruits to be added to those members of the public who already are inclined to agree with Mr. Bumble's well-known remark.<sup>3</sup>

No. 77-1697. MARSHALL, SECRETARY OF LABOR *v.* DANIEL CONSTRUCTION Co., INC. C. A. 5th Cir. Certiorari denied. MR. JUSTICE BRENNAN and MR. JUSTICE BLACKMUN would grant certiorari. Reported below: 563 F. 2d 707.

No. 77-1703. BEATTY *v.* LYCOMING COUNTY CHILDREN'S SERVICES ET AL.; and

No. 77-1704. LEHMAN *v.* LYCOMING COUNTY CHILDREN'S SERVICES ET AL. Sup. Ct. Pa. Certiorari denied. MR. JUSTICE BRENNAN, MR. JUSTICE WHITE, and MR. JUSTICE MARSHALL would grant certiorari. Reported below: 477 Pa. 322, 383 A. 2d 1228.

No. 77-1710. NATIONAL WILDLIFE ART EXCHANGE, INC., ET AL. *v.* FRANKLIN MINT CORP. C. A. 3d Cir. Certiorari denied. Motion of Ambassador Graphic Arts, Inc., et al. for leave to file a brief as *amici curiae* granted. Certiorari denied. Reported below: 575 F. 2d 62.

No. 77-1780. PENNSYLVANIA *v.* UNITED STATES TOBACCO Co. Sup. Ct. Pa. Motion of Multistate Tax Commission for leave to file a brief as *amicus curiae* granted. Certiorari denied. MR. JUSTICE WHITE would grant certiorari. Reported below: 478 Pa. 125, 386 A. 2d 471.

No. 77-1785. KERR-McGEE CHEMICAL CORP. *v.* ANDRUS, SECRETARY OF THE INTERIOR, ET AL. C. A. D. C. Cir. Certiorari denied. MR. JUSTICE POWELL would grant certiorari. Reported below: 187 U. S. App. D. C. 426, 574 F. 2d 637.

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<sup>3</sup> " 'If the law supposes that,' said Mr. Bumble, . . . 'the law is a ass—a idiot.' " C. Dickens, *Oliver Twist* 377 (1912).

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No. 77-1790. *DAVIS v. JOINT BAR ASSOCIATION GRIEVANCE COMMITTEE FOR THE SECOND AND ELEVENTH JUDICIAL DISTRICTS*. App. Div., Sup. Ct. N. Y., 2d Jud. Dept. Certiorari denied. MR. JUSTICE MARSHALL would grant certiorari. Reported below: 60 App. Div. 2d 613, 402 N. Y. S. 2d 335.

No. 77-1809. *SEDALIA-MARSHALL-BOONVILLE STAGE LINE, INC. v. NATIONAL MEDIATION BOARD ET AL.* C. A. 8th Cir. Motions of Commuter Airline Association of America and Airline Industrial Relations Conference et al. for leave to file briefs as *amici curiae* granted. Certiorari denied. Reported below: 574 F. 2d 394.

No. 77-1826. *KAISER ALUMINUM & CHEMICAL CORP. v. CONSUMER PRODUCT SAFETY COMMISSION ET AL.* C. A. 3d Cir. Certiorari denied. MR. JUSTICE POWELL would grant certiorari. MR. JUSTICE STEVENS took no part in the consideration or decision of this petition. Reported below: 574 F. 2d 178.

No. 77-6484. *BAKER v. GEORGIA*. Sup. Ct. Ga. Certiorari denied. MR. JUSTICE BRENNAN would grant certiorari. Reported below: 240 Ga. 431, 241 S. E. 2d 187.

No. 77-6607. *JOHNSON v. GEORGIA*. Sup. Ct. Ga. Certiorari denied. MR. JUSTICE BRENNAN would grant certiorari. Reported below: 240 Ga. 526, 242 S. E. 2d 53.

No. 77-6953. *SCHMIDT v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. MR. JUSTICE BRENNAN would grant certiorari. Reported below: 573 F. 2d 1057.

No. 77-6709. *MANSFIELD v. ESTELLE, CORRECTIONS DIRECTOR*. C. A. 5th Cir. Certiorari denied. MR. JUSTICE BLACKMUN would grant certiorari. Reported below: 568 F. 2d 1366.

No. 78-72. *COX v. FLOTA MERCANTE GRANCOLOMBIANA*, S. A. C. A. 2d Cir. Certiorari denied. MR. JUSTICE BLACKMUN would grant certiorari. Reported below: 577 F. 2d 798.

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- No. 77-6774. HULSEY *v.* ARKANSAS. Sup. Ct. Ark.;
- No. 77-6691. ALDRIDGE *v.* FLORIDA. Sup. Ct. Fla.;
- No. 77-6385. PEEK *v.* GEORGIA. Sup. Ct. Ga.;
- No. 77-6702. CAMPBELL *v.* GEORGIA. Sup. Ct. Ga.;
- No. 77-6744. STANLEY *v.* GEORGIA. Sup. Ct. Ga.;
- No. 78-5089. ISAACS ET AL. *v.* HOPPER, WARDEN. Sup. Ct. Ga.;
- No. 78-6809. PEERY *v.* NEBRASKA. Sup. Ct. Neb.;
- No. 77-6563. DUNSDON *v.* UTAH. Sup. Ct. Utah;
- No. 77-6578. MARVELL *v.* UTAH. Sup. Ct. Utah;
- No. 77-6579. CODIANNA *v.* UTAH. Sup. Ct. Utah;
- No. 77-6583. PIERRE *v.* UTAH. Sup. Ct. Utah; and
- No. 77-6743. ANDREWS *v.* UTAH. Sup. Ct. Utah. Certiorari denied. Reported below: No. 77-6774, 261 Ark. 449, 549 S. W. 2d 73; No. 77-6691, 351 So. 2d 942; No. 77-6385, 239 Ga. 422, 238 S. E. 2d 12; No. 77-6702, 240 Ga. 352, 240 S. E. 2d 828; No. 77-6744, 240 Ga. 341, 241 S. E. 2d 173; No. 78-5089, 241 Ga. 236, 244 S. E. 2d 849; No. 77-6809, 199 Neb. 656, 261 N. W. 2d 95; No. 77-6563, 573 P. 2d 343; No. 77-6578, 573 P. 2d 343; No. 77-6579, 573 P. 2d 343; No. 77-6583, 572 P. 2d 1338; No. 77-6743, 574 P. 2d 709.

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. 77-6715. LARSON *v.* MILLER. Sup. Ct. Ark. Certiorari and other relief denied.

No. 77-6869. STUART *v.* EMORY UNIVERSITY, INC., ET AL. Sup. Ct. Ga. Certiorari denied. MR. JUSTICE BLACKMUN took no part in the consideration or decision of this petition.

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No. 78-49. SOUTHERN RAILWAY CO. ET AL. *v.* ELLINGTON, GOVERNOR OF TENNESSEE, ET AL. Sup. Ct. Tenn. Certiorari denied. MR. JUSTICE BLACKMUN would grant certiorari. MR. JUSTICE POWELL took no part in the consideration or decision of this petition.

No. 78-66. ANGELINO ET AL. *v.* DODSON ET AL. C. A. 3d Cir. Motion of respondents Dodson et al. for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 571 F. 2d 571.

No. 78-92. FIRST NATIONAL BANK OF MEMPHIS *v.* SMITH ET AL. Sup. Ct. Ark. Certiorari denied. MR. JUSTICE WHITE, MR. JUSTICE BLACKMUN, and MR. JUSTICE POWELL would grant certiorari. Reported below: 263 Ark. 304, 564 S. W. 2d 521.

No. 78-135. JAGO, CORRECTIONAL SUPERINTENDENT *v.* JONES. C. A. 6th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. THE CHIEF JUSTICE and MR. JUSTICE STEWART would grant certiorari. Reported below: 575 F. 2d 1164.

#### *Rehearing Denied*

No. 76-1382. UNITED STATES *v.* SCOTT, 437 U. S. 82;

No. 76-1650. OHRALIK *v.* OHIO STATE BAR ASSN., 436 U. S. 447;

No. 77-444. PENN CENTRAL TRANSPORTATION CO. ET AL. *v.* NEW YORK CITY ET AL., 438 U. S. 104;

No. 77-528. FEDERAL COMMUNICATIONS COMMISSION *v.* PACIFICA FOUNDATION, 438 U. S. 726;

No. 77-1217. SIMKOVICH *v.* UNITED STATES, 436 U. S. 925;

No. 77-1253. NIMMO ET AL. *v.* GRAINGER ET AL., 436 U. S. 932; and

No. 77-1304. McADAMS *v.* BELL, ATTORNEY GENERAL, ET AL., 435 U. S. 997. Petitions for rehearing denied.

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- No. 77-1431. *FRINK v. FRINK*, 436 U. S. 926;
- No. 77-1516. *PELTZMAN v. CENTRAL GULF LINES, INC.*, 436 U. S. 927;
- No. 77-1535. *HELLMAN v. A & M RECORDS, INC.*, 436 U. S. 952;
- No. 77-6307. *MCCRAVY v. LANE, WARDEN*, 436 U. S. 947;
- No. 77-6416. *JAMES v. HOGAN, WARDEN*, 436 U. S. 947;
- No. 77-6463. *BUTTORFF ET AL. v. UNITED STATES*, 437 U. S. 906;
- No. 77-6466. *CASSIDY v. UNITED STATES*, 436 U. S. 951;
- No. 77-6470. *SMITH v. HOPPER, WARDEN*, 436 U. S. 950;
- No. 77-6512. *KICKASOLA v. JIM WALLACE OIL CO. ET AL.*, 436 U. S. 921;
- No. 77-6517. *WILSON v. ARMSTRONG ET AL.*, 436 U. S. 928;
- No. 77-6566. *CARTER v. PROPERTY SERVICES OF AMERICA, INC., ET AL.*, 436 U. S. 948;
- No. 77-6582. *CARTER v. ROMINES ET AL.*, 436 U. S. 948;
- No. 77-6639. *CHAPMAN v. FEDERAL NATIONAL MORTGAGE ASSN.*, 436 U. S. 961;
- No. 77-6648. *NASIM v. COMMISSIONER OF INTERNAL REVENUE*, 437 U. S. 907; and
- No. 77-6660. *TAYLOR v. POEHLING, ASSISTANT CIRCUIT ATTORNEY, CITY OF ST. LOUIS*, 437 U. S. 908. Petitions for rehearing denied.
- No. 76-1726. *MOBIL OIL CORP. v. HIGGINBOTHAM, ADMINISTRATRIX, ET AL.*, 436 U. S. 618. Petition for rehearing denied. MR. JUSTICE BRENNAN took no part in the consideration or decision of this petition.
- No. 77-11. *SHELL OIL CO. v. GOVERNOR OF MARYLAND ET AL.*; and
- No. 77-12. *CONTINENTAL OIL CO. ET AL. v. GOVERNOR OF MARYLAND ET AL.*, 437 U. S. 117. Petitions for rehearing denied. MR. JUSTICE POWELL took no part in the consideration or decision of these petitions.

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

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

No. 76-1587. FEDERAL ENERGY REGULATORY COMMISSION *v.* SOUTHLAND ROYALTY Co. ET AL., 436 U. S. 519. Motion of Natural Gas Producing Industry Assns. et al., for leave to file a brief as *amici curiae* granted. Motion of respondents not to recuse MR. JUSTICE STEWART and MR. JUSTICE POWELL denied. Motion of Crane County Development Co. for leave to file petition for rehearing denied. Petition for rehearing denied. MR. JUSTICE STEWART and MR. JUSTICE POWELL took no part in the consideration or decision of these motions and petition.

No. 76-1484. ZURCHER, CHIEF OF POLICE OF PALO ALTO, ET AL. *v.* STANFORD DAILY ET AL.; and

No. 76-1600. BERGNA, DISTRICT ATTORNEY OF SANTA CLARA COUNTY, ET AL. *v.* STANFORD DAILY ET AL., 436 U. S. 547. Motions of American Civil Liberties Union et al. and Reporters Committee for Freedom of the Press et al. for leave to file briefs as *amici curiae* granted. Petition for rehearing denied. MR. JUSTICE BRENNAN took no part in the consideration or decision of these motions and petition.

No. 77-89. LUCOM *v.* REID ET AL., 434 U. S. 857. Motion for leave to file petition for rehearing denied.

No. 77-454. MOORMAN MANUFACTURING Co. *v.* BAIR, DIRECTOR OF REVENUE OF IOWA, 437 U. S. 267. Motions of Financial Executives Institute, Committee on State Taxation of the Council of State Chambers of Commerce, and Motor Vehicle Manufacturers Association of the United States, Inc., for leave to file briefs as *amici curiae* granted. Petition for rehearing denied.

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No. 77-747. *ALLIED STRUCTURAL STEEL CO. v. SPANNAUS, ATTORNEY GENERAL OF MINNESOTA, ET AL.*, 438 U. S. 234. Petition for rehearing denied. MR. JUSTICE BLACKMUN took no part in the consideration or decision of this petition.

No. 77-955. *POWELL, CHIEF, U. S. CAPITOL POLICE v. DELLUMS ET AL.*; and

No. 77-1129. *WILSON, FORMER CHIEF, METROPOLITAN POLICE DEPARTMENT, ET AL. v. DELLUMS ET AL.*, 438 U. S. 916. Petition for rehearing denied. MR. JUSTICE REHNQUIST took no part in the consideration or decision of this petition.

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*Miscellaneous Order*

No. A-284 (78-540). *NEW YORK TIMES CO. ET AL. v. NEW JERSEY ET AL.* Sup. Ct. N. J. Motion to vacate stay granted, and it is ordered that the order of MR. JUSTICE STEWART, dated September 26, 1978, is hereby vacated. MR. JUSTICE BRENNAN took no part in the consideration or decision of this motion.

MR. JUSTICE MARSHALL, dissenting.

I dissent from the decision of the Court to vacate the stay entered by MR. JUSTICE STEWART on September 26, 1978.

The motion to vacate provides a third occasion for me to consider the merits of the contentions raised by the New York Times and Myron Farber in their petition for certiorari. On the first occasion, I denied their reapplication for a stay because of the premature stage of the state-court proceedings. *New York Times Co. v. Jasclevich*, *post*, p. 1304. Upon petitioners' reapplication for a stay after they had been held in contempt, I expressed my opinion that:

"Given the likelihood that forced disclosure even for *in camera* review will inhibit the reporter's and newspaper's exercise of First Amendment rights, I believe that some threshold showing of materiality, relevance, and ne-

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cessity should be required. . . . Examination of the record submitted with this application discloses that the Superior Court did not make any independent determinations of materiality, relevance, or necessity prior to ordering the applicants to submit the subpoenaed materials for *in camera* review." *New York Times Co. v. Jasclevich*, *post*, at 1335.

I was compelled to deny that reapplication for a stay, however, because I could not conclude in good faith that four Members of this Court would vote to grant a writ of certiorari, a criterion that must be satisfied before a single Justice can grant an application for a stay. Now that the matter is presented to the entire Court for decision, I am no longer so constrained.

I adhere to my view, notwithstanding the intervening decision by the Supreme Court of New Jersey, that petitioners have raised substantial claims under the First and Fourteenth Amendments. Under the circumstances, I believe that both the criminal and civil contempt penalties should be stayed until this Court disposes of the petition for certiorari.

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*Dismissal Under Rule 60*

No. 78-22. AMBASSADOR INTERNATIONAL CULTURAL FOUNDATION ET AL. *v.* SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES (SOLL, REAL PARTY IN INTEREST). Ct. App. Cal., 2d App. Dist. Appeal dismissed under this Court's Rule 60.

*Appeals Dismissed*

No. 77-1711. SIMPSON *v.* GEORGIA. Appeal from Ct. App. Ga. dismissed for want of substantial federal question. MR. JUSTICE BRENNAN, MR. JUSTICE STEWART, and MR. JUSTICE MARSHALL would reverse the conviction. Reported below: 144 Ga. App. 657, 242 S. E. 2d 265.

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No. 77-1849. *CHICAGO SHERATON CORP. v. ZABAN ET AL.* Appeal from Sup. Ct. Ill. dismissed for want of substantial federal question. MR. JUSTICE BRENNAN and MR. JUSTICE BLACKMUN would note probable jurisdiction and set case for oral argument. Reported below: 71 Ill. 2d 85, 373 N. E. 2d 1318.

No. 78-236. *METROPOLITAN DEVELOPMENT & HOUSING AGENCY v. SOUTH CENTRAL BELL TELEPHONE CO. ET AL.* Appeal from Sup. Ct. Tenn. dismissed for want of substantial federal question.

No. 78-5267. *WHITE v. STUBBS.* Appeal from Sup. Ct. Miss. dismissed for want of substantial federal question. Reported below: 359 So. 2d 354.

No. 78-5296. *HORNICK v. YOUNG WOMEN'S CHRISTIAN ASSOCIATION OF MADISON, WISCONSIN, INC.* Appeal from Sup. Ct. Wis. dismissed for want of substantial federal question.

No. 78-246. *ARMSTRONG v. NEW MEXICO.* Appeal from Sup. Ct. N. M. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied. Reported below: 91 N. M. 751, 580 P. 2d 972.

No. 78-276. *LERNER v. HYNES, DEPUTY ATTORNEY GENERAL OF NEW YORK; and FAR ROCKAWAY NURSING HOME ET AL. v. HYNES, DEPUTY ATTORNEY GENERAL OF NEW YORK.* Ct. App. N. Y. Appeal as to first case dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied. Appeal as to second case dismissed for want of substantial federal question. Reported below: 44 N. Y. 2d 329, 376 N. E. 2d 1294 (first case); 44 N. Y. 2d 383, 377 N. E. 2d 446 (second case).

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No. 78-248. *SESSOMS v. REDEVELOPMENT AUTHORITY OF BEAVER COUNTY, BEAVER, PENNSYLVANIA, ET AL.* Appeal from D. C. W. D. Pa. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied.

#### *Miscellaneous Orders*

No. A-102 (78-427). *GAETANO ET AL. v. SILBERT*, U. S. ATTORNEY. C. A. D. C. Cir. Application for injunction presented to MR. JUSTICE WHITE, and by him referred to the Court, denied.

No. A-215. *UNBORN CHILD ROE, BY ERNEST v. SIRICA*, U. S. DISTRICT JUDGE. D. C. D. C. Application for injunction, presented to MR. JUSTICE WHITE, and by him referred to the Court, denied.

No. 77-654. *GREAT ATLANTIC & PACIFIC TEA Co., INC. v. FEDERAL TRADE COMMISSION*. C. A. 2d Cir. [Certiorari granted, 435 U. S. 922.] Motion of Samuel E. Parker et al. for leave to file brief as *amici curiae* denied. Motion of Small Business Legislative Council for leave to file brief as *amicus curiae* granted. MR. JUSTICE STEVENS took no part in the consideration or decision of these motions.

No. 77-742. *MILLER, DIRECTOR, DEPARTMENT OF CHILDREN AND FAMILY SERVICES OF ILLINOIS, ET AL. v. YOUAKIM ET AL.* C. A. 7th Cir. [Probable jurisdiction noted, 434 U. S. 1060.] Motion of American Orthopsychiatric Assn. et al. for leave to file a brief as *amici curiae* granted. MR. JUSTICE STEVENS took no part in the consideration or decision of this motion.

No. 77-920. *THOR POWER TOOL Co. v. COMMISSIONER OF INTERNAL REVENUE*. C. A. 7th Cir. [Certiorari granted, 435 U. S. 914.] Motion of petitioner for additional time for oral argument denied.

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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.] Motion of Securities and Exchange Commission for leave to participate in oral argument as *amicus curiae* granted, and 15 additional minutes allotted for that purpose. Petitioners also allotted 15 additional minutes for oral argument. Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* denied.

No. 77-922. CHRYSLER CORP. *v.* BROWN, SECRETARY OF DEFENSE, ET AL. C. A. 3d Cir. [Certiorari granted, 435 U. S. 914.] Motion of Federation of American Hospitals for leave to file a brief as *amicus curiae* denied.

No. 77-961. NEW YORK TELEPHONE CO. ET AL. *v.* NEW YORK STATE DEPARTMENT OF LABOR ET AL. C. A. 2d Cir. [Certiorari granted, 435 U. S. 941.] Motion of National Lawyers Guild for leave to file a brief as *amicus curiae* granted.

No. 77-1105. HERBERT *v.* LANDO ET AL. C. A. 2d Cir. [Certiorari granted, 435 U. S. 922.] Motion of Time Inc. for leave to file a brief as *amicus curiae* denied.

No. 77-1255. ANDERS, SOLICITOR OF RICHLAND COUNTY *v.* FLOYD. Appeal from D. C. S. C. Motion of Alan Ernest to be appointed counsel or guardian *ad litem* for unborn children denied.

No. 77-6067. DUREN *v.* MISSOURI. Sup. Ct. Mo. [Certiorari granted, 435 U. S. 1006.] Motion of petitioner for divided argument granted.

No. 78-238. DICK *v.* UNITED STATES. Motion for leave to file petition for writ of prohibition denied.

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No. 77-6431. CABAN *v.* MOHAMMED ET UX. Ct. App. N. Y. [Probable jurisdiction noted, 436 U. S. 903.] Motion of the Legal Aid Society of New York City for leave to file a brief as *amicus curiae* denied.\* Motion of Attorney General of New York for leave to present oral argument as *amicus curiae* in support of appellees granted.

*Probable Jurisdiction Noted or Postponed*

No. 77-1810. ARIZONA PUBLIC SERVICE CO. ET AL. *v.* SNEAD, DIRECTOR OF REVENUE DIVISION, DEPARTMENT OF TAXATION AND REVENUE OF NEW MEXICO, ET AL. Appeal from Sup. Ct. N. M. Probable jurisdiction noted. Reported below: 91 N. M. 485, 576 P. 2d 291.

No. 78-233. PERSONNEL ADMINISTRATOR OF MASSACHUSETTS ET AL. *v.* FEENEY. Appeal from D. C. Mass. Probable jurisdiction noted. Reported below: 451 F. Supp. 143.

No. 78-225. BABBITT, GOVERNOR OF ARIZONA, ET AL. *v.* UNITED FARM WORKERS NATIONAL UNION ET AL. Appeal from D. C. Ariz. Further consideration of question of jurisdiction postponed to hearing of case on the merits. Reported below: 449 F. Supp. 449.

*Certiorari Granted*

No. 77-1497. ARKANSAS *v.* SANDERS. Sup. Ct. Ark. Certiorari granted. Reported below: 262 Ark. 595, 559 S. W. 2d 704.

No. 77-1806. FORD MOTOR CO. (CHICAGO STAMPING PLANT) *v.* NATIONAL LABOR RELATIONS BOARD ET AL. C. A. 7th Cir. Certiorari granted. Reported below: 571 F. 2d 993.

No. 78-91. JONES ET AL. *v.* WOLF ET AL. Sup. Ct. Ga. Certiorari granted. Reported below: 241 Ga. 208, 243 S. E. 2d 860.

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\*[REPORTER'S NOTE: On October 30, 1978, this portion of the order was vacated and the *amicus curiae* brief was ordered filed, *post*, p. 924.]

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No. 77-6540. *RAMSEY v. NEW YORK*. App. Div., Sup. Ct. N. Y., 2d Jud. Dept. Motion of petitioner for leave to proceed *in forma pauperis* and certiorari granted. Reported below: 61 App. Div. 2d 891, 401 N. Y. S. 2d 671.

No. 78-17. *UNITED GAS PIPE LINE CO. v. McCOMBS ET AL.*; and

No. 78-249. *FEDERAL ENERGY REGULATORY COMMISSION v. McCOMBS ET AL.* C. A. 10th Cir. Certiorari granted, cases consolidated, and a total of one hour allotted for oral argument. MR. JUSTICE STEWART took no part in the consideration or decision of these petitions. Reported below: 570 F. 2d 1376.

No. 78-38. *INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS ET AL. v. FOUST*. C. A. 10th Cir. Certiorari granted limited to Question 3 presented by the petition. Reported below: 572 F. 2d 710.

*Certiorari Denied.* (See also Nos. 78-246, 78-248, and 78-276, *supra.*)

No. 77-1613. *EASTERN CENTRAL MOTOR CARRIERS ASSN., INC., ET AL. v. INTERSTATE COMMERCE COMMISSION ET AL.*; and

No. 77-1727. *SOUTHERN MOTOR CARRIERS RATE CONFERENCE, INC. v. INTERSTATE COMMERCE COMMISSION ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 571 F. 2d 784.

No. 77-1824. *HORNE ET UX. v. COMMISSIONER OF INTERNAL REVENUE*. C. A. 9th Cir. Certiorari denied. Reported below: 523 F. 2d 1363.

No. 77-5343. *BARCLAY ET AL. v. FLORIDA*. Sup. Ct. Fla. Certiorari denied. Reported below: 343 So. 2d 1266.

No. 77-6543. *JONES v. VIRGINIA*. Sup. Ct. Va. Certiorari denied. Reported below: 218 Va. 757, 240 S. E. 2d 658.

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No. 77-6790. *OCHOA v. ESTELLE, CORRECTIONS DIRECTOR*. C. A. 5th Cir. Certiorari denied. Reported below: 568 F. 2d 1366.

No. 77-6899. *SANTIFER v. MABRY, CORRECTION COMMISSIONER*. C. A. 8th Cir. Certiorari denied.

No. 77-7001. *RUDERER v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 577 F. 2d 749.

No. 77-7015. *RAUCH v. UNITED STATES*; and  
No. 78-5022. *CORSA v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 574 F. 2d 706.

No. 78-51. *J. RAY McDERMOTT & Co., INC. v. NATIONAL LABOR RELATIONS BOARD*. C. A. 5th Cir. Certiorari denied. Reported below: 571 F. 2d 850.

No. 78-65. *INDEPENDENT COSMETIC MANUFACTURERS & DISTRIBUTORS, INC. v. DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE ET AL.* C. A. D. C. Cir. Reported below: 187 U. S. App. D. C. 342, 574 F. 2d 553.

No. 78-88. *DR. JOHN T. MACDONALD FOUNDATION, INC., DBA DOCTORS' HOSPITAL v. CALIFANO, SECRETARY OF HEALTH, EDUCATION, AND WELFARE, ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 571 F. 2d 328.

No. 78-93. *RUMPF ET AL. v. UNITED STATES*. C. A. 10th Cir. Certiorari denied. Reported below: 576 F. 2d 818.

No. 78-108. *CHAPMAN, ADMINISTRATOR v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 575 F. 2d 147.

No. 78-137. *TAYLOR v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 574 F. 2d 232.

No. 78-149. *WALLS v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 577 F. 2d 690.

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No. 78-174. *M. W. ZACK METAL CO. v. THE SEVERN RIVER ET AL.* C. A. 3d Cir. Certiorari denied. Reported below: 577 F. 2d 727.

No. 78-177. *BURKE, COMMISSIONER OF EDUCATION OF NEW JERSEY, ET AL. v. NEW JERSEY EDUCATION ASSN. ET AL.* C. A. 3d Cir. Certiorari denied. Reported below: 579 F. 2d 764.

No. 78-181. *SIZEMORE v. UNITED STATES.* C. A. 6th Cir. Certiorari denied. Reported below: 578 F. 2d 1382.

No. 78-196. *SWEENEY v. COTE & RENEY LUMBER CO., INC.* C. A. 1st Cir. Certiorari denied.

No. 78-200. *WORKMAN v. CALIFORNIA.* Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 78-212. *ROUBAS v. ILLINOIS.* App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 55 Ill. App. 3d 1119, 375 N. E. 2d 588.

No. 78-226. *MOODY v. KANSAS.* Sup. Ct. Kan. Certiorari denied. Reported below: 223 Kan. 699, 576 P. 2d 637.

No. 78-227. *GATES v. IOWA.* Ct. App. Iowa. Certiorari denied. Reported below: 268 N. W. 2d 652.

No. 78-228. *FLORIDA EAST COAST PROPERTIES, INC. v. METROPOLITAN DADE COUNTY.* C. A. 5th Cir. Certiorari denied. Reported below: 572 F. 2d 1108.

No. 78-235. *PITTSBURGH & NEW ENGLAND TRUCKING Co. v. UNITED STATES ET AL.* C. A. 2d Cir. Certiorari denied.

No. 78-243. *MARTIN THEATRES OF TEXAS, INC. v. BULLOCK, COMPTROLLER OF PUBLIC ACCOUNTS, ET AL.*; and

No. 78-260. *ABC INTERSTATE THEATRES, INC. v. BULLOCK, COMPTROLLER OF PUBLIC ACCOUNTS, ET AL.* Ct. Civ. App. Tex., 3d Sup. Jud. Dist. Certiorari denied. Reported below: 557 S. W. 2d 337.

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No. 78-251. *WRIGHT v. INDIANA*. Sup. Ct. Ind. Certiorari denied. Reported below: 267 Ind. 590, 372 N. E. 2d 453.

No. 78-252. *FEDERAL REALTY ESTATES CO., NOW KNOWN AS TIMBERS DEVELOPMENT CO. v. CITY OF CHICAGO ET AL.* C. A. 7th Cir. Certiorari denied. Reported below: 577 F. 2d 748.

No. 78-255. *SUTHERLAND MARINE CO. v. PENN CENTRAL TRANSPORTATION CO. ET AL.* C. A. 3d Cir. Certiorari denied. Reported below: 578 F. 2d 1375.

No. 78-256. *FLAIM v. ILLINOIS*. Ct. Cl. of Ill. Certiorari denied.

No. 78-261. *INDEPENDENT INVESTOR PROTECTIVE LEAGUE ET AL. v. TOUCHE ROSS & Co.* C. A. 2d Cir. Certiorari denied. Reported below: 607 F. 2d 530.

No. 78-269. *MILGO ELECTRONIC CORP. ET AL. v. WESTERN ELECTRIC Co., INC., ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 568 F. 2d 1203 and 573 F. 2d 255.

No. 78-285. *IVIMEY v. BOURQUE, DBA DICK'S AUTO BODY*. C. A. 1st Cir. Certiorari denied. Reported below: 577 F. 2d 721.

No. 78-286. *FRAZIER v. KENTUCKY*. Ct. App. Ky. Certiorari denied.

No. 78-366. *FRIED v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 576 F. 2d 787.

No. 78-368. *GLORIOSO ET AL. v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 580 F. 2d 1050.

No. 78-371. *BERNSTEIN v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 575 F. 2d 880.

No. 78-387. *HOOPER v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 575 F. 2d 496.

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No. 78-395. *TERRY ET UX. v. KLAMATH PRODUCTION CREDIT ASSN.* Ct. App. Cal., 3d App. Dist. Certiorari denied.

No. 78-5006. *OLSON v. UNITED STATES.* C. A. 8th Cir. Certiorari denied. Reported below: 576 F. 2d 1267.

No. 78-5028. *BRAGER v. UNITED STATES.* C. A. 5th Cir. Certiorari denied. Reported below: 569 F. 2d 399.

No. 78-5047. *JOHNSON v. UNITED STATES.* C. A. 6th Cir. Certiorari denied.

No. 78-5067. *JONES v. UNITED STATES.* C. A. 2d Cir. Certiorari denied. Reported below: 578 F. 2d 1371.

No. 78-5076. *SELF v. UNITED STATES.* C. A. 6th Cir. Certiorari denied. Reported below: 574 F. 2d 363.

No. 78-5084. *LOUDERMAN v. UNITED STATES.* C. A. 9th Cir. Certiorari denied. Reported below: 576 F. 2d 1383.

No. 78-5087. *THOMPSON v. UNITED STATES.* C. A. 10th Cir. Certiorari denied. Reported below: 579 F. 2d 1184.

No. 78-5093. *POLETO v. UNITED STATES.* C. A. 3d Cir. Certiorari denied. Reported below: 578 F. 2d 1376.

No. 78-5095. *POPEJOY v. UNITED STATES.* C. A. 10th Cir. Certiorari denied. Reported below: 578 F. 2d 1346.

No. 78-5113. *YOUNG v. UNITED STATES.* C. A. 6th Cir. Certiorari denied.

No. 78-5128. *LEE v. UNITED STATES.* C. A. 6th Cir. Certiorari denied. Reported below: 578 F. 2d 1381.

No. 78-5136. *ABBOTT v. UNITED STATES.* C. A. 10th Cir. Certiorari denied.

No. 78-5141. *MCGINNIS v. UNITED STATES;* and

No. 78-5171. *MIROYAN v. UNITED STATES.* C. A. 9th Cir. Certiorari denied. Reported below: 577 F. 2d 489.

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No. 78-5153. *JAFREE v. CLEVELAND STATE UNIVERSITY ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 575 F. 2d 1337.

No. 78-5189. *DICKSON v. COLMAN, SHERIFF, ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 569 F. 2d 1310.

No. 78-5214. *JACKSON v. NEW YORK.* App. Div., Sup. Ct. N. Y., 3d Jud. Dept. Certiorari denied. Reported below: 61 App. Div. 2d 1071, 403 N. Y. S. 2d 132.

No. 78-5215. *LARSON v. MILLER.* Sup. Ct. Ark. Certiorari denied.

No. 78-5219. *MAYO v. VIRGINIA.* Sup. Ct. Va. Certiorari denied.

No. 78-5220. *SLOCUM v. HOPPER, WARDEN.* C. A. 5th Cir. Certiorari denied.

No. 78-5221. *JOHNSON v. KENTUCKY.* Sup. Ct. Ky. Certiorari denied.

No. 78-5222. *KING, AKA McCULLOUGH ET AL. v. UNITED STATES.* C. A. 7th Cir. Certiorari denied. Reported below: 582 F. 2d 1284.

No. 78-5229. *TRACY, DECEASED, BY VOIGT v. UNIVERSITY OF UTAH HOSPITAL ET AL.* Sup. Ct. Utah. Certiorari denied.

No. 78-5236. *GAMBLE v. ESTELLE, CORRECTIONS DIRECTOR, ET AL.* C. A. 5th Cir. Certiorari denied.

No. 78-5238. *KAVANAUGH v. GRUNDMAN ET AL.* C. A. 7th Cir. Certiorari denied. Reported below: 577 F. 2d 748.

No. 78-5239. *RUETZ v. INDIANA.* Sup. Ct. Ind. Certiorari denied. Reported below: 268 Ind. 42, 373 N. E. 2d 152.

No. 78-5244. *MARTIN v. CORPUS CHRISTI PARISH CREDIT UNION.* Sup. Ct. La. Certiorari denied. Reported below: 358 So. 2d 295.

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No. 78-5246. *RICE v. COLORADO*. Ct. App. Colo. Certiorari denied. Reported below: 40 Colo. App. 357, 579 P. 2d 647.

No. 78-5257. *McFARLAND v. CALIFANO, SECRETARY OF HEALTH, EDUCATION, AND WELFARE*. C. A. 5th Cir. Certiorari denied. Reported below: 577 F. 2d 144.

No. 78-5259. *TARRANCE v. BORDENKIRCHER, PENITENTIARY SUPERINTENDENT*. C. A. 6th Cir. Certiorari denied. Reported below: 575 F. 2d 1338.

No. 78-5261. *HAWKINS v. OHIO*. Ct. App. Ohio, Cuyahoga County. Certiorari denied.

No. 78-5269. *BOLTS v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 558 F. 2d 316.

No. 78-5280. *GOOD SHIELD v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 582 F. 2d 1287.

No. 78-5287. *GROGAN v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 577 F. 2d 1133.

No. 78-5300. *GONZALES v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 582 F. 2d 1284.

No. 78-5301. *GIBSON v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 575 F. 2d 556.

No. 78-5306. *CRUZ-BELTRAN v. UNITED STATES*; and

No. 78-5308. *CRUZ-BELTRAN v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 578 F. 2d 870.

No. 78-5309. *MITCHELL ET AL. v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 578 F. 2d 735.

No. 78-5312. *PINCKNEY v. UNITED STATES*. C. A. 4th Cir. Certiorari denied.

No. 78-5315. *PHILLIPS v. SNYDER ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 578 F. 2d 869.

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No. 78-5319. *AUTEN v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 570 F. 2d 1284.

No. 78-5325. *DOBSON v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 585 F. 2d 55.

No. 78-5353. *CAMPBELL v. MICHIGAN*. Ct. App. Mich. Certiorari denied.

No. 77-1756. *SHERWOOD v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. MR. JUSTICE BRENNAN, MR. JUSTICE STEWART, and MR. JUSTICE MARSHALL would grant the petition and reverse the conviction. Reported below: 568 F. 2d 771.

No. 77-6946. *ALLEN ET AL. v. GEORGIA*. Ct. App. Ga. Certiorari denied. MR. JUSTICE BRENNAN, MR. JUSTICE STEWART, and MR. JUSTICE MARSHALL would grant the petition and reverse the conviction. Reported below: 144 Ga. App. 233, 240 S. E. 2d 754.

No. 77-6962. *WOOD v. GEORGIA*. Ct. App. Ga. Certiorari denied. MR. JUSTICE BRENNAN, MR. JUSTICE STEWART, and MR. JUSTICE MARSHALL would grant the petition and reverse the conviction. Reported below: 144 Ga. App. 236, 240 S. E. 2d 743.

No. 78-131. *MASCOLO ET AL. v. MASSACHUSETTS*. Ct. App. Mass. Certiorari denied. MR. JUSTICE BRENNAN, MR. JUSTICE STEWART, and MR. JUSTICE MARSHALL would grant the petition and reverse the conviction. Reported below: — Mass. App. —, 375 N. E. 2d 17.

No. 78-207. *DOBBS v. GEORGIA*. Ct. App. Ga. Certiorari denied. MR. JUSTICE BRENNAN, MR. JUSTICE STEWART, and MR. JUSTICE MARSHALL would grant the petition and reverse the conviction. Reported below: 145 Ga. App. 14, 243 S. E. 2d 275.

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No. 77-1822. *INDIANA v. MARTIN*. C. A. 7th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. MR. JUSTICE STEVENS took no part in the consideration or decision of this motion and petition. Reported below: 577 F. 2d 749.

No. 78-188. *MELLON BANK, N. A. v. SOUTHLAND MOBILE HOMES OF SOUTH CAROLINA, INC., ET AL.* Sup. Ct. S. C. Certiorari denied. Reported below: 270 S. C. 525 and 527, 244 S. E. 2d 211 and 212.

MR. JUSTICE BLACKMUN, dissenting.

This case raises a substantial issue concerning state-court venue of a transitory cause of action asserted against a national bank. For me, the issue merits plenary consideration, and I dissent from the Court's denial of certiorari insofar as the case concerns one of the two respondents.

Petitioner Mellon Bank, N. A., is a national banking association with principal place of business in Pittsburgh, Pa. In 1972, respondent Associates Financial Services Company, Inc., and Mellon executed an agreement under which Associates was to seek out mobile-home dealers whose time-sale contracts for retail sales of mobile homes could be financed by Mellon. Respondent Southland Mobile Homes of South Carolina, Inc., operated mobile-home retail sales lots in the State of South Carolina and was induced by Associates to enter Mellon's mobile-home service program. As a consequence, Mellon directly financed a number of Southland's sales. The program provided for Mellon's release to Southland of something less than the full purchase price of any mobile home so sold, with the balance to be held in reserve for six months, after which only a 2% contingency fund was retained. At Southland's request, the total reserve later was limited to \$20,000 in return for a personal guarantee from Southland's president and other security.

Southland subsequently instituted in the Court of Common

Pleas for Sumter County, S. C., this breach-of-contract action against both Mellon and Associates. The latter answered and filed a cross-complaint against Mellon. Mellon, by special appearance as allowed by state law, challenged the state court's jurisdiction over it on the grounds that it was "located" in Allegheny County, Pa., and that, under Rev. Stat. § 5198, 12 U. S. C. § 94,<sup>1</sup> a state-court suit against it could be brought only in Allegheny County.<sup>2</sup> The court, however, ruled that it had jurisdiction over Mellon. It concluded that branch banking for the benefit of Mellon was taking place at Associates' office; that South Carolina's long-arm statute, S. C. Code § 36-2-803 (1977), applied; and that Mellon by its conduct had waived any immunity from suit in South Carolina it may have possessed.

Mellon appealed to the Supreme Court of South Carolina. In an opinion concerning Associates, 270 S. C. 527, 244 S. E. 2d 212 (1978), that court, without considering waiver, affirmed.<sup>3</sup>

<sup>1</sup>"Suits, actions and proceedings against any association under this chapter may be had in any district or Territorial court of the United States held within the district in which such association may be established, or in any State, county, or municipal court in the county or city in which said association is located having jurisdiction in similar cases."

<sup>2</sup>A supporting affidavit from an officer of Mellon recited that Mellon maintained no office in South Carolina; that there were no employees or agents of Mellon, or of a subsidiary or affiliate, in that State; that Mellon purchased commercial paper from financial institutions throughout the country; and that Associates was one of those institutions.

<sup>3</sup>In a separate opinion concerning Southland, 270 S. C. 525, 244 S. E. 2d 211 (1978), the court ruled that, although there was timely notice of intention to appeal, service upon Southland of the "proposed case and exceptions" was untimely under S. C. Code § 18-9-70 (1976) and Circuit Court Rule 49, and it therefore "was the duty of the circuit judge to dismiss the appeal." The plausible argument that this untimeliness feature provides an adequate state ground for the court's decision is sufficient to convince me that the case with respect to respondent Southland is nonreviewable. See R. Stern & E. Gressman, *Supreme Court Practice* § 3.31 (5th ed. 1978). No claim of untimeliness, however, is raised with respect to Associates.

The proliferation of branch banking has produced problems of state-court venue with respect to national banks not envisioned when § 94's predecessor statutes were enacted more than a century ago. Just last Term we considered the application of § 94 to a bank's conduct of banking business at an authorized branch within the State of its "location," and held that venue need not be restricted to the county where the bank's charter had been issued. *Citizens & Southern Nat. Bank v. Bougas*, 434 U. S. 35 (1977). And the Court recently held that § 94 was mandatory, not permissive, in its operation and, absent waiver, that a national bank with principal place of business in New York and with no office or agent in Utah, and not regularly conducting business in that State, could not be sued in a Utah state court for breach of contract. *National Bank v. Associates of Obstetrics*, 425 U. S. 460 (1976). See also *Mercantile Nat. Bank v. Langdeau*, 371 U. S. 555 (1963), and *Michigan Nat. Bank v. Robertson*, 372 U. S. 591 (1963). The latter case on its facts is not dissimilar to the present one, for it concerned notes and lien instruments delivered to a local dealer upon purchases of house trailers in Nebraska, followed by the dealer's negotiating the notes and instruments to a national bank in Michigan. The Court held that, absent waiver, the bank could not be sued in Nebraska. See *Bank of America v. Whitney Bank*, 261 U. S. 171 (1923), and *First Nat. Bank v. Dickinson*, 396 U. S. 122 (1969).

Whether, as the South Carolina courts held, *Associates* was Mellon's agent in South Carolina and, as a consequence, Mellon was engaged in branch banking in that State to an extent sufficient to sustain venue there under § 94 is, for this Court at least, a new issue. I think that issue is sufficiently important for national banks generally, and for those doing business with national banks or in competition with them, that it receive plenary consideration here. The South Carolina courts, of course, may be correct in their rulings, but I am uncertain enough about their result in the light of this Court's

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cases cited above that I would grant certiorari. I therefore dissent from the Court's refusal to take this case.

No. 78-247. *MANATEE CABLEVISION CORP. v. FLORIDA POWER & LIGHT CO.* C. A. 5th Cir. Certiorari denied. MR. JUSTICE STEVENS took no part in the consideration or decision of this petition. Reported below: 573 F. 2d 83.

No. 78-5143. *SEIDENBERG v. UNITED STATES.* C. A. 4th Cir. Certiorari denied. MR. JUSTICE STEWART would grant certiorari. Reported below: 577 F. 2d 738.

No. 78-5159. *MOORE v. GEORGIA.* Sup. Ct. Ga.; and No. 78-5240. *HUGHES v. TEXAS.* Ct. Crim. App. Tex. Certiorari denied. Reported below: No. 78-5159, 240 Ga. 807, 243 S. E. 2d 1; No. 78-5240, 562 S. W. 2d 857.

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

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

#### *Rehearing Denied*

No. 77-555. *BUCK v. BOARD OF EDUCATION OF THE CITY OF NEW YORK ET AL.*, 438 U. S. 904. Petition for rehearing denied.

No. 77-6569. *GONZALEZ v. UNITED STATES ET AL.*, 436 U. S. 960. Motion for leave to file petition for rehearing denied.

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#### *Miscellaneous Orders*

No. A-322. *COBERLY ET AL. v. McCARTNEY ET AL.* Sup. Ct. App. W. Va. Application for stay, presented to MR. JUSTICE POWELL, and by him referred to the Court, denied.

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No. A-338. *ESPINOZA v. UNITED STATES*. Application for stay of proceedings in the United States District Court for the Southern District of West Virginia, presented to THE CHIEF JUSTICE, and by him referred to the Court, denied.

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*Appeals Dismissed*

No. 77-6835. *WAYLAND v. TOWN OF IPSWICH*. Appeal from C. A. 1st Cir. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, motion for leave to proceed *in forma pauperis* and certiorari granted. Judgment vacated and case remanded for further consideration in light of *Monell v. Department of Social Services of New York City*, 436 U. S. 658 (1978).

No. 77-6868. *RUNYAN v. CALIFORNIA*. Appeal from Sup. Ct. Cal. dismissed for want of final judgment.

No. 78-265. *WILLMAN v. MINNESOTA*. 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: 266 N. W. 2d 187.

No. 78-278. *TORRES, CONSERVATOR v. ILLINOIS*. Appeal from App. Ct. Ill., 3d 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: 56 Ill. App. 3d 1003, 372 N. E. 2d 445.

No. 78-5255. *KELLEY v. VERMONT*. Appeal from Sup. Ct. Vt. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied. Reported below: 136 Vt. 322, 388 A. 2d 379.

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No. 78-294. SOUTHERN CALIFORNIA EDISON Co. v. PUBLIC UTILITIES COMMISSION OF CALIFORNIA. Appeal from Sup. Ct. Cal. dismissed for want of properly presented federal question. Reported below: 20 Cal. 3d 813, 576 P. 2d 945.

*Certiorari Granted—Reversed and Remanded.* (See No. 77-1515, *ante*, p. 1.)

*Certiorari Granted—Vacated and Remanded.* (See No. 77-6835, *supra*.)

#### *Miscellaneous Orders*

No. A-315 (77-1844). CITY OF MOBILE, ALABAMA, ET AL. v. BOLDEN ET AL. C. A. 5th Cir. [Probable jurisdiction noted, *ante*, p. 815.] Application of appellees to vacate order issued by the United States District Court for the Southern District of Alabama, on October 3, 1978, presented to MR. JUSTICE POWELL, and by him referred to the Court, denied.

No. D-129. IN RE DISBARMENT OF FITZPATRICK. Disbarment entered. [For earlier order herein, see 434 U. S. 980.]

No. D-132. IN RE DISBARMENT OF ESSER. Disbarment entered. [For earlier order herein, see 435 U. S. 949.]

No. D-134. IN RE DISBARMENT OF BEITLING. Disbarment entered. [For earlier order herein, see 435 U. S. 993.]

No. D-136. IN RE DISBARMENT OF BREMERS. It is ordered that Ralph R. Bremers, of Omaha, Neb., be suspended from the practice of law in this Court and that a rule issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D-137. IN RE DISBARMENT OF GILBERT. It is ordered that Ira Stuart Gilbert, of Chicago, Ill., be suspended from the practice of law in this Court and that a rule issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

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No. D-138. *IN RE DISBARMENT OF MUELLER*. It is ordered that Paul C. Mueller, of Plantation, 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. D-139. *IN RE DISBARMENT OF WANDEL*. It is ordered that John Joseph Wandel, of Los Angeles, Cal., be suspended from the practice of law in this Court and that a rule issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D-140. *IN RE DISBARMENT OF RAY*. It is ordered that Samuel B. Ray, Jr., of Barnwell, S. C., be suspended from the practice of law in this Court and that a rule issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D-141. *IN RE DISBARMENT OF GASQUE*. It is ordered that J. Ralph Gasque, of Marion, S. C., be suspended from the practice of law in this Court and that a rule issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D-142. *IN RE DISBARMENT OF FOSTER*. It is ordered that Marvin F. Foster, Jr., of San Antonio, Tex., 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. 73, Orig. *CALIFORNIA v. NEVADA*. State of Nevada's answer to amended complaint and its counterclaim and State of California's reply to the counterclaim are referred to the Special Master. [For earlier order herein, see, *e. g.*, 438 U. S. 913.]

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No. 76-808. *AMBACH, COMMISSIONER OF EDUCATION OF THE STATE OF NEW YORK, ET AL. v. NORWICK ET AL.* Appeal from D. C. S. D. N. Y. [Probable jurisdiction noted *sub nom. Nyquist v. Norwick*, 436 U. S. 902.] Motion of Washington Lawyers' Committee for Civil Rights Under Law et al. for leave to file a brief as *amici curiae* granted.

No. 77-648. *FEDERAL ENERGY REGULATORY COMMISSION v. PENNZOIL PRODUCING CO. ET AL.* C. A. 5th Cir. [Certiorari granted, 436 U. S. 955.] Motion of respondents for divided argument granted. MR. JUSTICE STEWART and MR. JUSTICE POWELL took no part in the consideration or decision of this motion.

No. 77-926. *CANNON v. UNIVERSITY OF CHICAGO ET AL.* C. A. 7th Cir. [Certiorari granted, 438 U. S. 914.] Motion of petitioner for additional time for oral argument denied.

No. 77-1119. *ORR v. ORR.* Ct. Civ. App. Ala. [Probable jurisdiction noted, 436 U. S. 924.] Motion of American Civil Liberties Union 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, 436 U. S. 903.] Motion of Claude Pepper et al. for leave to file a brief as *amici curiae* granted.

No. 77-1327. *LAKE COUNTRY ESTATES, INC., ET AL. v. TAHOE REGIONAL PLANNING AGENCY ET AL.* C. A. 9th Cir. [Certiorari granted, 436 U. S. 943.] Motion of respondents for divided argument granted. Alternative request for additional time for oral argument denied.

No. 77-1388. *MASSACHUSETTS v. WHITE.* Sup. Jud. Ct. Mass. [Certiorari granted, 436 U. S. 925.] Motion of Americans for Effective Law Enforcement, Inc., for leave to file a brief as *amicus curiae* granted.

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No. 77-1378. JAPAN LINE, LTD., ET AL. *v.* COUNTY OF LOS ANGELES ET AL. Sup. Ct. Cal. [Probable jurisdiction postponed, 436 U. S. 955.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* granted and 15 additional minutes allotted for that purpose. Appellees also allotted an additional 15 minutes for oral argument.

No. 77-1413. ARONSON *v.* QUICK POINT PENCIL CO. C. A. 8th Cir. [Certiorari granted, 436 U. S. 943.] Motions of Licensing Executives Society (U. S. A.), Inc., Patent, Trademark and Copyright Section of the State Bar of Texas, and American Patent Law Assn. for leave to file briefs as *amici curiae*, granted. Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* granted and 15 additional minutes allotted for that purpose. Respondent also allotted 15 additional minutes for oral argument.

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, 436 U. S. 955.] Motion of American Insurance Assn. et al. for leave to file a brief as *amici curiae* granted. Motion of petitioners to dispense with printing appendix granted.

No. 77-5992. ADDINGTON *v.* TEXAS. Sup. Ct. Tex. [Probable jurisdiction noted, 435 U. S. 967.] Motion of American Psychiatric Assn. for divided argument granted.

No. 78-5351. GREEN *v.* RALSTON, U. S. MAGISTRATE, ET AL.; and

No. 78-5368. VICK *v.* UNITED STATES. Motions for leave to file petitions for writs of mandamus denied.

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No. 78-5407. GREEN *v.* MISSOURI BOARD OF PROBATION AND PAROLE. Motion for leave to file petition for writ of habeas corpus denied.

*Probable Jurisdiction Noted*

No. 77-6673. BROWN *v.* TEXAS. Appeal from County Ct. at Law No. 2, El Paso County. Motion of appellant for leave to proceed *in forma pauperis* granted. Probable jurisdiction noted and case set for oral argument together with No. 77-1680, Michigan *v.* DeFillippo [certiorari granted, *ante*, p. 816].

*Certiorari Granted*

No. 77-983. WASHINGTON ET AL. *v.* WASHINGTON STATE COMMERCIAL PASSENGER FISHING VESSEL ASSN. ET AL.; and WASHINGTON ET AL. *v.* PUGET SOUND GILLNETTERS ASSN. ET AL. Sup. Ct. Wash. Certiorari granted and case set for oral argument with *Washington v. United States*, No. 78-119, and *Puget Sound Gillnetters Assn. v. United States District Court for the Western District of Washington*, No. 78-139, immediately *infra*. Reported below: 88 Wash. 2d 677, 565 P. 2d 1151 (first case); 89 Wash. 2d 276, 571 P. 2d 1373 (second case).

No. 78-119. WASHINGTON ET AL. *v.* UNITED STATES ET AL.; and

No. 78-139. PUGET SOUND GILLNETTERS ASSN. ET AL. *v.* UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF WASHINGTON (UNITED STATES ET AL., REAL PARTIES IN INTEREST). C. A. 9th Cir. Certiorari granted. Cases consolidated and a total of one hour allotted for oral argument. Cases set for oral argument with *Washington v. Washington State Commercial Passenger Fishing Vessel Assn.* and *Washington v. Puget Sound Gillnetters Assn.*, No. 77-983, immediately *supra*. Reported below: No. 78-119, 573 F. 2d 1118 and 1123; No. 78-139, 573 F. 2d 1123.

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*Certiorari Denied.* (See also Nos. 78-265, 78-278, and 78-5255, *supra*.)

No. 77-1649. *EARLY v. PALM BEACH NEWSPAPERS, INC., ET AL.* Dist. Ct. App. Fla., 4th Dist. *Certiorari denied.* Reported below: 334 So. 2d 50.

No. 77-1733. *CULLUM ELECTRIC & MECHANICAL, INC. v. MECHANICAL CONTRACTORS ASSOCIATION OF SOUTH CAROLINA.* C. A. 4th Cir. *Certiorari denied.* Reported below: 569 F. 2d 821.

No. 77-1788. *GOLDSTEIN v. COLLIN ET AL.* Sup. Ct. Ill. *Certiorari denied.*

No. 77-1842. *HAGAN ET AL. v. DOWNS;* and

No. 78-165. *DOWNS v. SAWTELLE ET AL.* C. A. 1st Cir. *Certiorari denied.* Reported below: 574 F. 2d 1.

No. 77-6876. *HAZEL v. UNITED STATES.* Ct. App. D. C. *Certiorari denied.*

No. 77-6977. *McKINNEY v. CALIFORNIA.* Ct. App. Cal., 3d App. Dist. *Certiorari denied.*

No. 78-83. *TIMKEN CO. v. ENVIRONMENTAL PROTECTION AGENCY ET AL.;* and

No. 78-84. *CLEVELAND ELECTRIC ILLUMINATING CO. ET AL. v. ENVIRONMENTAL PROTECTION AGENCY ET AL.* C. A. 6th Cir. *Certiorari denied.* Reported below: 572 F. 2d 1150.

No. 78-100. *FITZGIBBON v. UNITED STATES.* C. A. 10th Cir. *Certiorari denied.* Reported below: 576 F. 2d 279.

No. 78-110. *MOODY v. ALABAMA EX REL. PAYNE, COMMISSIONER OF INSURANCE, ET AL.* Sup. Ct. Ala. *Certiorari denied.* Reported below: 355 So. 2d 1116.

No. 78-121. *CURTIS ET AL. v. UNITED STATES.* C. A. 9th Cir. *Certiorari denied.* Reported below: 562 F. 2d 1153.

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No. 78-125. *ROBERTS v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 582 F. 2d 1283.

No. 78-134. *SEXTON v. UNITED STATES*. Ct. Cl. Certiorari denied. Reported below: 215 Ct. Cl. 1059, 578 F. 2d 1388.

No. 78-154. *ELECTRI-FLEX Co. v. NATIONAL LABOR RELATIONS BOARD*. C. A. 7th Cir. Certiorari denied. Reported below: 570 F. 2d 1327.

No. 78-163. *L. D. McFARLAND Co. v. NATIONAL LABOR RELATIONS BOARD*. C. A. 9th Cir. Certiorari denied. Reported below: 572 F. 2d 256.

No. 78-189. *COUNCIL FOR EMPLOYMENT AND ECONOMIC ENERGY USE v. FEDERAL COMMUNICATIONS COMMISSION ET AL.* C. A. 1st Cir. Certiorari denied. Reported below: 575 F. 2d 311.

No. 78-191. *FASSNACHT v. PENNSYLVANIA*. Super. Ct. Pa. Certiorari denied. Reported below: 246 Pa. Super. 42, 369 A. 2d 800.

No. 78-273. *DERBOFEN ET AL. v. T. L. JAMES & Co., INC.* Ct. App. La., 4th Cir. Certiorari denied. Reported below: 355 So. 2d 963.

No. 78-280. *SWIMLEY v. ILLINOIS*. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 57 Ill. App. 3d 116, 372 N. E. 2d 887.

No. 78-291. *LINDLEY, TAX COMMISSIONER OF OHIO v. AMERICAN MODULARS CORP.* Sup. Ct. Ohio. Certiorari denied. Reported below: 54 Ohio St. 2d 273, 376 N. E. 2d 575.

No. 78-298. *ALLEN v. ATLANTIC NATIONAL BANK ET AL.* Sup. Ct. Va. Certiorari denied.

No. 78-299. *FONTANA AVIATION, INC. v. BALDINELLI ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 575 F. 2d 1194.

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No. 78-300. GENERAL COUNCIL ON FINANCE AND ADMINISTRATION OF THE UNITED METHODIST CHURCH *v.* SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO (BARR ET AL., REAL PARTIES IN INTEREST). Super. Ct. Cal., County of San Diego. Certiorari denied.

No. 78-301. ROSENTHAL ET AL. *v.* BRADFORD TRUST CO. App. Div., Sup. Ct. N. Y., 1st Jud. Dept. Certiorari denied.

No. 78-304. ALARSHI *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 57 Ill. App. 3d 464, 373 N. E. 2d 516.

No. 78-312. SKIDMORE *v.* ILLINOIS. App. Ct. Ill., 3d Dist. Certiorari denied. Reported below: 56 Ill. App. 3d 862, 372 N. E. 2d 723.

No. 78-313. BOORAS ET AL. *v.* WAUKEGAN PORT DISTRICT. App. Ct. Ill., 2d Dist. Certiorari denied. Reported below: 55 Ill. App. 3d 790, 371 N. E. 2d 321.

No. 78-338. DOOLEY *v.* GEORGIA. Ct. App. Ga. Certiorari denied. Reported below: 145 Ga. App. 539, 244 S. E. 2d 55.

No. 78-345. MOATS ET AL. *v.* LANDRUM, SPECIAL ADMINISTRATRIX. C. A. 8th Cir. Certiorari denied. Reported below: 576 F. 2d 1320.

No. 78-350. UNION OIL COMPANY OF CALIFORNIA *v.* CANADIAN AMERICAN OIL CO. ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 577 F. 2d 468.

No. 78-416. GRIDER *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 582 F. 2d 1281.

No. 78-434. HANSEN *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 583 F. 2d 325.

No. 78-5010. GALLAWAY *v.* OHIO. Ct. App. Ohio, Wayne County. Certiorari denied.

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No. 78-5021. *GOLDSMITH v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 572 F. 2d 412.

No. 78-5065. *HURT v. LORTON COMPLEX ET AL.* C. A. D. C. Cir. Certiorari denied.

No. 78-5097. *JANKO ET AL. v. UNITED STATES*. C. A. 10th Cir. Certiorari denied. Reported below: 578 F. 2d 1332.

No. 78-5103. *GILBERT v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 573 F. 2d 346.

No. 78-5112. *CERASE v. UNITED STATES*. C. A. 10th Cir. Certiorari denied. Reported below: 576 F. 2d 292.

No. 78-5129. *NORRIS v. FLORIDA*. Dist. Ct. App. Fla., 3d Dist. Certiorari denied. Reported below: 352 So. 2d 875.

No. 77-5160. *SCHROEDER v. KILLORAN*. C. A. 7th Cir. Certiorari denied. Reported below: 577 F. 2d 745.

No. 78-5163. *SPEARS v. CALIFANO, SECRETARY OF HEALTH, EDUCATION, AND WELFARE*. C. A. 5th Cir. Certiorari denied. Reported below: 575 F. 2d 880.

No. 78-5172. *ARROYO-ANGULO v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 580 F. 2d 1137.

No. 78-5175. *BARKER v. OHIO*. Sup. Ct. Ohio. Certiorari denied. Reported below: 53 Ohio St. 2d 135, 372 N. E. 2d 1324.

No. 78-5201. *EPPERSON v. IOWA*. Sup. Ct. Iowa. Certiorari denied. Reported below: 264 N. W. 2d 753.

No. 78-5237. *WILSON v. JAGO, CORRECTIONAL SUPERINTENDENT*. C. A. 6th Cir. Certiorari denied.

No. 78-5241. *BONNER ET AL. v. WYRICK, WARDEN*. C. A. 8th Cir. Certiorari denied. Reported below: 563 F. 2d 1293.

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No. 78-5243. *WOODSUM v. CITY OF NEW ORLEANS ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 575 F. 2d 880.

No. 78-5249. *GATES v. PENNSYLVANIA.* Sup. Ct. Pa. Certiorari denied. Reported below: 479 Pa. 461, 388 A. 2d 747.

No. 78-5256. *FOURNIER v. LEFEVRE, CORRECTIONAL SUPERINTENDENT.* C. A. 2d Cir. Certiorari denied.

No. 78-5265. *CARTER v. NEW YORK.* App. Div., Sup. Ct. N. Y., 1st Jud. Dept. Certiorari denied. Reported below: 63 App. Div. 2d 866, 404 N. Y. S. 2d 933.

No. 78-5278. *BOYD v. MABRY, CORRECTION COMMISSIONER, ET AL.* C. A. 8th Cir. Certiorari denied. Reported below: 578 F. 2d 1384.

No. 78-5282. *YOUNG v. CALIFORNIA.* Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 78-5291. *McBREEN v. OHIO.* Sup. Ct. Ohio. Certiorari denied. Reported below: 54 Ohio St. 2d 315, 376 N. E. 2d 593.

No. 78-5299. *LIPSCOMB v. KALOSIS ET AL.* C. A. 6th Cir. Certiorari denied.

No. 78-5304. *LEDESMA v. UNITED STATES.* C. A. 5th Cir. Certiorari denied.

No. 78-5310. *MAGOURK v. UNITED STATES.* C. A. 5th Cir. Certiorari denied. Reported below: 578 F. 2d 870.

No. 78-5323. *CRUZ-OJEDA v. UNITED STATES.* C. A. 5th Cir. Certiorari denied. Reported below: 577 F. 2d 960.

No. 78-5334. *WHETZEL v. UNITED STATES.* C. A. 4th Cir. Certiorari denied. Reported below: 577 F. 2d 738.

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No. 78-5337. SNEAD *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 582 F. 2d 1278.

No. 78-5338. CAPPS ET UX. *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied.

No. 78-5345. McMILLER *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied.

No. 78-5347. LIPSCOMB *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 78-5352. BROWN *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 582 F. 2d 197.

No. 78-5363. JUAREZ ET AL. *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 573 F. 2d 267.

No. 78-5364. CARSON *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 582 F. 2d 1269.

No. 78-5366. PULIDO-SANTOYO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 580 F. 2d 352.

No. 78-5411. LONG *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 578 F. 2d 579.

No. 77-1681. LAVALLEE, CORRECTIONAL SUPERINTENDENT *v.* SUGGS. C. A. 2d Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 570 F. 2d 1092.

No. 77-1865. WARD, CORRECTIONAL COMMISSIONER, ET AL. *v.* BULGER. C. A. 2d Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 575 F. 2d 407.

No. 78-287. NEW YORK *v.* BLANKS. App. Div., Sup. Ct. N. Y., 2d Jud. Dept. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 62 App. Div. 2d 1021, 403 N. Y. S. 2d 553.

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No. 77-1687. *DOST v. UNITED STATES*; and

No. 78-5007. *KILFOYLE v. UNITED STATES*. C. A. 10th Cir. Certiorari denied. MR. JUSTICE BRENNAN, MR. JUSTICE STEWART, and MR. JUSTICE MARSHALL would grant the petitions and reverse the convictions. Reported below: 575 F. 2d 1303.

No. 77-1736. *SMITH, PRESIDENT OF THE VILLAGE OF SKOKIE, ILLINOIS, ET AL. v. COLLIN ET AL.* C. A. 7th Cir. Certiorari denied. Reported below: 578 F. 2d 1197.

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

It is a matter of regret for me that the Court denies certiorari in this case, for this is litigation that rests upon critical, disturbing, and emotional facts, and the issues cut down to the very heart of the First Amendment.

The village of Skokie, Ill., a suburb of Chicago, in 1974 had a population of approximately 70,000 persons. A majority were Jewish; of the Jewish population a substantial number were survivors of World War II persecution. In March 1977, respondents Collin and the National Socialist Party of America, which Collin described as a "Nazi organization," publicly announced plans to hold an assembly in front of the Skokie Village Hall. On May 2, the village enacted three ordinances. The first established a permit system for parades and public assemblies and required applicants to post public liability and property damage insurance. The second prohibited the dissemination of material that incited racial or religious hatred with intent so to incite. The third prohibited public demonstrations by members of political parties while wearing military-style uniforms.

On June 22, respondent Collin applied for a permit under the first ordinance. His application stated that a public assembly would take place on July 4, would consist of persons demonstrating in front of the Village Hall, would last about a

half hour, and would not disrupt traffic. It also stated that the participants would wear uniforms with swastikas and would carry placards proclaiming free speech for white persons, but would not distribute handbills or literature. The permit was denied.

Skokie's Village Hall stood on a street that was zoned commercial. There were residential areas, however, adjoining to the North, South, and West. The front of the Village Hall was visible from dwellings in those areas.

Upon the rejection of the permit application, respondents filed a complaint in the United States District Court for the Northern District of Illinois against the president of the village of Skokie, its manager, its corporation counsel, and the village itself. Respondents asked that the ordinances be declared void and their enforcement enjoined. The District Court, after receiving evidence, ruled that the ordinances were unconstitutional on their face, and granted the requested declaratory and injunctive relief. It filed a comprehensive opinion. 447 F. Supp. 676 (1978). The United States Court of Appeals for the Seventh Circuit, with one judge dissenting in part, affirmed. 578 F. 2d 1197 (1978).

A permit then was issued to respondents for a demonstration on the afternoon of June 25, 1978, in front of the Village Hall. Respondents, however, shifted their assembly from Skokie to Chicago where activities took place on June 24 and July 9.

Other aspects of the controversy already have reached this Court. In April 1977, the Circuit Court of Cook County, Ill., entered an injunction against respondents prohibiting them, within the village, from parading in the National Socialist uniform, displaying the swastika, or displaying materials that incite or promote hatred against persons of the Jewish or any other faith. The Illinois Appellate Court denied an application for stay pending appeal. The Supreme Court of Illinois, in turn, denied a stay and also denied leave for an expedited appeal. Relief was sought here. This Court, *per curiam* but

by a divided vote, reversed the denial of a stay and remanded the case for further proceedings. *National Socialist Party v. Skokie*, 432 U. S. 43 (1977).

On remand, the Illinois Appellate Court reviewed and modified the injunction the Circuit Court had entered and this time upheld only that portion thereof that prevented the display of swastikas "in the course of a demonstration, march, or parade." *Village of Skokie v. National Socialist Party*, 51 Ill. App. 3d 279, 295, 366 N. E. 2d 347, 359 (1977). The Supreme Court of Illinois denied an application for stay pending expedited review. MR. JUSTICE STEVENS, as Circuit Justice, denied a stay of the injunction as so modified. 434 U. S. 1327 (1977). The Illinois Supreme Court ultimately reversed the remaining injunctive feature, "albeit reluctantly," and with one justice dissenting. 69 Ill. 2d 605, 619, 373 N. E. 2d 21, 26 (1978).

Thereafter, the village and its codefendants in the present federal litigation filed an application to stay the Seventh Circuit's mandate or, in the alternative, to stay enforcement of the injunction entered by the District Court. This Court, with two Justices dissenting, denied the application. 436 U. S. 953 (1978).

These facts and this chronology demonstrate, I believe, the pervading sensitivity of the litigation. On the one hand, we have precious First Amendment rights vigorously asserted and an obvious concern that, if those asserted rights are not recognized, the precedent of a "hard" case might offer a justification for repression in the future. On the other hand, we are presented with evidence of a potentially explosive and dangerous situation, enflamed by unforgettable recollections of traumatic experiences in the second world conflict. Finally, Judge Sprecher of the Seventh Circuit observed that "each court dealing with these precise problems (the Illinois Supreme Court, the District Court and this Court) feels the need to apologize for its result." 578 F. 2d, at 1211.

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Furthermore, in *Beauharnais v. Illinois*, 343 U. S. 250 (1952), this Court faced up to an Illinois statute that made it a crime to exhibit in any public place a publication that portrayed "depravity, criminality, unchastity, or lack of virtue of a class of citizens, of any race, color, creed or religion," thereby exposing such citizens "to contempt, derision, or obloquy." The Court, by a divided vote, held that, as construed and applied, the statute did not violate the liberty of speech guaranteed as against the States by the Due Process Clause of the Fourteenth Amendment.

I stated in dissent when the application for stay in the present litigation was denied, 436 U. S., at 953, that I feel the Seventh Circuit's decision is in some tension with *Beauharnais*. That case has not been overruled or formally limited in any way.

I therefore would grant certiorari in order to resolve any possible conflict that may exist between the ruling of the Seventh Circuit here and *Beauharnais*. I also feel that the present case affords the Court an opportunity to consider whether, in the context of the facts that this record appears to present, there is no limit whatsoever to the exercise of free speech. There indeed may be no such limit, but when citizens assert, not casually but with deep conviction, that the proposed demonstration is scheduled at a place and in a manner that is taunting and overwhelmingly offensive to the citizens of that place, that assertion, uncomfortable though it may be for judges, deserves to be examined. It just might fall into the same category as one's "right" to cry "fire" in a crowded theater, for "the character of every act depends upon the circumstances in which it is done." *Schenck v. United States*, 249 U. S. 47, 52 (1919).

No. 78-289. FEDERAL DEPOSIT INSURANCE CORP. v. FIRST EMPIRE BANK-NEW YORK ET AL. C. A. 9th Cir. Certiorari denied. MR. JUSTICE BLACKMUN would grant certiorari. Reported below: 572 F. 2d 1361.

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No. 77-7009. *HOY v. FLORIDA*. Sup. Ct. Fla. Certiorari denied. Reported below: 353 So. 2d 826.

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. 78-5213. *RODRIGUEZ v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. MR. JUSTICE BRENNAN, MR. JUSTICE WHITE, and MR. JUSTICE MARSHALL would grant certiorari. Reported below: 577 F. 2d 747.

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*Dismissal Under Rule 60*

No. 78-5442. *PROFFITT v. FLORIDA*. Sup. Ct. Fla. Certiorari dismissed under this Court's Rule 60. Reported below: 360 So. 2d 771.

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*Dismissal Under Rule 60*

No. 78-5228. *CALZADA v. UNITED STATES*. C. A. 7th Cir. Certiorari dismissed under this Court's Rule 60. Reported below: 579 F. 2d 1358.

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*Affirmed on Appeal*

No. 78-64. *NEW YORK v. UNITED STATES*. Affirmed on appeal from C. A. 2d Cir. MR. JUSTICE REHNQUIST would note probable jurisdiction and set case for oral argument. Reported below: 574 F. 2d 128.

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*Appeals Dismissed*

No. 78-55. *BROADWAY BOOKS, INC. v. VIRGINIA ET AL.* Appeal from Cir. Ct., City of Richmond, dismissed for want of substantial federal question. MR. JUSTICE STEWART would dismiss for want of a properly presented federal question. MR. JUSTICE BRENNAN and MR. JUSTICE MARSHALL would reverse the judgment.

No. 78-259. *BOSTON EDISON CO. v. DEPARTMENT OF PUBLIC UTILITIES OF MASSACHUSETTS ET AL.* Appeal from Sup. Jud. Ct. Mass. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied. Reported below: 375 Mass. 1, 375 N. E. 2d 305.

No. 78-5342. *JENKINS v. EVENING STAR NEWSPAPER CO. ET AL.* Appeal from C. A. D. C. Cir. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied.

No. 78-5380. *HEMMERLE ET UX. v. FIRST FEDERAL SAVINGS & LOAN ASSOCIATION OF DESOTO COUNTY.* Appeal from Dist. Ct. App. Fla., 2d Dist., dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied. Reported below: 358 So. 2d 1195.

No. 78-293. *AVERY FEDERAL SAVINGS & LOAN ASSN. ET AL. v. MEYERS ET AL., COMMISSIONERS, SINKING FUND OF THE CITY OF LOUISVILLE.* Appeal from Ct. App. Ky. dismissed for want of final judgment. (See 28 U. S. C. § 1257.) Reported below: 567 S. W. 2d 320.

No. 78-372. *MOSKOWITZ ET AL. v. HYNES, DEPUTY ATTORNEY GENERAL OF NEW YORK.* Appeal from Ct. App. N. Y. dismissed for want of substantial federal question. Reported below: 44 N. Y. 2d 383, 377 N. E. 2d 446.

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No. 78-359. *HORD ET AL. v. ASKEW, GOVERNOR OF FLORIDA, ET AL.* Appeal from Sup. Ct. Fla. dismissed for want of substantial federal question. Reported below: 359 So. 2d 455.

No. 78-376. *PABST v. COMMISSIONER OF TAXES OF VERMONT.* Appeal from Sup. Ct. Vt. dismissed for want of substantial federal question. Reported below: 136 Vt. 126, 388 A. 2d 1181.

No. 78-377. *SCUDDER v. FLORIDA POWER CORP. ET AL.* Appeal from Dist. Ct. App. Fla., 2d Dist., dismissed for want of substantial federal question. Reported below: 350 So. 2d 106.

No. 78-386. *CITY OF ROCHESTER ET AL. v. WALDERT.* Appeal from Ct. App. N. Y. dismissed for want of substantial federal question. Reported below: 44 N. Y. 2d 831, 378 N. E. 2d 115.

No. 78-389. *KAYE ET AL. v. WHALEN, COMMISSIONER OF HEALTH OF NEW YORK, ET AL.* Appeal from Ct. App. N. Y. dismissed for want of substantial federal question. Reported below: 44 N. Y. 2d 754, 376 N. E. 2d 1327.

*Certiorari Granted—Vacated and Remanded.* (See also No. 78-80, *ante*, p. 9.)

No. 78-40. *WESTERN OIL & GAS ASSN. ET AL. v. ALASKA ET AL.* C. A. D. C. Cir. Certiorari granted. Part II-C of decision below is vacated and case is remanded to the United States District Court for the District of Columbia for dismissal of paragraph 37 (j) of the complaint. Reported below: 188 U. S. App. D. C. 202, 580 F. 2d 465.

No. 78-327. *CALIFORNIA v. JESSE W., A MINOR.* Sup. Ct. Cal. Motion of respondent for leave to proceed *in forma pauperis* and certiorari granted. Judgment vacated and case remanded for further consideration in light of *Swisher v. Brady*, 438 U. S. 204 (1978). Reported below: 20 Cal. 3d 893, 576 P. 2d 963.

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*Miscellaneous Orders*

No. A-285. RUTH *v.* OKLAHOMA. Ct. Crim. App. Okla. Application for bail, presented to MR. JUSTICE MARSHALL, and by him referred to the Court, denied.

No. A-305. INTERNATIONAL TELEPHONE & TELEGRAPH CORP. *v.* SECURITIES AND EXCHANGE COMMISSION. C. A. D. C. Cir. Application for stay, presented to THE CHIEF JUSTICE, and by him referred to the Court, denied.

No. A-354 (78-657). KIMBLE ET AL. *v.* SWACKHAMER, SECRETARY OF STATE OF NEVADA, ET AL. Sup. Ct. Nev. Application for injunction, presented to MR. JUSTICE MARSHALL, and by him referred to the Court, denied.

No. 77-1248. ILLINOIS STATE BOARD OF ELECTIONS *v.* SOCIALIST WORKERS PARTY ET AL. C. A. 7th Cir. [Probable jurisdiction noted, 435 U. S. 994.] Motion of Socialist Workers Party for divided argument 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, 436 U. S. 916.] Motion of petitioners for divided argument granted.

No. 77-1493. GLADSTONE, REALTORS ET AL. *v.* VILLAGE OF BELLWOOD ET AL. C. A. 7th Cir. [Certiorari granted, 436 U. S. 956.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* granted and 15 additional minutes allotted for that purpose. Petitioners also allotted 15 additional minutes for oral argument.

No. 77-1547. DOUGLAS OIL COMPANY OF CALIFORNIA ET AL. *v.* PETROL STOPS NORTHWEST ET AL. C. A. 9th Cir. [Certiorari granted, 437 U. S. 902.] Motion of the Solicitor General for divided argument granted.

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No. 77-1578. BROADCAST MUSIC, INC., ET AL. v. COLUMBIA BROADCASTING SYSTEM, INC., ET AL.; and

No. 77-1583. AMERICAN SOCIETY OF COMPOSERS, AUTHORS & PUBLISHERS ET AL. v. COLUMBIA BROADCASTING SYSTEM, INC., ET AL. C. A. 2d Cir. [Certiorari granted, *ante*, p. 817.] Motion of Columbia Broadcasting System, Inc., for additional time for oral argument granted and 15 additional minutes allotted for that purpose. Petitioners also allotted 15 additional minutes for oral argument.

No. 77-6217. STACY v. FLORIDA, 436 U. S. 924. Appellee is invited to file a response to petition for rehearing within 30 days.

No. 77-6431. CABAN v. MOHAMMED ET UX. Ct. App. N. Y. [Probable jurisdiction noted, 436 U. S. 903.] Order heretofore entered on October 10, 1978 [*ante*, p. 891], is vacated and the *amicus curiae* brief of the Legal Aid Society of New York City is ordered filed.

No. 78-201. GREENHOLTZ, CHAIRMAN, BOARD OF PAROLE OF NEBRASKA, ET AL. v. INMATES OF THE NEBRASKA PENAL AND CORRECTIONAL COMPLEX ET AL. C. A. 8th Cir. [Certiorari granted, *ante*, p. 817.] Motion of respondents for appointment of counsel granted, and it is ordered that Brian K. Ridenour, Esquire, of Lincoln, Neb., be appointed to serve as counsel in this case.

No. 78-428. GAETANO ET AL. v. UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT (SILBERT, UNITED STATES ATTORNEY, REAL PARTY IN INTEREST). Motion for leave to file petition for writ of mandamus denied.

No. 78-5184. SELLARS v. PROCUNIER, MEN'S COLONY SUPERINTENDENT, ET AL. Motion for leave to file petition for writ of mandamus and/or prohibition denied.

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*Probable Jurisdiction Noted*

No. 78-6. MOORE ET AL. v. SIMS ET UX. D. C. S. D. Tex. Probable jurisdiction noted. Reported below: 438 F. Supp. 1179.

No. 78-329. BELLOTTI, ATTORNEY GENERAL OF MASSACHUSETTS, ET AL. v. BAIRD ET AL.; and

No. 78-330. HUNERWADEL v. BAIRD ET AL. Appeals from D. C. Mass. Probable jurisdiction noted, cases consolidated, and a total of one hour allotted for oral argument. Reported below: 450 F. Supp. 997.

No. 78-357. WILLIAMS ET AL. v. BROWN ET AL. Appeal from C. A. 5th Cir. Probable jurisdiction noted and case set for oral argument with No. 77-1844, *City of Mobile v. Bolden* [probable jurisdiction noted, *ante*, p. 815]. Reported below: 575 F. 2d 298.

*Certiorari Granted*

No. 78-58. BROWN v. FELSEN. C. A. 10th Cir. Certiorari granted.

No. 78-90. BURCH ET AL. v. LOUISIANA. Sup. Ct. La. Certiorari granted. Reported below: 360 So. 2d 831.

No. 78-275. OSCAR MAYER & Co. ET AL. v. EVANS. C. A. 8th Cir. Certiorari granted. Reported below: 580 F. 2d 298.

No. 78-334. FARE, ACTING CHIEF PROBATION OFFICER v. MICHAEL C. Sup. Ct. Cal. Motion of respondent for leave to proceed *in forma pauperis* and certiorari granted. Reported below: 21 Cal. 3d 471, 579 P. 2d 7.

No. 78-5072. DAVIS v. PASSMAN. C. A. 5th Cir. Motion of petitioner for leave to proceed *in forma pauperis* and certiorari granted. Reported below: 571 F. 2d 793.

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*Certiorari Denied.* (See also Nos. 78-259, 78-5342, and 78-5380, *supra*, and No. 78-80, *ante*, p. 9.)

No. 77-1735. THOMAS *v.* NORTH CAROLINA. Ct. App. N. C. Certiorari denied. Reported below: 34 N. C. App. 594, 239 S. E. 2d 288.

No. 77-1767. RISS INTERNATIONAL CORP. *v.* BAKER ET AL. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 53 Ill. App. 3d 1101, 373 N. E. 2d 120.

No. 77-1818. RAMAPURAM *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 577 F. 2d 738.

No. 77-1832. SKINNER *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied.

No. 77-1846. RANQUIST *v.* DIRECTOR, DEPARTMENT OF REGISTRATION AND EDUCATION OF ILLINOIS, ET AL. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 55 Ill. App. 3d 545, 370 N. E. 2d 1198.

No. 77-1867. CRANFORD *v.* MARYLAND. Ct. App. Md. Certiorari denied. Reported below: 282 Md. 255, 383 A. 2d 687.

No. 77-6798. EVANS *v.* BENSON, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied.

No. 77-6879. GENTRY *v.* KENTUCKY. Sup. Ct. Ky. Certiorari denied. Reported below: 563 S. W. 2d 10.

No. 77-6889. OAXACA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 569 F. 2d 518.

No. 77-6905. MITCHELL *v.* LOUISIANA. Sup. Ct. La. Certiorari denied. Reported below: 356 So. 2d 974.

No. 77-6952. WASHINGTON *v.* CALIFORNIA. Ct. App. Cal., 4th App. Dist. Certiorari denied.

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- No. 77-6989. *WILSON v. OHIO*; and  
No. 78-5023. *WILSON v. OHIO*. Ct. App. Ohio, Hamilton County. Certiorari denied. Reported below: 55 Ohio App. 2d 64, 379 N. E. 2d 273.
- No. 78-12. *CONIGLIO v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 580 F. 2d 1045.
- No. 78-96. *LODGE 1858, AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, ET AL. v. FROSCH, ADMINISTRATOR, NATIONAL AERONAUTICS AND SPACE ADMINISTRATION, ET AL.* C. A. D. C. Cir. Certiorari denied. Reported below: 188 U. S. App. D. C. 233, 580 F. 2d 496.
- No. 78-107. *WHITNEY v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 578 F. 2d 1384.
- No. 78-114. *TSOUMAS, DIRECTOR, DEPARTMENT OF FINANCIAL INSTITUTIONS OF ILLINOIS v. GLEN ELLYN SAVINGS & LOAN ASSN. ET AL.* Sup. Ct. Ill. Certiorari denied. Reported below: 71 Ill. 2d 493, 377 N. E. 2d 1.
- No. 78-150. *GONZALES ET AL. v. FAIRFAX-BREWSTER SCHOOL, INC., ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 569 F. 2d 1294.
- No. 78-158. *BESBRIS v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 576 F. 2d 1350.
- No. 78-172. *JIN WON PARK ET AL. v. IMMIGRATION AND NATURALIZATION SERVICE*. C. A. 9th Cir. Certiorari denied. Reported below: 577 F. 2d 751.
- No. 78-176. *HALL v. DIMARZO ET AL.* C. A. 1st Cir. Certiorari denied. Reported below: 575 F. 2d 15.
- No. 78-187. *DAVID ET VIR v. IMMIGRATION AND NATURALIZATION SERVICE*. C. A. 3d Cir. Certiorari denied. Reported below: 578 F. 2d 1373.

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No. 78-193. *CAPANEGRO v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 576 F. 2d 973.

No. 78-203. *SNAPP v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 577 F. 2d 744.

No. 78-205. *GIFT WRAPPINGS & TYINGS ASSN. v. UNITED STATES ET AL.* C. A. D. C. Cir. Certiorari denied. Reported below: 188 U. S. App. D. C. 200, 578 F. 2d 442.

No. 78-211. *INTERNATIONAL ORGANIZATION OF MASTERS, MATES & PILOTS v. NEWPORT TANKERS CORP. ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 575 F. 2d 477.

No. 78-215. *STEELE v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 576 F. 2d 111.

No. 78-218. *CARBON FUEL CO. v. ANDRUS, SECRETARY OF THE INTERIOR, ET AL.* C. A. D. C. Cir. Certiorari denied. Reported below: 189 U. S. App. D. C. 110, 581 F. 2d 888.

No. 78-230. *KALAV v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 577 F. 2d 752.

No. 78-232. *BUFALINO v. UNITED STATES*; and

No. 78-5218. *SPARBER v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 576 F. 2d 446.

No. 78-245. *LEHIGH LUMBER Co., INC. v. NATIONAL LABOR RELATIONS BOARD*. C. A. 3d Cir. Certiorari denied. Reported below: 577 F. 2d 727.

No. 78-272. *SCRUGGS v. KENTUCKY*. Sup. Ct. Ky. Certiorari denied. Reported below: 566 S. W. 2d 405.

No. 78-274. *WILCHER v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 578 F. 2d 1382.

No. 78-307. *BROWN v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 578 F. 2d 1280.

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No. 78-319. *AVIS RENT A CAR SYSTEM, INC., ET AL. v. CITY OF CHICAGO*; and

No. 78-320. *HERTZ COMMERCIAL LEASING CORP. v. CITY OF CHICAGO*. Sup. Ct. Ill. Certiorari denied. Reported below: 71 Ill. 2d 333, 375 N. E. 2d 1285.

No. 78-337. *SHAPIRO v. TOWNSHIP OF EAST WINDSOR ET AL.* Sup. Ct. N. J. Certiorari denied.

No. 78-346. *OXLEY ET AL. v. LITTLE SWITZERLAND BREWING CO. ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 573 F. 2d 1306.

No. 78-348. *BURNETT v. ARKANSAS*. Sup. Ct. Ark. Certiorari denied. Reported below: 263 Ark. 225, 564 S. W. 2d 211.

No. 78-355. *SAUDCO LIMITED ET AL. v. TWENTIETH CENTURY-FOX FILM CORP. ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 575 F. 2d 299.

No. 78-358. *FARRELL LINES, INC. v. CANIZZO ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 579 F. 2d 682.

No. 78-374. *STILL, TRUSTEE IN BANKRUPTCY, ET AL. v. CHATTANOOGA MEMORIAL PARK*. C. A. 6th Cir. Certiorari denied. Reported below: 574 F. 2d 349.

No. 78-375. *HADDAD v. CROSBY CORP. ET AL.* C. A. D. C. Cir. Certiorari denied. Reported below: 188 U. S. App. D. C. 200, 578 F. 2d 442.

No. 78-380. *TUZMAN v. GEORGIA*. Ct. App. Ga. Certiorari denied. Reported below: 145 Ga. App. 761, 244 S. E. 2d 882,

No. 78-383. *FENNELL v. BUTLER ET AL.* C. A. 8th Cir. Certiorari denied. Reported below: 578 F. 2d 1384.

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No. 78-392. *TRACY ET AL. v. RUTCOSKY ET UX.* Sup. Ct. Wash. Certiorari denied. Reported below: 89 Wash. 2d 606, 574 P. 2d 382.

No. 78-400. *HAHN-DIGUISEPPE v. NEW YORK.* Ct. App. N. Y. Certiorari denied. Reported below: 45 N. Y. 2d 45, 379 N. E. 2d 191.

No. 78-404. *FIRST PENNSYLVANIA BANK N. A. v. MONSEN ET AL.* C. A. 3d Cir. Certiorari denied. Reported below: 579 F. 2d 793.

No. 78-405. *NOGALES SERVICE CENTER v. ATLANTIC RICHFIELD Co.* Ct. App. Ariz. Certiorari denied. Reported below: 119 Ariz. 552, 582 P. 2d 642.

No. 78-415. *MAGNUSON v. BURLINGTON NORTHERN, INC., ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 576 F. 2d 1367.

No. 78-426. *GARZIA ET UX. v. NEW YORK.* Ct. App. N. Y. Certiorari denied. Reported below: 44 N. Y. 2d 867, 378 N. E. 2d 1045.

No. 78-427. *GAETANO ET AL. v. SILBERT, UNITED STATES ATTORNEY.* C. A. D. C. Cir. Certiorari denied.

No. 78-452. *WOODWARD STATE HOSPITAL-SCHOOL ET AL. v. AUXIER.* Sup. Ct. Iowa. Certiorari denied. Reported below: 266 N. W. 2d 139.

No. 78-473. *STANDARD v. COWAN, PENITENTIARY SUPERINTENDENT.* C. A. 6th Cir. Certiorari denied. Reported below: 582 F. 2d 1280.

No. 78-508. *IZSAK v. UNITED STATES.* C. A. 9th Cir. Certiorari denied. Reported below: 582 F. 2d 1290.

No. 78-543. *FRAZIER v. UNITED STATES.* C. A. 6th Cir. Certiorari denied. Reported below: 580 F. 2d 229.

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No. 78-550. *FREZZELL v. UNITED STATES*. Ct. App. D. C. Reported below: 380 A. 2d 1382.

No. 78-5004. *MANGAN v. UNITED STATES*; and

No. 78-5025. *MANGAN v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 575 F. 2d 32.

No. 78-5035. *JOHNSON v. OHIO*. Ct. App. Ohio, Greene County. Certiorari denied.

No. 78-5058. *WALKER v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 575 F. 2d 209.

No. 78-5062. *PIPPEN v. UNITED STATES*;

No. 78-5079. *RICKS v. UNITED STATES*; and

No. 78-5080. *NICHOLS v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 578 F. 2d 1382.

No. 78-5070. *RAMIREZ-VENEGAS v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 577 F. 2d 753.

No. 78-5078. *JOHNSTON v. UNITED STATES*. C. A. 10th Cir. Certiorari denied. Reported below: 578 F. 2d 1352.

No. 78-5099. *DYE v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 577 F. 2d 737.

No. 78-5100. *SMITH v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 574 F. 2d 308.

No. 77-5104. *TWO BULLS v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 577 F. 2d 63.

No. 78-5110. *CRISAFI v. UNITED STATES*. Ct. App. D. C. Certiorari denied. Reported below: 383 A. 2d 1.

No. 78-5111. *POOLE v. UNITED STATES*. C. A. 6th Cir. Certiorari denied.

No. 78-5114. *CLARK v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 577 F. 2d 752.

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No. 78-5115. *GARRISON v. TENNESSEE*. C. A. 6th Cir. Certiorari denied.

No. 78-5123. *WEST v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 578 F. 2d 1372.

No. 78-5126. *CHRISCO v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 578 F. 2d 1383.

No. 78-5150. *THOMAS v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 578 F. 2d 1382.

No. 78-5162. *HOOKEER v. KLEIN, U. S. MARSHAL*. C. A. 9th Cir. Certiorari denied. Reported below: 573 F. 2d 1360.

No. 78-5182. *MUNFORD v. UNITED STATES*. C. A. 3d Cir. Certiorari denied.

No. 78-5188. *BROWN v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 582 F. 2d 1280.

No. 78-5210. *HARGETT v. UNITED STATES*. Ct. App. D. C. Certiorari denied. Reported below: 380 A. 2d 1005.

No. 78-5226. *JACOBSON v. UNITED STATES*. C. A. 10th Cir. Certiorari denied. Reported below: 578 F. 2d 863.

No. 78-5230. *McCOY v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 582 F. 2d 1281.

No. 78-5233. *ABOUZAHAR v. UNITED STATES*. C. A. 9th Cir. Certiorari denied.

No. 78-5235. *LANGSTON v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 576 F. 2d 1138.

No. 78-5248. *PARRILLA v. GOVERNMENT OF THE VIRGIN ISLANDS*. C. A. 3d Cir. Certiorari denied. Reported below: 577 F. 2d 726.

No. 78-5253. *GRASER v. GOLDBERG ET AL.* Dist. Ct. App. Fla., 1st Dist. Certiorari denied.

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No. 78-5264. *COLYER v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 571 F. 2d 941 and 576 F. 2d 1249.

No. 78-5272. *TAYLOR v. LOUISIANA*. Sup. Ct. La. Certiorari denied. Reported below: 358 So. 2d 1284.

No. 78-5285. *SOLTERO v. CALIFORNIA*. Ct. App. Cal., 2d App. Dist. Certiorari denied. Reported below: 81 Cal. App. 3d 423, 146 Cal. Rptr. 457.

No. 78-5297. *WOLFRATH v. LAVALLEE, CORRECTIONAL SUPERINTENDENT*. C. A. 2d Cir. Certiorari denied. Reported below: 576 F. 2d 965.

No. 78-5298. *MAYNOR v. SUTTONS*. C. A. 4th Cir. Certiorari denied. Reported below: 577 F. 2d 735.

No. 78-5303. *CAMPELLONE v. ADULT PROBATION DEPARTMENT OF PIMA COUNTY, ARIZONA*. C. A. 9th Cir. Certiorari denied. Reported below: 573 F. 2d 1315.

No. 78-5314. *DUNAGAN v. GEORGIA*. Ct. App. Ga. Certiorari denied. Reported below: 145 Ga. App. 68, 243 S. E. 2d 254.

No. 78-5316. *RAY v. PROXMIRE ET AL.* C. A. D. C. Cir. Certiorari denied. Reported below: 189 U. S. App. D. C. 220, 581 F. 2d 998.

No. 78-5318. *MITCHELL v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 579 F. 2d 531.

No. 78-5322. *LINGHAM v. COMMISSIONER OF INTERNAL REVENUE*. C. A. 2d Cir. Certiorari denied.

No. 78-5332. *VALDIVIA v. CALIFORNIA*. App. Dept., Super. Ct. Cal., County of Los Angeles. Certiorari denied.

No. 78-5339. *BREEST v. HELGEMOE, WARDEN*. C. A. 1st Cir. Certiorari denied. Reported below: 579 F. 2d 95.

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No. 78-5340. *ROSENBERG 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: 62 App. Div. 2d 1065, 406 N. Y. S. 2d 492.

No. 78-5344. *DALE v. CALIFORNIA*. Ct. App. Cal., 2d App. Dist. Certiorari denied. Reported below: 78 Cal. App. 3d 722, 144 Cal. Rptr. 338.

No. 78-5346. *ROMAN v. PENNSYLVANIA*. Sup. Ct. Pa. Certiorari denied. Reported below: 478 Pa. 619, 387 A. 2d 661.

No. 78-5348. *STARKEY v. VERMILLION ET AL.* C. A. 8th Cir. Certiorari denied.

No. 78-5349. *FOSTER v. CALIFORNIA*. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 78-5354. *EDWARDS v. SUPERIOR COURT OF POLK COUNTY, IOWA*. Sup. Ct. Iowa. Certiorari denied.

No. 78-5361. *JOHNSON v. HOWARD, CORRECTIONAL SUPERINTENDENT*. C. A. 3d Cir. Certiorari denied.

No. 78-5362. *CAMPBELL v. CALIFORNIA*. Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 78-5367. *BEASLEY v. JOHN BUIST CHESTER HOSPITAL SCHOOL OF VOCATIONAL NURSING*. C. A. 5th Cir. Certiorari denied. Reported below: 575 F. 2d 879.

No. 78-5376. *BARBER v. KIMBRELL'S, INC., ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 577 F. 2d 216.

No. 78-5378. *POSTON ET AL. v. HIGH POINT BANK & TRUST Co.* C. A. 4th Cir. Certiorari denied. Reported below: 580 F. 2d 1048.

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No. 78-5379. *LIPPITT v. BOARD OF EDUCATION, SOUTH EUCLID-LYNDHURST CITY SCHOOL DISTRICT*. Ct. App. Ohio, Cuyahoga County. Certiorari denied.

No. 78-5385. *LAM LEK CHONG v. NEW YORK*. Ct. App. N. Y. Certiorari denied. Reported below: 45 N. Y. 2d 64, 379 N. E. 2d 200.

No. 78-5390. *WATSON v. JAGO, CORRECTIONAL SUPERINTENDENT*. C. A. 6th Cir. Certiorari denied. Reported below: 578 F. 2d 1382.

No. 78-5397. *EMERY v. UNITED STATES DEPARTMENT OF JUSTICE*. C. A. D. C. Cir. Certiorari denied.

No. 78-5399. *LORD v. UNITED STATES*. C. A. 2d Cir. Certiorari denied.

No. 78-5404. *BALITIAN v. KUTA ET AL.* C. A. D. C. Cir. Certiorari denied.

No. 78-5406. *RICH, AKA LUNCEFORD v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 580 F. 2d 929.

No. 78-5423. *BUSTILLO v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 573 F. 2d 368.

No. 78-5438. *BLANKENSHIP v. OVERBERG, CORRECTIONAL SUPERINTENDENT*. C. A. 6th Cir. Certiorari denied.

No. 78-5444. *JORDAN v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 582 F. 2d 1290.

No. 78-5448. *RESTREPO-GRANDA v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 575 F. 2d 524.

No. 78-5450. *CHIMPRAPIBOON v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 582 F. 2d 1290.

No. 78-5455. *MOORE v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 577 F. 2d 738.

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No. 78-5456. *MIRELES v. UNITED STATES*. C. A. 10th Cir. Certiorari denied. Reported below: 583 F. 2d 1115.

No. 78-5466. *WRIGHT v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 578 F. 2d 1379.

No. 78-5469. *STEWART ET AL. v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 579 F. 2d 356.

No. 78-5472. *BARBARIN v. ALL U. S. JUDGES OF THE EASTERN DISTRICT OF LOUISIANA*. C. A. 5th Cir. Certiorari denied. Reported below: 577 F. 2d 144.

No. 78-5478. *WINTERS v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 582 F. 2d 1152.

No. 78-5487. *SIERRA-HERNANDEZ v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 581 F. 2d 760.

No. 78-5496. *WILLIAMS v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 579 F. 2d 369.

No. 78-5511. *CAMPBELL v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 582 F. 2d 1287.

No. 77-1545. *McKETHAN v. UNITED STATES*; and

No. 77-1557. *GARNER v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 574 F. 2d 1141.

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

These petitioners contend that the admission into evidence at their trial of the grand jury testimony of an unavailable witness violated both the Federal Rules of Evidence and the Sixth Amendment. The Courts of Appeals have differed as to the admissibility of such evidence in similar cases. I would grant certiorari to resolve these questions.<sup>1</sup>

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<sup>1</sup> Garner also contends that the prosecution proved that he participated in no more than one conspiracy. Thus, he argues that he should not have received consecutive sentences after conviction on the two con-

The petitioners were convicted of conspiracy and substantive offenses stemming from their alleged importation of heroin. An alleged accomplice named Robinson was allowed to plead guilty to two lesser offenses in return for his testimony against the petitioners before a grand jury. The prosecution intended to rely heavily on Robinson's testimony at the petitioners' trial. Before the trial, however, Robinson stated that he would not testify. Although the court granted Robinson use immunity, he persisted in his refusal to testify. Over the petitioners' objections, the trial judge then admitted the transcript of Robinson's grand jury testimony under Fed. Rule Evid. 804 (b) (5).<sup>2</sup> After this transcript was read to the trial jury, Robinson did take the witness stand. He stated that he knew the petitioners and that his grand jury testimony had been false. The Court of Appeals characterized his comments as

"giv[ing] one the general impression not that the grand jury testimony was false but that, whatever pressures were brought upon him, [he] was unwilling to testify,

spiracy counts. I believe the Court of Appeals properly decided this issue, and would limit the grant of certiorari to the evidentiary question.

<sup>2</sup> Rule 804 (b) (5) provides:

"(b) Hearsay exceptions. The following are not excluded by the hearsay rule if the declarant is unavailable as a witness: . . .

"(5) Other exceptions. A statement not specifically covered by any of the foregoing exceptions but having equivalent circumstantial guarantees of trustworthiness, if the court determines that (A) the statement is offered as evidence of a material fact; (B) the statement is more probative on the point for which it is offered than other evidence which the proponent can procure through reasonable efforts; and (C) the general purposes of these rules and the interests of justice will best be served by admission of the statement into evidence. However, a statement may not be admitted under this exception unless the proponent of it makes known to the adverse party sufficiently in advance of the trial or hearing to provide the adverse party with a fair opportunity to prepare to meet it, his intention to offer the statement and the particulars of it, including the name and address of the declarant."

and particularly unwilling to say anything which would incriminate either of these defendants." 574 F. 2d 1141, 1143 (1978).

The grand jury testimony was the main support for the jury's guilty verdict against one of the petitioners, and an important part of the prosecution's case against the other.

A divided panel of the Court of Appeals for the Fourth Circuit affirmed the petitioners' convictions, concluding that neither the Federal Rules of Evidence nor the Confrontation Clause barred the admission of Robinson's grand jury testimony because it possessed "strong indicators of reliability." *Id.*, at 1144. The Court of Appeals found that Robinson's story was corroborated by testimony at the trial from another member of the alleged conspiracy and by documentary evidence of the petitioners' overseas travels.

Although they are not coextensive, the Confrontation Clause and the hearsay rule "stem from the same roots." *Dutton v. Evans*, 400 U. S. 74, 86 (1970). Considered under either the Sixth Amendment or the Federal Rules of Evidence, I have grave doubts about the admissibility of Robinson's grand jury testimony.

That the evidence was first given before a grand jury adds little to its reliability. In grand jury proceedings, the ordinary rules of evidence do not apply. Leading questions and multiple hearsay are permitted and common. Grand jury investigations are not adversary proceedings. No one is present to cross-examine the witnesses, to give the defendant's version of the story, or to expose weaknesses in the witnesses' testimony.

The only factor that generally makes grand jury testimony more trustworthy than other out-of-court statements is the fact that it is given under oath. The witnesses speak under the threat of prosecution for material false statements. But that usual indication of trustworthiness was missing here.

Robinson recanted his grand jury testimony at the trial. By disclaiming under oath his earlier sworn statements, he put himself in a position where one of his two sworn statements had to be false. Without further proof, Robinson would appear to have violated federal law, and, after the petitioners' trial, the Government did, indeed, indict Robinson for violation of 18 U. S. C. § 1623. The charges were dismissed only after he pleaded guilty to a contempt citation.

The Courts of Appeals are struggling with the problem of the admissibility of hearsay evidence not falling within one of the traditional exceptions to inadmissibility. The Fourth Circuit has taken a relatively liberal view of the admissibility of grand jury testimony, both in this case and in *United States v. West*, 574 F. 2d 1131 (1978). In a similar situation the Fifth Circuit concluded that grand jury testimony was inadmissible. *United States v. Gonzalez*, 559 F. 2d 1271 (1977). Before the adoption of the Federal Rules of Evidence, the Second Circuit held that the use of grand jury testimony in a situation like this violated both the hearsay rule and the Sixth Amendment. *United States v. Fiore*, 443 F. 2d 112 (1971). The Eighth Circuit, in a case in which the grand jury witness had not recanted his testimony, allowed the grand jury testimony to be admitted. *United States v. Carlson*, 547 F. 2d 1346 (1976).

While those cases may be factually distinguishable, the conflict in interpretation among the Circuits remains.<sup>3</sup> In some Circuits Rule 804 (b)(5) is being used to admit grand jury testimony when the witness is unavailable at trial; in others, it is not. Here, the witness recanted his grand jury testimony under oath at the trial, yet it was the crucial evidence in these petitioners' convictions.

I would grant certiorari to determine the limits placed upon

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<sup>3</sup> It seems to me open to serious doubt whether Rule 804 (b)(5) was intended to provide case-by-case hearsay exceptions, rather than only to permit expansion of the hearsay exceptions by categories.

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the admissibility of this kind of evidence by either the Federal Rules of Evidence or the Constitution.

No. 78-78. SINGLETON ET UX. *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 5th Cir. Certiorari denied. Reported below: 569 F. 2d 863.

MR. JUSTICE BLACKMUN, with whom MR. JUSTICE MARSHALL and MR. JUSTICE POWELL join, dissenting.

The issue in this federal income tax case is whether a cash distribution that petitioner husband (hereafter petitioner) received in 1965 with respect to his shares in Capital Southwest Corporation (CSW) was taxable to him as a dividend, as the United States Court of Appeals for the Fifth Circuit held, or whether that distribution was a return of capital and therefore not taxable, as the Tax Court held. I regard the issue as of sufficient importance in the administration of the income tax laws to justify review here, and I dissent from the Court's failure to grant certiorari.

CSW was the parent of a group of affiliated corporations. Consolidated returns were filed for CSW and the group for the fiscal years ended March 31, 1964 and 1965. This was advantageous taxwise, for it enabled income of Capital Wire & Cable Corporation (CW), one of the subsidiaries, to be offset against losses sustained by CSW. CW's board formally recognized a saving in tax of about \$863,000 through the filing of consolidated returns for the two fiscal years. That board then distributed \$1 million in March 1965, not solely to CSW, its principal shareholder, but ratably to all its shareholders. As primary shareholder, CSW received \$803,750 of that distribution.

The Internal Revenue Service subsequently determined that the consolidated returns for fiscal 1964 and 1965 did not accurately reflect the earnings of the group. Asserted deficiencies were settled in 1972 for approximately \$900,000. Of this amount, about \$755,000 was allocated to CW.

Petitioner takes the position that CW's allocable share of the 1965 tax must be accrued to that fiscal year; that CW's 1965 payment to CSW was thus not a dividend entering into the determination of CSW's earnings and profits at all, but was a constructive payment of CW's share of the tax bill; that this left CSW with no earnings and profits for 1965; and that, as a consequence, CSW's 1965 distribution to petitioner could only be a nontaxable return of capital and could not be a taxable dividend. The Tax Court, in a reviewed decision, with six judges dissenting, accepted this view. 64 T. C. 320 (1975). The Fifth Circuit reversed. 569 F. 2d 863 (1978).

As is not infrequently the situation in tax cases, the parties initially wage a battle of maxims. Petitioner speaks of "substance and realities" and cites, among other cases, *Helvering v. Lazarus & Co.*, 308 U. S. 252, 255 (1939), and *Frank Lyon Co. v. United States*, 435 U. S. 561, 573 (1978). The Commissioner asserts that a taxpayer must accept the tax consequences of his structural choice and cites *Commissioner v. National Alfalfa Dehydrating & Milling Co.*, 417 U. S. 134, 149 (1974). In addition, however, it is clear that CW's distribution was definitely intended to compensate CSW for the tax saving effected by the beneficial use of CSW's loss in the consolidated return. On the other hand, that compensatory action was accomplished by a pro rata distribution not only to CSW but to minority shareholders as well.

For me, the answer to this tax question is by no means immediately apparent. Each side advances a forceful argument. The deep division among the judges of the Tax Court is indicative and significant. I cannot regard the issue as one that is too fact-specific or incapable of precedential effect. On the contrary, it features important aspects of tax accounting and tax law. CSW and CW, after all, were accrual-basis taxpayers. Normally, when a deficiency in tax of an accrual-basis taxpayer is ultimately determined, it is to be accrued as of the tax year of the deficiency and it affects earnings and

profits accordingly. A consideration opposing this accepted proposition is the fact that the portion of CW's 1965 distribution paid to minority shareholders obviously qualified and apparently was reported as taxable dividends; it would be at least somewhat anomalous to have the portion paid to CSW constitute, in contrast, a return of capital.

I hope that the Court's decision to pass this case by is not due to a natural reluctance to take on another complicated tax case that is devoid of glamour and emotion and that would be remindful of the recent struggles, upon argument and reargument, in *United States v. Foster Lumber Co.*, 429 U. S. 32 (1976), and *Laing v. United States*, 423 U. S. 161 (1976).\*

Opinion of MR. JUSTICE STEVENS respecting the denial of the petition for writ of certiorari.

What is the significance of this Court's denial of certiorari? That question is asked again and again; it is a question that is likely to arise whenever a dissenting opinion argues that certiorari should have been granted. Almost 30 years ago Mr. Justice Frankfurter provided us with an answer to that question that should be read again and again.

"This Court now declines to review the decision of the Maryland Court of Appeals. The sole significance of such denial of a petition for writ of certiorari need not be elucidated to those versed in the Court's procedures. It simply means that fewer than four members of the Court deemed it desirable to review a decision of the lower court as a matter 'of sound judicial discretion.' Rule 38, paragraph 5. A variety of considerations underlie denials of the writ, and as to the same petition different reasons may lead different Justices to the same result. This is especially true of petitions for review on writ of certiorari

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\*The point MR. JUSTICE STEVENS would make by his separate opinion was answered effectively 25 years ago by Mr. Justice Jackson, concurring in the result, in *Brown v. Allen*, 344 U. S. 443, 542-544 (1953).

to a State court. Narrowly technical reasons may lead to denials. Review may be sought too late; the judgment of the lower court may not be final; it may not be the judgment of a State court of last resort; the decision may be supportable as a matter of State law, not subject to review by this Court, even though the State court also passed on issues of federal law. A decision may satisfy all these technical requirements and yet may commend itself for review to fewer than four members of the Court. Pertinent considerations of judicial policy here come into play. A case may raise an important question but the record may be cloudy. It may be desirable to have different aspects of an issue further illumined by the lower courts. Wise adjudication has its own time for ripening.

"Since there are these conflicting and, to the uninformed, even confusing reasons for denying petitions for certiorari, it has been suggested from time to time that the Court indicate its reasons for denial. Practical considerations preclude. In order that the Court may be enabled to discharge its indispensable duties, Congress has placed the control of the Court's business, in effect, within the Court's discretion. During the last three terms the Court disposed of 260, 217, 224 cases, respectively, on their merits. For the same three terms the Court denied, respectively, 1,260, 1,105, 1,189 petitions calling for discretionary review. If the Court is to do its work it would not be feasible to give reasons, however brief, for refusing to take these cases. The time that would be required is prohibitive, apart from the fact as already indicated that different reasons not infrequently move different members of the Court in concluding that a particular case at a particular time makes review undesirable. It becomes relevant here to note that failure to record a dissent from a denial of a petition for writ of certiorari in nowise

implies that only the member of the Court who notes his dissent thought the petition should be granted.

“Inasmuch, therefore, as all that a denial of a petition for a writ of certiorari means is that fewer than four members of the Court thought it should be granted, this Court has rigorously insisted that such a denial carries with it no implication whatever regarding the Court’s views on the merits of a case which it has declined to review. The Court has said this again and again; again and again the admonition has to be repeated.” Opinion respecting the denial of the petition for writ of certiorari in *Maryland v. Baltimore Radio Show*, 338 U. S. 912, 917-919.

When those words were written, Mr. Justice Frankfurter and his colleagues were too busy to spend their scarce time writing dissents from denials of certiorari. Such opinions were almost nonexistent.<sup>1</sup> It was then obvious that if there was no need to explain the Court’s action in denying the writ, there was even less reason for individual expressions of opinion about why certiorari should have been granted in particular cases.

Times have changed. Although the workload of the Court has dramatically increased since Mr. Justice Frankfurter’s day,<sup>2</sup> most present Members of the Court frequently file written dissents from certiorari denials. It is appropriate to ask whether the new practice serves any important goals or contributes to the strength of the institution.

One characteristic of all opinions dissenting from the denial of certiorari is manifest. They are totally unnecessary. They

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<sup>1</sup> There were none in 1945 or 1946, and I have been able to find only one in the 1947 Term. See dissent in *Chase National Bank v. Cheston*, and companion cases, 332 U. S. 793, 800.

<sup>2</sup> By way of comparison to the figures cited by Mr. Justice Frankfurter, the Court during the three most recent Terms reviewed and decided 362, 483, and 323 cases respectively. And during each of these Terms, the Court denied certiorari in well over 3,000 cases.

are examples of the purest form of dicta, since they have even less legal significance than the orders of the entire Court which, as Mr. Justice Frankfurter reiterated again and again, have no precedential significance at all.

Another attribute of these opinions is that they are potentially misleading. Since the Court provides no explanation of the reasons for denying certiorari, the dissenter's arguments in favor of a grant are not answered and therefore typically appear to be more persuasive than most other opinions. Moreover, since they often omit any reference to valid reasons for denying certiorari, they tend to imply that the Court has been unfaithful to its responsibilities or has implicitly reached a decision on the merits when, in fact, there is no basis for such an inference.

In this case, for example, the dissenting opinion suggests that the Court may have refused to grant certiorari because the case is "devoid of glamour and emotion." I am puzzled by this suggestion because I have never witnessed any indication that any of my colleagues has ever considered "glamour and emotion" as a relevant consideration in the exercise of his discretion or in his analysis of the law. With respect to the Court's action in this case, the absence of any conflict among the Circuits is plainly a sufficient reason for denying certiorari. Moreover, in allocating the Court's scarce resources, I consider it entirely appropriate to disfavor complicated cases which turn largely on unique facts. A series of decisions by the courts of appeals may well provide more meaningful guidance to the bar than an isolated or premature opinion of this Court. As Mr. Justice Frankfurter reminded us, "wise adjudication has its own time for ripening."

Admittedly these dissenting opinions may have some beneficial effects. Occasionally a written statement of reasons for granting certiorari is more persuasive than the Justice's oral contribution to the Conference. For that reason the written document sometimes persuades other Justices to change their

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votes and a petition is granted that would otherwise have been denied. That effect, however, merely justifies the writing and circulating of these memoranda within the Court; it does not explain why a dissent which has not accomplished its primary mission should be published.

It can be argued that publishing these dissents enhances the public's understanding of the work of the Court. But because they are so seldom answered, these opinions may also give rise to misunderstanding or incorrect impressions about how the Court actually works. Moreover, the selected bits of information which they reveal tend to compromise the otherwise secret deliberations in our Conferences. There are those who believe that these Conferences should be conducted entirely in public or, at the very least, that the votes on all Conference matters should be publicly recorded. The traditional view, which I happen to share, is that confidentiality makes a valuable contribution to the full and frank exchange of views during the decisional process; such confidentiality is especially valuable in the exercise of the kind of discretion that must be employed in processing the thousands of certiorari petitions that are reviewed each year. In my judgment, the importance of preserving the tradition of confidentiality outweighs the minimal educational value of these opinions.

In all events, these are the reasons why I have thus far resisted the temptation to publish opinions dissenting from denials of certiorari.

No. 78-335. CHESAPEAKE & OHIO RAILWAY CO. *v.* LAFONTAINE. C. A. 6th Cir. Motion of National Railway Labor Conference for leave to file a brief as *amicus curiae* granted. Certiorari denied. Reported below: 575 F. 2d 1337.

No. 78-347. ORECK CORP. *v.* WHIRLPOOL CORP. ET AL. C. A. 2d Cir. Certiorari denied. MR. JUSTICE BRENNAN, MR. JUSTICE WHITE, and MR. JUSTICE BLACKMUN would grant certiorari. Reported below: 579 F. 2d 126.

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No. 78-384. PARRY, COMMISSIONER, DEPARTMENT OF SOCIAL SERVICES OF ORANGE COUNTY, ET AL. *v.* GEORGE ET AL. C. A. 2d Cir. Motion of respondents for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 578 F. 2d 1367.

No. 78-5106. CORNELL *v.* IOWA. Sup. Ct. Iowa. Certiorari denied. MR. JUSTICE STEWART and MR. JUSTICE WHITE would grant certiorari. Reported below: 266 N. W. 2d 15.

No. 78-5192. FRITZ *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. MR. JUSTICE MARSHALL would grant certiorari. Reported below: 580 F. 2d 370.

No. 78-5321. ADAMS *v.* FLORIDA. Sup. Ct. Fla.; and

No. 78-5335. DAVIS *v.* GEORGIA. Sup. Ct. Ga. Certiorari denied. Reported below: No. 78-5321, 355 So. 2d 1205; No. 78-5335, 241 Ga. 376, 247 S. E. 2d 45.

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. 78-5327. HOSTETLER *v.* GEORGIA. Ct. App. Ga. Certiorari denied. MR. JUSTICE BRENNAN, MR. JUSTICE STEWART, and MR. JUSTICE MARSHALL would grant certiorari and reverse the conviction. Reported below: 145 Ga. App. 55, 243 S. E. 2d 256.

No. 78-5402. HAYS *v.* GEORGIA. Ct. App. Ga. Certiorari denied. MR. JUSTICE BRENNAN, MR. JUSTICE STEWART, and MR. JUSTICE MARSHALL would grant certiorari and reverse the conviction. Reported below: 145 Ga. App. 65, 243 S. E. 2d 263.

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*Dismissal Under Rule 60*

No. 78-5540. BUCHANAN *v.* BORDENKIRCHER, PENITENTIARY SUPERINTENDENT. C. A. 6th Cir. Certiorari dismissed under this Court's Rule 60.

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*Miscellaneous Orders*

No. A-417. ROGERS ET AL. *v.* LODGE ET AL. Application for stay of order of United States District Court for the Southern District of Georgia, presented to MR. JUSTICE POWELL, and by him referred to the Court, granted pending final disposition of the appeal to the United States Court of Appeals for the Fifth Circuit.

No. A-382 (78-710). KLEIN *v.* UNITED STATES. C. A. 2d Cir. Application for stay, presented to MR. JUSTICE MARSHALL, and by him referred to the Court, denied.

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*Appeals Dismissed*

No. 78-123. ACKER *v.* BOARD OF TRUSTEES OF PASS CHRISTIAN MUNICIPAL SEPARATE SCHOOL DISTRICT. Appeal from Sup. Ct. Miss. dismissed for want of substantial federal question. Reported below: 357 So. 2d 292.

No. 78-446. DUNHAM ET UX. *v.* CLACKAMAS COUNTY. Appeal from Sup. Ct. Ore. dismissed for want of substantial federal question. Reported below: 282 Ore. 419, 579 P. 2d 223.

No. 78-465. NAPOLITANO ET UX. *v.* WYOMING STATE HIGHWAY DEPARTMENT ET AL. Appeal from Sup. Ct. Wyo. dismissed for want of substantial federal question. Reported below: 578 P. 2d 1342.

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No. 78-297. *MANCHESTER NEWS CO., INC. v. NEW HAMPSHIRE*. Appeal from Sup. Ct. N. H. dismissed for want of final judgment. See 28 U. S. C. § 1257. Reported below: 118 N. H. 255, 387 A. 2d 324.

No. 78-381. *HOLDING v. BVA CREDIT CORP.* Appeal from Sup. Ct. Va. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied.

No. 78-397. *GARFINKLE ET VIR v. SUPERIOR COURT OF CONTRA COSTA COUNTY (WELLS FARGO BANK ET AL., REAL PARTIES IN INTEREST)*. Appeal from Sup. Ct. Cal. dismissed for want of substantial federal question. MR. JUSTICE WHITE and MR. JUSTICE MARSHALL would note probable jurisdiction and set case for oral argument. Reported below: 21 Cal. 3d 268, 578 P. 2d 925.

*Certiorari Granted—Reversed in Part and Remanded.* (See No. 77-6885, *ante*, p. 14.)

*Certiorari Granted—Vacated and Remanded*

No. 77-6817. *McELWEE v. TEXAS*. Ct. Crim. App. Tex. Motion of petitioner for leave to proceed *in forma pauperis* and certiorari granted. Judgment vacated and case remanded for further consideration in light of *Crist v. Bretz*, 437 U. S. 28 (1978). Reported below: 563 S. W. 2d 274.

*Miscellaneous Orders*

No. A-376. *PFISTER v. ANDERSON CLINIC, INC., ET AL.* Application for stay of orders of the United States Court of Appeals for the Fourth Circuit, addressed to MR. JUSTICE MARSHALL and referred to the Court, denied.

No. D-73. *IN RE DISBARMENT OF MCGOVERN*. Disbarment entered. [For earlier order herein, see 429 U. S. 936.]

No. D-102. *IN RE DISBARMENT OF PAPPAS*. Disbarment entered. [For earlier order herein, see 430 U. S. 981.]

No. D-117. *IN RE DISBARMENT OF EISENBERG*. Disbarment entered. [For earlier order herein, see 434 U. S. 885.]

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No. D-131. *IN RE DISBARMENT OF GIBSON*. Disbarment entered. [For earlier order herein, see 435 U. S. 901.]

No. D-133. *IN RE DISBARMENT OF CHU*. Disbarment entered. [For earlier order herein, see 435 U. S. 949.]

No. D-143. *IN RE DISBARMENT OF BEASLEY*. It is ordered that Alton S. Beasley, of Okeechobee, 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. 77-1410. *BUTNER v. UNITED STATES ET AL.* C. A. 4th Cir. [Certiorari granted, 436 U. S. 955.] Motion of the Solicitor General for divided argument granted.

No. 77-1497. *ARKANSAS v. SANDERS*. Sup. Ct. Ark. [Certiorari granted, *ante*, p. 891.] Motion of Bill Clinton, Esquire, to permit Joseph H. Purvis, Esquire, to present oral argument *pro hac vice* granted.

No. 77-1553. *COUNTY OF LOS ANGELES ET AL. v. DAVIS ET AL.* C. A. 9th Cir. [Certiorari granted, 437 U. S. 903.] Motion of California Organization of Police & Sheriffs, Inc., for leave to file a brief as *amicus curiae* granted.

No. 77-1578. *BROADCAST MUSIC, INC., ET AL. v. COLUMBIA BROADCASTING SYSTEM, INC., ET AL.*; and

No. 77-1583. *AMERICAN SOCIETY OF COMPOSERS, AUTHORS & PUBLISHERS ET AL. v. COLUMBIA BROADCASTING SYSTEM, INC., ET AL.* [Certiorari granted, *ante*, p. 817.] Motion of petitioners to dispense with printing appendix granted.

No. 78-136. *WHOLESALE MATERIALS CO., INC. v. MAGNA CORP., DBA MISSISSIPPI STEEL*, *ante*, p. 864. Motion of respondent for damages for delay denied.

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No. A-355 (78-649). CITY OF BOSTON ET AL. v. ANDERSON ET AL. Sup. Jud. Ct. Mass. Motion to vacate stay order heretofore entered by MR. JUSTICE BRENNAN on October 20, 1978, denied.

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

Because the Court in practical effect has summarily reversed the unanimous holding of the Supreme Judicial Court of Massachusetts on a question of Massachusetts law, it is appropriate to note my dissent. The highest court of the State held that a Massachusetts "municipality has no authority to appropriate funds for the purpose of taking action to influence the result of a referendum proposed to be submitted to the people at a State election."<sup>1</sup>

Unless state action has violated some federal law, a federal court has no power to compel a State to spend its money or to grant a political subdivision of the State authority which the State has withheld.<sup>2</sup> Federal questions may, of course, arise

<sup>1</sup> — Mass. —, —, 380 N. E. 2d 628, 632 (1978).

<sup>2</sup> "Municipal corporations are political subdivisions of the State, created as convenient agencies for exercising such of the governmental powers of the State as may be entrusted to them. For the purpose of executing these powers properly and efficiently they usually are given the power to acquire, hold, and manage personal and real property. The number, nature and duration of the powers conferred upon these corporations and the territory over which they shall be exercised rests in the absolute discretion of the State. Neither their charters, nor any law conferring governmental powers, or vesting in them property to be used for governmental purposes, or authorizing them to hold or manage such property, or exempting them from taxation upon it, constitutes a contract with the State within the meaning of the Federal Constitution. The State, therefore, at its pleasure may modify or withdraw all such powers, may take without compensation such property, hold it itself, or vest it in other agencies, expand or contract the territorial area, unite the whole or a part of it with another municipality, repeal the charter and destroy the corporation. All this may be done, conditionally or unconditionally, with or without the consent of the citizens, or even against their protest. In all these respects the State

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when a State regulates the communicative activities of third parties, whether they be individuals or private corporations. Such questions may also arise if a State authorizes expenditures to advance or explain a particular point of view. But in this case we are merely confronted with "a State's determination to refrain from speech on a given topic or topics and to bar its various subdivisions from expending funds in contravention of that determination."<sup>3</sup> I consider it frivolous to suggest that the First Amendment, or any other provision of the United States Constitution, empowers this Court to interfere with that determination. I would therefore grant the motion to vacate the stay entered by MR. JUSTICE BRENNAN as Circuit Justice on October 20, 1978.

No. 78-5181. *KOVACS v. BOLT ET AL.* Motion for leave to file petition for writ of mandamus denied.

*Certiorari Granted*

No. 77-1645. *TRANSAMERICA MORTGAGE ADVISORS, INC. (TAMA), ET AL. v. LEWIS.* C. A. 9th Cir. Certiorari granted. Reported below: 575 F. 2d 237.

No. 78-479. *EDMONDS v. COMPAGNIE GENERALE TRANS-ATLANTIQUE.* C. A. 4th Cir. Certiorari granted. Reported below: 577 F. 2d 1153.

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is supreme, and its legislative body, conforming its action to the state constitution, may do as it will, unrestrained by any provision of the Constitution of the United States. Although the inhabitants and property owners may by such changes suffer inconvenience, and their property may be lessened in value by the burden of increased taxation, or for any other reason, they have no right by contract or otherwise in the unaltered or continued existence of the corporation or its powers, and there is nothing in the Federal Constitution which protects them from these injurious consequences. The power is in the State and those who legislate for the State are alone responsible for any unjust or oppressive exercise of it." *Hunter v. Pittsburgh*, 207 U. S. 161, 178-179.

<sup>3</sup> — Mass., at —, 380 N. E. 2d, at 637.

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*Certiorari Denied.* (See also No. 78-381, *supra*, and No. 77-6885, *ante*, p. 14.)

No. 77-1677. RICHMAN *v.* SHEVIN, ATTORNEY GENERAL OF FLORIDA, ET AL. Sup. Ct. Fla. *Certiorari* denied. Reported below: 354 So. 2d 1200.

No. 77-1859. HELFAT *v.* SECURITIES AND EXCHANGE COMMISSION ET AL.; and

No. 78-295. KORACORP INDUSTRIES, INC., ET AL. *v.* SECURITIES AND EXCHANGE COMMISSION. C. A. 9th Cir. *Certiorari* denied. Reported below: 575 F. 2d 692.

No. 77-1868. IN RE JANAVITZ ET AL. C. A. 3d Cir. *Certiorari* denied. Reported below: 576 F. 2d 1071.

No. 77-6776. WARD ET UX. *v.* WASHINGTON. Ct. App. Wash. *Certiorari* denied. Reported below: 17 Wash. App. 1034.

No. 78-7. DELPH ET AL. *v.* UNITED STATES; and

No. 78-34. HAWKINS ET AL. *v.* UNITED STATES. C. A. 5th Cir. *Certiorari* denied. Reported below: 571 F. 2d 880.

No. 78-19. FRUEHAUF CORP. ET AL. *v.* UNITED STATES. C. A. 6th Cir. *Certiorari* denied. Reported below: 577 F. 2d 1038.

No. 78-42. CHOATE *v.* UNITED STATES. C. A. 9th Cir. *Certiorari* denied. Reported below: 576 F. 2d 165.

No. 78-45. GEORGE HANTSCHO CO., INC. *v.* WANSOR ET AL. C. A. 5th Cir. *Certiorari* denied. Reported below: 570 F. 2d 1202.

No. 78-54. KEENER *v.* KANSAS. Sup. Ct. Kan. *Certiorari* denied. Reported below: 224 Kan. 100, 577 P. 2d 1182.

No. 78-63. MOON *v.* VIRGINIA. Sup. Ct. Va. *Certiorari* denied.

No. 78-89. GOELLER *v.* NORTH DAKOTA. Sup. Ct. N. D. *Certiorari* denied. Reported below: 264 N. W. 2d 472.

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No. 78-117. GRAY-TAYLOR, INC., DBA JIMMIE GREEN CHEVROLET *v.* HARRIS COUNTY ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 569 F. 2d 893.

No. 78-120. CLAVEY *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 578 F. 2d 1219.

No. 78-171. FERNANDEZ-GUZMAN *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 577 F. 2d 1093.

No. 78-198. GUTIERREZ *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 576 F. 2d 269.

No. 78-210. WALTON *v.* MARYLAND. Ct. App. Md. Certiorari denied. Reported below: 282 Md. 514, 385 A. 2d 806.

No. 78-254. OHIO *v.* RUPPERT; and

No. 78-483. RUPPERT *v.* OHIO. Sup. Ct. Ohio. Certiorari denied. Reported below: 54 Ohio St. 2d 263, 375 N. E. 2d 1250.

No. 78-264. WEDELSTEDT *v.* IOWA. Sup. Ct. Iowa. Certiorari denied. Reported below: 263 N. W. 2d 894 and 265 N. W. 2d 626.

No. 78-266. SYUFY ENTERPRISES *v.* NATIONAL GENERAL THEATRES, INC., ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 575 F. 2d 233.

No. 78-277. DOYON, LTD., ET AL. *v.* BRISTOL BAY NATIVE CORP. ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 569 F. 2d 491.

No. 78-306. UNITED VAN LINES, INC. *v.* VONDER LINDEN ET UX. Sup. Ct. N. M. Certiorari denied.

No. 78-332. 83RD REALTY Co. *v.* JAMAICA SAVINGS BANK. C. A. 2d Cir. Certiorari denied.

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No. 78-356. SAC AND FOX TRIBE OF THE MISSISSIPPI IN IOWA *v.* LICKLIDER, CHAIRMAN, STATE CONSERVATION COMMISSION OF IOWA, ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 576 F. 2d 145.

No. 78-420. CAESAR'S HEALTH CLUB ET AL. *v.* ST. LOUIS COUNTY, MISSOURI. Ct. App. Mo., St. Louis Dist. Certiorari denied. Reported below: 565 S. W. 2d 783.

No. 78-422. WESTINGHOUSE ELECTRIC CORP. *v.* KERR-MCGEE CORP. ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 580 F. 2d 1311.

No. 78-429. HASTE ET UX. *v.* AMERICAN HOME PRODUCTS CORP. C. A. 10th Cir. Certiorari denied. Reported below: 577 F. 2d 1122.

No. 78-456. STATEWIDE CONTRACTORS, INC., ET AL. *v.* FOWLER, WHITE, GILLEN, BOGGS, VILLAREAL & BANKER ET AL. Sup. Ct. Pa. Certiorari denied.

No. 78-460. LIS ET AL. *v.* ROBERT PACKER HOSPITAL ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 579 F. 2d 819.

No. 78-475. FRIED ET AL. *v.* CAREY, STATE'S ATTORNEY OF COOK COUNTY. C. A. 7th Cir. Certiorari denied. Reported below: 582 F. 2d 1283.

No. 78-499. WARDEN, STATE PRISON OF SOUTHERN MICHIGAN AT JACKSON *v.* BERRIER. C. A. 6th Cir. Certiorari denied. Reported below: 583 F. 2d 515.

No. 78-502. FLISK ET AL. *v.* KELLY, JUDGE. Cir. Ct., Cook County, Ill. Certiorari denied.

No. 78-520. ROSS *v.* UNITED STATES ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 573 F. 2d 1316.

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No. 78-559. *SOUTHERN PACIFIC TRANSPORTATION Co. v. SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES (McDOWELL ET AL., REAL PARTIES IN INTEREST)*. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 78-588. *VAN WEY v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 578 F. 2d 1387.

No. 78-637. *GALANTE v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 584 F. 2d 973.

No. 78-5026. *NELSON ET AL. v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 574 F. 2d 277.

No. 78-5034. *RUVIWAT v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 554 F. 2d 1072.

No. 78-5051. *CARTER v. TEXAS*. Ct. Crim. App. Tex. Certiorari denied.

No. 78-5061. *GRAHAM v. OHIO*. Ct. App. Ohio, Summit County. Certiorari denied.

No. 78-5077. *BELL v. NORTH CAROLINA ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 576 F. 2d 564.

No. 78-5086. *BUCKINGHAM v. THOMPSON, WARDEN*. C. A. 6th Cir. Certiorari denied. Reported below: 578 F. 2d 1380.

No. 78-5121. *MOORE v. WISCONSIN*. Sup. Ct. Wis. Certiorari denied. Reported below: 83 Wis. 2d 285, 265 N. W. 2d 540.

No. 78-5134. *CROWELL v. ZAHRADNICK, PENITENTIARY SUPERINTENDENT*. C. A. 4th Cir. Certiorari denied. Reported below: 571 F. 2d 1257.

No. 78-5167. *CANET v. FLORIDA*. Dist. Ct. App. Fla., 3d Dist. Certiorari denied. Reported below: 356 So. 2d 63.

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No. 78-5179. *SAYLOR ET AL. v. OVERBERG, CORRECTIONAL SUPERINTENDENT*. Sup. Ct. Ohio. Certiorari denied.

No. 78-5194. *YOUNG v. NEW MEXICO*. Ct. App. N. M. Certiorari denied. Reported below: 91 N. M. 647, 579 P. 2d 179.

No. 78-5227. *DIAZ v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 577 F. 2d 145.

No. 78-5251. *McGUIRE v. UNITED STATES*; and

No. 78-5288. *BLACKWELL v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 578 F. 2d 1379.

No. 78-5254. *WILLIAMS v. UNITED STATES*. C. A. D. C. Cir. Certiorari denied. Reported below: 188 U. S. App. D. C. 201, 578 F. 2d 443.

No. 78-5260. *NAHAVANDI v. IMMIGRATION AND NATURALIZATION SERVICE*. C. A. 9th Cir. Certiorari denied.

No. 78-5266. *KEARNS v. UNITED STATES*. C. A. 10th Cir. Certiorari denied.

No. 78-5395. *ROBINSON v. RICHARDSON, DISTRICT ATTORNEY OF CADDO PARISH, ET AL.* C. A. 5th Cir. Certiorari denied.

No. 78-5398. *TYLER ET AL. v. GRADY, JUDGE, ET AL.* C. A. 8th Cir. Certiorari denied.

No. 78-5400. *D'AGOSTIN v. ENOMOTO, CORRECTIONS DIRECTOR*. C. A. 9th Cir. Certiorari denied. Reported below: 573 F. 2d 1315.

No. 78-5405. *HAWKINS v. CRIST, WARDEN, ET AL.* Sup. Ct. Mont. Certiorari denied. Reported below: — Mont. —, 583 P. 2d 396.

No. 78-5413. *CORPUS v. ESTELLE, CORRECTIONS DIRECTOR*. C. A. 5th Cir. Certiorari denied. Reported below: 571 F. 2d 1378.

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No. 78-5424. *ROCHE v. NEW YORK*. Ct. App. N. Y. Certiorari denied. Reported below: 45 N. Y. 2d 78, 379 N. E. 2d 208.

No. 78-5428. *DENNY v. FOREMAN, WARDEN, ET AL.* C. A. 3d Cir. Certiorari denied.

No. 78-5430. *JENSEN v. CALIFORNIA*. Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 78-5432. *HALL v. DIRECTOR, DEPARTMENT OF CORRECTIONS OF ILLINOIS*. C. A. 7th Cir. Certiorari denied. Reported below: 578 F. 2d 194.

No. 78-5434. *GARZA v. MCCARTHY, MEN'S COLONY SUPERINTENDENT*. C. A. 9th Cir. Certiorari denied.

No. 78-5437. *POSTON v. MORGAN-SCHULTHEISS, INC.* Ct. App. N. C. Certiorari denied.

No. 78-5449. *CONROY v. BOMBARD, CORRECTIONAL SUPERINTENDENT*. C. A. 2d Cir. Certiorari denied.

No. 78-5480. *MANCILLAS ET AL. v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 580 F. 2d 1301.

No. 78-5493. *BOHR v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 581 F. 2d 1294.

No. 78-5502. *SANDERS v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 582 F. 2d 1278.

No. 78-167. *AMERICAN AIR FILTER Co., INC., ET AL. v. FEDERAL TRADE COMMISSION ET AL.*;

No. 78-168. *GOODYEAR TIRE & RUBBER Co. ET AL. v. FEDERAL TRADE COMMISSION ET AL.*; and

No. 78-169. *MILLIKEN & Co. v. FEDERAL TRADE COMMISSION ET AL.* C. A. D. C. Cir. Certiorari denied. MR. JUSTICE POWELL and MR. JUSTICE STEVENS took no part in the consideration or decision of these petitions. Reported below: 193 U. S. App. D. C. 300, 595 F. 2d 685.

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No. 78-5527. *McNAIR v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 582 F. 2d 1277.

No. 78-190. *ELI LILLY & Co. v. STAATS, COMPTROLLER GENERAL, ET AL.* C. A. 7th Cir. Motion of Abbott Laboratories for leave to file a brief as *amicus curiae* granted. Certiorari denied. Reported below: 574 F. 2d 904.

No. 78-237. *AQUA MEDIA, LTD., ET AL. v. UNITED STATES*. C. A. 9th Cir. Certiorari and/or motion for leave to file petition for writ of certiorari denied. MR. JUSTICE POWELL took no part in the consideration or decision of this petition. Reported below: 575 F. 2d 222.

No. 78-351. *CLAY ET AL. v. HAYWARD ET AL.* C. A. 4th Cir. Certiorari denied. MR. JUSTICE STEWART would grant certiorari. Reported below: 573 F. 2d 187.

No. 78-407. *HAKE ET AL. v. HELTON, ADMINISTRATRIX, ET AL.* Ct. App. Mo., Kansas City Dist. Certiorari denied. MR. JUSTICE BRENNAN, MR. JUSTICE WHITE, and MR. JUSTICE MARSHALL would grant certiorari. Reported below: 564 S. W. 2d 313.

No. 78-5250. *JONES v. TEXAS*. Ct. Crim. App. Tex.; and No. 78-5311. *RAULERSON v. FLORIDA*. Sup. Ct. Fla. Certiorari denied. Reported below: No. 78-5250, 568 S. W. 2d 847; No. 78-5311, 358 So. 2d 826.

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.

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No. 78-5193. *KNIGHT v. FLORIDA*. Dist. Ct. App. Fla., 2d Dist. Certiorari denied. MR. JUSTICE BRENNAN, MR. JUSTICE WHITE, and MR. JUSTICE MARSHALL would grant certiorari. Reported below: 352 So. 2d 179.

No. 78-629. *HICKEY v. UNITED STATES*. C. A. 5th Cir. Application for stay, addressed to MR. JUSTICE MARSHALL and referred to the Court, denied. Certiorari denied. Reported below: 575 F. 2d 880.

### *Rehearing Denied*

No. 77-1636. *REED v. CITY OF LOS ANGELES ET AL.*, *ante*, p. 825;

No. 77-6574. *YANNI v. UNITED STATES*, *ante*, p. 840;

No. 77-6683. *CAMPBELL v. UNITED STATES*, *ante*, p. 841;

No. 77-6914. *DAVIS v. LAWYERS PROFESSIONAL RESPONSIBILITY BOARD OF MINNESOTA ET AL.*, *ante*, p. 807;

No. 77-6984. *KALEC v. DELLINGER, PROSECUTOR OF WHITE COUNTY, ET AL.*, *ante*, p. 857;

No. 78-5045. *ROOKS v. UNITED STATES*, *ante*, p. 862;

No. 78-5139. *CALHOUN ET UX. v. FRANCHISE TAX BOARD OF CALIFORNIA*, *ante*, p. 872; and

No. 78-5176. *SCEIFERS v. INDIANA*, *ante*, p. 873. Petitions for rehearing denied.

No. 77-1003. *NAPOLI ET AL. v. UNITED STATES*, 436 U. S. 912. Motion for leave to file petition for hearing denied.

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### *Appeals Dismissed*

No. 78-431. *GODSY v. GODSY*. Appeal from Ct. App. Mo., Kansas City District, dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied. Reported below: 565 S. W. 2d 726.

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No. 78-5458. *WAYLAND v. TOWN OF TOPSFIELD*. Appeal from C. A. 1st Cir. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied. Reported below: 582 F. 2d 1269.

No. 78-5507. *HARTO v. COLORADO*. Appeal from Sup. Ct. Colo. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied.

No. 78-467. *ENNTEX OIL & GAS CO. (OF NEVADA) ET AL. v. TEXAS*. Appeal from Ct. Civ. App. Tex., 6th Sup. Jud. Dist., dismissed for want of substantial federal question. Reported below: 560 S. W. 2d 494.

No. 78-5329. *HENRY v. COLORADO*. Appeal from Sup. Ct. Colo. dismissed for want of substantial federal question. MR. JUSTICE STEVENS would note probable jurisdiction and set case for oral argument. Reported below: 195 Colo. 309, 578 P. 2d 1041.

#### *Miscellaneous Orders*

No. A-364. *SCHAFFER ET AL. v. TRUSTEES OF PROPERTY OF PENN CENTRAL Co.* C. A. 3d Cir. Application for stay, addressed to THE CHIEF JUSTICE, and referred to the Court, denied.

No. 76-419. *VERMONT YANKEE NUCLEAR POWER CORP. v. NATURAL RESOURCES DEFENSE COUNCIL, INC., ET AL.*; and

No. 76-528. *CONSUMERS POWER Co. v. AESCHLIMAN ET AL.*, 435 U. S. 519. Motions of respondents for elimination or reduction of taxed costs denied. MR. JUSTICE BLACKMUN and MR. JUSTICE POWELL took no part in the consideration or decision of these motions.

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No. 77-983. WASHINGTON ET AL. *v.* WASHINGTON STATE COMMERCIAL PASSENGER FISHING VESSEL ASSN. ET AL.; and WASHINGTON ET AL. *v.* PUGET SOUND GILLNETTERS ASSN. ET AL. Sup. Ct. Wash. [Certiorari granted, *ante*, p. 909]; and

No. 78-119. WASHINGTON ET AL. *v.* UNITED STATES ET AL.; and

No. 78-139. PUGET SOUND GILLNETTERS ASSN. ET AL. *v.* UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF WASHINGTON (UNITED STATES ET AL., REAL PARTIES IN INTEREST). C. A. 9th Cir. [Certiorari granted, *ante*, p. 909.] Motion of the Solicitor General and motion of respondent Indian Tribes (except Yakima Indian Nation) to consolidate cases for purpose of briefing and argument granted. Briefing schedule of the Solicitor General as set out in his motion is adopted by the Court. Total time of two hours heretofore granted by the Court in these cases is reduced to one and one-half hours and is divided as follows: 30 minutes to the Solicitor General; 30 minutes to the State of Washington; 15 minutes to the Indian Tribes; and 15 minutes to the association of non-Indian fishermen.

No. A-395 (78-729). ARROW FOOD DISTRIBUTORS, INC. *v.* LOVE, CONSERVATOR. Sup. Ct. Miss. Application for stay, addressed to MR. JUSTICE REHNQUIST, and referred to the Court, denied.

No. A-420 (78-761). AMERICAN TELEPHONE & TELEGRAPH CO. ET AL. *v.* UNITED STATES. C. A. D. C. Cir. That portion of the order by THE CHIEF JUSTICE on November 2, 1978, which stayed the order of the United States Court of Appeals for the District of Columbia Circuit, entered October 31, 1978, pending filing of a response, is vacated and the application is denied.

No. A-372 (78-5600). GIBBS *v.* UNITED STATES. C. A. 4th Cir. Application for recall and stay of mandate, addressed to MR. JUSTICE MARSHALL, and referred to the Court, denied.

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*Certiorari Granted—Vacated and Remanded.* (See No. 77-1792, *ante*, p. 24.)

*Certiorari Granted*

No. 78-482. SMITH, JUDGE, ET AL. *v.* DAILY MAIL PUBLISHING Co. ET AL. Sup. Ct. App. W. Va. Certiorari granted. Reported below: — W. Va. —, 248 S. E. 2d 269.

No. 78-160. WILSON ET AL. *v.* OMAHA INDIAN TRIBE ET AL.; and

No. 78-161. IOWA ET AL. *v.* OMAHA INDIAN TRIBE ET AL. C. A. 8th Cir. Petition for writ of certiorari in No. 78-160 is granted limited to Questions 2 and 3 presented by the petition. Petition for writ of certiorari in No. 78-161 is granted limited to Questions 1 and 4 presented by the petition. Cases consolidated and a total of one hour allotted for oral argument. Reported below: 575 F. 2d 620.

*Certiorari Denied.* (See also Nos. 78-431, 78-5458, and 78-5507, *supra*.)

No. 77-1779. PARIS *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 578 F. 2d 1371.

No. 77-6570. WILSON *v.* UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF OHIO, WESTERN DIVISION. C. A. 6th Cir. Certiorari denied.

No. 77-6754. HOBGOOD *v.* ARKANSAS. Sup. Ct. Ark. Certiorari denied. Reported below: 262 Ark. 725, 562 S. W. 2d 41.

No. 77-6814. HOPPMAN *v.* WISCONSIN. Sup. Ct. Wis. Certiorari denied. Reported below: 82 Wis. 2d 811, 266 N. W. 2d 435.

No. 77-6916. URIARTE *v.* UNITED STATES; and

No. 78-316. RAMIREZ-URIARTE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 575 F. 2d 215.

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No. 77-6920. *CLARKE v. PERCY, SECRETARY, DEPARTMENT OF HEALTH AND SOCIAL SERVICE OF WISCONSIN*. Sup. Ct. Wis. Certiorari denied. Reported below: 83 Wis. 2d 349, 265 N. W. 2d 285.

No. 77-6968. *HARDWICK v. WELDON ET AL.* C. A. 5th Cir. Certiorari denied.

No. 78-13. *SCHOENHUT v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 576 F. 2d 1010.

No. 78-32. *REEVES v. ARKANSAS*. Sup. Ct. Ark. Certiorari denied. Reported below: 263 Ark. 227, 564 S. W. 2d 503.

No. 78-61. *HITCHEVA v. DIVISION OF STATE LANDS OF OREGON*. Ct. App. Ore. Certiorari denied. Reported below: 31 Ore. App. 839, 572 P. 2d 625.

No. 78-144. *MENDEL v. UNITED STATES*; and

No. 78-5156. *REEVES v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 578 F. 2d 668.

No. 78-147. *CHAMPAGNE v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 580 F. 2d 1045.

No. 78-186. *RICH v. UNITED STATES*; and

No. 78-314. *PELTON v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 578 F. 2d 701.

No. 78-220. *BRAVERMAN v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 578 F. 2d 1386.

No. 78-288. *WENCKE ET AL. v. SECURITIES AND EXCHANGE COMMISSION*. C. A. 9th Cir. Certiorari denied. Reported below: 577 F. 2d 619.

No. 78-290. *HERRERA-VINEGAS ET AL. v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 573 F. 2d 1308.

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No. 78-292. UTE INDIAN TRIBE *v.* STATE TAX COMMISSION OF UTAH. C. A. 10th Cir. Certiorari denied. Reported below: 574 F. 2d 1007.

No. 78-315. NEAVEILL *v.* ANDOLSEK, COMMISSIONER, UNITED STATES CIVIL SERVICE COMMISSION, ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 577 F. 2d 749.

No. 78-362. WESTERN WATERPROOFING Co., INC. *v.* MARSHALL, SECRETARY OF LABOR, ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 576 F. 2d 139.

No. 78-367. QUIGLEY *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 582 F. 2d 1278.

No. 78-378. ST. ELIZABETH'S HOSPITAL OF BOSTON *v.* WEINER, CHAIRMAN, RATE SETTING COMMISSION, OFFICE OF HUMAN SERVICES OF MASSACHUSETTS, ET AL. C. A. 1st Cir. Certiorari denied. Reported below: 577 F. 2d 722.

No. 78-409. VALLANCE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 574 F. 2d 1282.

No. 78-424. CUNNINGHAM *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied.

No. 78-438. McMASTERS ET AL. *v.* CHASE. C. A. 8th Cir. Certiorari denied. Reported below: 573 F. 2d 1011.

No. 78-444. RONK ET AL. *v.* AHLERT ET UX. Sup. Ct. Ark. Certiorari denied.

No. 78-457. NIETERT ET AL. *v.* CITIZENS BANK & TRUST Co. Sup. Ct. Ark. Certiorari denied. Reported below: 263 Ark. 251, 565 S. W. 2d 4.

No. 78-459. ROSEE *v.* BOARD OF TRADE OF CHICAGO ET AL. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 57 Ill. App. 3d 228, 372 N. E. 2d 1000.

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No. 78-470. *PORTNER v. COMMUNITY STATE BANK & TRUST Co. ET AL.* C. A. 3d Cir. Certiorari denied. Reported below: 578 F. 2d 1375.

No. 78-471. *NELSON v. PENTECOSTAL CHURCH OF GOD, INC., M. I., ET AL.* C. A. 1st Cir. Certiorari denied.

No. 78-472. *LEMM v. WASHINGTON SUBURBAN SANITARY COMMISSION.* Ct. Sp. App. Md. Certiorari denied.

No. 78-474. *PRINCETON COMMUNITY PHONE BOOK, INC., ET AL. v. BATE ET AL.* C. A. 3d Cir. Certiorari denied. Reported below: 582 F. 2d 706.

No. 78-476. *FLORIDA POWER & LIGHT Co. v. GAINESVILLE UTILITIES DEPARTMENT ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 573 F. 2d 292.

No. 78-480. *BLANCO v. CALIFORNIA.* App. Dept., Super. Ct. Cal., County of Ventura. Certiorari denied.

No. 78-481. *INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL No. 6, AFL-CIO v. SAN FRANCISCO ELECTRICAL CONTRACTORS ASSN., INC., ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 577 F. 2d 529.

No. 78-485. *TEXAS COMMITTEE ON NATURAL RESOURCES v. BERGLAND, SECRETARY OF AGRICULTURE, ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 573 F. 2d 201.

No. 78-501. *KOROS ET UX. v. CREDIT BUREAU, INC., OF GEORGIA ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 577 F. 2d 144.

No. 78-509. *28 EAST JACKSON ENTERPRISES, INC. v. ROSEWELL, TREASURER OF COOK COUNTY, ILLINOIS, ET AL.* C. A. 7th Cir. Certiorari denied. Reported below: 577 F. 2d 748.

No. 78-590. *BLASCO ET AL. v. UNITED STATES.* C. A. 7th Cir. Certiorari denied. Reported below: 581 F. 2d 681.

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No. 78-632. *BULLOCK ET AL. v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 579 F. 2d 1116.

No. 78-645. *MARTIN ET AL. v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 574 F. 2d 1359.

No. 78-5005. *EASLEY v. TEXAS*. Ct. Crim. App. Tex. Certiorari denied. Reported below: 564 S. W. 2d 742.

No. 78-5074. *RANGER ET AL. v. UNITED STATES*. C. A. 10th Cir. Certiorari denied.

No. 78-5094. *MIGNONA v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 578 F. 2d 1376.

No. 78-5101. *ADAMS v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 569 F. 2d 924.

No. 78-5120. *SMITH v. BREWER, WARDEN*. C. A. 8th Cir. Certiorari denied. Reported below: 577 F. 2d 466.

No. 78-5138. *LEWIS ET AL. v. UNITED STATES*. C. A. 6th Cir. Certiorari denied.

No. 78-5151. *WIGGINS v. ESTELLE, CORRECTIONS DIRECTOR*. Ct. Crim. App. Tex. Certiorari denied.

No. 78-5178. *BOYER v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 574 F. 2d 951.

No. 78-5270. *PROCTOR v. UNITED STATES*. C. A. 7th Cir. Certiorari denied.

No. 78-5276. *MOWAT ET AL. v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 582 F. 2d 1194.

No. 78-5295. *ETLEY ET AL. v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 574 F. 2d 850.

No. 78-5305. *JENKINS v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 579 F. 2d 840.

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No. 78-5307. *EDWARDS v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 577 F. 2d 883.

No. 78-5331. *CARTER v. UNITED STATES*. C. A. D. C. Cir. Certiorari denied.

No. 78-5336. *HARPER v. UNITED STATES*. C. A. 10th Cir. Certiorari denied. Reported below: 579 F. 2d 1235.

No. 78-5365. *WILLIAMS v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 577 F. 2d 744.

No. 78-5394. *MYERS v. RHAY, PENITENTIARY SUPERINTENDENT*. C. A. 9th Cir. Certiorari denied. Reported below: 577 F. 2d 504.

No. 78-5439. *RAWLEY v. RAWLEY ET AL.* Sup. Ct. La. Certiorari denied. Reported below: 357 So. 2d 1154.

No. 78-5459. *LARUFFA v. FOGG, CORRECTIONAL SUPERINTENDENT*. C. A. 2d Cir. Certiorari denied. Reported below: 578 F. 2d 1368.

No. 78-5461. *MAHLER v. OKLAHOMA*. Ct. Crim. App. Okla. Certiorari denied.

No. 78-5462. *HEBERT v. KENTUCKY*. Sup. Ct. Ky. Certiorari denied. Reported below: See 566 S. W. 2d 798.

No. 78-5463. *WHITE v. CALIFORNIA*. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 78-5467. *JAKOB v. FIRST ALABAMA BANK OF MONTGOMERY*. Sup. Ct. Ala. Certiorari denied. Reported below: 361 So. 2d 1017.

No. 78-5468. *TURPEN v. NEVADA*. Sup. Ct. Nev. Certiorari denied. Reported below: 94 Nev. 576, 583 P. 2d 1083.

No. 78-5470. *McKIBBEN v. HOPPER, WARDEN*. C. A. 5th Cir. Certiorari denied. Reported below: 577 F. 2d 144.

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No. 78-5473. *ALVAREZ v. AMERICAN EXPORT LINES, INC.* C. A. 3d Cir. Certiorari denied. Reported below: 580 F. 2d 1179.

No. 78-5474. *LOMAX v. ALABAMA.* Ct. Crim. App. Ala. Certiorari denied. Reported below: 359 So. 2d 832.

No. 78-5476. *NABKEY v. MICHIGAN STATE HIGHWAY COMMISSION.* Ct. App. Mich. Certiorari denied.

No. 78-5477. *WEST v. SMITH, CORRECTIONAL SUPERINTENDENT.* C. A. 2d Cir. Certiorari denied.

No. 78-5479. *HAMMER v. INDIANA.* Sup. Ct. Ind. Certiorari denied. Reported below: 268 Ind. 605, 377 N. E. 2d 638.

No. 78-5481. *BOYD v. DELAWARE.* Sup. Ct. Del. Certiorari denied. Reported below: 389 A. 2d 1282.

No. 78-5484. *GREEN v. CALIFORNIA.* Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 78-5485. *McDANIEL v. OKLAHOMA.* C. A. 10th Cir. Certiorari denied. Reported below: 582 F. 2d 1242.

No. 78-5492. *FOWLER v. OHIO.* Ct. App. Ohio, Hamilton County. Certiorari denied.

No. 78-5497. *CHILDS v. OHIO.* Ct. App. Ohio, Hamilton County. Certiorari denied.

No. 78-5499. *WILLIAMS v. UNITED STATES.* C. A. 6th Cir. Certiorari denied.

No. 78-5503. *HALL v. ANDERSON, WARDEN.* C. A. 6th Cir. Certiorari denied.

No. 78-5517. *CLAYTON v. LOGGINS, CORRECTIONAL SUPERINTENDENT.* C. A. 9th Cir. Certiorari denied.

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No. 78-5528. SCHAFFER *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 580 F. 2d 774.

No. 78-5546. MOORE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 580 F. 2d 360.

No. 78-5557. RITCH *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 583 F. 2d 1179.

No. 78-5579. BRADLEY *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 581 F. 2d 265.

No. 78-5585. STURGIS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 578 F. 2d 1296.

No. 77-1863. MITCHELL, WARDEN *v.* NOTTINGHAM. C. A. 4th Cir. Certiorari denied. Reported below: 573 F. 2d 193.

No. 78-180. LEEKE, CORRECTIONS COMMISSIONER, ET AL. *v.* GORDON; and COLLINS, WARDEN *v.* YOUNG. C. A. 4th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 574 F. 2d 1147.

No. 78-182. SERWOLD ET UX. *v.* NELSON. C. A. 9th Cir. Motion of Stephen W. Holohan for leave to file a brief as *amicus curiae* and certiorari denied. Reported below: 576 F. 2d 1332.

No. 78-317. DUPONT GLORE FORGAN, INC., ET AL. *v.* AMERICAN TELEPHONE & TELEGRAPH CO. ET AL. C. A. 2d Cir. Certiorari denied. MR. JUSTICE POWELL took no part in the consideration or decision of this petition. Reported below: 578 F. 2d 1367.

No. 78-5177. HARRIS *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied.

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

In 1971 a grocery store clerk in Tulsa, Okla., was shot and killed during the course of a robbery of the store. Petitioner has undergone two separate trials based on two separate

charges arising out of this event. Petitioner was convicted of armed robbery in the District Court of Tulsa County, Case No. CRF-73-228, on July 19, 1973. On November 21, 1973, petitioner was convicted in a second trial of the crime of felony murder, the armed robbery providing an essential element of the crime. Case No. CRF-73-227. Claiming that his rights under the Double Jeopardy Clause of the Fifth Amendment had been violated, petitioner sought postconviction relief in the District Court of Tulsa County, Okla. This relief was denied.

Petitioner then appealed to the Oklahoma Court of Criminal Appeals, which ordered petitioner's conviction for felony murder vacated because of the Double Jeopardy Clause. The Court stated:

"This order is made without prejudice to the trial of the said Floyd Harris on any charge of homicide which the facts and justice may warrant, not inconsistent with the views expressed by the Supreme Court of the United States in *Brown v. Ohio*, 432 U. S. 161, . . . and *Harris v. Oklahoma*, [433 U. S. 682]." Order Reversing Denial of Post-Conviction Relief, No. PC-78-93 (June 5, 1978).

Petitioner subsequently filed with the Oklahoma Court of Criminal Appeals an application entitled Writ of Habeas Corpus or alternatively, Petition for Rehearing *sua sponte*, alleging that the court's order in No. PC-78-93 was erroneous because in contravention of *Harris v. Oklahoma*, 433 U. S. 682 (1977). The court denied petitioner's application, stating:

"As petitioner's trial on the charge of Murder in the First Degree is barred solely because the armed robbery for which he was previously convicted is a necessary element of the murder conviction, the holding of *Harris v. Oklahoma* . . . does not prevent petitioner's trial on a lesser degree of homicide which does not require proof of the armed robbery as a necessary element." Order Denying Relief, No. H-78-322 (July 25, 1978).

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The order of the Oklahoma Court of Criminal Appeals would permit petitioner to be tried on charges arising out of the same criminal transaction as that underlying petitioner's conviction for armed robbery. Because I continue to adhere to my view, expressed in *Harris v. Oklahoma, supra*, at 683 (concurring opinion), that the Double Jeopardy Clause of the Fifth Amendment, applied to the States through the Fourteenth Amendment, requires the prosecution in one proceeding, except in extremely limited circumstances not present here, of "all the charges against a defendant that grow out of a single criminal act, occurrence, episode, or transaction," *Ashe v. Swenson*, 397 U. S. 436, 453-454 (1970) (BRENNAN, J., concurring), I would grant the petition for certiorari and reverse the judgment of the Oklahoma Court of Criminal Appeals in No. H-78-322. See *Thompson v. Oklahoma*, 429 U. S. 1053 (1977) (BRENNAN, J., dissenting), and cases collected therein.

No. 78-5489. *HALL v. CALIFORNIA*. Ct. App. Cal., 1st App. Dist. Certiorari denied. MR. JUSTICE WHITE would grant certiorari.

No. 78-464. *CURTIN MATHESON SCIENTIFIC, INC., ET AL. v. RUSSELL ET AL.* C. A. 5th Cir. Motion for leave to file petition for writ of certiorari and/or petition for writ of certiorari denied. Certiorari denied.

#### *Rehearing Denied*

- No. 77-1589. *OLIVETI v. UNITED STATES, ante*, p. 822;  
 No. 77-1616. *NELSON v. DEFENSE LOGISTICS AGENCY, ante*, p. 824;  
 No. 77-1816. *DiGILIO ET AL. v. UNITED STATES, ante*, p. 836;  
 No. 77-6691. *ALDRIDGE v. FLORIDA, ante*, p. 882;  
 No. 77-6696. *LEWIS v. UNITED STATES, ante*, p. 842; and  
 No. 77-6712. *BRIDGES v. UNITED STATES, ante*, p. 842.  
 Petitions for rehearing denied.

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No. 77-6932. *COOMES v. COMMISSIONER OF INTERNAL REVENUE*, *ante*, p. 854;

No. 77-6988. *BLOCH ET UX. v. GENERAL MOTORS ACCEPTANCE CORP.*, *ante*, p. 807;

No. 78-92. *FIRST NATIONAL BANK OF MEMPHIS v. SMITH ET AL.*, *ante*, p. 883;

No. 78-5055. *MAZZEFFI v. SCHWANKE, DBA ASHLAND & WAVELAND SERVICE STATION, ET AL.*, *ante*, p. 869;

No. 78-5085. *HAMILTON v. DEPARTMENT OF SOCIAL SERVICES OF NEW YORK CITY, HUMAN RESOURCES ADMINISTRATION*, *ante*, p. 870;

No. 78-5092. *ALEXANDER v. DELAWARE STATE BAR ASSN.*, *ante*, p. 808;

No. 78-5147. *BALOUN v. HELFERTY*, *ante*, p. 872;

No. 78-5186. *SHADD v. UNITED STATES BOARD OF PAROLE ET AL.*, *ante*, p. 815;

No. 78-5238. *KAVANAUGH v. GRUNDMAN ET AL.*, *ante*, p. 897; and

No. 78-5280. *GOOD SHIELD v. UNITED STATES*, *ante*, p. 898. Petitions for rehearing denied.

No. 77-6869. *STUART v. EMORY UNIVERSITY, INC., ET AL.*, *ante*, p. 882. Petition for rehearing denied. MR. JUSTICE BLACKMUN took no part in the consideration or decision of this petition.

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*Dismissal Under Rule 60*

No. 78-450. *UNITED STATES v. ST. LOUIS-SAN FRANCISCO RAILWAY CO.* C. A. 8th Cir. Certiorari dismissed under this Court's Rule 60. Reported below: 572 F. 2d 1224.

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*Appeals Dismissed*

No. 78-553. *AUTOMOTIVE SERVICE COUNCILS OF MICHIGAN ET AL. v. AUSTIN, SECRETARY OF STATE OF MICHIGAN.* Appeal

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from Ct. App. Mich. dismissed for want of substantial federal question. Reported below: 82 Mich. App. 574, 267 N. W. 2d 698.

No. 78-5486. RIDZON *v.* MOLLENKOPF, DIRECTOR, BOARD OF ELECTIONS OF COLUMBIANA COUNTY. Appeal from Sup. Ct. Ohio dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied.

No. 78-5560. BELL *v.* BELL 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.

#### *Certiorari Granted—Vacated and Remanded*

No. 78-2. ILLINOIS *v.* VITALE. Sup. Ct. Ill. Certiorari granted, judgment vacated, and case remanded to consider whether judgment based upon federal or state constitutional grounds, or both. See *California v. Krivda*, 409 U. S. 33 (1972). MR. JUSTICE WHITE and MR. JUSTICE BLACKMUN would grant certiorari and set case for oral argument. Reported below: 71 Ill. 2d 229, 375 N. E. 2d 87.

No. 78-370. CITY OF WEST HAVEN *v.* TURPIN. C. A. 2d Cir. Motion of respondent for leave to proceed *in forma pauperis* and certiorari granted. Judgment vacated and case remanded for further consideration in light of *Monell v. Department of Social Services of New York City*, 436 U. S. 658 (1978). Reported below: 579 F. 2d 152.

#### *Miscellaneous Orders*

No. A-437. THIES *v.* JOINT BAR ASSOCIATION GRIEVANCE COMMITTEE. Ct. App. N. Y. Application for stay, addressed to MR. JUSTICE POWELL and referred to the Court, denied.

No. A-460 (78-5716). McCRORY *v.* KIRK. Ct. Crim. App. Tex. Application for stay, addressed to MR. JUSTICE MARSHALL, and referred to the Court, denied.

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No. D-135. *IN RE DISBARMENT OF KUTZA*. Disbarment entered. [For earlier order herein, see 436 U. S. 943.]

No. D-144. *IN RE DISBARMENT OF HIRSCH*. It is ordered that Burton G. Hirsch of Phoenix, Ariz., be suspended from the practice of law in this Court and that a rule issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D-145. *IN RE DISBARMENT OF SHAKER*. It is ordered that Donald J. Shaker, of Pittsfield, Mass., be suspended from the practice of law in this Court and that a rule issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D-146. *IN RE DISBARMENT OF TEITELBAUM*. It is ordered that Myron Teitelbaum, of Dayton, Ohio, be suspended from the practice of law in this Court and that a rule issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D-147. *IN RE DISBARMENT OF PENCE*. It is ordered that Richard F. Pence, of Parkersburg, W. Va., be suspended from the practice of law in this Court and that a rule issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.\*

No. D-148. *IN RE DISBARMENT OF CLEM*. It is ordered that Maurice Curran Clem, Jr., of Henderson, Ky., 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. 80, Orig. *COLORADO v. NEW MEXICO ET AL.* Motion for leave to file bill of complaint granted and defendants allowed 60 days in which to answer.

\*[REPORTER'S NOTE: The rule to show cause was discharged and the order was vacated on December 11, 1978, *post*, p. 1042.]

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No. 76-1471. FEDERAL COMMUNICATIONS COMMISSION *v.* NATIONAL CITIZENS COMMITTEE FOR BROADCASTING ET AL.;

No. 76-1521. CHANNEL TWO TELEVISION CO. ET AL. *v.* NATIONAL CITIZENS COMMITTEE FOR BROADCASTING ET AL.;

No. 76-1595. NATIONAL ASSOCIATION OF BROADCASTERS *v.* FEDERAL COMMUNICATIONS COMMISSION ET AL.;

No. 76-1604. AMERICAN NEWSPAPER PUBLISHERS ASSN. *v.* NATIONAL CITIZENS COMMITTEE FOR BROADCASTING ET AL.;

No. 76-1624. ILLINOIS BROADCASTING CO., INC., ET AL. *v.* NATIONAL CITIZENS COMMITTEE FOR BROADCASTING ET AL.;  
and

No. 76-1685. POST CO. ET AL. *v.* NATIONAL CITIZENS COMMITTEE FOR BROADCASTING ET AL., 436 U. S. 775. Motion of National Citizens Committee for Broadcasting to waive or retax costs denied. MR. JUSTICE BRENNAN took no part in the consideration or decision of this motion.

No. 77-926. CANNON *v.* UNIVERSITY OF CHICAGO ET AL. C. A. 7th Cir. [Certiorari granted, 438 U. S. 914.] Motion of Equal Employment Advisory Council for leave to file a brief as *amicus curiae* granted.

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, 436 U. S. 955.] Motion of petitioners for divided argument granted. Motion of the Solicitor General to permit Kent L. Jones, Esquire, to present oral argument *pro hac vice* granted.

No. 77-1680. MICHIGAN *v.* DEFILLIPPO. Ct. App. Mich. [Certiorari granted, *ante*, p. 816.] Motion of respondent for appointment of counsel granted, and it is ordered that James C. Howarth, Esquire, of Detroit, Mich., be appointed to serve as counsel for respondent in this case.

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No. 77-1578. BROADCAST MUSIC, INC., ET AL. *v.* COLUMBIA BROADCASTING SYSTEM, INC., ET AL.; and

No. 77-1583. AMERICAN SOCIETY OF COMPOSERS, AUTHORS & PUBLISHERS ET AL. *v.* COLUMBIA BROADCASTING SYSTEM, INC., ET AL. C. A. 2d Cir. [Certiorari granted, *ante*, p. 817.] Motion of the Solicitor General for additional time to present oral argument on behalf of the United States as *amicus curiae* denied. Time allotted for oral argument is divided as follows: 30 minutes to petitioners, 15 minutes to the Solicitor General as *amicus curiae*, and 45 minutes to respondents.

No. 77-1654. CONSUMER ENERGY COUNCIL OF AMERICA *v.* FEDERAL ENERGY REGULATORY COMMISSION. C. A. 5th Cir. [Certiorari granted, *ante*, p. 817.] Motion of petitioner to substitute Consumer Energy Council of America in place of Consumer Federation of America, Energy Policy Task Force, granted. MR. JUSTICE STEWART took no part in the consideration or decision of this motion.

No. 77-1724. BURKS ET AL. *v.* LASKER ET AL. C. A. 2d Cir. [Certiorari granted, *ante*, p. 816.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* granted and 15 additional minutes allotted for that purpose.

No. 77-6673. BROWN *v.* TEXAS. County Ct. at Law No. 2, El Paso County, Tex. [Probable jurisdiction noted, *ante*, p. 909.] Motion of Joe B. Dibrell, Jr., Esquire, to permit Renea Hicks, Esquire, to present oral argument *pro hac vice* granted.

No. 78-201. GREENHOLTZ, CHAIRMAN, BOARD OF PAROLE OF NEBRASKA, ET AL. *v.* INMATES OF THE NEBRASKA PENAL AND CORRECTIONAL COMPLEX ET AL. C. A. 8th Cir. [Certiorari granted, *ante*, p. 817.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* granted and 15 additional minutes allotted for that purpose.

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No. 78-421. DAHLBERG ELECTRONICS, INC., ET AL. *v.* KIEVLAN ET AL. Appeal from Ct. App. Cal., 1st App. Dist.; and

No. 78-486. COUNCIL FOR EMPLOYMENT AND ECONOMIC ENERGY USE *v.* WHDH CORP. ET AL. C. A. 1st Cir. The Solicitor General is invited to file briefs in these cases expressing the views of the United States.

No. 78-761. AMERICAN TELEPHONE & TELEGRAPH CO. ET AL. *v.* UNITED STATES. C. A. D. C. Cir. Motion of petitioners to expedite consideration of petition for writ of certiorari denied.

No. 78-5388. FORD *v.* MUIR, U. S. DISTRICT JUDGE, ET AL.; and

No. 78-5505. PICKING *v.* BALTIMORE COUNTY, MARYLAND, ET AL. Motions for leave to file petitions for writs of mandamus denied.

#### *Certiorari Granted*

No. 78-425. P. C. PFEIFFER CO., INC., ET AL. *v.* FORD ET AL. C. A. 5th Cir. Certiorari granted. Reported below: 575 F. 2d 79.

No. 78-488. UNITED STATES *v.* 564.54 ACRES OF LAND, MORE OR LESS, SITUATED IN MONROE AND PIKE COUNTIES, PENNSYLVANIA, ET AL. C. A. 3d Cir. Certiorari granted. Reported below: 576 F. 2d 983.

No. 78-511. LO-JI SALES, INC. *v.* NEW YORK. App. Term, Sup. Ct. N. Y., 9th and 10th Jud. Dists. Certiorari granted.

No. 78-99. PARKER *v.* RANDOLPH ET AL. C. A. 6th Cir. Motions of respondents for leave to proceed *in forma pauperis* granted. Certiorari granted limited to Question 1 presented by the petition. Reported below: 575 F. 2d 1178.

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No. 78-309. *TOUCHE ROSS & Co. v. REDINGTON, TRUSTEE, ET AL.* C. A. 2d Cir. Motion of American Institute of Certified Public Accountants for leave to file a brief as *amicus curiae* and certiorari granted. Reported below: 592 F. 2d 617.

No. 78-5066. *DUNAWAY v. NEW YORK.* App. Div., Sup. Ct. N. Y., 4th Jud. Dept. Motion of petitioner for leave to proceed *in forma pauperis* and certiorari granted. Reported below: 61 App. Div. 2d 299, 402 N. Y. S. 2d 490.

*Certiorari Denied.* (See also Nos. 78-5486 and 77-5560, *supra.*)

No. 77-1765. *NEWPORT NEWS SHIPBUILDING & DRY DOCK Co. v. JONES ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 573 F. 2d 167.

No. 77-1848. *SPRAYREGEN v. UNITED STATES.* C. A. 2d Cir. Certiorari denied. Reported below: 577 F. 2d 173.

No. 77-1860. *RANKIN v. UNITED STATES.* C. A. 5th Cir. Certiorari denied. Reported below: 572 F. 2d 503.

No. 77-1861. *OGDEN v. UNITED STATES.* C. A. 5th Cir. Certiorari denied. Reported below: 572 F. 2d 501.

No. 77-6768. *MAYES v. UNITED STATES.* C. A. 6th Cir. Certiorari denied. Reported below: 575 F. 2d 1338.

No. 77-6819. *ROCHON v. UNITED STATES.* C. A. 8th Cir. Certiorari denied. Reported below: 575 F. 2d 191.

No. 78-128. *KRANCO, INC. v. NATIONAL LABOR RELATIONS BOARD.* C. A. 5th Cir. Certiorari denied. Reported below: 572 F. 2d 318.

No. 78-159. *CARSELLO v. UNITED STATES.* C. A. 7th Cir. Certiorari denied. Reported below: 578 F. 2d 199.

No. 78-178. *MAULDING ET AL. v. UNITED STATES.* C. A. 7th Cir. Certiorari denied. Reported below: 577 F. 2d 745.

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No. 78-194. *CHAMPION OIL CO., INC. v. HERBERT, COMMISSIONER, DEPARTMENT OF NATURAL RESOURCES OF ALASKA, ET AL.* Sup. Ct. Alaska. Certiorari denied. Reported below: 578 P. 2d 961.

No. 78-209. *FRENCH v. UNITED STATES*;

No. 78-5203. *BOEHM v. UNITED STATES*; and

No. 78-5204. *PAYNE v. UNITED STATES.* C. A. 10th Cir. Certiorari denied.

No. 78-216. *UNITED STATES INDEPENDENT TELEPHONE ASSN. v. MCI TELECOMMUNICATIONS CORP. ET AL.*;

No. 78-217. *AMERICAN TELEPHONE & TELEGRAPH CO. v. MCI TELECOMMUNICATIONS CORP. ET AL.*; and

No. 78-270. *FEDERAL COMMUNICATIONS COMMISSION v. MCI TELECOMMUNICATIONS CORP. ET AL.* C. A. D. C. Cir. Certiorari denied. Reported below: 188 U. S. App. D. C. 327, 580 F. 2d 590.

No. 78-231. *HARPER v. FELDMAN ET AL.* C. A. D. C. Cir. Certiorari denied. Reported below: 188 U. S. App. D. C. 200, 578 F. 2d 442.

No. 78-234. *NIEDERBERGER v. UNITED STATES.* C. A. 3d Cir. Certiorari denied. Reported below: 580 F. 2d 63.

No. 78-241. *ARPEJA-CALIFORNIA, INC. v. COHANE.* Ct. App. D. C. Certiorari denied. Reported below: 385 A. 2d 153.

No. 78-242. *ANDERSON ET AL. v. UNITED STATES.* C. A. 8th Cir. Certiorari denied. Reported below: 579 F. 2d 455.

No. 78-258. *MEHTA v. GUILLEMIN.* C. A. 9th Cir. Certiorari denied. Reported below: 573 F. 2d 1315.

No. 78-279. *PILUSO v. UNITED STATES.* C. A. 4th Cir. Certiorari denied. Reported below: 577 F. 2d 738.

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No. 78-281. *WEINER ET AL. v. UNITED STATES*; and  
No. 78-284. *LICHTIG v. UNITED STATES*. C. A. 9th Cir.  
Certiorari denied. Reported below: 578 F. 2d 757.

No. 78-305. *COMDEN ET UX. v. SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES, ET AL. (DORIS DAY DISTRIBUTING CO. ET AL., REAL PARTIES IN INTEREST)*. Sup. Ct. Cal. Certiorari denied. Reported below: 20 Cal. 3d 906, 576 P. 2d 971.

No. 78-318. *DALLAS POWER & LIGHT CO. ET AL. v. CENTRAL POWER & LIGHT CO. ET AL.* C. A. D. C. Cir. Certiorari denied. Reported below: 188 U. S. App. D. C. 56, 575 F. 2d 937.

No. 78-324. *PIERORAZIO ET AL. v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 578 F. 2d 48.

No. 78-326. *CHAMBER OF COMMERCE OF THE UNITED STATES EX REL. BOISE CASCADE CORP. v. NATIONAL LABOR RELATIONS BOARD ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 574 F. 2d 457.

No. 78-328. *CHAMBERS v. UNITED STATES*; and  
No. 78-333. *GRIFFIN v. UNITED STATES*. C. A. 8th Cir.  
Certiorari denied. Reported below: 579 F. 2d 1104.

No. 78-336. *ALLEN ET AL. v. UNITED STATES*. C. A. 10th Cir. Certiorari denied. Reported below: 579 F. 2d 553.

No. 78-341. *MAINS ET AL. v. UNITED STATES*. C. A. 6th Cir. Certiorari denied.

No. 78-363. *GRASSO v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 582 F. 2d 1277.

No. 78-365. *CREPS v. NEVADA*. Sup. Ct. Nev. Certiorari denied. Reported below: 94 Nev. 351, 581 P. 2d 842.

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No. 78-379. HOUSE, SUPERINTENDENT OF THE GREENSBORO CITY SCHOOLS, ET AL. *v.* STEWART, ASSISTANT AREA DIRECTOR, WAGE AND HOUR DIVISION, U. S. DEPARTMENT OF LABOR, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 577 F. 2d 734.

No. 78-382. STREETER *v.* UNITED STATES; and

No. 78-390. DYAR *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 574 F. 2d 1385.

No. 78-402. MEIER *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 577 F. 2d 753.

No. 78-412. LIVINGSTON ET AL. *v.* GEORGIA. Ct. App. Ga. Certiorari denied. Reported below: 145 Ga. App. 792, 245 S. E. 2d 11.

No. 78-413. BOWEN, GOVERNOR OF INDIANA, ET AL. *v.* UNITED STATES ET AL. C. A. 7th Cir. Certiorari before judgment denied.

No. 78-414. UNITED AIR LINES, INC. *v.* STATE HUMAN RIGHTS APPEAL BOARD ET AL. App. Div., Sup. Ct. N. Y., 2d Jud. Dept. Certiorari denied. Reported below: 61 App. Div. 2d 1010, 402 N. Y. S. 2d 630.

No. 78-418. ASH GROVE CEMENT CO. *v.* FEDERAL TRADE COMMISSION. C. A. 9th Cir. Certiorari denied. Reported below: 577 F. 2d 1368.

No. 78-458. DESOTO PARISH SCHOOL BOARD ET AL. *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 574 F. 2d 804.

No. 78-466. MODLA *v.* BELL, ATTORNEY GENERAL, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 570 F. 2d 351.

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No. 78-477. WEST SIDE WOMEN'S SERVICES, INC., ET AL. *v.* CITY OF CLEVELAND, OHIO, ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 582 F. 2d 1281.

No. 78-500. BROWN *v.* DANLEY, ADMINISTRATOR. Sup. Ct. Ark. Certiorari denied. Reported below: 263 Ark. 480, 566 S. W. 2d 385.

No. 78-506. BOWER *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 575 F. 2d 499.

No. 78-513. TRACY, JUDGE *v.* DIXON ET AL. Sup. Ct. Ariz. Certiorari denied. Reported below: 119 Ariz. 165, 579 P. 2d 1388.

No. 78-515. FEHR BROS., INC. *v.* ACCIAIERIE WEISSENFELS ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 584 F. 2d 833.

No. 78-519. BRAINERD *v.* FLANNERY. App. Ct. Ill., 2d Dist. Certiorari denied. Reported below: 56 Ill. App. 3d 991, 373 N. E. 2d 26.

No. 78-521. YIAMOUIYIANNIS *v.* CHEMICAL ABSTRACTS SERVICE ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 578 F. 2d 164.

No. 78-522. WENTZ ET AL. *v.* INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 578 F. 2d 1271.

No. 78-525. WILMORITE, INC., ET AL. *v.* EAGAN REAL ESTATE, INC., ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 578 F. 2d 1372.

No. 78-527. COURIER-NEWSOM EXPRESS, INC. *v.* MARTIN IMPORTS. C. A. 7th Cir. Certiorari denied. Reported below: 580 F. 2d 240.

No. 78-534. WELSH ET AL. *v.* KINCHLA ET AL. C. A. 1st Cir. Certiorari denied. Reported below: 577 F. 2d 767.

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No. 78-539. *MIZE ET AL. v. DARROW ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 574 F. 2d 1333.

No. 78-541. *DELTA REFRIGERATION Co. v. UPJOHN Co.* C. A. 5th Cir. Certiorari denied. Reported below: 575 F. 2d 879.

No. 78-545. *MOORE v. SUPREME COURT OF SOUTH CAROLINA ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 577 F. 2d 735.

No. 78-552. *BUILTA v. GENERAL ELECTRIC CREDIT CORP.* C. A. 5th Cir. Certiorari denied. Reported below: 575 F. 2d 879.

No. 78-554. *NATURAL GAS PIPELINE COMPANY OF AMERICA v. ZIMMER, TRUSTEE.* C. A. 5th Cir. Certiorari denied. Reported below: 576 F. 2d 106.

No. 78-555. *WARREN v. KUIPER, STATE ENGINEER, COLORADO GROUND WATER COMMISSION, ET AL.* Sup. Ct. Colo. Certiorari denied. Reported below: 195 Colo. 541, 580 P. 2d 32.

No. 78-556. *BLOCH ET AL. v. BLOCH.* C. A. 3d Cir. Certiorari denied. Reported below: 577 F. 2d 724.

No. 78-564. *WATKINS ET UX. v. NEW YORK.* App. Div., Sup. Ct. N. Y., 2d Jud. Dept. Certiorari denied. Reported below: 63 App. Div. 2d 1033, 406 N. Y. S. 2d 343.

No. 78-565. *LOCAL UNION No. 513, INTERNATIONAL UNION OF OPERATING ENGINEERS, AFL-CIO v. VANDEVENTER.* C. A. 8th Cir. Certiorari denied. Reported below: 579 F. 2d 1373.

No. 78-566. *POWELL v. SYRACUSE UNIVERSITY ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 580 F. 2d 1150.

No. 78-568. *ARRIAZA ET AL. v. CROCKER NATIONAL BANK.* C. A. 9th Cir. Certiorari denied. Reported below: 577 F. 2d 750.

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No. 78-573. *MELTON v. Bow*. Sup. Ct. Ga. Certiorari denied. Reported below: 241 Ga. 629, 247 S. E. 2d 100.

No. 78-576. *AMALGAMATED MEAT CUTTERS & BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO v. WINN-DIXIE STORES, INC.* C. A. 5th Cir. Certiorari denied. Reported below: 567 F. 2d 1343 and 575 F. 2d 1107.

No. 78-578. *IN RE STEINBERGER*. Sup. Jud. Ct. Me. Certiorari denied. Reported below: 387 A. 2d 1121.

No. 78-593. *SOUTH CAROLINA NATIONAL BANK v. NORTH CAROLINA NATIONAL BANK*. C. A. 4th Cir. Certiorari denied. Reported below: 573 F. 2d 1305.

No. 78-595. *LONE STAR GAS Co. v. BULLOCK, COMPTROLLER OF PUBLIC ACCOUNTS, ET AL.* Sup. Ct. Tex. Certiorari denied. Reported below: 567 S. W. 2d 493.

No. 78-601. *SCHULTZE ET UX. v. CHEVRON OIL Co.* C. A. 3d Cir. Certiorari denied. Reported below: 579 F. 2d 776.

No. 78-626. *LONG v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 574 F. 2d 761.

No. 78-662. *IRVIN v. UNITED STATES CIVIL SERVICE COMMISSION*. C. A. 5th Cir. Certiorari denied. Reported below: 577 F. 2d 144.

No. 78-667. *AMEND v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 577 F. 2d 145.

No. 78-670. *HANKS v. UNITED STATES ATTORNEY ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 573 F. 2d 1315.

No. 78-723. *JONES v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 580 F. 2d 349.

No. 78-5015. *BEAN ET AL. v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 575 F. 2d 880.

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No. 78-5063. *CHRISTIAN v. HOGAN ET AL.* C. A. 5th Cir. Certiorari denied.

No. 78-5168. *JONES v. UNITED STATES*; and  
No. 78-5200. *HOLT v. UNITED STATES.* C. A. 6th Cir. Certiorari denied. Reported below: 582 F. 2d 1281.

No. 78-5180. *JOHNSON v. ALEXANDER, SECRETARY OF THE ARMY, ET AL.* C. A. 8th Cir. Certiorari denied. Reported below: 572 F. 2d 1219.

No. 78-5195. *CARVER v. UNITED STATES*; and  
No. 78-5436. *CURTIS v. UNITED STATES.* C. A. 7th Cir. Certiorari denied. Reported below: 582 F. 2d 1284.

No. 78-5208. *HEIMERLE v. UNITED STATES.* C. A. 2d Cir. Certiorari denied. Reported below: 572 F. 2d 57.

No. 78-5216. *LOCKS v. CALIFORNIA.* Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 78-5247. *MAYFIELD v. UNITED STATES.* C. A. 9th Cir. Certiorari denied.

No. 78-5262. *HO YIN WONG v. UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA.* C. A. 9th Cir. Certiorari denied.

No. 78-5268. *SMITH v. UNITED STATES.* C. A. 2d Cir. Certiorari denied. Reported below: 574 F. 2d 707.

No. 78-5277. *KNUCKLES v. UNITED STATES.* C. A. 2d Cir. Certiorari denied. Reported below: 581 F. 2d 305.

No. 78-5293. *GAIAS ET AL. v. UNITED STATES.* C. A. 10th Cir. Certiorari denied. Reported below: 580 F. 2d 1382.

No. 78-5317. *MOSLEY v. UNITED STATES DEPARTMENT OF LABOR ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 577 F. 2d 751.

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No. 78-5320. *MORRIS v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 580 F. 2d 1048.

No. 78-5328. *KORTRIGHT v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 586 F. 2d 832.

No. 78-5343. *LANDRUM v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 582 F. 2d 1281.

No. 78-5350. *HILTON v. UNITED STATES*. Ct. App. D. C. Certiorari denied.

No. 78-5356. *DRIVER v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 581 F. 2d 80.

No. 78-5370. *WISHART v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 582 F. 2d 236.

No. 78-5372. *GOODWIN v. MORRIS, WARDEN*. C. A. 9th Cir. Certiorari denied. Reported below: 577 F. 2d 751.

No. 78-5377. *PIFER v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 582 F. 2d 1281.

No. 78-5382. *YATES v. UNITED STATES CIVIL SERVICE COMMISSION*. C. A. D. C. Cir. Certiorari denied.

No. 78-5383. *ROSENBERG v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 580 F. 2d 1046.

No. 78-5387. *SMITH v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 582 F. 2d 1280.

No. 78-5391. *DIXON v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 577 F. 2d 145.

No. 78-5392. *LEAL v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 577 F. 2d 753.

No. 78-5412. *HAWPETOSS v. UNITED STATES*. C. A. 7th Cir. Certiorari denied.

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No. 78-5417. *COLLINS v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 578 F. 2d 1366.

No. 78-5426. *JONES v. UNITED STATES*. Ct. Cl. Certiorari denied. Reported below: 217 Ct. Cl. —, 578 F. 2d 1391.

No. 78-5446. *MENDOZA v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 574 F. 2d 1373.

No. 78-5447. *WILLIAMS v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 582 F. 2d 1039.

No. 78-5495. *TALLEY v. FOREST CITY FOUNDRIES CO. ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 582 F. 2d 1280.

No. 78-5500. *MASON v. ZAHRADNICK, PENITENTIARY SUPERINTENDENT*. C. A. 4th Cir. Certiorari denied. Reported below: 573 F. 2d 1305.

No. 78-5501. *HOLLIS v. ESTELLE, CORRECTIONS DIRECTOR*. C. A. 5th Cir. Certiorari denied.

No. 78-5509. *LLOYD v. CALIFORNIA*. Ct. App. Cal., 3d App. Dist. Certiorari denied.

No. 78-5512. *NICHOLAS v. TENNESSEE DEPARTMENT OF EMPLOYMENT SECURITY ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 575 F. 2d 1338.

No. 78-5514. *NORKETT v. VIRGINIA*. Sup. Ct. Va. Certiorari denied.

No. 78-5516. *BRUCE v. INDIANA*. Sup. Ct. Ind. Certiorari denied. Reported below: 268 Ind. 180, 375 N. E. 2d 1042.

No. 78-5518. *TURPIN v. CITY OF WEST HAVEN*. C. A. 2d Cir. Certiorari denied. Reported below: 579 F. 2d 152.

No. 78-5521. *MCMAHON v. PENNSYLVANIA BOARD OF PROBATION AND PAROLE*. Pa. Commw. Ct. Certiorari denied.

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No. 78-5523. *CATANZARO v. MASCO CORP.* C. A. 3d Cir. Certiorari denied. Reported below: 575 F. 2d 1085.

No. 78-5524. *WERN v. CITY OF CENTERVILLE, OHIO.* Ct. App. Ohio, Montgomery County. Certiorari denied.

No. 78-5525. *JONES v. UNITED STATES.* C. A. 3d Cir. Certiorari denied. Reported below: 582 F. 2d 1277.

No. 78-5530. *SALTER v. JOHNSTON, SHERIFF.* C. A. 6th Cir. Certiorari denied. Reported below: 579 F. 2d 1007.

No. 78-5534. *PETERSON ET AL. v. PUERTO RICO.* Sup. Ct. P. R. Certiorari denied. Reported below: — P. R. R. —.

No. 78-5536. *HARMON v. MISSISSIPPI.* Sup. Ct. Miss. Certiorari denied. Reported below: 362 So. 2d 629.

No. 78-5537. *GARZA v. OREGON.* Ct. App. Ore. Certiorari denied. Reported below: 32 Ore. App. 643, 574 P. 2d 1151.

No. 78-5538. *IN RE WELFARE OF A. R. W. ET AL.* Sup. Ct. Minn. Certiorari denied. Reported below: 268 N. W. 2d 414.

No. 78-5539. *CLIFTON v. CALIFORNIA.* Ct. App. Cal., 5th App. Dist. Certiorari denied.

No. 78-5543. *HINCHCLIFFE v. PENNSYLVANIA.* Sup. Ct. Pa. Certiorari denied. Reported below: 479 Pa. 551, 388 A. 2d 1068.

No. 78-5545. *HOLSEY v. COLLINS, WARDEN.* C. A. 4th Cir. Certiorari denied. Reported below: 580 F. 2d 1048.

No. 78-5547. *BRIGHTWELL v. PENNSYLVANIA.* Sup. Ct. Pa. Certiorari denied. Reported below: 479 Pa. 541, 388 A. 2d 1063.

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No. 78-5549. *SHERRIL v. UNITED STATES*. C. A. 7th Cir. Certiorari denied.

No. 78-5565. *O'CALAGAN (CEREZO) v. GOVERNMENT OF THE CANAL ZONE*. C. A. 5th Cir. Certiorari denied. Reported below: 580 F. 2d 161.

No. 78-5572. *O'BRYANT v. PENNSYLVANIA*. Sup. Ct. Pa. Certiorari denied. Reported below: 479 Pa. 534, 388 A. 2d 1059.

No. 78-5584. *ALEXANDER v. SMITH, CORRECTIONAL SUPERINTENDENT*. C. A. 2d Cir. Certiorari denied. Reported below: 582 F. 2d 212.

No. 78-5588. *McCLENDON v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 582 F. 2d 1287.

No. 78-5595. *JIMENEZ (GONZALEZ) v. GOVERNMENT OF THE CANAL ZONE*. C. A. 5th Cir. Certiorari denied. Reported below: 580 F. 2d 897.

No. 78-5596. *KRUCKEBERG v. INDIANA*. Sup. Ct. Ind. Certiorari denied. Reported below: 268 Ind. 643, 377 N. E. 2d 1351.

No. 78-5602. *KEY v. GEORGIA*. Ct. App. Ga. Certiorari denied. Reported below: 146 Ga. App. 536, 246 S. E. 2d 723.

No. 78-5603. *BLOCH ET UX. v. SUFFOLK COUNTY FEDERAL SAVINGS & LOAN ASSN.* C. A. 2d Cir. Certiorari denied.

No. 78-5607. *CLECKLER v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 578 F. 2d 1055.

No. 78-5608. *BROWN v. BLACKBURN, WARDEN*. C. A. 5th Cir. Certiorari denied.

No. 78-5614. *VOGEL v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 578 F. 2d 870.

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No. 78-5616. *VINES v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 580 F. 2d 850.

No. 78-5622. *HAMNETT v. MICHIGAN CONFERENCE OF TEAMSTERS WELFARE FUND ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 586 F. 2d 843.

No. 78-5624. *SEAWELL v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 583 F. 2d 416.

No. 78-5627. *JERNIGAN v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 582 F. 2d 1211.

No. 78-5628. *CHASE v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 584 F. 2d 978.

No. 78-5634. *MAHLER v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 579 F. 2d 730.

No. 78-5637. *BEASLEY v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 571 F. 2d 578.

No. 76-6882. *MEEKS v. FLORIDA*. Sup. Ct. Fla.;

No. 78-5225. *DUFFY v. TEXAS*. Ct. Crim. App. Tex.;

No. 78-5490. *ALDERMAN v. GEORGIA*. Sup. Ct. Ga.; and

No. 78-5544. *STEPHENS v. HOPPER, WARDEN*. Sup. Ct. Ga. Certiorari denied. Reported below: No. 76-6882, 339 So. 2d 186; No. 78-5225, 567 S. W. 2d 197; No. 78-5490, 241 Ga. 496, 246 S. E. 2d 642; No. 78-5544, 241 Ga. 596, 247 S. E. 2d 92.

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. 77-1556. BERG ET AL. v. BERGER. C. A. 7th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 570 F. 2d 348.

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

Respondent, a nontenured public school teacher, was dismissed from her job in May 1975, following months of disagreement and dissension with her supervisors. The situation came to a head about six weeks before her dismissal. An informal conference was arranged and respondent, accompanied by her counsel, met with several school administrators to discuss her performance as a teacher. Although the meeting lasted for some time, it was confined primarily to an extensive cross-examination by respondent's counsel of the school administrators. The meeting was terminated inconclusively because respondent's counsel insisted upon a "specific written statement of charges" as a precondition of his client's full participation in the meeting and "never allowed her to speak."\*

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\*Dr. Robinson, one of the defendants, took notes of the meeting. His record of the events leading to the adjournment of the meeting was as follows:

"Mr. Ditekowsky [counsel for Miss Berger]: Again, Dr. Robinson, I respectfully submit that since we do not have a specific written statement of charges, and furthermore, since the nature of some of these charges are components of a Court suit we already have against the Board of Education, I do not feel that my client's participation in this meeting is proper. . . .

"Dr. Robinson: Mr. Ditekowsky, will you allow your client to respond to any of the reported activities [?]

"Mr. Ditekowsky: Yes, I will allow her to respond, but only for the sake of accommodation. Further, I would like the record to show that there should be a Court reporter present, and the charges should be made specifically in writing.

"(At this point the matter of impersonating a parent was discussed at great length. It turned into an extensive cross-examination by Mr. Ditekowsky

After conferring among themselves, the administrators, petitioners here, decided that the problems arising from respondent's conduct were sufficiently severe to merit an immediate recommendation of dismissal to the Board of Education. Their report to the Board referred to over 90 memoranda respondent had written to her principals during the past year about urgent problems with her students, emergencies which upon investigation were determined to be nonexistent or exaggerated; over

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of Miss O'Shea and Mrs. Berg [principals under whom Miss Berger served]. Neither Miss O'Shea nor Mrs. Berg were prepared with supportive documentation nor were they prepared to undergo an extensive cross-examination. This cross-examination went on for twenty to thirty minutes, and it appeared that Mr. Ditkowsky was taking advantage of the principals. Occasionally Miss Berger tried to volunteer some information, but Mr. Ditkowsky never allowed her to speak. It took about thirty minutes to cover one reported activity, when Mrs. Whitten [counsel for the school board] intervened.)

"*Mrs. Whitten*: Perhaps we should postpone this meeting to a time when we can supply you with a specific statement of charges and a time when the line administrators could have their supportive documentation available to them.

"*Mr. Ditkowsky*: We would be agreeable to this.

"*Dr. Robinson*: We will have to investigate with our Law Department as to whether or not under the State Statute it would be necessary for us to provide you with a written statement of charges which can be reviewed by you prior to any action by our Board of Education. You will be notified."

The Law Department advised petitioners that another meeting was not necessary. Instead, counsel for respondent was invited to review the documentation of Miss Berger's misconduct which the principals had compiled.

Respondent did not dispute this version of these events, but rather adopted it in her own pleadings. These notes provided substantial support for Dr. Robinson's statement, contained in an answer to one of respondent's interrogatories, that "[t]he entire purpose of the conference, which was to give Miss Berger an opportunity to respond to the allegations, was thwarted by her attorney, who would not allow her to respond." Respondent did not controvert this statement by any counter-affidavit.

60 telephone calls to principals and parents, the majority of which were threatening and harassing; and five incidents in which she had called the police into her classroom without cause and in violation of school policy. The report mentioned one incident where respondent had impersonated a parent and threatened other parents with a lawsuit. Following petitioners' recommendation, the Board discharged respondent for insubordination and conduct unbecoming a teacher.

Respondent filed an action under 42 U. S. C. § 1983 in the United States District Court for the Northern District of Illinois, accusing petitioners of having engaged in a malicious conspiracy to violate her rights under, *inter alia*, the First, Fourth, Fifth, Sixth, Eighth, Thirteenth, and Fourteenth Amendments. The District Court granted summary judgment for petitioners, ruling that "there is no genuine issue of fact to be submitted to the trier of fact" and concluding that petitioners "are entitled to a judgment as a matter of law." On appeal, the Seventh Circuit reversed. It perceived that the case turned on whether respondent had been deprived of a property or liberty interest without due process of law, and it found disputed issues of fact on this question. Respondent might be able to prove either that she had a property right to serve out the balance of her contract term or that the public dissemination of the charges against her created a stigma that infringed a protected liberty interest. Judge Pell dissented.

I would grant the petition for certiorari and summarily reverse. Even if respondent were able to prove the existence of a constitutionally protected property or liberty interest, it seems clear that the procedural requirements of the Due Process Clause were met on the facts of this case. Judge Pell appears to have been correct in observing:

"It needs no reading between the lines of the record presented to us to discern that the [petitioners], exercising their functions of operating the school system, terminated a non-tenured teacher who was seriously detrimental to

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the proper accomplishment of the educational aims of the school.”

With respect to the procedures followed here, Judge Pell noted:

“[T]his non-tenured teacher received the due process to which she was entitled by virtue of her status. She was given a meeting with school authorities who were willing to discuss with her and her attorney the difficulties which she was causing in the school where she was purporting to teach. The attorney’s tactics on that occasion subverted the effort.”

Our decisions in *Board of Curators v. Horowitz*, 435 U. S. 78 (1978); *Goss v. Lopez*, 419 U. S. 565 (1975); and *Cafeteria Workers v. McElroy*, 367 U. S. 886 (1961), have emphasized that the requirements of due process are flexible, varying according to the situation involved and interests implicated. It is abundantly clear that respondent and her supervisory authorities had been in a state of tension and disagreement for a period of months, and that respondent had full notice of the dissatisfaction with her performance. Finally, respondent was afforded a hearing with the appropriate school administrators at which she had the opportunity, with counsel present, to submit her views. It was at the instruction of her counsel that respondent did not speak in her own defense on this occasion. In sum, respondent received all process that she was due. See *Board of Curators v. Horowitz*, *supra*, at 85; *Goss v. Lopez*, *supra*, at 582.

No. 78-173. *KING v. NORRIS*. Ct. App. La., 3d Dist. Certiorari denied. MR. JUSTICE BLACKMUN would grant certiorari. Reported below: 355 So. 8d 21.

No. 78-352. *WILLIAMS PIPE LINE CO. ET AL. v. FEDERAL ENERGY REGULATORY COMMISSION ET AL.* C. A. D. C. Cir. Certiorari denied. MR. JUSTICE POWELL would grant certiorari. Reported below: 189 U. S. App. D. C. 250, 584 F. 2d 408.

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No. 78-257. BURNETTE-CARTER CO. *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. MR. JUSTICE WHITE would grant certiorari. Reported below: 575 F. 2d 587.

No. 78-440. COUNTY OF SONOMA ET AL. *v.* ISBELL ET AL. Sup. Ct. Cal. Certiorari denied for failure to file petition within time provided by 28 U. S. C. § 2101 (c). Reported below: 21 Cal. 3d 61, 577 P. 2d 188.

MR. JUSTICE STEVENS, with whom MR. JUSTICE BRENNAN and MR. JUSTICE STEWART join.

When a petition for certiorari is jurisdictionally untimely, should the Court so indicate in its order denying the writ? I think not, for these reasons: First, since a denial of certiorari has no precedential value in any event, the notation serves no useful purpose. Second, since the question of timeliness is not always easy to answer, compare *Department of Banking v. Pink*, 317 U. S. 264, with *Puget Sound Power & Light Co. v. King County*, 264 U. S. 22, and may produce different answers from different Members of the Court, even the decision to include that brief notation may consume valuable time. Third, because there is no consistency in the Court's practice with regard to such notations, their spasmodic use may engender confusion and misunderstanding. Accordingly, I do not join in the Court's statement.

No. 78-455. MITCHELL, WARDEN *v.* GIBSON. C. A. 4th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 581 F. 2d 75.

No. 78-491. ALTON & SOUTHERN RAILWAY CO. ET AL. *v.* BROTHERHOOD OF RAILWAY, AIRLINE & STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS & STATION EMPLOYEES. C. A. D. C. Cir. Certiorari denied. MR. JUSTICE POWELL took no part in the consideration or decision of this petition.

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No. 78-579. REUSS, MEMBER OF HOUSE OF REPRESENTATIVES *v.* BALLE ET AL. C. A. D. C. Cir. Certiorari denied. MR. JUSTICE POWELL took no part in the consideration or decision of this petition. Reported below: 189 U. S. App. D. C. 303, 584 F. 2d 461.

No. 78-510. WISCONSIN DEPARTMENT OF REVENUE *v.* MIDWESTERN GAS TRANSMISSION CO. Sup. Ct. Wis. Certiorari denied. MR. JUSTICE STEWART, MR. JUSTICE WHITE, and MR. JUSTICE BLACKMUN would grant certiorari. Reported below: 84 Wis. 2d 261, 267 N. W. 2d 253.

No. 78-540. NEW YORK TIMES CO. ET AL. *v.* NEW JERSEY ET AL. Sup. Ct. N. J. Motion of American Newspaper Publishers Assn. for leave to file a brief as *amicus curiae* granted. Certiorari denied. MR. JUSTICE BRENNAN took no part in the consideration or decision of this motion and petition. Reported below: 78 N. J. 259, 394 A. 2d 330.

#### *Rehearing Denied*

No. 77-1288. QUAGLINO *v.* CALIFORNIA, *ante*, p. 875;

No. 77-1432. KILRAIN ET AL. *v.* UNITED STATES, *ante*, p. 819;

No. 77-1523. MILLER *v.* UNITED STATES, *ante*, p. 821;

No. 77-1586. KEECH ET AL. *v.* UNITED STATES ET AL., *ante*, p. 822;

No. 77-1600. GILLRING OIL CO. *v.* FEDERAL ENERGY REGULATORY COMMISSION, *ante*, p. 823;

No. 77-1631. RIDGILL ET UX. *v.* RESTON HOMEOWNERS ASSN., *ante*, p. 805;

No. 77-1643. HOULTIN *v.* UNITED STATES, *ante*, p. 826;

No. 77-1655. HOWELL *v.* THOMAS, SHERIFF, *ante*, p. 826;

No. 77-1661. MARCH ET UX. *v.* ALLIS-CHALMERS CORP. ET AL., *ante*, p. 826; and

No. 77-1689. LITTON SYSTEMS, INC. *v.* UNITED STATES, *ante*, p. 828. Petitions for rehearing denied.

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- No. 77-1725. COLECO INDUSTRIES, INC. *v.* BERMAN ET AL., *ante*, p. 830;
- No. 77-1737. ROLOFF EVANGELISTIC ENTERPRISES, INC., ET AL. *v.* TEXAS, *ante*, p. 803;
- No. 77-1781. RABCO METAL PRODUCTS, INC. *v.* NATIONAL LABOR RELATIONS BOARD, *ante*, p. 833;
- No. 77-1787. GIACALONE *v.* UNITED STATES, *ante*, p. 834;
- No. 77-1796. METRO CLUB, INC. *v.* METRO PASSBOOK, INC., ET AL., *ante*, p. 834;
- No. 77-1825. ARTHUR ET AL. *v.* CLAY COMMUNITY SCHOOLS ET AL.; and TOLIN ET AL. *v.* SOUTHWEST PARKE COMMUNITY SCHOOL CORP. ET AL., *ante*, p. 806;
- No. 77-1834. LANG *v.* CITY OF PHILADELPHIA ET AL., *ante*, p. 804;
- No. 77-1849. CHICAGO SHERATON CORP. *v.* ZABAN ET AL., *ante*, p. 888;
- No. 77-6217. STACY *v.* FLORIDA, 436 U. S. 924;
- No. 77-6537. SPEARS ET AL. *v.* UNITED STATES, *ante*, p. 839;
- No. 77-6604. LITTLE *v.* NEBRASKA, *ante*, p. 809;
- No. 77-6728. PHILLIPS *v.* UNITED STATES, *ante*, p. 826;
- No. 77-6759. O'LEARY *v.* PALMER ET AL., *ante*, p. 844;
- No. 77-6767. PEACOCK *v.* COX ET VIR, *ante*, p. 845;
- No. 77-6897. KENNICK *v.* PLAIN DEALER PUBLISHING Co. ET AL., *ante*, p. 852;
- No. 77-6900. MACKEY *v.* FLORIDA, *ante*, p. 807;
- No. 78-66. ANGELINO ET AL. *v.* DODSON ET AL., *ante*, p. 883;
- No. 78-261. INDEPENDENT INVESTOR PROTECTIVE LEAGUE ET AL. *v.* TOUCHE ROSS & Co., *ante*, p. 895;
- No. 78-371. BERNSTEIN *v.* UNITED STATES, *ante*, p. 895;
- No. 78-5016. SAYLES *v.* SALES, *ante*, p. 868;
- No. 78-5098. NOONE *v.* DART DRUG CORP., *ante*, p. 871;
- and
- No. 78-5240. HUGHES *v.* TEXAS, *ante*, p. 903. Petitions for rehearing denied.

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No. 78-5296. *HORNICK v. YOUNG WOMEN'S CHRISTIAN ASSOCIATION OF MADISON, WISCONSIN, INC.*, ante, p. 888;  
No. 78-5315. *PHILLIPS v. SNYDER ET AL.*, ante, p. 898;  
No. 78-5353. *CAMPBELL v. MICHIGAN*, ante, p. 899; and  
No. 78-5380. *HEMMERLE ET UX. v. FIRST FEDERAL SAVINGS & LOAN ASSOCIATION OF DESOTO COUNTY*, ante, p. 921.  
Petitions for rehearing denied.

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*Dismissal Under Rule 60*

No. 78-655. *PINKUS, DBA ROSSLYN NEWS CO. ET AL. v. UNITED STATES*. C. A. 9th Cir. Certiorari dismissed under this Court's Rule 60. Reported below: 579 F. 2d 1174.

## DECEMBER 4, 1978

*Affirmed on Appeal*

No. 78-70. *WILKES COUNTY, GEORGIA, ET AL. v. UNITED STATES*. Affirmed on appeal from D. C. D. C. Reported below: 450 F. Supp. 1171.

No. 78-439. *BRIDGEPORT HYDRAULIC CO. ET AL. v. COUNCIL ON WATER COMPANY LANDS OF CONNECTICUT ET AL.* Affirmed on appeal from D. C. Conn. MR. JUSTICE POWELL and MR. JUSTICE REHNQUIST would vacate judgment and remand case for further consideration in light of *Penn Central Transportation Co. v. City of New York*, 438 U. S. 104 (1978). Reported below: 453 F. Supp. 942.

*Appeals Dismissed*

No. 78-5258. *PERILLO v. DEPARTMENT OF PUBLIC WELFARE OF PENNSYLVANIA*. Appeal from Sup. Ct. Pa. dismissed for want of substantial federal question. MR. JUSTICE STEWART and MR. JUSTICE STEVENS would note probable jurisdiction and set case for oral argument. Reported below: 476 Pa. 494, 383 A. 2d 208.

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No. 78-574. GIBSON DISTRIBUTING CO., INC., ET AL. v. DOWNTOWN DEVELOPMENT ASSOCIATION OF EL PASO, INC. Appeal from Sup. Ct. Tex. dismissed for want of jurisdiction. Notice of appeal was not filed within the time provided by 28 U. S. C. § 2101 (c). Reported below: 572 S. W. 2d 334.

No. 78-5408. MORPURGO v. PROFESSIONAL STAFF CONGRESS/CUNY ET AL. Appeal from C. A. 2d 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: 580 F. 2d 1045.

*Certiorari Granted—Reversed.* (See No. 78-344, *ante*, p. 89.)

#### *Miscellaneous Orders*

No. A-333. WHITE v. UNITED STATES. C. A. 7th Cir. Application for reduction of bond, addressed to MR. JUSTICE MARSHALL and referred to the Court, denied.

No. A-404 (78-708). GREENE ET UX. v. UNITED STATES. Application for recall and stay of mandate of the United States Court of Appeals for the Eighth Circuit, addressed to MR. JUSTICE MARSHALL and referred to the Court, denied.

No. A-472 (78-621). VILLAGE OF CARPENTERSVILLE v. LIMPERIS, TRUSTEE IN BANKRUPTCY. Application for stay of judgment of the United States Court of Appeals for the Seventh Circuit, entered July 14, 1978, addressed to MR. JUSTICE WHITE, and referred to the Court, denied.

No. 78-329. BELLOTTI, ATTORNEY GENERAL OF MASSACHUSETTS, ET AL. v. BAIRD ET AL.; and

No. 78-330. HUNERWADEL v. BAIRD ET AL. D. C. Mass. [Probable jurisdiction noted, *ante*, p. 925.] Motion of appellees Planned Parenthood League of Massachusetts et al. for additional time for oral argument denied. Alternative motion for divided argument granted. Motion of appellees Baird et al. to strike appearance of counsel for Planned Parenthood League of Massachusetts et al. denied.

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No. 76-1234. HARRIS, SECRETARY OF HOUSING AND URBAN DEVELOPMENT, ET AL. *v.* ROSS ET AL. C. A. 4th Cir.; and

No. 76-1261. HARRIS, SECRETARY OF HOUSING AND URBAN DEVELOPMENT, ET AL. *v.* ABRAMS ET AL. C. A. 9th Cir. [Certiorari granted, 431 U. S. 928.] Motion of the Solicitor General, with consent of respondents, for reference to the United States District Court for the District of Maryland [in No. 76-1234], and for reference to the United States District Court for the Central District of California [in No. 76-1261], to consider settlement granted.

No. 78-90. BURCH ET AL. *v.* LOUISIANA. Sup. Ct. La. [Certiorari granted, *ante*, p. 925.] Motion of petitioners to dispense with printing appendix granted.

No. 78-432. UNITED STEELWORKERS OF AMERICA, AFL-CIO-CLC *v.* WEBER ET AL.;

No. 78-435. KAISER ALUMINUM & CHEMICAL CORP. *v.* WEBER ET AL.; and

No. 78-436. UNITED STATES ET AL. *v.* WEBER ET AL. C. A. 5th Cir. Motion of Government Contract Employers Assn. for leave to file a brief as *amicus curiae* granted. MR. JUSTICE STEVENS took no part in the consideration or decision of this motion.

#### *Certiorari Granted*

No. 78-5283. JACKSON *v.* VIRGINIA ET AL. C. A. 4th Cir. Motion of petitioner for leave to proceed *in forma pauperis* and certiorari granted. Reported below: 580 F. 2d 1048.

No. 78-5374. SMITH *v.* MARYLAND. Ct. App. Md. Motion of petitioner for leave to proceed *in forma pauperis* and certiorari granted. Reported below: 283 Md. 156, 389 A. 2d 858.

*Certiorari denied.* (See also No. 78-5408, *supra*.)

No. 77-6979. PIERCE *v.* JAGO, CORRECTIONAL SUPERINTENDENT. C. A. 6th Cir. Certiorari denied.

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No. 78-166. *PLAQUEMINES PARISH SCHOOL BOARD v. BROUSSARD ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 572 F. 2d 1113.

No. 78-271. *DINKO v. UNITED STATES*; and

No. 78-469. *DINKO v. UNITED STATES.* C. A. 2d Cir. Certiorari denied. Reported below: 573 F. 2d 1297.

No. 78-296. *SALVUCCI v. REVERE RACING ASSN., INC., ET AL.* C. A. 1st Cir. Certiorari denied. Reported below: 577 F. 2d 721.

No. 78-340. *HAMILTON ET AL. v. UNITED STATES*;

No. 78-396. *FITZGERALD v. UNITED STATES*;

No. 78-398. *KOVACH v. UNITED STATES*; and

No. 78-5313. *LEAHU v. UNITED STATES.* C. A. 7th Cir. Certiorari denied. Reported below: 579 F. 2d 1014.

No. 78-353. *LUIGI GOLDSTEIN, INC. v. UNITED STATES.* Ct. Cl. Certiorari denied.

No. 78-369. *SHANNON ET AL. v. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT ET AL.* C. A. 3d Cir. Certiorari denied. Reported below: 577 F. 2d 854.

No. 78-408. *DUCHARME ET VIR v. MERRILL-NATIONAL LABORATORIES ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 574 F. 2d 1307.

No. 78-433. *GORDON TRANSPORTS, INC., ET AL. v. HIGHWAY & CITY FREIGHT DRIVERS, DOCKMEN & HELPERS, LOCAL UNION No. 600.* C. A. 8th Cir. Certiorari denied. Reported below: 576 F. 2d 1285.

No. 78-441. *ALLIED INTERNATIONAL PRODUCTS, LTD. v. TEXTRON INDUSTRIES, INC.* C. A. 1st Cir. Certiorari denied. Reported below: 577 F. 2d 722.

No. 78-442. *OTM CORP. v. UNITED STATES.* C. A. 5th Cir. Certiorari denied. Reported below: 572 F. 2d 1046.

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No. 78-445. ANDERSON, DIRECTOR, DEPARTMENT OF REGISTRATION AND EDUCATION OF ILLINOIS *v.* BARASA ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 582 F. 2d 1283.

No. 78-448. WRIGHT ET AL. *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 577 F. 2d 739.

No. 78-461. NORTON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 581 F. 2d 390.

No. 78-487. MARQUES-URIA *v.* IMMIGRATION AND NATURALIZATION SERVICE. C. A. 9th Cir. Certiorari denied. Reported below: 577 F. 2d 751.

No. 78-570. PREMIER CORP. *v.* SHEVIN, SHAPO & SHEVIN, P. A. C. A. 5th Cir. Certiorari denied. Reported below: 578 F. 2d 566.

No. 78-583. HERRMANN *v.* MOORE ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 576 F. 2d 453.

No. 78-584. ROBINSON *v.* MISSISSIPPI. Sup. Ct. Miss. Certiorari denied. Reported below: 359 So. 2d 1355.

No. 78-596. RUSS ET AL. *v.* RATLIFF. C. A. 8th Cir. Certiorari denied. Reported below: 578 F. 2d 221.

No. 78-598. LOUISVILLE & NASHVILLE RAILROAD CO. ET AL. *v.* HASTY. Sup. Ct. Miss. Certiorari denied. Reported below: 360 So. 2d 925.

No. 78-613. RUTLEDGE ET AL. *v.* LONG, PERSONNEL DIRECTOR, DEPARTMENT OF ADMINISTRATION OF KANSAS, ET AL. Ct. App. Kan. Certiorari denied. Reported below: 2 Kan. App. 2d xxii, 580 P. 2d 437.

No. 78-616. MARKUS *v.* ROSS, INDUSTRIAL COMMISSIONER OF NEW YORK. Ct. App. N. Y. Certiorari denied.

No. 78-620. ATKINSON, ADMINISTRATOR *v.* BASS ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 579 F. 2d 865.

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No. 78-628. *HUTTER v. LAKE VIEW TRUST & SAVINGS BANK ET AL.* App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 54 Ill. App. 3d 653, 370 N. E. 2d 47.

No. 78-631. *BUSH v. WEBSTER, MAYOR OF GU-WIN, ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 568 F. 2d 1365.

No. 78-635. *ACOUSTI ENGINEERING COMPANY OF FLORIDA v. SEA ET AL.* Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 352 So. 2d 1250.

No. 78-636. *FAGNAN v. GREAT CENTRAL INSURANCE CO.* C. A. 7th Cir. Certiorari denied. Reported below: 577 F. 2d 418.

No. 78-643. *ROCKWELL INTERNATIONAL CORP. v. KIRK.* C. A. 9th Cir. Certiorari denied. Reported below: 578 F. 2d 814.

No. 78-644. *LEE KLINGER VOLKSWAGEN, INC. v. CHRYSLER CORP. ET AL.* C. A. 7th Cir. Certiorari denied. Reported below: 583 F. 2d 910.

No. 78-648. *CITY OF SAN ANTONIO v. SAN PEDRO NORTH, LTD., ET AL.* Ct. Civ. App. Tex., 4th Sup. Jud. Dist. Certiorari denied. Reported below: 562 S. W. 2d 260.

No. 78-715. *FITZGERALD v. STAATS, COMPTROLLER GENERAL, ET AL.* C. A. D. C. Cir. Certiorari denied. Reported below: 188 U. S. App. D. C. 193, 578 F. 2d 435.

No. 78-5166. *RUDOLPH v. KENTUCKY.* Sup. Ct. Ky. Certiorari denied. Reported below: 564 S. W. 2d 1.

No. 78-5212. *WRIGHT v. ESTELLE, CORRECTIONS DIRECTOR.* C. A. 5th Cir. Certiorari denied. Reported below: 572 F. 2d 1071.

No. 78-5242. *DRENNON v. OKLAHOMA.* Ct. Crim. App. Okla. Certiorari denied. Reported below: 581 P. 2d 901.

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No. 78-5273. *CONNOR ET UX. v. ILLINOIS*. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 57 Ill. App. 3d 607, 373 N. E. 2d 684.

No. 78-5275. *GORECKI v. ILLINOIS*. App. Ct. Ill., 4th Dist. Certiorari denied. Reported below: 54 Ill. App. 3d 267, 369 N. E. 2d 380.

No. 78-5341. *VON REED v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 582 F. 2d 1278.

No. 78-5355. *BROWN v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 573 F. 2d 84.

No. 78-5360. *PARKER v. UNITED STATES*. C. A. D. C. Cir. Certiorari denied. Reported below: 188 U. S. App. D. C. 201, 578 F. 2d 443.

No. 78-5375. *GALLAGHER v. FLORIDA*. Dist. Ct. App. Fla., 2d Dist. Certiorari denied. Reported below: 359 So. 2d 1224.

No. 78-5396. *RAYO v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 580 F. 2d 1137.

No. 78-5401. *HALEY v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 581 F. 2d 723.

No. 78-5409. *FIERRO-SOZA v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 582 F. 2d 460.

No. 78-5418. *AGUILERA ET AL. v. UNITED STATES*;

No. 78-5452. *AGUIAR ET AL. v. UNITED STATES*; and

No. 78-5453. *MIRANDA ET AL. v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 579 F. 2d 641.

No. 78-5425. *TORRES ET AL. v. RAMOS ET AL.* C. A. 1st Cir. Certiorari denied. Reported below: 578 F. 2d 11.

No. 78-5443. *YORK v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 578 F. 2d 1036.

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No. 78-5445. *STONE v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 579 F. 2d 642.

No. 78-5451. *PRINCE ET AL. v. UNITED STATES*; and

No. 78-5465. *FOSTER v. UNITED STATES*. C. A. D. C. Cir. Certiorari denied. Reported below: 190 U. S. App. D. C. 16, 584 F. 2d 997.

No. 78-5475. *MARTINA v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 582 F. 2d 1290.

No. 78-5513. *HOMAN v. UNITED STATES*. C. A. 10th Cir. Certiorari denied.

No. 78-5558. *HOFFMAN v. BLACKBURN, WARDEN*. C. A. 5th Cir. Certiorari denied.

No. 78-5561. *BAILEY v. MITCHELL, WARDEN*. C. A. 4th Cir. Certiorari denied.

No. 78-5566. *MONROE v. UNITED STATES*. Ct. App. D. C. Certiorari denied. Reported below: 389 A. 2d 811.

No. 78-5567. *MACUMBER v. ARIZONA*. Sup. Ct. Ariz. Certiorari denied. Reported below: 119 Ariz. 516, 582 P. 2d 162.

No. 78-5568. *REICH v. DOW BADISCHE Co. ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 575 F. 2d 363.

No. 78-5642. *ADAMS v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 581 F. 2d 193.

No. 78-5655. *MARTIN v. COOPER, U. S. PAROLE COMMISSIONER, ET AL.* C. A. 5th Cir. Certiorari denied.

No. 78-5676. *WORCHESTER v. CRISP, WARDEN, ET AL.* C. A. 10th Cir. Certiorari denied.

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No. 77-1464. HUCH ET AL. *v.* UNITED STATES;

No. 77-1467. SOUTH PARK INDEPENDENT SCHOOL DISTRICT *v.* UNITED STATES; and

No. 78-222. BOARD OF EDUCATION FOR THE CITY OF VALDOSTA, GEORGIA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: Nos. 77-1464 and 77-1467, 566 F. 2d 1221; No. 78-222, 576 F. 2d 37.

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

Efforts to describe the complex of factors that go into a decision by this Court to deny certiorari in any given case date back at least to the opinion of Mr. Justice Frankfurter in *Maryland v. Baltimore Radio Show*, 338 U. S. 912 (1950), and I shall make no attempt to embroider them here. Some Members of the Court may feel that a case is wrongly decided, but lacking in general importance; others may feel that it is of general importance, but rightly decided; for either reason, a vote to deny certiorari is logically dictated. In these cases it seems to me demonstrable that the Court of Appeals has not properly assessed the relationship between *Swann v. Charlotte-Mecklenburg Board of Education*, 402 U. S. 1 (1971), and *Pasadena City Board of Education v. Spangler*, 427 U. S. 424 (1976). Obviously we cannot review in this Court every school desegregation case decided by a Court of Appeals, and particularly where, as here, the Court of Appeals merely remands the case to the District Court for further proceedings, there is a very natural tendency to conclude that the decisions of the Court of Appeals are not deserving of plenary review given the almost unmanageable caseload of the Court. But the Court of Appeals from which these cases come historically has had to decide more school desegregation cases than any other Court of Appeals, and the interminable pendency of school desegregation litigation resulting from remand orders such as these is precisely what was condemned in *Pasadena, supra*. I would therefore grant

certiorari to review the orders of the Court of Appeals remanding these cases to their respective District Courts.

## I

*Nos. 77-1464 and 77-1467. South Park Independent School District*

The United States brought this action in 1970, and in that same year the District Court adopted a school desegregation plan submitted by the district, "with certain modifications designed to increase the overall percentage of integration at particular schools." App. to Pet. for Cert. in No. 77-1467, pp. C-1—C-2 (hereinafter cited as Pet.). Since no party sought to appeal, the District Court's order became final. Almost six years later, the United States filed a motion for "supplemental relief," seeking an order requiring the district to "develop, adopt and implement a comprehensive school desegregation plan." The Government's motion, it should be noted, was filed *after* this Court's decision in *Pasadena, supra*. The motion was supported largely by the Government's assertion that during the 1975-1976 school term, 75.1% of all black students in the system attended schools that were 92% or more black, while 77.5% of all white students attended schools that were 86% or more white. The School District filed a reply, a group of parents successfully sought to intervene, and two separate hearings on the Government's motion were held in the District Court. The School District called witnesses in support of its petition; the Government called none.

The court concluded from the evidence before it that the 1970 desegregation order had dissolved all vestiges of a dual system. Noting that in each academic year since entry of the 1970 order total student enrollment in the district had consistently declined, while the percentage of black students enrolled in the district had steadily increased, the District Court found that "[t]he desegregative results differing from those anticipated in 1970 have been the result of shifting residential

patterns, attendance of some district students at private schools, and other factors beyond the control of defendant [school district] . . .” Pet. B-5. The court also found that the School District had complied with the 1970 order in all respects and had taken no action having a natural and foreseeable segregative effect on schools in the district. Student class assignments in the district had been made without regard to race or color, and no state agency had attempted to alter the residential or demographic patterns affecting the comprehensive neighborhood attendance plan set forth in the 1970 order. Concluding that no further action on its part was constitutionally required, the District Court denied the motion for supplemental relief.<sup>1</sup>

The Court of Appeals believed that this case was governed by a single passage from *Swann v. Charlotte-Mecklenburg Board of Education*, 402 U. S., at 26, removed from its context, describing the duty of district courts to scrutinize initial desegregation plans proposed by school boards for systems with a history of segregation where such plans contemplate the continuance of some schools that “are all or predominantly of one race.”<sup>2</sup> I think that the Court of Appeals erred in applying this particular passage from *Swann* to a

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<sup>1</sup> The District Court also based its denial of the motion for supplemental relief on the Government’s failure to comply with 20 U. S. C. § 1758, which in essence requires that local school authorities be given notice and a reasonable opportunity to develop a voluntary remedial plan before any existing court-approved desegregation plan may be modified.

<sup>2</sup> “Where the school authority’s proposed plan for conversion from a dual to a unitary system contemplates the continued existence of some schools that are all or predominantly of one race, they have the burden of showing that such school assignments are genuinely nondiscriminatory. The court should scrutinize such schools, and the burden upon the school authorities will be to satisfy the court that their racial composition is not the result of present or past discriminatory action on their part.” *United States v. South Park Independent School Dist.*, 566 F. 2d 1221, 1225 (CA5 1978), quoting *Swann v. Charlotte-Mecklenburg Board of Education*, 402 U. S., at 26.

school desegregation plan which had been accepted by all parties at the time of its inception, and had been in effect for six years before the Government decided to seek supplemental relief.<sup>3</sup> In *Swann* itself this Court acknowledged the reality that minority groups are often found concentrated in particular parts of metropolitan areas. Recognizing that demographic patterns can be affected by natural human migration as well as by official discrimination, the *Swann* court observed:

“Neither school authorities nor district courts are constitutionally required to make year-by-year adjustments of the racial composition of student bodies once the affirmative duty to desegregate has been accomplished and racial discrimination through official action is eliminated from the system. . . . [I]n the absence of a showing that either the school authorities or some other agency of the State has deliberately attempted to fix or alter demographic patterns to affect the racial composition of the schools, further intervention by a district court should not be necessary.” *Id.*, at 31–32.

This language was brought into sharper focus in *Pasadena City Board of Education v. Spangler*, 427 U. S. 424 (1976). Petitioner in *Pasadena* sought in 1974 to be relieved of a provision of a 1970 desegregation order requiring that there be no majority of any minority at any Pasadena school. Although the 1970 order had established a racially neutral system of student assignment in Pasadena, a “normal pattern of human migration” over the following four years had caused some Pasadena schools to “sli[p] out of compliance” with the no-majority-of-any-minority requirement. The District Court

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<sup>3</sup> Indeed, the District Court noted that “[t]he Department of Health, Education and Welfare, an agency of [the Government] charged with such responsibility, has approved student integration procedures in defendant district in each academic school year from entry of the Court’s order to the present, and prospectively, for academic school year 1977–78.” Pet. B-5.

denied relief, apparently believing it had authority to impose the requirement upon Pasadena schools regardless of what had caused the post-1971 change in their racial composition. We held that the District Court lacked such authority:

“[T]he District Court was not entitled to require [Pasadena] to rearrange its attendance zones each year so as to ensure that the racial mix desired by the court was maintained in perpetuity. For having once implemented a racially neutral attendance pattern in order to remedy the perceived constitutional violations on the part of the defendants, the District Court had fully performed its function of providing the appropriate remedy for previous racially discriminatory attendance patterns.” *Id.*, at 436-437.

The thrust of *Swann* and *Pasadena*, when taken together, is that a district court must heed the *Swann* mandate to closely scrutinize predominantly one-race schools when approving an *initial* desegregation plan in a school district with a history of *de jure* segregation, but that the District Court has no obligation, indeed, has no authority, to monitor the plan indefinitely to make sure that the initial *Swann* requirements are maintained year after year in spite of demographic changes which are in no way attributable to the school board. A unanimous Court in *Swann* made clear that the Constitution requires the dismantling of dual school systems, but does not mandate racial balance in schools. This principle was reaffirmed in *Milliken v. Bradley*, 418 U. S. 717, 740-741 (1974).

Here the Court of Appeals acknowledged that the District Court had found “no basis for relief since the 1970 plan had desegregated the school district thereby dissolving all vestiges of a dual school system.” *United States v. South Park Independent School Dist.*, 566 F. 2d 1221, 1224 (CA5 1978). After expressly observing that it did not view the case as “a situation where a district court has refused to rule,” the

Court of Appeals nonetheless found the District Court's holding that the School District was unitary "not detailed enough to show us whether or not the school system meets [the] *Swann* requirement." *Id.*, at 1225. Accordingly, the case was remanded to the District Court for "supplemental findings of fact."

I believe the Court of Appeals was wrong in its analysis of Fourteenth Amendment law when it implied that *Swann* rather than *Pasadena* would apply to a situation in which there *had been in effect* for six years a school desegregation plan fully accepted by all of the parties, including the United States. But more importantly, this case has an unsettling precedential potential for similar cases throughout the federal-court system. The Court of Appeals' opinion gives no clue to the District Court as to where it went wrong or how it can correct whatever mistake the Court of Appeals believes that it made. So far as I can tell from the remand order of the Court of Appeals, the District Court appears condemned to a fate akin to that of Sisyphus, the mythical King of Corinth who was sentenced by Zeus to an eternity in Hades trying "to roll a rock uphill which forever rolled back upon him."<sup>4</sup> Such a result, in my view, represents a departure "from the accepted and usual course of judicial proceedings" sufficient to warrant a grant of certiorari pursuant to our Rule 19 (1)(b).

## II

No. 78-222. *Board of Education for the City of Valdosta v. United States*

In *Board of Education for the City of Valdosta v. United States*, 576 F. 2d 37 (CA5 1978), another panel of the Fifth Circuit relied upon the decision in *South Park* as "the law of school desegregation as currently understood in this Circuit." 576 F. 2d, at 38 (emphasis added). There the United States

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<sup>4</sup> E. Hamilton, *Mythology* 439-440 (1945).

moved in 1976 for supplemental relief to "correct" the racial imbalance that had developed in certain Valdosta elementary schools since entry of the District Court's desegregation plan in 1971. After an evidentiary hearing, the District Court found that the school board had followed the 1971 desegregation order to the letter and that any racial imbalance in Valdosta schools "exists . . . not because of any action or inaction on the part of the Defendant Board of Education, but . . . simply because of a change in housing patterns which has occurred since the date of the Court's original order . . ." App. to Pet. for Cert. in No. 78-222, p. 5c. Having found the Valdosta school system unitary, the District Court denied the Government's motion for supplemental relief.

On appeal the Court of Appeals rejected the contention that the District Court's holding was compelled by *Pasadena City Board of Education v. Spangler*. Relying on *South Park* for the proposition that "the continued existence of a significant number of virtually one-race schools is constitutionally suspect," the court held that the "high incidence of racially identifiable schools belies the school board's contention that Valdosta has achieved a unitary school system. 576 F. 2d, at 38. Accordingly, the case was "remanded to the district court for the development of a plan . . . designed to alleviate the incidence of virtually one-race elementary schools." *Ibid*.

The Court of Appeals, having based its decision solely on statistics indicating that there were five racially identifiable elementary schools in Valdosta in 1976, undoubtedly acknowledged but can hardly be said to have heeded this Court's observation in *Swann*, 402 U. S., at 26, that "the existence of some small number of one-race . . . schools within a district is not in and of itself the mark of a system that still practices segregation by law." Before a district court can move under the Constitution to "correct" racially imbalanced schools, it must be shown that the imbalance was in some

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manner "caused by segregative actions chargeable to [school authorities]." *Pasadena City Board of Education v. Spangler*, 427 U. S., at 435. There is no indication in the Court of Appeals' opinion that the Government carried its burden of proving that the racial mix of Valdosta's elementary schools was the product of official discrimination, either present or past. Absent such a showing in the record, the District Court's finding that Valdosta had achieved a unitary school system cannot be held to be clearly erroneous. See *Dayton Board of Education v. Brinkman*, 433 U. S. 406, 417-418 (1977). Accordingly, I dissent from the Court's denial of certiorari in this case.

No. 77-1581. *BROWN TRANSPORT CORP. v. ATCON, INC.* Ct. App. Ga. Certiorari denied. Reported below: 144 Ga. App. 301, 241 S. E. 2d 15.

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

Respectfully, I dissent from the denial of certiorari.

## I

Section 223 of the Motor Carrier Act, 49 Stat. 565, 49 U. S. C. § 323, prohibits a common carrier by motor vehicle from delivering freight transported in interstate commerce until all tariff rates and charges have been paid, except as permitted by rules and regulations of the Interstate Commerce Commission. The Interstate Commerce Commission, pursuant to 49 U. S. C. § 323, has adopted regulations that allow delivery without prior collection of freight charges but limit the credit that may be extended: Freight bills must be presented to the shipper and collected within seven days. 49 CFR § 1322 (1977). A "shipper" is defined as the person who undertakes to pay the tariff charges. *Ibid.* The regulations are silent about what happens if the carrier fails to comply with the time limits established by them. The question raised by this case is whether failure by the carrier to comply with

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the time limits prescribed by 49 CFR § 1322 (1977) estops the carrier from collecting the freight charges from the shipper.

The Georgia Court of Appeals in this case held that it did, thereby joining the Seventh Circuit, which had reached a similar result in *Consolidated Freightways Corp. of Delaware v. Admiral Corp.*, 442 F. 2d 56 (1971).

Judge Swygert dissented in the *Consolidated Freightways Corp.* case, reasoning that "[n]othing in the Motor Carrier Act provides that a carrier's failure to comply with section 323 or the Interstate Commerce Commission's credit regulation should result in the carrier's forfeiting its right to collect freight charges." *Id.*, at 65. At least two jurisdictions share this view. *AAA Trucking Corp. v. Spherez, Inc.*, 110 N. H. 472, 272 A. 2d 594 (1970); *East Texas Motor Freight Lines v. Franklin County Distilling Co.*, 184 S. W. 2d 505 (Tex. Civ. App. 1944).

This conflict among jurisdictions over an issue which "imperatively demand[s] a single uniform rule," *Cooley v. Board of Wardens*, 12 How. 299, 319 (1852), commands the Court's immediate attention. There is further justification for review in *Pittsburgh, C., C. & St. L. R. Co. v. Fink*, 250 U. S. 577 (1919). There the Court held that a shipper remains liable for the full legal tariff even though the carrier mistakenly billed him for less, rejecting an argument that estoppel prevented collection on the ground that "[e]stoppel could not become the means of successfully avoiding the requirement of the act as to equal rates, in violation of the provisions of the statute." *Id.*, at 583. The *Fink* case, although concerning Interstate Commerce Act provisions regulating railroads and not motor carriers, is directly analogous to this case, suggesting that the decision below may be at variance with our prior case law.

Because of the substantiality of the federal issue raised, I would grant certiorari and set this case for argument.

## II

Although I dissent from denial of certiorari, it must be acknowledged that this case is no more deserving of plenary consideration than many other cases in which certiorari has been denied so far this Term.

## A

During the week of September 25, the Court met in Conference to deal with the petitions for certiorari, jurisdictional statements in appeals, petitions for rehearing, and miscellaneous motions that had accumulated and had been studied during the summer.\* There was a total of 992 items on the Conference List, of which 865 were petitions for writs of certiorari and 59 were appeals. As the Order Lists for this Term prior to today indicate, of these the Court has so far granted 24 petitions for certiorari, 23 paid and 1 unpaid, and has set for plenary consideration 6 appeals. In addition, summary action on the merits was taken on 15 petitions for certiorari, 8 paid and 7 unpaid, and on 30 statements of jurisdiction. Seven hundred and ninety-four petitions for certiorari were denied, 365 paid and 429 unpaid. Twenty-one appeals were dismissed and denied. There were thus 396 paid petitions for certiorari acted on and 437 unpaid, for a total of 833. Fifty-seven of the 59 appeals were also disposed of. For one reason or other, the remaining 32 petitions and 2 appeals have been held over for later action.

The 23 paid petitions granted amount to 5.81% of the 396 paid petitions acted upon. Summary action was taken on an additional 2.02%, making a total of 7.83% of the paid peti-

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\*The analysis following in the text pertains only to this Term's first Conference List. I have little doubt, however, that study of our dispositions of cases on subsequent Conference Lists would yield similar results. New filings accumulate at the rate of about 80 per week. As of the close of business on November 29, 869 paid petitions and statements of jurisdiction had been filed so far this Term, together with 808 unpaid petitions and statements of jurisdiction.

tions that were either granted or disposed of on the merits. The single unpaid petition granted amounted to 0.23% of the unpaid petitions acted on. Summary action was taken on an additional 1.60% of unpaid petitions, making a total of 1.83% of the unpaid petitions which were granted or on which summary action was taken.

## B

Our Rule 19 provides that one of the principal factors in determining whether certiorari should be granted is whether the decision below conflicts with another decision: Is the federal law, statutory or constitutional, being interpreted and enforced differently in different sections of the country? This has been an important criterion for the exercise of the Court's powers since most of the Court's jurisdiction was made discretionary in 1925.

When one examines the petitions for certiorari on the September 25 Conference List that have so far been denied, it is not difficult to find a good many cases in which the Court refused to review lower court decisions that conflicted with decisions of other federal or state appellate courts. The following are examples of such cases.

*Mansfield v. Estelle*, No. 77-6709, order reported below (opinion unpublished), 568 F. 2d 1366 (CA5 1978): "farce or mockery" standard for judging the effectiveness of retained counsel; a more stringent standard for appointed counsel. Cf. *United States v. DeCoster*, 159 U. S. App. D. C. 326, 487 F. 2d 1197 (1973) (diligent, conscientious, and reasonably competent assistance); *Moore v. United States*, 432 F. 2d 730, 736 (CA3 1970) ("the exercise of the customary skill and knowledge which normally prevails at the time and place"); *United States ex rel. Williams v. Twomey*, 510 F. 2d 634, 641 (CA7 1975) ("assistance which meets a minimum standard of professional representation"); *United States v. Easter*, 539 F. 2d 663, 666 (CA8 1976) ("reasonably competent" assistance). Also cf. *United States v. McCord*, 166 U. S. App.

D. C. 1, 509 F. 2d 334 (1974), cert. denied, 421 U. S. 930 (1975); *Goodwin v. Cardwell*, 432 F. 2d 521 (CA6 1970); *United States ex rel. Williams v. Twomey*, supra, at 640; *Blanchard v. Brewer*, 429 F. 2d 89 (CA8 1970), cert. denied, 401 U. S. 1002 (1971); *Ellis v. Oklahoma*, 430 F. 2d 1352 (CA10 1970), cert. denied, 401 U. S. 1010 (1971), all rejecting the distinction between paid and appointed counsel.

*United States v. Kelley*, No. 77-1729, opinion below, 568 F. 2d 259 (CA2 1978): timely administrative claim is not a jurisdictional prerequisite to recovery in suits in which the United States is substituted as defendant pursuant to the Federal Drivers' Act, 28 U. S. C. §§ 2679 (b)-(e). Contra, *Meeker v. United States*, 435 F. 2d 1219 (CA8 1970).

*Pennsylvania v. United States Tobacco Co.*, No. 77-1780, opinion below, 478 Pa. 125, 386 A. 2d 471 (1978): broad interpretation of "solicitation" in 15 U. S. C. § 381 (a), which prohibits a State from taxing the income of persons whose only contact with the State is solicitation of orders. Contra, *Clairol, Inc. v. Kingsley*, 109 N. J. Super. 22, 262 A. 2d 213. aff'd, 57 N. J. 199, 270 A. 2d 702 (1970), dismissed for want of a substantial federal question, 402 U. S. 902 (1971).

*Lacey v. United States*, No. 77-1751, order reported below (opinion unpublished), 578 F. 2d 1371 (CA2 1978): not impermissibly coercive *per se* to give a second *Allen* (*Allen v. United States*, 164 U. S. 492 (1896)) charge to a jury that has twice reported inability to reach a verdict and has not requested repetition of the charge. Accord, *United States v. Robinson*, 560 F. 2d 507 (CA2 1977) (en banc). Contra, *United States v. Seawell*, 550 F. 2d 1159 (CA9 1977).

*Guiffre v. United States*, No. 77-1778, opinion below 576 F. 2d 126 (CA7 1978): coverage of federal bank robbery statute, 18 U. S. C. § 2113 (b), is not limited to conduct that would fall within the common-law definition of larceny. Accord, *United States v. Fistell*, 460 F. 2d 157 (CA2 1972); *Thaggard v. United States*, 354 F. 2d 735 (CA5 1965), cert. denied, 383

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U. S. 958 (1966). Contra, *LeMasters v. United States*, 378 F. 2d 262 (CA9 1967); *United States v. Rogers*, 289 F. 2d 433 (CA4 1961) (dictum).

*Holcomb v. United States*, No. 77-6857, order reported below, 578 F. 2d 1381 (CA6 1978): a person accused of violating 18 U. S. C. § 922 (a)(6) by falsely denying that he has ever been convicted of a crime is not entitled to litigate the constitutionality of that conviction. Accord, *United States v. Edwards*, 568 F. 2d 68 (CA8 1977); *United States v. Allen*, 556 F. 2d 720 (CA4 1977); *United States v. Graves*, 554 F. 2d 65 (CA3 1977) (en banc); *United States v. Ransom*, 545 F. 2d 481 (CA5), cert. denied, 434 U. S. 908 (1977). Contra, *United States v. Pricepaul*, 540 F. 2d 417 (CA9 1976).

*Burke v. New Jersey Education Assn.*, No. 78-177, opinion below, 579 F. 2d 764 (CA3 1978): litigation of federal constitutional issues in a 42 U. S. C. § 1983 action is not precluded by a prior state adjudication of the same cause of action in which the federal issues could have been but were not raised. Other Circuits have taken different approaches to this issue. Cf. *Kurek v. Pleasure Driveway and Park District of Peoria*, 557 F. 2d 580 (CA7 1977); *Graves v. Olgiati*, 550 F. 2d 1327 (CA2 1977); *Scoggin v. Schrunk*, 522 F. 436 (CA9 1975); *Spence v. Latting*, 512 F. 2d 93 (CA10), cert. denied, 423 U. S. 896 (1975); *Lovely v. Laliberte*, 498 F. 2d 1261 (CA1 1974).

*Johnson v. Georgia*, No. 77-6607, opinion below, 240 Ga. 526, 242 S. E. 2d 53 (1978): Double Jeopardy Clause does not bar a State from revoking an individual's probation for an offense of which he was previously acquitted. Contra, *People v. Grayson*, 58 Ill. 2d 260, 319 N. E. 2d 43 (1974).

*McKethan v. United States*, No. 77-1545, and *Garner v. United States*, No. 77-1557, opinion below, 574 F. 2d 1141 (CA4 1978): admission into evidence of grand jury testimony of unavailable witness proper under Confrontation Clause and Federal Rules of Evidence. But see *United States v. Gonzalez*, 559 F. 2d 1271 (CA5 1977); *United States v. Fiore*, 443 F. 2d 112 (CA2 1971).

## C

Also among the petitions for certiorari that were denied were those appearing to conflict with a decision of this Court. Under our Rules, this is a substantial reason for granting certiorari. Examples of such cases follow.

*Sears, Roebuck & Co. v. Roberts*, No. 78-26, opinion below, 573 F. 2d 976 (CA7 1978): assignor of exclusive license may recover in action for fraud against assignee despite invalidity of the patent. Arguably inconsistent with *Lear, Inc. v. Adkins*, 395 U. S. 653 (1969).

*First Nat. Bank of Memphis v. Smith*, No. 78-92, opinion below *sub nom. Torian Estate v. Smith*, 564 S. W. 2d 521 (Ark. 1978): State need not give full faith and credit to judgment of court of sister State with *in personam* jurisdiction over property claimants but affecting personal property with no connection to that State. Arguably inconsistent with *Baker v. Baker, Eccles & Co.*, 242 U. S. 394 (1917).

*Arnold v. Hogan*, No. 77-6621, order below unpublished, D. C. Ct. App., No. 12347 (1978): neither the Due Process Clause nor the Ex Post Facto Clause infringed by the abolition of the corroboration requirement in a criminal trial for rape, where the requirement was judge made but longstanding, and is abolished in the course of the instant trial. Arguably inconsistent with *Weiler v. United States*, 323 U. S. 606 (1945), and *Calder v. Bull*, 3 Dall. 386, 390 (1798).

*Mellon Bank v. Southland Mobile Homes of S. C., Inc.*, No. 78-188, opinion below *sub nom. Southland Mobile Homes v. Associates Financial Services Co.*, 270 S. C. 527, 244 S. E. 2d 212 (1978): venue in suits against national banks under the National Bank Act, 12 U. S. C. § 94. Arguably inconsistent with *Michigan Nat. Bank v. Robertson*, 372 U. S. 591 (1963).

*Smith v. Collin*, No. 77-1736, opinion below, 578 F. 2d 1197 (CA7 1978): local ordinance prohibiting the dissemination of materials that would promote hatred toward persons on the

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basis of their heritage held unconstitutional. Arguably inconsistent with *Beauharnais v. Illinois*, 343 U. S. 250 (1952).

## D

Rule 19 also indicates that likely candidates for certiorari are those cases in which a state or federal court has decided an important question of federal law not heretofore determined by this Court. Some of the cases from our initial Conference List which involved issues of this kind and which the Court declined to review are the following.

*Lowe v. United States*, No. 78-5044, and *Dixon v. United States*, No. 78-5052, opinion below, 575 F. 2d 1193 (CA6 1978): whether 19 U. S. C. § 482 subjects mail entering the United States to customs inspection at a place other than the point of entry into this country, an issue reserved in *United States v. Ramsey*, 431 U. S. 606 (1977).

*Beatty v. Lycoming County Children's Services*, No. 77-1703, opinion below *sub nom. In re William L.*, 477 Pa. 322, 383 A. 2d 1228 (1978): rejecting equal protection and due process challenges to a Pennsylvania statute permitting termination of parental rights (so that the child may be adopted) on a showing of incapacity, without any evidence of abuse or misconduct.

*Warden of West Virginia Penitentiary v. Jones*, No. 77-1734, opinion below, — W. Va. —, 241 S. E. 2d 914 (1978): *Mullaney v. Wilbur*, 421 U. S. 684 (1975) is to be applied retroactively to collateral proceedings, an issue not expressly decided in *Hankerson v. North Carolina*, 432 U. S. 233 (1977).

*Eastern Scientific Co. v. Wild Heerbrugg Instruments, Inc.*, No. 77-1769, opinion below, 572 F. 2d 883 (CA1 1978): under *Continental T. V., Inc. v. GTE Sylvania Inc.*, 433 U. S. 36 (1977), territorial restrictions enforced by resale price maintenance are not *per se* illegal.

*Indiana v. Martin*, No. 77-1822, order reported below, 577 F. 2d 749 (CA7 1978): the prosecution bears the burden of

showing reliability of in-court identification subsequent to impermissibly suggestive lineup identification.

*Frazier v. Weatherholtz*, No. 77-6460, opinion below, 572 F. 2d 994 (CA4 1978): burden of proving self-defense may be placed on the accused in a criminal prosecution.

*International Business Machines Corp. v. FCC*, No. 77-1540, opinion below *sub nom. American Tel. & Tel. Co. v. FCC*, 572 F. 2d 17 (CA2 1978): whether the Commission possesses and has consciously exercised discretion to consider whether to refrain from rate regulation of resellers of telephone transmission services.

*Marshall v. Daniel Construction Co.*, No. 77-1697, opinion below, 563 F. 2d 707 (CA5 1977): worker has no right under Occupational Safety and Health Act to refuse to perform tasks that he reasonably believes present an immediate risk of death or serious injury, and employee who does so may be properly discharged; the Secretary of Labor's regulation to the contrary held invalid.

*Kerr-McGee Chemical Corp. v. Andrus*, No. 77-1785, order reported below, 187 U. S. App. D. C. 426, 574 F. 2d 637 (1978): regulations promulgated by the Secretary of the Interior may be applied retroactively to deny mining leases that were assertedly granted under formerly prevailing standards.

*University of Texas Medical Branch at Galveston v. United States*, No. 77-1520, opinion below, 557 F. 2d 438 (CA5 1977): the impact of *Wyandotte Transportation Co. v. United States*, 389 U. S. 191 (1967), implying a right of action under § 15 of the Rivers and Harbors Appropriation Act of 1899, 30 Stat. 1152, 33 U. S. C. § 409, upon the availability of a defense under the Limitation of Shipowners' Liability Act.

*Early v. Palm Beach Newspapers, Inc.*, No. 77-1649, opinion below, 334 So. 2d 60 (Fla. App. 1976), appeal and cert. dismissed, 354 So. 2d 351 (Fla. 1977): statements labeled as opinions or editorials and containing no misstatements of fact may not be the subject of a constitutionally valid libel action.

## E

I do not suggest that the Court should have granted certiorari in *all* of these cases or that it should review *all* cases of this kind in the future. The reason is that we are performing at our full capacity, *i. e.*, we are now extending plenary review to as many cases as we can adequately consider, decide and explain by full opinion.

In 1937, in a letter to Senator Wheeler, Mr. Chief Justice Hughes stated that the Court was fully abreast of its work and was granting plenary consideration to all cases that deserved decision by an institution such as the Supreme Court. The Chief Justice said:

“Granting certiorari is not a matter of favor but of sound judicial discretion. It is not the importance of the parties or the amount of money involved that is in any sense controlling. The action of the Court is governed by its rules.

“I think that it is safe to say that about 60 percent of the applications for certiorari are wholly without merit and ought never to have been made. There are probably about 20 percent or so in addition which have a fair degree of plausibility but which fail to survive critical examination. The remainder, falling short, I believe, of 20 percent, show substantial grounds and are granted. I think that it is the view of the members of the Court that if any error is made in dealing with these applications it is on the side of liberality.”

In 1937, there were fewer than 1,000 new filings on the Supreme Court docket. In 1962, there were about 2,800 and today about 4,000. No longer is it possible to review 20% or even 10% of the cases in which petitions are filed.

For the 24 years ending with the 1970 Term, in cases granted plenary consideration, the Court issued an average

of 101 full opinions plus 10 to 15 *per curiam* opinions. Since 1970, we have averaged 132 full opinions plus 15 *per curiams*—these opinions deciding an average of 170 cases—and we cannot hope substantially to exceed this average or to increase the percentage of all cases docketed to which we give plenary review. Indeed, if the certiorari docket resumes the remarkable growth that it exhibited prior to 1972, which it may well do when the output of the courts of appeals begins to reflect the many new judgeships created by the Omnibus Judgeship Act just passed by Congress, the percentage of petitions filed that can be reviewed here will inevitably decline ever further.

There is no doubt that those concerned with the coherence of the federal law must carefully consider the various alternatives available to assure that the appellate system has the capacity to function in the manner contemplated by the Constitution. As others have already noted, there is grave doubt that this function is being adequately performed.

In 1972, a study group chaired by Paul Freund of the Harvard Law School examined the problem. Its stark conclusion was:

“The statistics of the Court’s current workload, both in absolute terms and in the mounting trend, are impressive evidence that the conditions essential for the performance of the Court’s mission do not exist. For an ordinary appellate court the burgeoning volume of cases would be a staggering burden; for the Supreme Court the pressures of the docket are incompatible with the appropriate fulfillment of its historic and essential functions.” Federal Judicial Center, Report of the Study Group on the Case-load of the Supreme Court 5 (1972), reprinted in 57 F. R. D. 573, 581 (1973).

Likewise, the Commission on Revision of the Federal Court Appellate System, which was established by Congress, concluded in 1975 that the present appellate arrangements leave

unsettled too many conflicting decisions and important questions of federal law. The point has been reached at which "the percentage of cases accorded review [has] dipped below the minimum necessary for effective monitoring of the nation's courts on issues of federal statutory and constitutional law." Commission on Revision of the Federal Court Appellate System, Structure and Internal Procedures: Recommendations for Change 29 (1975), reprinted in 67 F. R. D. 195, 217 (1976).

The Commission recommended the creation of a National Court of Appeals, which would not be interposed between the lower courts and this Court but whose mission in the main would be to decide cases that this Court referred to it. Legislation was proposed to implement the Commission's recommendations. Under the proposal, cases from lower courts would first be filed here, as under the present system. This Court would then not only select and dispose of its own argument docket, but would also refer additional cases to the new court for its decision. The bill did not proceed beyond the hearing stage.

MR. CHIEF JUSTICE BURGER.

Reasonable men can, and do, have differing views on the specific cases recited by MR. JUSTICE WHITE, but his analysis of the broad workload problem confronting this Court is sound and constitutes an important service. It is not a healthy situation when cases deserving authoritative resolution must remain unresolved because we are currently accepting more cases for plenary review than we can cope with in the manner they deserve.

It is now six years since a committee of distinguished practitioners and scholars, all of them intimately familiar with the work of the Court, concluded that the growth in the volume and changing complexion of that work called for a remedy. Federal Judicial Center, Report of the Study Group on the Caseload of the Supreme Court (1972), 57 F. R. D. 573

(1973).<sup>1</sup> That committee, chaired by Professor Paul A. Freund,<sup>2</sup> after tracing the rise in the Court's filings and opinions, proposed the creation of a new national, intermediate appellate court to afford review of cases which it was not possible for this Court to review. The Study Group on the Caseload of the Supreme Court saw a twofold function for the proposed court:

"(1) screening all petitions for certiorari and appeals that would at present be filed in the Supreme Court, referring the most review-worthy . . . to the Supreme Court . . . , and denying the rest; and

"(2) retaining for decision on the merits cases of genuine conflict between circuits (except those of special moment, which would be certified to the Supreme Court)." *Id.*, at 611.

Responding to urgings from the Judicial Branch and the tremendous increase in the workload of the federal courts, the Congress in 1972 established a commission representing all three branches of Government to study the problems and make recommendations.<sup>3</sup> The commission requested the

<sup>1</sup> In the first Term of Chief Justice Warren's tenure (O. T., 1953), for example, this Court announced 65 signed opinions; his final (1968) Term, 99; with an average of 96, 1953 to 1968 inclusive. The average, 1969 through 1977, was 125.

<sup>2</sup> Other members of the committee were: Alexander M. Bickel, Peter D. Ehrenhaft, Russell D. Niles, Bernard G. Segal, Robert L. Stern, and Charles A. Wright.

<sup>3</sup> The Chairman and Vice Chairman of the commission were Senator Roman L. Hruska and Judge J. Edward Lumbard, respectively; Professor A. Leo Levin was Executive Director. Members appointed from the Senate and House, and by the President and Chief Justice, were Senators Quentin N. Burdick, Hiram L. Fong, and John L. McClellan; Congressmen Jack Brooks, Walter Flowers, Edward Hutchinson, and Charles E. Wiggins; Emanuel Celler, Dean Roger C. Cramton, Francis R. Kirkham, Judge Alfred T. Sulmonetti, Judge Roger Robb, Bernard G. Segal, and Professor Herbert Wechsler.

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views of each Member of this Court. My response in part stated:

“[I]f no significant changes are made in federal jurisdiction, including that of the Supreme Court, the creation of an intermediate appellate court in some form will be imperative. The notion that nine Justices of the Supreme Court can deal as effectively and correctly with four times as many docketed cases as were dealt with only four decades ago may seem flattering to the incumbent Justices, but Congress must become aware of the enormous change in the burdens on the Justices in that short period of time. Indeed, it can be documented that as far back as 40 years ago, 10 years after the Judiciary Act of 1925, many of the Justices were even then apprehensive about the capacity of the Supreme Court to perform the functions performed in its first 150 years. The changes brought on in the 20th century and the new social, political and economic developments have surely not diminished the importance of the questions presented to the Supreme Court and have vastly increased the volume of important questions which can have an impact of great significance on the country.” Report of the Commission on Revision of the Federal Court Appellate System, Structure and Internal Procedures: Recommendations for Change, reprinted in 67 F. R. D. 195, 398–399 (1976).

In June 1975, the Commission on Revision of the Federal Court Appellate System issued its report, recommending “the creation of a new national court of appeals, designed to increase the capacity of the federal judicial system for definitive adjudication of issues of national law, subject always to Supreme Court review.” *Id.*, at 208.

That Commission found four significant consequences resulting from the inability of the federal judicial system to provide

adequate capacity for the declaration of national law: (a) unresolved intercircuit conflict; (b) delay; (c) a burden on the Supreme Court to hear cases arising from intercircuit conflict otherwise less worthy than many cases denied review; and (d) resulting uncertainty in the law. *Id.*, at 217-219.

The Commission proposed a National Court of Appeals consisting of seven judges with reference jurisdiction and transfer jurisdiction. Under the proposed reference jurisdiction, the Supreme Court would be empowered to refer any case within its appellate jurisdiction to the National Court of Appeals either for a decision on the merits or, alternatively, for a decision as to whether the National Court of Appeals should review the case. Under the proposed transfer jurisdiction, any court of appeals could, in appropriate and specified circumstances, transfer any case to the National Court of Appeals for a nationally binding decision, subject to this Court's consideration. *Id.*, at 238-247.

The recommendations of the Study Group on the Caseload of the Supreme Court, commonly called the "Freund Committee," have been available to the Congress and the Bar since 1972. The recommendations of the Commission on the Federal Court Appellate System have been available since 1975.

The dilemma now confronting this Court—and the country—is not new. Under the Judiciary Act of 1789, Congress created only 13 federal district judgeships and six Justices of the Supreme Court. It did not provide for an intermediate appellate court staffed, as today, with United States circuit judges. Supreme Court Justices were required to "ride circuit" and to sit with district judges to form circuit courts, sometimes reviewing district court appeals, sometimes sitting as trial judges. Later these circuit-riding judges, acting as Supreme Court Justices, sat in review of the very cases in which they had participated on Circuit.

Chief Justice John Jay and the Associate Justices urged relief and circuit courts of appeal were authorized in the

Judiciary Act of 1801; however, after the election of Thomas Jefferson, that statute was repealed the following year. Subsequently, Chief Justice Marshall unavailingly urged the creation of an intermediate tier of courts of appeals. Thus, nearly a century passed before such courts were finally created in 1891; they exist today as the United States Courts of Appeals for the 11 Circuits.<sup>4</sup>

In my response of May 29, 1975, to the Commission, 67 F. R. D., at 396, I strongly urged that if an intermediate court was created it should not be a permanent tier of new judges at the outset. Rather, I suggested that Congress seriously consider the creation of a temporary court so that for five years, more or less, an experimental program could be carried out.<sup>5</sup> The experience could then serve as a valuable guide to the Congress, without the burden of the irreversible step of establishing a permanent intermediate court.<sup>6</sup> MR. JUSTICE WHITE, too, favored an additional appellate court, "at least on a trial basis." He said in his letter to the Commission:

"I should also emphasize that the proposed new court would not only permit the decision of a good many cases that are not now being decided at all by this Court, but

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<sup>4</sup> Under the recent Omnibus Judgeship Act of 1978, Pub. L. 95-486, 92 Stat. 1629 (Oct. 20, 1978), the total number of circuit judgeships was increased from 97 to 132.

<sup>5</sup> The mode of selection of members of such an ad hoc court can be worked out either along the lines recommended by the Freund Committee or through some other neutral mechanism.

<sup>6</sup> There is, of course, precedent for this suggestion, for Congress has created temporary courts in the past. *E. g.*, Special Regional Rail Reorganization Court, created by the Regional Rail Reorganization Act of 1973, § 209 (b), 87 Stat. 999; Temporary Emergency Court of Appeals, created by the Act of Dec. 22, 1971, § 211 (b), 85 Stat. 749; Emergency Court of Appeals, created by the Emergency Price Control Act of 1942, § 204, 56 Stat. 31.

would also (1) permit plenary consideration in selected cases which are within our compulsory appellate jurisdiction but which are presently being summarily disposed of here; (2) permit this Court to decline full consideration of and refer to the new court a substantial number of cases the issues in which are not unusually important or complex but which are now reviewed here because of existing conflicts among the circuits or among the federal and state courts; (3) enable this Court, if it was so minded, to reduce the total number of cases in which it now hears oral arguments and writes full opinions, perhaps to the yearly average of approximately 100 that obtained for 15 years prior to the 1970 Term; and (4) present the opportunity for this Court to review some cases that it would not now otherwise hear because of docket pressures." Report of the Commission on Revision of the Federal Court Appellate System, 67 F. R. D., at 402.<sup>7</sup>

After nearly nine years' delay, the 95th Congress recently created 117 additional district and 35 additional circuit judgeships—all of them long desperately needed to meet rising caseloads at both levels. This rise in caseload<sup>8</sup> is thought by many observers to result from multiple sources: (a) the enactment of more than 50 statutes by Congress since 1969

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<sup>7</sup> Letters to the Commission from JUSTICES BLACKMUN, POWELL, and REHNQUIST reflect general agreement with these views of MR. JUSTICE WHITE on the need for some relief if this Court is to achieve and maintain the optimum level of quality in its work. 67 F. R. D., at 404, 406, 407, respectively. MR. JUSTICE STEWART expressed the view that it is "likely that the day would come when a new court would be needed." *Id.*, at 400.

<sup>8</sup> For the year ending June 30, 1970, district court filings were 125,423, and for the year ending June 30, 1978, they were 166,539. Courts of appeals filings rose from 11,662 during the same period in 1970 to 18,918 for the year ending June 30, 1978.

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increasing the jurisdiction of federal courts; (b) the increasing tendency to bypass available state and municipal remedies in favor of assumed swifter remedies in federal courts; (c) the increasing perceived need for courts to become "problem solvers" on great social and economic problems rather than the traditional resolvers of discrete, manageable disputes;<sup>9</sup> (d) the default, perceived or real, of executive and legislative solutions; and (e) the increasing complexity of much of the litigation arising from a modern society.<sup>10</sup>

We cannot assume any lessening in the expansion of federal jurisdiction or in congressional response to new demands.<sup>11</sup> When the 152 newly created federal judgeships are filled and operational, decisions of those judges will likely generate a significant increase in cases subject to review on appeal or on certiorari in this Court.

The additional judgeships may solve short-term problems, but the long-term problems of the Supreme Court analyzed by the Freund Committee and the Commission on Revision of the Federal Court Appellate System remain as they were a decade ago. If the improvement in the expeditious dispensation of justice intended by the Congress and the President

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<sup>9</sup> See S. Rifkind, *Are We Asking too Much of our Courts?*, address delivered at the National Conference on the Causes of Popular Dissatisfaction with the Administration of Justice, 70 F. R. D. 96, 101-104 (1976).

<sup>10</sup> Provocative and thoughtful analyses of these subjects are not wanting. See, e. g., Hellman, *The Business of the Supreme Court Under the Judiciary Act of 1925: The Plenary Docket in the 1970's*, 91 Harv. L. Rev. 1711 (1978); S. Rifkind, *supra*, n. 9; Chayes, *The Role of the Judge in Public Law Litigation*, 89 Harv. L. Rev. 1281 (1976).

<sup>11</sup> These, obviously, are policy matters for the political branches; but it is equally true that the Judiciary has an obligation to help focus attention on its needs as they are perceived by judges who must give effect to legislation relating to the administration of justice. It is for Congress to develop appropriate measures to accommodate the tension arising from contending demands on judicial resources.

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when they authorized 152 new federal judges is to be realized, these problems should be faced without waiting for a crisis.

MR. JUSTICE BRENNAN.

It seems appropriate, in light of footnote 7 of the memorandum of THE CHIEF JUSTICE, to note my statement to the Commission, 67 F. R. D., at 400, that MR. JUSTICE BRENNAN "remains completely unpersuaded, as he has repeatedly said, that there is any need for a new national court." See also my article, *The National Court of Appeals: Another Dissent*. 40 U. Chi. L. Rev. 473 (1973).

No. 77-1794. *NEW JERSEY v. O'HERRON ET UX.* Super. Ct. N. J. Motion of respondents for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 153 N. J. Super. 570, 380 A. 2d 728.

No. 77-1831. *DUNCANTELL v. TEXAS.* Ct. Crim. App. Tex. Certiorari denied. Reported below: 563 S. W. 2d 252.

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

Petitioner is a black political activist who was stopped by Houston police for a traffic offense. Police pulled petitioner from his car, handcuffed him, and searched his automobile. Upon the dashboard police found a matchbox containing marihuana. Petitioner was convicted of possession of marihuana and sentenced to seven years.

Petitioner challenges the search of the matchbox on Fourth Amendment grounds. The Texas Court of Criminal Appeals rejected this claim. 563 S. W. 2d 252 (1978) (*en banc*). The court credited police testimony that petitioner had appeared intoxicated at the time of the arrest, reasoned that the intoxication could have resulted from drug use, and concluded that police thus had probable cause to search petitioner's car for drugs.

This jerry-built justification surely requires review by a federal forum. Police smelled alcohol on petitioner's breath

at the time of the arrest. They had no basis, therefore, for supposing that petitioner's alleged intoxication was the result of drug rather than alcohol use. Hence, the police claim of probable cause to inspect the contents of petitioner's matchbox is patently suspect.

Were it not for the Court's decision in *Stone v. Powell*, 428 U. S. 465 (1976), I would not dissent. But for that decision petitioner could have sought federal forum review in federal habeas corpus. The limitation that *Stone* has placed upon federal habeas jurisdiction to redress Fourth Amendment violations denies petitioner that remedy. Thus, this Court may well be the only federal forum with jurisdiction to review petitioner's Fourth Amendment claim. Because the Court declines to exercise jurisdiction, the denial of petitioner's Fourth Amendment rights may well stand forever uncorrected.

I would grant certiorari in this case so that the constitutional error of the Texas Court of Criminal Appeals can be corrected. More generally, I believe that, so long as *Stone v. Powell* remains the law, this Court is obliged to take a more active role in reviewing the denial of Fourth Amendment claims by state courts. We can no longer content ourselves with the articulation of general principles. Rather, if federal law in this area is to remain uniform and supreme, we must undertake the task of error correction previously performed by the district courts. In other words, I see no escape from plenary review whenever state courts deny criminal defendants rights guaranteed by the Fourth Amendment of the United States Constitution.

The Court's denial of certiorari in the present case reinforces, for me, "the notorious fact that our certiorari jurisdiction is inadequate for containing state criminal proceedings within constitutional bounds" and underscores Congress' wisdom, rejected by this Court in *Stone v. Powell*, "in mandating a broad federal habeas jurisdiction for the district courts." *Id.*, at 534 (BRENNAN, J., dissenting).

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No. 78-451. NELSON ET AL. *v.* BUTLER ET AL. C. A. 9th Cir. Motion of respondents for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 571 F. 2d 588.

No. 78-268. GILLESPIE ET AL. *v.* SCHWARTZ ET AL.; and

No. 78-361. BOSTON HOSPITAL FOR WOMEN *v.* SCHWARTZ ET AL. C. A. 2d Cir. Certiorari denied. MR. JUSTICE BLACKMUN and MR. JUSTICE POWELL would grant certiorari. Reported below: 579 F. 2d 194.

No. 78-410. LEE-HY PAVING CORP. ET AL. *v.* O'CONNOR, ADMINISTRATRIX. C. A. 2d Cir. Certiorari denied. Reported below: 579 F. 2d 194.

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

This case presents the question whether the Due Process Clause permits a tort plaintiff to obtain jurisdiction in New York over a defendant whose sole contact with the State arises from the defendant's contract for indemnity with a company that does business in New York.<sup>1</sup> The case presents an issue of considerable importance, with troublesome ramifications in the spacious arena of personal injury litigation. Moreover, it seems to me that the rationale of our recent decision in *Shaffer v. Heitner*, 433 U. S. 186 (1977), is at odds with the decision of the Court of Appeals here. I therefore would grant certiorari and set the case for argument.

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<sup>1</sup> Along with this case, the Court of Appeals decided two other cases with respect to which certiorari is sought: *Gillespie v. Schwartz*, No. 78-268, and *Boston Hospital for Women v. Schwartz*, No. 78-361. In each of these cases, residents of other States were sued in New York for torts occurring outside of New York. The sole basis for jurisdiction in each is the insurance policy of the defendant, issued by a company doing business in New York. Although I write only with respect to this case, the reasons stated in my opinion here would support the granting of certiorari in all three cases.

The petitioners are residents of Virginia. While working for petitioner Lee-Hy Paving Corp. (Lee-Hy) in Virginia, the respondent's decedent (a New York resident) was killed when Lee-Hy's grader, operated by petitioner Clem, struck him near Richmond, Va. The respondent instituted this suit in the District Court for the Eastern District of New York as executrix for her husband's estate, claiming damages for the wrongful death of her husband. In order to obtain jurisdiction over the petitioners, who are conceded to have no other connection with New York, the respondent sought and obtained under New York law an order attaching the contractual obligations of two insurance companies doing business in New York to defend and indemnify Lee-Hy. The District Court denied petitioners' motion to vacate the attachment and dismiss the suit. Acknowledging that there was a "substantial ground for difference of opinion" on the question of law, and that the issue was an important one, the District Court certified an appeal to the Court of Appeals under 28 U. S. C. § 1292 (b).

The Second Circuit affirmed. 579 F. 2d 194 (1978). The court based its ruling on the theory of *quasi in rem* jurisdiction adopted by the New York Court of Appeals in *Seider v. Roth*, 17 N. Y. 2d 111, 216 N. E. 2d 312 (1966). In *Seider*, personal jurisdiction was predicated on the fiction that the insurance company's obligation to indemnify the policyholder was a "debt" that the plaintiff in a negligence suit could attach as a "res." In *Minichiello v. Rosenberg*, 410 F. 2d 106 (1968), the Second Circuit affirmed the constitutionality of *Seider* jurisdiction, reasoning that the New York Court of Appeals had created judicially a direct-action law similar to the Louisiana statute held constitutional in *Watson v. Employers Liability Assurance Corp.*, 348 U. S. 66 (1954). The *Minichiello* court recognized that the *Seider* doctrine differed in one important respect from the Louisiana direct-action statute of *Watson*: Under *Seider*, there was no requirement that the tort for

which redress was sought occur in the State asserting jurisdiction. Despite the Court's emphasis in *Watson* on the location of the tort, the Second Circuit in *Minichiello* ruled that New York's interest in protecting its residents and providing them with a ready means of suing foreign tortfeasors was sufficient to justify *Seider* jurisdiction under the Due Process Clause.<sup>2</sup>

In the case at bar, the petitioners unsuccessfully urged reconsideration of *Minichiello* on the ground that the *Seider* doctrine had been undermined by *Shaffer v. Heitner*, *supra*. The Court of Appeals viewed the "overriding teaching of *Shaffer*" as requiring courts to look to the "realities" of the asserted grounds for jurisdiction. As far as the insurance companies were concerned, the court found no unfairness in their being subject to the jurisdiction of New York courts, as they do business in New York. The court thought that this was true even though often it is more expensive (and therefore more costly to insurers) to defend a lawsuit brought several hundred miles from the site of the accident, the residence of the defendants, and the location of the witnesses. The court reached a similar conclusion concerning the fairness of a suit brought in New York against "the nominal defendants" (the petitioners here). The court thought it ironical that they should complain even though they "will not pay the judgment, nor manage the defense." 579 F. 2d, at 201.<sup>3</sup>

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<sup>2</sup> In his persuasive dissent in *Minichiello*, Judge Anderson argued that *Watson* was based primarily on a State's strong interest in having jurisdiction with respect to tortious activity within the State's borders. See *Minichiello*, 410 F. 2d, at 113-117. Thus, Judge Anderson concluded that "statutes asserting jurisdiction of the state where the accident occurred qualify as due process, whereas the assertion of jurisdiction by the state of the plaintiff's residence does not." *Id.*, at 116 (footnote omitted).

<sup>3</sup> The court did note that no "other state could constitutionally give collateral estoppel effect to a *Seider* judgment." Although I agree that no such effect should be allowed, the court's opinion in this regard is dictum that may or may not be followed in other jurisdictions.

I find the Court of Appeals' decision disturbing. Although the insurance companies' contact with New York is important in determining whether it is fair for the New York courts to assert their jurisdiction, our decision in *Watson* indicated that the difficulties of defending a negligence case far from the place of the injury should be taken into account under the Due Process Clause. See *Watson v. Employers Liability Assurance Corp.*, *supra*, at 72. Often these difficulties are substantial. It is routine procedure for the judge and jury<sup>4</sup> to view the scene of the accident, often more than once. Jurors drawn from the venue of the accident may be better able to understand testimony pertaining to local conditions and geography. In short, many of the factors traditionally considered under the doctrine of *forum non conveniens*—itself a doctrine based on fairness—may also pertain to the fairness of a court hundreds of miles from the location of an accident exercising its jurisdiction over the parties to the resulting tort suit.<sup>5</sup>

Moreover, the Court of Appeals' reference to the petitioners as "nominal defendants" disregards many of the "realities" that bear upon whether an alleged tortfeasor, sued in a jurisdiction remote from his home and the location of the accident, is denied the fairness required by the Due Process Clause. It is novel doctrine, at least for me, to refer to the interest of defendants in negligence actions as "nominal" merely because they have insurance. In this case, for example, petitioners will be summoned to appear in a court in New York, and will be required to participate in the defense of the suit in essentially the same manner as if it had been brought in Virginia. They are required to do this 300 miles from their residences and place of business, confronted with all of the uncertainties caused by delays that often stretch a trial over several days or even weeks.

<sup>4</sup> See E. Cleary, McCormick on Evidence § 216 (2d ed. 1972).

<sup>5</sup> See *Gulf Oil Corp. v. Gilbert*, 330 U. S. 501, 507-509 (1947).

In addition to the problems posed for both the insurer and the insured by litigation located hundreds of miles from the scene of the tort, there is the ever-present possibility of a second suit in the jurisdiction where the accident occurred. The opinion of the Court of Appeals seems to assume, by its reference to petitioners as nominal defendants, that the only real parties in interest are the insurance companies. To be sure, a judgment against the petitioners in the New York courts cannot exceed the amount of indemnification provided under the insurance policies. But judgments for civil damages, especially in recent years, often have exceeded insured limits. In this case, for example, if respondent wins a judgment that exhausts the obligation of the insurers, the respondent will be free to sue petitioners in Virginia where they would be forced to go through a second trial—possibly without the benefit of lawyers supplied by the insurance companies. Moreover, as every litigation lawyer knows, the hazards of a second trial may exceed those of the first; witnesses seldom tell their story precisely the same way twice, and often new evidence is introduced. To say that the legal rights of insured defendants are not being adjudicated, despite their substantial role in the defense of the suit and despite the potential loss of their right to the insurance company's legal representation, begs the question: To what extent must an individual be involved in the litigation before the fundamental-fairness requirements of *International Shoe Co. v. Washington*, 326 U. S. 310 (1945), are applicable?

In sum, the judicially created *Seider* doctrine raises serious questions of due process. To me it does not appear consonant with the standards of fairness enunciated in *International Shoe Co. v. Washington*, and strongly reiterated in *Shaffer v. Heitner*. The issues presented are of concern to insurers and insureds in every State, as well as to state legislators responsible for the fairness of long-arm statutes. The case merits plenary consideration by this Court.

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No. 78-411. INTERSTATE COMMERCE COMMISSION *v.* CHICAGO & NORTH WESTERN TRANSPORTATION CO. ET AL. C. A. 7th Cir. Certiorari denied. MR. JUSTICE POWELL took no part in the consideration or decision of this petition. Reported below: 582 F. 2d 1043.

No. 78-560. BLYTH, EASTMAN DILLON & Co., INC., ET AL. *v.* ROLF. C. A. 2d Cir. Motions of Merrill Lynch, Pierce, Fenner & Smith, Inc., et al., and New York Stock Exchange, Inc., for leave to file briefs as *amici curiae* granted. Certiorari denied. MR. JUSTICE POWELL would grant certiorari. Reported below: 570 F. 2d 38.

No. 78-611. MIRABAL ET AL. *v.* GENERAL MOTORS ACCEPTANCE CORP. ET AL. C. A. 7th Cir. Certiorari denied. MR. JUSTICE STEVENS took no part in the consideration or decision of this petition. Reported below: 576 F. 2d 729.

No. 78-5410. PROCA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. MR. JUSTICE BRENNAN, MR. JUSTICE STEWART, and MR. JUSTICE MARSHALL would grant certiorari and reverse the conviction. Reported below: 578 F. 2d 1386.

No. 78-5460. SPIVEY *v.* GEORGIA. Sup. Ct. Ga. Certiorari denied. Reported below: 241 Ga. 477, 246 S. E. 2d 288.

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

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

### *Rehearing Denied*

No. 77-1684. BROADUS *v.* LOTT, ADMINISTRATRIX, *ante*, p. 828. Petition for rehearing denied.

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No. 78-428. GAETANO ET AL. *v.* UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT (SILBERT, U. S. ATTORNEY, REAL PARTY IN INTEREST), *ante*, p. 924;

No. 78-5051. CARTER *v.* TEXAS, *ante*, p. 956; and

No. 78-5213. RODRIGUEZ *v.* UNITED STATES, *ante*, p. 920.  
Petitions for rehearing denied.

## DECEMBER 5, 1978

*Dismissal Under Rule 60*

No. 78-157. UNITED STATES *v.* EDWARDS. C. A. 8th Cir. Certiorari dismissed under this Court's Rule 60. Reported below: 574 F. 2d 937.

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*Dismissal Under Rule 60*

No. 78-634. CLARENCE LABELLE POST NO. 217, VETERANS OF FOREIGN WARS OF THE UNITED STATES. C. A. 8th Cir. Certiorari dismissed under this Court's Rule 60. Reported below: 580 F. 2d 270.

*Appeals Dismissed*

No. 78-602. TUSCAN DAIRY FARMS, INC. *v.* BARBER, COMMISSIONER OF AGRICULTURE AND MARKETS OF NEW YORK. Appeal from Ct. App. N. Y. Motion of The Great Atlantic & Pacific Tea Co., Inc., for leave to file a brief as *amicus curiae* granted. Appeal dismissed for want of substantial federal question. MR. JUSTICE POWELL and MR. JUSTICE STEVENS would note probable jurisdiction and set case for oral argument. Reported below: 45 N. Y. 2d 215, 380 N. E. 2d 179.

No. 78-608. LUMPKIN *v.* DEPARTMENT OF SOCIAL SERVICES OF NEW YORK ET AL. Appeal from Ct. App. N. Y. dismissed for want of substantial federal question. Reported below: 45 N. Y. 2d 351, 380 N. E. 2d 249.

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No. 78-657. *KIMBLE ET AL. v. SWACKHAMER, SECRETARY OF STATE OF NEVADA, ET AL.* Appeal from Sup. Ct. Nev. dismissed for want of substantial federal question. Reported below: 94 Nev. 600, 584 P. 2d 161.

No. 78-646. *SOUTHERN CALIFORNIA EDISON CO. v. PUBLIC UTILITIES COMMISSION OF CALIFORNIA ET AL.* Appeal from Sup. Ct. Cal. dismissed for want of substantial federal question. MR. JUSTICE BLACKMUN and MR. JUSTICE POWELL would note probable jurisdiction and set case for oral argument.

No. 78-663. *BOROUGH OF FOX CHAPEL ET AL. v. FRIDAY.* Appeal from Sup. Ct. Pa. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied.

No. 78-5587. *BALLENTINE v. FOGG, CORRECTIONAL SUPERINTENDENT.* Appeal from C. A. 2d 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: 582 F. 2d 1271.

*Certiorari Granted—Vacated and Remanded*

No. 77-477. *HOPPER, WARDEN v. BARNETT.* C. A. 5th Cir. Motion of respondent for leave to proceed *in forma pauperis* and certiorari granted. Judgment vacated and case remanded with directions to dismiss cause as moot. Reported below: 548 F. 2d 550.

*Miscellaneous Orders*

No. D-149. *IN RE DISBARMENT OF GENUA.* It is ordered that Albert J. Genua, Jr., of Rocky Hill, Conn., be suspended from the practice of law in this Court and that a rule issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

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No. D-147. *IN RE DISBARMENT OF PENCE*. The rule to show cause is discharged and the order entered November 27, 1978 [*ante*, p. 975], is vacated.

No. D-150. *IN RE DISBARMENT OF GILLARD*. It is ordered that Jack F. C. Gillard, of Albert Lea, Minn., be suspended from the practice of law in this Court and that a rule issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D-151. *IN RE DISBARMENT OF HOPFL*. It is ordered that Charles E. Hopfl, of New York, N. Y., be suspended from the practice of law in this Court and that a rule issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D-152. *IN RE DISBARMENT OF WATERS*. It is ordered that Michael F. Waters, of Brooklyn, N. Y., be suspended from the practice of law in this Court and that a rule issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D-153. *IN RE DISBARMENT OF OLITT*. It is ordered that J. Jerome Olitt, of White Plains, N. Y., be suspended from the practice of law in this Court and that a rule issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D-154. *IN RE DISBARMENT OF BRICKEL*. It is ordered that Bernard Michael Brickel, of Croton-on-Hudson, N. Y., be suspended from the practice of law in this Court and that a rule issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

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No. 77-926. CANNON *v.* UNIVERSITY OF CHICAGO ET AL. C. A. 7th Cir. [Certiorari granted, 438 U. S. 914.] Motion of the Solicitor General for additional time for oral argument denied. Alternative request for divided argument granted.

No. 77-983. WASHINGTON ET AL. *v.* WASHINGTON STATE COMMERCIAL PASSENGER FISHING VESSEL ASSN. ET AL.; and WASHINGTON ET AL. *v.* PUGET SOUND GILLNETTERS ASSN. ET AL. Sup. Ct. Wash.;

No. 78-119. WASHINGTON ET AL. *v.* UNITED STATES ET AL. C. A. 9th Cir.; and

No. 78-139. PUGET SOUND GILLNETTERS ASSN. ET AL. *v.* UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF WASHINGTON (UNITED STATES ET AL., REAL PARTIES IN INTEREST). C. A. 9th Cir. [Certiorari granted, *ante*, p. 909.] Motions of Washington State Commercial Passenger Fishing Vessel Assn. and Puget Sound Gillnetters Assn. et al. for additional time for oral argument denied.

No. 77-1571. DELAWARE *v.* PROUSE. Sup. Ct. Del. [Certiorari granted, *ante*, p. 816.] Motion of Americans for Effective Law Enforcement et al. for leave to file a brief as *amici curiae* granted.

No. 77-1583. AMERICAN SOCIETY OF COMPOSERS, AUTHORS & PUBLISHERS ET AL. *v.* COLUMBIA BROADCASTING SYSTEM, INC., ET AL. C. A. 2d Cir. [Certiorari granted, *ante*, p. 817.] Motion of Authors League of America, Inc., for leave to file a brief as *amicus curiae* granted.

No. 78-642. SHAPP, GOVERNOR OF PENNSYLVANIA, ET AL. *v.* CASEY, TREASURER OF PENNSYLVANIA, ET AL. Appeal from Sup. Ct. Pa. The Solicitor General is invited to file a brief in this case expressing the views of the United States.

No. 78-852. LIBRACH *v.* FEDERAL BUREAU OF INVESTIGATION ET AL. C. A. 8th Cir. Motion of petitioner to expedite consideration of petition for writ of certiorari denied.

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No. 77-1652. FEDERAL ENERGY REGULATORY COMMISSION *v.* SHELL OIL CO. ET AL.; and

No. 77-1654. CONSUMER ENERGY COUNCIL OF AMERICA *v.* FEDERAL ENERGY REGULATORY COMMISSION. C. A. 5th Cir. [Certiorari granted, *ante*, p. 817.] Motions of Action Alliance of Senior Citizens of Greater Philadelphia and United States Conference of Mayors et al. for leave to file briefs as *amici curiae* granted. MR. JUSTICE STEWART took no part in the consideration or decision of these motions.

No. 78-5321. ADAMS *v.* FLORIDA, *ante*, p. 947. Respondent invited to file a response to petition for rehearing within 30 days.

No. 78-5742. BONIFACE *v.* UNITED STATES. Motion for leave to file petition for writ of habeas corpus denied.

No. 78-5550. WELCH *v.* UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT. Motion for leave to file petition for writ of mandamus denied.

*Probable Jurisdiction Noted*

No. 78-647. MARCHIORO ET AL. *v.* CHANEY ET AL. Appeal from Sup. Ct. Wash. Probable jurisdiction noted. Reported below: 90 Wash. 2d 298, 582 P. 2d 487.

No. 78-437. CALIFANO, SECRETARY OF HEALTH, EDUCATION, AND WELFARE *v.* WESTCOTT ET AL.; and

No. 78-689. SHARP, COMMISSIONER, DEPARTMENT OF PUBLIC WELFARE OF MASSACHUSETTS *v.* WESTCOTT ET AL. Appeals from D. C. Mass. Motion of appellees for leave to proceed *in forma pauperis* granted. Probable jurisdiction noted. Cases consolidated and a total of one hour allotted for oral argument. Reported below: 460 F. Supp. 737.

No. 78-5420. PAYTON *v.* NEW YORK; and

No. 78-5421. RIDDICK *v.* NEW YORK. Appeals from Ct. App. N. Y. Motions of appellants for leave to proceed *in*

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*forma pauperis* granted. In No. 78-5420, probable jurisdiction is noted limited to Question 1 presented by the jurisdictional statement. In No. 78-5421, probable jurisdiction noted. Cases consolidated and a total of one hour allotted for oral argument. Reported below: 45 N. Y. 2d 300, 380 N. E. 2d 224.

*Certiorari Granted*

No. 78-561. UNITED STATES *v.* NAFTALIN. C. A. 8th Cir. Certiorari granted. Reported below: 579 F. 2d 444.

No. 77-6949. DUNN *v.* UNITED STATES. C. A. 10th Cir. Motion of petitioner for leave to proceed *in forma pauperis* and certiorari granted. Reported below: 577 F. 2d 119.

No. 77-1665. BONANNO *v.* UNITED STATES. C. A. 9th Cir.; and

No. 78-156. UNITED STATES *v.* ADDONIZIO ET AL. C. A. 3d Cir. Certiorari granted, cases consolidated, and a total of one hour allotted for oral argument. Reported below: No. 77-1665, 571 F. 2d 588; No. 78-156, 573 F. 2d 147.

No. 78-349. UNITED STATES *v.* HELSTOSKI; and

No. 78-546. HELSTOSKI *v.* MEANOR, U. S. DISTRICT JUDGE, ET AL. C. A. 3d Cir. Certiorari granted, cases consolidated, and a total of one hour allotted for oral argument. Reported below: 576 F. 2d 511.

No. 78-432. UNITED STEELWORKERS OF AMERICA, AFL-CIO-CLC *v.* WEBER ET AL.;

No. 78-435. KAISER ALUMINUM & CHEMICAL CORP. *v.* WEBER ET AL.; and

No. 78-436. UNITED STATES ET AL. *v.* WEBER ET AL. C. A. 5th Cir. Certiorari granted, cases consolidated, and a total of one and one-half hours allotted for oral argument. MR. JUSTICE STEVENS took no part in the consideration or decision of these petitions. Reported below: 563 F. 2d 216.

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No. 78-354. NORTH CAROLINA *v.* BUTLER. Sup. Ct. N. C. Motion of respondent for leave to proceed *in forma pauperis* and certiorari granted. Reported below: 295 N. C. 250, 244 S. E. 2d 410.

*Certiorari Denied.* (See also Nos. 78-663 and 78-5587, *supra.*)

No. 78-244. FISHER *v.* BOARD OF EDUCATION OF THE CITY OF NEW YORK ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 586 F. 2d 832.

No. 78-321. PARKER ET AL. *v.* UNITED STATES. Ct. Cl. Certiorari denied. Reported below: 215 Ct. Cl. 773, 573 F. 2d 42.

No. 78-391. BROWN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 574 F. 2d 1274.

No. 78-401. MILLAR ET AL. *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 3d Cir. Certiorari denied. Reported below: 577 F. 2d 212.

No. 78-403. SCOTT, ATTORNEY GENERAL OF ILLINOIS *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 581 F. 2d 589.

No. 78-406. MATTHEWS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 569 F. 2d 941.

No. 78-454. PAVLECKA ET AL. *v.* BANNER, COMMISSIONER OF PATENTS AND TRADEMARKS. C. C. P. A. Certiorari denied. Reported below: 582 F. 2d 43.

No. 78-468. PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE *v.* NUCLEAR REGULATORY COMMISSION ET AL. C. A. 1st Cir. Certiorari denied. Reported below: 582 F. 2d 77.

No. 78-478. MAPES ET AL. *v.* UNITED STATES. Ct. Cl. Certiorari denied. Reported below: 217 Ct. Cl. 115, 576 F. 2d 896.

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No. 78-490. HOUSTON DISTRIBUTION SERVICES, INC., ET AL. *v.* NATIONAL LABOR RELATIONS BOARD. C. A. 5th Cir. Certiorari denied. Reported below: 573 F. 2d 260.

No. 78-494. TEXTRON, INC., BELL HELICOPTER TEXTRON, A DIVISION OF TEXTRON, INC. *v.* UNITED STATES ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 577 F. 2d 1163.

No. 78-507. FAIRFAX COUNTY WIDE CITIZENS ASSN. ET AL. *v.* COUNTY OF FAIRFAX, VIRGINIA, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 571 F. 2d 1299.

No. 78-533. LOUISIANA *v.* DINO. Sup. Ct. La. Certiorari denied. Reported below: 359 So. 2d 586.

No. 78-589. POE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 577 F. 2d 752.

No. 78-617. CULHANE ET AL. *v.* NEW YORK. Ct. App. N. Y. Certiorari denied. Reported below: 45 N. Y. 2d 757, 380 N. E. 2d 315.

No. 78-650. CORBETT *v.* THOR ET AL. Sup. Ct. Iowa. Certiorari denied. Reported below: 267 N. W. 2d 412.

No. 78-651. CACHUR *v.* WESTERN ELECTRIC Co., INC., ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 577 F. 2d 747.

No. 78-654. DELUCA *v.* ROBERTSON ET AL. C. A. 7th Cir. Certiorari denied.

No. 78-656. MACHIPONGO CLUB, INC. *v.* NATURE CONSERVANCY. C. A. 4th Cir. Certiorari denied. Reported below: 579 F. 2d 873.

No. 78-661. PORRO ET AL. *v.* NEW JERSEY. Super. Ct. N. J. Certiorari denied. Reported below: 158 N. J. Super. 269, 385 A. 2d 1258.

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No. 78-665. *MOLINA v. RICHARDSON ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 578 F. 2d 846.

No. 78-674. *MAYER v. OHIO STATE BAR ASSN.* Sup. Ct. Ohio. Certiorari denied. Reported below: 54 Ohio St. 2d 431, 377 N. E. 2d 770.

No. 78-676. *HICKOK ELECTRICAL INSTRUMENT CO. v. TEKTRONIX, INC., ET AL.* Ct. Cl. Certiorari denied. Reported below: 216 Ct. Cl. 144, 575 F. 2d 832.

No. 78-679. *KUGEL v. FLORIDA.* Dist. Ct. App. Fla., 4th Dist. Certiorari denied. Reported below: 351 So. 2d 429.

No. 78-681. *NOLTE v. BUDD Co.* C. A. 6th Cir. Certiorari denied.

No. 78-712. *ARA SERVICES, INC. v. SOUTH CAROLINA TAX COMMISSION.* Sup. Ct. S. C. Certiorari denied. Reported below: 271 S. C. 146, 246 S. E. 2d 171.

No. 78-745. *FAVREAU v. UNITED STATES.* C. A. 4th Cir. Certiorari denied. Reported below: 580 F. 2d 1049.

No. 78-747. *LEE v. UNITED STATES.* C. A. 6th Cir. Certiorari denied. Reported below: 581 F. 2d 1173.

No. 78-794. *WASHINGTON v. UNITED STATES.* Ct. App. D. C. Certiorari denied. Reported below: 389 A. 2d 1356.

No. 78-798. *GLIATTA v. UNITED STATES.* C. A. 5th Cir. Certiorari denied. Reported below: 580 F. 2d 156.

No. 78-801. *KIRK v. UNITED STATES.* C. A. 6th Cir. Certiorari denied. Reported below: 584 F. 2d 773.

No. 78-5289. *BRETZ v. UNITED STATES.* C. A. 5th Cir. Certiorari denied. Reported below: 569 F. 2d 951.

No. 78-5302. *JOHNSON v. OKLAHOMA ET AL.* Ct. Crim. App. Okla. Certiorari denied.

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No. 78-5324. *HOWARD v. INDIANA*. Sup. Ct. Ind. Certiorari denied. Reported below: 268 Ind. 589, 377 N. E. 2d 628.

No. 78-5358. *DULL v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 577 F. 2d 737.

No. 78-5389. *JONES v. LOUISIANA*. Sup. Ct. La. Certiorari denied. Reported below: 359 So. 2d 95.

No. 78-5415. *GUZMAN v. UNITED STATES*. C. A. 1st Cir. Certiorari denied. Reported below: 582 F. 2d 1269.

No. 78-5440. *KENNEDY v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 578 F. 2d 196.

No. 78-5483. *McMILLIAN v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 583 F. 2d 1061.

No. 78-5488. *OROZCO ET AL. v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 590 F. 2d 789.

No. 78-5494. *WILLIS v. UNITED STATES*. C. A. 5th Cir. Certiorari denied.

No. 78-5498. *GUILFORD v. UNITED STATES*. C. A. 9th Cir. Certiorari denied.

No. 78-5529. *STONE v. WASHINGTON*. Ct. App. Wash. Certiorari denied.

No. 78-5542. *FERNANDO v. CLELAND, ADMINISTRATOR, VETERANS' AFFAIRS, ET AL.* C. A. D. C. Cir. Certiorari denied.

No. 78-5563. *SMITH v. WARDEN, ILLINOIS STATE PENITENTIARY, ET AL.* C. A. 7th Cir. Certiorari denied. Reported below: 582 F. 2d 1283.

No. 78-5574. *YORE v. CALIFORNIA*. Ct. App. Cal., 3d App. Dist. Certiorari denied.

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No. 78-5577. *HARTBARGER v. ENGLE*, CORRECTIONAL SUPERINTENDENT. C. A. 6th Cir. Certiorari denied. Reported below: 586 F. 2d 844.

No. 78-5578. *FULTZ v. FINKBEINER*. C. A. 7th Cir. Certiorari denied. Reported below: 582 F. 2d 1285.

No. 78-5580. *SHAFFER v. WASHINGTON*. Ct. App. Wash. Certiorari denied. Reported below: 18 Wash. App. 2d 652, 571 P. 2d 220.

No. 78-5592. *SUBILOSKY v. MASSACHUSETTS*. Ct. App. Mass. Certiorari denied. Reported below: — Mass. App. —, 374 N. E. 2d 334.

No. 78-5594. *MIRON v. CALIFORNIA*. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 78-5609. *ROSS v. HUNT, GOVERNOR OF NORTH CAROLINA, ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 580 F. 2d 1049.

No. 78-5611. *HINDMAN v. KELLY ET AL.* C. A. 8th Cir. Certiorari denied. Reported below: 582 F. 2d 1288.

No. 78-5618. *BEASON v. LOUISIANA CASING CREW & RENTAL SERVICE CORP. ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 577 F. 2d 1132.

No. 78-5621. *WALKER v. INTERNAL REVENUE SERVICE*. C. A. 2d Cir. Certiorari denied.

No. 78-5625. *CLARK v. INDIANA*. Sup. Ct. Ind. Certiorari denied. Reported below: 269 Ind. 90, 378 N. E. 2d 850.

No. 78-5638. *CHAPLINSKI v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 579 F. 2d 373.

No. 78-5671. *PELLEGRINI v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 586 F. 2d 836.

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No. 78-5678. *TOBIN ET AL. v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 576 F. 2d 687.

No. 78-5679. *WALLER v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 581 F. 2d 585.

No. 78-5680. *GORDON v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 580 F. 2d 827.

No. 78-5686. *WRIGHT v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 586 F. 2d 836.

No. 78-5694. *JOHNSON v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 582 F. 2d 335.

No. 78-5697. *FRISON v. UNITED STATES*. Ct. App. D. C. Certiorari denied.

No. 78-5698. *SWIGER v. OHIO*. Ct. App. Ohio, Cuyahoga County. Certiorari denied.

No. 78-5708. *RUIZ v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 580 F. 2d 177.

No. 77-1694. *BENJAMIN FRANKLIN FEDERAL SAVINGS & LOAN ASSN. v. DERENCO, INC.* Sup. Ct. Ore. Certiorari denied. MR. JUSTICE POWELL took no part in the consideration or decision of this petition. Reported below: 281 Ore. 533, 577 P. 2d 477.

No. 78-140. *APELBY v. CALIFORNIA*. Ct. App. Cal., 2d App. Dist. Certiorari denied. MR. JUSTICE BRENNAN, MR. JUSTICE STEWART, and MR. JUSTICE MARSHALL would grant certiorari and reverse the conviction.

No. 78-5326. *TROTTI ET AL. v. GEORGIA*. Ct. App. Ga. Certiorari denied. MR. JUSTICE BRENNAN, MR. JUSTICE STEWART, and MR. JUSTICE MARSHALL would grant certiorari and reverse the conviction. Reported below: 144 Ga. App. 648, 242 S. E. 2d 270.

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No. 78-512. KONIAG, INC., ET AL. *v.* ANDRUS, SECRETARY OF THE INTERIOR. C. A. D. C. Cir. Motion of petitioners to defer consideration of petition for writ of certiorari and certiorari denied. Reported below: 188 U. S. App. D. C. 338, 580 F. 2d 601.

No. 78-606. PACIFIC TELEPHONE & TELEGRAPH CO. *v.* PUBLIC UTILITIES COMMISSION OF CALIFORNIA ET AL.; and

No. 78-607. GENERAL TELEPHONE COMPANY OF CALIFORNIA *v.* PUBLIC UTILITIES COMMISSION OF CALIFORNIA ET AL. Sup. Ct. Cal. Motions for leave to file briefs as *amici curiae*, in both cases, filed by Southern Co., Communications Workers of America, Sierra Pacific Power Co. et al., and California Independent Telephone Assn., granted. Motions for leave to file briefs as *amici curiae* in No. 78-606, filed by Edison Electric Institute and Dallas Power & Light Co. et al., granted. Certiorari denied. MR. JUSTICE MARSHALL and MR. JUSTICE BLACKMUN would grant certiorari.

No. 78-5519. HOLLENBAUGH ET AL. *v.* CARNEGIE FREE LIBRARY ET AL. C. A. 3d Cir. Certiorari denied. MR. JUSTICE BRENNAN would grant certiorari. Reported below: 578 F. 2d 1374.

MR. JUSTICE MARSHALL, dissenting.

The Court today lets stand a decision that upholds, after the most minimal scrutiny, an unwarranted governmental intrusion into the privacy of public employees. The ruling below permits a public employer to dictate the sexual conduct and family living arrangements of its employees, without a meaningful showing that these private choices have any relation to job performance. Because I believe this decision departs from our precedents and conflicts with the rulings of other courts, I would grant certiorari and set the case for argument.

## I

Petitioner Rebecca Hollenbaugh served as a librarian and petitioner Fred Philburn as a custodian at the state-maintained Carnegie Free Library in Connellsville, Pa. The two began seeing each other socially, although Mr. Philburn was married at the time. In 1972, Ms. Hollenbaugh learned that she was pregnant with Mr. Philburn's child, and within a month, Mr. Philburn left his wife and moved in with Ms. Hollenbaugh. Due to her pregnancy, Ms. Hollenbaugh sought and was granted a leave of absence by the respondent Board of Trustees from March to September 1973. While petitioners did not conceal their arrangement, neither did they advertise it.

Responding to some complaints from members of the community, the Board of Trustees attempted to dissuade petitioners from continuing to live together. When petitioners refused to alter their arrangement, they were discharged. They subsequently brought this action under 42 U. S. C. § 1983 seeking declaratory and injunctive relief and monetary damages.

After a nonjury trial, the District Court found that under the minimum rationality test, petitioners' discharge did not violate the Equal Protection Clause. The court further concluded that petitioners' behavior was not encompassed within the constitutional right to privacy. 436 F. Supp. 1328 (WD Pa. 1977). The Court of Appeals for the Third Circuit affirmed on the basis of the District Court's opinion. 578 F. 2d 1374 (1978).

## II

I have frequently reiterated my objections to the perpetuation of "the rigid two-tier model [that] still holds sway as the Court's articulated description of the equal protection test." *Massachusetts Board of Retirement v. Murgia*, 427 U. S. 307, 318 (1976) (MARSHALL, J., dissenting); see, e. g., *Marshall v. United States*, 414 U. S. 417, 432-433 (1974) (MARSHALL, J., dissenting); *San Antonio Independent School Dist. v. Rodri-*

quez, 411 U. S. 1, 98-110 (1973) (MARSHALL, J., dissenting). The test that this Court has in fact applied has often, I believe, been much more sophisticated. The substantiality of the interests we have required a State to demonstrate in support of a challenged classification has varied with the character of the classification and the importance of the individual interests at stake. See, e. g., *Trimble v. Gordon*, 430 U. S. 762, 767 (1977); *Craig v. Boren*, 429 U. S. 190 (1976); *Bullock v. Carter*, 405 U. S. 134, 144 (1972); *Reed v. Reed*, 404 U. S. 71 (1971); see also Gunther, Foreword: In Search of Evolving Doctrine on a Changing Court: A Model for a Newer Equal Protection, 86 Harv. L. Rev. 1 (1972). Had the courts below undertaken this inquiry, rather than unreflectively applying the minimum rationality test, the outcome here might well have been different.

Respondents do not claim to have relied on a legislative proscription of particular sexual conduct. The Commonwealth of Pennsylvania repealed its law prohibiting adultery and fornication in 1972. 1972 Pa. Laws, Act No. 334, § 5. Rather, in the exercise of ad hoc and, it seems, unreviewable discretion, respondents determined to deprive petitioners of their jobs unless "they 'normalized' their relationship through marriage or [unless] Philburn moved out." 436 F. Supp., at 1331. The District Court found that "the motivating factor behind the discharges of [petitioners] was that they were living together in a state of 'open adultery.'" *Id.*, at 1332. Respondents were unwilling to appear as if they "condoned [petitioners'] extramarital 'affair' and . . . the child's birth out of wedlock." *Ibid.* Thus, respondents apparently did not object to furtive adultery, but only to petitioners' refusal to hide their relationship. In essence, respondents sought to force a standard of hypocrisy on their employees and fired those who declined to abide by it. In my view, this form of discrimination is particularly invidious.

Such administrative intermeddling with important personal

rights merits more than minimal scrutiny. One such right, clearly implicated by petitioners' discharge, is that "of the individual . . . to engage in any of the common occupations of life," *Board of Regents v. Roth*, 408 U. S. 564, 572 (1972), quoting *Meyer v. Nebraska*, 262 U. S. 390, 399 (1923); see *Perry v. Sindermann*, 408 U. S. 593, 597 (1972); *Pickering v. Board of Education*, 391 U. S. 563, 568 (1968). Perhaps even more vital is "the right to be free, except in very limited circumstances, from unwanted governmental intrusions into one's privacy." *Stanley v. Georgia*, 394 U. S. 557, 564 (1969). Although we have never demarcated the precise boundaries of this right, we have held that it broadly encompasses "freedom of personal choice in matters of marriage and family life." *Cleveland Board of Education v. LeFleur*, 414 U. S. 632, 639-640 (1974) (pregnancy). See, e. g., *Loving v. Virginia*, 388 U. S. 1, 12 (1967), and *Zablocki v. Redhail*, 434 U. S. 374, 383-385 (1978) (marriage); *Skinner v. Oklahoma ex rel. Williamson*, 316 U. S. 535, 541-542 (1942) (procreation); *Eisenstadt v. Baird*, 405 U. S. 438, 453-454 (1972); *id.*, at 460, 463-465 (WHITE, J., concurring in result), and *Carey v. Population Services International*, 431 U. S. 678, 684-685 (1977) (contraception); *Prince v. Massachusetts*, 321 U. S. 158, 166 (1944) (family relationships); *Pierce v. Society of Sisters*, 268 U. S. 510, 535 (1925), and *Meyer v. Nebraska*, *supra*, at 399 (child rearing and education); *Roe v. Wade*, 410 U. S. 113, 152-153 (1973) (abortion); *Moore v. East Cleveland*, 431 U. S. 494, 499 (1977) (plurality opinion) (right to determine family living arrangements).

Petitioners' rights to pursue an open rather than a clandestine personal relationship and to rear their child together in this environment closely resemble the other aspects of personal privacy to which we have extended constitutional protection. That petitioners' arrangement was unconventional or socially disapproved does not negate the resemblance, cf. *Carey v. Population Services International*, *supra*, at

698, 699 (plurality opinion); *Eisenstadt v. Baird*, *supra*, at 452-453; *Wisconsin v. Yoder*, 406 U. S. 205, 223-224 (1972), particularly in the absence of a judgment that the arrangement so offends social norms as to evoke criminal sanctions. And certainly, no distinction can be drawn between this case and those cited above in terms of the importance to petitioners of this personal decision. In addition, to impose separate living arrangements as a condition of employment impinges not only on petitioners' associational interests, but also on the interests of their child in having a two-parent home. See *Trimble v. Gordon*, *supra*, at 769-770; *Weber v. Aetna Casualty & Surety Co.*, 406 U. S. 164, 175 (1972).

Petitioners' choice of living arrangements for themselves and their child is thus sufficiently close to the interests we have previously recognized as fundamental and sufficiently related to the constitutional guarantee of freedom of association that it should not be relegated to the minimum rationality tier of equal protection analysis, a disposition that seems invariably fatal to the assertion of a constitutional right. See *Massachusetts Board of Retirement v. Murgia*, 427 U. S., at 319-320 (MARSHALL, J., dissenting). Rather, respondents should at least be required to show that petitioners' discharge serves a substantial state interest. See *San Antonio Independent School Dist. v. Rodriguez*, 411 U. S., at 124-126 (MARSHALL, J., dissenting); *Massachusetts Board of Retirement v. Murgia*, *supra*, at 325 (MARSHALL, J., dissenting); *Reed v. Reed*, *supra*, at 76-77. As the plurality held in *Moore v. East Cleveland*, *supra*, at 499, "when the government intrudes on choices concerning family living arrangements, this Court must examine carefully the importance of the governmental interests advanced and the extent to which they are served by the challenged regulation."

Moreover, respondents' actions here may not withstand even the minimal scrutiny of the rational-basis test. In the District Court's view, the test was satisfied because respondents

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could have legitimately concluded that petitioners' relationship impaired their effectiveness on the job and that failure to discharge them would constitute tacit approval of an illicit relationship.

The court acknowledged, however, that petitioners were "competent employees who had had no significant problems with their employers until the circumstances that gave rise to their discharges." 436 F. Supp., at 1330-1331. In suggesting that respondents could rationally find petitioner Hollenbaugh unfit to perform her duties, the court observed merely that her job "involved direct and frequent contacts with the community" and that the "community was well aware of [petitioners'] living arrangement." *Id.*, at 1332, 1333. This reasoning reduces to the conclusion that Hollenbaugh was incompetent as a librarian because some members of the community disapproved of her lifestyle. But the District Court never intimated that this disapproval affected the community members' use of the library or that Hollenbaugh's marital status in any way diminished her ability to discharge her duties as a librarian. And the court gave no indication that Philburn's custodial job called for similar contacts with the community or that his performance was affected in any way by his extramarital relationship.

Nor does the District Court's opinion make clear how respondents' interest in avoiding the appearance of "tacit approval" of petitioners' relationship provided a rational basis for petitioners' discharge. The court adverted to no evidence suggesting that petitioners' status impaired the library's performance of its public function. Moreover, the State has given some indication of the prevailing moral sensibilities of the community by the repeal in 1972 of the criminal sanctions against fornication and adultery.

### III

On a record so devoid of evidence in support of petitioners' discharge, the Court of Appeals' holding appears to conflict

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with decisions of other courts striking down similar attempts by governmental bodies to regulate the private lives of their employees. In *Andrews v. Drew Municipal Separate School Dist.*, 507 F. 2d 611 (CA5 1975), cert. dismissed as improvidently granted, 425 U. S. 559 (1976), the Court of Appeals found that a school district rule barring employment of unwed parents was insufficiently related to any legitimate objective to satisfy the requirements of the Equal Protection Clause. Similarly, in *Drake v. Covington County Board of Education*, 371 F. Supp. 974, 979 (MD Ala. 1974), a three-judge District Court declared unconstitutional the dismissal of an unmarried, pregnant teacher, finding no compelling interest "which would justify the invasion of [the teacher's] constitutional right of privacy." See also *Mindel v. United States Civil Service Commission*, 312 F. Supp. 485 (ND Cal. 1970) (discharge of postal clerk for living with a woman not his wife held unconstitutional). These decisions reflect a considerably greater degree of solicitude for the privacy interests of public employees than was evident in the rulings of the courts below.

I believe that individuals' choices concerning their private lives deserve more than token protection from this Court, regardless of whether we approve of those choices. Accordingly, I dissent from the denial of certiorari.

No. 78-5582. *ROGERS v. DOUGLAS ET UX.* Ct. App. D. C. Certiorari denied. MR. JUSTICE BRENNAN and MR. JUSTICE MARSHALL would grant certiorari Reported below: 390 A. 2d 1.

#### *Rehearing Denied*

No. 78-5110. *CRISAFI v. UNITED STATES*, ante, p. 931; and

No. 78-5322. *LINGHAM v. COMMISSIONER OF INTERNAL REVENUE*, ante, p. 933. Petitions for rehearing denied.

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*Dismissal Under Rule 60*

No. 78-688. SAMMONS, DBA SAMMONS TRUCKING, ET AL. v. SCHINDELE ET AL. Appeal from Sup. Ct. Minn. dismissed under this Court's Rule 60. Reported below: 268 N. W. 2d 547.

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*Affirmed on Appeal*

No. 78-580. GARCIA ET AL. v. UVALDE COUNTY ET AL.; and No. 78-731. UNITED STATES v. UVALDE COUNTY ET AL. Affirmed on appeal from D. C. W. D. Tex. MR. JUSTICE BRENNAN and MR. JUSTICE MARSHALL would note probable jurisdiction and set cases for oral argument. Reported below: 455 F. Supp. 101.

*Appeals Dismissed*

No. 77-1567. BUCK v. HUNTER ET AL. Appeal from Ct. App. N. Y. dismissed for want of substantial federal question. MR. JUSTICE BRENNAN would note probable jurisdiction and set case for oral argument. Reported below: 44 N. Y. 2d 137, 375 N. E. 2d 735.

No. 78-343. GRADY ET AL. v. McLEAN. Appeal from Ct. App. N. Y. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied. Reported below: 44 N. Y. 2d 949.

No. 78-5508. DREW v. LOUISIANA. Appeal from Sup. Ct. La. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied. Reported below: 360 So. 2d 500.

No. 78-5660. BELL v. CHURCH 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.

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No. 78-621. *VILLAGE OF CARPENTERSVILLE v. LIMPERIS, TRUSTEE IN BANKRUPTCY*. Appeal from C. A. 7th Cir. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied. Reported below: 583 F. 2d 290.

No. 78-741. *FUTCH v. O'LEARY*; and *FUTCH v. SIEBENMORGEN*. 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. 78-5662. *CROSS v. ALZOFON 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. 78-360. *RANDOLPH ET AL. v. MUNICIPAL COURT, SOUTHERN JUDICIAL DISTRICT, COUNTY OF SAN MATEO, ET AL. (CALIFORNIA, REAL PARTY IN INTEREST)*. Appeal from Ct. App. Cal., 1st App. Dist., dismissed for want of substantial federal question. MR. JUSTICE BRENNAN, MR. JUSTICE STEWART, and MR. JUSTICE MARSHALL would reverse the convictions.

No. 78-649. *CITY OF BOSTON ET AL. v. ANDERSON ET AL.* Appeal from Sup. Jud. Ct. Mass. dismissed for want of substantial federal question. MR. JUSTICE BRENNAN, MR. JUSTICE BLACKMUN, and MR. JUSTICE POWELL would note probable jurisdiction and set case for oral argument. Reported below: — Mass. —, 380 N. E. 2d 628.

No. 78-816. *BELL v. NEW YORK STATE LIQUOR AUTHORITY*. Appeal from App. Div., Sup. Ct. N. Y., 3d Jud. Dept., dismissed for want of jurisdiction. Reported below: 62 App. Div. 2d 1066, 403 N. Y. S. 2d 804.

No. 78-5290. *EZZELL v. LOS ANGELES COUNTY DEPARTMENT OF ADOPTIONS*. Appeal from Sup. Ct. Cal. dismissed for want of substantial federal question. Reported below: 21 Cal. 3d 349, 579 P. 2d 495.

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No. 78-5357. CALDWELL *v.* KAQUATOSH ET AL. Appeal from Sup. Ct. Wis. dismissed for want of substantial federal question. MR. JUSTICE BRENNAN and MR. JUSTICE STEVENS would note probable jurisdiction and set case for oral argument. Reported below: 84 Wis. 2d 545, 267 N. W. 2d. 870.

*Certiorari Granted—Vacated and Remanded*

No. 78-571. BLUCHER *v.* UNITED STATES. C. A. 10th Cir. Certiorari granted, judgment vacated, and case remanded to the United States District Court for the District of Wyoming with directions to vacate its judgment and dismiss the indictment. MR. JUSTICE WHITE, MR. JUSTICE POWELL, and MR. JUSTICE REHNQUIST dissent. Reported below: 581 F. 2d 244.

*Miscellaneous Orders*

No. 77, Orig. TENNESSEE *v.* ARKANSAS. It is ordered that the Honorable Earl R. Larson, Senior Judge of the United States District Court for the District of Minnesota, be appointed Special Master in this case with authority to fix the time and conditions for the filing of additional pleadings and to direct subsequent proceedings, and with authority to summon witnesses, issue subpoenas, and take such evidence as may be introduced and such as he may deem necessary to call for. The Master is directed to submit such reports as he may deem appropriate.

The Master shall be allowed his actual expenses. The allowances to him, the compensation paid to his technical, stenographic, and clerical assistants, the cost of printing his report, and all other proper expenses shall be charged against and be borne by the parties in such proportion as the Court may hereafter direct.

It is further ordered that if the position of Special Master in this case becomes vacant during a recess of the Court, THE CHIEF JUSTICE shall have authority to make a new designation which shall have the same effect as if originally made by the Court. [For earlier order herein, see *ante*, p. 812.]

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No. A-452 (78-951). *MORTON v. MORTON*. Ct. App. Cal., 2d App. Dist. Application for stay, addressed to MR. JUSTICE BRENNAN and referred to the Court, denied.

No. A-580 (78-437). *CALIFANO, SECRETARY OF HEALTH, EDUCATION, AND WELFARE v. WESTCOTT ET AL.*; and

No. A-374 (78-689). *SHARP, COMMISSIONER, DEPARTMENT OF PUBLIC WELFARE OF MASSACHUSETTS v. WESTCOTT ET AL.* D. C. Mass. [Probable jurisdiction noted, *ante*, p. 1044.] Application of the Solicitor General for stay of judgment of the United States District Court for the District of Massachusetts, presented to MR. JUSTICE BRENNAN, and by him referred to the Court, granted pending this Court's final disposition of the cases. MR. JUSTICE BRENNAN would deny the application. Application of the Attorney General of Massachusetts for partial stay of judgment of the United States District Court for the District of Massachusetts, addressed to MR. JUSTICE REHNQUIST and referred to the Court, denied.

No. A-601. *LYNCH ET AL. v. UNITED STATES*. Application for stay of mandate of the United States Court of Appeals for the District of Columbia Circuit, addressed to MR. JUSTICE MARSHALL and referred to the Court, denied.

No. D-70. *IN RE DISBARMENT OF WEBER*. Disbarment entered. [For earlier order herein, see 429 U. S. 936.]

No. D-124. *IN RE DISBARMENT OF LINDSAY*. Disbarment entered. [For earlier order herein, see 434 U. S. 979.]

No. 77-1497. *ARKANSAS v. SANDERS*. Sup. Ct. Ark. [Certiorari granted, *ante*, p. 891.] Motion of respondent for leave to proceed further herein *in forma pauperis* granted. Motion for appointment of counsel granted, and it is ordered that Jack T. Lassiter, Esquire, of Little Rock, Ark., be appointed to serve as counsel for respondent in this case.

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No. 77-922. CHRYSLER CORP. *v.* BROWN, SECRETARY OF DEFENSE, ET AL. C. A. 3d Cir. [Certiorari granted, 435 U. S. 914.] Motion of petitioner for leave to file supplemental brief after argument granted.

No. 77-1575. FEDERAL COMMUNICATIONS COMMISSION *v.* MIDWEST VIDEO CORP. ET AL.;

No. 77-1648. AMERICAN CIVIL LIBERTIES UNION *v.* FEDERAL COMMUNICATIONS COMMISSION; and

No. 77-1662. NATIONAL BLACK MEDIA COALITION ET AL. *v.* MIDWEST VIDEO CORP. ET AL. C. A. 8th Cir. [Certiorari granted, *ante*, p. 816.] Motion of the Solicitor General to dispense with printing appendix granted.

No. 77-1578. BROADCAST MUSIC, INC., ET AL. *v.* COLUMBIA BROADCASTING SYSTEM, INC., ET AL.; and

No. 77-1583. AMERICAN SOCIETY OF COMPOSERS, AUTHORS, & PUBLISHERS ET AL. *v.* COLUMBIA BROADCASTING SYSTEM, INC., ET AL. C. A. 2d Cir. [Certiorari granted, *ante*, p. 817.] Motions of National Broadcasting Co., Inc., American Broadcasting Companies, Inc., and National Religious Broadcasters, Inc., for leave to file briefs as *amici curiae* granted. Motion of All-Industry Television Music License Committee for leave to participate in oral argument as *amicus curiae* denied.

No. 77-1652. FEDERAL ENERGY REGULATORY COMMISSION *v.* SHELL OIL CO. ET AL.; and

No. 77-1654. CONSUMER ENERGY COUNCIL OF AMERICA *v.* FEDERAL ENERGY REGULATORY COMMISSION. C. A. 5th Cir. [Certiorari granted, *ante*, p. 817.] Motion of the Solicitor General for additional time for oral argument denied. MR. JUSTICE STEWART took no part in the consideration or decision of this motion.

No. 78-5914. SCHREIBMAN *v.* WALTER E. HELLER & COMPANY OF PUERTO RICO ET AL. C. A. 1st Cir. Motion of Las Colinas Development Corp. for leave to proceed *in forma pauperis* denied. MR. JUSTICE STEWART would grant the motion.

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No. 77-1806. FORD MOTOR CO. (CHICAGO STAMPING PLANT) *v.* NATIONAL LABOR RELATIONS BOARD ET AL. C. A. 7th Cir. [Certiorari granted, *ante*, p. 891.] Motion of respondent UAW Local 588 for additional time for oral argument denied. Alternative request for divided argument granted.

No. 77-6949. DUNN *v.* UNITED STATES. C. A. 10th Cir. [Certiorari granted, *ante*, p. 1045.] Motion for appointment of counsel granted, and it is ordered that Daniel J. Sears, Esquire, of Denver, Colo., be appointed to serve as counsel for petitioner in this case.

No. 78-99. PARKER *v.* RANDOLPH ET AL. C. A. 6th Cir. [Certiorari granted, *ante*, p. 978.] Motion for appointment of counsel granted, and it is ordered that Walter Lee Evans, Esquire, of Memphis, Tenn., be appointed to serve as counsel for respondent in this case.

No. 78-201. GREENHOLTZ, CHAIRMAN, BOARD OF PAROLE OF NEBRASKA, ET AL. *v.* INMATES OF THE NEBRASKA PENAL AND CORRECTIONAL COMPLEX ET AL. C. A. 8th Cir. [Certiorari granted, *ante*, p. 817.] Motion of Jerome N. Frank Legal Services Organizations of Yale Law School et al. for leave to participate in oral argument as *amici curiae* denied.

No. 78-225. BABBITT, GOVERNOR OF ARIZONA, ET AL. *v.* UNITED FARM WORKERS NATIONAL UNION ET AL. D. C. Ariz. [Probable jurisdiction postponed, *ante*, p. 891.] Motion of appellee United Farm Workers National Union for additional time for oral argument granted and 10 additional minutes allotted for that purpose. Appellants also allotted an additional 10 minutes for oral argument.

No. 78-5283. JACKSON *v.* VIRGINIA ET AL. C. A. 4th Cir. [Certiorari granted, *ante*, p. 1001.] Motion for appointment of counsel granted, and it is ordered that Carolyn J. Colville of Richmond, Va., be appointed to serve as counsel for petitioner in this case.

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No. 78-329. BELLOTTI, ATTORNEY GENERAL OF MASSACHUSETTS, ET AL. *v.* BAIRD ET AL.; and

No. 78-330. HUNERWADEL *v.* BAIRD ET AL. D. C. Mass. [Probable jurisdiction noted, *ante*, p. 925.] Motion for appointment of Alan Ernest as counsel or guardian *ad litem* for unborn children denied.

No. 78-5633. CARTER *v.* BUE, U. S. DISTRICT JUDGE;

No. 78-5747. CARBINO ET AL. *v.* UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT; and

No. 78-5799. GREEN *v.* RALSTON, JUDGE. Motions for leave to file petitions for writs of mandamus denied.

No. 78-5717. GREEN *v.* CLERK, U. S. DISTRICT COURT, WESTERN DISTRICT OF MISSOURI. Motion for leave to file petition for writ of mandamus and/or prohibition denied.

#### *Probable Jurisdiction Noted*

No. 78-759. LEROY, ATTORNEY GENERAL OF IDAHO, ET AL. *v.* GREAT WESTERN UNITED CORP. Appeal from C. A. 5th Cir. Probable jurisdiction noted. Reported below: 577 F. 2d 1256.

#### *Certiorari Granted*

No. 78-223. NATIONAL LABOR RELATIONS BOARD *v.* BAPTIST HOSPITAL, INC. C. A. 6th Cir. Certiorari granted. Reported below: 576 F. 2d 107.

No. 78-625. ANDRUS, SECRETARY OF THE INTERIOR, ET AL. *v.* SIERRA CLUB ET AL. C. A. D. C. Cir. Certiorari granted. Reported below: 189 U. S. App. D. C. 117, 581 F. 2d 895.

No. 78-690. REITER *v.* SONOTONE CORP. ET AL. C. A. 8th Cir. Certiorari granted. Reported below: 579 F. 2d 1077.

No. 78-711. SOUTHEASTERN COMMUNITY COLLEGE *v.* DAVIS. C. A. 4th Cir. Certiorari granted. Reported below: 574 F. 2d 1158.

No. 78-744. UNITED STATES *v.* TIMMRECK. C. A. 6th Cir. Certiorari granted. Reported below: 577 F. 2d 372.

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No. 78-753. GREAT AMERICAN FEDERAL SAVINGS & LOAN ASSN. ET AL. *v.* NOVOTNY. C. A. 3d Cir. Certiorari granted. Reported below: 584 F. 2d 1235.

No. 78-776. UNITED STATES *v.* BATCHELDER. C. A. 7th Cir. Certiorari granted. Reported below: 581 F. 2d 626.

No. 78-575. SOUTHERN RAILWAY CO. *v.* SEABOARD ALLIED MILLING CORP. ET AL.;

No. 78-597. INTERSTATE COMMERCE COMMISSION *v.* SEABOARD ALLIED MILLING CORP. ET AL.; and

No. 78-604. SEABOARD COAST LINE RAILROAD CO. ET AL. *v.* SEABOARD ALLIED MILLING CORP. ET AL. C. A. 8th Cir. Certiorari granted, cases consolidated, and a total of one hour allotted for oral argument. MR. JUSTICE POWELL took no part in the consideration or decision of these petitions. Reported below: 570 F. 2d 1349.

No. 78-610. COLUMBUS BOARD OF EDUCATION ET AL. *v.* PENICK ET AL. C. A. 6th Cir. Certiorari granted and case set for oral argument with No. 78-627, immediately *infra*. Reported below: 583 F. 2d 787.

No. 78-627. DAYTON BOARD OF EDUCATION ET AL. *v.* BRINKMAN ET AL. C. A. 6th Cir. Certiorari granted and case set for oral argument with No. 78-610, immediately *supra*. Reported below: 583 F. 2d 243.

No. 78-680. HUTCHINSON *v.* PROXMIRE, U. S. SENATOR, ET AL. C. A. 7th Cir. Certiorari granted and case set for oral argument with No. 78-5414, immediately *infra*. Reported below: 579 F. 2d 1027.

No. 78-5414. WOLSTON *v.* READER'S DIGEST ASSN., INC., ET AL. C. A. D. C. Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted and case set for oral argument with No. 78-680, immediately *supra*. Reported below: 188 U. S. App. D. C. 185, 578 F. 2d 427.

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No. 78-749. *KENTUCKY v. WHORTON*. Sup. Ct. Ky. Motion of respondent for leave to proceed *in forma pauperis* and certiorari granted. Reported below: 570 S. W. 2d 627.

No. 78-5384. *SANDSTROM v. MONTANA*. Sup. Ct. Mont. Motion of petitioner for leave to proceed *in forma pauperis* and certiorari granted. Reported below: 176 Mont. 492, 580 P. 2d 106.

*Certiorari Denied*. (See also Nos. 78-343, 78-621, 78-741, 78-5508, 78-5660, and 78-5662, *supra*.)

No. 77-6300. *BHILLIPS, AKA GERGEL v. PENNSYLVANIA*. Sup. Ct. Pa. Certiorari denied. Reported below: 475 Pa. 427, 380 A. 2d 1210.

No. 78-342. *JARA v. MUNICIPAL COURT FOR THE SAN ANTONIO JUDICIAL DISTRICT OF LOS ANGELES COUNTY (COUNTY OF LOS ANGELES ET AL., REAL PARTIES IN INTEREST)*. Sup. Ct. Cal. Certiorari denied. Reported below: 21 Cal. 3d 181, 578 P. 2d 94.

No. 78-373. *TOOMER v. ARKANSAS*. Sup. Ct. Ark. Certiorari denied. Reported below: 263 Ark. 595, 566 S. W. 2d 393.

No. 78-388. *TEX-LA ELECTRIC COOPERATIVE, INC., ET AL. v. ANDRUS, SECRETARY OF THE INTERIOR, ET AL.* C. A. D. C. Cir. Certiorari denied. Reported below: 188 U. S. App. D. C. 201, 578 F. 2d 443.

No. 78-393. *PIERCEALL v. VIRGINIA*. Sup. Ct. Va. Certiorari denied. Reported below: 218 Va. 1016, 243 S. E. 2d 222.

No. 78-394. *COSTANZO v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 581 F. 2d 28.

No. 78-399. *NABORS v. ARKANSAS*. Sup. Ct. Ark. Certiorari denied. Reported below: 263 Ark. 409, 565 S. W. 2d 598.

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No. 78-417. CALIFORNIA ET AL. *v.* CIVIL AERONAUTICS BOARD; and

No. 78-447. NATIONAL ASSOCIATION OF REGULATORY UTILITY COMMISSIONERS *v.* CIVIL AERONAUTICS BOARD. C. A. D. C. Cir. Certiorari denied. Reported below: 189 U. S. App. D. C. 176, 581 F. 2d 954.

No. 78-423. CHEIMAN ET AL. *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 578 F. 2d 160.

No. 78-430. TODD ET UX. *v.* ASSOCIATED CREDIT BUREAU SERVICES, INC., ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 578 F. 2d 1376.

No. 78-462. OSBORNE *v.* UNITED STATES. Ct. Cl. Certiorari denied. Reported below: 216 Ct. Cl. 469, 578 F. 2d 1390.

No. 78-484. O'CALLAGHAN *v.* UNITED STATES. Ct. Cl. Certiorari denied. Reported below: 216 Ct. Cl. 481, 578 F. 2d 1390.

No. 78-489. MITCHELL ET UX. *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 577 F. 2d 1356.

No. 78-495. COLE HOSPITAL, INC., ET AL. *v.* CALIFANO, SECRETARY OF HEALTH, EDUCATION, AND WELFARE. C. A. 7th Cir. Certiorari denied. Reported below: 582 F. 2d 1284.

No. 78-496. RICHARDSON ET AL. *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 580 F. 2d 946.

No. 78-497. RAMSEY *v.* UNITED STATES. Ct. Cl. Certiorari denied. Reported below: 215 Ct. Cl. 1042, 578 F. 2d 1388.

No. 78-505. BRAESCH ET AL. *v.* DEPASQUALE ET AL. Sup. Ct. Neb. Certiorari denied. Reported below: 200 Neb. 726, 265 N. W. 2d 842.

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No. 78-514. *ABNEY v. ABNEY*. Ct. App. Ind. Certiorari denied. Reported below: — Ind. App. —, 374 N. E. 2d 264.

No. 78-518. *NACIREMA OPERATING CO. ET AL. v. LYNN ET AL.* C. A. 3d Cir. Certiorari denied. Reported below: 577 F. 2d 852.

No. 78-532. *CONSOLIDATION COAL CO. v. UNITED STATES*;

No. 78-537. *ZITKO v. UNITED STATES*; and

No. 78-697. *MARKS v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 579 F. 2d 1011.

No. 78-538. *CRIPPEN v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 570 F. 2d 535.

No. 78-542. *TAMA MEAT PACKING CORP. v. NATIONAL LABOR RELATIONS BOARD*. C. A. 8th Cir. Certiorari denied. Reported below: 575 F. 2d 661.

No. 78-547. *BURTON v. UNITED STATES*. C. A. D. C. Cir. Certiorari denied. Reported below: 189 U. S. App. D. C. 327, 584 F. 2d 485.

No. 78-548. *ARROYO ET AL. v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 581 F. 2d 649.

No. 78-562. *MADONNA v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 582 F. 2d 704.

No. 78-569. *PATTON v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 582 F. 2d 1278.

No. 78-577. *VALAND v. IMMIGRATION AND NATURALIZATION SERVICE*. C. A. 3d Cir. Certiorari denied. Reported below: 577 F. 2d 730.

No. 78-581. *CAHN v. JOINT BAR ASSOCIATION GRIEVANCE COMMITTEE*. Ct. App. N. Y. Certiorari denied. Reported below: 44 N. Y. 2d 641, 376 N. E. 2d 934.

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No. 78-585. JACKSON SAWMILL Co., INC., ET AL. *v.* UNITED STATES ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 580 F. 2d 302.

No. 78-592. ST. VINCENT'S MEDICAL CENTER OF RICHMOND *v.* STATE HUMAN RIGHTS APPEAL BOARD ET AL. App. Div., Sup. Ct. N. Y., 2d Jud. Dept. Certiorari denied. Reported below: 59 App. Div. 2d 778, 398 N. Y. S. 2d 735.

No. 78-594. O'BRIEN *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 571 F. 2d 583.

No. 78-614. CONSTRUCTION & GENERAL LABORERS' UNION LOCAL 1140, AFFILIATED WITH INTERNATIONAL LABORERS' UNION OF NORTH AMERICA, AFL-CIO *v.* NATIONAL LABOR RELATIONS BOARD. C. A. 8th Cir. Certiorari denied. Reported below: 577 F. 2d 16.

No. 78-615. INTERNATIONAL ASSOCIATION OF MACHINISTS & AEROSPACE WORKERS, AFL-CIO *v.* NATIONAL LABOR RELATIONS BOARD ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 193 U. S. App. D. C. 279, 595 F. 2d 664.

No. 78-619. GETTY OIL Co. *v.* DEPARTMENT OF ENERGY ET AL. Temp. Emerg. Ct. App. Certiorari denied. Reported below: 581 F. 2d 838.

No. 78-633. LOCAL 102, INTERNATIONAL LADIES' GARMENT WORKERS' UNION *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 586 F. 2d 832.

No. 78-639. INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 367 *v.* NATIONAL LABOR RELATIONS BOARD. C. A. 3d Cir. Certiorari denied. Reported below: 578 F. 2d 1375.

No. 78-652. PEAT *v.* NATIONAL TRANSPORTATION SAFETY BOARD. C. A. D. C. Cir. Certiorari denied.

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No. 78-658. UTAH POWER & LIGHT CO. *v.* ENVIRONMENTAL DEFENSE FUND, INC., ET AL.; and

No. 78-678. COLORADO RIVER WATER CONSERVATION DISTRICT ET AL. *v.* ENVIRONMENTAL DEFENSE FUND, INC., ET AL. C. A. D. C. Cir. Certiorari denied.

No. 78-659. FORSTNER *v.* IMMIGRATION AND NATURALIZATION SERVICE. C. A. 9th Cir. Certiorari denied. Reported below: 579 F. 2d 506.

No. 78-660. PLEASANTON GRAVEL CO. *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 9th Cir. Certiorari denied. Reported below: 578 F. 2d 827.

No. 78-664. NEW YORK SHIPPING ASSN., INC., ET AL. *v.* WATERFRONT COMMISSION OF NEW YORK HARBOR. C. A. 3d Cir. Certiorari denied. Reported below: 582 F. 2d 1275.

No. 78-668. DIPP *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 581 F. 2d 1323.

No. 78-677. ARTHUR YOUNG & Co. *v.* SECURITIES AND EXCHANGE COMMISSION. C. A. D. C. Cir. Certiorari denied. Reported below: 190 U. S. App. D. C. 37, 584 F. 2d 1018.

No. 78-682. T. G. MOTORS, INC., OF HOUSTON, DBA TOM GRAY DATSUN *v.* JACKSON ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 577 F. 2d 1133.

No. 78-684. AMERICAN SERVICE CORP. ET AL. *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 580 F. 2d 823.

No. 78-686. FLEMING *v.* CITIZENS FOR ALBEMARLE, INC., ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 577 F. 2d 236.

No. 78-691. FOSTER ET AL. *v.* MARYLAND FEDERAL SAVINGS & LOAN ASSN. C. A. D. C. Cir. Certiorari denied. Reported below: 191 U. S. App. D. C. 226, 590 F. 2d 928.

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No. 78-695. *FOWLER v. IOWA*. Sup. Ct. Iowa. Certiorari denied. Reported below: 268 N. W. 2d 220.

No. 78-700. *McKINNEY ET UX. v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 574 F. 2d 1240.

No. 78-702. *ZARCONI v. PERRY ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 581 F. 2d 1039.

No. 78-704. *GARCIA v. NEW MEXICO*. Ct. App. N. M. Certiorari denied.

No. 78-705. *P. D. Q., INC., OF MIAMI v. NISSAN MOTOR CORPORATION IN U. S. A. ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 577 F. 2d 910.

No. 78-706. *SOUTHERN PACIFIC TRANSPORTATION CO. ET AL. v. BURNS*. C. A. 9th Cir. Certiorari denied. Reported below: 589 F. 2d 403.

No. 78-710. *KLEIN v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 582 F. 2d 186.

No. 78-713. *UNITED STATES v. SEA-LAND SERVICE, INC.* C. A. 3d Cir. Certiorari denied. Reported below: 577 F. 2d 730.

No. 78-716. *NATIONAL AUTO BROKERS CORP. ET AL. v. GENERAL MOTORS CORP. ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 572 F. 2d 953.

No. 78-717. *GARONZIK v. SHEARSON HAYDEN STONE, INC.* C. A. 5th Cir. Certiorari denied. Reported below: 574 F. 2d 1220.

No. 78-725. *SOVEREIGN CONSTRUCTION Co., LTD. v. CITY OF PHILADELPHIA*. C. A. 3d Cir. Certiorari denied. Reported below: 582 F. 2d 1276.

No. 78-726. *BENNETT ET AL. v. KIGGINS ET AL.* Ct. App. D. C. Certiorari denied. Reported below: 391 A. 2d 236.

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No. 78-727. SOUTHEASTERN PENNSYLVANIA TRANSPORTATION AUTHORITY (SEPTA) *v.* KENNY. C. A. 3d Cir. Certiorari denied. Reported below: 581 F. 2d 351.

No. 78-729. ARROW FOOD DISTRIBUTORS, INC. *v.* LOVE, CONSERVATOR. Sup. Ct. Miss. Certiorari denied. Reported below: 361 So. 2d 324.

No. 78-754. UNIT, INC., ET AL. *v.* HICKMAN ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 582 F. 2d 1277.

No. 78-758. WESTINGHOUSE ELECTRIC CORP. *v.* HUMAN RIGHTS APPEAL BOARD OF NEW YORK ET AL. App. Div., Sup. Ct. N. Y., 3d Jud. Dept. Certiorari denied. Reported below: 60 App. Div. 2d 943, 401 N. Y. S. 2d 597.

No. 78-760. TASSOP, DBA ST. ANDREW ACADEMY ON THE SOUND *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 78-767. GLASGOW ET UX. *v.* BARTLESON. Ct. App. Wash. Certiorari denied.

No. 78-768. GASPER ET AL. *v.* LOUISIANA STADIUM AND EXPOSITION DISTRICT ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 577 F. 2d 897.

No. 78-770. CURTIS *v.* FRANK S. PHILLIPS, INC., ET AL. Ct. App. D. C. Certiorari denied.

No. 78-773. UNITED STATES LINES, INC. *v.* SUN SHIP-BUILDING & DRY DOCK Co. C. A. 3d Cir. Certiorari denied. Reported below: 582 F. 2d 1276.

No. 78-804. LAROCOCCO *v.* UNITED STATES; and

No. 78-805. SMALDONE ET AL. *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 583 F. 2d 1129.

No. 78-836. LEE PHARMACEUTICALS *v.* KREPS, SECRETARY OF COMMERCE, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 577 F. 2d 610.

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No. 78-851. *FAYER v. JOINT BAR ASSOCIATION GRIEVANCE COMMITTEE, TENTH JUDICIAL DISTRICT*. App. Div., Sup. Ct. N. Y., 2d Jud. Dept. Certiorari denied. Reported below: 63 App. Div. 2d 709, 406 N. Y. S. 2d 493.

No. 78-869. *JEZARIAN ET AL. v. RAICHLE, TRUSTEE, ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 579 F. 2d 206.

No. 78-870. *RODRIGUEZ v. UNITED STATES*. C. A. 2d Cir. Certiorari denied.

No. 78-5232. *CARTER v. TELETRON, INC., ET AL.* C. A. 5th Cir. Certiorari denied.

No. 78-5271. *MALLETT v. LOUISIANA*. Sup. Ct. La. Certiorari denied. Reported below: 357 So. 2d 1105.

No. 78-5279. *HEFLIN v. ILLINOIS*. Sup. Ct. Ill. Certiorari denied. Reported below: 71 Ill. 2d 525, 376 N. E. 2d 1367.

No. 78-5292. *BROWN v. TEXAS*. Ct. Crim. App. Tex. Certiorari denied.

No. 78-5294. *TRAYLOR v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 578 F. 2d 108.

No. 78-5330. *GILLESPIE v. JEFFES, CORRECTIONAL SUPERINTENDENT*. C. A. 3d Cir. Certiorari denied. Reported below: 582 F. 2d 1278.

No. 78-5371. *BRADY ET AL. v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 579 F. 2d 1121.

No. 78-5386. *ORDUNO v. CALIFORNIA*. Ct. App. Cal., 4th App. Dist. Certiorari denied. Reported below: 80 Cal. App. 3d 738, 80 Cal. Repr. 806.

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No. 78-5393. *SEDGWICK v. SUPERIOR COURT OF THE DISTRICT OF COLUMBIA*. C. A. D. C. Cir. Certiorari denied. Reported below: 190 U. S. App. D. C. 63, 584 F. 2d 1044.

No. 78-5416. *RIVERA v. HEFNER ET AL.* Super. Ct. Pa. Certiorari denied. Reported below: 254 Pa. Super. 627, 387 A. 2d 123.

No. 78-5431. *GAVIN ET VIR v. MARYLAND*. Ct. Sp. App. Md. Certiorari denied.

No. 78-5433. *HOLLINGSWORTH v. MARYLAND*. Ct. Sp. App. Md. Certiorari denied.

No. 78-5435. *SAENZ v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 578 F. 2d 643.

No. 78-5457. *GLOVER v. DOLAN, SHERIFF*. C. A. 9th Cir. Certiorari denied.

No. 78-5464. *DUFFY v. CUYLER, CORRECTIONAL SUPERINTENDENT, ET AL.* C. A. 3d Cir. Certiorari denied. Reported below: 581 F. 2d 1059.

No. 78-5491. *MONTGOMERY v. UNITED STATES*. C. A. 10th Cir. Certiorari denied. Reported below: 582 F. 2d 514.

No. 78-5506. *BABB ET AL. v. UNITED STATES*. C. A. 10th Cir. Certiorari denied. Reported below: 580 F. 2d 1011.

No. 78-5510. *KIRKLAND v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 582 F. 2d 1277.

No. 78-5515. *COX ET AL. v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 580 F. 2d 317.

No. 78-5520. *JONES v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 582 F. 2d 1287.

No. 78-5522. *DATTALO v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 582 F. 2d 1277.

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No. 78-5548. *VANDER LINDEN v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 577 F. 2d 1133.

No. 78-5554. *RELIFORD v. COLORADO*. Sup. Ct. Colo. Certiorari denied. Reported below: 195 Colo. 549, 579 P. 2d 1145.

No. 78-5555. *AKERBLOM v. UNITED STATES*. C. A. 10th Cir. Certiorari denied.

No. 78-5559. *MCMAHON v. PENNSYLVANIA*. Super. Ct. Pa. Certiorari denied. Reported below: 256 Pa. Super. 532, 389 A. 2d 173.

No. 78-5562. *SMITH v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 580 F. 2d 1054.

No. 78-5564. *COX v. UNITED STATES*. C. A. 10th Cir. Certiorari denied. Reported below: 581 F. 2d 1374.

No. 78-5570. *CRESTA v. MEACHUM, CORRECTIONAL SUPERINTENDENT*. C. A. 1st Cir. Certiorari denied.

No. 78-5573. *CARRIER v. VIRGINIA*. Sup. Ct. Va. Certiorari denied.

No. 78-5583. *ALVARADO-COLON v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 584 F. 2d 974.

No. 78-5599. *MEADOWS v. UNITED STATES*. C. A. 6th Cir. Certiorari denied.

No. 78-5605. *PARKS v. UNITED STATES*. C. A. 2d Cir. Certiorari denied.

No. 78-5613. *VANEK v. UNITED STATES*. C. A. 10th Cir. Certiorari denied.

No. 78-5626. *MAHDI v. DUKAKIS, GOVERNOR OF MASSACHUSETTS, ET AL.* C. A. 1st Cir. Certiorari denied. Reported below: 582 F. 2d 1269.

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No. 78-5630. GREAR *v.* TENNESSEE. Sup. Ct. Tenn. Certiorari denied. Reported below: 568 S. W. 2d 285.

No. 78-5636. RANDALL *v.* FITZMORRIS. Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 78-5644. RICHARDSON *v.* BLACKBURN, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 78-5646. WARNER *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 7th Cir. Certiorari denied.

No. 78-5647. McCLURE *v.* BALKCOM, WARDEN. C. A. 5th Cir. Certiorari denied. Reported below: 577 F. 2d 938.

No. 78-5652. WRIGHT *v.* WILLIAMS. C. A. 4th Cir. Certiorari denied. Reported below: 584 F. 2d 979.

No. 78-5653. MAGANN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 579 F. 2d 641.

No. 78-5654. WILLIAMS *v.* WORKERS' COMPENSATION APPEALS BOARD OF CALIFORNIA ET AL. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 78-5656. MANNING *v.* PENNSYLVANIA. Sup. Ct. Pa. Certiorari denied. Reported below: 480 Pa. 484, 391 A. 2d 989.

No. 78-5657. SPYCHALA *v.* GUNN, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 580 F. 2d 1054.

No. 78-5663. HUNTER *v.* GENERAL MOTORS CORP. ET AL. C. A. 6th Cir. Certiorari denied.

No. 78-5665. PROCK *v.* DERRYBERRY, ATTORNEY GENERAL OF OKLAHOMA. Sup. Ct. Okla. Certiorari denied.

No. 78-5668. RIGGS *v.* GIANNETTA ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 582 F. 2d 1280.

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No. 78-5669. *COOK v. CROFTS, JUDGE*. C. A. 5th Cir. Certiorari denied.

No. 78-5670. *DAVIS v. OHIO*. Ct. App. Ohio, Cuyahoga County. Certiorari denied.

No. 78-5672. *JOHNSON v. HILTON, PRISON SUPERINTENDENT, ET AL.* C. A. 3d Cir. Certiorari denied.

No. 78-5677. *CLEVELAND v. WARDEN, NEW JERSEY STATE PRISON*. C. A. 3d Cir. Certiorari denied. Reported below: 582 F. 2d 1278.

No. 78-5681. *GAINES v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 578 F. 2d 1381.

No. 78-5682. *REVIS v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 584 F. 2d 978.

No. 78-5683. *OLVERA v. UNITED STATES*. C. A. 5th Cir. Certiorari denied.

No. 78-5687. *KAPLAN v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 576 F. 2d 598.

No. 78-5690. *FLOYD v. HENDERSON, CORRECTIONAL SUPERINTENDENT*. C. A. 2d Cir. Certiorari denied. Reported below: 586 F. 2d 832.

No. 78-5691. *STOKES v. FAIR, CORRECTIONAL SUPERINTENDENT*. C. A. 1st Cir. Certiorari denied. Reported below: 581 F. 2d 287.

No. 78-5695. *MUDD ET AL. v. BUSSE*. C. A. 7th Cir. Certiorari denied. Reported below: 582 F. 2d 1283.

No. 78-5699. *GREEN v. WYRICK, WARDEN, ET AL.* C. A. 8th Cir. Certiorari denied.

No. 78-5700. *PATTERSON v. THOMPSON, WARDEN, ET AL.* C. A. 6th Cir. Certiorari denied.

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No. 78-5701. *RHEUARK v. TEXAS ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 581 F. 2d 265.

No. 78-5702. *FEARON v. SMITH, CORRECTIONAL SUPERINTENDENT.* C. A. 2d Cir. Certiorari denied.

No. 78-5703. *BATES v. BRIERTON, WARDEN.* C. A. 7th Cir. Certiorari denied. Reported below: 588 F. 2d 834.

No. 78-5704. *VAN CRANE BROCK v. CALIFANO, SECRETARY OF HEALTH, EDUCATION, AND WELFARE.* C. A. 7th Cir. Certiorari denied. Reported below: 588 F. 2d 832.

No. 78-5707. *HARDWICK v. BROOKS ET AL.* C. A. 5th Cir. Certiorari denied.

No. 78-5710. *JIMENEZ v. ESTELLE, CORRECTIONS DIRECTOR.* C. A. 5th Cir. Certiorari denied.

No. 78-5711. *LEWIS v. SOUTH CAROLINA.* Sup. Ct. S. C. Certiorari denied.

No. 78-5713. *GARCIA v. UNITED STATES; and*

No. 78-5773. *COWEN v. UNITED STATES.* C. A. 5th Cir. Certiorari denied. Reported below: 580 F. 2d 827.

No. 78-5714. *NELSON v. UNITED STATES.* C. A. 10th Cir. Certiorari denied. Reported below: 582 F. 2d 1246.

No. 78-5716. *McCRORY v. KIRK, JUDGE.* Ct. Crim. App. Tex. Certiorari denied.

No. 78-5719. *TURNER v. ESTELLE, CORRECTIONS DIRECTOR.* C. A. 5th Cir. Certiorari denied.

No. 78-5722. *KALITA v. UNITED STATES.* C. A. 4th Cir. Certiorari denied. Reported below: 584 F. 2d 978.

No. 78-5729. *AKERBLOM v. UNITED STATES.* C. A. 9th Cir. Certiorari denied.

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No. 78-5731. *MARCONI v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 586 F. 2d 836.

No. 78-5735. *HARTWELL v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 581 F. 2d 266.

No. 78-5736. *ROBERTS v. UNITED STATES*. C. A. 10th Cir. Certiorari denied. Reported below: 583 F. 2d 1173.

No. 78-5738. *HINES v. OHIO*. Ct. App. Ohio, Cuyahoga County. Certiorari denied.

No. 78-5740. *ROSS v. INDIANA*. Sup. Ct. Ind. Certiorari denied. Reported below: 268 Ind. 471, 376 N. E. 2d 1117.

No. 78-5741. *BECKER v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 585 F. 2d 703.

No. 78-5743. *ROGERS v. UNITED STATES*. C. A. 10th Cir. Certiorari denied.

No. 78-5754. *DIAZ v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 570 F. 2d 352.

No. 78-5756. *BECKWITH v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 577 F. 2d 737.

No. 78-5766. *ACEVEDO DE CAMPOS, SUBSECRETARY OF DEPARTMENT OF NATURAL RESOURCES OF PUERTO RICO, ET AL. v. CORDECO DEVELOPMENT CORP.* C. A. 1st Cir. Certiorari denied. Reported below: 582 F. 2d 1270.

No. 78-5768. *ARMSTRONG v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 580 F. 2d 800.

No. 78-5769. *MALONE v. ALABAMA*. Ct. Crim. App. Ala. Certiorari denied. Reported below: 361 So. 2d 674.

No. 78-5781. *LINDEN v. UNITED STATES ATTORNEY FOR THE SOUTHERN DISTRICT OF NEW YORK ET AL.* C. A. 2d Cir. Certiorari denied.

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No. 78-5772. HENNEMEYER *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 586 F. 2d 845.

No. 78-5782. PERRY *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 584 F. 2d 388.

No. 78-5787. ROLLINS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 586 F. 2d 845.

No. 78-5794. GREENE *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied.

No. 78-5805. FREEMAN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 580 F. 2d 1051.

No. 78-5807. LOSING *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 584 F. 2d 289.

No. 78-5813. WALKER *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 576 F. 2d 253.

No. 78-5815. SALDANA *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 588 F. 2d 831.

No. 78-364. CUPP, PENITENTIARY SUPERINTENDENT *v.* DOUGLAS. C. A. 9th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. MR. JUSTICE BLACKMUN would grant certiorari. Reported below: 578 F. 2d 266.

No. 78-453. ACF INDUSTRIES, INC., CARTER CARBURETOR DIVISION *v.* EQUAL EMPLOYMENT OPPORTUNITY COMMISSION. C. A. 8th Cir. Certiorari denied. Reported below: 577 F. 2d 43.

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

The decision of the Court of Appeals in this case appears to be inconsistent with recent decisions of this Court on principles vital to the proper functioning of the federal courts. I therefore dissent from the denial of certiorari.

## I

In 1970, a civil rights organization and several individuals filed a charge against petitioner with respondent Equal Employment Opportunity Commission (EEOC). It was claimed that in discharging an employee and in failing to promote another, petitioner had discriminated on the basis of race. In 1972, an additional complaint was lodged on behalf of a female employee who asserted that petitioner's pregnancy-leave policies discriminated against her on the basis of sex. Upon the unsuccessful conclusion of conciliation efforts concerning these charges, the EEOC commenced this action against petitioner in the District Court. The complaint alleged broadly that petitioner had discriminated on the basis of race in its hiring, promotion, apprenticeship, and other practices, and on the basis of sex with respect to its maternity-leave and disability benefits.

Each party served interrogatories on the other. The dispute leading to this petition arose from the EEOC's refusal adequately to answer interrogatories seeking the names of the individuals, other than those named in the initial administrative charges, against whom the EEOC believed petitioner had discriminated. Rather than supply this information, the EEOC moved the District Court to stay the filing of its answers while it completed its discovery against petitioner. This motion was denied. The EEOC thereafter submitted the following answer to the interrogatories: "The Commission is unable at this time to identify other individuals until it has completed its discovery."

Petitioner moved for sanctions against the EEOC under Fed. Rule Civ. Proc. 37. At a hearing on this motion, the District Judge reserved decision and directed the parties to confer. He stated that if they could not agree on the matter, he would consider the motion for sanctions. Further negotiations failed to produce an agreement.

The District Court then granted, in part, petitioner's mo-

tion for sanctions. It concluded that the answers filed by the EEOC were merely an attempt to postpone an adequate response until after the EEOC's own discovery was completed. It further found that "the EEOC has not in fact answered the interrogatories and has wilfully ignored the Court's order . . . denying the requested stay." 76 F. R. D. 143, 144 (1977). The court thought it obvious that the EEOC had made "broad-based allegations, without any basis for a belief in those allegations, and then . . . invade[d] the defendant's records in an attempt to determine whether or not a cause of action exists." *Ibid.* Rather than dismissing the complaint outright, as requested by petitioner, the court ordered (1) that at the trial on the merits it should be taken as established that petitioner had not discriminated against anyone, with the possible exception of the individuals named in the administrative charges before the EEOC; (2) that the EEOC would not be permitted to introduce evidence of discrimination against anyone other than those named individuals; and (3) that the EEOC should pay attorney's fees of \$500. Sanctions of this kind are expressly authorized by Rule 37 (d).

The EEOC filed a notice of appeal from the District Court's order. It argued to the Court of Appeals for the Eighth Circuit that the sanctions order was appealable either as a collateral order under *Cohen v. Beneficial Loan Corp.*, 337 U. S. 541 (1949), or as a denial of an injunction under 28 U. S. C. § 1292 (a)(1). Petitioner responded that the Court of Appeals lacked jurisdiction because the sanctions order was not appealable before final judgment.

The Court of Appeals declined to decide the jurisdictional issue as presented by the parties. Instead, it stated, "we find this an appropriate case for the issuance of a writ of mandamus." 577 F. 2d 43, 45 (1978). The court offered little by way of justification for its issuance of the writ, a remedy not requested by the EEOC. It merely noted its belief that petitioner, as well as the EEOC, had "displayed dilatory tactics

during the discovery period," *id.*, at 48, and that the procedures leading to the sanctions had been irregular.<sup>1</sup> It also disagreed with the District Court's finding that the EEOC's conduct amounted to willful disobedience.

## II

The opinion of the Court of Appeals appears to be seriously at odds with the decisions of this Court in two respects, both of which are important to federal judicial policy.

### A

The court below seems to have committed the compound error of using the mandamus power to mask a questionable jurisdictional decision. Our cases have emphasized the practical importance of the final-judgment rule of 28 U. S. C. § 1291, which goes to the jurisdiction of the courts of appeals. As recently as last Term we unanimously agreed that "[r]estricting appellate review to "final decisions" prevents the debilitating effect on judicial administration caused by piecemeal disposition of what is, in practical consequence, but a single controversy.'" *Coopers & Lybrand v. Livesay*, 437 U. S. 463, 471 (1978), quoting *Eisen v. Carlisle & Jacquelin*, 417 U. S. 156, 170 (1974). Whether the District Court's sanctions order comes within either of the exceptions to the final-judgment rule suggested by the EEOC appears to be highly questionable. Rather than dealing with the merits of

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<sup>1</sup>The Court of Appeals thought the procedures had been irregular because, in its opinion, the EEOC had not been given a sufficient opportunity to present its side of the story before sanctions were imposed. The District Court's action, however, was premised on the conclusion that the EEOC had simply persisted in doing what it had been forbidden to do when the motion to stay was denied. Thus, even if the Court of Appeals were correct that the adversary proceedings that preceded the sanctions order may have been unduly truncated, a district court should not be required to prolong argument over a matter within its discretion and already decided.

this important and dispositive issue, the Court of Appeals simply sidestepped it by treating the appeal as a petition for a writ of mandamus. This action is difficult to square with the well-established rule that mandamus "is not to be used as a substitute for appeal." *Schlagenhauf v. Holder*, 379 U. S. 104, 110 (1964).

It also seems evident that this was not an appropriate case for mandamus. "[O]nly exceptional circumstances amounting to a judicial "usurpation of power" will justify the invocation of this extraordinary remedy.'" *Kerr v. United States District Court*, 426 U. S. 394, 402 (1976), quoting *Will v. United States*, 389 U. S. 90, 95 (1967). The petitioning party must show, among other things, that his right to the issuance of the writ is "clear and indisputable.'" *Kerr v. United States District Court*, *supra*, at 403, quoting *Bankers Life & Cas. Co. v. Holland*, 346 U. S. 379, 384 (1953). A litigant does not have a clear and indisputable right to a particular result in matters committed to the discretion of the District Court. *Will v. Calvert Fire Ins. Co.*, 437 U. S. 655, 665-666 (1978) (plurality opinion). As the decision to impose sanctions under Rule 37 is discretionary with the District Judge, see *National Hockey League v. Metropolitan Hockey Club, Inc.*, 427 U. S. 639, 642 (1976), and the sanctions ordered in this case are among those expressly authorized by Rule 37, the Court of Appeals' resort to mandamus to review what appears to have been an otherwise unappealable order is highly suspect.

## B

The decision below is difficult to reconcile with our recent decision in *National Hockey League v. Metropolitan Hockey Club, Inc.*, *supra*. In that case an antitrust action was dismissed under Rule 37 because of the plaintiff's failure to comply with discovery orders. The Court of Appeals reversed, apparently finding this sanction too harsh. We summarily reversed the Court of Appeals. We stressed that "the most

severe in the spectrum of sanctions . . . must be available to the district court in appropriate cases, not merely to penalize those whose conduct may be deemed to warrant such a sanction, but to deter those who might be tempted to such conduct in the absence of such a deterrent." 427 U. S., at 643. The sanctions order in this case is less severe than that approved in *National Hockey League*, and it was imposed for a virtually identical reason: a willful failure to answer interrogatories. Although the Court of Appeals rejected the District Court's finding that the EEOC had willfully disregarded the court's order, "[t]he question . . . is not whether this Court, or whether the Court of Appeals, would as an original matter have [imposed the sanctions]; it is whether the District Court abused its discretion in so doing." *Id.*, at 642. Neither the EEOC nor the Court of Appeals has convincingly demonstrated that an abuse of discretion occurred here.

### III

The decision of the Court of Appeals in this case not only appears to be inconsistent with our recent decisions, but also could discourage efforts to curb the widespread abuse of discovery that is a prime cause of delay and expense in civil litigation. The extent of this abuse has been of increasing concern. It was the subject of close attention at the Pound Conference held in St. Paul, Minn., in April 1976, and it was scrutinized further by the Pound Conference Follow-Up Task Force.<sup>2</sup> The Task Force, chaired by then Judge Griffin B. Bell, recommended that the appropriate organizations of the bench and bar should "accord a high priority to the problem of abuses in the use of pretrial procedures . . . with a view to appropriate action by state and federal courts."<sup>3</sup> Fol-

<sup>2</sup> See Report of Pound Conference Follow-Up Task Force, 74 F. R. D. 159, 191-192 (1976).

<sup>3</sup> *Id.*, at 192. See also Erickson, *The Pound Conference Recommendations: A Blueprint for the Justice System in the Twenty-first Century*, 76

lowing the studies that ensued, the Section of Litigation of the American Bar Association submitted recommendations for substantial changes in the provisions of the Rules of Civil Procedure respecting pretrial discovery.<sup>4</sup> The Committee on Rules of Practice and Procedure of the Judicial Conference, after considering these and other recommendations, has circulated for comment a number of proposed amendments to the Rules.<sup>5</sup> In a letter to the Committee, Attorney General Bell stated:

"It has been my experience as a judge, practicing lawyer and now as Attorney General that the scope of discovery is far too broad and that excessive discovery has significantly contributed to the delays, complexity and high cost of civil litigation in the federal courts."<sup>6</sup>

I have referred briefly to the concern that exists with respect to abuse of discovery to emphasize that, at least until rule changes can be made, there is a pressing need for judicial supervision in this area. The district court before which a case is being litigated is in a far better position than a court of appeals to supervise and control discovery and to impose

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F. R. D. 277, 288-290 (1978); Bell, *The Pound Conference Follow-Up: A Response from the United States Department of Justice*, 76 F. R. D. 320, 328 (1978).

<sup>4</sup> See ABA Report of the Special Committee for the Study of Discovery Abuse, Section of Litigation (1977). Comments on these proposals were offered by the Justice Department's Office for Improvements in the Administration of Justice, see United States Department of Justice, *The Annual Report of the Attorney General of the United States 1977*, pp. 13-15 (1978), and by the Board of Regents of the American College of Trial Lawyers.

<sup>5</sup> See Judicial Conference of the United States, Committee on Rules of Practice and Procedure, *Preliminary Draft of Proposed Amendments to the Federal Rules of Civil Procedure* (1978).

<sup>6</sup> Letter to Hon. Roszel C. Thomsen, Chairman, Committee on Rules of Practice and Procedure of the Judicial Conference of the United States, June 27, 1978, from Hon. Griffin B. Bell.

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sanctions for its abuse. Here, the District Court found that the EEOC had "in fact [failed to] answe[r] . . . interrogatories" and also had "willfully ignored the Court's order." 76 F. R. D., at 144. It is a serious matter for a court of appeals to undercut a district court's authority on questions of this kind, which are peculiarly within its discretion and competency.<sup>7</sup>

## IV

Accordingly, because it appears that the decision below misapplied the relevant decisions of this Court with respect to interlocutory appeals and the use of mandamus, and also because its decision may deter district courts from imposing appropriate sanctions promptly where abuses of discovery occur, I would grant the petition.

No. 78-528. *PIERCE v. GEORGIA*;

No. 78-529. *CALLAHAN v. GEORGIA*;

No. 78-530. *WICKMAN v. GEORGIA*; and

No. 78-531. *RITCHIE v. GEORGIA*. Ct. App. Ga. Certiorari denied. MR. JUSTICE BRENNAN, MR. JUSTICE STEWART, and MR. JUSTICE MARSHALL would grant certiorari and reverse the convictions. Reported below: 145 Ga. App. 680, 244 S. E. 2d 589.

No. 78-549. *HENDERSON, CORRECTIONAL SUPERINTENDENT, ET AL. v. MAJORS ET AL.* Ct. App. N. Y. Motion of respondent Majors for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 44 N. Y. 2d 982, 380 N. E. 2d 164.

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<sup>7</sup> One need not disagree with the Court of Appeals that petitioner also was at fault in the apparently acrimonious discovery disputes in this case. The District Court supervising the trial concluded that the EEOC's abuse was flagrant enough to warrant sanctions. That petitioner's hands may not have been entirely clean would not seem to justify the drastic action of overturning this decision by mandamus.

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No. 78-557. SWOROB ET AL. *v.* HARRIS, SECRETARY OF HOUSING AND URBAN DEVELOPMENT, ET AL. C. A. 3d Cir. Motion of respondent Nellie Reynolds for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 578 F. 2d 1376.

No. 78-666. NATIONWIDE LIFE INSURANCE CO. *v.* COLLISTER. Sup. Ct. Pa. Motion of petitioner to defer consideration of petition for writ of certiorari and certiorari denied. Reported below: 479 Pa. 579, 388 A. 2d 1346.

No. 78-696. LEWIS ET AL. *v.* PHILIP MORRIS, INC., ET AL. C. A. 4th Cir. Certiorari denied. MR. JUSTICE POWELL took no part in the consideration or decision of this petition. Reported below: 577 F. 2d 1135.

No. 78-751. YOUNG *v.* ETHYL CORP. C. A. 8th Cir. Certiorari denied. MR. JUSTICE POWELL took no part in the consideration or decision of this petition. Reported below: 581 F. 2d 715.

No. 78-701. MELTZER ET AL. *v.* BOARD OF PUBLIC INSTRUCTION OF ORANGE COUNTY, FLORIDA. C. A. 5th Cir. Certiorari denied. MR. JUSTICE BRENNAN and MR. JUSTICE MARSHALL would grant certiorari. Reported below: 577 F. 2d 311.

No. 78-703. ACKERMAN-CHILLINGWORTH, DIVISION OF MARSH & McLENNAN, INC., ET AL. *v.* PACIFIC ELECTRICAL CONTRACTORS ASSN. ET AL. C. A. 9th Cir. Motion of Independent Insurance Agents of America, Inc., for leave to file a brief as *amicus curiae* granted. Certiorari denied. Reported below: 579 F. 2d 484.

No. 78-720. BANK OF HENDERSONVILLE *v.* RED BARON FLYING CLUB, INC. Ct. App. Tenn. Motion of Aircraft Finance Assn. for leave to file a brief as *amicus curiae* granted. Certiorari denied. Reported below: 571 S. W. 2d 152.

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No. 78-734. KANSAS CITY AREA TRANSPORTATION AUTHORITY *v.* DIVISION 1287, AMALGAMATED TRANSIT UNION, AFL-CIO. C. A. 8th Cir. Motion of American Public Transit Assn. for leave to file a brief as *amicus curiae* granted. Certiorari denied. Reported below: 582 F. 2d 444.

No. 78-755. HOGAN, CORRECTIONS COMMISSIONER, ET AL. *v.* DUNKERLEY. C. A. 2d Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 579 F. 2d 141.

No. 78-761. AMERICAN TELEPHONE & TELEGRAPH CO. ET AL. *v.* UNITED STATES. C. A. D. C. Cir. Motion to defer consideration of petition for writ of certiorari and certiorari denied.

No. 78-764. NORTHERN CALIFORNIA SUPERMARKETS, INC. *v.* CENTRAL CALIFORNIA LETTUCE PRODUCERS COOPERATIVE ET AL. C. A. 9th Cir. Certiorari denied. MR. JUSTICE BRENNAN would grant certiorari. Reported below: 580 F. 2d 369.

No. 78-807. PLEASURE DRIVEWAY AND PARK DISTRICT OF PEORIA, ILLINOIS, ET AL. *v.* KUREK ET AL. C. A. 7th Cir. Certiorari denied. MR. JUSTICE WHITE and MR. JUSTICE POWELL would grant certiorari. MR. JUSTICE STEVENS took no part in the consideration or decision of this petition. Reported below: 583 F. 2d 378.

No. 78-5333. SHANNON *v.* ASSOCIATES FINANCIAL SERVICES COMPANY, WESTERN, ET AL. Sup. Ct. Ore. Certiorari denied. MR. JUSTICE WHITE and MR. JUSTICE BLACKMUN would grant certiorari. Reported below: 282 Ore. 449, 579 P. 2d 1288.

No. 78-5359. JONES *v.* MORRIS, WARDEN. C. A. 7th Cir. Certiorari denied. MR. JUSTICE BRENNAN, MR. JUSTICE WHITE, and MR. JUSTICE POWELL would grant certiorari. Reported below: 577 F. 2d 747.

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No. 78-5381. *TENNON v. RICKETTS, WARDEN*. C. A. 5th Cir. Certiorari denied. MR. JUSTICE WHITE would grant certiorari. Reported below: 574 F. 2d 1243.

No. 78-5482. *WIGGINS v. MURPHY ET AL.* C. A. 4th Cir. Certiorari denied. MR. JUSTICE BRENNAN, MR. JUSTICE WHITE, and MR. JUSTICE MARSHALL would grant certiorari. Reported below: 576 F. 2d 572.

No. 78-5531. *CARMONA ET AL. v. WARD, CORRECTIONAL COMMISSIONER, ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 576 F. 2d 405.

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

In 1973, New York enacted a comprehensive drug law which prescribes mandatory maximum life sentences and varying minimum terms of imprisonment for all class A narcotics felonies. N. Y. Penal Law §§ 70.00 (2) (a), 70.00 (3) (a) (McKinney 1975).<sup>1</sup> The Court today declines to consider whether two mandatory life sentences imposed under this statute, one for possession of an ounce of a substance containing cocaine, and the other for sale of 0.00455 of an ounce of a substance containing cocaine, constitute cruel and unusual punishment.

## I

In 1975, petitioner Martha Carmona pleaded guilty to possession of an ounce of a substance containing cocaine in viola-

<sup>1</sup> Section 70.00 (2) (a) provides in part: "For a class A felony the [maximum] term shall be life imprisonment." The minimum terms that a court may impose vary depending on whether the felony is specified as A-I, A-II, or A-III. Section 70.00 (3) (a) provides:

"(i) For a class A-I felony, such minimum period shall not be less than fifteen years nor more than twenty-five years.

"(ii) For a class A-II felony, such minimum period shall not be less than six years nor more than eight years four months.

"(iii) For a class A-III felony such minimum period shall not be less than one year nor more than eight years four months."

tion of N. Y. Penal Law § 220.18 (McKinney Supp. 1978).<sup>2</sup> The Appellate Division affirmed her conviction, and the New York Court of Appeals denied leave to appeal. *People v. Carmona*, 40 N. Y. 2d 1081, 360 N. E. 2d 965 (1976). She is currently serving a sentence of six years to life, the minimum possible for a § 220.18 violation under the 1973 statute. N. Y. Penal Law §§ 70.00 (2)(a), (3)(a)(ii) (McKinney 1975).<sup>3</sup> Prior to a series of events giving rise to the instant charges, petitioner Carmona had no criminal record except for one non-drug-related arrest 19 years earlier.<sup>4</sup>

Petitioner Roberta Fowler was convicted in February 1974, of selling 0.00455 of an ounce of a substance containing cocaine to an undercover agent for \$20, in violation of N. Y. Penal Law § 220.39 (McKinney Supp. 1978).<sup>5</sup> The state trial court sentenced her to four years to life under §§ 70.00 (2)(a)

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<sup>2</sup> Section 220.18 provides in part:

"A person is guilty of criminal possession of a controlled substance in the second degree when he knowingly and unlawfully possesses:

"1. one or more preparations, compounds, mixtures or substances of an aggregate weight of one ounce or more containing a narcotic drug . . . ."

Cocaine is classified as a narcotic drug. § 220.00 (7). N. Y. Pub. Health Law § 3306, Schedule II (a) (4) (McKinney Supp. 1978).

<sup>3</sup> Section 220.18 classifies criminal possession of a controlled substance in the second degree as an A-II felony. See n. 1, *supra*.

<sup>4</sup> Several months before her indictment in state court for the instant offense, Carmona was arrested on federal charges of conspiracy and possession of cocaine with intent to distribute and on state charges of selling heroin. In satisfaction of the federal charges, she pleaded guilty to one substantive count of possession and received a sentence of imprisonment for one year and special parole for three years, both to run concurrently with the state sentence. The other state charges were dismissed in return for Carmona's guilty plea to one count of possession of cocaine.

<sup>5</sup> Section 220.39 provides in part:

"A person is guilty of criminal sale of a controlled substance in the third degree when he knowingly and unlawfully sells:

"1. a narcotic drug . . . ."

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and 70.00 (3)(a)(iii),<sup>6</sup> and the New York Court of Appeals sustained that penalty over her Eighth Amendment challenge, *sub nom. People v. Broadie*, 37 N. Y. 2d 100, 332 N. E. 2d 338, cert. denied, 423 U. S. 950 (1975). At the time of sentencing, Fowler, then age 20, had no prior record of possession or sale of narcotics, or of any violent criminal conduct, although she previously had been convicted of possession and use of drug paraphernalia, prostitution, and petit larceny.<sup>7</sup>

In 1975, Carmona petitioned the District Court for the Southern District of New York for a writ of habeas corpus under 28 U. S. C. § 2254, on the ground that the sentencing provision of the 1973 statute was unconstitutional as applied. A month later, Fowler intervened as a petitioner. After a hearing, the District Court held that petitioners' mandatory maximum life sentences were so "grossly out of proportion to the severity of [their] crime[s]" as to constitute cruel and unusual punishment. 436 F. Supp. 1153, 1164 (1977). Accordingly, the court ordered petitioners discharged at the end of their minimum terms unless the State imposed constitutionally appropriate maximum sentences within 90 days. *Id.*, at 1175.

A divided panel of the Court of Appeals for the Second Circuit reversed. Although agreeing in principle with the District Court that a sanction grossly disproportionate to the gravity of an offense would violate the Eighth Amendment, the majority concluded that petitioners' sentences were constitutional. 576 F. 2d 405 (1978).

## II

Few legal principles are more firmly rooted in the Bill of Rights and its common-law antecedents than the requirement

<sup>6</sup> Section 220.39 specifies criminal sale of a controlled substance in the third degree as a class A-III felony. See n. 1, *supra*.

<sup>7</sup> Fowler's criminal record is set out in full in the District Court's opinion, 436 F. Supp. 1153, 1159 n. 13 (SDNY 1977).

of proportionality between a crime and its punishment. The precept that sanctions should be commensurate with the seriousness of a crime found expression in both the Magna Carta and the English Bill of Rights.<sup>8</sup> And this Court has long recognized that the Eighth Amendment embodies a similar prohibition against disproportionate punishment.

In *Weems v. United States*, 217 U. S. 349 (1910), the Court struck down as cruel and unusual punishment a sentence under the Philippine Code for falsification of a Government document. Although the sentence was excessive not merely in its length but in its conditions—15 years of hard labor in chains, with lifetime surveillance after release—the duration of the imprisonment and subsequent supervision plainly contributed to the Court's conclusion that "[s]uch penalties for such offenses amaze those who . . . believe that . . . punishment for crime should be graduated and proportioned to offense." *Id.*, at 366–367. In so ruling, the Court quoted with approval the Massachusetts Supreme Court's observation that imprisonment "for a long term of years might be so disproportionate to the offence as to constitute a cruel and unusual punishment." *Id.*, at 368, quoting *McDonald v. Commonwealth*, 173 Mass. 322, 328 (1899).

Applying the analysis set forth in *Weems*, this Court has invalidated punishments that were disproportionate to the nature of the offense charged, *Robinson v. California*, 370 U. S. 660 (1962) (imprisonment for the status of drug addiction), and to the penalties imposed in other jurisdictions, *Trop v.*

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<sup>8</sup> Chapter 20, renumbered Chapter 14, of the Magna Carta states: "A free man shall not be amerced for a trivial offence, except in accordance with the degree of the offence; and for a serious offence he shall be amerced according to its gravity, saving his livelihood . . ." J. Holt, *Magna Carta* 323 (1965). For a discussion of the evolution of the Cruel and Unusual Punishments Clause in the English Bill of Rights, see Granucci, "Nor Cruel and Unusual Punishments Inflicted:" The Original Meaning, 57 *Calif. L. Rev.* 839, 855–860 (1969).

*Dulles*, 356 U. S. 86 (1958) (plurality opinion) (denationalization for wartime desertion). Thus, while recognizing that the power to prescribe punishments rests in the first instance with the legislature, we have not abdicated our constitutional function to draw a meaning from the Eighth Amendment consonant with "the evolving standards of decency that mark the progress of a maturing society." *Id.*, at 101.

Most recently, in *Coker v. Georgia*, 433 U. S. 584 (1977), the Court refined the test for assessing Eighth Amendment challenges, concluding that

"a punishment is 'excessive' and unconstitutional if it (1) makes no measurable contribution to acceptable goals of punishment and hence is nothing more than the purposeless and needless imposition of pain and suffering; or (2) is grossly out of proportion to the severity of the crime." *Id.*, at 592.

In holding the Georgia death penalty for rape invalid on the latter ground, the Court followed the approach of *Weems*, focusing on the character of the crime, the punishment for the same offense in other jurisdictions, and the penalty for similar crimes in the same jurisdiction.

The Court of Appeals here purported to apply the principles enunciated in *Coker* and *Weems*. Whether it did so in fact is, in my judgment, open to serious question.

### III

Under *Coker*, the threshold inquiry concerns the character of the offense. In assessing the severity of petitioners' crimes, the Court of Appeals made the following observations:

"The crime [drug abuse] spawns is well recognized. Ad-dicts turn to prostitution, larceny, robbery, burglary and assault to support their habits. . . .

"The entire system depends upon ultimate disposition by sellers such as [petitioners] here who . . . are, 'the crucial

link' in the pernicious cycle spawning the addiction which creates other sellers. We conclude that the legislature could only properly judge the severity of the crime involved by considering the well understood and undisputed operating procedures of the dirty business involved and its disastrous consequences." 576 F. 2d., at 412 (footnote and citation omitted).

This analysis is problematic for several reasons. Petitioners were convicted of selling a single dose of cocaine and of possessing one ounce of a substance containing cocaine. They were not, as the dissent pointed out, "wholesalers, importers, dealers or distributors of that drug or of heroin." *Id.*, at 423 (Oakes, J., dissenting).<sup>9</sup> Yet New York's 1973 statute precluded the judges who sentenced Carmona and Fowler from taking into account any gradations of culpability when imposing the maximum punishment.

To rationalize petitioners' sentences by invoking all evils attendant on or attributable to widespread drug trafficking is simply not compatible with a fundamental premise of the criminal justice system, that individuals are accountable only for their own criminal acts. Nor is it consistent with the proportionality principle implicit in the Eighth Amendment. As *Coker* suggests, a crime that is sometimes accompanied by

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<sup>9</sup>The Court of Appeals suggested that petitioners were "not aided by the fact that their convictions were based on cocaine and not heroin. Cocaine is a dangerous drug that causes damaging psychological and physiological effects in its users." 576 F. 2d, at 412 n. 11. In support of that proposition, the court cited no findings by the District Court. Rather, the Court of Appeals relied on a law review article which notes that cocaine use "does not produce tolerance or physical dependence," McLaughlin, *Cocaine: The History and Regulation of a Dangerous Drug*, 58 Cornell L. Rev. 537, 553 (1973), and on an opinion of the Alaska Supreme Court which acknowledges that, "[w]hile cocaine has been anecdotally related to aggressive or criminal conduct, adequate evidence to assess its possible impact in these areas is absent." *State v. Erickson*, 574 P. 2d 1, 9 (1978).

collateral offenses cannot constitutionally be punished as if it were always so linked. That the rape in *Coker* occurred while the defendant was committing armed robbery did not alter the plurality's analysis for, "[a]lthough [rape] may be accompanied by another crime, rape by definition does not include the death of, or even the serious injury to another person." 433 U. S., at 598.<sup>10</sup>

Moreover, none of the collateral crimes to which the Court of Appeals adverted carry as severe a punishment as those currently at issue. In New York, the maximum prison term for first-degree robbery and burglary is 25 years, for first-degree assault it is 4½ to 15 years, and for prostitution, 3 months.<sup>11</sup> To justify a stringent penalty for an act on the assumption that the act may engender other crimes makes little sense when those other crimes carry less severe sanctions than the act itself. See 576 F. 2d, at 423 (Oakes, J., dissenting). In sum, by focusing on the corrosive social impact of drug trafficking in general, rather than on petitioners' actual—and clearly marginal—involvement in that enterprise, the Court of Appeals substantially overstated the gravity of the instant charges.

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<sup>10</sup> Here there was no evidence causally linking petitioners' drug offenses to any violent collateral crimes. And it is questionable whether such linkage can be presumed. Even if the Court of Appeals could appropriately rely on a New Yorker Magazine article to establish that a substantial percentage of New York's prison inmates use drugs and that many of them turn to robbery or burglary to support their habits, see 576 F. 2d., at 412 n. 12, it cannot be presumed either that: (1) but for drugs, those defendants would not have committed crimes; or (2) cocaine sales have a significant causal relationship to robbery or burglary. See n. 9, *supra*. Indeed, one of the Court of Appeals' own sources noted that there is "no reliable scientific evidence linking cocaine usage to criminal conduct . . ." *State v. Erickson, supra*, at 9.

<sup>11</sup> N. Y. Penal Law §§ 160.15, 70.00 (2) (b) (McKinney 1975); §§ 140.30, 70.00 (2) (b) (McKinney 1975); §§ 230.00 (McKinney Supp. 1978), 70.15 (2) (McKinney 1975).

## IV

When comparing petitioners' sentences with those prescribed for other crimes by New York, and for the same crime in other States, it is first necessary to clarify the precise nature of the penalty imposed. Although the Court of Appeals professed to acknowledge that the "major question on appeal is whether the mandatory maximum sentence of life imprisonment imposed on [petitioners] is unconstitutional," 576 F. 2d, at 408, it declined to analyze the sentences in terms of their maximum potential. Rather, the court discounted petitioners' penalties by the "probability of parole," *id.*, at 413, and considered the constitutionality of those lesser undefined sentences. This approach is analytically unsatisfying and inconsistent with the position taken by other courts that have considered the constitutionality of maximum life sentences.

Under New York law, the determination to grant parole and absolute discharge from parole is committed to the discretion of the Parole Board. Unless the parolee receives an absolute discharge, he remains in the legal custody of the State for the maximum term of his sentence and may be reincarcerated for violating any of the conditions which normally attach to the grant of parole. N. Y. Exec. Law § 259-i (2)(b) (McKinney Supp. 1978). Since the standard governing absolute discharge from parole, whether such termination would serve the "best interests of society," § 259-j, affords nearly limitless discretion to the Parole Board, petitioners could not claim any realistic expectation of release from legal custody prior to the termination of their maximum sentences. On similar reasoning, the New York Court of Appeals and the California Supreme Court have both evaluated Eighth Amendment claims by reference to the maximum terms the defendants might serve, notwithstanding the possibility of parole. *People v. Broadie*, 37 N. Y. 2d, at 110, 332 N. E. 2d, at 341; *In*

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*re Lynch*, 8 Cal. 3d 410, 415-418, 503 P. 2d 921, 924-926 (1972) (en banc).<sup>12</sup>

Had the Court of Appeals evaluated petitioners' sentences in terms of their maximum potential, it might well have reached a different result. In New York, the only other crimes with mandatory life sentences are first- and second-degree murder, first-degree arson (intentional damage to an inhabited building by explosion) and first-degree kidnaping (abduction if the victim dies or the purpose is extortion).<sup>13</sup> Among those crimes carrying a substantially lighter maximum penalty than the \$20 sale and possession of an ounce of cocaine involved here are:

- (1) first-degree rape (sexual intercourse by force or with a female physically helpless or less than 11 years old) (6-25 years);
- (2) first-degree manslaughter (homicide with intent to cause serious physical injury) (6-25 years);
- (3) second-degree kidnaping (abduction) (6-25 years);
- (4) second-degree arson (intentional damage to an inhabited building) (6-25 years);

<sup>12</sup> In *In re Lynch*, the California Supreme Court held that an indeterminate sentence must be evaluated as a maximum sentence of life imprisonment and that, as such, it was cruel and unusual punishment for a second offense of indecent exposure.

The Court of Appeals for the Fifth Circuit adopted a contrary approach in *Rummel v. Estelle*, 587 F. 2d 651 (1978) (en banc). At issue there was the constitutionality of a sentence imposed under the Texas Habitual Criminal Statute, which mandates life imprisonment upon a third felony conviction. Relying in part on the analysis of the Court of Appeals in this case, the en banc majority upheld the sentence, after taking into consideration the possibility of parole. *Id.*, at 659. The dissent, in which six judges joined, refused to discount the defendant's sentence by "a statistical possibility of clemency, an unenforceable hope that he may someday benefit from the grace of a parole board." *Id.*, at 668. (Clark, J., dissenting) (footnote omitted). That another Circuit has narrowly divided over a question of critical significance for this case is, in my judgment, further reason for granting review.

<sup>13</sup> N. Y. Penal Law §§ 125.27, 125.25, 150.20, 135.25 (McKinney 1975).

(5) first-degree robbery or burglary (armed) (6-25 years); and

(6) first-degree assault (injury with intent to cause disfigurement or serious physical injury) (4½-15 years).<sup>14</sup>

Just as the plurality in *Coker* found it "difficult to accept the notion . . . that the rapist . . . should be punished more heavily than the deliberate killer," 433 U. S., at 600, so, too, I find it difficult to accept the concept that the sale or possession of a small amount of cocaine should be penalized more severely than manslaughter or forcible rape.

Compared with the punishment for similar offenses in other jurisdictions, New York's drug law is unique in its severity. As both the District Court and the dissent in the Court of Appeals painstakingly demonstrated, no other State prescribes life sentences for the crimes involved here:

"Indeed, only six states have statutes permitting a court to consider imposition of a life sentence on a first felony offender. The most common maximum permitted is between ten and twenty years and not one of the thirty-four states in this range *requires* imposition of the maximum term. Neither Fowler nor Carmona would have faced a mandatory sentence of life imprisonment under the law of any other state. As for Carmona, in thirty-one states the *maximum* penalty provided by law is less than the *minimum* sentence which she is serving." 576 F. 2d, at 424 (footnotes omitted).

Under federal drug laws, Carmona, if charged as a first offender with simple possession, could have received no more than one year of imprisonment and/or a \$5,000 fine, 21 U. S. C. § 844 (a).<sup>15</sup> Fowler's sale of narcotics, as a first offense, would have

<sup>14</sup> The crimes are defined in N. Y. Penal Law §§ 130.35, 125.20, 135.20, 150.15, 160.15, 140.30, 120.10 (McKinney 1975). The penalties are set forth in §§ 70.02 (3) (a), (b) (McKinney Supp. 1978).

<sup>15</sup> If convicted of possession as a second offender, Carmona would have been subject to no more than two years' imprisonment and a \$10,000

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been punishable by probation or incarceration for up to 15 years and/or a fine of up to \$25,000, coupled with a mandatory special parole term of at least 3 years. 21 U. S. C. § 841 (b)(1)(A).

Although acknowledging that the penalties under the 1973 New York law are harsher than those in any other jurisdiction, the Court of Appeals justified the disparity on the ground that New York City "houses more than half of all the addicts in the entire United States." 576 F. 2d, at 415. There was no finding to that effect by the District Court. Rather, the majority relied on *People v. Broadie*, 37 N. Y. 2d, at 116, 332 N. E. 2d, at 345, which in turn drew upon an estimate in *E. Brecher and the Editors of Consumer Reports, Licit and Illicit Drugs* 72 (1972). Current evidence, however, indicates that New York City has no more "epidemic" a drug problem than a number of other major metropolitan areas. A study by the National Institute on Drug Abuse reveals that in 1973, the year the statute was passed, Los Angeles, Miami, Detroit, Phoenix, San Diego, and San Francisco all had more heroin addicts per capita than New York City. Person, Retka, & Woodward, *A Method for Estimating Heroin Use Prevalence*, NIDA Technical Paper 8 (1977).<sup>16</sup>

Moreover, even granting that New York has a greater concentration of drug abuse than other States, this does not of itself justify the punishments at issue here. Due to a variety

fine. 21 U. S. C. § 844 (a). Had she been convicted of possession with intent to sell, the maximum penalty for a first offense would have been 15 years' imprisonment, a \$25,000 fine, and a special parole term of at least 3 years; for a second offense, it would have been 30 years, \$50,000, and at least 6 years' special parole. 21 U. S. C. § 841 (b)(1)(A). Only if she were found guilty of engaging in a "continuing criminal enterprise" in concert with at least five others could she have received a life sentence. 21 U. S. C. § 848.

<sup>16</sup> The report's latest annual figures, those for 1975, reflect that San Francisco, Los Angeles, Phoenix, Detroit, Chicago, San Diego, and San Antonio have a higher heroin addict per capita ranking than New York City. Person, Retka, & Woodward, at 8.

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of geographic, demographic, and socio-economic factors, New York has more than its fair share of motor vehicle theft and larceny,<sup>17</sup> but this misfortune could not insulate Draconian penalties for such offenses from constitutional challenge. However serious its narcotics problem, New York cannot constitutionally treat those with peripheral involvement in drug trafficking as if they were responsible for the problem in its entirety.

Throughout its opinion, the Court of Appeals emphasized the need for broad deference to the legislature's judgment of how best to deal with a social phenomenon alarming in its current proportions. I do not disagree. It is axiomatic that this Court should approach Eighth Amendment challenges with caution, lest it become "under the aegis of the Cruel and Unusual Punishments Clause, the ultimate arbiter of the standards of criminal responsibility . . . throughout the country." *Powell v. Texas*, 392 U. S. 514, 533 (1968) (plurality opinion). But neither should the Court abdicate the function conferred by the Eighth Amendment, to determine whether application of a given legislative judgment results in punishment grossly out of proportion to specific offenses. I decline to join the Court in its abdication here.

Accordingly, I would grant the petition for certiorari and set the case for argument.

No. 78-5533. *JACKSON v. FLORIDA*. Sup. Ct. Fla.; and

No. 78-5763. *WESTBROOK v. GEORGIA*. Sup. Ct. Ga. Certiorari denied. Reported below: No. 78-5533, 359 So. 2d 1190; No. 78-5763, 242 Ga. 151, 249 S. E. 2d 524.

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

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<sup>17</sup> See U. S. Dept. of Justice, FBI Uniform Crime Reports, Crime in the United States 1977, Table 4 (1978).

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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. 78-5619. *REZIN v. WOLFF, WARDEN*. C. A. 9th Cir. Certiorari denied. Reported below: 580 F. 2d 1053.

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

The Nevada Supreme Court affirmed petitioner's conviction after rejecting his claim that a plea bargain had been breached in violation of *Santobello v. New York*, 404 U. S. 257 (1971). *Rezin v. State*, 93 Nev. 55, 559 P. 2d 822 (1977). Petitioner then unsuccessfully sought federal habeas corpus, the District Court denying his petition on the grounds that he had failed to raise the *Santobello* claim until his appeal to the Nevada Supreme Court. Affirming, the Court of Appeals held that petitioner's failure to object in the state trial court was not within the "cause and prejudice" exception of *Wainwright v. Sykes*, 433 U. S. 72 (1977). Affirmance order, 580 F. 2d 1053 (CA9 1978).

*Wainwright v. Sykes*, however, did not impose its own contemporaneous-objection rule independent of state rules governing the time for raising objections in state criminal proceedings. The only issue addressed in *Sykes* was: "In what instances will an adequate and independent state ground bar consideration of otherwise cognizable federal issues on federal habeas review?" 433 U. S., at 78-79, 81. In this case, the Nevada Supreme Court reached and decided the *Santobello* issue, and there would have been no adequate and independent state ground of decision barring review by this Court on a petition for certiorari from the judgment of the Nevada Supreme Court. *Jenkins v. Georgia*, 418 U. S. 153, 154-157 (1974). If Nevada has a rule requiring the *Santobello* issues to be presented to the trial court, the Nevada Supreme Court

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did not enforce the rule in this case. *Wainwright v. Sykes* is therefore beside the point, and I would grant certiorari.

*Rehearing Denied*

- No. 78-134. *SEXTON v. UNITED STATES*, *ante*, p. 911;  
No. 78-315. *NEAVEILL v. ANDOLSEK ET AL.*, *ante*, p. 965;  
No. 78-347. *ORECK CORP. v. WHIRLPOOL CORP. ET AL.*,  
*ante*, p. 946;  
No. 78-381. *HOLDING v. BVA CREDIT CORP.*, *ante*, p. 949;  
No. 78-501. *KOROS ET UX. v. CREDIT BUREAU, INC., OF  
GEORGIA ET AL.*, *ante*, p. 966;  
No. 78-5342. *JENKINS v. EVENING STAR NEWSPAPER CO.,  
ET AL.*, *ante*, p. 921;  
No. 78-5382. *YATES v. UNITED STATES CIVIL SERVICE COM-  
MISSION*, *ante*, p. 987;  
No. 78-5417. *COLLINS v. UNITED STATES*, *ante*, p. 988;  
No. 78-5448. *RESTREPO-GRANDA v. UNITED STATES*, *ante*,  
p. 935;  
No. 78-5458. *WAYLAND v. TOWN OF TOPSFIELD*, *ante*, p.  
961;  
No. 78-5602. *KEY v. GEORGIA*, *ante*, p. 990;  
No. 78-5603. *BLOCH ET UX. v. SUFFOLK COUNTY FEDERAL  
SAVINGS & LOAN ASSN.*, *ante*, p. 990; and  
No. 78-5634. *MAHLER v. UNITED STATES*, *ante*, p. 991.  
Petitions for rehearing denied.

No. 75-1219. *SEXTON v. SIMON, SECRETARY OF THE TREAS-  
URY, ET AL.*, 425 U. S. 973, and 429 U. S. 873. Motion for  
leave to file second petition for rehearing denied.

No. 78-397. *GARFINKLE ET VIR v. SUPERIOR COURT OF  
CONTRA COSTA COUNTY (WELLS FARGO BANK ET AL., REAL  
PARTIES IN INTEREST)*, *ante*, p. 949. Motion of Richard B.  
Spohn, Director of Consumer Affairs of California, for leave  
to file a brief as *amicus curiae* denied. Petition for rehearing  
denied.

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*Affirmed on Appeal*

No. 77-1688. SYMM, TAX ASSESSOR-COLLECTOR OF WALLER COUNTY, TEXAS *v.* UNITED STATES ET AL. Affirmed on appeal from D. C. S. D. Tex; MR. JUSTICE BLACKMUN would note probable jurisdiction. MR. JUSTICE POWELL would dismiss appeal for want of a properly presented federal question. Reported below: 445 F. Supp. 1245.

MR. JUSTICE REHNQUIST, with whom THE CHIEF JUSTICE joins, dissenting.

Today the Court summarily affirms the judgment of a three-judge District Court enjoining appellant Symm, the Tax Assessor-Collector and ex officio voting registrar of Waller County, Tex., from using a certain questionnaire designed to aid Symm in determining whether persons registering to vote in Waller County are bona fide residents. Because I believe the three-judge District Court mistakenly exercised jurisdiction over Symm, I dissent.

Waller County, a small rural county west of Houston, has a population of approximately 15,000, a slight majority of which is Negro. Prairie View A & M University is a state-supported, predominately black university located in Waller County. Appellant Symm is responsible for registering voters in the county. Persons personally known to Symm or his deputies as county residents, as well as persons who are listed on the tax rolls as owning property in Waller County, are routinely registered upon filling out the state registration form. Those who fall within neither of these categories are required to complete a residency questionnaire, which asks whether the applicant is a college student and, if so, inquires into the student's home address, property ownership, employment status, future plans, and so forth.<sup>1</sup>

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<sup>1</sup>"The undersigned, at the request of the Registrar of Waller County, answers the following questions in support of the application of the under-

On October 14, 1976, the Attorney General of the United States filed this action against Symm, Waller County, the State of Texas, and its Secretary of State and Attorney General, alleging that use of the questionnaire denied Prairie View students the right to vote in violation of 42 U. S. C. §§ 1971 (a), 1971 (c), 1973, 1973j (d), 1973bb, and the Fourteenth, Fifteenth, and Twenty-sixth Amendments. Pursuant to 42 U. S. C. § 1973bb (a)(2),<sup>2</sup> the United States moved to convene a three-judge District Court. The request for a three-judge court was predicated on the United States' claim for injunctive relief to remedy alleged violations of the Twenty-sixth Amendment. The motion was granted, and a

signed for a voter registration certificate or for appointment as a Deputy Registrar, as the case may be:

"Please print or type your name and address:.....  
 .....  
 Are you a college student?..... If so, where do you attend school?....  
 ..... How long have you been a student at such school?  
 ..... Where do you live while in college?.....  
 ..... How long have you lived in Texas?..... In Waller  
 County?..... Do you intend to reside in Waller County in-  
 definitely?..... How long have you considered yourself to be a  
 bona fide resident of Waller County?..... What do you plan to  
 do when you finish your college education?..... Do you have a  
 job or position in Waller County?..... Own any home or other  
 property in Waller County?..... Have an automobile registered  
 in Waller County?..... Have a telephone listing in Waller  
 County?..... Belong to a Church, Club or some Waller County  
 Organization other than college related?..... If so, please name  
 them: .....  
 Where do you live when the college is not in session?.....  
 ..... What address is listed as your home address with the  
 college?..... Give any other information  
 which might be helpful."

<sup>2</sup> "The district courts of the United States shall have jurisdiction of proceedings instituted under [§ 1973bb], which shall be heard and determined by a court of three judges in accordance with section 2284 of title 28, and any appeal shall lie to the Supreme Court." 42 U. S. C. § 1973bb (a) (2).

three-judge District Court was convened. The District Court found that Symm's registration practices violated the Twenty-sixth Amendment and permanently enjoined him from, among other things, using the questionnaire. Symm appeals from that judgment.

The effect of an injunction against allegedly discriminatory voting practices in one small county in Texas is of no earth-shaking importance, and the District Court may have been justified in concluding that the appellant registrar violated rights guaranteed to Prairie View students under the Twenty-sixth Amendment to the United States Constitution. If the case were here, therefore, on a petition for certiorari and fell within our discretionary jurisdiction, I would have no hesitation in voting to deny certiorari.

But this case is here on direct appeal from the decision of a three-judge District Court. And since we are obligated to decide the merits of cases which Congress allows a party to bring here by appeal, regardless of their importance, I think we are bound to examine on our own motion the jurisdiction of the federal court from which the appeal comes. See *Liberty Mutual Ins. Co. v. Wetzel*, 424 U. S. 737, 740 (1976).

Section 1937bb directs the Attorney General "to institute, in the name of the United States, such actions *against States or political subdivisions*, including actions for injunctive relief, as he may determine to be necessary to implement the twenty-sixth article of amendment to the Constitution of the United States." 42 U. S. C. § 1973bb (a)(1) (emphasis added). Suits brought under the statute "shall be heard and determined by a court of three judges . . ." § 1973bb (a)(2). The section unambiguously limits the Attorney General's authority to bringing actions against States and political subdivisions. Although the United States brought this suit against the State of Texas and Waller County as well as named individual officials, the District Court's injunction runs only against Symm personally. Indeed, the District Court

specifically refused to grant relief "with respect to . . . the State of Texas, and Waller County."

In *Mt. Healthy City Board of Education v. Doyle*, 429 U. S. 274, 278-279 (1977), this Court distinguished between jurisdiction asserted under 28 U. S. C. § 1331, "the catchall federal-question provision requiring in excess of \$10,000 in controversy," 429 U. S., at 279, and jurisdiction under 28 U. S. C. § 1343, which requires not only that the technical requirements of jurisdiction be met but that suit against the parties named as defendants be authorized under the cognate provisions of 42 U. S. C. § 1983. The language of the jurisdictional provision here, being part of the very statute which creates the substantive cause of action, would seem to require a conclusion that § 1973bb is more akin to 28 U. S. C. § 1343 than it is to 28 U. S. C. § 1331. The jurisdiction of three-judge courts convened under § 1973bb is thus limited to Twenty-sixth Amendment claims brought by the Attorney General against the parties defendant named in the statute—States and political subdivisions. Since Symm falls within neither category, the District Court's jurisdiction to enjoin him from using the questionnaire cannot be based on § 1973bb (a)(2). Nor did the other statutes invoked by the United States furnish an independent basis for three-judge-court jurisdiction over the Government's action against Symm. See 28 U. S. C. §§ 1345, 2201; 42 U. S. C. §§ 1971 (d), 1973j (d).

The absence of a statutory basis of three-judge-court jurisdiction over Symm does not end the matter, however, for it is conceivable that the District Court based its injunction against Symm on some unarticulated, hybrid concept of pendent-party jurisdiction.<sup>3</sup> Resolution of this issue also

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<sup>3</sup> This possibility is suggested by the District Court's exercise, despite the objection of appellee United States, of "pendent jurisdiction" over appellant Symm's cross-claim against the Texas Secretary of State, in which Symm charged that the Secretary lacked authority under Texas law to prohibit use of the residency questionnaire.

requires reference to § 1973bb since under cases such as *Aldinger v. Howard*, 427 U. S. 1, 14 (1976), and *Owen Equipment & Erection Co. v. Kroger*, 437 U. S. 365 (1978), we must carefully inquire not only into the existence of a case or controversy under Art. III of the United States Constitution but also into the statutory grant of jurisdiction to the District Court.

In *Aldinger* this Court observed that "as against a plaintiff's claim of *additional* power over a 'pendent party,' the reach of the statute conferring jurisdiction should be construed in light of the scope of the cause of action as to which federal judicial power *has* been extended by Congress." 427 U. S., at 17 (emphasis in original). Petitioner, who was discharged from her job as a county employee, brought a § 1983 civil rights claim against county officials and a state-law claim against the county itself. Because Congress had excluded municipal corporations such as counties from the class of "person[s]" suable under § 1983,<sup>4</sup> and therefore from the corresponding grant of jurisdiction in § 1343 (3), we held that "where the asserted basis of federal jurisdiction over a municipal corporation is not diversity of citizenship, but is a claim of jurisdiction pendent to a suit brought against a municipal officer within § 1343, the refusal of Congress to authorize suits against municipal corporations under the cognate provisions of § 1983 is sufficient to defeat the asserted claim of pendent-party jurisdiction." 427 U. S., at 17-18, n. 12.

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<sup>4</sup> *Aldinger* was decided before *Monell v. New York City Dept. of Social Services*, 436 U. S. 658 (1978), which overruled prior cases holding that municipal corporations are not "person[s]" within the meaning of 42 U. S. C. § 1983. *Monell* did not disturb, however, the jurisdictional analysis applied in *Aldinger*, which was recently reaffirmed in *Owen*:

"*Monell* in no way qualifies the holding of *Aldinger* that the jurisdictional questions presented in a case such as this one are statutory as well as constitutional . . ." 437 U. S., at 373 n. 12.

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In this case I think an exercise of pendent-party jurisdiction over Symm would be demonstrably wrong under *Aldinger, supra*, and *Owen, supra*. The civil action created by § 1973bb is plainly limited to suits brought against States and political subdivisions. Accordingly, the special grant of three-judge-court jurisdiction contained in the statute is similarly limited. The other jurisdictional statutes invoked by the United States provide no independent basis of three-judge-court jurisdiction over Symm. Since the District Court could, in my opinion, have quite readily attributed Symm's actions as voting registrar to Waller County, a party statutorily authorized to be named and in fact named as a defendant, I would reverse the judgment against Symm and remand the case to the District Court for further proceedings against the county. While the injunctive relief ordered against Symm is contrary to *Aldinger, supra*, and *Owen, supra*, injunctive relief against Waller County, if the District Court decides such relief is appropriate, would be fully authorized and equally efficacious in vindicating the right of Prairie View students. In the absence of such relief, I would think that any student could bring an action against Symm under 28 U. S. C. §1343. This analysis may all seem very "legalistic" and "technical," but since the case is here on direct appeal, we have no choice but to examine the question of federal jurisdiction. Upon such examination, I believe *Aldinger, supra*, and *Owen, supra*, require reversal of the judgment entered by the District Court.

No. 78-523. BAILEY ET AL. *v.* HARGROVE, JUDGE, ET AL. Affirmed on appeal from D. C. M. D. Ga. MR. JUSTICE BRENNAN and MR. JUSTICE MARSHALL dissent.

No. 78-821. HOLLOWAY ET AL. *v.* WISE, JUDGE, ET AL. Affirmed on appeal from D. C. M. D. Ga.

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*Appeals Dismissed*

No. 78-609. *CARDWELL v. VILLAGE OF WAITE HILL*. Appeal from Ct. App. Ohio, Lake County, dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied.

No. 78-5804. *GENCO v. DISTRICT OF COLUMBIA NATIONAL BANK*. Appeal from Ct. App. D. C. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied.

No. 78-5631. *AHMAD v. RODAK, CLERK, SUPREME COURT OF THE UNITED STATES*. Appeal from D. C. D. C. dismissed for want of jurisdiction.

No. 78-5689. *AHMAD ET AL. v. AYTCH ET AL.* Appeal from D. C. E. D. Pa. dismissed for want of jurisdiction.

*Certiorari Granted—Reversed and Remanded.* (See No. 77-1618, *ante*, p. 438.)

*Certiorari Granted—Vacated and Remanded.* (See Nos. 77-6062, 77-6066, 77-6068, 77-6701, and 77-7012, *ante*, p. 461.)

*Miscellaneous Orders*

No. D-141. *IN RE DISBARMENT OF GASQUE*. Disbarment entered. [For earlier order herein, see *ante*, p. 906.]

No. D-142. *IN RE DISBARMENT OF FOSTER*. Disbarment entered. [For earlier order herein, see *ante*, p. 906.]

No. 78-17. *UNITED GAS PIPE LINE CO. v. McCOMBS ET AL.*; and

No. 78-249. *FEDERAL ENERGY REGULATORY COMMISSION v. McCOMBS ET AL.* C. A. 10th Cir. [Certiorari granted, *ante*, p. 892.] Motion of Associated Gas Distributors for leave to file a brief as *amicus curiae* granted. MR. JUSTICE STEWART took no part in the consideration or decision of this motion.

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No. 77-983. WASHINGTON ET AL. *v.* WASHINGTON STATE COMMERCIAL PASSENGER FISHING VESSEL ASSN. ET AL.; and WASHINGTON ET AL. *v.* PUGET SOUND GILLNETTERS ASSN. ET AL. Sup. Ct. Wash.;

No. 78-119. WASHINGTON ET AL. *v.* UNITED STATES ET AL.; C. A. 9th Cir.; and

No. 78-139. PUGET SOUND GILLNETTERS ASSN. ET AL. *v.* UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF WASHINGTON (UNITED STATES ET AL., REAL PARTIES IN INTEREST). C. A. 9th Cir. [Certiorari granted, 439 U. S. 909.] Motions of Pacific Legal Foundation, American Institute of Fishery Research Biologists, and Northwest Steelhead & Salmon Council of Trout Unlimited, for leave to file briefs as *amici curiae* granted.

No. 78-309. TOUCHE ROSS & Co. *v.* REDINGTON, TRUSTEE, ET AL. C. A. 2d Cir. [Certiorari granted, *ante*, p. 979.] Motions of petitioner and respondents for additional time for oral argument denied. Alternative motion for divided argument granted.

No. 78-329. BELLOTTI, ATTORNEY GENERAL OF MASSACHUSETTS, ET AL. *v.* BAIRD ET AL.; and

No. 78-330. HUNERWADEL *v.* BAIRD ET AL. D. C. Mass. [Probable jurisdiction noted, *ante*, p. 925.] Motion of Legal Defense Fund for Unborn Children for leave to file a brief as *amicus curiae* denied. Motions of Americans United for Life, Inc., et al., Catholic League for Religious and Civil Rights et al., and United States Catholic Conference for leave to file briefs as *amici curiae* granted.

No. 78-479. EDMONDS *v.* COMPAGNIE GENERALE TRANS-ATLANTIQUE. C. A. 4th Cir. [Certiorari granted, *ante*, p. 952.] Motion of National Association of Stevedores for leave to file a brief as *amicus curiae* granted. Joint motion of respondent and American Export Lines, Inc., et al. as *amici curiae* for additional time for oral argument denied.

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No. 78-349. UNITED STATES *v.* HELSTOSKI; and

No. 78-546. HELSTOSKI *v.* MEANOR, U. S. DISTRICT JUDGE, ET AL. C. A. 3d Cir. [Certiorari granted, *ante*, p. 1045.] Motion to dispense with printing appendix granted.

No. 78-354. NORTH CAROLINA *v.* BUTLER. Sup. Ct. N. C. [Certiorari granted, *ante*, p. 1046.] Motion of respondent for appointment of counsel granted, and it is ordered that R. Gene Braswell, Esquire, of Goldsboro, N. C., be appointed to serve as counsel for respondent in this case.

No. 78-5072. DAVIS *v.* PASSMAN. C. A. 5th Cir. [Certiorari granted, *ante*, p. 925.] Motion of petitioner for divided argument denied. Motion of Peter Barton Hutt, Esquire, to permit Sana F. Shtasel to present oral argument *pro hac vice* granted.

No. 78-5420. PAYTON *v.* NEW YORK; and

No. 78-5421. RIDDICK *v.* NEW YORK. Ct. App. N. Y. [Probable jurisdiction noted, *ante*, p. 1044.] Motion of appellants for divided argument denied.

No. 78-5732. GREEN *v.* HUNTER, U. S. DISTRICT JUDGE, ET AL.; and

No. 78-5752. CHRISTIANSEN *v.* UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF TEXAS. Motions for leave to file petitions for writs of mandamus denied.

#### *Certiorari Granted*

No. 77-1546. STAFFORD, U. S. ATTORNEY, ET AL. *v.* BRIGGS ET AL. C. A. D. C. Cir. Certiorari granted and case set for argument with No. 78-303, immediately *infra*. Reported below: 186 U. S. App. D. C. 170, 569 F. 2d 1.

No. 78-303. COLBY, DIRECTOR, CENTRAL INTELLIGENCE AGENCY, ET AL. *v.* DRIVER ET AL. C. A. 1st Cir. Certiorari granted and case set for argument with No. 77-1546, immediately *supra*. Reported below: 577 F. 2d 147.

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No. 78-752. *BAKER v. McCOLLAN*. C. A. 5th Cir. Motion of respondent for leave to proceed *in forma pauperis* and certiorari granted. Reported below: 575 F. 2d 509.

*Certiorari Denied*. (See also Nos. 78-609 and 78-5804, *supra*.)

No. 77-1615. *CANTWELL ET AL. v. HUDNUT, MAYOR OF INDIANAPOLIS, ET AL.* C. A. 7th Cir. Certiorari denied. Reported below: 566 F. 2d 30.

No. 77-6092. *HUDSON v. GEORGIA*. Sup. Ct. Ga. Certiorari denied. Reported below: 240 Ga. 70, 239 S. E. 2d 330.

No. 78-129. *BRITISH EUROPEAN AIRWAYS v. BENJAMINS ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 572 F. 2d 913.

No. 78-302. *EAST BATON ROUGE PARISH SCHOOL BOARD ET AL. v. DAVIS ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 570 F. 2d 1260.

No. 78-310. *HELMS ET AL. v. DRIVER ET AL.*; and

No. 78-311. *DRIVER ET AL. v. HELMS ET AL.* C. A. 1st Cir. Certiorari denied. Reported below: 577 F. 2d 147.

No. 78-498. *BOULET v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 577 F. 2d 1165.

No. 78-504. *MARRA v. WEST VIRGINIA*. Sup. Ct. App. W. Va. Certiorari denied.

No. 78-535. *SHELL OIL CO. v. ENVIRONMENTAL PROTECTION AGENCY ET AL.*; and

No. 78-536. *CINCINNATI GAS & ELECTRIC CO. ET AL. v. ENVIRONMENTAL PROTECTION AGENCY ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 578 F. 2d 660.

No. 78-563. *AMERICAN ASSOCIATION OF COUNCILS OF MEDICAL STAFFS OF PRIVATE HOSPITALS, INC. v. CALIFANO, SECRETARY OF HEALTH, EDUCATION, AND WELFARE*. C. A. 5th Cir. Certiorari denied. Reported below: 575 F. 2d 1367.

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No. 78-586. *OSTREER v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 577 F. 2d 782.

No. 78-587. *McLENNAN ET AL. v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 577 F. 2d 753.

No. 78-618. *PINNER v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 577 F. 2d 145.

No. 78-653. *BRENNAN ET VIR, DBA P. H. BRENNAN HAND DELIVERY v. UNITED STATES POSTAL SERVICE*. C. A. 2d Cir. Certiorari denied. Reported below: 574 F. 2d 712.

No. 78-675. *MAHER v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 582 F. 2d 842.

No. 78-694. *BARONE v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 584 F. 2d 118.

No. 78-698. *SHIMBERG ET UX. v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 577 F. 2d 283.

No. 78-722. *STARR v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 584 F. 2d 235.

No. 78-732. *SWISHER v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 584 F. 2d 979.

No. 78-766. *AMERICAN CAST IRON CO. v. PETTWAY ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 576 F. 2d 1157.

No. 78-772. *GARRETT FREIGHTLINES, INC. v. UNITED STATES*. C. A. 10th Cir. Certiorari denied.

No. 78-782. *PIPELINE CONSTRUCTION Co., INC. v. JAFFEE ET AL.* Ct. App. Mass. Certiorari denied.

No. 78-796. *SPERL v. CALIFORNIA*. Sup. Ct. Cal. Certiorari denied.

No. 78-810. *SCHOLL, INC. v. S. S. KRESGE Co.* C. A. 7th Cir. Certiorari denied. Reported below: 580 F. 2d 244.

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No. 78-797. *K. G. MOORE, INC. v. ANDERSON*. Ct. App. Mass. Certiorari denied. Reported below: — Mass. App. —, 376 N. E. 2d 1238.

No. 78-799. *BOARD OF SUPERVISORS OF BUCKINGHAM TOWNSHIP v. BARNES ET AL.* Commw. Ct. Pa. Certiorari denied. Reported below: 33 Pa. Commw. 364, 382 A. 2d 140.

No. 78-814. *THOMPSON v. COVINGTON HOUSING DEVELOPMENT CORP. ET AL.* C. A. 6th Cir. Certiorari denied.

No. 78-815. *NORTHWEST POWER PRODUCTS, INC. v. OMARK INDUSTRIES, INC., ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 576 F. 2d 83.

No. 78-827. *BALL v. COUNTY OF LOS ANGELES*. Ct. App. Cal., 2d App. Dist. Certiorari denied. Reported below: 82 Cal. App. 3d 312, 147 Cal. Rptr. 252.

No. 78-834. *MCAx SIGN Co., INC. v. NATIONAL LABOR RELATIONS BOARD*. C. A. 5th Cir. Certiorari denied. Reported below: 576 F. 2d 62.

No. 78-848. *R. G. BARRY CORP. v. MUSHROOM MAKERS, INC.* C. A. 2d Cir. Certiorari denied. Reported below: 580 F. 2d 44.

No. 78-879. *RABBITT v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 583 F. 2d 1014.

No. 78-887. *COLONIAL BANK & TRUST Co. v. DEPARTMENT OF FINANCIAL INSTITUTIONS OF INDIANA*. Ct. App. Ind. Certiorari denied. Reported below: — Ind. App. —, 375 N. E. 2d 285.

No. 78-888. *GROSVENOR ET AL. v. EQUITABLE LIFE ASSURANCE SOCIETY OF THE UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 582 F. 2d 1279.

No. 78-928. *LOPP v. LOPP*. Sup. Ct. Ind. Certiorari denied. Reported below: 268 Ind. 690, 378 N. E. 2d 414.

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No. 78-891. BOMENGO, AKA RUSSO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 580 F. 2d 173.

No. 78-934. DOMINGUEZ, ADMINISTRATRIX *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 583 F. 2d 615

No. 78-938. ROSATO *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 586 F. 2d 833.

No. 78-940. GREEN *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 584 F. 2d 974.

No. 78-979. STOBAUGH *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 582 F. 2d 1290.

No. 78-5427. GOULDEN, AKA HART *v.* DAVIS, WARDEN, ET AL. C. A. 5th Cir. Certiorari denied.

No. 78-5429. WRIGHT *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 581 F. 2d 704.

No. 78-5526. CAVANESS *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied. Reported below: 581 P. 2d 475.

No. 78-5541. JOHNSON *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 188 U. S. App. D. C. 438, 580 F. 2d 701.

No. 78-5586. SAND *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied. Reported below: 81 Cal. App. 3d 448, 146 Cal. Rptr. 448.

No. 78-5591. WALLACE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 578 F. 2d 1387.

No. 78-5597. WILLIAMS *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 583 F. 2d 1194.

No. 78-5600. GIBBS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 580 F. 2d 1050.

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No. 78-5612. *KELLY v. LOUISIANA*. Sup. Ct. La. Certiorari denied. Reported below: 362 So. 2d 1071.

No. 78-5632. *CALHOUN ET UX. v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 591 F. 2d 1243.

No. 78-5649. *SINCLAIR v. UNITED STATES*. Ct. App. D. C. Certiorari denied. Reported below: 388 A. 2d 1201.

No. 78-5659. *PALMERE v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 578 F. 2d 105.

No. 78-5666. *BURMAN v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 584 F. 2d 1354.

No. 78-5667. *PETERMAN v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 586 F. 2d 836.

No. 78-5673. *SPRATT v. IOWA*. Sup. Ct. Iowa. Certiorari denied.

No. 78-5684. *HUBBARD v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 586 F. 2d 845.

No. 78-5720. *WILKINS v. WILLIAMS, WARDEN*. C. A. 4th Cir. Certiorari denied. Reported below: 580 F. 2d 1050.

No. 78-5721. *MORROW v. IGLEBURGER ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 584 F. 2d 767.

No. 78-5726. *SOMMERVILLE v. ALABAMA*. Ct. Crim. App. Ala. Certiorari denied. Reported below: 361 So. 2d 386.

No. 78-5728. *BOLER v. CALIFANO, SECRETARY OF HEALTH, EDUCATION, AND WELFARE*. C. A. 5th Cir. Certiorari denied. Reported below: 579 F. 2d 641.

No. 78-5730. *WALKER v. WAINWRIGHT, DIRECTOR, DEPARTMENT OF OFFENDER REHABILITATION OF FLORIDA*. C. A. 5th Cir. Certiorari denied. Reported below: 579 F. 2d 642.

No. 78-5734. *FLOYD v. JAGO, CORRECTIONAL SUPERINTENDENT*. Sup. Ct. Ohio. Certiorari denied.

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No. 78-5737. *McDANIEL v. ARIZONA*. Ct. App. Ariz. Certiorari denied. Reported below: 119 Ariz. 373, 580 P. 2d 1227.

No. 78-5748. *McDONALD v. KENTUCKY*. Sup. Ct. Ky. Certiorari denied. Reported below: 569 S. W. 2d 134.

No. 78-5749. *CRAWLEY v. KENTUCKY*. Sup. Ct. Ky. Certiorari denied. Reported below: 568 S. W. 2d 927.

No. 78-5751. *GIBSON v. JACKSON, JUDGE, ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 578 F. 2d 1045.

No. 78-5770. *WILKINS v. MARYLAND ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 586 F. 2d 839.

No. 78-5780. *COLEMAN ET UX. v. WALLACE, GOVERNOR OF ALABAMA, ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 579 F. 2d 641.

No. 78-5786. *COBB v. NEW YORK*. App. Div., Sup. Ct. N. Y., 3d Jud. Dept. Certiorari denied. Reported below: 64 App. Div. 2d 872, 406 N. Y. S. 2d 943.

No. 78-5788. *PORTER v. CONTINENTAL BANK ET AL.* C. A. 7th Cir. Certiorari denied. Reported below: 588 F. 2d 838.

No. 78-5790. *SAYERS v. BRIERTON, PRISON SUPERINTENDENT, ET AL.* C. A. 5th Cir. Certiorari denied.

No. 78-5797. *FODERARO v. UNITED STATES*. C. A. 10th Cir. Certiorari denied. Reported below: 583 F. 2d 1129.

No. 78-5800. *MARTELL v. CBS, INC., WCBS AM RADIO STATION, NEW YORK, NEW YORK*. C. A. 2d Cir. Certiorari denied. Reported below: 573 F. 2d 1292.

No. 78-5802. *McGHEE v. UNITED STATES*. C. A. 7th Cir. Certiorari denied.

No. 78-5816. *SULLIVAN v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 584 F. 2d 979.

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No. 78-5821. *McGUIRK v. MASSACHUSETTS*. Sup. Jud. Ct. Mass. Certiorari denied. Reported below: — Mass. —, 380 N. E. 2d 662.

No. 78-5822. *WILSON v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 588 F. 2d 831.

No. 78-5827. *HOWARD v. CALIFANO, SECRETARY OF HEALTH, EDUCATION, AND WELFARE*. C. A. 2d Cir. Certiorari denied. Reported below: 578 F. 2d 1368.

No. 78-5830. *JETER v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 579 F. 2d 641.

No. 78-5839. *ELLIS v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 582 F. 2d 1290.

No. 78-5840. *JORDAN v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 588 F. 2d 843.

No. 78-5852. *JOHNSON v. DEPARTMENT OF PUBLIC HEALTH AIR MANAGEMENT SERVICES OF PHILADELPHIA*. C. A. 3d Cir. Certiorari denied. Reported below: 582 F. 2d 1274.

No. 78-5853. *HUTTER v. FABER ET AL.* C. A. 7th Cir. Certiorari denied. Reported below: 588 F. 2d 832.

No. 78-5861. *WALKER v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 577 F. 2d 744.

No. 78-5865. *WALLACE v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 582 F. 2d 1278.

No. 78-5879. *MORELLO v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 588 F. 2d 824.

No. 77-7004. *KERPEN v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. MR. JUSTICE BRENNAN would grant certiorari. Reported below: 578 F. 2d 1371.

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No. 78-267. MICHIGAN *v.* JAMES ET AL. Ct. App. Mich. Motion of respondents for leave to proceed *in forma pauperis* granted. Certiorari denied.

No. 78-840. ROWE ET AL. *v.* DURSO. C. A. 7th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 579 F. 2d 1365.

No. 78-748. CULLERTON ET AL. *v.* FULTON MARKET COLD STORAGE Co. C. A. 7th Cir. Certiorari denied. MR. JUSTICE WHITE and MR. JUSTICE BLACKMUN would grant certiorari. Reported below: 582 F. 2d 1071.

No. 78-811. CITY OF EL PASO *v.* DARBYSHIRE STEEL Co. INC., ET AL. C. A. 5th Cir. Certiorari denied. MR. JUSTICE STEVENS took no part in the consideration or decision of this petition. Reported below: 575 F. 2d 521.

No. 78-824. BRAUER *v.* SHEET METAL WORKERS PENSION PLAN OF SOUTHERN CALIFORNIA, ARIZONA & NEVADA. Ct. App. Cal., 2d App. Dist. Motion of Motion Picture Industry Pension Plan for leave to file a brief as *amicus curiae* granted. Certiorari denied. MR. JUSTICE WHITE, MR. JUSTICE BLACKMUN, and MR. JUSTICE POWELL would grant certiorari. Reported below: 82 Cal. App. 3d 159, 146 Cal. Rptr. 844.

No. 78-5532. THOMPSON *v.* OKLAHOMA ET AL. C. A. 10th Cir. Certiorari denied.

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

In this proceeding pursuant to 28 U. S. C. § 2254, petitioner presents the same questions presented by him in No. 76-5283, cert. denied, 429 U. S. 1053 (1977). For the reasons expressed in my dissent from the denial of certiorari in that case, I would grant the petition for certiorari and reverse the judgment of

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the Court of Appeals affirming the dismissal of the petition for a writ of habeas corpus.

No. 78-5696. *JACOBS v. ALABAMA*. Sup. Ct. Ala.; and  
No. 78-5759. *WOODARD v. ARKANSAS*. Sup. Ct. Ark. Certiorari denied. Reported below: No. 78-5696, 361 So. 2d 640; No. 78-5759, 261 Ark. 895, 553 S. W. 2d 259.

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

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

*Rehearing Denied.*

No. 76-1660. *HUTTO ET AL. v. FINNEY ET AL.*, 437 U. S. 678;

No. 77-5781. *RAKAS ET AL. v. ILLINOIS*, *ante*, p. 128;

No. 78-173. *KING v. NORRIS*, *ante*, p. 995;

No. 78-513. *TRACY, JUDGE v. DIXON ET AL.*, *ante*, p. 983;

No. 78-5317. *MOSLEY v. UNITED STATES DEPARTMENT OF LABOR ET AL.*, *ante*, p. 986;

No. 78-5388. *FORD v. MUIR, U. S. DISTRICT JUDGE, ET AL.*, *ante*, p. 978;

No. 78-5490. *ALDERMAN v. GEORGIA*, *ante*, p. 991; and

No. 78-5582. *ROGERS v. DOUGLAS ET UX.*, *ante*, p. 1058.  
Petitions for rehearing denied.

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*Dismissal Under Rule 60*

No. 78-224. *CITY OF CLEVELAND v. ALBAUGH*. C. A. 6th Cir. Certiorari dismissed under this Court's Rule 60. Reported below: 577 F. 2d 740.

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*Appeals Dismissed*

No. 78-339. *WILCOX, SHERIFF v. STRUVE*. Appeal from Sup. Ct. Idaho dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied. Reported below: 99 Idaho 205, 579 P. 2d 1188.

No. 78-5814. *WAYLAND v. ESSEX COUNTY BANK & TRUST Co. ET AL.* Appeal from C. A. 1st Cir. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied.

No. 78-866. *VORNADO, INC., ET AL. v. DEGNAN, ATTORNEY GENERAL OF NEW JERSEY, ET AL.* Appeal from Sup. Ct. N. J. dismissed for want of substantial federal question. Reported below: 77 N. J. 347, 390 A. 2d 606.

*Certiorari Granted—Vacated and Remanded*

No. 78-5606. *HARDY v. MISSOURI*. Ct. App. Mo., Kansas City Dist. Motion of petitioner for leave to proceed *in forma pauperis* and certiorari granted. Judgment vacated and case remanded for further consideration in light of *Duren v. Missouri, ante*, p. 357, and *Harlin v. Missouri, ante*, p. 459. Reported below: 568 S. W. 2d 86.

*Miscellaneous Orders*

No. A-642 (78-961). *GAMBINO v. LOUISIANA*. Sup. Ct. La. Application for stay, addressed to MR. JUSTICE BRENNAN and referred to the Court, denied. MR. JUSTICE BRENNAN and MR. JUSTICE STEWART would grant the application.

No. 27, Orig. *OHIO v. KENTUCKY*. Report of Special Master received and ordered filed. Exceptions, if any, with supporting briefs, to report may be filed by the parties within 45 days. Reply briefs, if any, to such exceptions may be filed within 30 days. [For earlier orders herein, see, *e. g.*, 410 U. S. 641.]

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No. 79, Orig. OKLAHOMA *v.* ARKANSAS. It is ordered that the Honorable William H. Becker, Senior Judge of the United States District Court for the Western District of Missouri, be appointed Special Master in this case with authority to fix the time and conditions for the filing of additional pleadings and to direct subsequent proceedings, and with authority to summon witnesses, issue subpoenas, and take such evidence as may be introduced and such as he may deem necessary to call for. The Master is directed to submit such reports as he may deem appropriate.

The Master shall be allowed his actual expenses. The allowances to him, the compensation paid to his technical, stenographic and clerical assistants, the cost of printing his report, and all other proper expenses shall be charged against and be borne by the parties in such proportion as the Court may hereafter direct.

It is further ordered that if the position of Special Master in this case becomes vacant during a recess of the Court, THE CHIEF JUSTICE shall have authority to make a new designation which shall have same effect as if originally made by the Court.

[For earlier order herein, see *ante*, p. 812.]

No. D-140. IN RE DISBARMENT OF RAY. Disbarment entered. [For earlier order herein, see *ante*, p. 906.]

No. D-156. IN RE DISBARMENT OF FALK. It is ordered that Eugene A. Falk, of New York, N. Y., be suspended from the practice of law in this Court and that a rule issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. 77-983. WASHINGTON ET AL. *v.* WASHINGTON STATE COMMERCIAL PASSENGER FISHING VESSEL ASSN. ET AL.; and WASHINGTON ET AL. *v.* PUGET SOUND GILLNETTERS ASSN. ET AL. Sup. Ct. Wash.;

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No. 78-119. WASHINGTON ET AL. *v.* UNITED STATES ET AL. C. A. 9th Cir.; and

No. 78-139. PUGET SOUND GILLNETTERS ASSN. ET AL. *v.* UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF WASHINGTON (UNITED STATES ET AL., REAL PARTIES IN INTEREST). [Certiorari granted, *ante*, p. 909.] Motion of Pacific Seafood Processors Assn. for leave to file a brief as *amicus curiae* granted.

No. 77-1511. CALIFANO, SECRETARY OF HEALTH, EDUCATION, AND WELFARE *v.* ELLIOTT ET AL. C. A. 9th Cir. [Certiorari granted, *ante*, p. 816.] Motion of respondents to dismiss or remand denied.

No. 78-6. MOORE ET AL. *v.* SIMS ET UX. D. C. S. D. TEX. [Probable jurisdiction noted, *ante*, p. 925.] Motion of John Quincy Carter for leave to present oral argument *pro hac vice* denied. Motion of appellees for divided argument denied.

No. 78-17. UNITED GAS PIPE LINE Co. *v.* McCOMBS ET AL.; and

No. 78-249. FEDERAL ENERGY REGULATORY COMMISSION *v.* McCOMBS ET AL. C. A. 10th Cir. [Certiorari granted, *ante*, p. 892.] Motion of petitioners for divided argument granted. MR. JUSTICE STEWART took no part in the consideration or decision of this motion.

No. 78-160. WILSON ET AL. *v.* OMAHA INDIAN TRIBE ET AL.; and

No. 78-161. IOWA ET AL. *v.* OMAHA INDIAN TRIBE ET AL. C. A. 8th Cir. [Certiorari granted, *ante*, p. 963.] Motions of parties for additional time for oral argument and for divided argument granted, and a total of one and one-half hours allotted for that purpose to be divided as follows: 45 minutes for petitioners, 25 minutes for the United States, and 20 minutes for the Omaha Indian Tribe. Motion of the Attorney General of California for leave to participate in oral argument as *amicus curiae* denied.

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No. 78-225. *BABBITT, GOVERNOR OF ARIZONA, ET AL. v. UNITED FARM WORKERS NATIONAL UNION ET AL.* D. C. Ariz. [Probable jurisdiction postponed, *ante*, p. 891.] Motion of American Federation of Labor & Congress of Industrial Organizations for leave to file a brief as *amicus curiae* granted.

No. 78-329. *BELLOTTI, ATTORNEY GENERAL OF MASSACHUSETTS, ET AL. v. BAIRD ET AL.*; and

No. 78-330. *HUNERWADEL v. BAIRD ET AL.* D. C. Mass. [Probable jurisdiction noted, *ante*, p. 925.] Motion of appellants for divided argument granted.

No. 78-5384. *SANDSTROM v. MONTANA.* Sup. Ct. Mont. [Certiorari granted, *ante*, p. 1067.] Motion for appointment of counsel granted, and it is ordered that Byron W. Boggs, Esquire, of Anaconda, Mont., be appointed to serve as counsel for petitioner in this case.

No. 78-5420. *PAYTON v. NEW YORK*; and

No. 78-5421. *RIDDICK v. NEW YORK.* Ct. App. N. Y. [Probable jurisdiction noted, *ante*, p. 1044.] Motion of appellee for divided argument denied.

No. 78-5907. *CAMACHO v. UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT ET AL.* Motion for leave to file petition for writ of mandamus denied.

No. 78-5808. *CLARK v. FIFTH JUDICIAL DISTRICT COURT OF EDDY COUNTY, NEW MEXICO.* Motion for leave to file petition for writ of mandamus and/or prohibition denied.

*Probable Jurisdiction Noted*

No. 78-808. *CALIFANO, SECRETARY OF HEALTH, EDUCATION, AND WELFARE v. BOLES ET AL.* Appeal from D. C. W. D. Tex. Probable jurisdiction noted. Reported below: 464 F. Supp. 408.

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*Certiorari Granted*

No. 78-605. UNITED STATES ET AL. *v.* RUTHERFORD ET AL. C. A. 10th Cir. Motion of American Cancer Society for leave to file a brief as *amicus curiae* and certiorari granted. Reported below: 582 F. 2d 1234.

*Certiorari Denied.* (See also Nos. 78-339 and 78-5814, *supra.*)

No. 78-503. FRISBY *v.* WEST VIRGINIA. Sup. Ct. App. W. Va. Certiorari denied. Reported below: — W. Va —, 245 S. E. 2d 622.

No. 78-516. BORDEN, INC. *v.* BERGLAND, SECRETARY OF AGRICULTURE. C. A. 7th Cir. Certiorari denied. Reported below: 577 F. 2d 746.

No. 78-641. STIVERS ET AL. *v.* MINNESOTA ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 575 F. 2d 200.

No. 78-673. DAWSON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 576 F. 2d 656.

No. 78-687. LOUISIANA LAND & EXPLORATION CO. *v.* FEDERAL ENERGY REGULATORY COMMISSION ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 574 F. 2d 204.

No. 78-693. BANE *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 583 F. 2d 832.

No. 78-708. GREENE ET UX. *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 583 F. 2d 978.

No. 78-709. WETTERLIN *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 583 F. 2d 346.

No. 78-714. WELCH, ADMINISTRATOR *v.* CLAYTOR, SECRETARY OF THE NAVY. C. A. 2d Cir. Certiorari denied. Reported below: 578 F. 2d 1372.

No. 78-724. WALKER *v.* HOFFMAN ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 583 F. 2d 1073.

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No. 78-730. *AMERICAN EXPORT LINES, INC., ET AL. v. METAL TRADERS, INC.* C. A. 2d Cir. Certiorari denied. Reported below: 582 F. 2d 1271.

No. 78-746. *GROSSMANN v. REDINGTON, TRUSTEE IN BANKRUPTCY, ET AL.* C. A. 2d Cir. Certiorari denied.

No. 78-763. *RUTHERFORD ET AL. v. UNITED STATES ET AL.* C. A. 10th Cir. Certiorari denied. Reported below: 582 F. 2d 1234.

No. 78-771. *QUINN v. UNITED STATES.* C. A. 9th Cir. Certiorari denied. Reported below: 580 F. 2d 1053.

No. 78-778. *NATTER MANUFACTURING CORP. v. NATIONAL LABOR RELATIONS BOARD.* C. A. 9th Cir. Certiorari denied. Reported below: 580 F. 2d 948.

No. 78-785. *ESPINOZA v. COPENHAVER, U. S. DISTRICT JUDGE.* C. A. 4th Cir. Certiorari denied.

No. 78-786. *MCDANNALD v. HILL, ATTORNEY GENERAL OF TEXAS, ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 575 F. 2d 880.

No. 78-787. *DEJAYNES ET AL. v. GENERAL FINANCE CORP. OF ILLINOIS.* C. A. 7th Cir. Reported below: 583 F. 2d 918.

No. 78-790. *SHIPPERS DISPATCH, INC. v. UNITED STATES.* C. A. 6th Cir. Certiorari denied. Reported below: 581 F. 2d 582.

No. 78-813. *MATTHEWS ET AL. v. NORTH CAROLINA.* Sup. Ct. N. C. Certiorari denied. Reported below: 295 N. C. 265, 245 S. E. 2d 727.

No. 78-822. *WILCZYNSKI v. NEW YORK.* App. Div., Sup. Ct. N. Y., 1st Jud. Dept. Certiorari denied. Reported below: 65 App. Div. 2d 518, 409 N. Y. S. 2d 325.

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No. 78-830. *HITSON ET AL. v. BAGGETT, SECRETARY OF STATE OF ALABAMA, ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 580 F. 2d 1051.

No. 78-839. *LEGUENNEC, REGISTRAR OF VOTERS OF SAN FRANCISCO, ET AL. v. CHINESE FOR AFFIRMATIVE ACTION ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 580 F. 2d 1006.

No. 78-841. *SHEPHERD ET UX. v. TREVINO, TAX ASSESSOR, COLLECTOR, AND REGISTRAR OF HIDALGO COUNTY, ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 575 F. 2d 1110.

No. 78-844. *PLANTE ET AL. v. GONZALEZ, EXECUTIVE DIRECTOR OF FLORIDA COMMISSION ON ETHICS, ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 575 F. 2d 1119.

No. 78-850. *MORRIS v. TEXAS.* County Crim. Ct., Hunt County, Tex. Certiorari denied.

No. 78-853. *CRAMER v. GENERAL TELEPHONE & ELECTRONICS CORP., ET AL.* C. A. 3d Cir. Certiorari denied. Reported below: 582 F. 2d 259.

No. 78-859. *GRASECK v. MIDDLEMISS ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 582 F. 2d 203.

No. 78-862. *ANDERSON v. NEUBERGER ET AL.*; and *MORRIS v. HAYDUK ET AL.* Ct. App. N. Y. Certiorari denied. Reported below: 45 N. Y. 2d 708, 381 N. E. 2d 168 (first case); 45 N. Y. 2d 793, 381 N. E. 2d 159 (second case).

No. 78-864. *PERRELLO v. INDIANA SUPREME COURT DISCIPLINARY COMMISSION.* Sup. Ct. Ind. Certiorari denied. Reported below: 380 N. E. 2d 72.

No. 78-876. *SMITH v. TEXAS.* Ct. Crim. App. Tex. Certiorari denied. Reported below: 570 S. W. 2d 599.

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No. 78-878. *GILMARTIN ET AL. v. BOARD OF DENTAL EXAMINERS OF CALIFORNIA*. Ct. App. Cal., 3d App. Dist. Certiorari denied.

No. 78-898. *F. C. Y. CONSTRUCTION & EQUIPMENT CO., INC., ET AL. v. HARRISON, INC., ET AL.* Ct. App. Ariz. Certiorari denied.

No. 78-902. *SHOPMEN'S LOCAL UNION No. 455, INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL & ORNAMENTAL IRON WORKERS, AFL-CIO v. NATIONAL LABOR RELATIONS BOARD ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 582 F. 2d 135.

No. 78-922. *MEDICAL THERAPY SCIENCES, INC., ET AL. v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 583 F. 2d 36.

No. 78-963. *LONDE v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 587 F. 2d 18.

No. 78-969. *CHARLES ET AL. v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 586 F. 2d 845.

No. 78-976. *TAYLOR v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 583 F. 2d 178.

No. 78-996. *PERL v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 584 F. 2d 1316.

No. 78-5556. *SMITH v. MARYLAND*. Ct. App. Md. Certiorari denied. Reported below: 283 Md. 187, 388 A. 2d 539.

No. 78-5569. *THOMAS v. UNITED STATES*. C. A. 10th Cir. Certiorari denied. Reported below: 580 F. 2d 1036.

No. 78-5575. *OKOROHA v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 582 F. 2d 1288.

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No. 78-5581. *BURCIAGO v. CALIFORNIA*. Ct. App. Cal., 3d App. Dist. Certiorari denied. Reported below: 81 Cal. App. 3d 151, 146 Cal. Rptr. 236.

No. 78-5589. *STEWART v. CALIFORNIA*. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 78-5604. *ACOSTA v. CALIFORNIA*. Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 78-5620. *GOULDEN v. UNITED STATES*. C. A. 5th Cir. Certiorari denied.

No. 78-5650. *JOHNSON v. UNITED STATES*. C. A. 10th Cir. Certiorari denied.

No. 78-5685. *POLLY v. ARIZONA*. Sup. Ct. Ariz. Certiorari denied.

No. 78-5706. *MORENO v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 580 F. 2d 1137.

No. 78-5739. *HERRINGTON v. CALIFANO, SECRETARY OF HEALTH, EDUCATION, AND WELFARE*. C. A. 5th Cir. Certiorari denied. Reported below: 579 F. 2d 641.

No. 78-5779. *WALKER v. OHIO*. Ct. App. Ohio, Cuyahoga County. Certiorari denied.

No. 78-5806. *MACK v. VIRGINIA*. Sup. Ct. Va. Certiorari denied.

No. 78-5811. *GROOMS ET AL. v. INDIANA*. Sup. Ct. Ind. Certiorari denied. Reported below: 269 Ind. 212, 379 N. E. 2d 458.

No. 78-5817. *CARLSEN v. CITY OF LOGAN, UTAH*. Sup. Ct. Utah. Certiorari denied. Reported below: 585 P. 2d 449.

No. 78-5819. *ALERS v. TOLEDO ET AL.* C. A. 1st Cir. Certiorari denied.

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No. 78-5824. *SILLO v. PENNSYLVANIA*. Sup. Ct. Pa. Certiorari denied. Reported below: 480 Pa. 15, 389 A. 2d 62.

No. 78-5828. *SHARP v. UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF OHIO ET AL.* C. A. 6th Cir. Certiorari denied.

No. 78-5832. *O'NEILL ET AL. v. WALT DISNEY PRODUCTIONS*. C. A. 9th Cir. Certiorari denied. Reported below: 581 F. 2d 751.

No. 78-5866. *ASKEW v. UNITED STATES*. C. A. 10th Cir. Certiorari denied. Reported below: 584 F. 2d 960.

No. 78-5867. *JONES v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 588 F. 2d 831.

No. 78-5874. *SCHERMERHORN v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 588 F. 2d 831.

No. 78-5883. *LEDESMA v. COLEMAN, U. S. CIRCUIT JUDGE, ET AL.* C. A. 5th Cir. Certiorari denied.

No. 78-5891. *HACKNEY v. UNITED STATES*. Ct. App. D. C. Certiorari denied. Reported below: 389 A. 2d 1336.

No. 78-5892. *CLINE v. UNITED STATES*. C. A. 8th Cir. Certiorari denied.

No. 78-5894. *MANN v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 591 F. 2d 1332.

No. 78-5895. *HARRIS v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 585 F. 2d 518.

No. 78-5896. *DAVIS v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 587 F. 2d 365.

No. 78-5898. *HADDAD v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 587 F. 2d 12.

No. 78-5900. *HEYDON v. UNITED STATES*. C. A. 7th Cir. Certiorari denied.

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No. 78-5905. MCFARLAND *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 588 F. 2d 824.

No. 78-5911. KLEIN *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 588 F. 2d 837.

No. 78-5913. WENTLAND *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 582 F. 2d 1022.

No. 78-5920. GREENE ET AL. *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 578 F. 2d 648.

No. 78-5927. GALE *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 391 A. 2d 230.

No. 78-5934. PARSONS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 585 F. 2d 941.

No. 78-5935. AGURS *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied.

No. 78-213. AUGER, WARDEN *v.* COLLINS. C. A. 8th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 577 F. 2d 1107.

No. 78-719. REPRODUCTIVE SERVICES, INC. *v.* WALKER, JUDGE. Sup. Ct. Tex. Certiorari denied for want of jurisdiction.

MR. JUSTICE STEVENS.

On June 23, 1978, the Texas Supreme Court denied petitioner's application for a writ of mandamus and dissolved its earlier order requiring discovery concerning certain patients of petitioner's abortion clinic. On July 10, 1978, MR. JUSTICE BRENNAN stayed the order of the Texas Supreme Court. On July 17, 1978, MR. JUSTICE BRENNAN vacated that stay and filed an opinion, *post*, p. 1307, stating in part:

"The question sought to be raised by applicant—whether the names of abortion patients can be obtained by discovery for use in a civil suit against a person or

clinic performing abortions where, as here, the parties have not agreed to a protective order to ensure the privacy of those patients—is a serious one. If this question were in fact presented by this case, I am of the view that four Members of this Court would vote to grant certiorari to hear it. However, this issue is not presented here. First, the order of the trial court challenged by applicant's petition for mandamus did in fact provide that the names of applicant's patients could be deleted. Second, the State of Texas has represented in its response in this Court that it is prepared to enter into a protective order which will ensure the privacy of all patients at applicant's clinics. In light of the representations of the State of Texas, there is no irreparable injury to any patient's privacy interests which would justify a stay of the order of the Supreme Court of Texas.

"Therefore, on express condition that the parties agree to a protective order ensuring the privacy of patients at applicant's clinics, the stay I entered on July 10, 1978, in these proceedings is hereby dissolved. If such a protective order is not entered, applicant may resubmit a further stay application." *Post*, at 1308-1309 (footnote omitted).

On August 21, 1978, MR. JUSTICE BRENNAN re-entered his stay because the parties had not satisfied the express condition identified in his opinion of July 17, 1978. *Post*, p. 1354.

On September 16, 1978, MR. JUSTICE POWELL granted an extension of time, until October 30, 1978, in which to file a petition for writ of certiorari. The petition for a writ of certiorari was timely filed on October 30, 1978.

Since the rationale for the Court's jurisdictional holding is unclear, and since adequate reasons for denying certiorari as a matter of discretion are disclosed by MR. JUSTICE BRENNAN's opinion of July 17, 1978, I would simply deny the petition without further explanation.

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No. 78-855. COHEN *v.* ILLINOIS INSTITUTE OF TECHNOLOGY ET AL. C. A. 7th Cir. Certiorari denied. MR. JUSTICE STEVENS took no part in the consideration or decision of this petition. Reported below: 581 F. 2d 658.

No. 78-5198. HOVILA *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied. Reported below: 562 S. W. 2d 243.

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. 78-5571. WILLIAMS *v.* RICKETTS, WARDEN. Sup. Ct. Ga. Certiorari denied. MR. JUSTICE BRENNAN, MR. JUSTICE WHITE, and MR. JUSTICE MARSHALL would grant certiorari. Reported below: 240 Ga. 148, 240 S. E. 2d 41.

### *Rehearing Denied*

No. 77-1464. HUCH ET AL. *v.* UNITED STATES, *ante*, p. 1007;

No. 78-284. LICHTIG *v.* UNITED STATES, *ante*, p. 981;

No. 78-296. SALVUCCI *v.* REVERE RACING ASSN., INC., ET AL., *ante*, p. 1002;

No. 78-344. UNION PACIFIC RAILROAD CO. *v.* SHEEHAN, *ante*, p. 89;

No. 78-648. CITY OF SAN ANTONIO *v.* SAN PEDRO NORTH, LTD., ET AL., *ante*, p. 1004;

No. 78-5014. BLANKNER *v.* GOODWIN, COMMISSIONER, NEW YORK STATE DIVISION OF HOUSING AND COMMUNITY RENEWAL, *ante*, p. 867; and

No. 78-5180. JOHNSON *v.* ALEXANDER, SECRETARY OF THE ARMY, ET AL.; *ante*, p. 986. Petitions for rehearing denied.

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No. 78-5539. CLIFTON *v.* CALIFORNIA, *ante*, p. 989; and  
No. 78-5611. HINDMAN *v.* KELLY ET AL., *ante*, p. 1050.  
Petitions for rehearing denied.

No. 77-1388. MASSACHUSETTS *v.* WHITE, *ante*, p. 280.  
Petition for rehearing denied. MR. JUSTICE POWELL took no  
part in the consideration or decision of this petition.

FEBRUARY 1, 1979

*Dismissal Under Rule 60*

No. 77-1665. BONANNO *v.* UNITED STATES. C. A. 9th Cir.  
[Certiorari granted, *ante*, p. 1045.] Writ of certiorari dis-  
missed under this Court's Rule 60. Reported below: 571 F.  
2d 588.

OPINIONS OF INDIVIDUAL JUSTICES IN  
CHAMBERS

NEW YORK TIMES CO. ET AL. v. JACOBY & CO.

U. S. SUPREME COURT

NO. 1301. Argued Jan. 21, 1928.

MR. JUSTICE WATSON.

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REPORTER'S NOTE

The next page is purposely numbered 1301. The numbers between 1136 and 1301 were intentionally omitted, in order to make it possible to publish in-chambers opinions with *permanent* page numbers, thus making the official citations available upon publication of the preliminary prints of the United States Reports.

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