

## ORDERS FROM APRIL 16 THROUGH MAY 21, 1979

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APRIL 16, 1979\*

### *Dismissal Under Rule 60*

No. 78-1073. *HENNESSY ET UX. v. HENNESSY ET AL.* C. A. 7th Cir. Certiorari dismissed under this Court's Rule 60. Reported below: 582 F. 2d 1284.

### *Vacated and Remanded on Appeal*

No. 78-1071. *HUGHES v. HUGHES.* Appeal from Sup. Ct. Ala. Judgment vacated and case remanded for further consideration in light of *Orr v. Orr*, 440 U. S. 268 (1979). Reported below: 362 So. 2d 918.

### *Appeal Dismissed*

No. 78-1451. *MCCOY ET AL. v. CALIFANO, SECRETARY OF HEALTH, EDUCATION, AND WELFARE, ET AL.* Appeal from C. A. 7th Cir. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied. Reported below: 588 F. 2d 834.

### *Certiorari Granted—Vacated and Remanded*

No. 77-1611. *HERCOFORM, INC. v. CHICAGO TITLE INSURANCE CO. ET AL.* C. A. 1st Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *United States v. Kimbell Foods, Inc.*, 440 U. S. 715 (1979). Reported below: 568 F. 2d 217.

No. 78-5995. *HUNT 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. Mis-*

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

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souri, 439 U. S. 357 (1979). Reported below: 570 S. W. 2d 777.

No. 78-6077. JONES 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*, 439 U. S. 357 (1979). Reported below: 571 S. W. 2d 741.

### *Miscellaneous Orders*

No. A-835. UNITED STEELWORKERS OF AMERICA, AFL-CIO-CLC v. SOLIEN, REGIONAL DIRECTOR, NATIONAL LABOR RELATIONS BOARD, ET AL. C. A. 8th Cir. Application for stay, addressed to MR. JUSTICE BRENNAN and referred to the Court, denied.

No. 80, Orig. COLORADO v. NEW MEXICO ET AL. It is ordered that the Honorable Ewing I. Kerr, Senior Judge for the United States District Court for the District of Wyoming, 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 439 U. S. 975.]

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No. 78-599. SECRETARY OF THE NAVY ET AL. *v.* HUFF ET AL. C. A. D. C. Cir. [Certiorari granted, 440 U. S. 957]; and

No. 78-1006. BROWN, SECRETARY OF DEFENSE, ET AL. *v.* GLINES. C. A. 9th Cir. [Certiorari granted, 440 U. S. 957.] Motion of the Solicitor General to consolidate these cases for briefing and oral argument denied.

No. 78-605. UNITED STATES ET AL. *v.* RUTHERFORD ET AL. C. A. 10th Cir. [Certiorari granted, 439 U. S. 1127.] Motion of Save the United States Movement, Improving Public Health and Physical Fitness of the United States Citizens, for leave to participate in oral argument as *amicus curiae* denied.

No. 78-610. COLUMBUS BOARD OF EDUCATION ET AL. *v.* PENICK ET AL. C. A. 6th Cir. [Certiorari granted, 439 U. S. 1066.] Motion of Cleveland Board of Education for leave to file a brief as *amicus curiae* denied. Motion of the Solicitor General for divided argument as *amicus curiae* granted.

No. 78-627. DAYTON BOARD OF EDUCATION ET AL. *v.* BRINKMAN ET AL. C. A. 6th Cir. [Certiorari granted, 439 U. S. 1066.] Motion of Cleveland Board of Education for leave to file a brief as *amicus curiae* denied. Motion of the Solicitor General for divided argument as *amicus curiae* granted.

No. 78-776. UNITED STATES *v.* BATCHELDER. C. A. 7th Cir. [Certiorari granted, 439 U. S. 1066.] Motion of the Solicitor General to permit Andrew J. Levander, Esquire, to present oral argument *pro hac vice* granted.

No. 78-1309. PIOCHE MINES CONSOLIDATED, INC. *v.* FIDELITY PHILADELPHIA TRUST Co. Motion for leave to file petition for writ of certiorari and/or mandamus denied.

No. 78-6229. JOHNSON *v.* UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MICHIGAN. Motion for leave to file petition for writ of mandamus and/or prohibition denied.



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No. 78-6281. GREEN *v.* CLARK, U. S. DISTRICT JUDGE, ET AL. Motion for leave to file petition for writ of mandamus denied.

*Certiorari Granted*

No. 78-756. OHIO *v.* ROBERTS. Sup. Ct. Ohio. Certiorari granted. Reported below: 55 Ohio St. 2d 191, 378 N. E. 2d 492.

No. 78-1318. O'BANNON, SECRETARY OF PUBLIC WELFARE OF PENNSYLVANIA *v.* TOWN COURT NURSING CENTER ET AL. C. A. 3d Cir. Certiorari granted. Reported below: 586 F. 2d 280.

No. 78-1323. NORFOLK & WESTERN RAILWAY Co. *v.* LIEPELT, ADMINISTRATRIX. App. Ct. Ill., 1st Dist. Certiorari granted. Reported below: 62 Ill. App. 3d 653, 378 N. E. 2d 1232.

No. 78-1088. KISSINGER *v.* REPORTERS COMMITTEE FOR FREEDOM OF THE PRESS ET AL.; and

No. 78-1217. REPORTERS COMMITTEE FOR FREEDOM OF THE PRESS ET AL. *v.* KISSINGER. C. A. D. C. Cir. Certiorari granted. Reported below: 191 U. S. App. D. C. 213, 589 F. 2d 1116.

No. 78-5471. WHALEN *v.* UNITED STATES; and PYNES *v.* UNITED STATES. Ct. App. D. C. Motion of Thomas W. Whalen for leave to proceed *in forma pauperis* granted. Certiorari granted in *Whalen v. United States*. Reported below: 379 A. 2d 1152 (first case); 385 A. 2d 772 (second case).

*Certiorari Denied.* (See also No. 78-1451, *supra*.)

No. 77-1835. NATIONAL ASSOCIATION OF REGULATORY UTILITY COMMISSIONERS *v.* BROOKHAVEN CABLE TV, INC., ET AL.; and

No. 77-1845. KELLY ET AL. *v.* BROOKHAVEN CABLE TV, INC., ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 573 F. 2d 765.

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No. 78-1033. *SOUTHLAND ROYALTY Co. v. UNITED STATES*. Ct. Cl. Certiorari denied. Reported below: 217 Ct. Cl. 431, 582 F. 2d 604.

No. 78-1052. *BUNDY ET AL. v. RUDD ET AL., JUDGES*. Cir. Ct. Fla., Leon County. Certiorari denied.

No. 78-1080. *LOVELESS v. MARYLAND*. Ct. Sp. App. Md. Certiorari denied. Reported below: 39 Md. App. 563, 387 A. 2d 311.

No. 78-1093. *BUNDY ET AL. v. RUDD, JUDGE, ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 581 F. 2d 1126.

No. 78-1128. *PODELL 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: 61 App. Div. 2d 1019, 403 N. Y. S. 2d 52.

No. 78-1129. *BRASCO 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 1006, 406 N. Y. S. 2d 1002.

No. 78-1152. *VERGARA ET AL. v. CHAIRMAN, MERIT SYSTEMS PROTECTION BOARD, ET AL.* C. A. 7th Cir. Certiorari denied. Reported below: 581 F. 2d 1281.

No. 78-1164. *HOLLAND v. SEABOARD COAST LINE RAILROAD Co.* Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 353 So. 2d 618.

No. 78-1167. *GIBSON v. DAVIS, DIRECTOR, BUREAU OF ALCOHOL, TOBACCO AND FIREARMS, ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 587 F. 2d 280.

No. 78-1174. *TAXATION WITH REPRESENTATION v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 585 F. 2d 1219.

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No. 78-1190. *WALKER v. NEWGENT ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 583 F. 2d 163.

No. 78-1192. *GINSBURG, FELDMAN & BRESS v. DEPARTMENT OF ENERGY.* C. A. D. C. Cir. Certiorari denied. Reported below: 192 U. S. App. D. C. 108, 591 F. 2d 717.

No. 78-1200. *SANTOS ET AL. v. UNITED STATES.* C. A. 9th Cir. Certiorari denied. Reported below: 588 F. 2d 1300.

No. 78-1204. *HONICKER v. NUCLEAR REGULATORY COMMISSION ET AL.* C. A. D. C. Cir. Certiorari denied. Reported below: 192 U. S. App. D. C. 91, 590 F. 2d 1207.

No. 78-1210. *MOENCKMEIER ET UX. v. UNITED STATES ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 585 F. 2d 519.

No. 78-1229. *A-OK MOTOR LINES, INC. (KAUFMAN, TRUSTEE IN BANKRUPTCY) v. NORTH ALABAMA EXPRESS, INC., ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 576 F. 2d 679 and 583 F. 2d 779.

No. 78-1230. *MORELOCK ET AL. v. NCR CORP.* C. A. 6th Cir. Certiorari denied. Reported below: 586 F. 2d 1096.

No. 78-1240. *JOHNSON v. UNITED STATES.* C. A. 9th Cir. Certiorari denied.

No. 78-1264. *HENDERSON ET AL. v. FORT WORTH INDEPENDENT SCHOOL DISTRICT ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 584 F. 2d 115.

No. 78-1266. *MATHIAS v. MARYLAND.* Ct. App. Md. Certiorari denied. Reported below: 284 Md. 22, 394 A. 2d 292.

No. 78-1274. *THOMPSON v. ALABAMA.* Ct. Crim. App. Ala. Certiorari denied. Reported below: 364 So. 2d 683.



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No. 78-1276. *KAPP v. NATIONAL FOOTBALL LEAGUE ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 586 F. 2d 644.

No. 78-1277. *GOLDING v. CITY COUNCIL OF THE CITY OF RICHMOND ET AL.* Sup. Ct. Va. Certiorari denied.

No. 78-1281. *IOWA BEEF PROCESSORS, INC. v. SMITH.* C. A. 8th Cir. Certiorari denied. Reported below: 588 F. 2d 638.

No. 78-1283. *BROTHERHOOD OF RAILWAY, AIRLINE & STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS & STATION EMPLOYEES, ET AL. v. KANSAS CITY TERMINAL RAILWAY CO.* C. A. 8th Cir. Certiorari denied. Reported below: 587 F. 2d 903.

No. 78-1289. *GODWIN v. MARYLAND.* Ct. App. Md. Certiorari denied.

No. 78-1291. *VAN GORDON v. OREGON STATE BOARD OF DENTAL EXAMINERS ET AL.* Ct. App. Ore. Certiorari denied. Reported below: 34 Ore. App. 607, 579 P. 2d 306.

No. 78-1293. *STEWART v. ILLINOIS.* App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 66 Ill. App. 3d 342, 383 N. E. 2d 1179.

No. 78-1297. *WINE v. INDIANA.* Ct. App. Ind. Certiorari denied.

No. 78-1301. *HICKEL ET AL. v. THOMAS, LT. GOVERNOR OF ALASKA, ET AL.* Sup. Ct. Alaska. Certiorari denied. Reported below: 588 P. 2d 256.

No. 78-1304. *AMERICAN SEATING CO. v. NATIONAL SEATING Co.* C. A. 6th Cir. Certiorari denied. Reported below: 586 F. 2d 611.

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No. 78-1305. *BLEA v. NEW MEXICO*. Ct. App. N. M. Certiorari denied. Reported below: 92 N. M. 269, 587 P. 2d 47.

No. 78-1312. *SMITH v. COUNTY OF YORK*. Pa. Commw. Ct. Certiorari denied. Reported below: 37 Pa. Commw. 47, 388 A. 2d 1149.

No. 78-1315. *MOTOWN RECORD CORP. v. SOLINGER*; and

No. 78-1317. *A&M RECORDS, INC., ET AL v. SOLINGER*. C. A. 9th Cir. Certiorari denied. Reported below: 586 F. 2d 1304.

No. 78-1321. *A. T. CROSS Co. v. QUILL Co., INC.* C. A. 1st Cir. Certiorari denied. Reported below: 587 F. 2d 533.

No. 78-1322. *PITTSWAY CORP. v. BURKE ET AL.* App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 63 Ill. App. 3d 354, 380 N. E. 2d 1.

No. 78-1355. *HARCO PRODUCTS, INC., DBA DFC Co. v. REX CHAINBELT, INC.* C. A. 9th Cir. Certiorari denied.

No. 78-1378. *VAICEKAUSKAS v. IMMIGRATION AND NATURALIZATION SERVICE*. C. A. 7th Cir. Certiorari denied. Reported below: 588 F. 2d 837.

No. 78-1416. *CARTER v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 590 F. 2d 138.

No. 78-1421. *CARTER v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 592 F. 2d 402.

No. 78-1426. *PACELLI v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 588 F. 2d 360.

No. 78-1432. *THOMPSON v. UNITED STATES*. C. A. 9th Cir. Certiorari denied.

No. 78-5916. *VEAL v. ILLINOIS*; and

No. 78-5917. *KNIGHTS v. ILLINOIS*. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 58 Ill. App. 3d 938, 374 N. E. 2d 963.



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No. 78-5922. *RIGGSBEE v. ROMERO, WARDEN*. C. A. 10th Cir. Certiorari denied.

No. 78-5967. *McLAIN v. MORRIS, WARDEN, ET AL.* C. A. 7th Cir. Certiorari denied. Reported below: 588 F. 2d 840.

No. 78-5985. *HERRERA v. NEW MEXICO*. Sup. Ct. N. M. Certiorari denied. Reported below: 92 N. M. 180, 585 P. 2d 324.

No. 78-6000. *ZEPEDA v. STAHL, SHERIFF*. C. A. 4th Cir. Certiorari denied. Reported below: 588 F. 2d 1354.

No. 78-6005. *WASHINGTON v. CUPP, PENITENTIARY SUPERINTENDENT*. C. A. 9th Cir. Certiorari denied. Reported below: 586 F. 2d 134.

No. 78-6011. *SNEAD v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 577 F. 2d 730 and 586 F. 2d 836.

No. 78-6030. *MOORE v. VIRGINIA*. Sup. Ct. Va. Certiorari denied.

No. 78-6068. *LANDRUM v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 585 F. 2d 519.

No. 78-6069. *CASSASA v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 588 F. 2d 282.

No. 78-6071. *ROBERTS v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 594 F. 2d 853.

No. 78-6087. *PAUL v. UNITED STATES*. C. A. 5th Cir. Certiorari denied.

No. 78-6093. *MASON v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 588 F. 2d 1352.

No. 78-6107. *COLE v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 588 F. 2d 56.

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No. 78-6118. *YOUNGE v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 588 F. 2d 568 and 834.

No. 78-6120. *TEMPESTA v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 587 F. 2d 931.

No. 78-6126. *BENNING v. TAULBORG BROTHERS BUILDERS*. C. A. 8th Cir. Certiorari denied. Reported below: 590 F. 2d 340.

No. 78-6139. *HAWKINS v. UNITED STATES*. C. A. D. C. Cir. Certiorari denied. Reported below: 193 U. S. App. D. C. 366, 595 F. 2d 751.

No. 78-6141. *LYON v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 588 F. 2d 581.

No. 78-6173. *ROBERTSON v. NEW YORK*. App. Term, Sup. Ct. N. Y., 1st Jud. Dept. Certiorari denied.

No. 78-6182. *SMITH v. SMITH*. Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 78-6206. *MUNDY v. DIRECTOR, DEPARTMENT OF CORRECTIONS, TAZEWELL, VIRGINIA*. C. A. 4th Cir. Certiorari denied. Reported below: 588 F. 2d 1350.

No. 78-6211. *REYNOLDS v. UNITED STATES*. C. A. 6th Cir. Certiorari denied.

No. 78-6212. *LESLIE v. MASSACHUSETTS*. Sup. Jud. Ct. Mass. Certiorari denied. Reported below: 376 Mass. 647, 382 N. E. 2d 1072.

No. 78-6213. *KESSLER v. NEW YORK ET AL.* C. A. 2d Cir. Certiorari denied.

No. 78-6228. *KUMAR v. OHIO*. Ct. App. Ohio, Marion County. Certiorari denied.

No. 78-6230. *MONROE v. BROWN*. C. A. 1st Cir. Certiorari denied.

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No. 78-6231. *WEDDINGTON v. GEORGIA*. Ct. App. Ga. Certiorari denied. Reported below: 146 Ga. App. 662, 247 S. E. 2d 190.

No. 78-6233. *SOLBERG v. HENDERSON*, CORRECTIONAL SUPER-INTENDENT. C. A. 2d Cir. Certiorari denied. Reported below: 584 F. 2d 974.

No. 78-6241. *LYON v. CALIFORNIA*. C. A. 9th Cir. Certiorari denied.

No. 78-6242. *GREEN v. CRANE*. Sup. Ct. Miss. Certiorari denied. Reported below: 364 So. 2d 1117.

No. 78-6252. *SAWAYA v. BERNALILLO COUNTY ASSESSOR*. Sup. Ct. N. M. Certiorari denied. Reported below: 92 N. M. 353, 588 P. 2d 554.

No. 78-6254. *BANKS v. ILLINOIS*. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 63 Ill. App. 3d 891, 380 N. E. 2d 903.

No. 78-6259. *HAMPEL v. CALIFORNIA*. Ct. App. Cal., 5th App. Dist. Certiorari denied.

No. 78-6267. *MILLIGAN v. PENNSYLVANIA*. Super. Ct. Pa. Certiorari denied. Reported below: 256 Pa. Super. 611, 389 A. 2d 682.

No. 78-6268. *SALLIE v. NORTH CAROLINA ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 587 F. 2d 636.

No. 78-6269. *STUART v. GAMWELL*. Ct. App. Ga. Certiorari denied.

No. 78-6273. *WILLIAMS v. ILLINOIS*. App. Ct. Ill., 4th Dist. Certiorari denied.

No. 78-6274. *SANCHEZ v. DALLAS MORNING NEWS ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 584 F. 2d 388.



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No. 78-6278. *GREEN v. WYRICK, WARDEN*. C. A. 8th Cir. Certiorari denied.

No. 78-6279. *CREQUE v. ILLINOIS*. Sup. Ct. Ill. Certiorari denied. Reported below: 72 Ill. 2d 515, 382 N. E. 2d 793.

No. 78-6285. *HARRISON v. INDIANA*. Sup. Ct. Ind. Certiorari denied. Reported below: 269 Ind. 677, 382 N. E. 2d 920.

No. 78-6289. *CZORNONOH v. UNITED STATES SECRET SERVICE*; and *CZORNONOH v. STALLARD ET AL.* C. A. 9th Cir. Certiorari denied.

No. 78-6339. *GOODLOE v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 595 F. 2d 1226.

No. 78-6347. *CACY v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 588 F. 2d 827.

No. 78-6348. *GORDON v. UNITED STATES*. C. A. 1st Cir. Certiorari denied. Reported below: 592 F. 2d 1215.

No. 78-6355. *ALONZO v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 590 F. 2d 332.

No. 78-6364. *SMITH v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 594 F. 2d 243.

No. 78-6370. *MARTIN v. UNITED STATES*. C. A. 5th Cir. Certiorari denied.

No. 78-6373. *DAVIS v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 595 F. 2d 1226.

No. 78-6377. *JACKSON v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 590 F. 2d 121.

No. 78-6389. *POWELL v. FARRELL, CONTROLLER OF THE CITY AND COUNTY OF SAN FRANCISCO, CALIFORNIA, ET AL.* C. A. 9th Cir. Certiorari before judgment denied.

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No. 78-6390. *LEFTON v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 590 F. 2d 337.

No. 78-6399. *GREENE v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 590 F. 2d 341.

No. 78-6402. *FRICK v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 588 F. 2d 531.

No. 78-1018. *FIGGINS ET AL. v. HUDSPETH*. C. A. 4th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 584 F. 2d 1345.

No. 78-1099. *MARQUEZ, CORRECTIONAL SUPERINTENDENT v. BITTAKER*. C. A. 9th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 587 F. 2d 400.

No. 78-1103. *PENNSYLVANIA v. RITTER*. Sup. Ct. Pa. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 481 Pa. 177, 392 A. 2d 305.

No. 78-1098. *HERMAN v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. MR. JUSTICE BRENNAN and MR. JUSTICE MARSHALL would grant certiorari. Reported below: 589 F. 2d 1191.

No. 78-1290. *GOLDSTEIN v. CITY OF NORFOLK*. Sup. Ct. Va. Certiorari denied. MR. JUSTICE BRENNAN, MR. JUSTICE STEWART, and MR. JUSTICE MARSHALL would grant certiorari and reverse the conviction.

No. 78-5873. *IRVING v. MISSISSIPPI*. Sup. Ct. Miss. Certiorari denied. Reported below: 361 So. 2d 1360.

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

I adhere to my view that the death penalty is unconstitutional under all circumstances. *Furman v. Georgia*, 408 U. S.

238, 314 (1972) (MARSHALL, J., concurring); *Gregg v. Georgia*, 428 U. S. 153, 231 (1976) (MARSHALL, J., dissenting). I would therefore grant certiorari and vacate the death sentence on this basis alone. However, because the Mississippi Supreme Court's ruling on an issue of joint representation appears inconsistent with this Court's prior decisions, I believe certiorari should be granted on that ground as well.

Petitioner John Irving was indicted in Pontotoc County, Miss., on July 7, 1976, for capital murder. Both petitioner and a separately indicted accomplice, Keith Givhan, retained the same counsel. On November 8, 1976, the day before petitioner's trial, his attorney filed a motion to withdraw because of a conflict of interest. Counsel did, however, express his willingness to continue representing Givhan, whose trial was scheduled for the following week. After a hearing, the Circuit Court denied the motion and petitioner's case proceeded to trial. A jury found petitioner guilty as charged and sentenced him to death. The Mississippi Supreme Court affirmed. 361 So. 2d. 1360 (1978).

In the affidavit supporting his motion to withdraw, petitioner's counsel identified several potential sources of conflict. Each defendant had given an inculpatory statement implicating the other. Also, during the period of pretrial incarceration, each had developed inconsistent theories of defense. Finally, plea negotiations with the local district and county attorneys had raised the possibility of a bargain in one case but not the other. Under those circumstances, counsel averred that he could not, based on his "reading of *Glasser* [v. *United States*, 315 U. S. 60 (1942),] advise either defendant . . . as to what posture [he] should assume." Record 53.

In *Glasser*, this Court stated: "[T]he 'assistance of counsel' guaranteed by the Sixth Amendment contemplates that such assistance be untrammelled and unimpaired by a court order requiring that one lawyer shall simultaneously represent conflicting interests." 315 U. S., at 70. Just last Term, in



*Holloway v. Arkansas*, 435 U. S. 475 (1978), we reaffirmed that principle and noted:

"[S]ince the decision in *Glasser*, most courts have held that an attorney's request for the appointment of separate counsel, based on his representations as an officer of the court regarding a conflict of interests, should be granted. . . . An 'attorney representing two defendants in a criminal matter is in the best position professionally and ethically to determine when a conflict of interest exists or will probably develop in the course of a trial.' *State v. Davis*, [110 Ariz. 29, 31, 514 P. 2d 1025, 1027 (1973)]. . . . [A]ttorneys are officers of the court, and 'when they address the judge solemnly upon a matter before the court, their declarations are virtually made under oath.'" *State v. Brazile*, [226 La. 254, 266, 75 So. 2d 856, 860-861 (1954)]. (Emphasis deleted.) We find these considerations persuasive." *Id.*, at 485-486 (footnotes omitted).

Particularly where, as here, a defendant is on trial for his life, an attorney's judgment as to potential conflicts should carry special force.

Notwithstanding *Holloway's* clear directive and the nature of the sentence imposed, the Mississippi Supreme Court sustained the refusal to permit counsel's withdrawal. In so ruling, the court relied on petitioner and Givhan's failure to testify, and on the absence of any clear indication that counsel "would have defended any differently or would have approached the defense of the case on another basis had he not been representing Givhan." 361 So. 2d, at 1365. Because the record did not "reflect any prejudice or harm resulting to [petitioner] on account of the alleged conflict of interest," *ibid.*, the court below found no constitutional infirmity.

Yet it was precisely this form of analysis that we rejected in *Glasser* and again in *Holloway*. *Glasser* unequivocally held that "[t]he right to have the assistance of counsel is too

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fundamental and absolute to allow courts to indulge in nice calculations as to the amount of prejudice arising from its denial." 315 U. S., at 76. After quoting this passage with approval, the *Holloway* Court made clear that where joint representation occurs over a defendant's express objection, "prejudice is presumed regardless of whether it [is] independently shown." 435 U. S., at 489. For the danger presented by a conflict of interest arises not simply from what an advocate does, which may be evident from the record, but from what he "finds himself compelled to *refrain* from doing," which may not be so readily apparent. *Id.*, at 490. To assess the effect of incompatible interests on all of an attorney's strategies at trial and in plea negotiations would, as we concluded in *Holloway*, be "virtually impossible." *Id.*, at 491.

Here, however, the Mississippi Supreme Court professed itself able to accomplish what *Holloway* explicitly recognized as beyond the competence of a reviewing tribunal. On this record, I cannot share the court's confidence that counsel would have approached the defense no differently had he represented only petitioner. More to the point, I believe that such speculation is inappropriate under *Holloway* and unsupportable in a capital case. Surely where a defendant's life is at stake, he is entitled to assistance from an attorney whose loyalty is beyond question.

I therefore dissent from the denial of certiorari.

No. 78-6091. WASHINGTON v. MISSISSIPPI. Sup. Ct. Miss.; and

No. 78-6253. FINNEY v. GEORGIA. Sup. Ct. Ga. Certiorari denied. Reported below: No. 78-6091, 361 So. 2d 61; No. 78-6253, 242 Ga. 582, 250 S. E. 2d 388.

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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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. 77-952. GROUP LIFE & HEALTH INSURANCE CO. ET AL. v. ROYAL DRUG CO., INC., ET AL., 440 U. S. 205;

No. 77-1163. FRIEDMAN ET AL. v. ROGERS ET AL., 440 U. S. 1;

No. 77-1186. TEXAS OPTOMETRIC ASSN., INC. v. ROGERS ET AL., 440 U. S. 1;

No. 77-1337. NEVADA ET AL. v. HALL ET AL., 440 U. S. 410;

No. 78-733. POE v. MITCHELL, 440 U. S. 908;

No. 78-784. MORENO v. UNITED STATES, 440 U. S. 908;

No. 78-788. ESQUIRE, INC. v. RINGER, REGISTER OF COPYRIGHTS, 440 U. S. 908;

No. 78-791. GREENBLATT v. UNITED STATES, 440 U. S. 909;

No. 78-809. WALTON v. SMALL BUSINESS ADMINISTRATION, 440 U. S. 901;

No. 78-819. FROMMHAGEN v. UNITED STATES, 440 U. S. 909;

No. 78-871. SHANNON v. WATERHOUSE ET AL., EXECUTORS, 440 U. S. 911;

No. 78-970. ROWLETT ET AL. v. UNITED STATES, 440 U. S. 935;

No. 78-1083. KORNIT v. BOARD OF EDUCATION OF PLAINVIEW-OLD BETHPAGE SCHOOL DISTRICT, PLAINVIEW, NEW YORK, 440 U. S. 936;

No. 78-5648. FINNEGAN v. WASHINGTON, 440 U. S. 919;

No. 78-5744. LEVY v. UNITED STATES, 440 U. S. 920;

No. 78-5810. TURNER ET AL. v. JONES ET AL., 440 U. S. 962;

No. 78-5890. McFERRAN v. ENLARGED CITY SCHOOL DISTRICT OF TROY, NEW YORK, 440 U. S. 923; and

No. 78-5929. LORENTZEN v. BOSTON COLLEGE, 440 U. S. 924. Petitions for rehearing denied.



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No. 78-5956. *BROWN v. UNITED STATES*, 440 U. S. 948;  
No. 78-5984. *ISAACS ET UX. v. BOARD OF TRUSTEES OF  
TEMPLE UNIVERSITY ET AL.*, 440 U. S. 926;

No. 78-6008. *SHAW v. CARYL*, 440 U. S. 938;

No. 78-6032. *ORONoz v. UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF PUERTO RICO ET AL.*, 440 U. S. 944;

No. 78-6096. *WELCH v. CELEBREZZE*, CHIEF JUSTICE,  
SUPREME COURT OF OHIO, 440 U. S. 956; and

No. 78-6103. *MILLER v. HUNT ET AL.*, 440 U. S. 938. Peti-  
tions for rehearing denied.

No. 78-268. *GILLESPIE ET AL. v. SCHWARTZ ET AL.*, 439  
U. S. 1034;

No. 78-361. *BOSTON HOSPITAL FOR WOMEN v. SCHWARTZ  
ET AL.*, 439 U. S. 1034;

No. 78-410. *LEE-HY PAVING CORP. ET AL. v. O'CONNOR,  
ADMINISTRATRIX*, 439 U. S. 1034; and

No. 78-5499. *WILLIAMS v. UNITED STATES*, 439 U. S. 969.  
Motions for leave to file petitions for rehearing denied.

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##### *Appeals Dismissed*

No. 78-1374. *MARTIN v. BOARD OF COUNTY COMMISSION-  
ERS OF LEE COUNTY, FLORIDA, ET AL.* Appeal from Sup. Ct.  
Fla. dismissed for want of substantial federal question. MR.  
JUSTICE BRENNAN would note probable jurisdiction and set  
case for oral argument. Reported below: 364 So. 2d 449.

No. 78-6060. *ELAM v. VIRGINIA*. Appeal from Sup. Ct.  
Va. dismissed for want of jurisdiction. Treating the papers  
whereon the appeal was taken as a petition for writ of certio-  
rari, certiorari denied.

##### *Certiorari Granted—Vacated and Remanded*

No. 78-97. *SEARS, ROEBUCK & Co. v. DAHM ET AL.* C. A.  
7th Cir. Certiorari granted, judgment vacated, and case re-  
manded for further consideration in light of *Chrysler Corp. v.  
Brown*, ante, p. 281. Reported below: 575 F. 2d 1197.

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No. 78-79. GENERAL DYNAMICS CORP. *v.* MARSHALL, SECRETARY OF LABOR, ET AL. C. A. 8th Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Chrysler Corp. v. Brown*, ante, p. 281. Reported below: 572 F. 2d 1211.

*Miscellaneous Orders*

No. — — —. WHITE *v.* OFFICE OF PERSONNEL MANAGEMENT ET AL. C. A. D. C. Cir. Motion for leave to dispense with printing petition denied. See *Snider v. All State Administrators, Inc.*, 414 U. S. 685 (1974).

No. A-844 (78-1475). PENCE *v.* BROWN, SECRETARY OF DEFENSE, ET AL. C. A. 6th Cir. Application for stay, addressed to MR. JUSTICE BRENNAN and referred to the Court, denied.

No. A-867. CALLAHAN *v.* UNITED STATES. C. A. 5th Cir. Applications for bond, recall of mandate, transfer of sealed envelopes, and disclosure of certain materials, addressed to MR. JUSTICE MARSHALL and referred to the Court, denied.

No. D-146. IN RE DISBARMENT OF TEITELBAUM. Disbarment entered. [For earlier order herein, see 439 U. S. 975.]

No. D-159. IN RE DISBARMENT OF RATCLIFF. Disbarment entered. [For earlier order herein, see 440 U. S. 903.]

No. D-162. IN RE DISBARMENT OF TURNER. It is ordered that John Joseph Turner, 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.

No. D-163. IN RE DISBARMENT OF REEDY. It is ordered that James Phillip Reedy, 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-164. *IN RE DISBARMENT OF MACURDY*. It is ordered that Thomas E. Macurdy, of Natrona Heights, Pa., 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-165. *IN RE DISBARMENT OF ROTHBART*. It is ordered that Norman Shine Rothbart, of Northbrook, 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.

No. D-166. *IN RE DISBARMENT OF KAUFMAN*. It is ordered that Robert Kaufman, 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-167. *IN RE DISBARMENT OF REISER*. It is ordered that Arthur A. Reiser, Jr., of Western Springs, 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.

No. D-168. *IN RE DISBARMENT OF POWELL*. It is ordered that Paul Lee Powell, 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.

No. 78-605. *UNITED STATES ET AL. v. RUTHERFORD ET AL.* C. A. 10th Cir. [Certiorari granted, 439 U. S. 1127.] Motion of Northwest Academy of Preventive Medicine for leave to file a brief as *amicus curiae* granted.



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No. 1, Orig. WISCONSIN ET AL. *v.* ILLINOIS ET AL.;

No. 2, Orig. MICHIGAN *v.* ILLINOIS ET AL.; and

No. 3, Orig. NEW YORK *v.* ILLINOIS ET AL., 388 U. S. 426.

It is ordered that Honorable Albert B. Maris, Senior Judge of the United States Court of Appeals for the Third Circuit, be appointed Special Master in these cases 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 these cases 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.

The motion for leave to file petition for modification of decree is referred to the Special Master.

No. 78-711. SOUTHEASTERN COMMUNITY COLLEGE *v.* DAVIS. C. A. 4th Cir. [Certiorari granted, 439 U. S. 1065.] Motion of the Solicitor General for leave to file a brief as *amicus curiae* granted.

No. 78-752. BAKER *v.* MCCOLLAN. C. A. 5th Cir. [Certiorari granted, 439 U. S. 1114.] Motion of American Civil Liberties Union et al. to participate in oral argument as *amici curiae* denied.

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No. 78-6438. *YOST v. WAINWRIGHT, SECRETARY, DEPARTMENT OF OFFENDER REHABILITATION OF FLORIDA*. Motion for leave to file petition for writ of habeas corpus denied.

No. 78-6296. *CARLOS v. UNITED STATES ET AL.* Motion for leave to file petition for writ of mandamus denied.

*Probable Jurisdiction Postponed*

No. 78-1155. *VITEK, CORRECTIONAL DIRECTOR, ET AL. v. JONES*. Appeal from D. C. Neb. Motion of appellee for leave to proceed *in forma pauperis* granted. Further consideration of question of jurisdiction postponed to hearing of case on the merits. Reported below: See 437 F. Supp. 569.

*Certiorari Granted*

No. 78-1335. *VILLAGE OF SCHAUMBURG v. CITIZENS FOR A BETTER ENVIRONMENT ET AL.* C. A. 7th Cir. Certiorari granted. Reported below: 590 F. 2d 220.

*Certiorari Denied.* (See also No. 78-6060, *supra.*)

No. 78-1117. *SMITH v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 584 F. 2d 759.

No. 78-1191. *CERRELLA ET AL. v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 582 F. 2d 974.

No. 78-1211. *TUCKER v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 586 F. 2d 845.

No. 78-1228. *SEIDLITZ v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 589 F. 2d 152.

No. 78-1233. *MITCHELL v. MID-CONTINENT SPRING COMPANY OF KENTUCKY*; and

No. 78-1373. *MID-CONTINENT SPRING COMPANY OF KENTUCKY v. MITCHELL*. C. A. 6th Cir. Certiorari denied. Reported below: 583 F. 2d 275.

No. 78-1245. *GEDERS v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 585 F. 2d 1303.

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No. 78-1262. *FLOWERS v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 595 F. 2d 1209.

No. 78-1267. *HICKS v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 587 F. 2d 252.

No. 78-1272. *NOALL v. UNITED STATES ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 587 F. 2d 123.

No. 78-1331. *WEINGER v. ILLINOIS*. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 63 Ill. App. 3d 171, 379 N. E. 2d 810.

No. 78-1333. *STANDARD ALLIANCE INDUSTRIES, INC. v. BLACK CLAWSON Co.* C. A. 6th Cir. Certiorari denied. Reported below: 587 F. 2d 813.

No. 78-1339. *TAYLOR v. NASHVILLE BANNER PUBLISHING Co.* Ct. App. Tenn. Certiorari denied. Reported below: 573 S. W. 2d 476.

No. 78-1349. *KERNER v. STATE EMPLOYEES' RETIREMENT SYSTEM OF ILLINOIS ET AL.* Sup. Ct. Ill. Certiorari denied. Reported below: 72 Ill. 2d 507, 382 N. E. 2d 243.

No. 78-1350. *LEONARD v. EXXON CORP. ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 581 F. 2d 522.

No. 78-1354. *KLUGE v. SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES*. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 78-1360. *FIGORE v. COUNTY OF WESTMORELAND ET AL.* Pa. Commw. Ct. Certiorari denied. Reported below: 36 Pa. Commw. 493, 388 A. 2d 1119.

No. 78-1361. *McCOY v. LINCOLN INTERMEDIATE UNIT No. 12*. Pa. Commw. Ct. Certiorari denied. Reported below: 38 Pa. Commw. 29, 391 A. 2d 1119.



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No. 78-1362. *WALKER v. OHIO*. Sup. Ct. Ohio. Certiorari denied. Reported below: 55 Ohio St. 2d 208, 378 N. E. 2d 1049.

No. 78-1364. *RUDOLPH v. WAGNER ELECTRIC CORP.* C. A. 8th Cir. Certiorari denied. Reported below: 586 F. 2d 90.

No. 78-1367. *COOK v. MUSKINGUM WATERSHED CONSERVANCY DISTRICT*. C. A. 6th Cir. Certiorari denied. Reported below: 573 F. 2d 1310.

No. 78-1371. *BUIAN v. BAUGHARD ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 595 F. 2d 1222.

No. 78-1395. *ZARINSKY v. NEW JERSEY ET AL.* C. A. 3d Cir. Certiorari denied.

No. 78-1404. *BALL ET AL. v. CAREY, GOVERNOR OF NEW YORK, ET AL.* App. Div., Sup. Ct. N. Y., 3d Jud. Dept. Certiorari denied. Reported below: 64 App. Div. 2d 723, 407 N. Y. S. 2d 76.

No. 78-1425. *COLE ET AL. v. COMMISSIONER OF INTERNAL REVENUE*. C. A. 9th Cir. Certiorari denied. Reported below: 586 F. 2d 747.

No. 78-1448. *BENNETT v. SECRETARY OF DEFENSE*. C. A. D. C. Cir. Certiorari denied.

No. 78-1469. *WHEELER DEALERS, INC. v. RALEIGH INDUSTRIES OF AMERICA, INC.* C. A. 7th Cir. Certiorari denied. Reported below: 590 F. 2d 338.

No. 78-1485. *HANLEY ET AL. v. UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF OHIO*. C. A. 6th Cir. Certiorari denied.

No. 78-6066. *EDMOND v. BERNHARDT, WARDEN*. C. A. 6th Cir. Certiorari denied. Reported below: 590 F. 2d 334.

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No. 78-6081. *LADANY v. OVERBERG*, CORRECTIONAL SUPERINTENDENT. C. A. 6th Cir. Certiorari denied. Reported below: 586 F. 2d 844.

No. 78-6116. *BLANDING v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 595 F. 2d 1226.

No. 78-6165. *LYONS v. UNITED STATES*. C. A. 1st Cir. Certiorari denied. Reported below: 582 F. 2d 1270.

No. 78-6177. *JOHN ET AL. v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 587 F. 2d 683.

No. 78-6183. *PLATEL v. YOUNG*, CHIEF JUDGE, U. S. DISTRICT COURT. C. A. 5th Cir. Certiorari denied. Reported below: 588 F. 2d 1355.

No. 78-6295. *NATSON v. GEORGIA*. Sup. Ct. Ga. Certiorari denied. Reported below: 242 Ga. 618, 250 S. E. 2d 420.

No. 78-6297. *HOLSEY v. MANDEL*. C. A. 4th Cir. Certiorari denied. Reported below: 588 F. 2d 1348.

No. 78-6305. *COFFEY v. NORTH CAROLINA*. C. A. 4th Cir. Certiorari denied. Reported below: 586 F. 2d 837.

No. 78-6306. *HULING v. OHIO*. Ct. App. Ohio, Summit County. Certiorari denied.

No. 78-6307. *MILLER v. CALIFORNIA*. Ct. App. Cal., 2d App. Dist. Certiorari denied. Reported below: 85 Cal. App. 3d 194, 149 Cal. Rptr. 204.

No. 78-6309. *QUEEN ET AL. v. LEEKE*, CORRECTIONS COMMISSIONER, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 584 F. 2d 977.

No. 78-6311. *GREEN v. WHITE*, TRAINING CENTER SUPERINTENDENT. C. A. 8th Cir. Certiorari denied. Reported below: 589 F. 2d 378.

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No. 78-6312. *LADD v. OHIO*. Sup. Ct. Ohio. Certiorari denied. Reported below: 56 Ohio St. 2d 197, 383 N. E. 2d 579.

No. 78-6313. *BRACEY v. HEERINGA ET AL.* C. A. 7th Cir. Certiorari denied. Reported below: 588 F. 2d 838.

No. 78-6314. *MORRIS v. JAGO, CORRECTIONAL SUPERINTENDENT*. C. A. 6th Cir. Certiorari denied. Reported below: 590 F. 2d 335.

No. 78-6316. *GIBSON v. LOUISIANA*. Sup. Ct. La. Certiorari denied. Reported below: 359 So. 2d 147.

No. 78-6323. *JACOBS v. OREGON*. Ct. App. Ore. Certiorari denied. Reported below: 34 Ore. App. 755, 579 P. 2d 881.

No. 78-6324. *LIGHTNER v. OHIO*. Ct. App. Ohio, Cuyahoga County. Certiorari denied.

No. 78-6327. *GREEN v. MISSOURI ET AL.* C. A. 8th Cir. Certiorari denied.

No. 78-6328. *BUNDY v. UTAH*. Sup. Ct. Utah. Certiorari denied. Reported below: 589 P. 2d 760.

No. 78-6331. *MUSTO v. ENGLE, CORRECTIONAL SUPERINTENDENT*. C. A. 6th Cir. Certiorari denied. Reported below: 590 F. 2d 335.

No. 78-6332. *EDWARDS v. CITY OF SEATTLE ET AL.* Sup. Ct. Wash. Certiorari denied.

No. 78-6334. *SARNESCKY v. OHIO*. Sup. Ct. Ohio. Certiorari denied.

No. 78-6382. *DOW v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 591 F. 2d 101.



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No. 78-6392. *REGELIN v. UNITED STATES*. C. A. 9th Cir. Certiorari denied.

No. 78-6398. *DAVIS v. SEDGWICK ET AL.* C. A. 8th Cir. Certiorari denied. Reported below: 590 F. 2d 341.

No. 78-6400. *MARTINO v. UNITED STATES*. C. A. 2d Cir. Certiorari denied.

No. 78-6401. *BACA v. UNITED STATES*. C. A. 10th Cir. Certiorari denied.

No. 78-6403. *BRADEN v. KENTUCKY*. Sup. Ct. Ky. Certiorari denied.

No. 78-6410. *HUDSON v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 591 F. 2d 1345.

No. 78-6426. *WEINRICH v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 586 F. 2d 481.

No. 78-707. *ATKINS v. LOUISIANA*. Sup. Ct. La. Certiorari denied, it appearing that the judgment below rests on independent and adequate state grounds. Reported below: 360 So. 2d 1341.

No. 78-793. *DiLEO v. BOARD OF REGENTS OF THE UNIVERSITY OF COLORADO ET AL.* Sup. Ct. Colo. Certiorari denied. MR. JUSTICE BRENNAN, MR. JUSTICE WHITE, and MR. JUSTICE MARSHALL would grant certiorari. Reported below: 196 Colo. 216, 590 P. 2d 486.

No. 78-961. *GAMBINO v. LOUISIANA*. Sup. Ct. La. Certiorari denied. MR. JUSTICE BRENNAN, MR. JUSTICE STEWART, and MR. JUSTICE MARSHALL would grant certiorari and reverse the conviction. Reported below: 362 So. 2d 1107.

No. 78-1247. *IMPERIAL DISTRIBUTORS, INC., ET AL. v. PETTINE, U. S. DISTRICT JUDGE*. C. A. 1st Cir. Certiorari denied. MR. JUSTICE BRENNAN, MR. JUSTICE STEWART, and MR. JUSTICE MARSHALL would grant certiorari and reverse the judgment.

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No. 78-6439. HAMPTON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 78-6086. PENDLETON *v.* FLORIDA. Dist. Ct. App. Fla., 4th Dist. Certiorari denied. MR. JUSTICE BRENNAN and MR. JUSTICE BLACKMUN would grant certiorari. Reported below: 363 So. 2d 885.

*Rehearing Denied*

No. 77-1255. ANDERS, SOLICITOR OF RICHLAND COUNTY *v.* FLOYD, 440 U. S. 445; and

No. 78-956. COVEN *v.* SECURITIES AND EXCHANGE COMMISSION, 440 U. S. 950. Petitions for rehearing denied.

No. 78-5645. GAUTAM *v.* FIRST NATIONAL CITY BANK, 440 U. S. 919. Motion for leave to file petition for rehearing denied.

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*Miscellaneous Order*

No. A-887. LOUISVILLE & NASHVILLE RAILROAD CO. *v.* SULLIVAN, ADMINISTRATOR, FEDERAL RAILROAD ADMINISTRATION, ET AL. The document captioned "Application for an order continuing the injunction granted by a panel of the United States Court of Appeals for the District of Columbia Circuit but vacated by that Court *en banc*, pending the timely filing of a petition for writ of certiorari and its consideration by this Court" was presented to THE CHIEF JUSTICE and by him referred to the Court. Treating the papers as an application for a stay, pending the timely filing and disposition of a petition for a writ of certiorari, the application is denied. MR. JUSTICE STEVENS would grant the stay.

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*Appeals Dismissed*

No. 78-1433. CHUBB *v.* PENNSYLVANIA. Appeal from Super. Ct. Pa. dismissed for want of substantial federal question. Reported below: 261 Pa. Super. 402, 395 A. 2d 964.

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No. 78-5989. *MUSE v. LOUISIANA*. Appeal from Sup. Ct. La. dismissed for want of substantial federal question. Reported below: 363 So. 2d 462.

No. 78-6358. *CRANE ET UX. v. CARROLL COUNTY DEPARTMENT OF FAMILY AND CHILDREN SERVICES*. Appeal from Sup. Ct. Ga. dismissed for want of substantial federal question. Reported below: 242 Ga. 737, 251 S. E. 2d 299.

*Certiorari Granted—Vacated and Remanded*. (See also No. 77-5992, *ante*, p. 418; and No. 78-5885, *ante*, p. 468.)

No. 78-582. *NORTH CAROLINA v. CONNLEY*. Sup. Ct. N. C. Motion of respondent for leave to proceed *in forma pauperis* granted. *Certiorari* granted, judgment vacated, and case remanded for further consideration in light of *North Carolina v. Butler*, *ante*, p. 369. Reported below: 295 N. C. 327, 245 S. E. 2d 663.

No. 78-1051. *UNITED STATES v. FINAZZO ET AL.* C. A. 6th Cir. *Certiorari* granted, judgment vacated, and case remanded for further consideration in light of *Dalia v. United States*, *ante*, p. 238. Reported below: 583 F. 2d 837.

*Certiorari Granted—Reversed*. (See No. 78-1223, *ante*, p. 463.)

#### *Miscellaneous Orders\**

No. D-139. *IN RE DISBARMENT OF WANDEL*. Disbarment entered. [For earlier order herein, see 439 U. S. 906.]

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\*For the Court's orders prescribing amendments to the Federal Rules of Appellate Procedure, see *post*, p. 971; amendments to the Rules of Criminal Procedure for the United States District Courts, see *post*, p. 987; amendments to the Rules Governing Proceedings in the United States District Courts under 28 U. S. C. §§ 2254 and 2255, see *post*, p. 1003; and an amendment to the Federal Rules of Evidence, see *post*, p. 1007.



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

No. 77-1491. GEO CONTROL, INC., ET AL. *v.* RASMUSSEN ET AL., 440 U. S. 29. Motion of respondents for clarification of order denying motion for award of attorney's fees, entered April 2, 1979 [440 U. S. 978], denied. MR. JUSTICE POWELL took no part in the consideration or decision of this motion.

No. 77-1645. TRANSAMERICA MORTGAGE ADVISORS, INC. (TAMA), ET AL. *v.* LEWIS. C. A. 9th Cir. [Certiorari granted, 439 U. S. 952];

No. 77-1844. CITY OF MOBILE, ALABAMA, ET AL. *v.* BOLDEN ET AL. C. A. 5th Cir. [Probable jurisdiction noted, 439 U. S. 815];

No. 78-357. WILLIAMS ET AL. *v.* BROWN ET AL. C. A. 5th Cir. [Probable jurisdiction noted, 439 U. S. 925];

No. 78-425. P. C. PFEIFFER Co., INC., ET AL. *v.* FORD ET AL. C. A. 5th Cir. [Certiorari granted, 439 U. S. 978];

No. 78-5420. PAYTON *v.* NEW YORK; and

No. 78-5421. RIDDICK *v.* NEW YORK. Ct. App. N. Y. [Probable jurisdiction noted, 439 U. S. 1044.] These cases are restored to the calendar for reargument.

No. 78-1006. BROWN, SECRETARY OF DEFENSE, ET AL. *v.* GLINES. C. A. 9th Cir. [Certiorari granted, 440 U. S. 957.] Motion of respondent for appointment of counsel granted, and it is ordered that David Michael Cobin, Esquire, of St. Paul, Minn., be appointed to serve as counsel for respondent in this case.

No. 78-6359. GREEN *v.* RALSTON, U. S. MAGISTRATE, ET AL. Motion for leave to file petition for writ of mandamus denied.

#### *Certiorari Denied*

No. 78-385. VOLPE ET AL. *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 578 F. 2d 1372.

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No. 78-1127. *BRADFORD v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 588 F. 2d 1235.

No. 78-1179. *GRANT ET AL. v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 582 F. 2d 1272.

No. 78-1206. *LATSHAW v. PENNSYLVANIA*. Sup. Ct. Pa. Certiorari denied. Reported below: 481 Pa. 298, 392 A. 2d 1301.

No. 78-1213. *PARIS v. COOPER ET AL.* Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 352 So. 2d 534.

No. 78-1221. *DANIELS v. KIESER*. C. A. 7th Cir. Certiorari denied. Reported below: 586 F. 2d 64.

No. 78-1222. *WESTERN COMMUNICATIONS, INC. v. FEDERAL COMMUNICATIONS COMMISSION ET AL.* C. A. D. C. Cir. Certiorari denied. Reported below: 191 U. S. App. D. C. 71, 589 F. 2d 594.

No. 78-1275. *RINN ET AL. v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 586 F. 2d 113.

No. 78-1278. *JOHN v. GOVERNMENT OF THE VIRGIN ISLANDS*. C. A. 3d Cir. Certiorari denied. Reported below: 588 F. 2d 820.

No. 78-1284. *BUB DAVIS PACKING Co., INC. v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 584 F. 2d 116.

No. 78-1288. *HIGGINS ET AL. v. MARSHALL, SECRETARY OF LABOR, ET AL.* C. A. D. C. Cir. Certiorari denied. Reported below: 190 U. S. App. D. C. 54, 584 F. 2d 1035.

No. 78-1308. *FLORIDA DEPARTMENT OF HEALTH AND REHABILITATIVE SERVICES v. CALIFANO, SECRETARY OF HEALTH, EDUCATION, AND WELFARE, ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 585 F. 2d 150.

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No. 78-1337. GILIBERTO, JUDGE, ET AL. *v.* COMPAGNIE NATIONALE AIR FRANCE ET AL. Sup. Ct. Ill. Certiorari denied. Reported below: 74 Ill. 2d 90, 383 N. E. 2d 977.

No. 78-1358. FRAZIER *v.* KAPLAN, JUDGE, ET AL. Dist. Ct. App. Fla., 4th Dist. Certiorari denied. Reported below: 359 So. 2d 1237.

No. 78-1368. CONSOLIDATED CARRIERS CORP. ET AL. *v.* CLOAK DRESS DRIVERS & HELPERS UNION LOCAL 102, INTERNATIONAL LADIES' GARMENT WORKERS' UNION. C. A. 2d Cir. Certiorari denied. Reported below: 594 F. 2d 851.

No. 78-1370. CALIFORNIA & HAWAIIAN SUGAR CO. ET AL. *v.* CALIFORNIA ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 588 F. 2d 1270.

No. 78-1376. DRESSER INDUSTRIES, INC. *v.* COMMUNITY TELEVISION SERVICES, INC. C. A. 8th Cir. Certiorari denied. Reported below: 586 F. 2d 637.

No. 78-1381. MIAMI COPPER COMPANY DIVISION, TENNESSEE CORP. *v.* TAX COMMISSION OF ARIZONA. Ct. App. Ariz. Certiorari denied. Reported below: 121 Ariz. 150, 589 P. 2d 24.

No. 78-1385. LEBOWITZ *v.* FLORIDA. Dist. Ct. App. Fla., 3d Dist. Certiorari denied. Reported below: 343 So. 2d 666.

No. 78-1392. HARRINGTON *v.* VANDALIA-BUTLER BOARD OF EDUCATION. C. A. 6th Cir. Certiorari denied. Reported below: 585 F. 2d 192.

No. 78-1427. ROSS ET AL. *v.* SWARTZBERG ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 590 F. 2d 337.

No. 78-1437. GOTTESMAN ET AL. *v.* GENERAL MOTORS CORP. ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 573 F. 2d 1290.



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No. 78-1456. *BAKER ET AL. v. ELCONA HOMES CORP. ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 588 F. 2d 551.

No. 78-1473. *PACKARD v. CITY OF VALLEJO.* Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 78-5552. *PATMAN v. UNITED STATES.* C. A. 5th Cir. Certiorari denied. Reported below: 557 F. 2d 1181.

No. 78-6007. *STEWART v. UNITED STATES.* C. A. 5th Cir. Certiorari denied. Reported below: 585 F. 2d 799.

No. 78-6090. *KINCAID v. COMMISSIONER OF FINANCE AND CONTROL OF CONNECTICUT ET AL.* App. Sess., Super. Ct. Conn. Certiorari denied.

No. 78-6181. *PRENZLER v. UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ARIZONA (KLEINMAN ET AL., REAL PARTIES IN INTEREST).* C. A. 9th Cir. Certiorari denied.

No. 78-6197. *SOBLOTNEY v. UNITED STATES.* C. A. 4th Cir. Certiorari denied.

No. 78-6214. *MASON v. UNITED STATES.* C. A. 3d Cir. Certiorari denied. Reported below: 588 F. 2d 824.

No. 78-6216. *FARIS v. UNITED STATES.* C. A. 3d Cir. Certiorari denied. Reported below: 591 F. 2d 1337.

No. 78-6221. *GALLAGHER v. UNITED STATES.* C. A. 3d Cir. Certiorari denied. Reported below: 591 F. 2d 1337.

No. 78-6226. *McGOWAN v. UNITED STATES;* and

No. 78-6227. *SWIDERSKI v. UNITED STATES.* C. A. D. C. Cir. Certiorari denied. Reported below: 193 U. S. App. D. C. 92, 593 F. 2d 1246.

No. 78-6244. *GANDOLFO v. UNITED STATES.* C. A. 5th Cir. Certiorari denied. Reported below: 577 F. 2d 955.

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No. 78-6250. *CRAWFORD v. JACKSON, CORRECTIONS DIRECTOR, ET AL.* C. A. D. C. Cir. Certiorari denied. Reported below: 191 U. S. App. D. C. 170, 589 F. 2d 693.

No. 78-6256. *SHEPARD v. OHIO.* Ct. App. Ohio, Champaign County. Certiorari denied.

No. 78-6258. *WALDRON v. UNITED STATES.* C. A. 1st Cir. Certiorari denied. Reported below: 590 F. 2d 33.

No. 78-6301. *CLEVELAND v. MARYLAND.* Ct. Sp. App. Md. Certiorari denied.

No. 78-6318. *APONTE v. SECRETARY OF HEALTH, EDUCATION, AND WELFARE.* C. A. 1st Cir. Certiorari denied. Reported below: 588 F. 2d 818.

No. 78-6325. *PHELPS v. COMMISSIONER OF CORRECTION ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 580 F. 2d 1049.

No. 78-6326. *PHELPS v. MARYLAND ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 580 F. 2d 1049.

No. 78-6338. *POSADA v. CLANON, MEDICAL FACILITY SUPERINTENDENT.* C. A. 9th Cir. Certiorari denied.

No. 78-6341. *ABRAM v. LOUISIANA.* Sup. Ct. La. Certiorari denied. Reported below: 353 So. 2d 1019.

No. 78-6342. *MILES v. BORDENKIRCHER, PENITENTIARY SUPERINTENDENT, ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 590 F. 2d 335.

No. 78-6343. *VAUGHN v. OREGON EX REL. JUVENILE DEPARTMENT OF MULTNOMAH COUNTY.* Ct. App. Ore. Certiorari denied.

No. 78-6344. *DOLEN v. TELEVISION STATION TV 12 ET AL.* C. A. 1st Cir. Certiorari denied.

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No. 78-6346. *PLEASANT v. WASHINGTON*. Ct. App. Wash. Certiorari denied. Reported below: 21 Wash. App. 177, 583 P. 2d 680.

No. 78-6353. *CYRUS v. INDIANA*. Sup. Ct. Ind. Certiorari denied. Reported below: 269 Ind. 461, 381 N. E. 2d 472.

No. 78-6360. *GREEN v. MISSOURI BOARD OF PROBATION AND PAROLE*. C. A. 8th Cir. Certiorari denied.

No. 78-6361. *CLOUDY v. SUPREME COURT OF INDIANA*. C. A. 7th Cir. Certiorari denied. Reported below: 594 F. 2d 867.

No. 78-6363. *HIGHTOWER v. JAGO, CORRECTIONAL SUPERINTENDENT*. C. A. 6th Cir. Certiorari denied. Reported below: 590 F. 2d 334.

No. 78-6365. *McMILLIAN v. TEXAS*. Ct. Crim. App. Tex. Certiorari denied. Reported below: 574 S. W. 2d 777.

No. 78-6366. *CLOUDY v. COURT OF APPEALS OF INDIANA*. C. A. 7th Cir. Certiorari denied. Reported below: 594 F. 2d 867.

No. 78-6372. *GINGRAS v. MASON ET AL.* C. A. 1st Cir. Certiorari denied.

No. 78-6404. *GOODWYN v. DeLUCA, U. S. ATTORNEY, ET AL.* C. A. 3d Cir. Certiorari denied.

No. 78-6408. *CARTER v. ROBERTSON*. C. A. 5th Cir. Certiorari denied.

No. 78-6419. *VAUGHN v. NORTH CAROLINA*. Sup. Ct. N. C. Certiorari denied. Reported below: 296 N. C. 167, 250 S. E. 2d 210.



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No. 78-6425. *GORDON v. UNITED STATES*. C. A. 1st Cir. Certiorari denied.

No. 78-6441. *BENNS v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 594 F. 2d 859.

No. 78-6448. *VOORHEES v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 593 F. 2d 346.

No. 78-6460. *HARVEY v. UNITED STATES*. Ct. App. D. C. Certiorari denied. Reported below: 395 A. 2d 92.

No. 78-6464. *MCCALL v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 592 F. 2d 1066.

No. 78-6465. *THORNTON v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 590 F. 2d 1359.

No. 78-6467. *LUDDINGTON v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 589 F. 2d 236.

No. 78-6471. *MORENO v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 588 F. 2d 490.

No. 78-6472. *DISILVESTRO v. VETERANS' ADMINISTRATION*. C. A. 2d Cir. Certiorari denied.

No. 78-6473. *ROBINSON v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 588 F. 2d 1030.

No. 78-6476. *WILSON v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 595 F. 2d 1215.

No. 78-6477. *HEREDIA-NARANJO v. UNITED STATES*. C. A. 9th Cir. Certiorari denied.

No. 78-6484. *MORRISON v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 595 F. 2d 1215.

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No. 78-6485. *MARCANTONI ET UX. v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 590 F. 2d 1324.

No. 78-6163. *WASHINGTON v. FLORIDA*. Sup. Ct. Fla. Certiorari denied. Reported below: 362 So. 2d 658.

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

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

*Rehearing Denied*

No. 76-6853. *RANDLE ET AL. v. BEAL, SECRETARY, DEPARTMENT OF PUBLIC WELFARE OF PENNSYLVANIA, ET AL.*, 440 U. S. 957;

No. 78-1209. *RICHARDSON ET AL. v. UNITED STATES*, 440 U. S. 947; and

No. 78-6154. *LOVALLO v. VETERANS' ADMINISTRATION ET AL.*, 440 U. S. 966. Petitions for rehearing denied.

No. 78-6035. *HERNANDEZ v. UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TEXAS*, 440 U. S. 973; and

No. 78-6048. *SPENKELINK v. WAINWRIGHT, SECRETARY, DEPARTMENT OF OFFENDER REHABILITATION OF FLORIDA*, 440 U. S. 976. Petitions for rehearing denied. MR. JUSTICE POWELL took no part in the consideration or decision of these petitions.

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*Dismissal Under Rule 60*

No. 78-1122. *GRAND LODGE OF THE INTERNATIONAL ASSOCIATION OF MACHINISTS & AEROSPACE WORKERS v. BENDA ET AL.* Certiorari dismissed under this Court's Rule 60. Reported below: 584 F. 2d 308.

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MAY 7, 1979

*Dismissal Under Rule 60*

No. 78-6167. *BAYLESS v. ESTELLE*, CORRECTIONS DIRECTOR. C. A. 5th Cir. Certiorari dismissed under this Court's Rule 60. Reported below: 583 F. 2d 730.

MAY 14, 1979

*Affirmed on Appeal*

No. 78-1166. *CHURCH OF SCIENTOLOGY OF CALIFORNIA ET AL. v. BLUMENTHAL*, SECRETARY OF THE TREASURY, ET AL. Affirmed on appeal from D. C. C. D. Cal. MR. JUSTICE BLACKMUN and MR. JUSTICE STEVENS would note probable jurisdiction and set case for oral argument. Reported below: 460 F. Supp. 56.

No. 78-1393. *CHERRY v. SECRETARY OF THE TREASURY*. Affirmed on appeal from D. C. S. D. N. Y. Reported below: 460 F. Supp. 606.

*Appeals Dismissed*

No. 78-895. *SATTERFIELD v. SUNNY DAY RESOURCES, INC.* Sup. Ct. Wyo. 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: 581 P. 2d 1386.

No. 78-1219. *MORRILL v. JANKLOW*, GOVERNOR OF SOUTH DAKOTA. Appeal from Sup. Ct. S. D. dismissed for want of substantial federal question. MR. JUSTICE BRENNAN, MR. JUSTICE WHITE, and MR. JUSTICE BLACKMUN would note probable jurisdiction and set case for oral argument. Reported below: — S. D. —, 271 N. W. 2d 356.

No. 78-1417. *HANSEN v. MINNESOTA STATE BOARD OF BAR EXAMINERS ET AL.* Appeal from Sup. Ct. Minn. dismissed for want of substantial federal question. Reported below: 275 N. W. 2d 790.



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No. 78-1508. *RUDDER ET AL. v. WISE COUNTY HOUSING AND REDEVELOPMENT AUTHORITY*. Appeal from Sup. Ct. Va. dismissed for want of substantial federal question. Reported below: 219 Va. 592, 249 S. E. 2d 177.

No. 78-1401. *CITY OF MIAMI v. ST. JOE PAPER CO. ET AL.* Appeal from Sup. Ct. Fla. dismissed for want of substantial federal question. Reported below: 364 So. 2d 439.

No. 78-1405. *THIES v. JOINT BAR ASSOCIATION GRIEVANCE COMMITTEE FOR THE SECOND AND ELEVENTH JUDICIAL DISTRICTS*. Appeal from Ct. App. N. Y. Motion of New York County Lawyers Assn. for leave to file a brief as *amicus curiae* granted. Appeal dismissed for want of substantial federal question. MR. JUSTICE BRENNAN and MR. JUSTICE POWELL would note probable jurisdiction and set case for oral argument. Reported below: 45 N. Y. 2d 865 and 924, 382 N. E. 2d 1351.

No. 78-5441. *ROBINSON, A MINOR, BY COE v. KOLSTAD ET AL.* Appeal from Sup. Ct. Wis. 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. Reported below: 84 Wis. 2d 579, 267 N. W. 2d 886.

*Certiorari Granted—Vacated and Remanded*

No. 78-1194. *REEVES, INC. v. KELLEY ET AL.* C. A. 8th Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Hughes v. Oklahoma*, ante, p. 322. Reported below: 586 F. 2d 1230.

No. 78-1375. *UNITED STATES v. SANTORA*. C. A. 9th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Dalia v. United States*, ante, p. 238. Reported below: 583 F. 2d 453.

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*Miscellaneous Orders*

No. A-929. *FRAZIER v. BARBERA*. Munic. Ct., Pasadena Jud. Dist., Cal. Application for stay, addressed to MR. JUSTICE MARSHALL and referred to the Court, denied.

No. A-955. *OLSON ET AL. v. UNITED STATES*. C. A. 5th Cir. Application for stay, addressed to MR. JUSTICE BRENNAN and referred to the Court, denied.

No. D-160. *IN RE DISBARMENT OF FODIMAN*. Aaron R. Fodiman of Arlington, Va., having requested to resign as a member of the Bar of this Court, it is ordered that his name be stricken from the roll of attorneys admitted to practice before the Bar of this Court. The rule to show cause, heretofore issued on February 26, 1979 [440 U. S. 932], is hereby discharged.

No. D-161. *IN RE DISBARMENT OF BONG HYUN KIM*. Bong Hyun Kim, of Chicago, Ill., having requested to resign as a member of the Bar of this Court, it is ordered that his name be stricken from the roll of attorneys admitted to practice before the Bar of this Court. The rule to show cause, heretofore issued on February 26, 1979 [440 U. S. 933], is hereby discharged.

No. D-168. *IN RE DISBARMENT OF POWELL*. Paul Lee Powell, of Chicago, Ill., having requested to resign as a member of the Bar of this Court, it is ordered that his name be stricken from the roll of attorneys admitted to practice before the Bar of this Court. The rule to show cause, heretofore issued on April 23, 1979 [*ante*, p. 920], is hereby discharged.

No. 77-1546. *STAFFORD, U. S. ATTORNEY, ET AL. v. BRIGGS ET AL.* C. A. D. C. Cir. [Certiorari granted, 439 U. S. 1113]; and

No. 78-303. *COLBY, DIRECTOR, CENTRAL INTELLIGENCE AGENCY, ET AL. v. DRIVER ET AL.* C. A. 1st Cir. [Certiorari granted, 439 U. S. 1113.] Cases are restored to calendar for reargument. MR. JUSTICE MARSHALL dissents. MR. JUSTICE WHITE took no part in the consideration or decision of these orders.

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No. 78-6543. *PAVAO v. ANDERSON, WARDEN*. Motion for leave to file petition for writ of habeas corpus denied.

No. 81, Orig. *KENTUCKY v. INDIANA ET AL.* It is ordered that the Honorable Robert Van Pelt, Senior Judge of the United States District Court for the District of Nebraska, 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 the 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.

The motion of Public Service Company of Indiana, Inc., for leave to intervene is referred to the Special Master. [For earlier order herein, see 440 U. S. 902.]

*Probable Jurisdiction Noted*

No. 78-1201. *MOBIL OIL CORP. v. COMMISSIONER OF TAXES OF VERMONT*. Appeal from Sup. Ct. Vt. Motions of Committee on State Taxation of the Council of State Chambers of Commerce and National Association of Manufacturers for leave to file briefs as *amici curiae* granted. Probable jurisdiction noted. MR. JUSTICE STEWART took no part in the consideration or decision of this appeal. Reported below: 136 Vt. 545, 394 A. 2d 1147.



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*Certiorari Granted*

No. 78-1175. *HATZLACHH SUPPLY Co., INC. v. UNITED STATES*. Ct. Cl. Certiorari granted. Reported below: 217 Ct. Cl. 423, 579 F. 2d 617.

No. 78-1202. *CHIARELLA v. UNITED STATES*. C. A. 2d Cir. Certiorari granted. Reported below: 588 F. 2d 1358.

No. 78-1248. *GTE SYLVANIA, INC., ET AL. v. CONSUMERS UNION OF THE UNITED STATES, INC., ET AL.* C. A. D. C. Cir. Certiorari granted. Reported below: 192 U. S. App. D. C. 93, 590 F. 2d 1209.

No. 78-1327. *BOEING Co. v. VAN GEMERT ET AL.* C. A. 2d Cir. Certiorari granted. Reported below: 590 F. 2d 433.

No. 78-1418. *BLOOMER v. LIBERTY MUTUAL INSURANCE Co.* C. A. 2d Cir. Certiorari granted. Reported below: 586 F. 2d 908.

No. 78-1455. *UNITED STATES v. GILLOCK*. C. A. 6th Cir. Certiorari granted. Reported below: 587 F. 2d 284.

No. 78-1501. *McLAIN ET AL. v. REAL ESTATE BOARD OF NEW ORLEANS, INC., ET AL.* C. A. 5th Cir. Certiorari granted. Reported below: 583 F. 2d 1315.

No. 78-1118. *FORSHAM ET AL. v. CALIFANO, SECRETARY OF HEALTH, EDUCATION, AND WELFARE, ET AL.* C. A. D. C. Cir. Certiorari granted, and case set for oral argument in tandem with No. 78-1088, *Kissinger v. Reporters Committee for Freedom of the Press*, and No. 78-1217, *Reporters Committee for Freedom of the Press v. Kissinger* [certiorari granted, *ante*, p. 904]. Reported below: 190 U. S. App. D. C. 231, 587 F. 2d 1128.

No. 78-1453. *UNITED STATES ET AL. v. EUGE*. C. A. 8th Cir. Motion of respondent for leave to proceed *in forma pauperis* and certiorari granted. Reported below: 587 F. 2d 25.

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*Certiorari Denied.* (See also No. 78-895, *supra*.)

No. 78-765. *MICHIGAN v. CONNER*. Ct. App. Mich. *Certiorari denied*.

No. 78-861. *GLASSCOCK v. TENNESSEE*. Ct. Crim. App. Tenn. *Certiorari denied*. Reported below: 570 S. W. 2d 354.

No. 78-1111. *SIELAFF ET AL. v. DREW ET AL.* C. A. 7th Cir. *Certiorari denied*. Reported below: 588 F. 2d 838.

No. 78-1176. *EXXON CORP. ET AL. v. FEDERAL TRADE COMMISSION ET AL.* C. A. D. C. Cir. *Certiorari denied*. Reported below: 191 U. S. App. D. C. 59, 589 F. 2d 582.

No. 78-1184. *BOTELER v. MISSISSIPPI*. Sup. Ct. Miss. *Certiorari denied*. Reported below: 363 So. 2d 279.

No. 78-1226. *OTTERBEIN v. UNITED STATES*. C. A. 4th Cir. *Certiorari denied*. Reported below: 588 F. 2d 1352.

No. 78-1239. *SAFIR v. BLACKWELL, ASSISTANT SECRETARY OF COMMERCE, ET AL.*; and

No. 78-1311. *SAFIR v. AMERICAN EXPORT LINES, INC., ET AL.* C. A. 2d Cir. *Certiorari denied*. Reported below: 579 F. 2d 742.

No. 78-1258. *SCHLANGER v. UNITED STATES ET AL.* C. A. 9th Cir. *Certiorari denied*. Reported below: 586 F. 2d 667.

No. 78-1259. *SHREEVES v. UNITED STATES*. Ct. App. D. C. *Certiorari denied*. Reported below: 395 A. 2d 774.

No. 78-1265. *VILLANUEVA v. IMMIGRATION AND NATURALIZATION SERVICE*. C. A. 3d Cir. *Certiorari denied*. Reported below: 588 F. 2d 825.

No. 78-1287. *AMERICAN MARITIME ASSN. v. BLUMENTHAL, SECRETARY OF THE TREASURY, ET AL.* C. A. D. C. Cir. *Certiorari denied*. Reported below: 192 U. S. App. D. C. 40, 590 F. 2d 1156.

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No. 78-1295. *BOTERO ET AL. v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 589 F. 2d 430.

No. 78-1296. *GIACALONE v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 588 F. 2d 1158.

No. 78-1299. *91.90 ACRES OF LANDS, SITUATE IN MONROE COUNTY, MISSOURI v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 586 F. 2d 79.

No. 78-1302. *WALL v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 590 F. 2d 245.

No. 78-1306. *EASTERN PHOTOGRAPHIC LABORATORIES, INC., ET AL. v. BRAUNSTEIN*. C. A. 2d Cir. Certiorari denied. Reported below: 600 F. 2d 335.

No. 78-1324. *JACKSON v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 595 F. 2d 1226.

No. 78-1329. *UNITED STATES v. NAVAJO TRIBE ET AL.* Ct. Cl. Certiorari denied. Reported below: 218 Ct. Cl. 11, 586 F. 2d 192.

No. 78-1345. *RYAN v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 594 F. 2d 853.

No. 78-1356. *MACOMB CONCRETE CORP. v. EARL DUBEY & SONS, INC., ET AL.* Ct. App. Mich. Certiorari denied. Reported below: 81 Mich. App. 662, 266 N. W. 2d 152.

No. 78-1359. *GUNDUY v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 598 F. 2d 610.

No. 78-1394. *PROFESSIONAL AIR TRAFFIC CONTROLLERS ORGANIZATION v. AIR TRANSPORT ASSOCIATION OF AMERICA*. C. A. 2d Cir. Certiorari denied. Reported below: 594 F. 2d 851.

No. 78-1408. *PROCELL v. LOUISIANA*. Sup. Ct. La. Certiorari denied. Reported below: 365 So. 2d 484.



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No. 78-1409. *WILLIAMS v. PORT AUTHORITY OF NEW YORK AND NEW JERSEY ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 584 F. 2d 974.

No. 78-1410. *HELDON v. PENNSYLVANIA.* Sup. Ct. Pa. Certiorari denied.

No. 78-1413. *SIMS, DBA BICENTENNIAL SHOP v. KIRO, INC.* Ct. App. Wash. Certiorari denied. Reported below: 20 Wash. App. 229, 580 P. 2d 642.

No. 78-1419. *BROCKETT, PROSECUTING ATTORNEY OF SPOKANE COUNTY v. SPOKANE ARCADES, INC., ET AL.* C. A. 9th Cir. Certiorari denied.

No. 78-1434. *WILSON v. OHIO.* Ct. App. Ohio, Franklin County. Certiorari denied.

No. 78-1439. *COHN ET AL. v. CITY OF NORWALK PLANNING AND ZONING COMMISSION ET AL.* Super. Ct. Conn., Fairfield County. Certiorari denied.

No. 78-1443. *STROUSE ET AL. v. WINTER.* Sup. Ct. Okla. Certiorari denied. Reported below: 589 P. 2d 217.

No. 78-1446. *BARNES v. CHESAPEAKE & OHIO RAILWAY Co.* Sup. Ct. Ky. Certiorari denied. Reported below: 593 S. W. 2d 510.

No. 78-1447. *STRAIN ET AL. v. TURNER ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 588 F. 2d 829.

No. 78-1450. *DALEY v. NEW JERSEY.* Super. Ct. N. J. Certiorari denied.

No. 78-1458. *PATROLMEN'S BENEVOLENT ASSOCIATION OF THE CITY OF NEW YORK, INC. v. CITY OF NEW YORK.* App. Div., Sup. Ct. N. Y., 1st Jud. Dept. Certiorari denied. Reported below: 64 App. Div. 2d 1038, 407 N. Y. S. 2d 771.

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No. 78-1459. *FEELINGS v. LEFEVRE, CORRECTIONAL SUPERINTENDENT*. C. A. 2d Cir. Certiorari denied. Reported below: 594 F. 2d 851.

No. 78-1460. *APPLE THEATRE, INC. v. CITY OF SEATTLE*. Sup. Ct. Wash. Certiorari denied. Reported below: 90 Wash. 2d 709, 585 P. 2d 1153.

No. 78-1471. *LITTLE v. UNITED STATES*.; and

No. 78-6423. *ROBERTSON v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 588 F. 2d 575.

No. 78-1476. *LYNCH v. INDIANA STATE UNIVERSITY BOARD OF TRUSTEES*. Ct. App. Ind. Certiorari denied. Reported below: — Ind. App. —, 378 N. E. 2d 900.

No. 78-1490. *GRAHAM ET AL. v. BUCKS COUNTY BOARD OF ASSESSMENT APPEALS*. Sup. Ct. Pa. Certiorari denied.

No. 78-1497. *HEAVRIN v. KENTUCKY BAR ASSN.* Sup. Ct. Ky. Certiorari denied. Reported below: 573 S. W. 2d 916.

No. 78-1503. *SOCIALIST WORKERS PARTY ET AL. v. EU, SECRETARY OF STATE OF CALIFORNIA*. C. A. 9th Cir. Certiorari denied. Reported below: 591 F. 2d 1252.

No. 78-1517. *HATHORN, MAYOR OF LOUISVILLE, ET AL. v. LOVORN ET AL.* Sup. Ct. Miss. Certiorari denied. Reported below: 365 So. 2d 947.

No. 78-1525. *NOWLIN v. CITY OF PEARL, MISSISSIPPI*. Sup. Ct. Miss. Certiorari denied. Reported below: 365 So. 2d 952.

No. 78-1528. *SCALES v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 594 F. 2d 558.

No. 78-1532. *MERCURI v. UNITED STATES*. C. A. 1st Cir. Certiorari denied. Reported below: 595 F. 2d 1206.

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No. 78-1543. *SPERLING v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 595 F. 2d 1209.

No. 78-1563. *HENDERSON v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 591 F. 2d 1344.

No. 78-1565. *ASPURU ET AL. v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 588 F. 2d 490.

No. 78-1572. *HERRING v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 590 F. 2d 332.

No. 78-1574. *LINARES ET AL. v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 588 F. 2d 490.

No. 78-1594. *COHEN v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 594 F. 2d 855.

No. 78-5968. *SPEECH v. UNITED STATES*;

No. 78-6149. *WILSON v. UNITED STATES*; and

No. 78-6161. *JONES v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 593 F. 2d 553.

No. 78-5992. *FORD v. ARKANSAS*. Sup. Ct. Ark. Certiorari denied. Reported below: 264 Ark. 141, 569 S. W. 2d 105.

No. 78-6050. *HAUCK v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 586 F. 2d 1296.

No. 78-6101. *ROGERS v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 588 F. 2d 831.

No. 78-6129. *CLENNY v. TENNESSEE*. Ct. Crim. App. Tenn. Certiorari denied. Reported below: 576 S. W. 2d 12.

No. 78-6137. *CANNON v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 582 F. 2d 1277.

No. 78-6176. *ROBINSON v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 585 F. 2d 274.



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No. 78-6194. *HARRIES v. MISSISSIPPI*. Sup. Ct. Miss. Certiorari denied. Reported below: 361 So. 2d 989.

No. 78-6220. *PITTS v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 588 F. 2d 102.

No. 78-6222. *WARRINGTON v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 590 F. 2d 338.

No. 78-6243. *SIMMS v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 559 F. 2d 28.

No. 78-6248. *PETERS v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 588 F. 2d 1353.

No. 78-6255. *PARSELLS v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 591 F. 2d 1337.

No. 78-6271. *ZEIGLER v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 595 F. 2d 1227.

No. 78-6288. *BLACKBURN v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 595 F. 2d 1226.

No. 78-6291. *GOMEZ v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 593 F. 2d 210.

No. 78-6293. *JOHNSON v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 573 F. 2d 1310.

No. 78-6300. *FANNON ET AL. v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 590 F. 2d 794.

No. 78-6315. *HODGES ET AL. v. GOVERNMENT OF THE CANAL ZONE*. C. A. 5th Cir. Certiorari denied. Reported below: 589 F. 2d 207.

No. 78-6376. *LANTRIP v. ESTELLE, CORRECTIONS DIRECTOR, ET AL.* C. A. 5th Cir. Certiorari denied.

No. 78-6381. *WARDEN v. KANSAS*. Sup. Ct. Kan. Certiorari denied. Reported below: 224 Kan. 705, 585 P. 2d 1038.

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No. 78-6385. *ROBERTS v. JAGO*, CORRECTIONAL SUPERINTENDENT. C. A. 6th Cir. Certiorari denied. Reported below: 590 F. 2d 335.

No. 78-6393. *MILES v. McCONKEY*. Ct. App. D. C. Certiorari denied.

No. 78-6394. *BALASSY v. COURT OF APPEAL OF CALIFORNIA, SECOND APPELLATE DISTRICT*. C. A. 9th Cir. Certiorari denied.

No. 78-6395. *BRADFORD v. DISTRICT OF COLUMBIA HACKER'S LICENSE APPEAL BOARD*. Ct. App. D. C. Certiorari denied. Reported below: 396 A. 2d 988.

No. 78-6414. *MAY v. OHIO*. Sup. Ct. Ohio. Certiorari denied.

No. 78-6415. *TRAVISON v. NEW YORK*. Ct. App. N. Y. Certiorari denied. Reported below: 46 N. Y. 2d 758, 386 N. E. 2d 256.

No. 78-6416. *HARRISON v. ILLINOIS ET AL.* C. A. 7th Cir. Certiorari denied. Reported below: 590 F. 2d 338.

No. 78-6417. *GREEN v. ESTELLE*, CORRECTIONS DIRECTOR. C. A. 5th Cir. Certiorari denied.

No. 78-6421. *VAN ORDEN v. ARIZONA BOARD OF PARDONS AND PAROLES*. Sup. Ct. Ariz. Certiorari denied.

No. 78-6427. *COLE v. QUICK*, CORRECTIONAL SUPERINTENDENT. C. A. 2d Cir. Certiorari denied. Reported below: 598 F. 2d 609.

No. 78-6430. *SMITH v. SUPERINTENDENT, POWHATAN CORRECTIONAL CENTER*. Sup. Ct. Va. Certiorari denied.

No. 78-6433. *HERRERA v. ARIZONA*. Sup. Ct. Ariz. Certiorari denied. Reported below: 121 Ariz. 12, 588 P. 2d 305.

No. 78-6434. *YOUNG, AKA CLOUDY v. CONN.* Sup. Ct. Ind. Certiorari denied.

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No. 78-6435. *YOUNG, AKA CLOUDY v. INDIANA*. Sup. Ct. Ind. Certiorari denied.

No. 78-6436. *YOUNG, AKA CLOUDY v. GARRETTSON*. Sup. Ct. Ind. Certiorari denied.

No. 78-6442. *BROWN v. BARRY, MAYOR OF WASHINGTON, D. C., ET AL.* Ct. App. D. C. Certiorari denied.

No. 78-6452. *KINGSBURY v. UNITED STATES*. Ct. App. D. C. Certiorari denied.

No. 78-6494. *MORTON v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 591 F. 2d 483.

No. 78-6498. *PEREZ-LOPEZ v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 595 F. 2d 1230.

No. 78-6499. *ROBINSON v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 591 F. 2d 1342.

No. 78-6501. *FRANKLIN v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 589 F. 2d 192.

No. 78-6506. *BATTLE v. UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF KENTUCKY*. C. A. 6th Cir. Certiorari denied.

No. 78-6507. *MURRELL v. McCARTER, TRUSTEE IN BANKRUPTCY*. C. A. 8th Cir. Certiorari denied. Reported below: 588 F. 2d 1207.

No. 78-6510. *GOFF v. HILTON, PRISON SUPERINTENDENT, ET AL.* C. A. 3d Cir. Certiorari denied.

No. 78-6513. *YOUNG BUFFALO, AKA ZAUNER v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 591 F. 2d 506.

No. 78-6520. *DAVIS v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 589 F. 2d 904.



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No. 78-6522. DINSIO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 595 F. 2d 1229.

No. 78-6525. GONZALEZ *v.* UNITED STATES ET AL. C. A. 1st Cir. Certiorari denied.

No. 78-6533. DIXON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 592 F. 2d 329.

No. 78-6535. GORE *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 594 F. 2d 905.

No. 78-6536. WOODALL *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 591 F. 2d 1345.

No. 78-6539. IN RE A. O. S. Ct. App. D. C. Certiorari denied.

No. 78-6544. RODES *v.* PRISTO ET AL. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 61 Ill. App. 3d 599, 377 N. E. 2d 1190.

No. 78-6558. JONES *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 592 F. 2d 1038.

No. 78-6559. BARRON *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 594 F. 2d 1345.

No. 78-1068. PENNSYLVANIA *v.* FANT. Sup. Ct. Pa. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 480 Pa. 586, 391 A. 2d 1040.

No. 78-1072. FORD MOTOR CREDIT CO. *v.* EDMONDSON. C. A. 5th Cir. Motion of National Consumer Finance Assn. et al. for leave to file a brief as *amici curiae* granted. Certiorari denied. MR. JUSTICE WHITE would grant certiorari. Reported below: 577 F. 2d 291.

No. 78-1113. ROSAS *v.* CALIFORNIA. Ct. App. Cal., 1st App. Dist. Certiorari denied. MR. JUSTICE BRENNAN would grant certiorari.

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No. 78-1214. *P. P. G., INC., ET AL. v. CALIFORNIA*. App. Dept., Super. Ct. Cal., County of Los Angeles. Certiorari denied. MR. JUSTICE BRENNAN would grant certiorari.

No. 78-1196. *COUNTY OF THURSTON, NEBRASKA v. ANDRUS, SECRETARY OF THE INTERIOR, ET AL.* C. A. 8th Cir. Certiorari denied. MR. JUSTICE BLACKMUN would grant certiorari. Reported below: 586 F. 2d 1212.

No. 78-1270. *McDANIEL v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. MR. JUSTICE BRENNAN and MR. JUSTICE WHITE would grant certiorari. Reported below: 574 F. 2d 1224.

No. 78-1316. *FLEX-A-LITE CORP. v. SCHWITZER DIVISION, WALLACE-MURRAY CORP.* C. A. 7th Cir. Certiorari denied. MR. JUSTICE BRENNAN and MR. JUSTICE WHITE would grant certiorari. Reported below: 588 F. 2d 835.

No. 78-1298. *BAIRD ET AL. v. PRATT, COMMISSIONER, DEPARTMENT OF PUBLIC WELFARE OF MASSACHUSETTS*; and

No. 78-1430. *PRETERM, INC., ET AL. v. KING, GOVERNOR OF MASSACHUSETTS, ET AL.* C. A. 1st Cir. Motions of Legal Defense Fund for Unborn Children for leave to file briefs as *amicus curiae* denied. Motions to appoint Alan Ernest as counsel for children unborn and born alive denied. Certiorari denied. Reported below: 591 F. 2d 121.

No. 78-1313. *GATEWAY BOOKS, INC., ET AL. v. JACKSON, MAYOR OF ATLANTA, ET AL.* Sup. Ct. Ga. Certiorari denied. MR. JUSTICE BRENNAN and MR. JUSTICE STEWART would grant certiorari. Reported below: 242 Ga. 214, 248 S. E. 2d 623.

No. 78-1431. *JOHNSON OIL Co., INC. v. MOUNTAIN FUEL SUPPLY Co.* C. A. 10th Cir. Certiorari denied. MR. JUSTICE STEWART took no part in the consideration or decision of this petition. Reported below: 586 F. 2d 1375.

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No. 78-6073. *BILES v. WATKINS*, CORRECTIONS COMMISSIONER. Sup. Ct. Miss. Certiorari denied.

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

Petitioner was convicted of capital felony murder under § 97-3-19 (2)(e) of the Mississippi Code of 1972: "The killing of a human being . . . [w]hen done with or without any design to effect death, by any person engaged in the commission of the crime of . . . kidnapping . . . ." The Mississippi Supreme Court reversed the felony-murder conviction, finding insufficient proof of the crime of kidnapping. *Biles v. State*, 338 So. 2d 1004 (1976), cert. denied, 431 U. S. 940 (1977). Nonetheless, on the ground that the evidence was sufficient to sustain a conviction for the "lesser included offense" of "simple" murder, the court affirmed as to guilt and remanded for resentencing. 338 So. 2d, at 1005. Simple murder is defined in relevant part under § 97-3-19 (1)(a) as "[t]he killing of a human being . . . [w]hen done with deliberate design to effect the death of the person killed . . . ." Petitioner subsequently filed a pleading in the Mississippi Supreme Court that was treated as a petition for writ of error *coram nobis* and was denied without written opinion. Petitioner here seeks a writ of certiorari to review that judgment.

Whatever the phrase "lesser included offense" may connote under Mississippi law, it is apparent from the relevant Mississippi statutes that capital murder may be committed "without any design to effect death," while simple murder requires "a deliberate design to effect . . . death." Although overturning petitioner's conviction for capital murder, the Mississippi Supreme Court, finding evidence of the necessary intent to kill, found petitioner guilty of simple murder and to this extent affirmed the conviction. Petitioner, however, was not tried by the jury for simple murder, and the judgment of the Mississippi court would appear infirm under *Cole v. Arkansas*,



333 U. S. 196, 201 (1948), where the Court held that "[i]t is as much a violation of due process to send an accused to prison following conviction of a charge on which he was never tried as it would be to convict him upon a charge that was never made."<sup>1</sup> Further, the right to a jury trial is rendered nugatory where an appellate court overturns the verdict on the only offense found by the jury to have been committed and imposes a conviction for an offense that includes an essential element not necessarily found by the jury. On the basis of the statutory definitions of the crimes involved, it appears that exactly that might have happened here.

It is true as the State contends that regardless of what the statutes say, the trial court, though it refused to give a direct simple-murder instruction, incorporated that instruction in one of its capital felony-murder instructions.<sup>2</sup> Another capital

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<sup>1</sup> In *Presnell v. Georgia*, 439 U. S. 14 (1978), we recently dealt with a somewhat similar situation. The State Supreme Court in that case had upheld the jury's imposition of the death penalty on the ground that the killing in question occurred while Presnell was engaged in the commission of the offense of kidnaping with bodily injury. This conclusion was based on the court's belief that there was sufficient evidence of forcible rape, which established the element of bodily harm. Because the jury had not based its penalty determination on this theory and had not made the key finding of forcible rape, we found that "fundamental principles of procedural fairness" had been violated, even though the indictment charged forcible rape and the jury was instructed on it. *Id.*, at 16. That case is quite similar to this in that the jury returned a verdict of guilty of "rape," but that verdict was an unreliable indication of a finding of forcible rape because the jury had also been instructed on statutory rape. *Id.*, at 15 n. 1.

<sup>2</sup> Instruction 2-S stated:

"The Court instructs the jury that murder is the killing of a human being, without authority of law, by any means, or in any manner, when done with a deliberate design to effect the death of the person killed, and that if you believe from the evidence in this case beyond a reasonable doubt that the defendant did on or about the 18th day of February, 1975 unlawfully, wilfully, feloniously and of his malice aforethought, then and

felony-murder instruction,<sup>3</sup> however, permitted guilt to be found if petitioner acted "either with or without deliberate design or intent [to] shoot, kill and murder . . ." The State argues that even under the latter instruction, when considered as a whole, the jury would have realized that all the elements of simple murder had to be found. But it appears just as likely that when the jury convicted of capital murder, it heeded the direction that it could do so even if petitioner acted "without deliberate design or intent," and there is no way to know which course the jury followed. One course, however, would mean that the State Supreme Court's action was constitutionally forbidden, and in these circumstances the conviction cannot stand. See *Eaton v. Tulsa*, 415 U. S. 697, 699 n. (1974); *Williams v. North Carolina*, 317 U. S. 287, 291—

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there, kill and murder one Henry Muller a human being, while he, the said Billy Glen Biles, was, then and there, engaged in the commission of kidnapping the said Henry Muller, by forcing the said Henry Muller to drive him the said Billy Glen Biles, at gun point, and do his bidding, then in that event, the defendant, Billy Glen Biles, is Guilty of Capital Murder, and it shall be your sworn duty to find the defendant guilty of Capital Murder."

<sup>3</sup> Instruction 5-S stated:

"The court instructs the jury that Capital Murder is the killing of a human being without authority of law, by any means or in any manner when done with, or without a deliberate design or intent to effect the death of the person killed, when said killing is done while engaged in the perpetration or commission of the crime of kidnapping. Therefore, the court further, instructs the jury that if you believe from the evidence in this case, beyond a reasonable doubt that the defendant, Billy Glen Biles, on the 18th day of February 1975, in Jackson County, Mississippi did unlawfully, wilfully and feloniously, with a design to kidnap Henry Muller, force the said Henry Muller to drive him and do his bidding, and while so engaged in kidnapping the said Henry Muller, the said Billy Glen Biles, did wilfully, unlawfully, feloniously and of his malice aforethought, either with or without deliberate design or intent, shoot, kill and murder the said Henry Muller, a human being, then in that event, it shall be your sworn duty to find the defendant guilty of capital murder."

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292 (1942); *Stromberg v. California*, 283 U. S. 359, 367-368 (1931).

Accordingly, I dissent from denial of the petition for certiorari.

No. 78-6225. *VOYLES v. MISSISSIPPI*. Sup. Ct. Miss.; and

No. 78-6371. *SONGER v. FLORIDA*. Sup. Ct. Fla. Certiorari denied. Reported below: No. 78-6225, 362 So. 2d 1236; No. 78-6371, 365 So. 2d 696.

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. 78-6429. *HARVARD v. FLORIDA*. Sup. Ct. Fla. Motion of petitioner to defer consideration of petition for writ of certiorari and certiorari denied.

### *Rehearing Denied*

No. 77-1444. *JOHNSON v. ABRAMS, ATTORNEY GENERAL OF NEW YORK, ET AL.*, 440 U. S. 945;

No. 77-1618. *LEIS ET AL. v. FLYNT ET AL.*, 439 U. S. 438;

No. 78-1026. *KLINGAMAN, T/A BANNER SIGHTSEEING CO., ET AL. v. SOMMERS*, 440 U. S. 959;

No. 78-1034. *EVANS v. ANDREJKO ET AL.*, 440 U. S. 916;

No. 78-1047. *HORVAT ET AL. v. COMMISSIONER OF INTERNAL REVENUE*, 440 U. S. 959;

No. 78-1180. *ROSENTHAL v. ATTORNEY REGISTRATION AND DISCIPLINARY COMMISSION OF ILLINOIS*, 440 U. S. 961;

No. 78-1193. *CARNOW v. ATTORNEY REGISTRATION AND DISCIPLINARY COMMISSION OF ILLINOIS*, 440 U. S. 961; and

No. 78-5844. *FARRELL v. JOHNSON*, 440 U. S. 952. Petitions for rehearing denied. MR. JUSTICE POWELL took no part in the consideration or decision of these petitions.



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No. 78-1188. *SPICKLER v. BRENGELMANN ET UX.*, 440 U. S. 971;

No. 78-1225. *ETKES v. BARTELL MEDIA CORP. ET AL.*, 440 U. S. 978;

No. 78-5916. *VEAL v. ILLINOIS*, *ante*, p. 908;

No. 78-6089. *BLANTON v. ENGLE*, CORRECTIONAL SUPERINTENDENT, ET AL., 440 U. S. 979;

No. 78-6143. *JAWA v. FAYETTEVILLE STATE UNIVERSITY ET AL.*, 440 U. S. 974;

No. 78-6169. *HOHENSEE v. SPADINE*, 440 U. S. 974;

No. 78-6190. *DELESPINE v. ESTELLE*, CORRECTIONS DIRECTOR, 440 U. S. 984;

No. 78-6192. *WOOD v. JEFFES*, CORRECTIONAL SUPERINTENDENT, ET AL., 440 U. S. 984;

No. 78-6290. *ROWAN v. UNITED STATES*, 440 U. S. 976; and

No. 78-6348. *GORDON v. UNITED STATES*, *ante*, p. 912. Petitions for rehearing denied. MR. JUSTICE POWELL took no part in the consideration or decision of these petitions.

No. 78-5535. *BODDE v. TEXAS*, 440 U. S. 968. Motion for leave to file petition for rehearing denied.

MAY 17, 1979

*Dismissal Under Rule 60*

No. 78-1400. *COWLES BROADCASTING, INC., ET AL. v. CENTRAL FLORIDA ENTERPRISES, INC., ET AL.* C. A. D. C. Cir. Certiorari dismissed under this Court's Rule 60.

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*Dismissal Under Rule 60*

No. 78-1300. *GENERAL WAREHOUSEMEN & HELPERS LOCAL 767 v. STANDARD BRANDS, INC.* C. A. 5th Cir. Certiorari dismissed under this Court's Rule 60. Reported below: 579 F. 2d 1282.

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*Appeal Dismissed*

No. 78-1314. *SPENCER v. SPENCER*. Appeal from Ct. App. N. 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: 37 N. C. App. 481, 246 S. E. 2d 805.

*Miscellaneous Orders*

No. A-946. *BENEFIELD v. FLORIDA*. Application to continue stay of mandate of the Supreme Court of Florida, addressed to MR. JUSTICE MARSHALL and referred to the Court, denied.

No. A-949 (78-6620). *CARDILLO v. UNITED STATES PAROLE COMMISSION ET AL.* C. A. 3d Cir. Application for release from custody, addressed to MR. JUSTICE STEWART and referred to the Court, denied.

No. A-957. *BEHNKE v. COMMITTEE ON PROFESSIONAL ETHICS AND CONDUCT OF IOWA STATE BAR ASSN.* Sup. Ct. Iowa. Application for stay of disciplinary sentence, presented to MR. JUSTICE BLACKMUN, and by him referred to the Court, denied. MR. JUSTICE BLACKMUN would grant the application.

No. A-970. *HAYNIE v. UNITED STATES*. C. A. 4th Cir. Application for bail pending appeal, presented to THE CHIEF JUSTICE, and by him referred to the Court, denied.

No. A-995. *GOMES v. RHODE ISLAND INTERSCHOLASTIC LEAGUE ET AL.* Application to vacate stay entered by the United States Court of Appeals for the First Circuit, presented to MR. JUSTICE BRENNAN, and by him referred to the Court, denied.

No. D-137. *IN RE DISBARMENT OF GILBERT*. Disbarment entered. [For earlier order herein, see 439 U. S. 905.]

No. D-156. *IN RE DISBARMENT OF FALK*. Disbarment entered. [For earlier order herein, see 439 U. S. 1124.]

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No. D-163. *IN RE DISBARMENT OF REEDY*. James Phillip Reedy, of Pompano Beach, Fla., having requested to resign as a member of the Bar of this Court, it is ordered that his name be stricken from the roll of attorneys admitted to practice before the Bar of this Court. The rule to show cause, heretofore issued on April 23, 1979 [*ante*, p. 919], is hereby discharged.

No. 78, Orig. *CALIFORNIA v. ARIZONA ET AL.* It is ordered that Honorable Roy W. Harper, Senior Judge for the United States District Court for the Eastern and Western Districts 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 the same effect as if originally made by the Court. [For earlier order herein, see 439 U. S. 812.]

No. 77-1511. *CALIFANO, SECRETARY OF HEALTH, EDUCATION, AND WELFARE v. YAMASAKI ET AL.* C. A. 9th Cir. [Certiorari granted, 439 U. S. 816.] Motion for leave to substitute Nancy Yamasaki in place of Evelyn Elliott, deceased, as a party respondent, granted.



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No. 78-1155. *VITEK, CORRECTIONAL DIRECTOR, ET AL. v. JONES*. D. C. Neb. [Probable jurisdiction postponed, *ante*, p. 922.] Motion for appointment of counsel granted, and it is ordered that Thomas A. Wurtz, Esquire, of Lincoln, Neb., be appointed to serve as counsel for appellee in this case.

No. 78-6595. *NICHOLAS v. FENTON, WARDEN, ET AL.* Motion for leave to file petition for writ of habeas corpus denied.

*Probable Jurisdiction Noted or Postponed*

No. 78-1268. *MARTINEZ ET AL. v. CALIFORNIA ET AL.* Appeal from Ct. App. Cal., 4th App. Dist. Probable jurisdiction noted. Reported below: 85 Cal. App. 3d 430, 149 Cal. Rptr. 519.

No. 78-1513. *UNITED STATES v. CLARK, GUARDIAN*. Appeal from Ct. Cl. Further consideration of question of jurisdiction postponed to hearing of case on the merits. Reported below: — Ct. Cl. —, 590 F. 2d 343.

*Certiorari Granted*

No. 78-1007. *FULLILOVE ET AL. v. KREPS, SECRETARY OF COMMERCE, ET AL.* C. A. 2d Cir. Certiorari granted. Reported below: 584 F. 2d 600.

No. 78-6386. *RUMMEL v. ESTELLE, CORRECTIONS DIRECTOR*. C. A. 5th Cir. Motion of petitioner for leave to proceed *in forma pauperis* and certiorari granted. Reported below: 587 F. 2d 651.

*Certiorari Denied.* (See also No. 78-1314, *supra*.)

No. 77-6443. *KRAEMER v. MENTAL HEALTH BOARD OF NEBRASKA ET AL.* Sup. Ct. Neb. Certiorari denied. Reported below: 199 Neb. 785, 261 N. W. 2d 626.

No. 78-1279. *ARABIAN ET AL. v. DALEY ET AL.* C. A. 1st Cir. Certiorari denied.

No. 78-1341. *WALLS v. TUBBS*. C. A. 5th Cir. Certiorari denied. Reported below: 582 F. 2d 39.

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No. 78-1319. *SOUTH DAKOTA v. ADAMS, SECRETARY OF TRANSPORTATION, ET AL.* C. A. 8th Cir. Certiorari denied. Reported below: 587 F. 2d 915.

No. 78-1342. *BLACKBURN ET AL. v. MINOR.* C. A. 5th Cir. Certiorari denied. Reported below: 582 F. 2d 39.

No. 78-1365. *HOUGH ET AL. v. UNITED STATES.* C. A. 5th Cir. Certiorari denied. Reported below: 586 F. 2d 841.

No. 78-1384. *PROESEL ET AL. v. UNITED STATES.* C. A. 7th Cir. Certiorari denied. Reported below: 585 F. 2d 295.

No. 78-1389. *DYAR v. UNITED STATES; and*

No. 78-1415. *HALL v. UNITED STATES.* C. A. 5th Cir. Certiorari denied. Reported below: 587 F. 2d 177.

No. 78-1406. *MCCARTHY ET UX. v. UNITED STATES.* C. A. 6th Cir. Certiorari denied. Reported below: 590 F. 2d 336.

No. 78-1429. *COSTANZO v. UNITED STATES.* C. A. 3d Cir. Certiorari denied. Reported below: 591 F. 2d 1337.

No. 78-1475. *PENCE v. BROWN, SECRETARY OF DEFENSE, ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 590 F. 2d 335.

No. 78-1478. *JAFFEE ET AL. v. UNITED STATES.* C. A. 3d Cir. Certiorari denied. Reported below: 592 F. 2d 712.

No. 78-1481. *GOOD GOVERNMENT GROUP OF SEAL BEACH, INC., ET AL. v. HOGARD.* Sup. Ct. Cal. Certiorari denied. Reported below: 22 Cal. 3d 672, 586 P. 2d 572.

No. 78-1488. *BRADFORD COAL Co., INC. v. BAUGHMAN ET AL.* C. A. 3d Cir. Certiorari denied. Reported below: 592 F. 2d 215.

No. 78-1489. *McNULTY v. HAWAII.* Sup. Ct. Hawaii. Certiorari denied. Reported below: 60 Haw. 259, 588 P. 2d 438.

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No. 78-1507. *RICKMAN v. MODERN AMERICAN MORTGAGE CORP. ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 583 F. 2d 155.

No. 78-1509. *KARABATSOS v. VANDER ZEE.* C. A. D. C. Cir. Certiorari denied. Reported below: 191 U. S. App. D. C. 200, 589 F. 2d 723.

No. 78-1510. *BINDER v. OFFICIAL CREDITORS' COMMITTEE.* C. A. 2d Cir. Certiorari denied. Reported below: 595 F. 2d 1208.

No. 78-1511. *MURPHY ET AL. v. BOARD OF EDUCATION OF THE CITY OF ST. LOUIS ET AL.* C. A. 8th Cir. Certiorari denied. Reported below: 594 F. 2d 869.

No. 78-1530. *MILLER ET AL. v. FEDERAL LAND BANK OF SPOKANE.* C. A. 9th Cir. Certiorari denied. Reported below: 587 F. 2d 415.

No. 78-1624. *ANDREWS ET AL. v. UNITED STATES;*

No. 78-6568. *HALL v. UNITED STATES;* and

No. 78-6579. *MARTIN v. UNITED STATES.* C. A. 9th Cir. Certiorari denied. Reported below: 599 F. 2d 880.

No. 78-1641. *PARKER v. UNITED STATES.* C. A. 5th Cir. Certiorari denied. Reported below: 586 F. 2d 422.

No. 78-6144. *MITCHELL v. ESTELLE, CORRECTIONS DIRECTOR.* C. A. 5th Cir. Certiorari denied. Reported below: 586 F. 2d 840.

No. 78-6204. *CLAYTON v. UNITED STATES;* and

No. 78-6304. *DAVIS ET AL. v. UNITED STATES.* C. A. 5th Cir. Certiorari denied. Reported below: 582 F. 2d 947.

No. 78-6218. *OLIPHANT v. UNITED STATES.* C. A. 2d Cir. Certiorari denied. Reported below: 594 F. 2d 853.

No. 78-6235. *BARKSDALE v. SIELAFF.* C. A. 7th Cir. Certiorari denied. Reported below: 585 F. 2d 288.



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No. 78-6205. *RAICEVICH v. ILLINOIS*. App. Ct. Ill., 3d Dist. Certiorari denied. Reported below: 61 Ill. App. 3d 143, 377 N. E. 2d 1266.

No. 78-6240. *CARNEY v. CALIFORNIA*. Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 78-6260. *ORDONEZ v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 588 F. 2d 448.

No. 78-6308. *RECTOR v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 538 F. 2d 223.

No. 78-6330. *VELEZ v. SECRETARY OF HEALTH, EDUCATION, AND WELFARE*. C. A. 1st Cir. Certiorari denied. Reported below: 588 F. 2d 818.

No. 78-6340. *NEISWENDER v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 590 F. 2d 1269.

No. 78-6349. *JONES v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 594 F. 2d 243.

No. 78-6350. *SREMANIAK v. UNITED STATES*. Ct. Cl. Certiorari denied. Reported below: 218 Ct. Cl. 746, 590 F. 2d 344.

No. 78-6354. *POTESTIO v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 594 F. 2d 853.

No. 78-6356. *FIELDS v. UNITED STATES*. C. A. D. C. Cir. Certiorari denied. Reported below: 191 U. S. App. D. C. 213, 589 F. 2d 1116.

No. 78-6379. *HOWE ET AL. v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 591 F. 2d 454.

No. 78-6418. *BLOETH v. HENDERSON, CORRECTIONAL SUPER-INTENDENT*. C. A. 2d Cir. Certiorari denied.

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No. 78-6440. *HENDRICKS v. FLORIDA*. Dist. Ct. App. Fla., 3d Dist. Certiorari denied. Reported below: 360 So. 2d 1119.

No. 78-6444. *SMITH v. KANSAS*. Sup. Ct. Kan. Certiorari denied. Reported below: 224 Kan. 662, 585 P. 2d 1006; 225 Kan. 199, 588 P. 2d 953.

No. 78-6445. *LINEBARGER v. OKLAHOMA*. Ct. Crim. App. Okla. Certiorari denied.

No. 78-6446. *JENNINGS, AKA ABDULLAH v. OKLAHOMA ET AL.* Ct. Crim. App. Okla. Certiorari denied.

No. 78-6449. *WEBB v. BALSON, STATE HOSPITAL SUPERINTENDENT*. C. A. 6th Cir. Certiorari denied. Reported below: 595 F. 2d 1227.

No. 78-6451. *REEVES v. ARKANSAS*. Sup. Ct. Ark. Certiorari denied. Reported below: 264 Ark. 622, 574 S. W. 2d 647.

No. 78-6453. *DAVIS v. BROWN*. Sup. Ct. Fla. Certiorari denied. Reported below: 366 So. 2d 411.

No. 78-6455. *VAN CLIFF v. PENNSYLVANIA*. Sup. Ct. Pa. Certiorari denied. Reported below: 483 Pa. 576, 397 A. 2d 1173.

No. 78-6461. *PLEASANT v. CALIFORNIA*. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 78-6463. *CARTER v. NORTH CAROLINA*. Sup. Ct. N. C. Certiorari denied. Reported below: 296 N. C. 344, 250 S. E. 2d 263.

No. 78-6470. *WILLS ET AL. v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 593 F. 2d 285.

No. 78-6475. *HAUGHEY v. NEW YORK STATE BOARD OF LAW EXAMINERS*. Ct. App. N. Y. Certiorari denied.

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No. 78-6519. MONTEZ *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied.

No. 78-6534. WASHINGTON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 595 F. 2d 1230.

No. 78-6552. SEMAAN *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 594 F. 2d 1215.

No. 78-6560. WATSON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 591 F. 2d 1058.

No. 78-6562. SOTO-CAMARENA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 595 F. 2d 1230.

No. 78-6563. HUFALT *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 603 F. 2d 216.

No. 78-6570. WESSON ET AL. *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 595 F. 2d 1227.

No. 78-6573. SHEFFIELD *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 397 A. 2d 963.

No. 78-6574. PERKINS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 588 F. 2d 1100.

No. 78-6578. BARTLETT *v.* UNITED STATES. Ct. App. D. C. Certiorari denied.

No. 78-6583. LIZARRAGA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 596 F. 2d 824.

No. 78-6584. BOGGS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 595 F. 2d 1229.

No. 78-1172. TORMEY ET AL. *v.* DE LA CRUZ ET AL. C. A. 9th Cir. Motion of respondents for leave to proceed *in forma pauperis* granted. Motion of respondents to add parties or, in the alternative, motion of Mary Evans et al. for leave to intervene denied. Certiorari denied. Reported below: 582 F. 2d 45.



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No. 78-6588. *HELTON v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 601 F. 2d 594.

No. 78-6590. *HOWELL v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 594 F. 2d 240.

No. 78-1237. *CROATAN BOOKS, INC. v. VIRGINIA*. Sup. Ct. Va. Certiorari denied. MR. JUSTICE BRENNAN, MR. JUSTICE STEWART, and MR. JUSTICE MARSHALL would grant certiorari and reverse the conviction.

No. 78-1238. *CROATAN BOOKS, INC. v. VIRGINIA*. Sup. Ct. Va. Certiorari denied. MR. JUSTICE BRENNAN, MR. JUSTICE STEWART, and MR. JUSTICE MARSHALL would grant certiorari and reverse the conviction.

No. 78-1271. *NORTH CAROLINA v. ASHE ET AL.* C. A. 4th Cir. Motion of respondents for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 586 F. 2d 334.

No. 78-1343. *BEAUBOUF ET AL. v. MITCHELL ET AL.* C. A. 5th Cir. Motion of respondent Arthur Mitchell for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 581 F. 2d 412.

No. 78-1380. *PEARY, AKA PEAY v. CONNECTICUT*. Sup. Ct. Conn. Certiorari denied. Reported below: 176 Conn. 170, 405 A. 2d 626.

MR. JUSTICE MARSHALL, dissenting.

Petitioner challenges the admission into evidence of a partially masked mug shot. In my view, displaying to the jury a mug shot of a criminal defendant creates the same potential for prejudice as forcing him to stand trial in prison attire. See *Estelle v. Williams*, 425 U. S. 501, 503-506 (1976). Particularly since the Connecticut Supreme Court conceded that the mug shot of petitioner was of "limited probative value," its use at trial raises substantial questions under the Sixth and

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Fourteenth Amendments. Accordingly, I would grant certiorari and set the case for argument.

No. 78-1438. ILLINOIS OFFICE OF EDUCATION *v.* JENNINGS. C. A. 7th Cir. Certiorari denied. MR. JUSTICE POWELL would grant certiorari. Reported below: 589 F. 2d 935.

No. 78-1466. PLY\*GEM INDUSTRIES, INC., ET AL. *v.* JOHN M. LEE, INC., ET AL. C. A. D. C. Cir. Certiorari denied. MR. JUSTICE WHITE would grant certiorari. Reported below: 193 U. S. App. D. C. 112, 593 F. 2d 1266.

No. 78-6140. MORGAN *v.* GEORGIA. Sup. Ct. Ga. Certiorari denied. MR. JUSTICE MARSHALL would grant certiorari and set the case for oral argument. Reported below: 241 Ga. 485, 246 S. E. 2d 198.

MR. JUSTICE BRENNAN, dissenting.

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

No. 78-6223. VON BYRD *v.* TEXAS. Ct. Crim. App. Tex.;

No. 78-6275. BERRYHILL *v.* ZANT, WARDEN. Sup. Ct. Ga.;

No. 78-6310. SMITH *v.* VIRGINIA. Sup. Ct. Va.; and

No. 78-6443. GOODE *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: No. 78-6223, 569 S. W. 2d 883; No. 78-6275, 242 Ga. 447, 249 S. E. 2d 197; No. 78-6310, 219 Va. 455, 248 S. E. 2d 135; No. 78-6443, 365 So. 2d 381.

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. 78-1496. LOCAL 13000, UNITED STEELWORKERS OF AMERICA, AFL-CIO-CLC *v.* PARSON ET AL. C. A. 5th Cir. Certiorari denied. MR. JUSTICE STEVENS took no part in the consideration of this petition. Reported below: 575 F. 2d 1374 and 583 F. 2d 132.

*Rehearing Denied*

No. 77-1833. SUN OIL COMPANY OF PENNSYLVANIA *v.* UNEMPLOYMENT COMPENSATION BOARD OF REVIEW OF PENNSYLVANIA ET AL., 440 U. S. 977;

No. 78-1216. BRITISH AIRWAYS BOARD *v.* BOEING Co., 440 U. S. 981; and

No. 78-6289. CZORNONOH *v.* UNITED STATES SECRET SERVICE; and CZORNONOH *v.* STALLARD ET AL., *ante*, p. 912. Petitions for rehearing denied. MR. JUSTICE POWELL took no part in the consideration or decision of these petitions.