

ORDERS FROM APRIL 21 THROUGH
JUNE 5, 1980

APRIL 21, 1980

Appeals Dismissed

No. 78-5928. *WALLER v. UNITED STATES*. Appeal from Ct. App. D. C. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied. Reported below: 389 A. 2d 801.

No. 79-1339. *CHILDS v. CHILDS*. Appeal from App. Div., Sup. Ct. N. Y., 2d Jud. Dept., dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied. Reported below: 69 App. Div. 2d 406, 419 N. Y. S. 2d 533.

No. 79-1145. *BUDGET MARKETING, INC., ET AL. v. KENTUCKY*. Appeal from Sup. Ct. Ky. dismissed for want of substantial federal question. MR. JUSTICE STEWART would note probable jurisdiction and set case for oral argument. Reported below: 587 S. W. 2d 245.

No. 79-1341. *BOWMAN v. MAINE STATE EMPLOYEES APPEALS BOARD ET AL.* Appeal from Sup. Jud. Ct. Me. dismissed for want of substantial federal question. Reported below: 408 A. 2d 688.

No. 79-5946. *PARKINS ET AL. v. ILLINOIS*. Appeal from Sup. Ct. Ill. dismissed for want of substantial federal question. Reported below: 77 Ill. 2d 253, 396 N. E. 2d 22.

No. 79-6094. *CRUZ v. NEW YORK*. Appeal from Ct. App. N. Y. dismissed for want of substantial federal question. Reported below: 48 N. Y. 2d 419, 399 N. E. 2d 513.

April 21, 1980

446 U. S.

No. 79-6160. JACKSON *v.* WISCONSIN. Appeal from Ct. App. Wis. dismissed for want of substantial federal question. Reported below: 92 Wis. 2d 905, 287 N. W. 2d 853.

No. 79-6174. HIGGINS *v.* MISSOURI. Appeal from Sup. Ct. Mo. dismissed for want of substantial federal question. Reported below: 592 S. W. 2d 151.

No. 79-6050. CROSS *v.* CHURCH ET AL. Appeal from Small Claims Court, San Mateo County, Cal., dismissed for want of jurisdiction.

No. 79-6152. HAYES *v.* VALLEY BANK OF NEVADA; and HAYES *v.* GLADSTONE ET AL. Appeal from Sup. Ct. Nev. dismissed for want of properly presented federal question.

Vacated and Remanded on Appeal

No. 78-5422. GONZALEZ *v.* NEW YORK. Appeal from App. Div., Sup. Ct. N. Y., 2d Jud. Dept. Judgment vacated and case remanded for further consideration in light of *Payton v. New York*, 445 U. S. 573 (1980). Reported below: 63 App. Div. 2d 686, 404 N. Y. S. 2d 933.

Certiorari Granted—Vacated and Remanded

No. 77-6769. BROWN *v.* FLORIDA. Dist. Ct. App. Fla., 1st 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 *Payton v. New York*, 445 U. S. 573 (1980).

No. 78-5403. BUSCH *v.* FLORIDA. Dist. Ct. App. Fla., 1st 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 *Payton v. New York*, 445 U. S. 573 (1980). Reported below: 355 So. 2d 488.

446 U. S.

April 21, 1980

No. 78-5471. *PYNES v. UNITED STATES*. Ct. App. D. C. Motion of petitioner for leave to proceed *in forma pauperis* and certiorari granted. Judgment vacated and case remanded for further consideration in light of *Whalen v. United States*, 445 U. S. 684 (1980). Reported below: 385 A. 2d 772.

No. 78-6276. *VIDAL v. NEW YORK*. App. Div., Sup. Ct. N. Y., 2d Jud. Dept. Motion of petitioner for leave to proceed *in forma pauperis* and certiorari granted. Judgment vacated and case remanded for further consideration in light of *Payton v. New York*, 445 U. S. 573 (1980). Reported below: 61 App. Div. 2d 825, 402 N. Y. S. 2d 61.

No. 78-6839. *GORDON v. NEW YORK*. App. Div., Sup. Ct. N. Y., 2d Jud. Dept. Motion of petitioner for leave to proceed *in forma pauperis* and certiorari granted. Judgment vacated and case remanded for further consideration in light of *Payton v. New York*, 445 U. S. 573 (1980). Reported below: 67 App. Div. 2d 931, 413 N. Y. S. 2d 29.

No. 79-326. *UNITED STATES v. DUNCAN ET AL.* Ct. Cl. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *United States v. Mitchell*, 445 U. S. 535 (1980). Reported below: 220 Ct. Cl. 1, 597 F. 2d 1337.

No. 79-620. *SALA v. COUNTY OF SUFFOLK*. C. A. 2d Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Owen v. City of Independence*, 445 U. S. 622 (1980). Reported below: 604 F. 2d 207.

No. 79-711. *ALABAMA v. DAVIS*. C. A. 5th Cir. Certiorari granted, judgment of the Court of Appeals vacated, and that court is directed to remand the case to the United States District Court for the Northern District of Alabama with instructions to vacate the order denying the petition for

April 21, 1980

446 U. S.

a writ of habeas corpus. See *United States v. Munsingwear*, 340 U. S. 36 (1950). Reported below: 596 F. 2d 1214.

MR. JUSTICE STEVENS, dissenting.

In *United States v. Munsingwear*, 340 U. S. 36, 39, the Court stated that

“[t]he established practice of the Court in dealing with a civil case from a court in the federal system which has become moot while on its way here or pending our decision on the merits is to reverse or vacate the judgment below and remand with a direction to dismiss.”

But that need not be done in this case, first, because respondent Davis' petition for a writ of habeas corpus has already been dismissed by the District Court on motion by Davis after the State's petition for a writ of certiorari had been filed. See Supplement to Pet. for Cert. 6. And second, it should be noted that the judgment of the Court of Appeals did not order that Davis be released from custody, but merely held that his attorneys had failed to discharge their duty to their client, and therefore reversed and remanded the case for an evidentiary hearing to determine whether that failure had prejudiced him. 596 F. 2d 1214, 1223 (CA5 1979). If such a hearing should one day be held in accordance with the opinion of the Court of Appeals, and should Davis ultimately succeed in getting his conviction vacated, there will still be an opportunity for this Court to review any decision on the merits. In the meantime, it is difficult to see what harm would flow to the State if we were simply to let the judgment of the Court of Appeals stand. There is no realistic possibility that the judgment could “spaw[n] any legal consequences.” *United States v. Munsingwear*, *supra*, at 41. Thus, there is no particular justification for this Court's intervention.

Accordingly, I would simply deny the petition for a writ of certiorari.

446 U.S.

April 21, 1980

No. 79-1178. FAYMOR DEVELOPMENT Co., INC. v. KING ET AL. C. A. 2d Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Strycker's Bay Neighborhood Council v. Karlen*, 444 U. S. 223 (1980). MR. JUSTICE BLACKMUN and MR. JUSTICE STEVENS dissent. Reported below: 614 F. 2d 1288.

No. 79-1312. PENNSYLVANIA v. HENDERSON. Super. Ct. Pa. Motion of respondent for leave to proceed *in forma pauperis* and certiorari granted. Judgment vacated and case remanded for further consideration in light of *Fare v. Michael C.*, 442 U. S. 707 (1979). MR. JUSTICE BRENNAN and MR. JUSTICE STEVENS dissent. Reported below: 266 Pa. Super. 519, 405 A. 2d 940.

No 79-1329. DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, U. S. DEPARTMENT OF LABOR v. WALTER TANTZEN, INC., ET AL. C. A. 2d Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *P. C. Pfeiffer Co. v. Ford*, 444 U. S. 69 (1979). Reported below: 601 F. 2d 670.

No. 79-5438. GAYLE, AKA WAITERS v. NEW YORK. App. Div., Sup. Ct. N. Y., 3d Jud. Dept. Motion of petitioner for leave to proceed *in forma pauperis* and certiorari granted. Judgment vacated and case remanded for further consideration in light of *Payton v. New York*, 445 U. S. 573 (1980). Reported below: 70 App. Div. 2d 788, 416 N. Y. S. 2d 158.

No. 79-5853. DUNAGAN v. ILLINOIS. App. Ct. Ill., 1st 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 *Payton v. New York*, 445 U. S. 573 (1980). Reported below: 71 Ill. App. 3d 972, 389 N. E. 2d 1261.

April 21, 1980

446 U. S.

Miscellaneous Orders

No. A-833. *HOLLIDAY ET AL. v. HAUPTMAN, TRUSTEE*. C. A. 2d Cir. Application for stay, addressed to MR. JUSTICE WHITE and referred to the Court, denied.

No. D-152. *IN RE DISBARMENT OF WATERS*. Disbarment entered. [For earlier order herein, see 439 U. S. 1042.]

No. D-157. *IN RE DISBARMENT OF MITCHELL*. Disbarment entered. [For earlier order herein, see 440 U. S. 933.]

No. D-176. *IN RE DISBARMENT OF PRAVDA*. Disbarment entered. [For earlier order herein, see 444 U. S. 895.]

No. D-179. *IN RE DISBARMENT OF KYLE*. Disbarment entered. [For earlier order herein, see 444 U. S. 912.]

No. D-185. *IN RE DISBARMENT OF MITCHELL*. It is ordered that Freeman D. Mitchell, of Atlanta, Ga., 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. 9, Orig. *UNITED STATES v. LOUISIANA ET AL.* Motion of the Special Master, Walter P. Armstrong, Jr., for allowance of additional compensation and reimbursement of expenses, as set forth in the motion, granted, and it is ordered that such costs be borne equally by the United States and Louisiana. The Court defers action at this time on the Special Master's suggestion for discharge with respect to the reference of October 20, 1975 [423 U. S. 909]. MR. JUSTICE MARSHALL took no part in the consideration or decision of this motion. [For earlier order herein, see, *e. g.*, 445 U. S. 923.]

No. 78-1881. *CARPENTERS PENSION TRUST FUND FOR NORTHERN CALIFORNIA v. CAMPA ET AL.*, 444 U. S. 1028. Motion of appellees for attorney's fees denied.

446 U. S.

April 21, 1980

No. 79-602. *AGINS ET UX. v. CITY OF TIBURON*. Sup. Ct. Cal. [Probable jurisdiction noted, 444 U. S. 1011.] Motion of New Jersey for leave to file a brief as *amicus curiae* denied.

No. 79-952. *THOMAS v. REVIEW BOARD OF THE INDIANA EMPLOYMENT SECURITY DIVISION ET AL.* Sup. Ct. Ind. [Certiorari granted, 444 U. S. 1070.] Motions of Jewish Peace Fellowship et al., American Jewish Congress, American Civil Liberties Union, and Americans United for Separation of Church and State Fund, Inc., for leave to file briefs as *amici curiae* granted.

No. 79-1268. *HARRIS, SECRETARY OF HEALTH, EDUCATION, AND WELFARE v. McRAE ET AL.* D. C. E. D. N. Y. [Probable jurisdiction noted, 444 U. S. 1069.] Motion for reconsideration of motion for appointment of Alan Ernest as counsel for children unborn and born alive denied.

Probable Jurisdiction Noted

No. 79-1260. *CHANDLER ET AL. v. FLORIDA*. Appeal from Sup. Ct. Fla. Probable jurisdiction noted. Reported below: 376 So. 2d 1157.

Certiorari Granted

No. 79-814. *DELTA AIR LINES, INC. v. AUGUST*. C. A. 7th Cir. Certiorari granted. Reported below: 600 F. 2d 699.

Certiorari Denied. (See also Nos. 78-5928 and 79-1339, *supra.*)

No. 78-6098. *GAULTNEY v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 581 F. 2d 1137.

No. 78-6834. *JONES v. IOWA*. Sup. Ct. Iowa. Certiorari denied. Reported below: 274 N. W. 2d 273.

No. 79-261. *BARNES ET AL. v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 604 F. 2d 121.

April 21, 1980

446 U.S.

No. 79-851. *CLAUSER v. ILLINOIS*. App. Ct. Ill., 3d Dist. Certiorari denied. Reported below: 73 Ill. App. 3d 145, 391 N. E. 2d 793.

No. 79-1123. *NEVILLE v. CAVANAUGH, STATE'S ATTORNEY, ET AL.* C. A. 7th Cir. Certiorari denied. Reported below: 611 F. 2d 673.

No. 79-1130. *THEVIS ET AL. v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 614 F. 2d 1293.

No. 79-1139. *CITY OF NEW YORK ET AL. v. DEPIETRO*. C. A. 2d Cir. Certiorari denied. Reported below: 607 F. 2d 995.

No. 79-1148. *SPARKS v. UNITED STATES*. C. A. 10th Cir. Certiorari denied.

No. 79-1183. *SIMA PRODUCTS CORP. ET AL. v. McLUCAS, ADMINISTRATOR, FEDERAL AVIATION ADMINISTRATION*. C. A. 7th Cir. Certiorari denied. Reported below: 612 F. 2d 309.

No. 79-1188. *CLEMENTE v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 608 F. 2d 76.

No. 79-1202. *PARKER v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 607 F. 2d 1008.

No. 79-1204. *NOLICHUCKEY SAND Co., INC. v. MARSHALL, SECRETARY OF LABOR*. C. A. 6th Cir. Certiorari denied. Reported below: 606 F. 2d 693.

No. 79-1205. *WIREMAN v. DISCIPLINARY COMMISSION*. Sup. Ct. Ind. Certiorari denied.

No. 79-1220. *GARCIA v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 622 F. 2d 576.

No. 79-1229. *KLAUBER v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 611 F. 2d 512.

446 U.S.

April 21, 1980

No. 79-1230. *COATS v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 611 F. 2d 37.

No. 79-1277. *TREPEL PETROLEUM CORP. v. CLEVEROCK ENERGY CORP.* C. A. 10th Cir. Certiorari denied. Reported below: 609 F. 2d 1358.

No. 79-1327. *NORMAN v. TEXAS*. Ct. Crim. App. Tex. Certiorari denied. Reported below: 588 S. W. 2d 340.

No. 79-1328. *BOROUGH OF DOYLESTOWN v. BRADSHAW ET AL.* C. A. 3d Cir. Certiorari denied. Reported below: 612 F. 2d 135.

No. 79-1330. *CLIFFORD, COMMISSIONER, DEPARTMENT OF HEALTH OF NIAGARA COUNTY, NEW YORK v. SUSAN B. ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 610 F. 2d 807.

No. 79-1335. *ABRAMS, ATTORNEY GENERAL OF NEW YORK v. SALLA ET AL.* Ct. App. N. Y. Certiorari denied. Reported below: 48 N. Y. 2d 514, 399 N. E. 2d 909.

No. 79-1337. *SINDONA v. TISCH ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 610 F. 2d 807.

No. 79-1338. *SHUFFMAN, EXECUTRIX v. HARTFORD TEXTILE CORP. ET AL.* C. A. 2d Cir. Certiorari denied.

No. 79-1347. *SPENCER v. GREYHOUND LINES, INC., ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 609 F. 2d 510.

No. 79-1353. *ROBERT BOSCH GMBH v. PAPENDICK*. Sup. Ct. Del. Certiorari denied. Reported below: 410 A. 2d 148.

No. 79-1358. *SLONE v. BLOCKSOM & Co.* C. A. 4th Cir. Certiorari denied. Reported below: 599 F. 2d 1046.

April 21, 1980

446 U. S.

No. 79-1437. *GUST ET AL. v. COMMISSIONER OF TAXATION AND FINANCE ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 614 F. 2d 1287 and 1291.

No. 79-1480. *MCGUIRE v. UNITED STATES.* C. A. 5th Cir. Certiorari denied. Reported below: 608 F. 2d 1028.

No. 79-1484. *SAITTA v. UNITED STATES.* C. A. 5th Cir. Certiorari denied. Reported below: 612 F. 2d 205.

No. 79-1488. *HERNANDEZ ET AL. v. UNITED STATES.* C. A. 5th Cir. Certiorari denied. Reported below: 607 F. 2d 1145.

No. 79-1500. *TEICHER v. UNITED STATES.* C. A. 2d Cir. Certiorari denied. Reported below: 614 F. 2d 1293.

No. 79-1503. *RODRIQUEZ-MARTINEZ ET AL. v. UNITED STATES.* C. A. 1st Cir. Certiorari denied. Reported below: 618 F. 2d 92.

No. 79-5477. *JORDAN v. CALIFORNIA.* Ct. App. Cal., 3d App. Dist. Certiorari denied.

No. 79-5808. *MITCHELL v. ESTELLE, CORRECTIONS DIRECTOR.* C. A. 5th Cir. Certiorari denied. Reported below: 603 F. 2d 858.

No. 79-5876. *SEARLES v. UNITED STATES.* C. A. 3d Cir. Certiorari denied. Reported below: 612 F. 2d 575.

No. 79-5957. *ALMON v. GEORGIA.* Ct. App. Ga. Certiorari denied. Reported below: 151 Ga. App. 863, 261 S. E. 2d 772.

No. 79-5988. *SPARROW v. UNITED STATES.* C. A. 10th Cir. Certiorari denied.

No. 79-5991. *ROYSDON v. UNITED STATES.* C. A. 6th Cir. Certiorari denied. Reported below: 612 F. 2d 582.

446 U. S.

April 21, 1980

No. 79-6043. *KIBERT v. BLANKENSHIP, CORRECTIONAL SUPERINTENDENT*. C. A. 4th Cir. Certiorari denied. Reported below: 611 F. 2d 520.

No. 79-6045. *JOHNSON v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 610 F. 2d 194.

No. 79-6057. *GRAY v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 611 F. 2d 194.

No. 79-6082. *THOMPSON v. UNITED STATES*. C. A. D. C. Cir. Certiorari denied. Reported below: 198 U. S. App. D. C. 92, 612 F. 2d 587.

No. 79-6146. *DOUGLAS, AKA JOHNSON v. MARYLAND*. C. A. 4th Cir. Certiorari denied. Reported below: 610 F. 2d 810.

No. 79-6147. *SMITH v. COLLINS, WARDEN, ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 618 F. 2d 104.

No. 79-6155. *AUSTIN v. ARIZONA*. Sup. Ct. Ariz. Certiorari denied. Reported below: 124 Ariz. 231, 603 P. 2d 502.

No. 79-6158. *BOYKIN v. NORTH CAROLINA*. Sup. Ct. N. C. Certiorari denied. Reported below: 298 N. C. 687, 259 S. E. 2d 883.

No. 79-6159. *MARTIN v. BLACKBURN, WARDEN, ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 606 F. 2d 92.

No. 79-6161. *HOHENSEE v. SOUTHARD ET AL.* Sup. Ct. Pa. Certiorari denied.

No. 79-6164. *DUNCAN v. TEXAS*. Ct. Crim. App. Tex. Certiorari denied.

No. 79-6166. *THOMAS v. MICHIGAN*. Sup. Ct. Mich. Certiorari denied. Reported below: 406 Mich. 971.

April 21, 1980

446 U.S.

No. 79-6178. *BOALBEY v. KINDRED*. Sup. Ct. Ill. Certiorari denied. Reported below: See 73 Ill. App. 3d 37, 391 N. E. 2d 236.

No. 79-6183. *COOPER v. CITY OF COMMERCE CITY, COLORADO*. Sup. Ct. Colo. Certiorari denied. Reported below: 198 Colo. 553, 609 P. 2d 106.

No. 79-6214. *GIST ET AL. v. JAMES H. THOMPSON & SON FUNERAL HOME*. Ct. App. Ohio, Hamilton County. Certiorari denied.

No. 79-6225. *TARKOWSKI v. CHADWELL, KAYSER, RUGGLES, MCGEE & HASTINGS ET AL.* App. Ct. Ill., 2d Dist. Certiorari denied.

No. 79-6296. *MILLER v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 603 F. 2d 535.

No. 79-6299. *KAIL v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 612 F. 2d 443.

No. 79-6302. *MALLET v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 614 F. 2d 778.

No. 79-6308. *HACH v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 615 F. 2d 1203.

No. 79-6312. *COUCH v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 616 F. 2d 954.

No. 78-1697. *PENNSYLVANIA v. WILLIAMS*. Sup. Ct. Pa. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 483 Pa. 293, 396 A. 2d 1177.

No. 79-1096. *PEARSON v. TEXAS*. Ct. Crim. App. Tex. Certiorari denied. MR. JUSTICE BRENNAN would grant certiorari. Reported below: 587 S. W. 2d 393.

446 U. S.

April 21, 1980

No. 79-593. BLUM, COMMISSIONER OF NEW YORK STATE DEPARTMENT OF SOCIAL SERVICES *v.* HOLLEY ET AL.; and

No. 79-594. RUSSO, COMMISSIONER OF MONROE COUNTY DEPARTMENT OF SOCIAL SERVICES *v.* HOLLEY ET AL. C. A. 2d Cir. Motions of respondent Holley for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 605 F. 2d 638.

No. 79-1331. DEPARTMENT OF SAFETY OF NEW HAMPSHIRE ET AL. *v.* CARLSON. C. A. 1st Cir. Certiorari denied. MR. JUSTICE BLACKMUN would grant certiorari. Reported below: 609 F. 2d 1024.

No. 79-1332. GOODMAN ET AL. *v.* McDONNELL DOUGLAS CORP. C. A. 8th Cir. Motion of petitioners for leave to proceed as veterans granted. Certiorari denied. Reported below: 606 F. 2d 800.

No. 79-6148. RUTLEDGE *v.* FLORIDA. Sup. Ct. Fla.;

No. 79-6175. HOLMES *v.* FLORIDA. Sup. Ct. Fla.; and

No. 79-6241. DOBBS *v.* GEORGIA. Sup. Ct. Ga. Certiorari denied. Reported below: No. 79-6148, 374 So. 2d 975; No. 79-6175, 374 So. 2d 944; No. 79-6241, 245 Ga. 208, 264 S. E. 2d 18.

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

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

Rehearing Denied

No. 78-1453. UNITED STATES ET AL. *v.* EUGE, 444 U. S. 707;

No. 79-5663. WILLIAMS *v.* VIRGINIA, 445 U. S. 917; and

No. 79-6075. CONRAD *v.* GREENE, U. S. DISTRICT JUDGE, ET AL., 445 U. S. 921. Petitions for rehearing denied.

April 25, 28, 1980

446 U.S.

APRIL 25, 1980

Miscellaneous Order

No. A-904. *WORLDWIDE CHURCH OF GOD, INC., ET AL. v. SUPERIOR COURT FOR THE COUNTY OF LOS ANGELES (CALIFORNIA, REAL PARTY IN INTEREST)*. Application for stay of judgment of the Superior Court of the State of California for the County of Los Angeles, entered December 31, 1979, presented to MR. CHIEF JUSTICE BURGER, and by him referred to the Court, denied. MR. JUSTICE STEWART took no part in the consideration or decision of this application.

APRIL 28, 1980

Appeal Dismissed

No. 79-6015. *ROBERTSON v. TEXAS*. Appeal from Ct. Crim. App. Tex. dismissed for want of substantial federal question. Reported below: 586 S. W. 2d 877.

Certiorari Granted—Vacated and Remanded

No. 79-1044. *BUSH v. LUCAS*. C. A. 5th Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Carlson v. Green, ante*, p. 14. Reported below: 598 F. 2d 958.

Miscellaneous Orders

No. A-844. *WALTON v. UNITED STATES*. Application for bail, addressed to MR. JUSTICE STEVENS and referred to the Court, denied.

No. A-863. *GREEN v. BARTHOLOMEW ET AL.* C. A. 2d Cir. Application for stay of mandate, addressed to MR. JUSTICE STEWART and referred to the Court, denied.

No. A-892. *MARCELLO v. UNITED STATES*. Application for bail, addressed to MR. JUSTICE BRENNAN and referred to the Court, denied.

446 U. S.

April 28, 1980

No. D-186. *IN RE DISBARMENT OF COOPER*. It is ordered that David B. Cooper, of Bellaire, Ohio, be suspended from the practice of law in this Court and that a rule issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D-187. *IN RE DISBARMENT OF WOLK*. It is ordered that Leon S. Wolk, of Woodcliff Lake, N. J., 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-188. *IN RE DISBARMENT OF KESLER*. It is ordered that John A. Kesler, of Terre Haute, Ind., 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-189. *IN RE DISBARMENT OF MANN*. It is ordered that Robert G. Mann, of Indianapolis, Ind., 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-190. *IN RE DISBARMENT OF FUSCIELLO*. It is ordered that John P. Fusciello, of Colts Neck, N. J., 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. 78-1577. *SEARS, ROEBUCK & Co. v. COUNTY OF LOS ANGELES ET AL.* Ct. App. Cal., 2d App. Dist. [Certiorari granted, 444 U. S. 823.] Case restored to calendar for reargument. MR. JUSTICE STEWART took no part in the consideration or decision of this order.

April 28, 1980

446 U. S.

No. 79-45. LEWIS, COMPTROLLER OF FLORIDA *v.* BT INVESTMENT MANAGERS, INC., ET AL. D. C. N. D. Fla. [Probable jurisdiction noted, 444 U. S. 822.] Motion of appellees for leave to file a supplemental brief after argument granted.

No. 79-770. ENVIRONMENTAL PROTECTION AGENCY *v.* NATIONAL CRUSHED STONE ASSN. ET AL.; and COSTLE, ADMINISTRATOR, ENVIRONMENTAL PROTECTION AGENCY *v.* CONSOLIDATION COAL CO. ET AL. C. A. 4th Cir. [Certiorari granted, 444 U. S. 1069.] Motion of the Solicitor General to dispense with printing appendix granted.

No. 79-870. UNITED STATES RAILROAD RETIREMENT BOARD *v.* FRITZ. D. C. S. D. Ind. [Probable jurisdiction noted, 444 U. S. 1069.] Motion of the Solicitor General to dispense with printing appendix granted.

No. A-887 (79-1637). J. P. STEVENS & Co., INC. *v.* NATIONAL LABOR RELATIONS BOARD ET AL. Application for stay of judgment of the United States Court of Appeals for the Fourth Circuit, presented to MR. CHIEF JUSTICE BURGER, and by him referred to the Court, denied.

No. 79-5515. BROWN *v.* MITCHELL, PENITENTIARY SUPERINTENDENT. C. A. 4th Cir. Motion to schedule the petition for writ of certiorari for consideration denied.

No. 79-5780. WEAVER *v.* GRAHAM, GOVERNOR OF FLORIDA. Sup. Ct. Fla. [Certiorari granted, 445 U. S. 927.] Motion of petitioner for appointment of counsel granted, and it is ordered that Thomas C. MacDonald, Jr., Esquire, of Tampa, Fla., be appointed to serve as counsel for petitioner in this case.

No. 79-1397. INTERNATIONAL BUSINESS MACHINES CORP. *v.* GREYHOUND COMPUTER CORP. Motion for leave to file a petition for writ of certiorari denied. MR. JUSTICE BLACKMUN and MR. JUSTICE STEVENS took no part in the consideration or decision of this motion.

446 U. S.

April 28, 1980

Probable Jurisdiction Noted

No. 79-1388. *KIRCHBERG v. FEENSTRA ET AL.* Appeal from C. A. 5th Cir. Motion of appellee Feenstra for leave to proceed *in forma pauperis* granted. Probable jurisdiction noted. Reported below: 609 F. 2d 727.

Certiorari Granted

No. 79-700. *WALTER FLEISHER CO., INC. v. COUNTY OF LOS ANGELES ET AL.* Ct. App. Cal., 2d App. Dist. Certiorari granted.

No. 79-1266. *STEADMAN v. SECURITIES AND EXCHANGE COMMISSION.* C. A. 5th Cir. Certiorari granted. Reported below: 603 F. 2d 1126.

Certiorari Denied

No. 79-390. *CITY OF ANNISTON, ALABAMA, ET AL. v. SCOTT ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 597 F. 2d 897.

No. 79-915. *DOMINGUEZ v. BEAME, MAYOR OF NEW YORK CITY, ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 603 F. 2d 337.

No. 79-1141. *MORA v. FLORIDA.* Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 368 So. 2d 1377.

No. 79-1179. *BALISTRERI v. UNITED STATES.* C. A. 7th Cir. Certiorari denied. Reported below: 606 F. 2d 216.

No. 79-1195. *PENROD v. UNITED STATES.* C. A. 4th Cir. Certiorari denied. Reported below: 609 F. 2d 1092.

No. 79-1263. *JAHODA v. UNITED STATES.* C. A. 7th Cir. Certiorari denied. Reported below: 618 F. 2d 109.

No. 79-1269. *INTERNAL REVENUE SERVICE v. LONG ET VIR.* C. A. 9th Cir. Certiorari denied. Reported below: 596 F. 2d 362.

April 28, 1980

446 U.S.

No. 79-1309. SEIBERT *v.* BAPTIST, DISTRICT DIRECTOR OF INTERNAL REVENUE, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 594 F. 2d 423 and 599 F. 2d 743.

No. 79-1313. WARD *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 5th Cir. Certiorari denied. Reported below: 608 F. 2d 599.

No. 79-1349. SABATER *v.* KANSAS. Ct. App. Kan. Certiorari denied. Reported below: 3 Kan. App. 2d 692, 601 P. 2d 11.

No. 79-1350. RUBIN ET AL. *v.* U. N. INDUSTRIES, INC., ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 610 F. 2d 820.

No. 79-1355. GREENBERG, ADMINISTRATRIX *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 2d Cir. Certiorari denied. Reported below: 613 F. 2d 1213.

No. 79-1357. AMERICAN OIL Co. *v.* ARNOTT. C. A. 8th Cir. Certiorari denied. Reported below: 609 F. 2d 873.

No. 79-1366. ST. PAUL MERCURY INSURANCE Co. ET AL. *v.* EAST WEST TOWING, INC., ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 608 F. 2d 160.

No. 79-1367. COLE *v.* LOUISIANA. 22d Jud. Dist. Ct. La., St. Tammany Parish. Certiorari denied.

No. 79-1368. MOLLURA *v.* MILLER ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 609 F. 2d 381.

No. 79-1369. AMERICAN MARINE CORP. ET AL. *v.* HIGHLANDS INSURANCE Co. C. A. 5th Cir. Certiorari denied. Reported below: 607 F. 2d 1101.

No. 79-1370. FETNER *v.* FEDERAL LAND BANK OF BALTIMORE. Super. Ct. Pa. Certiorari denied. Reported below: 269 Pa. Super. 455, 410 A. 2d 344.

446 U.S.

April 28, 1980

No. 79-1371. FOSTER, DBA SNO-WHITE DRIVE IN, INC., ET AL. *v.* LAWRENCE T. LASAGNA, INC. C. A. 9th Cir. Certiorari denied. Reported below: 609 F. 2d 392.

No. 79-1372. ALDENS, INC. *v.* MILLER, ATTORNEY GENERAL OF IOWA. C. A. 8th Cir. Certiorari denied. Reported below: 610 F. 2d 538.

No. 79-1378. ROSARIO ET AL. *v.* AMALGAMATED LADIES' GARMENT CUTTERS' UNION, LOCAL 10, I.L.G.W.U., ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 605 F. 2d 1228.

No. 79-1452. BILLINGSLEY ET UX. *v.* LAWSON, SUBSTITUTE TRUSTEE, ET AL. Ct. Sp. App. Md. Certiorari denied. Reported below: 43 Md. App. 713, 406 A. 2d 946.

No. 79-1468. SEYFARTH *v.* LOVRET. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 79-1504. LABUS ET AL. *v.* UNITED STATES; and
No. 79-1516. BRIEN *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 617 F. 2d 299.

No. 79-1507. BASEY *v.* UNITED STATES; and
No. 79-1526. RAMSEY *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 613 F. 2d 198.

No. 79-1521. BREGER *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 616 F. 2d 634.

No. 79-1529. AMEN *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 622 F. 2d 576.

No. 79-5703. BRYANT *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 612 F. 2d 799.

No. 79-5858. WALLS *v.* ILLINOIS. App. Ct. Ill., 2d Dist. Certiorari denied. Reported below: 71 Ill. App. 3d 68, 389 N. E. 2d 6.

April 28, 1980

446 U.S.

No. 79-5886. *BRYANT v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 612 F. 2d 806.

No. 79-5958. *SMITH v. TENNESSEE*. Sup. Ct. Tenn. Certiorari denied. Reported below: 587 S. W. 2d 659.

No. 79-5966. *HUNT v. MARSHALL, CORRECTIONAL SUPERINTENDENT*. C. A. 6th Cir. Certiorari denied. Reported below: 611 F. 2d 372.

No. 79-5974. *PROCTOR v. GEORGIA*. Ct. App. Ga. Certiorari denied. Reported below: 152 Ga. App. 11, 262 S. E. 2d 170.

No. 79-5992. *WHITE v. WYRICK, WARDEN, ET AL.* C. A. 8th Cir. Certiorari denied.

No. 79-5993. *FAIRIS v. ESTELLE, CORRECTIONS DIRECTOR*. C. A. 5th Cir. Certiorari denied.

No. 79-5998. *WOODS v. UNITED STATES*; and

No. 79-6041. *UNDERWOOD v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 613 F. 2d 629.

No. 79-5999. *ANDERSON v. OREGON*. Ct. App. Ore. Certiorari denied. Reported below: 42 Ore. App. 29, 599 P. 2d 1225.

No. 79-6021. *ROLDAN v. GOVERNMENT OF THE VIRGIN ISLANDS*. C. A. 3d Cir. Certiorari denied. Reported below: 612 F. 2d 775.

No. 79-6026. *JUSTICE v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 615 F. 2d 1363.

No. 79-6039. *SCOTT v. WASHINGTON*. Sup. Ct. Wash. Certiorari denied. Reported below: 93 Wash. 2d 7, 604 P. 2d 943.

446 U. S.

April 28, 1980

No. 79-6139. *TAYLOR v. ECONOMOPOULOS ET AL.* Ct. App. D. C. Certiorari denied. Reported below: 407 A. 2d 585.

No. 79-6181. *WILSON v. MARYLAND.* Ct. Sp. App. Md. Certiorari denied. Reported below: 44 Md. App. 1, 408 A. 2d 102.

No. 79-6184. *JACKSON v. TENNESSEE.* Ct. Crim. App. Tenn. Certiorari denied.

No. 79-6198. *HARRIS v. BARBER, JUDGE.* Sup. Ct. Ore. Certiorari denied.

No. 79-6201. *CARVEY v. LEFEVRE, CORRECTIONAL SUPERINTENDENT, ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 611 F. 2d 19.

No. 79-6202. *TOWNES v. MITCHELL, PENITENTIARY SUPERINTENDENT.* C. A. 4th Cir. Certiorari denied.

No. 79-6205. *SPEED v. MARYLAND.* C. A. 4th Cir. Certiorari denied. Reported below: 612 F. 2d 1310.

No. 79-6206. *KICKASOLA v. JIM WALLACE OIL Co., INC., ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 608 F. 2d 1371.

No. 79-6210. *CHAMBERS v. MARYLAND.* Ct. Sp. App. Md. Certiorari denied. Reported below: 42 Md. App. 756.

No. 79-6212. *JONES v. TEXAS.* Ct. Crim. App. Tex. Certiorari denied. Reported below: 591 S. W. 2d 542.

No. 79-6222. *HEREFORD v. AJEMIAN.* Ct. App. D. C. Certiorari denied.

No. 79-6223. *WILLIAMS v. IOWA.* Sup. Ct. Iowa. Certiorari denied. Reported below: 285 N. W. 2d 248.

April 28, 1980

446 U.S.

No. 79-6230. *SCHMANSKI v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 622 F. 2d 575.

No. 79-6239. *WRIGHT ET AL. v. VALLEY CENTER MUNICIPAL WATER DISTRICT*. Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 79-6251. *PODRAZIK ET AL. v. BLUM, COMMISSIONER, NEW YORK STATE DEPARTMENT OF SOCIAL SERVICES, ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 622 F. 2d 575.

No. 79-6284. *WARREN v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 603 F. 2d 859.

No. 79-6311. *RODES v. BROWN, JUDGE*. Sup. Ct. Ark. Certiorari denied.

No. 79-6316. *BRISCO v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 615 F. 2d 1354.

No. 79-6320. *GOODMAN v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 618 F. 2d 117.

No. 79-6326. *WARREN v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 606 F. 2d 320.

No. 79-6335. *FRANCISCO v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 614 F. 2d 617.

No. 79-6336. *WILLIAMSON v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 618 F. 2d 106.

No. 79-6352. *PALUMBO v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 608 F. 2d 529.

No. 79-6355. *VENABLE v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 614 F. 2d 292.

446 U.S.

April 28, 1980

No. 79-6361. *COLLOM v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 614 F. 2d 624.

No. 78-671. *DELAWARE STATE BOARD OF EDUCATION v. EVANS ET AL.*; and

No. 78-672. *ALEXIS I. DU PONT SCHOOL DISTRICT ET AL. v. EVANS ET AL.* C. A. 3d Cir. Certiorari denied. *THE CHIEF JUSTICE* agrees these cases merit review here but only when a full Court is available to consider the important issues presented by the petitions for certiorari. *MR. JUSTICE STEVENS* took no part in the consideration or decision of these petitions. Reported below: 582 F. 2d 750.

MR. JUSTICE REHNQUIST, with whom *MR. JUSTICE STEWART* and *MR. JUSTICE POWELL* join, dissenting.

In 1971, respondents in these cases instituted an action seeking the desegregation of the schools in the city of Wilmington, Del. The litigation has now culminated in a county-wide remedy more Draconian than any ever approved by this Court. The order provides for the dissolution of the county's 11 independent school boards, most of which were locally elected. In their place, the District Court "created" a single countywide school system, to be run by court-appointed officials for five years. Within this judicial school district, which comprises in excess of 60% of all the public school students in the State of Delaware, every single student will be reassigned away from his or her local school for a period of no less than three years and for as long as nine years. The plan is designed to accomplish a racial balance in each and every school, in every grade, in all of the former 11 districts, mirroring the racial balance of the total area involved.

The three-judge District Court which initially found a desegregation remedy to be warranted, expressly found that 10 of the 11 county school districts had established fully unitary school systems after this Court's decision in *Brown v. Board of Education*, 347 U. S. 483 (1954). *Evans v. Buchanan*, 393 F. Supp. 428, 437, and n. 19 (Del.), summarily

aff'd, 423 U. S. 963 (1975). Only the school district in the city of Wilmington was found to have engaged in discriminatory conduct—conduct which the court did not find to be purposeful.* The court did find, however, that the acts of other governmental entities resulted in an interdistrict violation. I think this Court should grant certiorari to review the District Court's imposition of this remedy, even accepting as settled the finding that there was an interdistrict violation warranting an interdistrict remedy.

One principle that has been continually emphasized in the desegregation opinions of this Court is that the "scope of the remedy" formulated by a district court must be tailored to fit "the nature and extent of the constitutional violation." *Swann v. Charlotte-Mecklenburg Board of Education*, 402 U. S. 1, 16 (1971). In order to effectively fulfill this mandate, we have made clear that district courts *must* "determine how much incremental segregative effect [the constitutional] violations had on the racial distribution of the . . . school population' as . . . compared to what it would have been in the absence of such constitutional violations." *Dayton Board of Education v. Brinkman*, 433 U. S. 406, 420 (1977). Without such a finding, it would not be possible for a judge to fulfill the equitable limitations commanded by *Swann*.

In this case, however, the courts have ignored *Swann* and

*The three-judge court identified the Wilmington school board's adoption of voluntary attendance zones, which "although possibly designed to minimize the flight of white families with school-aged-children" to the suburbs, as possibly having the opposite effect. 393 F. Supp., at 435. Thus the court specifically recognized that the policy in question may well not have been purposefully discriminatory, even though it may have had a discriminatory effect. Even the discriminatory effect, however, was only speculative since the District Court only found that "to some extent, . . . discriminatory school policies in Wilmington *may have affected* the relative racial balance. . . ." *Id.*, at 436 (emphasis added). I am prepared to assume, *arguendo*, that this Court's summary affirmance settles the question of an interdistrict violation, however, and would review only the imposition of the remedy.

Dayton, and held that as a matter of law, no such findings were required. The District Court explicitly acknowledged that it did not apply this standard in adopting the remedy in issue. The court stated that it was "fully cognizant" that the submitted plans "were formulated without exacting consideration of whether they returned the Northern New Castle County schools to the precise position they would have assumed 'but for' the found constitutional violations." 447 F. Supp. 982, 1009 (Del. 1978). The Court of Appeals on review again conceded that the District Court did not make the inquiry identified by *Dayton* but nevertheless found this omission excusable because Wilmington had previously been subject to *de jure* segregation.

This Court has never held that a remedy dismantling local education or devising a scheme of total racial balance is warranted simply upon a finding of *de jure* segregation, and in fact, *Swann* held precisely to the contrary. Whatever the nature of the constitutional violation, the standard articulated in *Dayton*, as well as in the predecessors to *Dayton*, requires the District Court to impose changes in local education only to the extent necessary to cure the violation. The Court of Appeals' express departure from the precedents of this Court certainly warrants review.

Our cases indicate that the need for specific findings is particularly compelling when the district court seeks to impose a remedy curtailing local control of education. The District Court here has chosen such a remedy, actually *abolishing* the county's system of education and disenfranchising the voters who formerly retained popular control of education. This has been mandated even though no court has found that these local school boards have engaged in *any* purposeful discrimination since 1954. While on my assumption the absence of purpose does not negate the need for an interdistrict remedy in this case, the conduct of the boards is still relevant to the formulation of that interdistrict remedy. When the "nature of the violation" does not include purposeful discrimination on

the part of the school boards, I am not convinced that a truly "equitable" remedy would abolish those governmental entities that had not been found to purposefully participate in the perpetration of the violations. I had thought that *Milliken v. Bradley*, 418 U. S. 717 (1974), would forcefully preclude district courts from imposing such a remedy without the most exhaustive comparison of the nature of the violation and the need for this form of disestablishment of local government.

In *Milliken*, this Court declined to permit the federal courts to impose a remedy of this nature without the most exacting showing of necessity. The Court emphasized that "local control over the educational process affords citizens an opportunity to participate in decisionmaking, permits the structuring of school programs to fit local needs, and encourages 'experimentation, innovation, and a healthy competition for educational excellence.'" *Id.*, at 742. The Court not only emphasized these important benefits of local control, but also recognized the inability of courts and judges to assume that role, noting that "[t]his is a task which few, if any, judges are qualified to perform. . . ." *Id.*, at 744. In *Dayton*, this Court reiterated that "local autonomy of school districts is a vital national tradition." 433 U. S., at 410. It was because of these considerations that *Dayton* insisted that "the case for displacement of the local authorities by a federal court in a school desegregation case must be satisfactorily established by factual proof and justified by a reasoned statement of legal principles." *Ibid.* Yet the District Court has here treated a series of independent school districts much as if they were a "railroad in reorganization," without any attempt to comply with the requirements of *Milliken* and *Dayton*. *Alexis I. du Pont School Dist. v. Evans*, 439 U. S. 1375, 1379 (1978) (REHNQUIST, J., in chambers). If we have any remaining commitment to this "vital national tradition," I think this Court should be certain, before it allows the dismantling of not 1 but 11 independent school boards, that the violations

found warrant this total substitution of judicial for popular control of local education.

Thus I think the principal reason this case merits review is because there is substantial doubt that the abolition of these 11 school districts is an appropriate equitable remedy for the interdistrict violation found by the courts. In addition, I think the failure to apply *Dayton* may also have resulted in a pupil reassignment far more comprehensive and disruptive than that which the established violations warranted. My reading of the District Court opinion indicates that the court devised a remedy creating complete racial balance in every grade of every school throughout the county despite the existence of substantial residential segregation. This is a clear violation of the ruling in *Swann*. For the reasons expressed in my opinion dissenting from the denial of certiorari in *Cleveland Bd. of Ed. v. Reed*, 445 U. S. 935 (1980), and by MR. JUSTICE POWELL in his opinion dissenting from the dismissal of certiorari in *Estes v. Metropolitan Branch, Dallas NAACP*, 444 U. S. 437 (1980), I do not believe that such an assumption should go unreviewed by this Court. As in those cases, there is substantial record evidence here indicating that the classroom makeup achieved by the order would *not* exist "but for" the supposed constitutional violations. The District Court found that while 43.6% of the city of Wilmington's residents are black, only 4.5% of the county suburban residents are black. Specifically, the court found that since 1950 there had been extensive "white flight" from the city to the suburbs and that "the result of these demographic changes is that the black population of the County is heavily concentrated within the City of Wilmington." 393 F. Supp., at 432-433. The court concluded that "the residential demographic change of the past two decades has had a striking effect on the school attendance patterns in the County." *Id.*, at 433. The court did not find that these residential patterns were attributable solely (or even

April 28, 1980

446 U.S.

principally) to governmental discrimination. Therefore to devise a remedy on the assumption that absent the constitutional violations there would be precise racial parity in the county neighborhoods is impermissible under any traditional notion of an equitable remedy to restore the situation as it would have existed prior to the assumed wrong.

This Court does a disservice to local government and the people of Delaware, and very likely in the long run to the Equal Protection Clause of the Fourteenth Amendment, by once again declining to review a case of such fundamental importance.

No. 78-1260. *MOFFITT, UNITED STATES MARSHAL, ET AL. v. LOE*. C. A. 4th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 582 F. 2d 1291.

No. 79-54. *CITY OF LOS ANGELES ET AL. v. BLAKE ET AL.* C. A. 9th Cir. Motion of Los Angeles Police Protective League for leave to file a brief as *amicus curiae* granted. Certiorari denied. Reported below: 595 F. 2d 1367.

No. 79-1018. *DELAY v. ILLINOIS*. App. Ct. Ill., 4th Dist. Certiorari denied. MR. JUSTICE STEWART would grant certiorari. Reported below: 70 Ill. App. 3d 712, 388 N. E. 2d 1316.

No. 79-1247. *BOARD OF TRADE OF CHICAGO v. COMMODITY FUTURES TRADING COMMISSION*. C. A. 7th Cir. Motions of Mid-America Commodity Exchange et al., Coffee, Sugar & Cocoa Exchange, Inc., and Chicago Mercantile Exchange for leave to file briefs as *amici curiae* granted. Certiorari denied. MR. JUSTICE WHITE and MR. JUSTICE POWELL would grant certiorari. Reported below: 605 F. 2d 1016.

No. 79-1387. *MINSON v. CHRYSLER CORP.* C. A. 4th Cir. Certiorari denied. MR. JUSTICE POWELL took no part in the consideration or decision of this petition. Reported below: 612 F. 2d 1308.

446 U.S.

April 28, 1980

No. 79-1382. SWITLIK ET AL. *v.* HARDWICKE CORP. ET AL. Super. Ct. N. J. Certiorari denied. MR. JUSTICE BRENNAN took no part in the consideration or decision of this petition.

No. 79-1383. GANT ET AL. *v.* UNION BANK ET AL. C. A. 9th Cir. Motion of International Business Machines Corp. for leave to file a brief as *amicus curiae* granted. Certiorari denied. MR. JUSTICE BLACKMUN and MR. JUSTICE STEVENS took no part in the consideration or decision of this motion and petition. Reported below: 609 F. 2d 411.

No. 79-1396. INTERNATIONAL BUSINESS MACHINES CORP. *v.* GREYHOUND COMPUTER CORP. C. A. 9th Cir. Certiorari denied. MR. JUSTICE BLACKMUN and MR. JUSTICE STEVENS took no part in the consideration or decision of this petition.

No. 79-1636. WINPISINGER ET AL. *v.* WATSON ET AL. C. A. D. C. Cir. Motion of petitioners to expedite consideration of the petition for writ of certiorari granted. Certiorari denied. Reported below: 202 U. S. App. D. C. 133, 628 F. 2d 133.

No. 79-5987. JOLLY *v.* NORTH CAROLINA. Sup. Ct. N. C. Certiorari denied. MR. JUSTICE BRENNAN would grant certiorari. Reported below: 298 N. C. 573, 260 S. E. 2d 629.

No. 79-6229. HUETER *v.* LUTHERAN SOCIAL SERVICES OF CENTRAL OHIO ET AL. Ct. App. Ohio, Franklin County. Certiorari denied. MR. JUSTICE BRENNAN and MR. JUSTICE WHITE would grant certiorari.

Rehearing Denied

No. 79-1039. WILLIAM C. HAAS & Co., INC. *v.* CITY AND COUNTY OF SAN FRANCISCO, 445 U. S. 928;

No. 79-5626. SIMON *v.* TEXAS ET AL., 445 U. S. 938; and

No. 79-5863. GODWIN *v.* UNITED STATES, 445 U. S. 932. Petitions for rehearing denied.

April 28, 29, May 12, 1980

446 U. S.

No. 79-6014. *HERNANDEZ v. ELIO M. ROSSY, INC., ET AL.*,
445 U. S. 933. Petition for rehearing denied.

APRIL 29, 1980

*Miscellaneous Order**

MAY 12, 1980

Appointment of Chief Deputy Clerk

It is ordered that Alexander L. Stevas be, and he is hereby, appointed Chief Deputy Clerk of this Court, effective Monday, June 9, 1980.

Affirmed on Appeal

No. 79-6108. *ARMOUR ET AL. v. NIX ET AL.* Affirmed on appeal from D. C. N. D. Ga. MR. JUSTICE BRENNAN, MR. JUSTICE BLACKMUN, and MR. JUSTICE STEVENS would dismiss the appeal for want of jurisdiction. MR. JUSTICE MARSHALL took no part in the consideration or decision of this case.

Appeals Dismissed

No. 79-492. *FUNGAROLI v. FUNGAROLI*. Ct. App. N. C. [Probable jurisdiction noted, 444 U. S. 1031.†] Appeal dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied. MR. JUSTICE STEWART would grant certiorari. Reported below: 40 N. C. App. 397, 252 S. E. 2d 849.

No. 79-1233. *STUCKEY'S STORES, INC. v. O'CHESKEY, CHIEF HIGHWAY ADMINISTRATOR OF NEW MEXICO*. Appeal from Sup. Ct. N. M. dismissed for want of substantial federal question. Reported below: 93 N. M. 312, 600 P. 2d 258.

*For the Court's order prescribing amendments to the Federal Rules of Civil Procedure, see *post*, p. 997.

†[REPORTER'S NOTE: The case was argued April 16, 1980. *John F. Morrow* argued the cause and filed a brief for appellant. *B. Ervin Brown II* argued the cause and filed a brief for appellee.]

446 U. S.

May 12, 1980

No. 79-1453. BREWSTER *v.* CITY OF CARBONDALE. Appeal from Sup. Ct. Ill. dismissed for want of substantial federal question. Reported below: 78 Ill. 2d 111, 398 N. E. 2d 829.

No. 79-1474. AMERICAN AMUSEMENT CO., INC., ET AL. *v.* DEPARTMENT OF REVENUE OF MICHIGAN. Appeal from Ct. App. Mich. dismissed for want of substantial federal question. Reported below: 91 Mich. App. 573, 283 N. W. 2d 803.

No. 79-1495. SAPPINGTON *v.* BECKERT, JUDGE, ET AL. Appeal from Super. Ct. Pa. dismissed for want of substantial federal question.

No. 79-1497. ALFREE *v.* ALFREE. Appeal from Sup. Ct. Del. dismissed for want of substantial federal question. Reported below: 410 A. 2d 161.

No. 79-1325. CLARK *v.* INDIANA ET AL. Appeal from Sup. Ct. Ind. dismissed for want of substantial federal question. MR. JUSTICE BRENNAN and MR. JUSTICE BLACKMUN would note probable jurisdiction and set case for oral argument. Reported below: — Ind. —, 397 N. E. 2d 580.

No. 79-6237. RODRIGUES *v.* CITY OF SPARKS, NEVADA, ET AL. Appeal from C. A. 9th Cir. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied.

No. 79-6261. JAFFER *v.* CITY OF MIAMI ET AL. Appeal from Sup. Ct. Fla. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied. Reported below: 381 So. 2d 764.

Certiorari Granted—Vacated and Remanded

No. 77-6595. WILLIAMS *v.* NORTH CAROLINA. Sup. Ct. N. C. Motion of petitioner for leave to proceed *in forma pau-*

May 12, 1980

446 U.S.

peris and certiorari granted. Judgment vacated and case remanded for further consideration in light of *Baldasar v. Illinois*, ante, p. 222. Reported below: 294 N. C. 187, 241 S. E. 2d 73.

No. 79-1465. CALIFORNIA *v.* BRAESEKE. Sup. Ct. Cal. Motion of respondent for leave to proceed *in forma pauperis* and certiorari granted. Judgment vacated and case remanded to consider whether judgment is based on federal or state constitutional grounds, or both. *California v. Krivda*, 409 U. S. 33 (1972). Reported below: 25 Cal. 3d 691, 602 P. 2d 384.

No. 79-6149. SCHEER *v.* UNITED STATES. C. A. 3d Cir. Motion of petitioner for leave to proceed *in forma pauperis* and certiorari granted. Judgment vacated and case remanded for further consideration in light of the position presently asserted by the Solicitor General in his memorandum filed April 15, 1980. THE CHIEF JUSTICE, MR. JUSTICE WHITE, and MR. JUSTICE REHNQUIST dissent. Reported below: 614 F. 2d 771.

No. 79-6182. GRAHAM *v.* NEW YORK. App. Div., Sup. Ct. N. Y., 3d Jud. Dept. Motion of petitioner for leave to proceed *in forma pauperis* and certiorari granted. Judgment vacated and case remanded for further consideration in light of *Payton v. New York*, 445 U. S. 573 (1980). Reported below: 69 App. Div. 2d 544, 419 N. Y. S. 2d 290.

Miscellaneous Orders

No. A-886. MELECHINSKY *v.* UNITED STATES. Application for stay of execution of sentence, addressed to THE CHIEF JUSTICE and referred to the Court, denied.

No. A-890. WALTHAL *v.* TEXAS. Application for stay of mandate of the Court of Criminal Appeals of Texas, addressed to MR. JUSTICE MARSHALL and referred to the Court, denied.

446 U. S.

May 12, 1980

No. D-182. *IN RE DISBARMENT OF BLONDES*. Disbarment entered. [For earlier order herein, see 444 U. S. 977.]

No. D-191. *IN RE DISBARMENT OF SCHILPP*. It is ordered that Thomas F. Schilpp, of Lansdowne, 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-192. *IN RE DISBARMENT OF CRUMPACKER*. It is ordered that Owen W. Crumpacker, of Valparaiso, Ind., 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. 78-1851. *HARRIS v. H. SCHULDT REEDEREI*, 444 U. S. 839. Respondent is invited to file a response to the petition for rehearing within 30 days.

No. 79-1362. *AMERICAN FIDELITY LIFE INSURANCE CO. ET AL. v. ALABAMA FARM BUREAU MUTUAL CASUALTY INSURANCE Co., INC.* C. A. 5th Cir.;

No. 79-1406. *CITY OF LOS ANGELES v. GREATER WEST-CHESTER HOMEOWNERS ASSN. ET AL.* Sup. Ct. Cal.;

No. 79-1423. *WESTERN & SOUTHERN LIFE INSURANCE Co. v. STATE BOARD OF EQUALIZATION OF CALIFORNIA*. Appeal from Ct. App. Cal., 2d App. Dist.; and

No. 79-1469. *COSE v. COSE*. Sup. Ct. Alaska. The Solicitor General is invited to file briefs in these cases expressing the views of the United States.

No. 79-5601. *GOMEZ v. TOLEDO*. C. A. 1st Cir. [Certiorari granted, 444 U. S. 1031.] Motion of petitioner for leave to file a supplemental brief after argument granted.

May 12, 1980

446 U. S.

No. 79-5962. VINCENT *v.* TEXAS. Ct. Crim. App. Tex. [Probable jurisdiction postponed, 445 U. S. 960.] Motion for appointment of counsel granted, and it is ordered that Robert D. McCutcheon, Esquire, of Perryton, Tex., be appointed to serve as counsel for appellant in this case.

No. 79-6278. PLUMLEE *v.* FIELDS, WARDEN;

No. 79-6417. TURNER *v.* GRAHAM, GOVERNOR OF FLORIDA, ET AL.; and

No. 79-6421. CLEVELAND *v.* WARDEN, MARYLAND PENITENTIARY. Motions for leave to file petitions for writs of habeas corpus denied.

Certiorari Granted

No. 79-512. SCINDIA STEAM NAVIGATION CO., LTD. *v.* DE LOS SANTOS ET AL. C. A. 9th Cir. Certiorari granted. Reported below: 598 F. 2d 480.

No. 79-1420. FIRESTONE TIRE & RUBBER CO. *v.* RISJORD. C. A. 8th Cir. Certiorari granted. Reported below: 612 F. 2d 377.

No. 79-1515. UNITED STATES *v.* SWANK ET AL. Ct. Cl. Certiorari granted. Reported below: 221 Ct. Cl. 246, 602 F. 2d 348.

No. 79-1176. CITY OF MEMPHIS ET AL. *v.* GREENE ET AL. C. A. 6th Cir. Motion of Hein Park Civic Association for leave to file a brief as *amicus curiae* granted. Motion of respondents for leave to proceed *in forma pauperis* and certiorari granted. Reported below: 610 F. 2d 395.

Certiorari Denied. (See also Nos. 79-492, 79-6237, and 79-6261, *supra.*)

No. 79-989. FREDERICK JOSEPH G. *v.* CALIFORNIA. Ct. App. Cal., 5th App. Dist. Certiorari denied. Reported below: 96 Cal. App. 3d 353, 157 Cal. Rptr. 769.

446 U.S.

May 12, 1980

No. 79-1092. *ABERCROMBIE v. LOUISIANA*. Sup. Ct. La. Certiorari denied. Reported below: 375 So. 2d 1170.

No. 79-1147. *APPALACHIAN POWER CO. ET AL. v. UNITED STATES*. Ct. Cl. Certiorari denied. Reported below: 221 Ct. Cl. 398, 607 F. 2d 935.

No. 79-1164. *LICAVOLI v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 604 F. 2d 613.

No. 79-1184. *HOLLOWAY ET AL. v. UNITED STATES*; and
No. 79-1194. *SPIEGEL v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 604 F. 2d 961.

No. 79-1187. *FOX v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 612 F. 2d 575.

No. 79-1192. *FOREST E. OLSON, INC., ET AL. v. SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE (CALIFORNIA, REAL PARTY IN INTEREST)*. Ct. App. Cal., 4th App. Dist. Certiorari denied. Reported below: 96 Cal. App. 3d 181, 157 Cal. Rptr. 628.

No. 79-1216. *SYROVATKA ET UX. v. EHRlich, DIRECTOR, DEPARTMENT OF PUBLIC WELFARE OF NEBRASKA, ET AL.* C. A. 8th Cir. Certiorari denied. Reported below: 608 F. 2d 307.

No. 79-1221. *GRZYWACZ ET AL. v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 603 F. 2d 682.

No. 79-1235. *NATIONAL ASSOCIATION OF GOVERNMENT EMPLOYEES, INC., DBA INTERNATIONAL BROTHERHOOD OF POLICE OFFICERS v. CENTRAL BROADCASTING CORP.* Sup. Jud. Ct. Mass. Certiorari denied. Reported below: 379 Mass. 220, 396 N. E. 2d 996.

No. 79-1238. *BRIGGS v. IMMIGRATION AND NATURALIZATION SERVICE*. C. A. 9th Cir. Certiorari denied. Reported below: 608 F. 2d 1374.

May 12, 1980

446 U. S.

No. 79-1241. *ASHLAND OIL, INC. v. PHILLIPS PETROLEUM Co. ET AL.*; and

No. 79-1250. *PHILLIPS PETROLEUM Co. v. ASHLAND OIL, INC., ET AL.* C. A. 10th Cir. Certiorari denied. Reported below: 607 F. 2d 335.

No. 79-1244. *FALKOWSKI v. PERRY ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 599 F. 2d 1051.

No. 79-1251. *HARRIS, KERR, FORSTER & Co. v. SPECTRUM FINANCIAL COS. ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 608 F. 2d 377.

No. 79-1282. *PATRICK PETROLEUM CORPORATION OF MICHIGAN ET AL. v. UNITED STATES.* C. A. 5th Cir. Certiorari denied. Reported below: 608 F. 2d 542.

No. 79-1296. *COMO-FALCON COMMUNITY COALITION, INC. v. UNITED STATES DEPARTMENT OF LABOR ET AL.* C. A. 8th Cir. Certiorari denied. Reported below: 609 F. 2d 342.

No. 79-1297. *VICTORSON ET AL. v. UNITED STATES.* C. A. 9th Cir. Certiorari denied. Reported below: 607 F. 2d 1010.

No. 79-1304. *CITY OF NEW YORK v. UNITED STATES.* C. A. 2d Cir. Certiorari denied. Reported below: 614 F. 2d 1292.

No. 79-1305. *LUTHERAN MUTUAL LIFE INSURANCE Co. v. UNITED STATES.* Ct. Cl. Certiorari denied. Reported below: 221 Ct. Cl. 77, 602 F. 2d 328.

No. 79-1310. *LARSON v. UNITED STATES.* C. A. 8th Cir. Certiorari denied. Reported below: 612 F. 2d 1301.

No. 79-1311. *CHUTE, ADMINISTRATOR, ET AL. v. UNITED STATES.* C. A. 1st Cir. Certiorari denied. Reported below: 610 F. 2d 7.

446 U. S.

May 12, 1980

No. 79-1316. *ESTELLE, CORRECTIONS DIRECTOR v. PASSMORE*; and

No. 79-6138. *PASSMORE v. ESTELLE, CORRECTIONS DIRECTOR*. C. A. 5th Cir. Certiorari denied. Reported below: 594 F. 2d 115 and 607 F. 2d 662.

No. 79-1321. *JAIN v. IMMIGRATION AND NATURALIZATION SERVICE*. C. A. 2d Cir. Certiorari denied. Reported below: 612 F. 2d 683.

No. 79-1323. *QUINONES ET AL. v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 613 F. 2d 47.

No. 79-1326. *HESS v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 614 F. 2d 1292.

No. 79-1334. *HAYDEN ET UX. v. NATIONAL SECURITY AGENCY/CENTRAL SECURITY SERVICE ET AL.* C. A. D. C. Cir. Certiorari denied. Reported below: 197 U. S. App. D. C. 224, 608 F. 2d 1381.

No. 79-1365. *DEPARTMENT OF ENERGY ET AL. v. MOBIL OIL CORP.* Temp. Emerg. Ct. App. Certiorari denied. Reported below: 610 F. 2d 796.

No. 79-1391. *BAGNELL v. CALIFORNIA*. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 79-1398. *LERMAN v. INHABITANTS OF THE CITY OF PORTLAND*. Sup. Jud. Ct. Me. Certiorari denied. Reported below: 406 A. 2d 903.

No. 79-1402. *YOUNG ET AL. v. DISTINCTIVE DEVICES, INC.* App. Div., Sup. Ct. N. Y., 1st Jud. Dept. Certiorari denied. Reported below: 70 App. Div. 2d 792, 415 N. Y. S. 2d 917.

No. 79-1403. *PEREZ v. TEXAS*. Ct. Crim. App. Tex. Certiorari denied. Reported below: 590 S. W. 2d 474.

No. 79-1407. *GRIFFIN v. MARYLAND*. Ct. Sp. App. Md. Certiorari denied. Reported below: 43 Md. App. 744.

May 12, 1980

446 U. S.

No. 79-1409. *LUETKEMEYER v. ILLINOIS*. App. Ct. Ill., 4th Dist. Certiorari denied. Reported below: 74 Ill. App. 3d 708, 393 N. E. 2d 117.

No. 79-1411. *BUSHONG v. ARKANSAS*. Sup. Ct. Ark. Certiorari denied. Reported below: 267 Ark. 113, 589 S. W. 2d 559.

No. 79-1412. *CROSMAN v. LONG ISLAND UNIVERSITY*. App. Div., Sup. Ct. N. Y., 2d Jud. Dept. Certiorari denied. Reported below: 70 App. Div. 2d 650, 417 N. Y. S. 2d 207.

No. 79-1417. *BARTHOLOMEW ET AL. v. VIRGINIA CHIROPRACTORS ASSN., INC., ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 612 F. 2d 812.

No. 79-1418. *GLOBE PAPER Co. v. LINDLEY, TAX COMMISSIONER OF OHIO*. Ct. App. Ohio, Cuyahoga County. Certiorari denied. Reported below: 63 Ohio App. 2d 180, 410 N. E. 2d 804.

No. 79-1421. *DESIGN & MANUFACTURING CORP. v. INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE & AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW), ET AL.* C. A. 7th Cir. Certiorari denied. Reported below: 608 F. 2d 767.

No. 79-1440. *ADAMIAN v. LOMBARDI ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 608 F. 2d 1224.

No. 79-1441. *FORAKER v. OHIO*. Ct. App. Ohio, Licking County. Certiorari denied.

No. 79-1449. *KENTUCKY STATE BOARD FOR ELEMENTARY AND SECONDARY EDUCATION ET AL. v. RUDASILL ET AL.* Sup. Ct. Ky. Certiorari denied. Reported below: 589 S. W. 2d 877.

No. 79-1461. *MEYER v. MARYLAND*. Ct. Sp. App. Md. Certiorari denied. Reported below: 43 Md. App. 427, 406 A. 2d 427.

446 U.S.

May 12, 1980

No. 79-1470. *LEHMAN BROTHERS INC. v. LILLY ET AL.*; and

No. 79-1471. *STATE TEACHERS RETIREMENT SYSTEM OF OHIO PENSION FUND v. LILLY ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 608 F. 2d 55.

No. 79-1472. *CASHIN v. NEW JERSEY.* Super. Ct. N. J. Certiorari denied.

No. 79-1475. *HARRIGILL v. MISSISSIPPI.* Sup. Ct. Miss. Certiorari denied. Reported below: 381 So. 2d 619.

No. 79-1477. *DI MAURO v. PAVIA ET AL., DBA PAVIA & HARCOURT ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 614 F. 2d 1286.

No. 79-1478. *ELLIPSE CORP. v. FORD MOTOR CORP.* C. A. 7th Cir. Certiorari denied. Reported below: 614 F. 2d 775.

No. 79-1518. *DAVIS v. INTERNATIONAL UNION OF CHAUFFEURS, TEAMSTERS, WAREHOUSEMEN & HELPERS, LOCAL 135, ET AL.* C. A. 7th Cir. Certiorari denied. Reported below: 624 F. 2d 1104.

No. 79-1520. *FIELD ET AL. v. BROWN, SECRETARY OF DEFENSE, ET AL.* C. A. D. C. Cir. Certiorari denied. Reported below: 198 U. S. App. D. C. 39, 610 F. 2d 981.

No. 79-1531. *LARKIN v. UNITED STATES.* C. A. 5th Cir. Certiorari denied. Reported below: 605 F. 2d 1360 and 611 F. 2d 585.

No. 79-1536. *ROMANO v. UNITED STATES.* C. A. 9th Cir. Certiorari denied. Reported below: 612 F. 2d 584.

No. 79-1546. *LAYFIELD v. BILL HEARD CHEVROLET Co. ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 607 F. 2d 1097.

No. 79-1564. *KING v. UNITED STATES.* C. A. 8th Cir. Certiorari denied. Reported below: 614 F. 2d 1164.

May 12, 1980

446 U. S.

No. 79-1579. *BECK v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 618 F. 2d 109.

No. 79-1582. *COLEMAN, AKA COLEMAN-BEY, ET AL. v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 609 F. 2d 511.

No. 79-1585. *TENCH v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 615 F. 2d 1358.

No. 79-1589. *SANTOS v. UNITED STATES*. C. A. 1st Cir. Certiorari denied. Reported below: 613 F. 2d 1205.

No. 79-1603. *PEIFER v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 615 F. 2d 1354.

No. 79-5839. *HINES v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 609 F. 2d 503.

No. 79-5948. *PRESTON v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 608 F. 2d 626.

No. 79-5953. *SPICER v. ILLINOIS*. Sup. Ct. Ill. Certiorari denied. Reported below: 79 Ill. 2d 173, 402 N. E. 2d 169.

No. 79-5954. *RUBIES ET AL. v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 612 F. 2d 397.

No. 79-5969. *CALLABRASS v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 607 F. 2d 559.

No. 79-5980. *YOUNG v. DELAWARE*. Sup. Ct. Del. Certiorari denied. Reported below: 407 A. 2d 517.

No. 79-5985. *SALAAM v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 618 F. 2d 106.

No. 79-5996. *PEERY v. SIELAFF, CORRECTIONS DIRECTOR, ET AL.* C. A. 7th Cir. Certiorari denied. Reported below: 615 F. 2d 402.

No. 79-6002. *PRADO v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 609 F. 2d 603.

446 U. S.

May 12, 1980

No. 79-6020. *BROWN ET AL. v. SCHIFF ET AL.* C. A. 10th Cir. Certiorari denied. Reported below: 614 F. 2d 237.

No. 79-6033. *WISCHNEWSKI v. UNITED STATES.* C. A. 5th Cir. Certiorari denied. Reported below: 609 F. 2d 1007.

No. 79-6037. *ARMSTRONG v. MITCHELL, WARDEN.* C. A. 4th Cir. Certiorari denied. Reported below: 609 F. 2d 505.

No. 79-6049. *REYNOLDS v. NORTH CAROLINA.* Sup. Ct. N. C. Certiorari denied. Reported below: 298 N. C. 380, 259 S. E. 2d 843.

No. 79-6055. *HEITMAN v. MISSOURI.* Sup. Ct. Mo. Certiorari denied. Reported below: 589 S. W. 2d 249.

No. 79-6067. *McKETHAN v. UNITED STATES.* C. A. 4th Cir. Certiorari denied. Reported below: 618 F. 2d 106.

No. 79-6073. *GREEN v. SUMMERS.* C. A. 4th Cir. Certiorari denied. Reported below: 610 F. 2d 810.

No. 79-6080. *CHERRY v. NORTH CAROLINA.* Sup. Ct. N. C. Certiorari denied. Reported below: 298 N. C. 86, 257 S. E. 2d 551.

No. 79-6093. *RILEY v. UNITED STATES.* C. A. 6th Cir. Certiorari denied. Reported below: 615 F. 2d 1363.

No. 79-6129. *PAQUETTE v. HENDERSON, CORRECTIONAL SUPERINTENDENT.* C. A. 2d Cir. Certiorari denied. Reported below: 610 F. 2d 807.

No. 79-6142. *PAUL v. UNITED STATES.* C. A. 6th Cir. Certiorari denied. Reported below: 614 F. 2d 115.

No. 79-6163. *LEWIS v. UNITED STATES.* C. A. 2d Cir. Certiorari denied.

No. 79-6176. *ENSMINGER v. COMMISSIONER OF INTERNAL REVENUE.* C. A. 4th Cir. Certiorari denied. Reported below: 610 F. 2d 189.

May 12, 1980

446 U.S.

No. 79-6180. *RAYSOR v. STERN, ADMINISTRATOR, NEW YORK STATE COMMISSION ON JUDICIAL CONDUCT, ET AL.* App. Div., Sup. Ct. N. Y., 4th Jud. Dept. Certiorari denied. Reported below: 68 App. Div. 2d 786, 418 N. Y. S. 2d 713.

No. 79-6191. *BETANCOURT v. TEXAS.* Ct. Crim. App. Tex. Certiorari denied. Reported below: 590 S. W. 2d 487.

No. 79-6203. *WERNERT v. OHIO.* Sup. Ct. Ohio. Certiorari denied.

No. 79-6228. *WATERS v. NEW YORK; and*

No. 79-6235. *QUAMINA v. NEW YORK.* Ct. App. N. Y. Certiorari denied. Reported below: 49 N. Y. 2d 48, 399 N. E. 2d 1177.

No. 79-6232. *SNYDER v. BLANKENSHIP, CORRECTIONAL SUPERINTENDENT, ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 618 F. 2d 104.

No. 79-6240. *ROSS v. JONES, WARDEN.* C. A. 2d Cir. Certiorari denied.

No. 79-6244. *HENRYHAND v. SMITH, CORRECTIONAL SUPERINTENDENT.* C. A. 2d Cir. Certiorari denied.

No. 79-6247. *FRENCH v. BUTTERWORTH, CORRECTIONAL SUPERINTENDENT.* C. A. 1st Cir. Certiorari denied. Reported below: 614 F. 2d 23.

No. 79-6248. *MA v. HAZELWOOD ET AL.* Ct. App. Wis. Certiorari denied. Reported below: 90 Wis. 2d 864, 280 N. W. 2d 786.

No. 79-6249. *HOOTEN v. GEORGIA.* Sup. Ct. Ga. Certiorari denied. Reported below: 245 Ga. 250, 264 S. E. 2d 192.

No. 79-6257. *TURNAGE v. MCCARTHY, WARDEN.* C. A. 9th Cir. Certiorari denied. Reported below: 610 F. 2d 822.

446 U.S.

May 12, 1980

No. 79-6258. *WILEY v. NATIONAL COLLEGIATE ATHLETIC ASSN. ET AL.* C. A. 10th Cir. Certiorari denied. Reported below: 612 F. 2d 473.

No. 79-6260. *WALKER v. NEWPORT NEWS SHIPBUILDING & DRY DOCK Co.* C. A. 4th Cir. Certiorari denied. Reported below: 618 F. 2d 107.

No. 79-6262. *JAFFER v. ONGIE, CLERK, CITY OF MIAMI.* Sup. Ct. Fla. Certiorari denied. Reported below: 377 So. 2d 169.

No. 79-6264. *CHRISTENSEN v. COMMISSIONER OF INTERNAL REVENUE.* C. A. 10th Cir. Certiorari denied.

No. 79-6266. *MORGAN v. DISTRICT OF COLUMBIA ET AL.* C. A. D. C. Cir. Certiorari denied.

No. 79-6270. *WILLIAMS v. DALSHHEIM, CORRECTIONAL SUPERINTENDENT, ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 614 F. 2d 1293.

No. 79-6271. *JENKINS v. BORDENKIRCHER, PENITENTIARY SUPERINTENDENT.* C. A. 6th Cir. Certiorari denied. Reported below: 611 F. 2d 162.

No. 79-6275. *PRICE v. OHIO.* Sup. Ct. Ohio. Certiorari denied. Reported below: 60 Ohio St. 2d 136, 398 N. E. 2d 772.

No. 79-6280. *FELTINGTON v. MOVING PICTURE MACHINE OPERATORS UNION LOCAL 306 OF I.A.T.S.E. ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 605 F. 2d 1251.

No. 79-6282. *MOORE v. NORTH DAKOTA.* Sup. Ct. N. D. Certiorari denied. Reported below: 286 N. W. 2d 274.

No. 79-6287. *PORTER v. OHIO.* Ct. App. Ohio, Cuyahoga County. Certiorari denied.

May 12, 1980

446 U.S.

No. 79-6288. *CLARK v. PENNSYLVANIA*. Super. Ct. Pa. Certiorari denied. Reported below: 270 Pa. Super. 441, 411 A. 2d 800.

No. 79-6289. *JACOBS v. REDMAN, CORRECTIONAL SUPERINTENDENT*. C. A. 3d Cir. Certiorari denied. Reported below: 616 F. 2d 1251.

No. 79-6291. *DEMARBIEUX v. ARIZONA*. Super. Ct. Ariz., County of Maricopa. Certiorari denied.

No. 79-6292. *GUZMAN v. TEXAS*. Ct. Crim. App. Tex. Certiorari denied.

No. 79-6293. *LUCK v. TEXAS*. Ct. Crim. App. Tex. Certiorari denied. Reported below: 588 S. W. 2d 371.

No. 79-6294. *MCDANIEL v. GUNN, WARDEN*. C. A. 9th Cir. Certiorari denied. Reported below: 614 F. 2d 777.

No. 79-6298. *DIOQUINO v. WORKERS' COMPENSATION APPEALS BOARD ET AL.* Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 79-6303. *TILLMAN v. FAUVER, CORRECTION COMMISSIONER, ET AL.* C. A. 3d Cir. Certiorari denied.

No. 79-6310. *PRENZLER v. PIKE ET AL.* Sup. Ct. Cal. Certiorari denied.

No. 79-6315. *CHEEK v. BATES*. C. A. 1st Cir. Certiorari denied. Reported below: 615 F. 2d 559.

No. 79-6354. *PICKING v. HUGHES, GOVERNOR OF MARYLAND, ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 607 F. 2d 1002.

No. 79-6364. *GUANAJUATO v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 618 F. 2d 113.

No. 79-6368. *WALKER v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 613 F. 2d 1349.

446 U.S.

May 12, 1980

No. 79-6369. SAUNDERS-EL *v.* UNITED STATES ET AL. C. A. 3d Cir. Certiorari denied.

No. 79-6371. GOSNELL *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 609 F. 2d 1007.

No. 79-6375. MALLOY *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 79-6378. VARKONYI *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 611 F. 2d 84.

No. 79-6388. DEJEAN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 613 F. 2d 1356.

No. 79-6391. BROWN *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied.

No. 79-6397. CAMERON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 613 F. 2d 313.

No. 79-6398. BURRUS *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 618 F. 2d 111.

No. 79-6406. JONES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 614 F. 2d 80.

No. 79-6411. MEARS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 614 F. 2d 1175.

No. 79-6418. PLEXICO *v.* PENNSYLVANIA. Sup. Ct. Pa. Certiorari denied.

No. 79-6424. BROWN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 618 F. 2d 117.

No. 79-6426. COLVIN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 614 F. 2d 44.

No. 79-1200. OREGON *v.* HAYNES. Sup. Ct. Ore. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 288 Ore. 59, 602 P. 2d 272.

May 12, 1980

446 U. S.

No. 79-1303. CHICAGO TRANSIT AUTHORITY *v.* GOLDSCHMIDT, SECRETARY OF TRANSPORTATION, ET AL. C. A. 7th Cir. Certiorari denied. MR. JUSTICE STEVENS took no part in the consideration or decision of this petition. Reported below: 607 F. 2d 1284.

No. 79-1416. RANDALL *v.* COMMITTEE ON PROFESSIONAL ETHICS AND CONDUCT OF THE IOWA STATE BAR ASSN. Sup. Ct. Iowa. Certiorari denied. MR. JUSTICE POWELL took no part in the consideration or decision of this petition. Reported below: 285 N. W. 2d 161.

No. 79-6207. SPRADLIN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. MR. JUSTICE POWELL took no part in the consideration or decision of this petition. Reported below: 615 F. 2d 1358.

No. 79-1428. A. H. ROBINS CO., INC., ET AL. *v.* ROSS ET AL. C. A. 2d Cir. Motions of American Institute of Certified Public Accountants and Merrill Lynch, Pierce, Fenner & Smith, Inc., et al. for leave to file briefs as *amici curiae* granted. Certiorari denied. MR. JUSTICE POWELL took no part in the consideration or decision of these motions and this petition. Reported below: 607 F. 2d 545.

No. 79-1439. REICH ET AL. *v.* REED TOOL Co. Ct. Civ. App. Tex., 5th Sup. Jud. Dist. Petition for writ of certiorari denied as untimely filed. Reported below: 582 S. W. 2d 549.

No. 79-1450. CHAPMAN *v.* CITY OF TALLMADGE. Sup. Ct. Ohio. Certiorari denied. MR. JUSTICE BRENNAN, MR. JUSTICE STEWART, and MR. JUSTICE MARSHALL would grant certiorari and reverse the conviction.

No. 79-6029. THORNE *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied. MR. JUSTICE BRENNAN and MR. JUSTICE STEWART would grant certiorari.

446 U. S.

May 12, 1980

No. 79-6188. *MOORE v. ZANT, WARDEN*. Super. Ct. Ga., Butts County. Certiorari denied.

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. 78-904. *DEPOSIT GUARANTY NATIONAL BANK OF JACKSON, MISSISSIPPI v. ROPER ET AL.*, 445 U. S. 326;

No. 78-1472. *COSTLE, ADMINISTRATOR, ENVIRONMENTAL PROTECTION AGENCY v. PACIFIC LEGAL FOUNDATION ET AL.*, 445 U. S. 198;

No. 78-1588. *VANCE ET AL. v. UNIVERSAL AMUSEMENT CO., INC., ET AL.*, 445 U. S. 308;

No. 79-812. *OSMOSE WOOD PRESERVING CO. OF AMERICA, INC., ET AL. v. CITY OF LOS ANGELES*, 445 U. S. 950;

No. 79-1031. *SOUTHWEST TEXAS METHODIST HOSPITAL v. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION*, 445 U. S. 928;

No. 79-1143. *RINGLING BROS.-BARNUM & BAILEY COMBINED SHOWS, INC. v. MIKOS, PROPERTY APPRAISER OF SARASOTA COUNTY, FLORIDA, ET AL.*, 445 U. S. 939;

No. 79-1298. *UNKNOWN NAMED CHILDREN UNBORN AND BORN ALIVE v. GREENE, U. S. DISTRICT JUDGE*, 445 U. S. 941;

No. 79-5662. *FEASTER v. MARYLAND*, 445 U. S. 917;

No. 79-5820. *KLOBUCHIR v. PENNSYLVANIA*, 445 U. S. 952;

No. 79-6028. *LOCKETT v. SOUTH CENTRAL BELL TELEPHONE Co.*, 445 U. S. 944; and

No. 79-6036. *FROEMGEN v. UNITED STATES*, 445 U. S. 933. Petitions for rehearing denied.

May 12, 15, 19, 1980

446 U. S.

No. 79-6088. PROSAK *v.* BOEING CO. ET AL., 445 U. S. 934;
and

No. 79-6103. CAMPBELL *v.* UNITED STATES, 445 U. S. 945.
Petitions for rehearing denied.

MAY 15, 1980

Dismissal Under Rule 60

No. 79-6307. JOHNSON *v.* WASHINGTON. Sup. Ct. Wash.
Certiorari dismissed under this Court's Rule 60. Reported
below: 92 Wash. 2d 671, 600 P. 2d 1249.

MAY 19, 1980

Appeals Dismissed

No. 79-1169. BERGER *v.* BERGER. Appeal from Ct. App.
Ohio, Cuyahoga County, dismissed for want of jurisdiction.
Treating the papers whereon the appeal was taken as a peti-
tion for writ of certiorari, certiorari denied.

No. 79-1508. BROWN *v.* UNITED AUTOMOBILE, AERO-
SPACE & AGRICULTURAL IMPLEMENT WORKERS OF AMERICA,
UAW, 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: 614 F. 2d 774.

No. 79-6305. DI FALCO *v.* COMMISSIONER OF INTERNAL
REVENUE. Appeal from C. A. 9th Cir. dismissed for want
of jurisdiction. Treating the papers whereon the appeal was
taken as a petition for writ of certiorari, certiorari denied.

No. 79-6328. PRENZLER *v.* PIKE ET AL. Appeal from Ct.
App. Cal., 4th App. Dist., dismissed for want of jurisdiction.
Treating the papers whereon the appeal was taken as a peti-
tion for writ of certiorari, certiorari denied.

446 U. S.

May 19, 1980

No. 79-1434. *MANDEL ET AL. v. NEW YORK*. Appeal from Ct. App. N. Y. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied. MR. JUSTICE BRENNAN, MR. JUSTICE STEWART, and MR. JUSTICE STEVENS would note probable jurisdiction and set case for oral argument. Reported below: 48 N. Y. 2d 952, 401 N. E. 2d 185.

No. 79-1513. *DENGLER v. ATTORNEY GENERAL OF MINNESOTA*. Appeal from Sup. Ct. Minn. dismissed for want of substantial federal question. Reported below: 287 N. W. 2d 637.

Certiorari Granted—Vacated and Remanded

No. 79-1156. *MILLER, SECRETARY OF THE TREASURY, ET AL. v. CASTLEWOOD INTERNATIONAL CORP.* C. A. 5th Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *California Retail Liquor Dealers Assn. v. Midcal Aluminum, Inc.*, 445 U. S. 97 (1980). Reported below: 596 F. 2d 638.

Miscellaneous Orders

No. A-969. *ANDREWS v. MORRIS, WARDEN*. Sup. Ct. Utah. Application for stay of execution of sentence of death, presented to MR. JUSTICE WHITE, and by him referred to the Court, granted pending the timely filing and disposition of a petition for writ of certiorari.

No. 79-1738. *NIXON v. FITZGERALD*. C. A. D. C. Cir. Motion of petitioner to expedite consideration of the petition for writ of certiorari denied. MR. JUSTICE REHNQUIST took no part in the consideration or decision of this motion.

No. A-947 (79-1752). *ADAMS ET AL. v. UNITED STATES ET AL.* Application for stay of judgment of the United States Court of Appeals for the Eighth Circuit, addressed to MR. JUSTICE REHNQUIST and referred to the Court, denied.

May 19, 1980

446 U. S.

No. A-951 (79-1763). CHLORINE INSTITUTE, INC., ET AL. v. OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION ET AL. Application for stay of mandate of the United States Court of Appeals for the Fifth Circuit, presented to MR. JUSTICE POWELL, and by him referred to the Court, granted except as to the employers' obligation to provide respirators to employees exposed to chlorine concentrations in excess of 1 ppm, pending disposition of the petition for writ of certiorari.

No. 79-6353. SIMON v. UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT;

No. 79-6392. SIMON v. UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT;

No. 79-6399. DELESPINE v. UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT; and

No. 79-6465. PAUL v. HERMANSDORFER, U. S. DISTRICT JUDGE. Motions for leave to file petitions for writs of mandamus denied.

No. 79-1645. CANTER v. UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT ET AL. (UNITED STATES, REAL PARTY IN INTEREST). Motion for leave to file petition for writ of mandamus and/or other relief denied.

Probable Jurisdiction Noted

No. 79-1320. KASSEL, DIRECTOR OF TRANSPORTATION, ET AL. v. CONSOLIDATED FREIGHTWAYS CORPORATION OF DELAWARE. Appeal from C. A. 8th Cir. Probable jurisdiction noted. Reported below: 612 F. 2d 1064.

Certiorari Granted

No. 79-5269. EDWARDS v. ARIZONA. Sup. Ct. Ariz. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted limited to Question 1 presented by the petition. Reported below: 122 Ariz. 206, 594 P. 2d 72.

446 U. S.

May 19, 1980

No. 79-880. *KISSINGER ET AL. v. HALPERIN ET AL.* C. A. D. C. Cir. Certiorari granted. MR. JUSTICE REHNQUIST took no part in the consideration or decision of this petition. Reported below: 196 U. S. App. D. C. 285, 606 F. 2d 1192.

No. 79-1336. *CHICAGO & NORTH WESTERN TRANSPORTATION Co. v. KALO BRICK & TILE Co.* Ct. App. Iowa. Certiorari granted. Reported below: 295 N. W. 2d 467.

No. 79-6027. *WOOD ET AL. v. GEORGIA.* Ct. App. Ga. Motion of petitioner for leave to proceed *in forma pauperis* and certiorari granted. Reported below: 150 Ga. App. 582, 258 S. E. 2d 171.

Certiorari Denied. (See also Nos. 79-1169, 79-1434, 79-1508, 79-6305, and 79-6328, *supra.*)

No. 78-492. *NEVETT ET AL. v. SIDES, MAYOR OF FAIRFIELD, ALABAMA, ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 571 F. 2d 209.

No. 79-1175. *WM. T. BURNETT & Co., INC. v. GENERAL TIRE & RUBBER Co.* C. A. 4th Cir. Certiorari denied. Reported below: 609 F. 2d 512.

No. 79-1181. *HERNANDEZ v. FLORIDA*; and

No. 79-1210. *EDER ET AL. v. FLORIDA.* Dist. Ct. App. Fla., 3d Dist. Certiorari denied. Reported below: 369 So. 2d 76.

No. 79-1193. *ARANDA ET AL. v. VAN SICKLE ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 600 F. 2d 1267.

No. 79-1217. *UZZELL ET AL. v. FRIDAY ET AL.* C. A. 4th Cir. Certiorari denied.

No. 79-1245. *ACAVINO v. UNITED STATES.* C. A. 3d Cir. Certiorari denied. Reported below: 612 F. 2d 575.

No. 79-1253. *OPERATING ENGINEERS PENSION TRUST v. LIONBERGER.* Ct. App. Cal., 2d App. Dist. Certiorari denied. Reported below: 97 Cal. App. 3d 56, 158 Cal. Rptr. 535.

May 19, 1980

446 U.S.

No. 79-1262. *GENERAL MOTORS CORP. ET AL. v. COSTLE, ADMINISTRATOR, ENVIRONMENTAL PROTECTION AGENCY, ET AL.* C. A. D. C. Cir. Certiorari denied. Reported below: 201 U. S. App. D. C. 109, 627 F. 2d 1095.

No. 79-1276. *BUCCHINO v. UNITED STATES.* C. A. 5th Cir. Certiorari denied. Reported below: 606 F. 2d 590.

No. 79-1318. *LIBERTI ET UX. v. UNITED STATES.* C. A. 2d Cir. Certiorari denied. Reported below: 616 F. 2d 34.

No. 79-1345. *KORMAN v. UNITED STATES.* C. A. 6th Cir. Certiorari denied. Reported below: 614 F. 2d 541.

No. 79-1346. *MUNOZ v. UNITED STATES.* C. A. 6th Cir. Certiorari denied. Reported below: 612 F. 2d 582.

No. 79-1359. *WEST v. UNITED STATES ET AL.* C. A. 10th Cir. Certiorari denied. Reported below: 612 F. 2d 1224.

No. 79-1393. *COURTWRIGHT ET AL. v. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION ET AL.* C. A. 10th Cir. Certiorari denied. Reported below: 611 F. 2d 795.

No. 79-1473. *MENDOZA-ALVAREZ v. UNITED STATES ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 605 F. 2d 561.

No. 79-1486. *HARE v. ALABAMA.* Ct. Crim. App. Ala. Certiorari denied. Reported below: 377 So. 2d 1143.

No. 79-1492. *MOORE v. MINNESOTA ET AL.* C. A. 8th Cir. Certiorari denied. Reported below: 620 F. 2d 307.

No. 79-1505. *DREBIN ET AL. v. RUSSELL, TRUSTEE, ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 612 F. 2d 1123.

No. 79-1506. *LAGUTA ET AL. v. OHIO.* Ct. App. Ohio, Summit County. Certiorari denied.

446 U.S.

May 19, 1980

No. 79-1510. *TUCKER v. ANDERSON*. C. A. 2d Cir. Certiorari denied.

No. 79-1511. *ARCHER v. AIRLINE PILOTS ASSN., INTERNATIONAL*. C. A. 9th Cir. Certiorari denied. Reported below: 609 F. 2d 934.

No. 79-1512. *WESTOVER ET VIR v. TOLEDO*. Sup. Ct. Fla. Certiorari denied. Reported below: 377 So. 2d 171.

No. 79-1533. *W. R. GRACE & Co., INC. v. E-T INDUSTRIES, INC., ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 608 F. 2d 1214.

No. 79-1569. *YANKTON SIOUX TRIBE v. UNITED STATES*. Ct. Cl. Certiorari denied. Reported below: 222 Ct. Cl. 421, 616 F. 2d 485.

No. 79-1573. *BERGEN v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 612 F. 2d 443.

No. 79-1578. *CALDWELL ET AL. v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 611 F. 2d 881.

No. 79-1591. *RODGERS v. KENTUCKY*. Sup. Ct. Ky. Certiorari denied. Reported below: 594 S. W. 2d 273.

No. 79-1609. *HANIGAN ET AL. v. UNITED STATES*. C. A. 9th Cir. Certiorari denied.

No. 79-1632. *PROVENZANO v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 615 F. 2d 37.

No. 79-1633. *MARINO v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 622 F. 2d 576.

No. 79-1634. *STARR ET AL v. NIXON, FORMER PRESIDENT OF THE UNITED STATES, ET AL.* C. A. 10th Cir. Certiorari denied.

No. 79-1638. *HOGBERG v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 618 F. 2d 114.

May 19, 1980

446 U. S.

No. 79-1648. THOMAS *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 618 F. 2d 114.

No. 79-1651. GARNER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 618 F. 2d 106.

No. 79-6016. JONES *v.* GEORGIA. Sup. Ct. Ga. Certiorari denied. Reported below: 244 Ga. 689, 261 S. E. 2d 629.

No. 79-6031. MOORE *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 198 U. S. App. D. C. 296, 613 F. 2d 1029.

No. 79-6058. JOHNSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 612 F. 2d 1311.

No. 79-6123. KAMPILES *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 609 F. 2d 1233.

No. 79-6193. ALMENDAREZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 614 F. 2d 777.

No. 79-6204. QUATERMAIN *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 613 F. 2d 38.

No. 79-6265. CHIODO *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 620 F. 2d 286.

No. 79-6274. MOORMAN *v.* DAVIS ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 605 F. 2d 1203.

No. 79-6318. McMILLON *v.* PADGETT, JUDGE, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 613 F. 2d 313.

No. 79-6319. WILLIAMSON *v.* HINTON, WARDEN, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 618 F. 2d 107.

No. 79-6323. CAVER *v.* HILTON, PRISON SUPERINTENDENT, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 615 F. 2d 1352.

446 U. S.

May 19, 1980

No. 79-6324. CEPEDA *v.* HENDERSON, CORRECTIONAL SUPERINTENDENT. C. A. 2d Cir. Certiorari denied.

No. 79-6334. ATTWELL *v.* UNDERCOFLER, CHIEF JUSTICE, SUPREME COURT OF GEORGIA, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 608 F. 2d 228.

No. 79-6343. STOREY *v.* MASSACHUSETTS. Sup. Jud. Ct. Mass. Certiorari denied. Reported below: 378 Mass. 312, 391 N. E. 2d 898.

No. 79-6344. HEBERT *v.* SMITH, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 615 F. 2d 1360.

No. 79-6389. DUNN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 618 F. 2d 105.

No. 79-6415. IRVIN *v.* CATALANO, JUDGE, ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 617 F. 2d 603.

No. 79-6427. DOBSON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 609 F. 2d 840.

No. 79-6428. BROADWAY *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 613 F. 2d 1349.

No. 79-6430. DECAMBRA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 615 F. 2d 1367.

No. 79-6433. LEIB *v.* UNITED STATES ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 198 U. S. App. D. C. 92, 612 F. 2d 587.

No. 79-6435. HAWKINS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 614 F. 2d 85.

No. 79-6437. COLEMAN *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 620 F. 2d 290.

No. 79-6450. YOUNG *v.* BALTIMORE COUNTY BOARD OF EDUCATION ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 610 F. 2d 815.

May 19, 1980

446 U.S.

No. 79-6463. *SHORT v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 617 F. 2d 604.

No. 79-6469. *WEATHERS v. UNITED STATES*. C. A. 10th Cir. Certiorari denied. Reported below: 618 F. 2d 663.

No. 79-907. *INGRAM, SECRETARY, DEPARTMENT OF HUMAN SERVICES OF NEW MEXICO v. NOLAN*. C. A. 10th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 603 F. 2d 810.

No. 79-1105. *MOUNTAIN LAUREL RACING, INC., ET AL. v. FITZGERALD*. C. A. 3d Cir. Certiorari denied. MR. JUSTICE BLACKMUN would grant certiorari. Reported below: 607 F. 2d 589.

No. 79-1222. *AMERICAN GEMS, INC. v. MESSER, ADMINISTRATRIX*. C. A. 4th Cir. Certiorari denied. MR. JUSTICE BLACKMUN would grant certiorari. Reported below: 612 F. 2d 1367.

No. 79-1228. *IVY ET AL. v. SECURITY BARGE LINES, INC.* C. A. 5th Cir. Certiorari denied. MR. JUSTICE BRENNAN and MR. JUSTICE WHITE would grant certiorari. Reported below: 606 F. 2d 524.

No. 79-1482. *DoCARMO, ADMINISTRATOR v. F. V. PILGRIM I CORP.* C. A. 1st Cir. Certiorari denied. MR. JUSTICE BRENNAN and MR. JUSTICE WHITE would grant certiorari. Reported below: 612 F. 2d 11.

No. 79-6217. *WARREN ET AL. v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. MR. JUSTICE BRENNAN and MR. JUSTICE WHITE would grant certiorari. Reported below: 578 F. 2d 1058 and 612 F. 2d 887.

No. 79-1476. *STARLEY v. CITY OF BIRMINGHAM*. Ct. Crim. App. Ala. Certiorari denied. MR. JUSTICE BRENNAN, MR. JUSTICE STEWART, and MR. JUSTICE MARSHALL would grant certiorari and reverse the conviction. Reported below: 377 So. 2d 1131.

446 U. S.

May 19, 1980

No. 79-1258. CONFEDERATION OF IRANIAN STUDENTS *v.* CIVILETTI, ATTORNEY GENERAL; and

No. 79-1270. NARENJI ET AL. *v.* CIVILETTI, ATTORNEY GENERAL, ET AL. C. A. D. C. Cir. Certiorari denied. MR. JUSTICE BRENNAN would grant certiorari. Reported below: 199 U. S. App. D. C. 163, 617 F. 2d 745.

No. 79-1259. TORCH *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. MR. JUSTICE BRENNAN, MR. JUSTICE STEWART, and MR. JUSTICE MARSHALL would grant certiorari and reverse the conviction. Reported below: 609 F. 2d 1088.

No. 79-1386. UNITED STATES POSTAL SERVICE *v.* UNITED PARCEL SERVICE, INC., ET AL. C. A. 3d Cir. Certiorari denied. MR. JUSTICE WHITE and MR. JUSTICE POWELL would grant certiorari. Reported below: 604 F. 2d 1370.

No. 79-1466. BLACKBURN, WARDEN *v.* MONROE. C. A. 5th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. MR. JUSTICE WHITE and MR. JUSTICE BLACKMUN would grant certiorari. Reported below: 607 F. 2d 148.

No. 79-1491. SEYMOUR ET AL., TRUSTEES *v.* COUGHLIN Co. C. A. 9th Cir. Motion of International Union of Operating Engineers, Local Union No. 12, for leave to file a brief as *amicus curiae* granted. Certiorari denied. Reported below: 609 F. 2d 346.

No. 79-6177. RIVERA *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 618 F. 2d 93.

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

In December 1976 petitioner was indicted for possessing with intent to distribute one kilogram of heroin, in violation of 21 U. S. C. § 841 (a)(1). He was tried, convicted, and sentenced to 12 years in prison and a 3-year special parole term. Subsequently, petitioner was indicted for con-

May 19, 1980

446 U. S.

spiracy to distribute the same kilogram of heroin, in violation of 21 U. S. C. § 846. He pleaded guilty to the second charge and was sentenced to 14 years in prison and a 3-year special parole term to be served concurrently with the first sentence. Petitioner challenged the second conviction under 28 U. S. C. § 2255, alleging that it was barred by the Double Jeopardy Clause. The District Court denied relief, and the Court of Appeals affirmed.

Indictments for conspiracy and for the underlying substantive offense are indictments arising out of the same criminal transaction. *Dempsey v. United States*, 423 U. S. 1079 (1976) (BRENNAN, J., dissenting); *Ciuzio v. United States*, 416 U. S. 995 (1974) (BRENNAN, J., dissenting). Therefore, I would grant the petition for certiorari and remand with directions that the writ of habeas corpus be granted and the second conviction vacated. I adhere to my view that the Double Jeopardy Clause requires prosecution in one proceeding, except in extremely limited circumstances not present here, of "all the charges against a defendant that grow out of a single criminal act, occurrence, episode, or transaction." *Ashe v. Swenson*, 397 U. S. 436, 453-454 (1970) (BRENNAN, J., concurring). See *Thompson v. Oklahoma*, 429 U. S. 1053 (1977) (BRENNAN, J., dissenting), and cases collected therein.

No. 79-6242. *JERNIGAN v. LOUISIANA*. Sup. Ct. La. Certiorari denied. Reported below: 377 So. 2d 1222.

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

The New Orleans, La., police received an anonymous telephone call informing them that a black male wearing a yellow shirt and blue pants and armed with a handgun could be found sitting in Sander's Bar. A radio dispatch went out, and Officer Williams proceeded to the bar. Of the 10 or 12 persons in the bar, petitioner was the only one wearing a yellow shirt and blue pants. Officer Williams approached petitioner, directed him to stand, and frisked him. The

officer detected a gun in petitioner's pants pocket; he removed a .38-caliber revolver and arrested petitioner who was charged with violation of Louisiana law by possession of a firearm after having been previously convicted of a felony.

In sustaining the trial court's denial of petitioner's motion to suppress the gun as illegally seized, the Louisiana Supreme Court noted that the Fourth Amendment would render the evidence inadmissible if the officer did not have sufficient knowledge of facts and circumstances to amount to reasonable cause for an investigatory detention. The court also noted that *Adams v. Williams*, 407 U. S. 143 (1972), recognized that an informer's tip can provide a police officer with reasonable cause to detain and question a suspect. But the court noted further the difference between this case and *Adams*, for the narrow issue presented here was whether an informer's tip could provide reasonable cause if the tip was anonymous. According to the court, if the information received from the anonymous tipster carried enough indicia of reliability, such as specificity of the information and corroboration by independent police work, the anonymous tip was sufficient. Moreover, prompt police action was justified where the information would indicate an immediate and real danger to the public.

We have not directly decided whether an anonymous tip may furnish reasonable suspicion for a stop and frisk. We have emphasized the specificity of the information provided, the independent corroboration by the police officer, and the danger to the public. See, *e. g.*, *Adams, supra*; *Draper v. United States*, 358 U. S. 307 (1959). But in the decided cases, these factors were not the only indicia of reliability. The informers in *Adams* and *Draper* were known to the officer and were known to have provided reliable information in the past. The same cannot be said of an anonymous tipster.

Arguably, the decision of the Louisiana Supreme Court is inconsistent with our prior cases which require that reason-

May 19, 22, 1980

446 U. S.

able suspicion be based on a sufficiently reliable informer's tip. I would grant certiorari for this reason and also because the reliability of an anonymous or unidentified tipster is an issue that has divided the Federal Courts of Appeals. Compare *United States v. McLeroy*, 584 F. 2d 746 (CA5 1978), and *United States v. Robinson*, 536 F. 2d 1298 (CA9 1976) (no reasonable suspicion), with *United States v. Hernandez*, 486 F. 2d 614 (CA7 1973) (*per curiam*) (reasonable suspicion), cert. denied, 415 U. S. 959 (1974). See also *United States v. Gorin*, 564 F. 2d 159 (CA4 1977), cert. denied, 434 U. S. 1080 (1978), and *United States v. Unverzagt*, 424 F. 2d 396 (CA8 1970) (identity of informer known but no proof of his reliability; reasonable suspicion found). The state courts are similarly divided. Accordingly, I dissent from the denial of certiorari.

Rehearing Denied

No. 79-5940. *TURNER v. MITCHELL, WARDEN*, 445 U. S. 966;

No. 79-6057. *GRAY v. UNITED STATES*, *ante*, p. 911;

No. 79-6092. *LILLIBRIDGE ET UX. v. COMMISSIONER OF INTERNAL REVENUE*, 445 U. S. 967;

No. 79-6171. *ATTWELL ET AL. v. LASALLE NATIONAL BANK ET AL.*, 445 U. S. 954;

No. 79-6178. *BOALBEY v. KINDRED*, *ante*, p. 912; and

No. 79-6186. *NOE v. CIVILETTI, ATTORNEY GENERAL, ET AL.*, 445 U. S. 969. Petitions for rehearing denied.

MAY 22, 1980

Dismissals Under Rule 60

No. 78-1653. *NORTH CAROLINA WILDLIFE RESOURCES COMMISSION ET AL. v. EASTERN BAND OF CHEROKEE INDIANS*. C. A. 4th Cir. Certiorari dismissed under this Court's Rule 60. Reported below: 588 F. 2d 75.

446 U. S.

May 22, 27, 1980

No. 79-1237. *PHILLIPS v. TEXAS*. Appeal from Ct. Crim. App. Tex. dismissed under this Court's Rule 60. Reported below: 588 S. W. 2d 378.

MAY 27, 1980

Appeals Dismissed

No. 79-1340. *HODGES TRANSFER CO., INC., ET AL. v. ALABAMA PUBLIC SERVICE COMMISSION ET AL.* Appeal from Sup. Ct. Ala. dismissed for want of substantial federal question. Reported below: 376 So. 2d 680.

No. 79-1606. *CARTER v. KANSAS CITY, MISSOURI*. Appeal from Ct. App. Mo., Western District, dismissed for want of substantial federal question. Reported below: 591 S. W. 2d 132.

No. 79-1549. *GEECK ET AL. v. CITY OF NEW ORLEANS ET AL.* Appeal from Sup. Ct. La. dismissed for want of substantial federal question. MR. JUSTICE BLACKMUN and MR. JUSTICE POWELL would note probable jurisdiction and set case for oral argument. Reported below: 377 So. 2d 1206.

Certiorari Granted—Reversed and Remanded. (See No. 79-1101, *ante*, p. 643.)

Certiorari Granted—Vacated and Remanded

No. 78-6891. *DAVIS v. GEORGIA*;

No. 79-5032. *SPRAGGINS v. GEORGIA*;

No. 79-5188. *COLLINS v. GEORGIA*;

No. 79-5567. *BAKER v. GEORGIA*;

No. 79-5904. *HAMILTON v. GEORGIA*; and

No. 79-6330. *BROOKS v. GEORGIA*. Sup. Ct. Ga. Motions of petitioners for leave to proceed *in forma pauperis* and certiorari granted. Judgments vacated insofar as they leave undisturbed the death penalties imposed, and cases remanded for further consideration in light of *Godfrey v. Georgia, ante*,

May 27, 1980

446 U. S.

p. 420. Reported below: No. 78-6891, 242 Ga. 901, 252 S. E. 2d 443; No. 79-5032, 243 Ga. 73, 252 S. E. 2d 620; No. 79-5188, 243 Ga. 291, 253 S. E. 2d 729; No. 79-5567, 243 Ga. 710, 257 S. E. 2d 192; No. 79-5904, 244 Ga. 145, 259 S. E. 2d 81; No. 79-6330, 244 Ga. 574, 261 S. E. 2d 379.

No. 79-1243. HARRIS, CORRECTIONAL SUPERINTENDENT, ET AL. v. BERMUDEZ ET AL. C. A. 2d Cir. Motions of respondents for leave to proceed *in forma pauperis* and certiorari granted. Judgment vacated and case remanded for further consideration in light of *Cuyler v. Sullivan, ante*, p. 335. Reported below: 614 F. 2d 1285.

No. 79-1462. MCGUIRE, POLICE COMMISSIONER OF NEW YORK CITY v. LEIGH ET AL. C. A. 2d Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Board of Regents v. Tomanio, ante*, p. 478. Reported below: 613 F. 2d 380.

No. 79-1565. MISSOURI v. SOURS. Sup. Ct. Mo. Motion of respondent for leave to proceed *in forma pauperis* and certiorari granted. Judgment vacated and case remanded for further consideration in light of *Whalen v. United States*, 445 U. S. 684 (1980). Reported below: 593 S. W. 2d 208.

No. 79-5790. BROWN v. UNITED STATES. C. A. 9th Cir. Motion of petitioner for leave to proceed *in forma pauperis* and certiorari granted. Judgment vacated and case remanded for further consideration in light of *Cuyler v. Sullivan, ante*, p. 335. Reported below: 605 F. 2d 561.

No. 79-5995. SMITH v. BORDENKIRCHER, PENITENTIARY SUPERINTENDENT. C. A. 6th Cir. Motion of petitioners for leave to proceed *in forma pauperis* and certiorari granted. Judgment vacated and case remanded for further consideration in light of *Cuyler v. Sullivan, ante*, p. 335. Reported below: 611 F. 2d 374.

446 U. S.

May 27, 1980

No. 79-6376. *BARNETT v. ALFORD, WARDEN, ET AL.* C. A. 10th Cir. Motion of petitioner for leave to proceed *in forma pauperis* and certiorari granted. Judgment vacated and case remanded for further consideration in light of *Cuyler v. Sullivan, ante*, p. 335.

Miscellaneous Orders

No. A-941. *EGBERT v. KANSAS.* Application for stay of mandate of the Supreme Court of Kansas, addressed to MR. JUSTICE BRENNAN and referred to the Court, denied.

No. A-979. *BOARD OF EDUCATION OF THE CITY OF DETROIT ET AL. v. MILLIKEN, GOVERNOR OF MICHIGAN, ET AL.* Application for stay of mandate of the United States Court of Appeals for the Sixth Circuit, presented to MR. JUSTICE STEWART, and by him referred to the Court, denied. The order entered by MR. JUSTICE STEWART on May 14, 1980, is vacated.

No. D-193. *IN RE DISBARMENT OF LEACH.* It is ordered that Fred L. Leach, of Amarillo, Tex., be suspended from the practice of law in this Court and that a rule issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. 79-816. *POTOMAC ELECTRIC POWER Co. v. DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, U. S. DEPARTMENT OF LABOR, ET AL.* C. A. D. C. Cir. [Certiorari granted, 444 U. S. 1069.] Motion of petitioner to dispense with printing appendix granted.

No. 79-6370. *ABLE ET UX. v. DELAWARE.* Appeal from Sup. Ct. Del. Motion of appellants to seal the record granted.

No. 79-1451. *PFISTER v. DELTA AIR LINES, INC., ET AL.* Motion for leave to file petition for writ of certiorari and for other relief denied.

May 27, 1980

446 U. S.

Probable Jurisdiction Noted

No. 79-1380. HARRIS, SECRETARY OF HEALTH AND HUMAN SERVICES *v.* WILSON ET AL. Appeal from D. C. N. D. Ill. Probable jurisdiction noted. Reported below: 478 F. Supp. 1046.

Certiorari Denied

No. 79-646. PARTIN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 601 F. 2d 1000.

No. 79-795. MEDINA-HERRERA *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 606 F. 2d 770.

No. 79-1256. TURLOCK IRRIGATION DISTRICT ET AL. *v.* CITY AND COUNTY OF SAN FRANCISCO; and

No. 79-1479. UNITED AIR LINES, INC., ET AL. *v.* CITY AND COUNTY OF SAN FRANCISCO. C. A. 9th Cir. Certiorari denied. Reported below: 616 F. 2d 1063.

No. 79-1273. RUMAN *v.* DEPARTMENT OF REVENUE OF PENNSYLVANIA ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 612 F. 2d 574.

No. 79-1289. CHANEY *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 614 F. 2d 774.

No. 79-1299. FITZGERALD, PUBLIC ADMINISTRATOR OF THE COUNTY OF NEW YORK *v.* AMERICAN TRADING & PRODUCTION CORP. Ct. App. N. Y. Certiorari denied. Reported below: 48 N. Y. 2d 843, 400 N. E. 2d 366.

No. 79-1384. EXXON CORP. *v.* UNITED STATES;

No. 79-1394. SHELL OIL Co. *v.* UNITED STATES; and

No. 79-1395. MARATHON OIL Co. *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 202 U. S. App. D. C. 70, 628 F. 2d 70.

446 U.S.

May 27, 1980

No. 79-1401. OHIO COUNTY AND INDEPENDENT AGRICULTURE SOCIETIES, DELAWARE COUNTY FAIR *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 6th Cir. Certiorari denied. Reported below: 610 F. 2d 448.

No. 79-1442. ASSOCIATED BUILDERS & CONTRACTORS, INC., BALTIMORE METROPOLITAN CHAPTER *v.* LUBBERS, GENERAL COUNSEL OF NATIONAL LABOR RELATIONS BOARD. C. A. 4th Cir. Certiorari denied. Reported below: 610 F. 2d 1221.

No. 79-1445. SCHMIDT *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 615 F. 2d 1354.

No. 79-1456. FRUEHAUF CORP. *v.* EQUAL EMPLOYMENT OPPORTUNITY COMMISSION. C. A. 10th Cir. Certiorari denied. Reported below: 609 F. 2d 434.

No. 79-1490. JACKSON ET VIR *v.* WHERRY ET AL. Ct. App. D. C. Certiorari denied.

No. 79-1528. SMITH ET AL. *v.* EQUITY NATIONAL INDUSTRIES, INC., ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 609 F. 2d 1007.

No. 79-1537. COWLEY, DBA COWLEY PUMP & SUPPLY, ET AL. *v.* BRADEN INDUSTRIES, INC. C. A. 9th Cir. Certiorari denied. Reported below: 613 F. 2d 751.

No. 79-1541. ROSS *v.* UNITED STATES. Ct. Cl. Certiorari denied. Reported below: 220 Ct. Cl. 689, 618 F. 2d 122.

No. 79-1554. FERRELL *v.* SOUTH CAROLINA. Sup. Ct. S. C. Certiorari denied. Reported below: 274 S. C. 401, 266 S. E. 2d 869.

No. 79-1556. CANRON, INC. *v.* PLASSER AMERICAN CORP. C. A. 4th Cir. Certiorari denied. Reported below: 609 F. 2d 1075.

No. 79-1559. BRAMBLETT *v.* TENNESSEE. Ct. Crim. App. Tenn. Certiorari denied.

May 27, 1980

446 U.S.

No. 79-1566. *IOWA STATE MEN'S REFORMATORY ET AL. v. GUNTHER*. C. A. 8th Cir. Certiorari denied. Reported below: 612 F. 2d 1079.

No. 79-1568. *DISTRICT OF COLUMBIA v. BISHOP ET AL.* Ct. App. D. C. Certiorari denied. Reported below: 411 A. 2d 997.

No. 79-1590. *NOLAN v. MARYLAND*. Ct. Sp. App. Md. Certiorari denied. Reported below: 43 Md. App. 747.

No. 79-1593. *GULF OIL CORP. ET AL. v. PENNSYLVANIA POWER & LIGHT Co.* Super. Ct. Pa. Certiorari denied. Reported below: 270 Pa. Super. 514, 411 A. 2d 1203.

No. 79-1619. *MOSSER v. WHITE-WELD & Co., INC.* Ct. Civ. App. Tex., 5th Sup. Jud. Dist. Certiorari denied. Reported below: 587 S. W. 2d 485.

No. 79-1663. *PEARSON v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 517 F. 2d 350.

No. 79-1684. *MEDELLIN v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 614 F. 2d 1297.

No. 79-5700. *HUNT v. GRASSO, GOVERNOR OF CONNECTICUT, ET AL.* C. A. 2d Cir. Certiorari denied. Reported below: 614 F. 2d 1287.

No. 79-5795. *WEST v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 609 F. 2d 274.

No. 79-5841. *BROWN v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 602 F. 2d 909.

No. 79-5983. *HUNT v. ILLINOIS*. App. Ct. Ill., 3d Dist. Certiorari denied. Reported below: 73 Ill. App. 3d 1034, 392 N. E. 2d 793.

No. 79-6100. *ASHCROFT v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 607 F. 2d 1167.

446 U.S.

May 27, 1980

No. 79-6101. *VASIL v. FLORIDA*. Sup. Ct. Fla. Certiorari denied. Reported below: 374 So. 2d 465.

No. 79-6106. *PARROTT v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 612 F. 2d 572.

No. 79-6117. *DASKALAKIS v. EXECUTIVE COMMERCIAL SERVICES, LTD., ET AL.* App. Ct. Ill., 2d Dist. Certiorari denied. Reported below: 74 Ill. App. 3d 760, 393 N. E. 2d 1365.

No. 79-6120. *ZUROSKY ET AL. v. UNITED STATES*. C. A. 1st Cir. Certiorari denied. Reported below: 614 F. 2d 779.

No. 79-6141. *FORD v. ILLINOIS*. App. Ct. Ill., 4th Dist. Certiorari denied. Reported below: 73 Ill. App. 3d 1111, 395 N. E. 2d 1249.

No. 79-6145. *LEE v. GARRISON, WARDEN, ET AL.* C. A. 4th Cir. Certiorari denied.

No. 79-6157. *BUCKLE v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 613 F. 2d 361.

No. 79-6221. *GINTER v. SOUTHERN ET AL.* C. A. 8th Cir. Certiorari denied. Reported below: 611 F. 2d 1226.

No. 79-6243. *O'BRIEN v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 615 F. 2d 1361.

No. 79-6246. *RODRIGUEZ v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 613 F. 2d 28.

No. 79-6253. *BROWN v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 615 F. 2d 1020.

No. 79-6269. *DYAS v. ARKANSAS*. Sup. Ct. Ark. Certiorari denied. Reported below: 265 Ark. xxii.

No. 79-6273. *CHAPMAN v. UNITED STATES*. C. A. 10th Cir. Certiorari denied. Reported below: 615 F. 2d 1294.

May 27, 1980

446 U.S.

No. 79-6277. *BUCK v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 615 F. 2d 1362.

No. 79-6332. *STEVENS v. NORTH CAROLINA*. Super. Ct. N. C., Mecklenberg County. Certiorari denied.

No. 79-6333. *BAINES v. HILTON, PRISON SUPERINTENDENT, ET AL.* C. A. 3d Cir. Certiorari denied.

No. 79-6338. *STREET v. WARDEN, MARYLAND PENITENTIARY*. C. A. 4th Cir. Certiorari denied. Reported below: 618 F. 2d 105.

No. 79-6342. *LANE v. JEFFERSON HEALTH CARE, INC., ET AL.* C. A. 3d Cir. Certiorari denied. Reported below: 612 F. 2d 573.

No. 79-6347. *GIORDANO v. MASSACHUSETTS*. Ct. App. Mass. Certiorari denied. Reported below: 8 Mass. App. 590, 395 N. E. 2d 896.

No. 79-6349. *SCHULTZ v. ISRAEL, WARDEN*. C. A. 7th Cir. Certiorari denied. Reported below: 618 F. 2d 109.

No. 79-6351. *GARRETT v. ARRINGTON, SHERIFF*. Sup. Ct. Ga. Certiorari denied. Reported below: 245 Ga. 47, 262 S. E. 2d 808.

No. 79-6356. *HOP-WAH, AKA GREEN v. HOPPER, WARDEN*. C. A. 5th Cir. Certiorari denied. Reported below: 613 F. 2d 312.

No. 79-6357. *SHAW v. COLE, SHERIFF, ET AL.* C. A. 5th Cir. Certiorari denied.

No. 79-6358. *ANGEL v. CLARK*. C. A. 5th Cir. Certiorari denied.

No. 79-6360. *TAYLOR v. HAYES ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 618 F. 2d 105.

No. 79-6363. *DAWN v. WENZLER ET AL.* C. A. 9th Cir. Certiorari denied.

446 U. S.

May 27, 1980

No. 79-6367. *BROOKS v. WYRICK, WARDEN*. C. A. 8th Cir. Certiorari denied. Reported below: 620 F. 2d 308.

No. 79-6377. *GRACEY v. MILLER*. App. Ct. Ill., 4th Dist. Certiorari denied. Reported below: 75 Ill. App. 3d 1104, 399 N. E. 2d 1390.

No. 79-6436. *RAY v. SOWDERS, REFORMATORY SUPERINTENDENT*. C. A. 6th Cir. Certiorari denied. Reported below: 612 F. 2d 582.

No. 79-6461. *SULLIVAN v. FORD ET AL.* C. A. 5th Cir. Certiorari denied. Reported below: 609 F. 2d 197.

No. 79-6468. *KING v. UNITED STATES*. C. A. 8th Cir. Certiorari denied. Reported below: 616 F. 2d 1034.

No. 79-6483. *PAYTON v. UNITED STATES*. C. A. 1st Cir. Certiorari denied. Reported below: 615 F. 2d 922.

No. 79-6486. *VENABLE v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 618 F. 2d 106.

No. 79-6495. *MELTON v. UNITED STATES*. C. A. 5th Cir. Certiorari denied.

No. 79-6498. *SANDERS v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 614 F. 2d 292.

No. 79-6501. *LABINIA v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 614 F. 2d 1207.

No. 79-6503. *FERA v. UNITED STATES*. C. A. 1st Cir. Certiorari denied. Reported below: 616 F. 2d 590.

No. 79-6505. *HAYWARD v. DAY*. C. A. 8th Cir. Certiorari denied. Reported below: 619 F. 2d 716.

No. 79-1317. *HUNT v. OKLAHOMA*. Ct. Crim. App. Okla. Certiorari denied. MR. JUSTICE BRENNAN, MR. JUSTICE STEWART, and MR. JUSTICE MARSHALL would grant certiorari and reverse the conviction. Reported below: 601 P. 2d 464.

May 27, June 2, 1980

446 U. S.

No. 79-6527. REED *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 618 F. 2d 118.

No. 79-1553. COLEMAN *v.* MONTANA. Sup. Ct. Mont.; and

No. 79-5975. BOWEN *v.* GEORGIA. Sup. Ct. Ga. Certiorari denied. Reported below: No. 79-1553, — Mont. —, 605 P. 2d 1000; No. 79-5975, 244 Ga. 495, 260 S. E. 2d 855.

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

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

Rehearing Denied

No. 79-1190. LAsALLE NATIONAL BANK, TRUSTEE, ET AL. *v.* PEOPLES GAS LIGHT & COKE Co., 445 U. S. 943. Petition for rehearing denied.

No. 79-6018. STEELE *v.* BARRETT ET AL., 445 U. S. 933. Motion for leave to file petition for rehearing denied.

JUNE 2, 1980

Appeals Dismissed

No. 79-1295. MCKEESPORT AREA SCHOOL DISTRICT *v.* PENNSYLVANIA DEPARTMENT OF EDUCATION. Appeal from Pa. Commw. Ct. dismissed for want of substantial federal question. MR. JUSTICE STEVENS would note probable jurisdiction and set case for oral argument. Reported below: 38 Pa. Commw. 290, 392 A. 2d 912.

MR. JUSTICE WHITE, with whom MR. JUSTICE REHNQUIST joins, concurring.

Under Pennsylvania law, a public school district must provide nonpublic school children with transportation to and

from school and transportation for educational field trips if those services are provided to public school children. Pa. Stat. Ann., Tit. 24, § 13-1361 (Purdon Supp. 1979-1980). The present controversy centers on that portion of the statute dealing with transportation to and from school. MR. JUSTICE BLACKMUN's concurring opinion, however, *post*, at 978, states that it "is not automatically apparent from the jurisdictional statement and the motion to dismiss that have been filed with this Court, or from the summary opinion of the [Pennsylvania] Commonwealth Court," that the constitutionality of the field-trip provision is not before us. I write both to demonstrate that the absence of the field-trip issue is absolutely clear and to analyze the law that MR. JUSTICE BLACKMUN would apply to this case if the field-trip issue were present.

I

In *School District of Pittsburgh v. Pennsylvania Dept. of Education*, 443 U. S. 901 (1979), we dismissed for want of a substantial federal question an appeal challenging the constitutionality of the same statute challenged here. The question presented by the jurisdictional statement in *School District of Pittsburgh* reads as follows: "Whether Pennsylvania Act 372 of 1972 [Act of Dec. 29, 1972, P. L. 1726, No. 372, amending § 1361 of the Public School Code of 1949 (24 P. S. § 13-1361, as amended)] requiring school districts to transport resident nonpublic school pupils to and from schools located up to 10 miles beyond district boundaries violates the Establishment Clause of the First Amendment of the Constitution of the United States because of the Act's primary effect of advancing religion in addition to fostering excess entanglement of the state with religion." Juris. Statement, O. T. 1978, No. 78-1614, p. 3. The question presented by the jurisdictional statement in the instant case is identically phrased. Juris. Statement 4. Because a ruling of dismissal for want of a substantial federal question is a judgment on the merits, *Hicks v.*

WHITE, J., concurring

446 U. S.

Miranda, 422 U. S. 332, 344 (1975), and because this case presents the same challenge to the same statute that we rejected in *School District of Pittsburgh*, the same outcome properly follows here.

II

Nor can it be maintained that, although the identical statute and constitutional arguments are involved in both cases, *School District of Pittsburgh* involved a different application of the statute and thus that a different legal response is occasioned here. The instant litigation commenced with a show-cause order emanating from the Pennsylvania Department of Education, an order that placed in jeopardy under the statute appellant school district's public transportation reimbursement for the 1973-1974 school year. The order was premised not on any district action regarding field trips, but on the district's alleged refusal to transport students to five specified nonpublic schools beyond district boundaries in violation of the statute. Juris. Statement 7-8. Similarly, in *School District of Pittsburgh*, the litigation commenced with a show-cause order from the Department of Education threatening the appellant district's public transportation reimbursement for the 1973-1974 school year and relying on the district's alleged refusal to transport students to 20 specified institutions located beyond district boundaries. Juris. Statement, O. T. 1978, No. 78-1614, pp. 7-8.

In short, both cases involve controversies surrounding transportation to nonpublic schools outside the relevant district in accordance with a statute that also happens to provide for educational field trips for nonpublic school children. Neither case, however, involves any claim that the field-trip provision, as distinguished from the provision for transportation to and from nonpublic schools, is a forbidden establishment of religion.¹ In neither case did the state courts address such an

¹ Even a cursory glance at the statutory language, see *post*, at 977, n. *, confirms that the two provisions are distinct and severable. School

issue, and in neither was the field-trip provision expressly included in or subsumed by the question presented in the jurisdictional statement. Indeed, the Pennsylvania Supreme Court in *School District of Pittsburgh*, upon which case the Pennsylvania Commonwealth Court in the instant suit relied, App. to Juris. Statement 4a, expressly declared that the field-trip "portion of Act 372 is not before us" and that the court "need not consider the constitutionality of the field trip provision." *Springfield School Dist. v. Department of Ed.*, 483 Pa. 539, 553, n. 6, 397 A. 2d 1154, 1161, n. 6 (1979). It is apparent, therefore, that we have no jurisdiction to decide the validity of the part of the statute dealing with field trips. *Cardinale v. Louisiana*, 394 U. S. 437 (1969); *Crowell v. Randell*, 10 Pet. 368, 391 (1836). See R. Stern & E. Gressman, *Supreme Court Practice* § 3.27, p. 214 (5th ed. 1978) ("It has long been established that the Supreme Court is vested with no jurisdiction unless a federal question was raised and decided in the state court below").

III

Affirming this case thus would involve no inconsistency with *Wolman v. Walter*, 433 U. S. 229 (1977), where this Court saw lurking behind a routine exercise in local pedagogy, the educational field trip, the menacing hulk of an established state religion. Since MR. JUSTICE BLACKMUN'S concurrence adverts to *Wolman* as authority in this area, however, that case merits further examination.

In *Wolman* the Ohio Legislature had enacted a multifaceted program designed to provide assistance to nonpublic schools, presumably in recognition of the central importance of these schools in fulfilling the Nation's educational mission. See *Committee for Public Education v. Nyquist*, 413 U. S. 756, 813-820 (1973) (WHITE, J., dissenting). The program in-

district action that implicates one provision need not, and does not here, implicate the other.

cluded, *inter alia*, the loaning of secular textbooks to nonpublic school students or their parents; the supplying to nonpublic schools of standardized tests and scoring services; and the granting to nonpublic schools of field trips and transportation services such as are provided to public school students. The Court found certain aspects of the program acceptable under the Establishment Clause—*e. g.*, secular textbooks, standardized tests and scoring—but other aspects, including the field-trip provision, did not fare so well.

The Court believed that the field-trip provision had several troubling features. First, “the nonpublic school controls the timing of the trips and, within a certain range, their frequency and destinations,” indicating that “the schools, rather than the children, truly are the recipients of the service. . . .” 433 U. S., at 253. Second, the Court observed that, “although a trip may be to a location that would be of interest to those in public schools, it is the individual teacher who makes a field trip meaningful,” *ibid.*, and this poses “an unacceptable risk of fostering of religion [as] an inevitable byproduct.” *Id.*, at 254. Finally, to ensure that nonpublic schools do not pursue sectarian ends on their field trips would entail supervision by public school authorities, which “would create excessive [governmental] entanglement” in the affairs of sectarian institutions. *Ibid.*

In the present case, as in *Wolman*, we are not faced with a legislative enactment evincing a sectarian purpose. *Id.*, at 236. Fortunately, all of us continue to regard the achievement of educational quality as a valid secular end that States may pursue. A secular legislative purpose, however, is only one of the Court’s Establishment Clause indicia. To pass muster a statute must also have “a principle or primary effect that neither advances nor inhibits religion” and “must not foster an excessive government entanglement with religion.” *Ibid.* See *Roemer v. Maryland Public Works Bd.*, 426 U. S. 736, 748 (1976); *Committee for Public Education v. Nyquist*,

supra, at 772–773; *Lemon v. Kurtzman*, 403 U. S. 602, 612–613 (1971). In *Wolman*, the Court concluded that the challenged statute fails the latter two tests by subsidizing field trips for nonpublic school students.

What is the “principal or primary effect” of such a provision? The most reasonable appraisal surely suggests that the principal or primary effect of field trips for nonpublic school students is that boys and girls whose parents have exercised their constitutional right to send their children to private schools, *Pierce v. Society of Sisters*, 268 U. S. 510 (1925), will expand their educational horizons, just as the public school children benefiting from the same experience will expand theirs. Is this a danger from which we must shield the American public? The Court in *Wolman* failed to explain why we should not consider the venerable institution of the field trip as firmly grounded in sound educational policy and the effect sought to be created by educators and legislators as pedagogical and not religious. In *Wolman*, the Court could do no more than voice insubstantial and baseless fears that field trips might be used for religious indoctrination.

And what of excessive entanglement? As I read the instant statute, the State of Pennsylvania has devised no mechanism for “policing” nonpublic schools. The Supreme Court of Pennsylvania has similarly concluded that the “Act before us does not in any manner require the state to engage in ‘a comprehensive, discriminating and continuing’ surveillance of the nonpublic school teachers.” 483 Pa., at 566, 397 A. 2d, at 1168, quoting *Lemon v. Kurtzman*, *supra*, at 619. Nor had the State of Ohio in *Wolman* devised such a mechanism. Yet there the Court, without the benefit of any record facts showing actual entanglement, went on to conclude that, if the State of Ohio were ever to police nonpublic school field trips, excessive entanglement would result.

The precedential—or, for that matter, the persuasive—force of such *ex cathedra* wanderings is deservedly minimal. A decision that concedes a secular purpose, describes no actual

religious effect, and allows that there is no present excessive entanglement furnishes very little guidance for subsequent Establishment Clause inquiries. Insofar as field trips were concerned, *Wolman*, at bottom, was a decision predicated on fear of a series of unsubstantiated eventualities: What if the nonpublic school controls the timing, frequency, and destination of field trips so as to create a religious effect? 433 U. S., at 253. What if a nonpublic school teacher contrives, in making the field trip "meaningful," to exalt religion? *Ibid.* What if the State were ever to police nonpublic schools to make sure the field trips remained secular in character? *Id.*, at 254.

Responding to such fears is a difficult, if not impossible, task. One can say "it isn't so" on the indisputable ground that "it isn't." This would be one way of declining to find in the record what is not there. Perhaps the best response, however, is to observe that we ought "not assume that teachers in parochial schools will be guilty of bad faith or any conscious design to evade the limitations imposed by the statute and the First Amendment," *Lemon v. Kurtzman*, *supra*, at 618, quoted in *Wolman v. Walter*, 433 U. S., at 254, and to remind the Court "that legislation having a secular purpose and extending governmental assistance to sectarian schools in the performance of their secular functions does not constitute 'law[s] respecting an establishment of religion' forbidden by the First Amendment merely because a secular program may incidentally benefit a church in fulfilling its religious mission." *Lemon v. Kurtzman*, *supra*, at 663-664 (WHITE, J., concurring in part and dissenting in part).²

MR. JUSTICE BLACKMUN, with whom MR. JUSTICE BRENNAN joins, concurring.

Section 1361 of the Pennsylvania Public School Code of 1949 (Pa. Stat. Ann., Tit. 24, § 13-1361 (Purdon 1962)), as

² In this respect it is useful to bear in mind MR. JUSTICE BLACKMUN'S

amended by 1972 Pa. Laws No. 372,* authorizes a public school district of the Commonwealth of Pennsylvania to provide free transportation for its kindergarten, elementary, and secondary school pupils, and also to provide free transportation to and from any point in the Commonwealth for educational field trips. The statute states, in addition, that when such transportation is provided for public school pupils, the district "shall also make identical provision" for pupils who attend nonprofit, nonpublic schools located within the district or outside the district at a distance not exceeding 10 miles.

admonition in *Roemer v. Maryland Public Works Bd.*, 426 U. S. 736, 747 (1976) (footnote omitted), quoted in *Committee for Public Education v. Regan*, 444 U. S. 646, 658, n. 6 (1980):

"The Court has not been blind to the fact that in aiding a religious institution to perform a secular task, the State frees the institution's resources to be put to sectarian ends. If this were impermissible, however, a church could not be protected by the police and fire departments, or have its public sidewalk kept in repair. The Court never has held that religious activities must be discriminated against in this way."

*"The board of school directors in any school district may, out of the funds of the district, provide for the free transportation of any resident pupil to and from the kindergarten, elementary school, or secondary school in which he is lawfully enrolled, provided that such school is not operated for profit and is located within the district boundaries or outside the district boundaries at a distance not exceeding ten miles by the nearest public highway, . . . and to and from any points in the Commonwealth in order to provide field trips for any purpose connected with the educational pursuits of the pupils. When provision is made by a board of school directors for the transportation of public school pupils to and from such schools or to and from any points in the Commonwealth in order to provide field trips as herein provided, the board of school directors shall also make identical provision for the free transportation of pupils who regularly attend nonpublic kindergarten, elementary and high schools not operated for profit to and from such schools or to and from any points in the Commonwealth in order to provide field trips as herein provided." Pa. Stat. Ann., Tit. 24, § 13-1361 (Purdon Supp. 1979-1980).

Appellant district challenged the Pennsylvania statute as violative of the Fourteenth Amendment's Equal Protection Clause and of the First Amendment's Establishment Clause. The Commonwealth Court of Pennsylvania upheld the statute against that challenge. 38 Pa. Commw. 290, 392 A. 2d 912 (1978). The Supreme Court of Pennsylvania denied a petition for allowance of an appeal.

I join the Court's dismissal of this case only on the specific assumption that the issue of the constitutionality of the field-trip provision of the Pennsylvania statute is not before us. The absence of that issue, for me at least, is not automatically apparent from the jurisdictional statement and the motion to dismiss that have been filed with this Court, or from the summary opinion of the Commonwealth Court. That opinion, however, states: "No issue of law or fact distinguishes this case from earlier cases decided by this Court and upholding the Secretary's interpretation of the Act and the Act's constitutionality as so interpreted." 38 Pa. Commw., at 291, 392 A. 2d, at 912. That court's "earlier cases" cited are *School Dist. of Pittsburgh v. Commonwealth Dept. of Ed.*, 33 Pa. Commw. 535, 382 A. 2d 772 (1978); *Springfield School Dist. v. Commonwealth Dept. of Ed.*, 35 Pa. Commw. 71, 384 A. 2d 1049 (1978); and *Pequea Valley School Dist. v. Commonwealth Dept. of Ed.*, 36 Pa. Commw. 403, 387 A. 2d 1022 (1978).

On appeal to the Supreme Court of Pennsylvania, those three decisions of the Commonwealth Court were affirmed by a divided vote in a single opinion. *Springfield School Dist. v. Department of Ed.*, 483 Pa. 539, 397 A. 2d 1154 (1979). In its opinion, the Supreme Court of Pennsylvania construed the basic free-transportation provision of the Pennsylvania statute in such a way as to alleviate federal constitutional concern. It specifically noted, however, that the field-trip provision of the Act "is not before us in these appeals," and that

446 U. S.

June 2, 1980

the constitutionality of the field-trip provision need not be considered. *Id.*, at 553, n. 6, 397 A. 2d, at 1161, n. 6. The court went on to observe, *ibid.*, that the Attorney General of Pennsylvania has ruled the field-trip provision of the Act unconstitutional in its application to sectarian nonpublic schools. 1977 Op. Atty. Gen. No. 15.

In the present case I therefore assume that when the Commonwealth Court observed that no issue of law or fact distinguished this case from its cited "earlier cases," it necessarily means that the constitutionality of the field-trip provision was not at issue. It is only on that assumption that I join the Court in its dismissal of the appeal, for in *Wolman v. Walter*, 433 U. S. 229, 252-255 (1977), the Court flatly ruled that field-trip reimbursements to parochial schools are violative of the First Amendment. The continuing vitality of *Wolman* as controlling precedent in this area was recognized in *Committee for Public Education v. Regan*, 444 U. S. 646, 654 (1980).

No. 79-1563. YAKIMA COUNTY DEPUTY SHERIFF'S ASSN. v. BOARD OF COMMISSIONERS FOR YAKIMA COUNTY, WASHINGTON, ET AL. Appeal from Sup. Ct. Wash. dismissed for want of substantial federal question. Reported below: 92 Wash. 2d 831, 601 P. 2d 936.

No. 79-1608. TAYLOR ET AL. v. WISCONSIN TAX APPEALS COMMISSION ET AL. Appeal from Sup. Ct. Wis. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied. Reported below: 92 Wis. 2d 915, 289 N. W. 2d 306.

No. 79-6393. DOE v. SEARS. Appeal from Sup. Ct. Ga. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied. Reported below: 245 Ga. 83, 263 S. E. 2d 119.

June 2, 1980

446 U. S.

No. 79-6219. NELSON *v.* STATE ACCIDENT INSURANCE FUND. Appeal from Ct. App. Ore. dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied. MR. JUSTICE STEVENS would note probable jurisdiction and set case for oral argument. Reported below: 43 Ore. App. 155, 602 P. 2d 341.

Certiorari Granted—Reversed. (See Nos. 79-912 and 79-914, *ante*, p. 754.)

Certiorari Granted—Vacated and Remanded

No. 79-6290. DUPRIS *v.* UNITED STATES. C. A. 8th Cir. Motion of Cheyenne River Sioux Tribe of Cheyenne River Reservation for leave to file a brief as *amicus curiae* granted. Motion of petitioner for leave to proceed *in forma pauperis* and certiorari granted. Judgment vacated and case remanded to the United States District Court for the District of South Dakota (Central Division) to consider the question of mootness. Reported below: 612 F. 2d 319.

Miscellaneous Orders

No. A-946. BLUM, COMMISSIONER OF NEW YORK STATE DEPARTMENT OF SOCIAL SERVICES *v.* CALDWELL ET AL. Application to stay injunction of the United States District Court for the Northern District of New York, entered December 3, 1979, addressed to MR. JUSTICE STEVENS and referred to the Court, denied.

No. 79-1457. INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL-CIO, LOCAL 1969, ET AL. *v.* BISE ET AL. C. A. 9th Cir.; and

No. 79-1617. DEPARTMENT OF TRANSPORTATION OF OKLAHOMA *v.* PILE. Sup. Ct. Okla. The Solicitor General is invited to file briefs in these cases expressing the views of the United States.

446 U. S.

June 2, 1980

No. 79-1266. *STEADMAN v. SECURITIES AND EXCHANGE COMMISSION*. C. A. 5th Cir. [Certiorari granted, *ante*, p. 917.] Motion of petitioner to dispense with printing appendix granted.

No. A-995 (79-1791). *FLYNT v. GEORGIA*. Application for stay of execution and enforcement of mandate of the Court of Appeals of Georgia, presented to MR. JUSTICE POWELL, and by him referred to the Court, denied. MR. JUSTICE BRENNAN, MR. JUSTICE STEWART, and MR. JUSTICE MARSHALL would grant the application.

No. A-990 (79-1839). *FAZIO ET AL. v. UNITED STATES*. Application for stay of mandate of the United States Court of Appeals for the Fifth Circuit, addressed to MR. JUSTICE BRENNAN and referred to the Court, denied.

No. 79-6390. *MATTHEWS v. UNITED STATES*;

No. 79-6412. *MUINA v. DEPARTMENT OF PROFESSIONAL LICENSING OF MONTANA ET AL.*; and

No. 79-6446. *JONES v. PORTER*, U. S. DISTRICT JUDGE. Motions for leave to file petitions for writs of mandamus denied.

Certiorari Denied. (See also Nos. 79-912 and 79-914, *ante*, p. 754; and Nos. 79-1608, 79-6393, and 79-6219, *supra*.)

No. 79-1136. *BROWN & ROOT, INC., ET AL. v. JOYNER ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 607 F. 2d 1087.

No. 79-1280. *FIRST INVESTMENT ANNUITY COMPANY OF AMERICA v. MILLER, SECRETARY OF THE TREASURY, ET AL.*; and

No. 79-1281. *INVESTMENT ANNUITY, INC. v. MILLER, SECRETARY OF THE TREASURY, ET AL.* C. A. D. C. Cir. Certiorari denied. Reported below: 197 U. S. App. D. C. 235, 609 F. 2d 1.

June 2, 1980

446 U. S.

No. 79-1315. *DOYLE ET AL. v. UNITED STATES*. Ct. Cl. Certiorari denied. Reported below: 220 Ct. Cl. 285, 599 F. 2d 984, and 220 Ct. Cl. 326, 609 F. 2d 990.

No. 79-1199. *TEXAS v. BATTARBEE*. 183d Jud. Dist. Ct. Tex., Harris County. Certiorari denied.

No. 79-1343. *DIGGS v. UNITED STATES*. C. A. D. C. Cir. Certiorari denied. Reported below: 198 U. S. App. D. C. 255, 613 F. 2d 988.

No. 79-1351. *BABIC v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 614 F. 2d 777.

No. 79-1354. *CLUB RECREATION & PLEASURE ET AL. v. OREGON EX REL. HAAS, DISTRICT ATTORNEY FOR MULTNOMAH COUNTY*. Ct. App. Ore. Certiorari denied. Reported below: 41 Ore. App. 557, 599 P. 2d 1194.

No. 79-1361. *BEATTIE v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 613 F. 2d 762.

No. 79-1425. *WILDERNESS PUBLIC RIGHTS FUND v. ANDRUS, SECRETARY OF THE INTERIOR, ET AL.*; and

No. 79-1447. *EISEMAN ET AL. v. ANDRUS, SECRETARY OF THE INTERIOR, ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 608 F. 2d 1250.

No. 79-1432. *SOUTHERN PACIFIC TRANSPORTATION Co. v. HECTOR MARTINEZ & Co.* C. A. 5th Cir. Certiorari denied. Reported below: 606 F. 2d 106.

No. 79-1444. *ZANGRILLO v. AMBACH, COMMISSIONER OF EDUCATION OF NEW YORK, ET AL.* App. Div., Sup. Ct. N. Y., 3d Jud. Dept. Certiorari denied. Reported below: 70 App. Div. 2d 790, 416 N. Y. S. 2d 159.

No. 79-1455. *KULIK v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 601 F. 2d 604.

446 U. S.

June 2, 1980

No. 79-1458. MORGAN GUARANTY TRUST COMPANY OF NEW YORK *v.* RINIER, AGENT FOR CERTAIN EMPLOYEES OF BANKRUPT, ET AL.; and

No. 79-1459. RODMAN, TRUSTEE IN BANKRUPTCY *v.* RINIER, AGENT FOR CERTAIN EMPLOYEES OF BANKRUPT, ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 620 F. 2d 319.

No. 79-1485. UNITED STEELWORKERS OF AMERICA, AFL-CIO-CLC *v.* DUNBAR ET AL. Sup. Ct. Idaho. Certiorari denied. Reported below: 100 Idaho 523, 602 P. 2d 21.

No. 79-1493. PELLON ET AL. *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 620 F. 2d 286.

No. 79-1558. THEODOSOPOULOS *v.* NEW HAMPSHIRE. Sup. Ct. N. H. Certiorari denied. Reported below: 119 N. H. 573, 409 A. 2d 1134.

No. 79-1562. BALDWIN ET AL. *v.* MILLS ET AL. Sup. Ct. Fla. Certiorari denied. Reported below: 377 So. 2d 971.

No. 79-1572. REVERE COPPER & BRASS INC. *v.* OVERSEAS PRIVATE INVESTMENT CORP. C. A. D. C. Cir. Certiorari denied. Reported below: 202 U. S. App. D. C. 81, 628 F. 2d 81.

No. 79-1584. VANGO *v.* MITCHELL, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 618 F. 2d 106.

No. 79-1600. BOMBARDIER LTD. ET AL. *v.* ENGINE SPECIALTIES, INC. C. A. 1st Cir. Certiorari denied. Reported below: 605 F. 2d 1.

No. 79-1604. HALL *v.* ALABAMA. Ct. Crim. App. Ala. Certiorari denied. Reported below: 377 So. 2d 1123.

No. 79-1607. SHERARD *v.* SHELTON, DIRECTOR, DEPARTMENT OF SOCIAL SERVICES OF WAYNE COUNTY. Sup. Ct. Mich. Certiorari denied. Reported below: 407 Mich. 888.

June 2, 1980

446 U. S.

No. 79-1620. *LOMBARD, SHERIFF, ET AL. v. COOPER ET AL.* Ct. App. N. Y. Certiorari denied. Reported below: 49 N. Y. 2d 69, 399 N. E. 2d 1188.

No. 79-1627. *GREEN v. COUNTY OF ALAMEDA ET AL.* C. A. 9th Cir. Certiorari denied.

No. 79-1692. *FAMOLARE, INC. v. EDISON BROTHERS STORES, INC., ET AL.* C. A. 7th Cir. Certiorari denied. Reported below: 618 F. 2d 111.

No. 79-1699. *HAWAIIAN TELEPHONE CO. ET AL. v. DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS OF HAWAII ET AL.* C. A. 9th Cir. Certiorari denied. Reported below: 614 F. 2d 1197.

No. 79-1715. *PARRISH ET AL. v. UNITED STATES.* C. A. 4th Cir. Certiorari denied. Reported below: 618 F. 2d 106.

No. 79-1745. *SCAFIDI v. UNITED STATES.* C. A. 7th Cir. Certiorari denied. Reported below: 618 F. 2d 113.

No. 79-1758. *ERICKSON ET UX. v. UNITED STATES.* C. A. 10th Cir. Certiorari denied.

No. 79-1773. *ERICKSON ET UX. v. EUBANKS, U. S. DISTRICT JUDGE.* C. A. 10th Cir. Certiorari denied.

No. 79-6035. *GARCIA v. UNITED STATES.* C. A. 7th Cir. Certiorari denied. Reported below: 605 F. 2d 349.

No. 79-6134. *CHRISTIAN v. TEXAS.* Ct. Crim. App. Tex. Certiorari denied. Reported below: 592 S. W. 2d 625.

No. 79-6165. *LUMSDEN v. MISSOURI.* Sup. Ct. Mo. Certiorari denied. Reported below: 589 S. W. 2d 226.

No. 79-6172. *SHARP v. RHODES ET AL.* C. A. 6th Cir. Certiorari denied. Reported below: 615 F. 2d 1362.

No. 79-6179. *CHAVEZ v. WYOMING.* Sup. Ct. Wyo. Certiorari denied. Reported below: 604 P. 2d 1341.

446 U. S.

June 2, 1980

No. 79-6189. *McCoy v. UNITED STATES*. C. A. 10th Cir. Certiorari denied.

No. 79-6196. *GEROMETTE v. GENERAL MOTORS CORP.* C. A. 6th Cir. Certiorari denied. Reported below: 609 F. 2d 1200.

No. 79-6200. *THOMAS v. UNITED STATES*. Ct. App. D. C. Certiorari denied. Reported below: 411 A. 2d 618.

No. 79-6213. *BEAL v. ESTELLE, CORRECTIONS DIRECTOR*. C. A. 5th Cir. Certiorari denied.

No. 79-6226. *CAMPBELL v. ILLINOIS*. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 75 Ill. App. 3d 1101, 399 N. E. 2d 1388.

No. 79-6255. *QUINONES v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 615 F. 2d 1354.

No. 79-6283. *MARKT v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 612 F. 2d 584.

No. 79-6297. *WADE v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 618 F. 2d 106.

No. 79-6304. *TAYLOR v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 615 F. 2d 1354.

No. 79-6314. *IRVIN v. NANNI ET AL.* Ct. App. Tenn. Certiorari denied.

No. 79-6339. *HARBOLT v. UNITED STATES*. C. A. 5th Cir. Certiorari denied.

No. 79-6346. *HONEYCUTT v. WARD, CORRECTIONS COMMISSIONER*. C. A. 2d Cir. Certiorari denied. Reported below: 612 F. 2d 36.

No. 79-6381. *SHORT v. WASHINGTON*. Ct. App. Wash. Certiorari denied. Reported below: 23 Wash. App. 1055.

June 2, 1980

446 U. S.

No. 79-6382. SCOTT, ADMINISTRATRIX *v.* LANE. Sup. Ct. Va. Certiorari denied. Reported below: 220 Va. 578, 260 S. E. 2d 238.

No. 79-6401. RICE *v.* PENNSYLVANIA. Sup. Ct. Pa. Certiorari denied.

No. 79-6402. SHIRD *v.* WARDEN, MARYLAND CORRECTIONAL INSTITUTION. C. A. 4th Cir. Certiorari denied. Reported below: 618 F. 2d 104.

No. 79-6405. DAVIS *v.* NEW YORK. App. Div., Sup. Ct. N. Y., 4th Jud. Dept. Certiorari denied. Reported below: 72 App. Div. 2d 669, 422 N. Y. S. 2d 271.

No. 79-6408. NUNN *v.* CALIFORNIA. Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 79-6409. STEVENS *v.* NORTH CAROLINA. C. A. 4th Cir. Certiorari denied. Reported below: 618 F. 2d 105.

No. 79-6414. HARRIS *v.* GARRISON ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 612 F. 2d 1307.

No. 79-6416. DOE *v.* ANKER ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 614 F. 2d 1286.

No. 79-6420. HENDERSON *v.* LANE, WARDEN. C. A. 7th Cir. Certiorari denied. Reported below: 613 F. 2d 175.

No. 79-6464. BRISSETTE *v.* MACCHIAROLA, CHANCELLOR, NEW YORK CITY BOARD OF EDUCATION. C. A. 2d Cir. Certiorari denied. Reported below: 610 F. 2d 806.

No. 79-6480. BULLOCK *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 618 F. 2d 112.

No. 79-6492. MORGAN *v.* NORTH CAROLINA. Sup. Ct. N. C. Certiorari denied. Reported below: 299 N. C. 191, 261 S. E. 2d 827.

No. 79-6497. GOODWIN *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 612 F. 2d 1103.

446 U. S.

June 2, 1980

No. 79-6508. *FLANAGAN v. UNITED STATES*. C. A. 10th Cir. Certiorari denied.

No. 79-6518. *MOORE v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 616 F. 2d 1030.

No. 79-6523. *PEDEN v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 612 F. 2d 584.

No. 79-6528. *GAUSE v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 620 F. 2d 295.

No. 79-6538. *NUNN v. UNITED STATES*. C. A. 7th Cir. Certiorari denied. Reported below: 618 F. 2d 111.

No. 79-6539. *ROMAN v. LE FEVRE, CORRECTIONAL SUPERINTENDENT, ET AL.* C. A. 2d Cir. Certiorari denied.

No. 79-6547. *HOOD v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 618 F. 2d 1319.

No. 79-6567. *KEARNEY v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 620 F. 2d 305.

No. 79-6572. *DUKAJINI v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 628 F. 2d 1346.

No. 79-1225. *FIDELITY UNION LIFE INSURANCE Co v. PERRY*. C. A. 5th Cir. Certiorari denied. MR. JUSTICE STEWART and MR. JUSTICE BLACKMUN would grant certiorari. Reported below: 606 F. 2d 468.

No. 79-1348. *WORLDWIDE CHURCH OF GOD, INC., ET AL. v. SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES (CALIFORNIA, REAL PARTY IN INTEREST)*; and *HELGE ET AL. v. SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES (CALIFORNIA, REAL PARTY IN INTEREST)*. Ct. App. Cal., 2d App. Dist. Motions for leave to file briefs as *amici curiae* filed by the following were granted: National Council of Churches of Christ et al., American Civil Liberties Union of

June 2, 1980

446 U. S.

Southern California et al., Holy Spirit Association for the Unification of World Christianity et al., Church of the Nazarene, and Catholic League for Religious and Civil Rights. Certiorari denied.

No. 79-6588. *JONES v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 618 F. 2d 106.

No. 79-1290. *COMMUNITY LOAN CORPORATION OF RICHMOND COUNTY ET AL. v. CODY ET AL.* C. A. 5th Cir. Certiorari denied. MR. JUSTICE STEWART and MR. JUSTICE BLACKMUN would grant certiorari. Reported below: 606 F. 2d 499.

No. 79-1438. *OTEY v. NEBRASKA*. Sup. Ct. Neb.;

No. 79-5921. *BLAKE v. GEORGIA*. Sup. Ct. Ga.;

No. 79-6194. *O'BRYAN v. TEXAS*. Ct. Crim. App. Tex.;

No. 79-6250. *GRAY v. MISSISSIPPI*. Sup. Ct. Miss.; and

No. 79-6422. *BURGER v. GEORGIA*. Sup. Ct. Ga. Certiorari denied. Reported below: No. 79-1438, 205 Neb. 90, 287 N. W. 2d 36; No. 79-5921, 244 Ga. 466, 260 S. E. 2d 876; No. 79-6194, 591 S. W. 2d 464; No. 79-6250, 375 So. 2d 994; No. 79-6422, 245 Ga. 458, 265 S. E. 2d 796.

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

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

No. 79-1581. *COCA-COLA BOTTLING COMPANY OF ARKANSAS v. CHAUFFEURS, TEAMSTERS & HELPERS LOCAL UNION NO. 878*. C. A. 8th Cir. Certiorari denied. MR. JUSTICE BLACKMUN took no part in the consideration or decision of this petition. Reported below: 613 F. 2d 716.

446 U. S.

June 2, 1980

No. 79-1621. REYNOLDS METALS Co. v. ALUMINUM COMPANY OF AMERICA ET AL. C. A. 7th Cir. Certiorari denied. MR. JUSTICE POWELL would grant certiorari. Reported below: 609 F. 2d 1218.

No. 79-6121. HYMAN v. RICKMAN ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 624 F. 2d 1104.

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

Petitioner, an inmate at the Stateville Correctional Center in Joliet, Ill., filed *pro se* a civil rights action pursuant to 42 U. S. C. § 1983, alleging that the defendants he named (the warden and three officers of the prison guard) had deprived him of his constitutional rights by failing to afford him appropriate medical treatment for glaucoma, a sight-threatening eye condition. According to appointed counsel's statement of the case, petitioner's condition, while made known to the prison authorities at the beginning of his incarceration, did not receive the attention of an eye doctor during his first four months at Stateville, and he was denied the medication that eventually was prescribed for him until he was hospitalized some eight months after entering the prison. Pet. for Cert. 2. After being released from the hospital, petitioner continually had to prod the guards to give him his medicine, and they sometimes denied it to him. His eyes were permanently injured. *Ibid.*

The United States District Court for the Northern District of Illinois initially granted the defendants' motion for summary judgment on all of petitioner's claims. Although granting leave to proceed *in forma pauperis*, that court failed to act upon petitioner's motion, under 28 U. S. C. § 1915 (d), for the appointment of counsel.¹ The United States Court of Appeals for the Seventh Circuit, after appointing counsel

¹ Title 28 U. S. C. § 1915 (d) provides that in *in forma pauperis* cases "[t]he court may request an attorney to represent any such person unable to employ counsel. . . ."

to represent petitioner on appeal, reversed the District Court's judgment in part, remanding the case for further proceedings on petitioner's claim that respondents intentionally had deprived him of medication.

On remand, petitioner again moved the District Court for the appointment of counsel, and, unlike the Court of Appeals, the District Court denied his motion. Petitioner presented his own case in a 4-day jury trial. At the conclusion of his presentation of evidence, the District Court granted directed verdicts in favor of the warden and two of the guards, who evidently had little responsibility for petitioner's treatment on a day-to-day basis. Petitioner based his case against the fourth defendant, Lt. James L. Rickman, on allegations that this officer had sometimes denied petitioner medication on weekends. The case was submitted to the jury but they were unable to reach a verdict. Following a second trial, during which petitioner again represented himself, the jury found for Rickman.

Petitioner appealed a second time, and the Court of Appeals again appointed counsel to represent him. Petitioner argued that the District Court's failure to appoint counsel to represent him at trial had been an abuse of discretion and reversible error because his claim in fact was colorable (as evidenced by the Court of Appeals' earlier reversal of the District Court's entry of summary judgment), because the trial issues were factually and legally complex, because the constitutional right at stake was serious, and because the presence of counsel would have substantially aided petitioner in presenting his case. The Court of Appeals rejected this argument, holding, in an unpublished opinion, that the decision to appoint counsel for a civil rights litigant proceeding *in forma pauperis* rests with the discretion of the trial court. It repeated the standard it had articulated in earlier cases, that "[o]nly when a 'denial [of counsel] would result in fundamental unfairness impinging on due process rights' . . . will an appeals court overturn a decision of the district court

not to appoint counsel." App. to Pet. for Cert. 3 (quoting *Heidelberg v. Hammer*, 577 F. 2d 429, 431 (CA7 1978)).²

The Court of Appeals found no abuse of discretion in this case because the record revealed that petitioner understood the issue that was remanded for trial and had introduced evidence on that issue. Even conceding that counsel may have amended petitioner's complaint after the first appeal to expand his claim concerning the denial of medical treatment, the court concluded that petitioner had received a fair opportunity to state his case.

Petitioner contends that if his motion for the appointment of counsel had been granted by the District Court, counsel no doubt would have amended petitioner's complaint to add as defendants the prison physicians who were most responsible for his inadequate medical treatment. Counsel, unlike petitioner, would not have focused the jury's attention on isolated instances in which a single guard failed to give petitioner his medication, but rather would have concentrated on the lengthy period during which petitioner received no treatment at all for his sight-threatening condition. Appointed counsel would have obtained expert testimony to testify that glaucoma, if not treated properly, progressively leads to total blindness and irreversible damage.

I believe that under the controlling standards governing the appointment of counsel in civil rights cases that have been

² The standard of review articulated by the court in this case is derived from its earlier decision in *LaClair v. United States*, 374 F. 2d 486, 489 (CA7 1967). In *Chapman v. Kleindienst*, 507 F. 2d 1246, 1250, n. 6 (CA7 1974), the court refrained from deciding whether *LaClair's* standard should be replaced by that articulated in *Dreyer v. Jalet*, 349 F. Supp. 452, 486 (SD Tex. 1972), affirmance order, 479 F. 2d 1044 (CA5 1973): "[I]f a civil action brought by an indigent acting pro se, including prison inmates, has merit requiring an evidentiary hearing, then counsel should be appointed to properly present the claim." In *Heidelberg v. Hammer*, 577 F. 2d, at 431, the court stated: "We are not now disposed to overrule the holding of *LaClair*. . . ."

June 2, 1980

446 U. S.

adopted by other Courts of Appeals, a district court would have granted petitioner's § 1915 (d) motion. See *Gordon v. Leeke*, 574 F. 2d 1147, 1153 (CA4), cert. denied, 439 U. S. 970 (1978) ("If it is apparent to the district court that a *pro se* litigant has a colorable claim but lacks the capacity to present it, the district court should appoint counsel to assist him"); *Shields v. Jackson*, 570 F. 2d 284, 286 (CA8 1978) (where an indigent prisoner is in no position to investigate his case, his complaint states a cause of action, and the appointment of counsel will advance the administration of justice, the case will be remanded with directions to the district court to appoint counsel). See also *Chubbs v. City of New York*, 324 F. Supp. 1183, 1191 (EDNY 1971) ("If the case has merit and a trial is required counsel should be appointed. The prisoner himself can simply not prepare and try the case effectively"); and n. 2, *supra*.

Questions concerning the standards by which district courts are to exercise their discretion in appointing counsel under § 1915 (d), and the degree to which the exercise of that discretion is to be controlled, are of obvious importance to the administration of justice, and to the enforcement of federal civil rights, particularly in our Nation's penal institutions. Because I believe that petitioner's motion for the appointment of trial counsel would have been granted in other circuits, and that he may well have been prejudiced in presenting his case by the failure of the District Court to appoint counsel, I would grant certiorari and set the case for argument.

No. 79-6359. *WHITE v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. MR. JUSTICE BRENNAN would grant certiorari. Reported below: 611 F. 2d 531.

Rehearing Denied

No. 78-1756. *UNITED STATES v. MITCHELL ET AL.*, 445 U. S. 535. Petition for rehearing denied.

446 U. S.

June 2, 4, 5, 1980

No. 78-1779. OWEN *v.* CITY OF INDEPENDENCE, MISSOURI, ET AL., 445 U. S. 622;

No. 79-1265. CATERINA *v.* PENNSYLVANIA, 445 U. S. 963;

No. 79-1285. MASCHHOFF *v.* INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE & AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, UAW, ET AL., 445 U. S. 964;

No. 79-5993. FAIRRIS *v.* ESTELLE, CORRECTIONS DIRECTOR, *ante*, p 920;

No. 79-6040. BEEDE *v.* NEW HAMPSHIRE, 445 U. S. 967; and

No. 79-6043. KIBERT *v.* BLANKENSHIP, CORRECTIONAL SUPERINTENDENT, *ante*, p. 911. Petitions for rehearing denied.

JUNE 4, 1980

Dismissal Under Rule 60

No. 79-1805. MARYLAND *v.* WHITFIELD. Ct. App. Md. Certiorari dismissed under this Court's Rule 60. Reported below: 287 Md. 124, 411 A. 2d 415.

JUNE 5, 1980

Dismissal Under Rule 60

No. 79-1803. GRASSI ET AL. *v.* LOUISIANA. Sup. Ct. La. Certiorari dismissed as to petitioner Grassi under this Court's Rule 60. Reported below: 378 So. 2d 934.

INVESTIGATION

CONFIDENTIAL

On 12-15-54, the following information was received from the New York Office of the Federal Bureau of Investigation (NYO) regarding the activities of the Communist Party, USA, in the New York City area:

The NYO has advised that the Communist Party, USA, is active in the New York City area and is engaged in various activities designed to further the interests of the Party. The NYO has advised that the Communist Party, USA, is active in the New York City area and is engaged in various activities designed to further the interests of the Party.

The NYO has advised that the Communist Party, USA, is active in the New York City area and is engaged in various activities designed to further the interests of the Party. The NYO has advised that the Communist Party, USA, is active in the New York City area and is engaged in various activities designed to further the interests of the Party.

The NYO has advised that the Communist Party, USA, is active in the New York City area and is engaged in various activities designed to further the interests of the Party. The NYO has advised that the Communist Party, USA, is active in the New York City area and is engaged in various activities designed to further the interests of the Party.

The NYO has advised that the Communist Party, USA, is active in the New York City area and is engaged in various activities designed to further the interests of the Party. The NYO has advised that the Communist Party, USA, is active in the New York City area and is engaged in various activities designed to further the interests of the Party.

No. 75-210. *United States v. [Name]*, D. C. N.Y. (1954).
 Confidential. See [Name] Report, [Date].

Reference Made

No. 75-175. *United States v. [Name]*, D. C. N.Y. (1954).
 U. S. 625. [Name] Report, [Date].